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Public procurement and experiments in transparency: How not to profit from the poor

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Introduction

Modern democratic states, regardless of their chosen political or economic system, are unable to efficiently provide all the goods and services necessary to achieve their mandates. State procurement is an unavoidable necessity. Democratic values and rights such as equality and dignity are reflected in public fiduciary duties of prudence and accountability, which require the state to function with reasonable efficiency.[1]

However, many countries struggle to effectively prevent or combat corruption in public procurement. Corrupt practices in government, even if they often entail private sector involvement, undermine democracy, for they distort normal decision-making processes and subvert the policy objectives of legitimate democratic government. Corruption perpetuates socioeconomic divisions as it results in unfair advantage or undeserved benefit. Ultimately, corruption, if unchecked, can destroy a democratic society.

Corruption takes many forms, ranging from bribery to fronting, to contract price inflation, to the poor quality of goods and services delivered, to poor management of conflicts of interest, and to embezzlement and diversion of public funds. When those funds are then extracted from a country's economy, for example, by transnational corporations, the injury is compounded. Sometimes, despite clear legislative frameworks, ineffective management and oversight systems can allow small-scale corruption to develop into patronage networks that control large swathes of the interface between the public and private sectors. In South Africa, the problem has reached the scale and level of sophistication that has been described as 'state capture'.[2] Losses from the public purse are massive, running into billions of Rands. Public resources that should be utilised in a constitutionally-mandated effort to improve the quality of life of the poorest citizens are instead diverted to old and new elites.

That corruption and fraud in public procurement is not solely a South African or indeed an African problem is recognised in a recent Open Contracting Partnership Brief, which reported that –

> 'The OECD, European Commission, World Economic Forum and UN Office of Drugs and Crime all agree that public procurement and contracting is a government's number one vulnerability for corruption and fraud.'[3]

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[1] Shende, S. and Bennett, T, UN DESA (2004). 'Concept Paper 2: Transparency and Accountability in Public Financial Administration'. The authors state that – 'The term "democracy" minimally presupposes three essential elements: transparency, accountability, and equality. *Transparency* denotes free access to governmental political and economic activities and decisions. *Accountability* entails a state being held responsible, by both its people and its elected bodies, for its choices and actions. And the concept of *equality* [includes] citizens being treated equally under the law, as well as some degree of equal political participation among them in their own governance.'

[2] Olver, C. 2016. 'State Capture at a Local Level: A Case Study of Nelson Mandela Bay'. PARI, November 2016.

[3] *Open Contracting in Africa: The next generation of action*, Open Contracting Partnership. Available at http://www.open-contracting.org/wp-content/uploads/2016/05/OCP2016-Africa-brief-web.pdf. Last accessed 17 December 2016.

Noting the scale of the challenge in a large part of the developing world, the Brief also noted that –

'Across Africa, on average half of government spending is on public contracts.'

This paper therefore resists the notion that patrimonial networks can be ascribed to particular societies, economies, economic policies or time periods. Instead, it argues that the emergence of patrimonial behaviour or networks is somewhat organic, dynamically adapting to opportunities in a wide range contexts.

'Patrimonialism' is understood here in relatively loose terms as any situation where an individual or group misuses their position of authority or influence in order to 'take care of' or prefer the interests of one or more individuals outside the domain of power with whom there is some affinity.

Patrimony, then, can be small or large, and can range from an individual scale and a single instance, through an 'asystematised' or disorganised series of ad hoc events, sometimes escalating to the level of an organised network thriving on repeated exploitation of a generally poorly managed or deliberately unmanaged system. The resulting pathology may not be susceptible to some of the traditional techniques of democratic management.

In each instance and in each scenario, a form and degree of patrimony exists that departs from a purpose characterised by the general public interest or 'the common good'. The 'public interest' here represents optimal value for money, such that, all other things being equal, there is a generalised benefit to the democratic state's interest in serving a clear, democratically-endorsed programme, whatever that may represent. The greatest value in this context, represented by collective concepts such as the 'public interest' or the 'common good', is to enable a democratically elected government to operate as efficiently as possible in pursuit of the objectives of citizens' equality and dignity before the law.

Definitions and drivers of corruption – SA case study

In a *Diagnostic Research Report on Corruption, Non-Compliance and Weak Organisations* for South Africa's National Treasury, the Public Affairs Research Institute (PARI) observed that '[t]ypically, definitions of corruption identify an act of private abuse or private misuse or private appropriation as lying at the heart of the phenomenon of corruption' (PARI, 2012: 7).[4] These definitions share a 'distinction between private interests and public duties' (PARI, 2012: 7). By contrast, South Africa's Prevention and Combating of Corrupt Activities Act 12 of 2004 (PRECCA) defines corruption more broadly, envisaging that it may occur in any position of entrusted authority or responsibility, whether in the private or public sector.

PARI's report notes that '[m]odern definitions of corruption are not necessarily tied to liberal or neoliberal economic policy prescriptions; but they are closely tied to a liberal conception of the polity. Central to the liberal conception of the state is the idea that the bureaucracy can be organised in such a way that it 1) operates neutrally vis-à-vis any social class or group of individuals and 2) that it can become a reliable instrument for whoever controls … the legislature … and … the executive' (PARI, 2012: 9). In this context, corruption refers to –

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[4] Public Affairs Research Institute (2012). 'Diagnostic Research Report on Corruption, Non-Compliance and Weak Organisations'. PARI for the Technical Assistance Unit, National Treasury, at p7.

- Any kind of bias or partisanship that bureaucrats practice either towards themselves (Weber's major concern) or to a social class or group (Burke's objection),
- Any deviation in the work of bureaucrats from the policies and programmes of the government of the day.

The PARI report also observes, however, that 'for most of the twentieth century and for a good part of the nineteenth century too, the idea that the bureaucracy could or should be neutral relative to social interests was rejected out of hand'. In the context of a democratic South African, for example, 'the purpose of State transformation has not been to remove the social bias of the State, but to change its direction – from the white minority to the black majority, most notably to Africans. In other words, the purpose of State transformation in South Africa has not been to create a neutral state, but rather one that would work in favour of blacks in general and Africans in particular' (PARI, 2012: 8-9). In this sense, which is important for purposes of the thematic focus of this conference, the South African bureaucracy replaced one social bias with another.

Nevertheless, the PARI study concludes that the 'growing concern about corruption in South Africa from all quarters suggests that, on all definitions of corruption, there is evidence of widespread "misuse" of public resources' (PARI, 2012: 9). More to the point, the PARI report identifies the patrimonial nature of some aspects of corruption. Thus, there is 'a growing concern in the ANC that the main beneficiaries of public sector procurement are not those intended by either the movement or the government. The ANC's organisational renewal document notes, for example, that within the ANC there has been "a silent retreat from the mass line to palace politics of factionalism and perpetual in-fighting"' (ANC, 2012a: 9, cited in PARI).

While acknowledging this particular motive for patrimonialism, it is suggested that this is merely one motive among many, and likewise only one form of patrimonialism in a spectrum of possible incarnations. One can therefore agree that, as the PARI study concludes, in South Africa as elsewhere, the interface between the public and private sectors is a highly significant focal point for understanding the nature of many dimensions of corruption (PARI, 2012: 18).

For these reasons, a more inclusive definition of corruption might be useful, one which liberates us from the narrow neo-colonial paradigm that concerns Thandika Mkandawire. This preferred definition describes corruption in neutral and inclusive terms as any act involving *the misuse of entrusted power for personal or sectional gain*,[5] where power is understood as any position of authority, whether in the workplace, the home or on the sportsfield. This definition highlights this author's preference for viewing corruption as arising not originally, solely or even primarily from particular political-economic contexts. Rather, it seeks to understand corruption as a function of universal human nature – in terms of which avarice meets opportunity, wherever and whenever it may arise. Accepting this orientation for purposes of argument here, it is suggested that, if the malaise is universal, its remedies are equally so, subject to the peculiarities of a local context.

While the PARI study notes the difficulties in establishing with any certainty the scale of the problem in South Africa, it fairly confidently identifies the sources of the problem. Thus, it refers to the

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[5] *Towards a national integrity strategy for Namibia: A national discussion paper*, Technical Committee on the Promotion of Ethics and the Combating of Corruption, Windhoek, 1998, p 7. Cited in Pienaar, G (2000). 'The role of the public protector in fighting corruption', Office of the Public Protector, Pretoria. *African Security Review* Vol 9 No 2, 2000. Institute for Security Studies. Available at http://www.issafrica.org/pubs/ASR/9No2/Pienaar.html.

Auditor-General's 2011 audit report of national departments which noted a 'continuous decreasing trend of departments and public entities receiving clean audits', with 'unauthorised and irregular expenditure at national departments and national public entities rising to a total of R5.4 billion, compared to R341 million in 2007' (PARI, 2012: 10).[6]

AGSA attributes much of the blame for this outcome to poor SCM, and in particular a failure to adhere to prescribed regulations'. Moreover, '[i]f talking about corruption is also a way of speaking about "unfairness", then' it is no surprise that 'perceptions that corruption is increasing testify to declining public trust in government bodies' (PARI, 2102: 11). Indeed, the HSRC's annual SASAS surveys reveal a clear decline in public trust.

From an audit perspective, certain key indicators indicate potential or actual problems with corruption within an organisation, even if not strictly criminal "corruption" –

- Rising levels of irregular, unauthorised and fruitless/wasteful expenditure (IUFWE);
- SCM irregularities; and
- Awarding tenders/government business 'to entities in which an interest if held by government employees and/or their family members.'

Examining these trends across all three spheres of government, PARI finds evidence of patrimonialism in 'a clear rising trend of increasing IUFWE, accompanied by widespread SCM irregularities and the participation of government employees in government tenders' (PARI, 2012: 13).

PARI identifies the 'drivers of corruption' as including non-compliance with regulations, laws and standard operating procedures (PARI, 2012: 13). 'The most serious area of non-compliance', says PARI, 'is probably in the area of … SCM: Despite the detailed regulation of SCM practices in government and the efforts of various government agencies (including the AGSA's operation Clean Audit launched in 2009), there are serious problems across all spheres of government. For example, in 2011, almost 70% of all irregular expenditure in provinces (just under R12 billion) was a result of the circumvention of SCM regulations' (PARI, 2012: 13-14). Adopting an organisational focus, PARI identified the drivers of non-compliance as including (PARI, 2012: 14-16) –

- Lack of consequences for wrongdoing and non-compliance.
- Shortage of relevant skills and capacity for procurement and investigating allegations of corruption.
- Poor planning and reporting.
- Specific vulnerabilities in the SCM system.[7]
- No independent bodies setting and/or evaluating prices and developing costing models for a range of government services.
- A lack of minimum norms and standards for procurement, which enable an assessment of what constitutes a reasonable price.

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[6] The PARI study acknowledges that 'although a portion of this may be accounted for by the broadening of the Auditor General of South Africa's (AGSA's) mandate and improvements in their forensic auditing capabilities', these figures and subsequent trends 'are nonetheless disturbing'.

[7] It is suggested by this author that much confusion and uncertainty has arisen from the processes of centralisation, devolution and, now, re-centralisation of procurement - at least, centralisation of procurement oversight by the OCPO.

- The political-administrative interface and the impact on organisations.[8]
- Organisational weakness[9] and instability.[10]
- Independence and fairness of anti-corruption agencies, which stand or fall 'on the basis of their perceived fairness'. It is therefore 'vital that anti-corruption units select cases on the basis of <u>transparent, impartial and credible</u> criteria' (PARI, 2012: 17). (Emphasis added).

Significantly, for purposes of the present argument, the study shows 'the limited usefulness of understanding corruption as driven solely by individual "moral failure"'. Rather, an effective anti-corruption strategy 'depends to a great extent on how well the drivers of corruption are understood.' PARI's 'own analysis and the international experience clearly shows is that <u>what seems to make a reliable difference is close attention to the design and implementation of administrative systems and effective work processe</u>s. … [W]here administrative systems are weak and where processes are badly designed or ineffective, the likelihood of corruption increases.' (Emphasis added) By contrast, anti-corruption efforts seem to work better when they include organisational development and institution building, and '<u>appear </u>to work fairly (impartially/neutrally)'. (Emphasis added)

It is significant that the PARI study implicitly acknowledges the centrality of perceptions of impartiality and fairness arising from transparency, and that they coincide with effective organisational systems. Thus, the PARI study concludes that '[t]here is evidence of an indirect correlation between organisational efficiency, on the one hand and, corruption, on the other'. In other words, says PARI, 'the more efficient an organisation is[,] the less corrupt it is likely to be. Conversely, in line with the proposed thesis, as an 'organisation's efficiency decreases so <u>opportunities</u> for corruption grow' (PARI, 2012: 18). (Emphasis added)

With these findings and conclusions in mind, this paper argues that, while personal agency and responsibility will always remain relevant to the fight against corruption, identified organisational and systemic weaknesses will take time to overcome. Equally, changing associated drivers and incentives is not a short-term exercise. It is therefore suggested that, as alluded to in the PARI study, transparency is a key institutional practice that can be implemented in the short-term to build state and business integrity and, thereby, public trust in representative democratic institutions and fair economic arrangements. Transparency mechanisms can also model democratic values and behaviours that stimulate responsible citizenship and social cohesion. They are also relatively cheap.

As UN Secretary General Kofi Annan wrote in the 2004 foreword to the 2003 United National Convention Against Corruption -

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[8] Thus, while senior staff appointments remain the prerogative of the Minister and not the departmental Director-General, it remains 'difficult for staff to know to whom they are accountable and with whose directives they should comply', with political party imperatives often proving decisive.

[9] Weakness: 'The introduction of New Public Management reforms in South Africa in the 1990's was motivated by a fierce critique of bureaucracy – internally focused, rule-driven, hierarchically structured organisation. Instead, a post-apartheid public service was to be led by independent and values-driven managers that focused on outcomes and that were unrestrained by bureaucratic rules and regulations. Whatever the merit of these innovations, they have been associated with a general neglect of administrative processes in government departments. … The result is that careful process design and engineering has been severely neglected in government' (PARI, 2012: 17).

[10] 'Instability is sometimes compounded by "management interventions" to "turn-around" distressed organisations - resulting in what the Technical Assistance Unit (TAU) in the National Treasury call the "turn-around-about". 'This situation is compounded by high vacancies and high turnover rates amongst senior staff, associated with a constantly changing world of work.' See PARI, 2012: 16.

'The adoption of the United Nations Convention against Corruption will send a clear message that the international community is determined to prevent and control corruption. It will warn the corrupt that betrayal of the public trust will no longer be tolerated. And it will reaffirm the importance of <u>core values such as honesty, respect for the rule of law, accountability and transparency</u> in promoting development and making the world a better place for all.' [11] (Emphasis added)

Broadening the benefits of transparency and 'open contracting'

The evidence is mounting of the contribution that transparency can make to improvements in the quality of governance.[12] According to a U4 Brief, greater transparency in public contracting 'should increase accountability by enabling taxpayer control over use of public resources' (U4, 2012: 2).[13] 'There is anecdotal and micro-evidence of the economic benefits of procurement transparency and oversight mechanisms on corruption', but 'research on this topic remains relatively scant'.

However, the Brief cites research indicating that non-transparent bidding processes 'tend to discourage bidders from participating in tender processes, leaving government dependant on bids from a small group of firms, with higher contract prices, lower quality of goods and services and common delays and cost overruns (Evenett, S., 2003)'.

By contrast, 'improved transparency tends to divert government expenditure away from goods that could involve bribery, while increasing the number of suppliers involved in the bidding process (Evenett, Si. J. & Hoekman, B. M., 2004). 'As a result, open contracting can lead to more efficient allocation of resources for better quality and at lower prices through increased competition and higher quality procurement'.[14] For private companies, 'transparent contracting lowers investment risks and reduces costs of accessing relevant information, allowing them to make an informed decision on whether to bid or not'. By enhancing 'companies' confidence in participating in procurement processes and yielding stronger competition, transparent procurement also help enhance the efficiency of suppliers, foster more innovative approaches to production and promote wider access to more dynamic local markets' (OECD, 2003). Moreover, 'research suggests that greater domestic competition on procurement markets and greater transparency is likely to improve economic welfare' (Evenett, S. J. & Hoekman, B. M., 2004) (U4, 2012: 2-3).

Ghana and Liberia, Zambia and Uganda

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[11] Quoted in MTBPS 26 October 2016. See UN Office on Drugs and Crime (2004). The United Nations Convention Against Corruption, 2003. Available at: https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf.
[12] See for example a now rather dated study by the Institute for Development Studies: McGee, R. and Gaventa, J. (2010). *Synthesis report: Review of impact and effectiveness of transparency and accountability initiatives*, Transparency & Accountability Initiative, London. They state at pp 5-6 - 'While traditional forms of state-led accountability are increasingly found to be inadequate, thousands of multi-stakeholder and citizen-led approaches have come to the fore, to supplement or supplant them.' … [F]ew comprehensive, comparative or meta-level studies exist of whether desired impacts have been achieved and if so how. At the same time, there are a number of micro level studies, especially in the service delivery and budget transparency fields. These begin to suggest that in some conditions, the initiatives can contribute to a range of positive outcomes including, for instance, increased state or institutional responsiveness; <u>lowering of corruption</u>; building new democratic spaces for citizen engagement; empowering local voices; better budget utilization and better delivery of services.' (Emphasis added)
[13] U4 Anti-Corruption Resource Centre (2012). *Expert answer: The benefits of open contracting.* No. 328, 30 March 2012.
[14] For example, the Guatemala Ministry of Health reports saving 43% in purchasing medicines through more transparent procurement procedures while the Columbian Ministry of Defence generated 47% in the procurement of military goods (OECD, 2003). See U4 Expert Answer Number 328 (above).

These two African countries have been in the vanguard of 'open contracting' – for many years they have published contracts between government and private companies, albeit only in extractive industries. The Extractive Industries Transparency Initiative (EITI) has been the driving force here. The movement is broadening under the aegis of the Open Contracting Partnership (OCP) and the Open Government Partnership (OGP).

In its second OGP National Action Plan 2015-2017, Ghana reaffirmed its committed to open contracting in extractive industries. Contract disclosure in the extractives sector is 'becoming more routine' (OCP, 2016).[15] The governments of Liberia and Guinea 'are already disclosing all their contracts'. Proactive disclosure of public contracts in extractive industries is included in many African countries' OGP National Action Plans, e.g. Sierra Leone, Tanzania, Liberia, and Tunisia. The OGP National Action Plans for Congo DRC, Republic of Congo, Ghana, Mali, Mauritania, Mozambique and Sierra Leone 'include a commitment to disclose at least some of their contracts. Online searchable databases for contracts and/or licenses are available in Guinea, Liberia and the Republic of Congo. The databases for the latter two have been established by national EITI processes' (OCP, 2016).

The government of *Zambia* is reportedly also 'championing' open contracting. The World Bank and the OCP are supporting the development of a new e-procurement system that allows the publication of open data in accordance with the OCP's Open Contracting Data Standard.[16] The *Ugandan* Public Procurement Authority has signed an agreement with the Uganda Contracts Monitoring Coalition to ensure transparency and accountability in public contracts.

Chile

Chile's Comptroller-General (i.e. Accountant-General) has established an interactive online platform[17] that publicises large infrastructure projects and enables crowd-sourcing of information to track details of progress. The public is able to view disaggregated budget categories and payment schedules, service delivery intervals and supervisors' reports, as well as quantities and delivery schedules for the supply of materials. Innovative features include a standing invitation to members of the public and local communities to participate in monitoring construction processes, using increasingly widespread access to mobile phone technologies. Construction delays, theft of goods from a construction site, or diversions of a road or rail project from a publicised route can be reported via text message, accompanied by a photograph capturing onsite reality. All reports are automatically posted on the website, encouraging multi-stakeholder monitoring and mutual accountability.

Ukraine

The Open Contracting Partnership (OCP) describes a remarkable and apparently transformative experiment in post-revolution Ukraine.[18] After the 2015 revolution, a group of civil society activists

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[15] *Open Contracting in Africa: The next generation of action*, Open Contracting Partnership. Available at http://www.open-contracting.org/wp-content/uploads/2016/05/OCP2016-Africa-brief-web.pdf. Last accessed 17 December 2016.
[16] *Open Contracting in Africa: The next generation of action*, Open Contracting Partnership. Available at http://www.open-contracting.org/wp-content/uploads/2016/05/OCP2016-Africa-brief-web.pdf. Last accessed 17 December 2016.
[17] See http://www.contraloria.cl/NewPortal2/portal2/appmanager/portalCGR/v3ENG. Last accessed 17 January 2017.
[18] '"Everyone sees everything": Overhauling Ukraine's corrupt contracting sector', Open Contracting stories 28 November 2016. Available at https://medium.com/open-contracting-stories/everyone-sees-everything-fa6df0d00335#.y5bs3dwf0. Last accessed 14 December 2016.

sought to reform 'Ukraine's dysfunctional public institutions', including one of its 'most broken sectors, public procurement'. Patrimonial practices were legion - oligarchs were using government contracts as a means to enrich themselves. Yuriy Bugay says of his country that "[t]here were plenty of problems but the key one was corruption, and the key solution to corruption is transparency."

This informal group of activists 'decided the best way to make government deals more open was to create an e-procurement system, which they called ProZorro', Ukrainian for 'transparent'. ProZorro said that, by their 'very low estimate, 20% of spending in public procurement was lost due to corruption and limited competition'. Using open source software, it was 'designed to make it possible for government bodies to conduct procurement deals electronically, in a transparent manner, while also making the state's information about public contracts easily accessible online for anyone to see. Although it was initially conceived as a tool for fighting corruption, the potential benefits of the system are much broader — increasing competition, reducing the time and money spent on contracting processes, helping buyers make better decisions and making procurement fairer for suppliers'.

In its pilot phase, ProZorro reportedly saved 'over UAH 1.5 billion (US$55 million) for more than 3,900 government agencies and state-owned enterprises across Ukraine'. This pilot was so successful that, within a year, the project was adopted by Ukraine's economy ministry and Ukraine's parliament passed a new public procurement law requiring all government contracting to be carried out via ProZorro from 1 August 2016. Since then, potential savings to the procurement budget have 'snowballed'. As of November 2016, they stand at an estimated UAH 5.97 billion (US$233 million), with more than 15,000 buyers and 47,000 commercial suppliers using the new system.'

Nigeria

A Nigerian civil society leader, Seember Nyager, has argued that the public can use what they have now 'to build systems that make it difficult for contract [prices] to be inflated. A way of achieving this would be to start to ask for standard pricing benchmarks for [p]ublic contracts and for readily available access to procurement related information'.[19] Generally, it's easier for a member of the public to establish a reliable price for food or surgical supplies, or a truck, than for public goods such as a bridge.

Nigeria's Public Procurement Law anticipated the problem of inflated contract prices that could arise from complex public contracts and therefore requires that standard prices for public goods, works and services are determined, recorded and accessible. In addition, the law requires clear specifications for public contracts. If such information is 'available and publicly accessible, then it becomes harder for a public contract to be inflated. If Nigeria is truly committed to eliminating graft, then we need to put such systems in place where comparisons can be made across planned and actual government spending' (Nyager, 2015). Nigeria has one of the most detailed disaggregated national budgets in Africa. Details of larger contracts are accessible through the Bureau of Public

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[19] 'Eliminating Graft through Open Contracting', Seember Nyager *Premium Times* 26 February 2015. Available at http://opinion.premiumtimesng.com/2015/02/26/eliminating-graft-through-open-contracting-by-seember-nyager/. Last accessed 5 December 2016. Nyager is executive director of the Public Private Development Centre (PPDC) which recently launched a project called 'Budeshi' which means "open it" in the Hausa language.

Procurement's website,[20] while details of projects with lower monetary thresholds can be requested by using Nigeria's Freedom of Information (FOI) Act.

However, experiences of Nigerian CSO procurement monitors have highlighted a larger problem - 'even with these various datasets, linking them together is a challenge. This in turn, affects all attempts to verify that these contracts have delivered value for money'.[21] Nyager points out that it is almost 'impossible to use contracting data to verify the performance of public services if the data is presented differently at each stage'. Without 'clear specifications and specific locations for each project in both the budget and procurement data, it becomes difficult to know what data represents a certain contract, and what specifications each project ought to have. It then becomes difficult to verify the performance of each contract since it is unclear what specifications apply to each contract.' These are the challenges that the new Open Contracting Data Standard[22] seeks to address.

South Africa

In the South African edition of the 2014 *Global Economic Crime Survey* conducted by PriceWaterhouseCoopers (PwC), 'Bribery and corruption has been the fastest growing economic crime category in South Africa since 2011. … South African organisations [public and private] suffer significantly more procurement fraud, human resources fraud, bribery and financial statement fraud than organisations globally'[23] (PwC, 2014: 7).[24] This ranking remained the same for South Africa in PwC's 2016 report. In 2016, three African countries, South Africa, Kenya and Zambia, were in the top four countries reporting most economic crime (PwC: 2016: 8).

'Globally, the construction, energy and mining sectors experience the most bribery', PwC found (PwC, 2014: 4). The scale of opportunity for losses from the public purse is evident when one considers that, by the end of 2014, the SA government reported that it had spent R1 trillion on developing the country's infrastructure alone.[25]

As a result of the weaknesses in public procurement, South Africa has recently begun to adopt similar transparency strategies to those used elsewhere. Recent innovations include National Treasury's eTender portal,[26] where larger procurement contracts are advertised, and bid scoring and awards are announced. In 2013, the Competition Commission levied vast fines of approximately R1.4bn on construction companies which engaged in collusive rendering that enabled them to inflate costs for the WC 2010 football stadiums. If the eTender portal had been in existence at the time, evidence of price patterns would have been easier to red flag, much as current Open Contracting practitioners now do.[27]

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[20] See http://www.bpp.gov.ng/. Last accessed 14 February 2017.

[21] 'How Budeshi can help Nigeria track public services and tackle corruption using open data', Seember Nyager, Executive Director PPDC, Open Contracting Blog 29 February 2016. Available at http://www.open-contracting.org/2016/02/29/how-budeshi-can-help-nigeria-track-public-services-and-tackle-corruption-using-open-data/. Last accessed 15 December 2016.

[22] See http://standard.open-contracting.org/latest/en/. Last accessed 14 February 2017.

[23] Key findings of the South African edition of the *Global Economic Crime Survey* conducted and presented by PriceWaterhouseCoopers (PWC) in 2014, at p4.

[24] Profile of economic crime in South Africa in the SA edition of the *Global Economic Crime Survey* PWC 2014, at p7.

[25] 'Government spends R1 trillion on infrastructure' *SA News* 17 June 2015. Available at http://www.sanews.gov.za/south-africa/government-spends-r1-trillion-infrastructure. Last accessed 18 June 2015.

[26] See http://www.etenders.gov.za/.

[27] Wikrent, K. (2016). 'Red flags for integrity: Giving the green light to open data solutions', Open Contracting Blog, 30 November 2016. Available at http://www.open-contracting.org/2016/11/30/red-flags-integrity-giving-green-light-open-data-solutions/. Last accessed 10 February 2017.

With effect from 1 July 2016, local government contracts also had to be advertised on the eTender platform.[28] It is anticipated that the transparent announcement of comparative bid prices and scoring, and the announcement of the contract price proposed by successful bidders will ensure increased efficiency through the reduced incidence of price inflation, collusion and conflicts of interest by government employees. Treasury has also introduced transversal contracts through which commonly used goods and services can be procured through a standardised process, and using pricing benchmarks.[29]

In the 2016 Medium-Term Budget Policy Statement, Finance Minister Pravin Gordhan announced further transparency measures. Apparently echoing the problem diagnosis by civil society in Nigeria, these would include 'implementation of the new municipal Standard Chart of Accounts in all 257 municipalities from July 2017'. Minister Gordhan described this as 'a major reform that will improve the transparency and comparability of accounts, allowing for stronger monitoring and oversight of municipal finances.' In keeping with National Treasury's 'commitment to transparency in … public finances', he reported that it had also recently 'launched a new local government budget data portal … called "Municipal Money".[30] It provides citizens and other stakeholders with access to comparable, verified information on the financial performance of each municipality. It aims to promote transparency and citizen engagement by providing information about municipal spending in a simple, accessible format.'[31]

Conflicts of interest

Echoing PwC's findings, Treasury's Kenneth Brown, who recently stepped down as the head of the Office of the Chief Procurement Officer (OCPO), identified a few primary areas of 'leakage' in the public procurement process. These loopholes account for 'as much as 40% of the government's R600bn [annual] budget for goods and services'.[32] He elaborated, identifying three major interlinked weaknesses, viz. inflated prices from suppliers, fraud, and collusion between suppliers and government officials. In response, he said that the OCPO has 'stopped 9 000 public servants using companies they own to try to do business with the government'. This achievement was credited to the Office's introduction of a 'central supplier database'.[33] Pre-existing transparency regulations for conflicts of interest apparently now includes a more rigorous oversight by the OCPO.

Recent national legislation aims to enable more effective management of conflicts of interest in public procurement processes, which have contributed to vast wastage of public resources in South Africa. The Public Administration Management Act 11 of 2014 (PAMA) criminalises the failure to proactively manage the conflicts of interest that arise when companies owned by public servants or

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[28] 'Newsmaker – Kenneth Brown: The man slashing costs' City Press 28 February 2016. Available at http://city-press.news24.com/News/newsmaker-kenneth-brown-the-man-slashing-costs-20160228. Last accessed 17 December 2016.
[29] See http://www.treasury.gov.za/divisions/ocpo/ostb/contracts/default.aspx. Last accessed 14 February 2017.
[30] See https://municipaldata.treasury.gov.za/. Last accessed 11 February 2017.
[31] MTBPS 26 October 2016.
[32] 'Overpricing is where the real leakage is, Treasury's Kenneth Brown says' BD Live 6 October 2016. Available at http://www.bdlive.co.za/national/2016/10/06/overpricing-is-where-the-real-leakage-is-treasurys-kenneth-brown-says. Last accessed 6 October 2016. In 2014, Brown reportedly estimated that 'of the R600bn-R700bn spent each year by all spheres of government, about R30bn-R40bn was lost to corruption'. See 'New e-tender portal to simplify procurement process' *BDLive* 9 April 2015. Available at http://www.bdlive.co.za/business/2015/04/09/new-e-tender-portal-to-simplify-procurement-process?cx_tag=bcuf. Last accessed 6 April 2016.
[33] See https://secure.csd.gov.za/.

close relatives endeavour to do business with the state. Sections 8 and 9 of the PAMA are pertinent. Section 9 endeavours to strengthen pre-existing elements of disclosure and transparency, and now clearly stipulates that non-compliance is a dismissible offence. Significantly, these provisions now apply to municipal officials as well as to other public servants.

Gauteng Provincial Government Treasury: 'Open Tender'

The Auditor-General's PFMA Consolidated General Reports for 2015-16 in respect of the Gauteng provincial government's (GPG) noted a decline in GPG audit performance,[34] with irregular expenditure increasing to R6,5 billion (from R5,6 billion in 2014-15). This was primarily attributable to 'continued non-compliance with SCM legislation (concentrated around uncompetitive or unfair procurement processes)' (AGSA, 2016: 197). The AG's report also noted that, in order to 'minimise the risk of procurement processes that are not transparent, cost-effective and equitable, the premier and MEC for Finance have committed to fast track the implementation of the open tender system across all Gauteng provincial departments'.[35]

According the GPG's website, 'open tender' is intended to improve transparency in government procurement processes in order to build public confidence in the procurement system. Tightened internal compliance controls include greater scrutiny of internal controls, compliance and governance, including interest disclosures and review of bid specifications. Transparency at several critical stages in the procurement process ensures that bids are awarded through fair competition while ensuring compliance with Supply Chain Management rules and regulations. Tender bids are opened and evaluated in meetings open to the public, and bidders' prices are published on the GPG website (GPG, n.d.: 5ff).[36]

Concluding remarks

Ukraine has apparently achieved significant savings following prompt and enthusiastic government adoption and implementation of system designed by activists. The success or otherwise of Chile's interactive online platforms has been difficult to determine. The Nigerian government appears to be showing uneven interest in greater transparency, despite growing civil society pressure following grudging moves towards increased budget transparency. In South Africa, national and provincial governments are pursuing a state-led approach, selecting specific areas in which to permit greater transparency. Transparency can enhance state capacity by reducing the incentives for corruption and by enabling collaboration through multi-stakeholder forms of governance.

Nevertheless, globally, the message is converging – common challenges are increasingly being addressed through similar approaches. African and global perspectives are increasingly aligned. South African policy and practice is increasingly aligned with some courageous and ambitious global and African initiatives towards greater transparency, accountability and democratic equality.

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[34] Available at http://www.agsa.co.za/Portals/0/PFMA%202015-16/Part%2012%20PFMA%202015-16%20Sect%209%20Provincial%20overviews.pdf. Last accessed 6 January 2017.
[35] Gauteng Provincial Government Treasury (n.d.). 'Open Tender'. Available at http://www.treasury.gpg.gov.za/pages/open-tender.aspx. Last accessed 14 December 2016.
[36] Gauteng Provincial Government (n.d.). 'Open Procurement Process' presentation. Available at http://www.treasury.gpg.gov.za/Tenders/Open%20Procurement%20Presentation.pdf. Last accessed 14 December 2016.

More and more pieces of information about public finances are being placed in the public domain. Some of that information, such as on the Municipal Money website, desperately needs to be analysed, interpreted, assessed in the context of other information, and then communicated to the public.

An important next step in the globally-connected struggle against corruption should be a publicly-accessible register of corporate beneficial ownership. South Africa's 2016-18 OGP National Action commits to establishing such a register. In a still-globalised world, that register needs to include transnational corporations operating in South Africa and in each African country.