

# OPEN UP CONTRACTING

## Private Sector Engagement

End-Term Evaluation of the  
Citizen Agency Consortium  
Open Up Contracting Program



# Evaluation of the Hivos Open Up Contracting Programme – Private sector engagement case study

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FINAL

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# OPEN UP CONTRACTING PROGRAMME

## Case Study: Private Sector

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### I. Introduction

This case study synthesises evidence concerning the Hivos Open Up Contracting Programme’s engagement with the private sector. It begins with a description of the methodology and an overview of the evidence and debates regarding private sector engagement with open contracting. A discussion of how the programme tried to engage with the private sector as it relates to its theory of change and what this has achieved follows. In the last few sections the case study discusses issues arising from Hivos’s engagement with the private sector, draws some conclusions and ends with a series of questions for reflection.

Broadly, our findings illustrate the challenge of engaging the private sector in open contracting while highlighting some recent progress developing concepts and arguments that can make a stronger case than in previous efforts.

## II. Methodology

At the start of the evaluation the Hivos Open Up Contracting (OUC) programme team had identified the following questions to guide the evaluation work:

- Why should the private sector take an active role?
- What are the value propositions for them to engage?
- How to facilitate multi-actor processes when interests are contradicting and a clear win-win narrative cannot be established?

During the inception phase we agreed that the above questions should be reframed to be more evaluative. We aimed to cover some issues in the evidence and debates section, and then used our review of these value propositions as an implicit conceptual framework to guide our analysis of data collected and to answer the following questions:

### 1. Evaluation questions

- Was the programme successful in engaging private sector actors in different locations? How did it persuade them and mitigate concerns such as confidentiality? What was the value proposition?
- What were the contextual factors in different countries that influenced success or failure?
- How did private sector actors participate and what were the outcomes in terms of the programme goals of government openness, government engagement, infomediation and oversight? What were the contributions of the programme itself compared with other actors or factors?
- Were there positive or negative impacts related to climate/environment or diversity/inclusion. Did inclusion or climate change/environmental considerations in programme support play any role in the above?
- What worked and what did not work in terms of the dialogue/insider and dissent/outsider model and why? How did the programme overcome challenges of conflicting interests?
- How were the above results influenced by country and programme contexts?

We selected potential partners for the private sector case study research and used information from reports, outcome harvests and early interviews to refine questions for deeper exploration and conduct follow up with partners. Where necessary, we attempted snowball sampling, to find additional perspectives from informants who might help us to triangulate perceptions and fill data gaps.

During analysis we reviewed and organised material from interviews, partner reports, outcome harvests and articles to answer the evaluation questions.

## 2. Limitations

The data and analysis presented in this report is subject to a number of limitations. These reflect the broad scope of the overall evaluation; the implications of Covid 2019; the reality of several "moving targets"; and the inevitable imbalance of varied levels of engagement with diverse country programmes. Some specific and significant challenges included:

- **Broad scope:** The scope encompassing an overall evaluation and in-depth studies made it difficult to cover all the ground necessary in interviews. Some participants were already involved in research projects and were thus simultaneously responding to our requests for validation while completing documentation for the most recent outcome harvesting. This inevitably led to some fatigue.
- **Challenge of accessing private sector perspectives:** It was very difficult to secure interviews with those who had participated in the programme. This means a strong private sector perspective is missing.
- **Covid-19:** Initially we had planned to visit three countries for in depth fieldwork: the Philippines, Guatemala and Kenya. We were able to visit the Philippines in January but trips to Kenya and Guatemala had to be cancelled. We were thus almost entirely reliant on remote interviews, which tend to be less revealing than in person meetings. In addition, we had to engage in analysis and reflection conversations in remote team meetings, which is not ideal.
- **Moving targets:** Hivos's OUC programme manager provided a new consolidated list of outcomes for 2019-2020 on the 21st May and it has been difficult to fully explore some of those important outcomes within the pre-existing timeline.
- **Balance:** The data for the Philippines is more complete than other countries both because we visited and also because of the high quality of their reporting and learning documentation. Data for Kenya and Guatemala is more complete than the remaining countries because they remained the foci for our cases, even without the chance to visit in person.

## III. Locating support for private sector in the OUC programme

The evolution of the Hivos Open Up Contracting programme reflects the wider evidence from the field: CSOs have been slow to engage with the private sector because they knew it would be difficult. Initially the private sector was considered a subset of civil society and received no special attention in the programme TOC.<sup>1</sup> After the arrival of the current Programme Manager and a team reflection on progress, that approach changed. The management team decided to adapt and expand the TOC to include a special impact pathway for business and the private sector.<sup>2</sup>

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<sup>1</sup> Interview with Hivos CED

<sup>2</sup> Interview with Hivos CED

## IV. Evidence and debates from the field

### 1. Context

While ties between private sector actors and the international development community have deepened over the last 20 years (and private sector influence along with it), the private sector's role in open governance has received attention only recently. As one indicator, among the 2,800 country commitments in the **Open Government Partnership** as of 2017, only 106 referred to the private sector.<sup>3</sup>

This lack of progress has not been for lack of effort. Early OGP programs (2011-2014) that sought to engage the tech sector in increasing governments' open data capacity failed, possibly because they were too top down and driven by the companies concerned.

In its 2016 strategic refresh, OGP tried to enlist the private sector as stronger co-owners of local processes by giving them seats on national multi-stakeholder groups. But this effort also met with challenges. Many private sector actors reported reluctance to engage because initiatives were "amateurish" and did not clearly articulate their value propositions. Other private sector concerns included the absence of case studies that illustrated the practical advantages of OGP and traditional (if not always proven) fears that more data disclosure would undermine their competitive edge or expose them to unwanted scrutiny. Among civil society groups, the prospect of closer ties with private actors was likewise met with suspicion, due to worries that companies might engage only for the purposes of 'open washing,' in other words to appear to embrace integrity measures without actually changing their practices.

Responding to these criticisms, various open governance communities have come up with more specific value propositions that offer the benefits of private sector engagement in open government initiatives. In a 2017 discussion paper, the Open Government Partnership outlined these benefits from a range of perspectives:

- **On the benefits for OGP goals:**
  - **Disclosure capacity:** Technical support from private actors will enable governments to disclose data.
  - **"Carrot and stick" investment:** Government has incentives to disclose data to financial institutions and ratings agencies that can use evidence of openness to encourage private sector investment.
  - **Peer pressure:** Local governments that want to be seen as better for business than other districts or provinces can be induced by business rankings or standards.

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<sup>3</sup> Adjami, M. and Wannenwestch, S. (2017) Promoting Private Sector Engagement in the Open Government Partnership: A Discussion Paper, International Centre for Collective Action (ICCA) at the Basel Institute on Governance, [https://baselgovernance.org/sites/default/files/2019-02/promoting\\_private\\_sector\\_engagement\\_in\\_the\\_open\\_government\\_partnership\\_-\\_basel\\_institute\\_-\\_june\\_2017-2.pdf](https://baselgovernance.org/sites/default/files/2019-02/promoting_private_sector_engagement_in_the_open_government_partnership_-_basel_institute_-_june_2017-2.pdf) (Accessed: 20 May 2020)

- **Demonstration:** OGP multistakeholder groups that include a private sector focus on anti-corruption or other measures that promise an enabling investment environment can catalyse or create incentives for disclosure and government reforms.
- **Citizen uses:**
  - Private sector disclosure can enhance the ability of citizens to hold governments to account in planning and implementing policy, for instance by enabling communities to better understand revenues and finances of oil and mining companies in business with their governments.
  - Private sector actors can play an intermediary role increasing citizens' access and ability to use data, by creating "civic tech" tools, for example, or by providing technical or capacity development assistance to other local actors.

#### **The Makati Business Club**

The Makati Business Club, a Philippines business association, used an integrity initiative to get 2,000 private sector actors, 45 government agencies, 200 organisations, and 86 academics to sign a pledge for integrity and promote regulatory reform on anti-competition issues, for example promoting reforms on business registration to improve ease of doing business.<sup>4</sup>

- **On the benefits for the private sector:**

- **Demanding government accountability:** OGP, open contracting and anti-corruption commitments allow the private sector to hold governments to account.
- **Legislative change:** The Kenyan Association of Manufacturers (KAM), credits the OGP process with providing the platform that business needed to effectively push new developments in anti-corruption legislation.
- **Business case incentive:** systems improvements that include, but are not restricted to businesses being able to access more tender and contract data yield the following advantages:
  - Business Intelligence: information on tenders increases business opportunities.
  - Efficiency:
    - easy access to information from governments means prospective contractors spend less on their own research.

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<sup>4</sup> Ibid

- discussions around tendering processes highlight problems in other parts of procurement systems and prompt improvements, such as more timely payment of contractors by governments.
- Competition and a fairer business environment: more information on potential tenders can tilt the balance in favour of SMEs on the basis of quality, innovation and price.

The 2017 OGP Discussion Paper also identified *contextual factors* that are likely to influence success. For instance, the likelihood of better engagement with the private sector in countries with business associations, based on successes in the Philippines and Kenya. Conversely, places where CSOs had lower trust in business were identified as far more difficult.

Since 2017, the **Open Contracting Partnership** (OCP) has employed several of the aforementioned value propositions in its advocacy for open data systems. These arguments can be broadly summarised as:

- **Building trust and a fairer playing field:** on the premise that more businesses will bid if they can access government data and thereby reduce their concerns about corruption
- **Efficiency:** on the premise that businesses are incentivised by more efficient bidding and payment systems<sup>5</sup>

In 2018, OCP released a new briefing seeking to counter the “myths” most commonly cited as reasons not to release open data and to push for contractor confidentiality.<sup>6</sup> Some of the disclosure myths that get “busted” in this publication include: that open contracting conflicts with confidentiality clauses or commercial or national security; that open processes discourage competition or fail to reduce corruption; and several others.

## 2. Evidence

There appear to be only a small number of instances where these propositions were put into action successfully. In Ukraine, a system for the transparent sale of government assets has recently been adapted to make the purchase of Covid-19 equipment and drugs more coordinated, efficient and fair.<sup>7</sup> In the Kyrgyz Republic, similar efforts have been made, in a process that is well-documented by the Open Contracting Partnership.<sup>8</sup>

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<sup>5</sup> Newman G. (2016) When Open Contracting is good business, <https://www.open-contracting.org/2016/05/20/open-contracting-good-business/>, (Accessed: 10 June 2020)

<sup>6</sup> Mythbusting in open contracting, <http://mythbusting.open-contracting.org>. (Accessed: 10 June 2020)

<sup>7</sup> Prozorro, V. (2020) How open contracting approaches help Ukraine to tackle Covid- 19, The Open Contracting Partnership, <https://www.open-contracting.org/2020/04/16/how-open-contracting-approaches-help-ukraine-to-tackle-covid-19/> (Accessed: 20 May 2020)

<sup>8</sup> Marchessault, L, Pinder, C. and Marshall, M. (2020) Kyrgyz Republic: how open contracting can support small business, <https://www.open-contracting.org/2019/09/23/kyrgyz-republic-how-open-contracting-can-support-small-business/> (Accessed: 20 May 2020)

OCP persuaded the Kyrgyz government to adopt the Open Contracting Data Standard (OCDS),<sup>9</sup> using the value proposition that it would level the playing field and increase competition in government procurement. When new law required procuring entities to disclose more information, CSO actors undertook analysis enabled by the new data standard, which showed that only a small number of eligible companies were bidding for government contracts, and well under 50% were winning bids.

The government surveyed contractors asking what would encourage more of them to bid. Responding businesses said they wanted more information on bids, less bureaucracy in bidding and quicker payments. As a consequence, the multistakeholder group working to enhance procurement data developed a system that both simplified procedures and added new analyses and tools designed to address the business sector's requests. These tools, which aimed to build trust, included an app to disseminate information about new tenders on a regular basis.

Early results from Kyrgyzstan's new system revealed both benefits and issues that still need ironing out. While the system has increased efficiency for procurement auditors, the number of businesses adopting the tenders app has been relatively small compared to the number of businesses registered in the procurement system. Moreover, some data remains difficult for the general public or civil society to access for monitoring purposes. These challenges raise questions that are common in the open data field about whether disclosure of data is itself meaningful transparency and when governments run the risk of 'open washing,' through disclosures that lack sufficient relevance, accuracy, usability, etc.

In summary, it is challenging to engage business in open contracting. CoST, the Infrastructure Transparency Initiative, has had some success, but this has been partial. Consequently, the OC community has collaborated in useful conceptual thinking in the last few years, resulting in clearer value propositions and suggestions for how to use *emerging evidence* to respond to private sector objections with recent positive examples. This recent thinking forms the basis of an implicit conceptual framework used to analyse experiences from the Hivos Open Up Contracting Programme below.

## V. Outcomes

The Hivos Open Up Contracting programme collaborated with the B Team and the Open Contracting Partnership at the global level to support empirical research that they hoped would generate robust supporting evidence for the argument that transparency reforms, such as open contracting, are good for government and more efficient for business. However, the research found no positive impacts. Moreover, one informant argued that the findings were unlikely to speak to the private sector's needs, partly because private sector actors were not adequately involved in the design stage.<sup>10</sup>

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<sup>9</sup> Open contracting standard documentation, The Open Contracting Partnership <https://standard.open-contracting.org/latest/en/> (Accessed: 20 May 2020)

<sup>10</sup> Interview with B Team

At the national level, results of the programme's attempts to engage the private sector and their outcomes have been mixed. In Africa, business representatives attended some large OC events. Though the B Team have a presence in Kenya and Hivos tried hard to engage with them,<sup>11</sup> we found no evidence of strategic collaboration between Hivos and the B Team there, which was also surprising given the strong relationship at the global level.<sup>12</sup> When Hivos tried to engage the Chambers of Commerce and Trade Associations, they found that the opacity of the procurement process favoured the private sector. This is because in many East African countries, the beneficial owners of private companies are embedded within government.<sup>13</sup>

TISA received support to build awareness in Elgeyo Marakwet County of the provisions in AGPO laws which set targets for increasing the number of contracts awarded to enterprises owned by women, youth, and people with disabilities.<sup>14</sup> Engagement approaches such as radio were based on scoping that identified typical barriers to engagement by women, youth and disabled person owned SMEs. These included, for example, low levels of awareness; apathy stemming from the sense that connections and invisible power meant contracts went mostly to a certain group of people; lack of access to financing; real and perceived concerns over local government debt and failures to pay; and the common demand to provide kickbacks to get paid. TISA tried to address some of these barriers through partnerships with government authorities whose mandate is to support marginalised groups with microcredit.

Engagement in Tanzania was similar to the approach in Kenya. The Tanzania Youth Visionary Association, a relatively new partner, has been raising awareness among small businesses about their rights to a certain proportion of government contracts.

Malawi is where the most effort has been made, but results have been disappointing because the business community was rather hostile to the idea. The Malawi Chamber of Commerce – a CSO representing business interests and complaints – was identified as a possible interlocutor for business engagement during Hivos's initial scoping study.<sup>15</sup> However, we could not find any evidence of Hivos trying to engage business through the MCC directly. Instead efforts were made by one of the programme partners, CoST, a multi stakeholder transparency initiative for infrastructure that includes private sector representation.

Joe Ching'ani, an industry representative on the CoST Malawi MSG, has promoted the value proposition that open contracting offers businesses a more level playing field and increases competition. But, in early 2018, he conceded that there was a "lack of enthusiasm in business to openly disclose information on public infrastructure." In reality, the business community was rather hostile to the idea. Businesses would not get involved in initiatives

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<sup>11</sup> Comments on a draft by Hivos PM

<sup>12</sup> Interview with Hivos PM

<sup>13</sup> Interviews with Hivos EA region, Malawi CED

<sup>14</sup> Interview with TISA

<sup>15</sup> Hivos, Article 19, Open Contracting Partnership, (2016) Open contracting lessons from 15 countries, a synthesis report <https://www.open-contracting.org/wp-content/uploads/2016/12/OC-HivosArticle19-synthesisreport.pdf>, (Accessed: 20 May 2020)

that they perceived might undermine their chances of winning contracts.<sup>16</sup> According to Ching'ani, involvement in the initiative led to his being labelled as a trouble-maker. His business was threatened and he saw a decrease in government contract offers.<sup>17</sup>

In Indonesia, like Tanzania and Kenya, the OUC programme engaged with small-scale enterprises who represented more marginal groups, in an effort to increase their access to government tenders.<sup>18</sup> IDEA in Indonesia is similarly trying to broker relationships between small, women-led enterprises and local political actors. IDEA staff are pushing the value proposition that opportunities for women-led businesses will create jobs among a demographic that might then lend more votes to incumbent politicians.

The stories from Latin America were similar. In Guatemala, as in Malawi, the intention was to cultivate large private sector actors. Based on evaluation criteria Hivos global headquarters staff recommended local staff to include the local chapter of CoST as programme partner.<sup>19</sup> Unsurprisingly given the power dynamics that often exist between headquarters teams and local staff in international NGOs, the local team initially accepted the suggestion despite their reservations regarding this consortium's legitimacy and technical capacities.<sup>20</sup> CoST was perceived to not 'fit in' because of its closeness to industry actors who were thought to be involved in the previous federal administration's corruption scandal.<sup>21</sup> The data gathered for the evaluation could not confirm or deny this; however, we were able to confirm with several sources that CoST did not develop the technical capacity needed to properly use and manipulate open data repositories, a central requirement for continued funding from the programme; therefore by end of 2018 the engagement had ended.<sup>22</sup>

In Bolivia, where the OUC programme focused exclusively on influencing subnational level school meals procurement, the Sustainable Diets (S4DAll) programme and OC developed a joint initiative to link small farmers from SD4All with the municipal authorities that OC is supporting in issues of contracting.<sup>23</sup> However, that is unlikely to overcome the disincentive posed by high taxes which make many small farmers reluctant to do the formal registration required for eligibility for government contracts.

The most significant progress was made in the Philippines, where the OUC programme engaged with the private sector in multiple ways. These included facilitating discussions between mining companies and indigenous groups<sup>24</sup> and enabling privately owned companies to report on open contracting using training from one of the partners. The most intensive and significant examples, however, were at the subnational level, where private sector companies participated in multi stakeholder groups focused on improvements to

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<sup>16</sup> Interview with Hivos PM

<sup>17</sup> Joe Ching'ani, Chair of CoST Malawi Multi-stakeholder Group, Interview, 9 November 2017

<sup>18</sup> Interview with Hivos PM

<sup>19</sup> Interview with Hivos PM

<sup>20</sup> Interview with Hivos CED

<sup>21</sup> Interviews with Partners

<sup>22</sup> Interview with CED

<sup>23</sup> Interview with CED

<sup>24</sup> Interviews with Hivos CED, Bantak Kita staff, Palawan IPDOs

local contracting systems. These initiatives also included a focus on opening data, analyzing it and making it more useful to a range of users. Sub-national locations included the Province of South Cotabato in the Mindanao region and Legazpi City, in the Province of Bicol, an area in South Luzon. Both regions had already been recognised as areas that are competitive for business.

## 1. Engaging business in South Cotabato, Philippines

The Philippines PM, who has a background in procurement, had a strategic vision for the Hivos OUC programme that included the private sector from the start. She approached the European Chamber for Commerce of the Philippines (ECCP) to become a strategic partner early in the programme.<sup>25</sup>

Initially, ECCP was reluctant to engage.<sup>26</sup> Although they were using a multistakeholder approach to enhance the integrity of local government, it did not involve them in the data or budgets. The Integrity Circles convened by ECCP were designed as safe spaces where local government administrators, businesses and CSOs could think collaboratively about how to improve the business environment. But because the OC project aligned so closely with ECCP's value proposition and offered an opportunity to create healthy competition among LGUs, ECCP eventually decided to join the programme. To help attract businesses to participate, ECCP framed the open contracting value proposition as a chance to level the playing field for business, rather than as an open government effort.<sup>27</sup>

After a short pilot test in Muntinlupa which led to data disclosures and valuable lessons on open contracting processes, ECCP began to integrate OC in their integrity work in South Cotabato. They chose South Cotabato because they were already using their Integrity Circles there and knew it was governed by an integrity champion, Daisy Fuentes. Fuentes understood the links between integrity, investment and jobs.<sup>28</sup> This made the South Cotabato LGU competitive and open to any initiative that might bring employment to a province that investors often avoid because of terrorist activity nearby.

A subsequent successful application by South Cotabato to join OGP local deepened local incentive and commitment to open contracting work.<sup>29</sup> Soon after the event launching the OC initiative, ECCP began to engage with different groups of contractors to learn what they wanted from an open contracting system. They facilitated several focus group discussion meetings with previous and potential bidders for infrastructure, goods and services projects<sup>30</sup>.

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<sup>25</sup> Interview with Hivos CED

<sup>26</sup> Interviews with ECCP and Hivos CED

<sup>27</sup> van der Vaart, J. (2019) On the road to a better procurement system in South Cotabato, The Open Contracting, Partnership <https://www.opengovpartnership.org/stories/on-the-road-to-a-better-procurement-system-in-south-cotabato/> (Accessed: 20 May 2020)

<sup>28</sup> Interview with Governor

<sup>29</sup> Interviews with LGU and ECCP

<sup>30</sup> Interviews with ECCP and ECCP activity logs

Meetings with business actors were followed by training on procurement and the start of work aimed at making data more accessible and useful. A School of Data fellow supported by Hivos set about developing relationships with and winning the trust of the Bids and Awards Committee (BAC) of the LGU.<sup>31</sup> This was the first essential step in understanding how the existing LGU systems worked and how they might be transformed to address the needs of business, the LGU and civil society.

Because these plans were unfolding during an election campaign, ECCP was concerned about losing high level political support in any leadership transition.<sup>32</sup> Based on guidance from Hivos and OC partners in other countries, they employed an apolitical approach that emphasised their commitment to the LGU rather than to any particular politician or party.<sup>33</sup> This was largely successful, both because of the tactics themselves, and because the newly-elected Governor Reynaldo Tamayo Jr. was a natural ally for what was being proposed. A former businessman who campaigned on promises to increase access to free education and health services, he was keen to increase efficiency in procurement and was quick to indicate support. ECCP and Hivos worked hard to engage with Governor Tamayo, and the new partnership was cemented with an MOU signed by the new governor.

Meanwhile, members of the BAC and the School of Data fellow continued their painstaking work of making contracting data more accessible and useful. During this process it emerged that the slippage rate from underperforming contractors that completed contracts late was unacceptably high: 90%. This led Governor Tamayo to issue an order blacklisting any contractor with more than 15% slippage.

During the second half of 2019, the BAC team undertook several activities to introduce contractors to platforms and analytics, build trust and request their feedback.<sup>34</sup> ECCP's existing relationships with business made it easy to find willing participants.<sup>35</sup> Experienced in working with a sector where time is money, ECCP made sure events were efficient and that formats prevented local CSO actors from dominating and risk alienating the business community at the very outset.<sup>36</sup>

According to both the School of Data Fellow and ECCP, one of the user design events was successful in enabling businesses and other stakeholders to define the information they needed. It was not an easy meeting to facilitate, though.<sup>37</sup> The LGU staff and business people who attended had very different backgrounds. This made it hard to get those with little experience working with data to participate and express their ideas. Despite these difficulties, the School of Data Fellow was able to identify that both government and business stakeholders wanted more business intelligence on bids. Businesses also requested

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<sup>31</sup> Interview with School of Data Fellow

<sup>32</sup> Interviews with ECCP, and HivosCED

<sup>33</sup> Interview with ECCP and Hivos CED

<sup>34</sup> Interviews with ECCP and School of Data Fellow

<sup>35</sup> Interview with ECCP

<sup>36</sup> Interview with ECCP

<sup>37</sup> Interview with School of Data Fellow

a tracking system for invoicing and processing payments, as the LGU's processes were inefficient. In addition, contractors asked for real time information to advise them where their documents are in the process at any given time.<sup>38</sup>

Over the ensuing months the School of Data Fellow and an IT consultant developed a platform (using free and open source software) as a prototype. Though it has been challenging, the BAC committee said they were motivated by the ability to monitor the performance of their office through analytics, such as an increase revealed in the number of contractors participating in bids, as well as fewer failed bids.<sup>39</sup>

According to Governor Tamayo and one contractor interviewed, payment times have improved as a result, as have slippage rates, which are now monitored and discussed every week.<sup>40</sup> The data below, provided by the LGU, indicates that the systems improvements, ordinances and increased access to data by the LGU may be having some effects on efficiency as well as on leveling the field for different types of businesses. However we can not be sure since we were unable to speak directly with many businesses or review analysis showing the new bidders or contractors.

#### **Open contracting in South Cotabato: Key Statistics<sup>41</sup>**

- Decrease in number of failed bids: from 32 in 2018 to 3 in 2019
- Increase in number of completed infrastructure projects: from 120 in 2018 to 128 in 2019
- Increase in number of new bidders: from 173 in 2018 to 202 in 2019
- Increase in number of projects posted to OC portal: from 0 in 2018 to 19 in 2020
- Increase in the number of market surveys from 0 in 2018 to 2 in 2019

In terms of sustainability, Hivos and ECCP are trying to maintain demand through a relationship with university students who might value the data for research. To date this has been successful and Hivos has funded 4 research projects. At the time of our field visit, School of Data staff and university members were concerned about whether the technological side of the system would be sustainable. However, we have recently learned that the LGU is migrating the data to a new website and service provider, which is promising.<sup>42</sup>

## **2. Engaging business in Legazpi, Philippines**

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<sup>38</sup> Interview with School of Data Fellow

<sup>39</sup> Interviews with BAC and School of Data Fellow

<sup>40</sup> Interviews with BAC and Governor Tamayo

<sup>41</sup> Sent by Hivos CED

<sup>42</sup> Interview with ECCP

In Legazpi, Hivos' partner Layertech, itself a private entity, sought to engage businesses in a project to make open data accessible and useful for different stakeholders. Layertech's outreach and approach capitalised on the relationships the company had built with Legazpi's mayor and city government while designing, operationalising and rolling out a disaster management application – Balangay – developed under a previous Hivos programme.<sup>43</sup> Since this application had enabled the city to win a national e-government award, the mayor responded enthusiastically to the invitation to join the OUC programme.<sup>44</sup> The Balangay app was credited with increasing investment activity and the mayor (a one-time technophobe) had now come to associate tech projects with increases in employment that could enhance his political prospects.<sup>45</sup>

Layertech's initial proposal to the OUC programme outlined a number of value propositions that could be leveraged to get buy in from other potential stakeholders. In addition to persuading the mayor an open data system would be good for business and investment, they also made an argument to attract business with more business intelligence and a more level playing field.

In their initial pitch to the mayor, Layertech argued that the business community did not trust the city because they could not access the data they needed to make bidding decisions. Being careful not to rock the boat, they framed the problem in terms of ineffective procurement systems, avoiding any reference to possible corruption. Layertech suggested that if the Bids and Awards committee collaborated in building an OC platform, it would also be easier for the city to comply with the national agency PhilGEPs' data requirements (and to access all the documents and data they required to perform their basic work functions).

While the mayor was easy to persuade, the LGU and business sector proved more difficult and Layertech devoted considerable time to discussions.<sup>46</sup> For the Bids and Awards committee, accessing the previously undisclosed data around their offices was hard work. They were also concerned that by disclosing data they could violate data privacy rules and attract criticism from investigative journalists who were also part of the OUC programme. This prompted an intervention from the Hivos programme manager, who set up meetings between the BAC and representatives from three national agencies with the power to alleviate their fears. Soon after they agreed to start disclosing the data again.

Alongside their efforts to build trust with the BAC, Layertech also worked on trying to engage the business community. This involved a series of meetings with the Albay Chamber of Commerce and Industry (ACCI), a civil society organisation representing business interests. Through workshops similar to those organised in South Cotabato, Layertech was soon able to establish that existing contractors wanted business intelligence on pricing and

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<sup>43</sup> Interviews with Hivos CED and Layertech

<sup>44</sup> NCIP, Seven LGUs bag 5th egov awards <https://www.nicp.org.ph/events-activities/94-seven-igus-bag-5th-egov-awards>, (Accessed: 20 May 2020)

<sup>45</sup> Interview with Layertech

<sup>46</sup> Interview with Layertech, Layertech learning log

greater efficiency in payment systems.<sup>47</sup> Aspiring contractors, on the other hand, were more focused on information about upcoming bids. Interestingly the head of the ACCI, who said she did not bid for government contracts because she did not trust the existing system, was the most enthusiastic about the potential for increasing openness and reducing corruption.<sup>48</sup> As another sign of growing interest in the OC project, business groups began approaching Layertech seeking business intelligence that might give them an advantage.<sup>49</sup>

Interest from local businesses and visiting dignitaries such as the Ambassador of Israel only served to increase the BAC's enthusiasm for the project.<sup>50</sup> Once Layertech had secured the buy in of BAC and the business sector, they set about the enormous task of cleaning procurement and contract data, with the help of faculty and students at the university, whose time and expertise were seen as playing a key role in sustainability.<sup>51</sup> At the same time, Layertech began designing a permanent OC platform to replace the prototype, which would be open and jointly owned by the various stakeholders involved. Layertech also began deeper analysis of initial data, in order to generate business intelligence not only for the private sector, but also for the university's procurement department and local NGOs working with marginalised communities.<sup>52</sup> Soon Layertech was able to share reports with local businesses, foreign investors and local NGOs concerned about the quality of services being procured for them and their more vulnerable clients. These included predictive forecasting analytics to enable the university to determine how they could price tenders so as to avoid failed bids.<sup>53</sup>

There is some evidence that these activities provided information that was useful for businesses. In August 2019, the Albay Chamber of Commerce and Industry expressed interest in using Layertech's business intelligence report and other data on provincial procurement, to enable members to take better advantage of local procurement opportunities. To increase the efficiency of payments to business, the ACCI and the mayor also issued a joint resolution in November 2019, streamlining the procurement process.<sup>54</sup>

## VI. Discussion and conclusions

The Hivos Open Up Contracting programme's experience engaging business is broadly consistent with evidence from the field. In Malawi and Guatemala, the OUC programme found it challenging to engage private sector actors in MSG initiatives. Malawi stakeholders found that business was reluctant to bite the hand that feeds them or to risk harsher reprisals. In Guatemala the gaps between the values of dissenting CSOs and the industry

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<sup>47</sup> Interview with Layertech

<sup>48</sup> Interview with ACCI

<sup>49</sup> Interview with Layertech, Layertech learning log

<sup>50</sup> Interviews with Layertech and ACCI

<sup>51</sup> Interviews with Layertech and Lany Mercada

<sup>52</sup> Interviews with Hivos CED, Layertech and Lany Mercada

<sup>53</sup> Interview with Layertech

<sup>54</sup> Outcome harvest report

partner CoST was just too big to bridge. The lack of progress in Kenya—which is recognised as a more favourable context—can partly be explained by the fact that many beneficial owners hold positions of power in government and the local team recognises that direct engagement with owners may achieve very little. This is also the case for Indonesia and Malawi.

In Bolivia, Tanzania and Indonesia country programmes were engaging with small private sector actors led by marginalised groups either to make them more aware of the potential to access government contracts, or for the terms of these contracts to be fairer. However all these contexts demonstrated that small businesses seeking government contracts face significant barriers and power dynamics unrelated to open contracting itself, e.g., poor access to tech solutions, rent seeking by official gatekeepers of registration and participation processes, tax, etc.

By contrast, the OUC programme in the Philippines yielded two examples of how, in more politically conducive contexts, a strategically minded PM who was open to engaging with business, can make established OC value propositions work.

## **1. Discussion**

Hivos and its partners had to use dialogue tactics to leverage the political incentive that more competitive OC systems would bring investment and jobs. It required trust building and leveraging of other job performance related incentives to engage administrative officers. This group were more likely to resist by citing some of the myths around confidentiality. It is notable that relationships with national agencies helped to bust myths and that positive framing was used throughout with no reference to OC being an anti-corruption strategy.

Carefully selected partners who had existing relationships with politicians broadly supportive of data and integrity initiatives could also get business owners to give up their time to participate in events designed to learn what they need from government procurement systems.

Chambers of commerce – civil society organisations representing business interests – played a critical role brokering relationships with business in both the Philippines cases. It is noteworthy that ECCP had already been able to build trust between business, CSOs and the LGU through its Integrity Circles. This made it easy to get business representatives to attend events where ECCP and the School of Data fellow explored their data and information needs. Champions within chambers of commerce played important roles in both locations.

User driven design workshops where facilitators employed dialogue rather than dissent tactics were important moments to assess business interests and needs. Practical exercises based on examples use cases worked well to generate ideas. That said, in South Cotabato, it was challenging to address the power dynamics between participants with different levels of experience. In addition, these design spaces required careful facilitation by ECCP to ensure CSOs did not dominate and that the business community felt they were heard.

When it comes to business interests, successful propositions included making the system fairer and more competitive and the value of business intelligence to improve efficiency in bids for both bidders and procurement agencies. Both of these arguments were entry points for discussions on improvements to tracking and payment procedures. In Legazpi, arguments about transparency and fairness seemed to appeal more to those who had yet to win bids, whereas business intelligence was of interest to those already in the game. Interestingly the head of the ACCI saw this project as having great potential to mitigate corrupt practice, which she implied was endemic. Layertech's experience also suggested that contractors who already had their feet in the door were keen to try and use business intelligence for potentially unfair advantage. For example they wanted to use insights to gain advantage over their competitors.

Both Philippines provinces have enacted orders that should improve payment and efficiency for business. In addition, a South Cotabato order blacklisting contractors who complete jobs late should mean quicker project completion and enhance efficiency for local communities. However, as we were unable to access their public portal, speak to any businesses, or see any analysis of who comprises the new contractors in South Cotabato, it is hard to assess whether these are meaningful measures of openness and a fairer playing field. Without such granular data there remains the possibility that apparent improvements in systems could enhance efficiency for some contractors without having much impact on meaningful openness. In other words, there remains a risk of "open washing."

The sustainability of both demand and supply for such databases and portals is always difficult to predict, but efforts to build demand through links with universities deserve more attention as does the multi-stakeholder ownership approach of the Legazpi portal.

## 2. Conclusions

The Hivos Open Up Contracting programme has generated useful insights on the factors that help or hinder efforts to engage businesses in projects to open procurement and contracting systems. Political contexts and CSO willingness to engage in dialogue appear to be key. In countries where beneficial owners hold high positions in government, it may be difficult to make progress.

The Philippines examples suggest that value propositions relating to competition and efficiency both can play a useful role in engaging business in contexts where it is possible to also leverage relationships with senior politicians and their personal political incentives. Yet questions remain about whether existing contractors might try to use business intelligence to gain unfair advantage, which was reported as a concern by partners.

The cases highlight that political support does not guarantee administrative support and that special arguments relating to the links between open contracting and professional success may need to be adapted to local contexts. They also indicate that winning over these important actors is no trivial task; it requires considerable time and effort.

Achievements in both Philippines provinces relied on carefully managed dialogue approaches that excluded the potential for dissent. Such tactics are likely to be controversial for many civil society actors in other contexts, particularly if they do not yield evidence that

the tactics contribute to meaningful openness. While these two stories illustrate that OC programmes that are successful in engaging business can play a useful role in enhancing efficiency, they say far less about the implications for fairness and openness. This is of particular concern for an organisation like Hivos with a commitment to marginalised groups.

Arguably the most important lesson from this case is that in most countries power relations mean that the barriers to small business engaging or benefitting from open contracting are many confirming what is now widely known: that these cannot be overcome by data or technology on their own.

## VII. Questions for reflection

These questions are designed to prompt reflection on the Open Up Contracting programme's work with the private sector:

- **Is there scope for either of the value propositions successfully used in the Philippines to be used to engage the business sector in other, more difficult contexts? What opportunities might there be to work through chambers of commerce?**
- **What is, can or should be done to ensure any enhancements to OC really benefit small businesses, for example in countries where they have legal rights to a certain percentage of contracts like Tanzania and Bolivia? What are the barriers other than tax? What would it take for legal provisions to overcome them?**
- **How does Hivos assess whether enhancements to OC systems driven by business interests are really contributing to government openness? Precisely what analytics and data does civil society need to be able to monitor and review to assess this?**

## VIII. References

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## IX. Annexes

### People interviewed

Location	Name	Organisation
Global	Daniel Dietrich	Hivos
Global	Jameela Raymond	BTeam
Regional EA	Hope Muli	Hivos East Africa
Kenya	Stephanie Muchai	Hivos Kenya
Global	Kathrin Frauscher	Open Contracting Partnership
Global	Tonu Basu	Open Government Partnership
Regional LAC	Juan Pablo Marin	Data Sketch

Regional LAC	Anca Maticoc	The Engine Room
Regional LAC	Juan Pane	Center for Sustainable Development
Regional LAC	Eduard Martín-Borregón	Red Palta / PODER
Regional LAC	Juan Manuel Casanueva	Social TIC
Regional LAC	José Rodrigo Vega	Hivos
Philippines	Vivien Suerte-Cortez	Hivos
Philippines	Benhur Pintor	School of Data
Philippines	Frei Sangil	Layertech
Philippines	Gerry Constantino	ECCP
Philippines	Zyra Fastidio	ECCP
Philippines	John Magbanua	South Cotabato Bids and Awards Committee
Philippines	Jennifer Bretaña	South Cotabato LGU
Philippines	Daisy Avance-Fuentes	Former Governor of South Cotabato
Philippines	Reynaldo Tamayo Jr	Governor of South Cotabato Governor

Philippines	Michael Canares	Step Up Consulting
Philippines	Angelica Dacanay and Rose Ann Paragas	Bantay Kita
Philippines	Chadwick Llanos	Former Bantay Kita staff
Philippines	Velma Chollipas, Nonoy Siplan, Boyet Patio, Anido Acat	IPDO and consultant Bataraza
Philippines	Renato Tundan, Herbert Dazidon, Siverstra Dazidon, Aguilaro Dieg	IPDO Narra
Philippines	Lany Meceda	University of Legazpi
Philippines	Roel Ian "Yankee" Blanker	CSO-Mahintana Foundation
Philippines	Eugenio	CSO-integrity circle
Philippines	Carlito Y Uy	CSO- integrity circle
Philippines	Rosemarie Quinto-Rey	Albay Chamber of Commerce
Philippines	Ron Van Anoché	Agro Distributor South Cotabato
Malawi	June J Kambalmetore	Hivos OM
Malawi	Donald Kamthunzi	Yoneco
Guatemala	Julio Herrera	Hivos

Indonesia	Octrina Nanda Sihombing & Ilham	Hivos
Philippines	Lilian Tribunalo	Jami Construction
Kenya	Philip Thigo	OGP Point of Contact

### Programme documents

Global programme documents	
	Outcome harvest report spreadsheet
Philippines	
	There's always room for improvement: Open contracting in the province of South Cotabato
	Layertech Labs: Business Intelligence in Action
	Layertech Labs: Securing buy-in from the top down
	Faces of Gov South Cotabato-interview Jen
	On the road to a better procurement system in South Cotabato
	Philippines cases Working with Governments
	Capture learnings - ECCP.docx
	Partner Logbook - PHL_ECCP.docx
	ECCP - 2018 implementation plan

ECCP - Capacity self-assessment
ECCP - review self-assessment
ECCP - Learning log
ECCP - 2018 Annual report
ECCP - First quarter 2019 report
ECCP - Second quarter report 2019
ECCP - 3rd Q 2019
ECCP - Activity log
Layertech - Powerpoint from an analysis of procurement of HIV Aids services requested by a local CSO
Layertech - Capacity assessment with April 18 hand in date
Layertech - Capacity assessment that mentions plans for 2019-2020
Layertech activity log from April 2018 onwards
Layertech - Longer of 2 implementation plans
Layertech - Learning log
Layertech - 2018 annual report
Layertech - 1sq Q 2019
259 & others Hivos Philippines - 2019.docx

