The multi-stakeholder group of participants from Ghana discusses FOI-related issues during the first VC of the Regional Dialogue on February 23.

Credit: Human Rights Advocacy Centre, Accra
From Deals to Development: Contract Monitoring and Transparency

By Robert Hunja and Michael Jarvis

Procurement is critical to development. According to the OECD, on average globally, procurement accounts for about 15% of a country’s GDP or about 70% of the overall national budget. According to the 2007 African Peer Review Mechanism Report, one African country lost USD $258.6 million annually through corruption and procurement malfeasance. Poor choices about procurement processes, i.e. how contracts are awarded and implemented, can result in poor development outcomes for society.

Perhaps no procurement process has more potential to shape a country’s development than a large scale oil, gas or mining contract in a resource-rich country. A single deal in the extractive industries sector can be worth billions of dollars. For example, in Ghana, the Jubilee oil field that was discovered in 2007, has an estimated value of USD 30 billion and is worth more than twice the nation’s yearly GDP. Yet contracts for oil production were awarded without legislation in place to manage the sector and its revenues. The contracting stage is crucial as it sets the foundation for the way resources will be developed, operations monitored and benefits shared between the state, the company, and the affected communities throughout the lifecycle of a project. There are competing concerns over contract disclosure and how to accurately monitor award and implementation of the deals. Public expectations are often high but access to or understanding of the agreements limited. Affected communities lack clarity over what to hold i)the government accountable for, ii)the private operator or concessionaire responsible for.

Despite the arguments for transparency, in most countries, governments do not disclose contracts to their legislatures, and lack rules or legislation providing citizens with a right to information about their country’s extractive industries. Required disclosure in oil, gas and mining is still relatively rare (as of 2009 only Colombia, Liberia, Peru, Timor-Leste and the United States published their contracts fully.) Besides contracts, environmental and social impact assessments or community development agreements are not always disclosed either (Revenue Watch Index, 2010). That said, there is an emerging movement to promote greater transparency in the sector, building on the Extractive Industries Transparency Initiative success in promoting revenue disclosure. Congress passed the Dodd-Frank Act requiring oil, mining and gas companies listed in the US stock exchange to report payments they make to foreign governments to the Securities and Exchange Commission. Publish What You Pay have now made contract disclosure a priority. The International Finance Corporation is proposing requiring contract disclosure for its investments.

Of course, to achieve better development outcomes, transparency alone is not enough. Making information available is the critical first step, but making sure that the range of stakeholders, including citizens, media, parliamentarians and CSOs have the capacity to understand and use that information responsibly and even be included or consulted in the decision-making process is imperative if we are to ensure accountability.

A network of partners–global and local–are promoting greater accountability in large scale procurement across key sectors, including extractives, by reinforcing informed and responsible oversight of the awarding and implementation of contracts. Responding to extensive consultations, a process of multi-stakeholder engagement is being held that strengthens stakeholders’ technical capacities, but also mutual understanding and ability to work together in support of more equitable and sustainable deals. Such a forum is important because it initiates an ongoing dialogue where challenges and solutions can be considered, and ultimately may establish greater trust amongst the parties. The reality is that over the long term diverse stakeholders – governments, private sector and citizens–have many more interests in common than perceived at first glance.

This initiative is incubating and supporting coalitions in Ghana, Liberia, Nigeria and Sierra Leone. The aim is to identify and deliver innovative solutions through the individual and joint commitments of the participating stakeholders. The initial focus of the action plans is around gaining access to information, recognizing that this is critically important, not just to ensure greater third-party monitoring, but also in strengthening intragovernmental processes. Roles and responsibilities for entering into agreements, monitoring those agreements and reporting to oversight bodies are typically fragmented across many
ministries, departments and agencies. At a basic level, to ensure effective policy and decision making by government leaders, access to information frameworks are necessary to break down these internal barriers.

Some results are already emerging. For example, NGOs and the private sector are jointly convening a summit on contract disclosure policy. In Ghana, the coalition managed to include contract monitoring in the parliament’s agenda and the Auditor General in Ghana has agreed to choose two contracts for a pilot monitoring evaluation. This is not business-as-usual by any means for the various stakeholders.

One option is to make a “user-friendly” summary of contracts public and provide tools to monitor compliance. Even in situations where contracts are not made public it can still be possible to monitor the awarding process and contract implementation. In the case of mining one can monitor whether or not environmental and social impact of extractives operations are in line with what legislation permits, and stock market registration often requires companies to disclose useful information as well. Informed stakeholders and coalitions can put pressure on government, companies and other organizations to use contracts and resources for the benefit of all citizens.

Such skilled and informed coalitions of CSOs, media, procurement agencies and the private sector could make a huge difference to ensuring transparent and accountable procurement and contracting. At WBI we believe this will contribute to better deals, especially in transformative industries, such as oil, gas and mining, leading to much-needed infrastructure, increased economic opportunity, and poverty reduction. Yet the first step is to ensure that sufficient access to information frameworks are in place to underpin this process.

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Summary of VC#2 on “The Role of Parliaments in FOI Regimes”

Introduction

This videoconference brought together parliamentarians from Ghana and Sierra Leone, where FOI legislation is being considered, and provided a space for MPs to hear about the experiences of peers in South Africa and Liberia, where FOI laws have been enacted. Participants discussed key issues in the passage and implementation of FOI regimes, with the objective of facilitating an exchange of experiences and lessons learned at the parliamentary level across the region. This was the second in a series of targeted videoconferences for FOI practitioners in focusing on preparing for the implementation of FOI.

Speakers and participants discussed the role of parliamentarians throughout the enactment, implementation and use of FOI laws. Raenette Taljaard, a former MP in South Africa, spoke about the role of MPs in the enactment and implementation of the Promotion of Access to Information Act (PAIA), and Senator Theodore Momo, Chairman of the Senate Committee on Information and Broadcasting, Culture and Tourism, spoke about his recent experience with the passage of the Liberian FOI law. Together, the speakers made a strong case for how and why Ghana’s and Sierra Leone’s Parliaments can be successful in adopting comprehensive FOI laws. Chair Marcos Mendiburu, Coordinator of the Access to Information Program at the World Bank Institute, guided the group to think about the broader role of Parliaments in the FOI process, even after the law has been passed.

Group Discussion

FOI & Secrecy: There is evidence of the ongoing discussion on these issues coming into the fore now in South Africa with the proposed Protection of Information Bill, as it potentially reinforces these exemptions and poses challenges to the strength of PAIA. PAIA has life and

Key Messages from VC #2

- Political will from the Government and parliament is key
- Parliament has a role beyond the enactment of FOI, especially on budgets, amendments, and monitoring.
- There is a link between FOI and conflict prevention because FOI can bring about a shift in government culture
a role for parliaments beyond enactment, and Parliament will play a major role in determining whether the secrecy bill will be properly aligned with PAIA. Parliamentarians can play a key role in pushing back against amendments that threaten FOI laws and the right to information.

Parliaments & Adoption of FOI: The Government of Liberia worked with civil society and the media to organize public hearings on the FOI bill. They mapped out a strategic plan of action and invited stakeholders, such as representatives from the relevant agencies, CSOs, the Human Rights and Justice and Peace Commission, and members of the communications department of universities. The purpose of this was for all Liberians to be acquainted with this issue. The hearings revealed that people were concerned with the protection of individual privacy, national security, the power of the information commission, judicial review, and the issue of fines. Accordingly, the Act addresses these issues: there are exemptions for information on national security, trade, and criminal cases; people can go to courts for redress.

Beyond Adoption: The role of parliament during passage and beyond was discussed. Initially, one of the roles of parliaments is encouraging and stimulating political will for FOI, which is critical to its adoption. Parliamentarians are responsible for holding public hearings and facilitating the debates. Yet beyond the approval of the law, parliamentarians can ensure that bodies responsible for FOI implementation are allotted the necessary funds. Senator Momo’s responsibility as a committee chair is to remind the Senate Appropriations Committee to put money in the budget, particularly as the FOI bill in Liberia was passed in the middle of the budget process. Parliaments can promote participatory debates around FOI when it comes to new bills that could impact the scope and coverage of the act and amendments, as is happening currently in South Africa with the focus on the Protection of Information Act.

Parliaments also play key roles in the selection of commissioners and monitor the implementation of recommendations made in annual reports by the bodies responsible for implementation. Finally, Parliament can also lead by example by implementing FOI in the legislature.

Misperceptions of FOI: During the conversation between parliamentarians, the theme of the misperceptions of FOI was raised, especially regarding the FOI bill’s potential intrusion into personal privacy. In Sierra Leone, a parliamentarian champion of FOI asked: “How did [parliamentarians in Liberia] see this bill as a blessing and not a cost?” Given that there was a similar experience with Liberians, it was found that a reading of the law provided a greater understanding that the law is about governance and transparency and responsiveness to the needs of the people, and there are provisions for exemptions.
Summary of VC#3 on “Implementing FOI in Liberia: The First Steps”

Introduction
This videoconference aimed to provide specific inputs to key Liberian stakeholders as they continue their efforts to implement the new FOI law and monitor the advancements. The videoconference featured speakers from the Cayman Islands and India and who have led their countries’ efforts to implement similar laws. Insight from international experiences during the months following the adoption of their FOI laws helped inform discussions in Liberia.

Carole Excell, former Coordinator for FOI Unit of the Cayman Islands, and Mr. Krishna Gopal Verma, Director at India’s Department of Personnel and Training for the Right to Information Act, presented on their experiences with the implementation of FOI laws. Although the Cayman Islands and India contrast each other in many ways, there are many applicable lessons learned that can be helpful to Liberian efforts. Laura Neuman, Manager of the Carter Center’s Global Access to Information Project, chaired the session and raised the question of how an environment can be created for effective implementation despite limited resources.

Experience of the Cayman Islands: The preparation for implementation occurred over 18 months prior to the law’s entry into force. With a clear vision for FOI and strong political leadership, the government took a number of key steps:

1. The government set up a FOI unit within government to drive implementation and prepare to push the agencies without fear of criticism. This body had a clear role and leadership capacity, a specific budget, and a reporting framework.
2. A steering committee guided the FOI Unit with multi-stakeholder representation across government.
3. The government hosted an official launch to introduce FOI to the government and the public.
4. The FOI Unit conducted a baseline assessment of the state of records management in all agencies.

The experience in the Cayman Islands revealed a number of challenges to the implementation process. The FOI Unit discovered that implementation needs time, particularly for trainings for information managers. However, it is important to distinguish between training and more general awareness-raising. In order to affect an attitudinal shift, the staff often needs incentives and to be convinced that proactive disclosure could actually decrease the workload. In some cases, pre-existing laws were inconsistent with FOI, and the FOI unit put together a panel of experts to deal with existing provisions.

Lessons learned from this experience include:

1. Buy-in across government was absolutely critical.
2. FOI requires systems – even basic ones – in order to most effectively fulfill its objectives.
3. A discrete pace for and achieving goals with regular accountability checks and reporting requirements provided accountability for the FOI Unit, thus reinforcing its credibility.

Experience of India: The government created the machinery for implementation within each public authority and all offices appoint designated public information officers (PIOs) and assistant PIOs. PIOs are responsible for giving information to applicants and helping them if necessary, including helping people write out the applications and understand what information they need. Also, post offices designate an assistant PIO to send requests to authorities. Finally, people can make

Key Messages from VC #3
- A specific unit in government with committed leadership, should be responsible for implementation.
- Appointing public information officers’ and gaining their buy-in for disclosure policies are necessary steps to shifting agency culture toward openness.
- Focused trainings for information officers are critical, as well as clear guidelines and policies.
- Governments can and should seek creative opportunities to bring FOI to the people and end users.

This is a critical step because there is often wide variation in agency-level preparedness.

5. Fifth, the FOI body developed an implementation plan with consultations from the public with approval from the government.
appeals to appellate authorities, who can pass orders to PIOs. Beyond this, there are 27 independent information commissioners at the state level as well as the Central Information Commission. GoI has engaged training institutions and developed training programs to create an army of trainers who are enthusiastic about spreading the message to receivers and suppliers of information. States have developed simple guides for information seekers that take out the legalistic aspects, and there are additional guidelines for PIOs and appellate authorities.

There are some gaps in the RTI Act that need to be amended. The Government of India (GoI) consulted the public and received many responses from people and watchdog organizations. The Government understands that people have feelings about the RTI Act and the challenge is how to make the law accessible to people, despite the urban and rural split.

The challenge is convincing the PIOs and changing the mindset of information givers. Government as a whole needs to remember that people are the masters seeking information, not the other way around. Despite this, the RTI Act is the most used act in the country, and it has helped India with its corruption. But now people are being victimized for gaining information through the Act, and this is a concern for the government. Clearly this is so powerful a law that some people feel threatened by its potential, and the government is trying to ensure that users of the Act are protected.

Group Discussion

Compliance: A central point of discussion was how both the Cayman Islands and India have dealt with compliance of information providers. In the Cayman Islands, the FOI Unit tracked compliance based on the baseline questionnaire and attendance at trainings, and they reported this information to the cabinet. The head of the civil service sent a letter to agencies that had not complied. The FOI Unit also provided incentive structures, such as a network for information managers that met every two months and awarded prizes. In India, particularly in rural areas that are characterized by secrecy, the GoI has successfully used carrots and sticks to urge PIOs to comply. For example, a fear of penalties and disciplinary action has made PIOs more likely to disclose.

Information Commissions: Participants discussed the dynamics that affect information commissions’ independence, because the Government of Liberia is undergoing consultations to structure its commission. In the Cayman Islands, the FOI Unit was responsible for creating rules on how the governor was to appoint the commission in order to ensure its independence. For the Indian commission, both opposition and government is involved in the election of the commissioners.

Localizing FOI: In the Cayman Islands, the FOI Unit focused on bringing the law to everyday issues such as using cartoons and collecting requests from students. By meeting with various stakeholders to scope out their needs, the Unit coordinated the legal aspects of the law with the needs of the end user, such as the ability to make oral requests. To reach people in rural areas in India, there are RTI drives through advertisements on TV, radio, and posters with information about how RTI has been used. The role of symbols is important because of illiteracy rates, and GoI developed a logo for the RTI Act.

In India there is a focus on the use of radio and user-friendly pamphlets to permeate the RTI message. The Government encourages people to do research on this issue and provides fellowships for this. State governments have pioneered creative approaches, such as in Bihar, where there are call centers for making RTI requests. GoI plans to do something similar with a central fund.

Implementation Plans: The FOI Unit in the Cayman Islands relied heavily on its implementation plan to complete its activities in the allotted 18 months. However in India, the sheer size of the country led to a decentralized approach. A centralized organization would not have been able to run implementation. Thus it is the responsibility of the states and the central government equally to implement.
Civil Society Profile: 
World Resources Institute's 
ATI in Africa Project

The World Resources Institute’s project, Access to Information in Africa: Transparency Models and Lessons Learned, or the ATI in Africa project, is a two-year initiative in partnership with the Center for Democratic Development (CDD) in Ghana, Greenwatch in Uganda, and the Open Democracy Advice Centre (ODAC) in South Africa. The overall goal of the ATI in Africa project is to better understand transparency models and sectoral approaches to ATI and accountability in Africa, and to inform policymakers and citizen groups engaged in building the infrastructure of transparency.

Evidence shows that ATI strides have been made in several sectors, including health, education and the environment. The ATI in Africa project examines ATI progress through the lens of environment and natural resources because of the importance of natural capital in household and national economies, and the links between nature, wealth and power. In addition to freedom of information (FOI) laws, environmental justice advocates have used constitutional provisions, environmental and natural resource laws, regional declarations, international accords and other instruments to access information and participate more effectively in government matters.

The broader vision is to promote sustainable development and poverty reduction by establishing greater transparency in Africa and providing measures for governments to be more accountable and responsive to citizens. The ATI in Africa project has three objectives:

1. The project will develop a better understanding of legal and policy frameworks, public and private institutional roles, and other infrastructures in the provision of ATI, transparency of public decision-making processes, and accountability and responsive government.

2. This new knowledge and understanding will inform government, NGO and donor decision-making and reform processes (e.g., new institutions, laws and strategies) designed to promote transparency.

3. Building on WRI's history supporting the establishment and strengthening the capacity of independent policy research and public interest environmental law NGOs in Africa, the ATI in Africa project will build local research skills and communications capacity.

WRI’s partners will conduct research and communications in Ghana, Uganda and South Africa. All three countries have large, poor rural populations that live off the land (agriculture and livestock), and depend on a range of natural resources for their livelihood and basic subsistence. Natural resources also contribute significantly to local and national economies. Mining has long been important in South Africa (gold, diamonds and other minerals) and Ghana (gold). Economically viable quantities of oil have also recently been discovered in Ghana (off-shore) and Uganda (on-shore).

To ensure that this natural capital and wealth translate into economic growth and development, there is a need for the development of laws, institutions and practices that establish transparency and accountable governments.

Each partner organization in the three countries has chosen four natural resource sectors to focus their research on, including environment, mining, forestry, land, oil, fisheries, and water. Research will be conducted using a variety of methods such as literature review and legal analysis, review of institutional structures and procedures, development of case studies as well as making FOIA requests. The ATI in Africa project seeks to create an evidence-based approach and understanding of ATI through the environmental lens in order to strengthen access and equity rights.

For additional information please contact Carole Excell (cexcell@wri.org) or Peter Veit (pveit@wri.org). The World Resources Institute is a global environmental think tank that goes beyond research to put ideas into action. For more information please visit our website at www.wri.org.
Country Updates from Regional Dialogue

GHANA: The World Bank recently had meetings with Parliamentarians, in which support for regional consultations on the draft FOI bill was discussed. The details and timeline for this work are still to be determined. Parliament is presently on recess until after Easter. The RTI Coalition has had consultations with the Clerk of the Committee on Constitutional, Legal and Parliamentary Affairs and urged him to confirm a date for the consultations. The RTI Coalition is also asking Parliament to move legislative processes on the Bill forward. Additionally, the Coalition has recently received support from STAR-Ghana (Strengthening Transparency, Accountability and Responsiveness in Ghana). This support will allow the Coalition to strengthen its regional networks and to increase public demand for an FOI Law at the local level.

Focal Point: Nana Oye Lithur, Executive Director, Human Rights Advocacy Centre

LIBERIA: Since the passage of the FOI law in Liberia, CSOs have come together to form the FOI Coalition. The group is now working on an internal strategic plan and laying out its mission and vision. The idea is for the various organizations to act together to support the implementation process in a manner that is efficient and involves all CSOs. In the future, this coalition will seek institutional support to continue its work. The Carter Center has signed an MOU with the government and is piloting implementation to improve the supply side of transparency in seven key ministries and agencies, including Ministries of Finance, Education, Health, and the National Social Security and Welfare Corporation.

Focal Point: Alphonsus Zeon, Project Coordinator, The Carter Center Access to Information Project, Liberia

SIERRA LEONE: The Minister was invited to Parliament on 24th March, 2011 by the Clerk of Parliament to present the FOI bill for enactment, but was later told to wait for another suitable date since they had too many papers to discuss on that same date. Prior to this, Sierra Leone’s FOI Bill had been tabled before the House of Parliament in October 2010. It went through the first and second reading and was forwarded to the Legislative Committee. The Legislative Committee completed its line by line analysis after the urging of civil society and the Ministry of Information. After the legislative Committee stage there will be no more debates on the bill; it will be automatically enacted.

Focal Point: Kwame Yankson, Sr. Asst. Secretary/Personal Assistant to the Minister, Ministry of Information & Comm.

Additional Updates from the Continent

ZAMBIA: In early March, a sensitization conference on FOI was held in Lusaka to connect civil society and government officials, discuss the importance of FOI in Zambia, and seek next steps for how to move forward FOI legislation. The meeting was hosted by the Jesuit Centre for Theological Reflection at the World Bank office, and two international FOI experts presented the benefits of FOI, linked FOI to development outcomes, and explained the relevance of FOI across all sectors, emphasizing that FOI is not just for use by the media. The participants discussed the misperceptions of FOI, such as associations with national security risks. Finally, the group concluded with a discussion of how to engender a broad-based advocacy coalition in support of FOI.

UGANDA: The Coalition on FOI in Uganda is undertaking a campaign to improve implementation of the ATI Act, including trainings, litigation, hosting a colloquium for judges and judicial officers, and an information request campaign. The Coalition, led by Human Rights Network-Uganda (HURINET) with support from the Africa Free of Information Centre (AFIC) and other NGOs, is closely monitoring implementation and actively following up with information requests. This strategy has been informed by meetings with MPs and parliamentary reporters, many of whom are unfamiliar with the ATI Act or have never used it. This April, AFIC is undertaking trainings on FOI for civil society, media, and political parties.

NIGERIA: On March 16, the Nigerian Senate passed an FOI bill, three weeks after the passage of a distinct FOI bill by the House of Representatives. Currently, the Senate is in the process of holding a conference committee between the two bodies to harmonize the laws and reconcile their differences. However, there is some concern by civil society of weaknesses in the Senate law. If the conference committee comes to agreement and passes it to President Goodluck Jonathan for signature, Nigeria will become the second country in West Africa to pass such a law. However, upcoming elections mean that the time period in which this could happen is quite short.

To learn more about the regional dialogue on FOI, visit The Carter Center Access to Information Project at www.cartercenter.org/accesstoinformation.html or the International School of Transparency at http://www.istinfo.net/.