

REPORT

Responsible Data in Open Contracting

Prepared by The Engine Room

December 2017

Responsible Data

ACKNOWLEDGEMENTS

This report was made possible thanks to many people who contributed their time and energy towards this report. We would like to thank the team at Hivos, local partners and open contracting experts who generously gave their time and expertise. Interviews were carried out by Zara Rahman, with assistance from Paola Verhaert. Zara Rahman wrote the main narrative, and editing support was provided by Paola Verhaert.

THE
ENGINE
ROOM



NOTES

This report was commissioned by Hivos and written by The Engine Room. Responsibility for the information and views expressed in the report lies entirely with The Engine Room.

Lead writer: Zara Rahman, The Engine Room

Research assistant: Paola Verhaert, The Engine Room

This work is licensed under the Creative Commons Attribution-ShareAlike 4.0 International License. To view a copy of this license, visit: creativecommons.org/licenses

First published December 2017.

Contents

INTRODUCTION	4
UNDERSTANDING THE ECOSYSTEM	5
WHAT IS THE MOST STRATEGIC WAY OF FRAMING OPEN CONTRACTING?	5
OPEN CONTRACTING AS A POLITICAL TOOL	5
THINKING LONG-TERM	6
OPEN BY DEFAULT, OR RESPONSIBLY OPEN?	7
UNDERSTANDING LIMITATIONS OF THE DATA	7
Who holds the power?	7
Individuals' privacy	7
Planning ahead	8
Responsible levels of transparency	9
KNOWLEDGE IMBALANCES	9
Regular communications and trust	9
Open contracting for everyone - not just citizens	10
Listening for feedback	10
SAFETY AND SECURITY OF INTERMEDIARIES	10

Introduction

Open contracting (OC) involves publishing and using open, accessible and timely information on government procurement to engage government, citizens and businesses in identifying and fixing problems.¹ It can be an incredibly useful tool for uncovering misdeeds, improving accountability in governance, and providing access to data that can be used to strengthen and better-inform advocacy about both of the above.

Open contracting data includes information about contracts, companies, and tenders, and can also include beneficial ownership data (personal data about people that own companies applying for government tenders).

This brief is designed to outline responsible data considerations for open contracting communities that are using procurement data for advocacy. It was commissioned by Hivos to support responsible data practices in its open contracting program.

First, what responsible data is and what we will cover.

Responsible Data (RD) is a concept to outline our collective duty to prioritise and respond to the ethical, legal, social and privacy-related challenges that come from using data in new and different ways in advocacy and social change.

RD encompasses a variety of issues which are sometimes thought about separately, like data privacy and data protection, or ethical challenges. We believe that in order to address those issues, we need to address them together.

In this short briefing paper, we analyse Open Contracting through a Responsible Data lens to assess what some of the unintended consequences might be, and suggest ways to mitigate those risks.

Suggestions are focused on the community of practitioners that are using data from open contracting projects to advocate against corruption.

They are also limited to the insights from practitioners within the Hivos open contracting program, some of whom are just getting started on their open contracting work. That means that they are baseline for learning as the program progresses, are not meant to be exhaustive, and will change as the program progresses.

This brief is not meant to encompass all aspects of privacy within open contracting work.

It is important to note that there is rich debate about privacy in open contracting. Privacy claims from companies are a significant impediment to fighting corruption. Companies attempt to stop the publication of data about open contracting by making two types of claims:

- 1) that personal data about owners should not be published
- 2) that data disclosure requests threaten 'commercial confidentiality' or rather that keeping data private is necessary for their companies protection.

For the purposes of this brief, we address privacy and encourage responsible data considerations when developing public interest tests for what information is appropriate to publish, but do not touch on debates about public policy as it relates to commercial confidentiality.

To gain a better understanding of this, we spoke with Hivos staff working on their open contracting programme, their local implementing partners, and experts within the open contracting world.

This brief will be focused on two main areas:

- Responsible data considerations, frameworks, and 'questions to ask yourself' when publishing or using data in open contracting
- Responsible data practices to support advocates

that are taking on risk by working to increase data disclosure or use data to uncover wrongdoing of powerful actors

Responsible approaches to open contracting are a way of ensuring that contracting data is released and used in a thoughtful and considered way. These approaches could also provide a useful counter-argument to groups who are unsure about or even against open contracting. Contracts can contain personal information, or reveal private relationships which have nothing to do with government procurement. Investigations of corruption can be a powerful political tool, and information used incorrectly could unfairly decrease trust in governments.

All data is shaped by people – through deciding what to collect and what to leave out, how to share it, and how it is framed. Particularly in open contracting, understanding the political context is crucial to ensuring open contracting data is used in a responsible and strategic way.

For example: if open contracting information is used to highlight corruption or collusion among powerful people and institutions, this might put OC advocates in danger. Hivos' work on open contracting aims to open up government contracting by supporting intermediaries like journalists, activists, businesses and civic watchdog organisations in their efforts to use contracting data and public revenue flows for public scrutiny – so implementing OC in a way that prioritises safety and security of intermediaries is crucial.

One way of addressing these concerns is through a Responsible Data lens.

Understanding the ecosystem

To those in power, open contracting could be understood in an adversarial way. Making transactions and deals transparent and viewable for anyone to see can reveal a lot – and for certain people, it could reveal things that they explicitly don't want others to know.

Interviewees mentioned being worried about unintended negative consequences coming from open contracting initiatives, particularly if they unveil nepotism or corruption. One interviewee expressed concern about a potential lack of preparation for this: “We are preparing to expose powerful people – but are we ready for the backlash?” In many countries, anything that is critical of the government is reported to be more and more dangerous, with shrinking civic space around the world.

Questions to ask yourself include:

- Who (if anyone) would be against publishing this data, and why? Are there ways of framing the aims of open contracting in a way that addresses their concerns?
- Is the sector you're working in known for its shady dealings – for example, through known mafia involvement?
- Are there particular allies it would be useful to have on board, before working in a new sector?
- Is it strategic for local partners and civil society organisations to get involved in that fight, at that time?

WHAT IS THE MOST STRATEGIC WAY OF FRAMING OPEN CONTRACTING?

As interviewees mentioned, framing open contracting as a stepping stone for journalists, or

as a keystone of freedom of expression could raise red flags for particularly repressive governments. But connecting it to political movements could attract grassroots activist movements to take part in pushing for greater transparency.

Understanding how far to push in each direction will be a case-by-case decision that needs to be made and reviewed regularly by people with deep contextual knowledge of the sector and politics of the country in question. How can OC advocates and intermediaries develop appropriate incentive structures both for civil society organisations to get involved, as well as governments?

There have been clear benefits of open contracting seen by various actors, and some outstanding cases have been showcased² by the Open Contracting Partnership. Using real-life cases could be a good way of showing what the benefits for different stakeholders are.

Interviewees mentioned that in certain countries, framing open contracting as an “anti-corruption” effort would make it a topic of particular sensitivity by the government after recent corruption scandals – for example, following a corruption scandal in Bolivia regarding the role of Chinese companies, working on anti-corruption is now seen as sensitive.

OPEN CONTRACTING AS A POLITICAL TOOL

It's easy to think of open contracting as a tool for public engagement and transparency in a largely utopian way – providing more information for a better-informed public. But how could open contracting be weaponised as a political tool? Accusing a political opponent of corruption (and providing contracts to back up those accusations) can be a powerful way of turning public opinion against them.

With that in mind, if contracts are made available via non-official channels, it's worth asking yourself:

- Are these the final contracts?
- If these were published, who would it benefit most? If it paints a very clear picture against a particular party or individual, it might be just part of the whole picture.

THINKING LONG-TERM

Open contracting can be a tool for better citizen engagement and addressing systemic issues – but it can also be used to highlight individuals who have engaged in corrupt practices. Which is more strategic for the longer-term goals of the open contracting movement?

Interviewees suggested that thinking longer-term about the aims of open contracting would help prioritise what findings to push for. This would also alleviate worries from individual government officials, and hopefully make more broader systems change possible.

Open by default, or responsibly open?

Currently, the Open Contracting Partnership operates with an ‘open by default’ approach. While this approach is a useful framing to start with, we believe that Hivos can take a lead in setting out what a more detailed approach could look like.

Open by default is a good way of getting people to understand the issue at its most general – but the field needs to go further than this if we want people to understand what open contracting really means. Adding more nuance means encouraging people to understand more deeply why open contracting can be helpful, and what it does and doesn’t include.

Responsible data approaches try to address that balance of transparency and openness, with a duty of care towards the people reflected in the data. See the ‘Questions to Ask Yourself’ section for suggested approaches.

UNDERSTANDING LIMITATIONS OF THE DATA

Multiple interviewees mentioned having to work with limited amounts of data about a particular topic. While this is an expected step in encouraging broader adoption of the open contracting data standard, this does mean that there are limitations in inferences that can be drawn from the limited data available.

When drawing conclusions from open contracting data, be sure to check that the information being used is as complete as it needs to be. One interviewee expressed a worry that inferences made from incomplete data proven wrong could call into question the integrity of open contracting as a whole.

This also reflects a reason that government officials are sometimes unwilling to release open contracting

data – that the data they do release will be used in irresponsible ways or to create false accusations. Demonstrating good will, and showing that civil society making use of open contracting data have a thorough understanding of what findings can and can’t be drawn from data will be crucial to building better relationships with governments.

Who holds the power?

Thinking about the different stakeholders in a particular sector in terms of the power they hold is a good way of thinking through who should be held to higher levels of transparency. In short, as Sunil Abraham wrote – privacy protections should be inversely proportionate to the power held by a person or actor, and subsequently the demands of transparency should be directly proportionate to power.³

In today’s world, the private sector holds a lot of power – particularly the biggest companies and corporations. But they are rarely held to the same levels of transparency and accountability as the most powerful actors within governments. When powerful actors are influencing government to their own end, they deserve to be held to high standards of transparency – and open contracting is a mechanism for doing just that.

Individuals’ privacy

The The Open Contracting Partnership recently commissioned a report as part of their Confidentiality Project⁴, which addresses many concerns that people have against open contracting.

Their report is focused on compliance and abiding by existing legal systems, rather than looking forward at future standards that might be developed to reflect the new ways that data is being used. Though legal compliance is vital, another tenant of practising

responsible data in open contracting involves holding ourselves to higher standards to ensure that the rights of people reflected in the data we work with, are prioritised.

If an individual's data – such as name, address or birthday – is included in a contract, questions to ask yourself include:

- Is this person in the public eye? (Through holding a position in government; being in a position of power in a major corporation; or similar.)
- Is this person powerful, even if they're not in the public eye?
- Is this data already publicly available elsewhere?
- If the answer to these questions is 'no' – has the person given their consent for their private data to be publicly available?
- Is the topic of the contract at all sensitive now, or is there any reasonable expectation that it could be in the future? (for example: receiving funds to work on LGBTQI issues in a country where sexuality rights are not respected; projects relating to HIV/AIDS support)

Another useful set of guidelines relating to people's privacy rights in open data is the Open Data Charter⁵ – while the broad principles there are helpful, the focus on "citizen's rights" could be interpreted to exclude millions of stateless people who cannot claim citizenship. It also excludes the rights of immigrants in countries where a government might be making decisions regarding their privacy.

As a result, rather than prioritising only the rights of a citizen of the country in question, we recommend prioritising the rights of anyone reflected in the

data, regardless of their citizenship status.

Planning ahead

Another key issue to bear in mind is that although anonymising personal data or removing certain identifiers prior to publishing might be seen as a way to protect a person's privacy, this could change in the future. With the emergence of more datasets which might pertain to other aspects of that person's life, it could become possible to piece together who that individual is. This is known as the mosaic effect⁶.

Privacy concerns might change at different stages of the contract's lifecycle – as such, it is important to regularly review what data is stored where, particularly when it pertains to individuals (ie. as Personally Identifiable Information) or communities (Community Identifiable Information).

For example: the Open State Foundation in the Netherlands decided not to publish personal information for privacy reasons. But using other information that was published plus other publicly available registers, it became possible to find out those personal details that they had intended to not make publicly available.

It's worth noting, though, that combining datasets to reveal unseen patterns is a powerful tool of data investigators and investigative journalists, and indeed, could be a useful way to ensure that open contracting data is revealing as many useful insights as it could be.

Questions:

- Use your imagination: what could a particular anonymised dataset reveal, if combined with

other (potentially unavailable) datasets? They might currently be unavailable, but what's the likelihood they might become available in the future?

- Is there any risk that anonymised data might (if other datasets are collected) be easily de-anonymised? What is the likelihood of this risk, and what is its potential impact on the people involved?

Responsible levels of transparency

In certain politically restrictive countries, making certain activities public could be dangerous for the people involved. Some of these are reasonably clear-cut, but still require prior planning to retract from any data made public – for example, data which would reveal who is working on protecting LGBTQI rights in a country like Zimbabwe, where homosexuality is illegal. Other issues may be less clear cut, however, such as issues that might not be legally codified as being illegal or not allowed, but which are in practice discouraged.

Globally, governments are cracking down on rights defenders – for example, environmental defenders are being killed in record numbers globally⁷. In these cases, it seems clear that contracting data at all related to particularly sensitive topics should not be made public, for the safety of the people, organisations and/or companies in those contracts.

Questions include:

- Are any of the topics/sectors mentioned in these contracts particularly sensitive?
- Particularly regarding foreign funding to civil society – do the civil society organisations in question have a legitimate reason for wanting to keep these contracts secret?

KNOWLEDGE IMBALANCES

In an ideal world, publishing open contracting data empowers anyone to learn more about procurement in a particular sector in their country. In the real world, access to data and levels of data literacy are very much mixed – which means that some people will be able to take advantage of the data, and others might not be.

Interviewees expressed concern that opening up contracts could actually put countries with lower capacity levels to take advantage of and learn from that data at a disadvantage in comparison to other countries where intermediaries have stronger levels of data literacy. As many told us, a strong ecosystem of intermediaries is necessary to ensure that the findings from OC data are shared with the public, but we also heard of countries with particularly weak ecosystems of intermediaries, which will require time to build up.

Questions to ask yourself:

- For whom could this data be most helpful? For example: grassroots activists working on environmental issues; investigative journalists; civil society pushing for better governance of natural resources.
- Do they have the capacity to be able to take advantage of this data, once it's published? If not, are there ways to support them or other intermediaries to get this information to them?

Regular communications and trust

One way of reassuring government officials who might be wary of what open contracting means and how that data will be used, could be through

regular transparent communications about the data. For example - outlining how privacy concerns are systematically dealt with, or why to focus on a particular sector.

For contracting information to reach its full potential – that is, ensure that the public is well-informed around the way in which a government’s money is being spent – intermediaries involved need to have credibility and trust with their potential audience.

Open contracting is in many countries relatively new, so being transparent around the process used to acquire the contracts, and how certain conclusions have been drawn, might be a good way of helping people get used to this new source of information. For example: though the contracts and documents for the Paradise Papers were acquired via whistleblowing, they released a documentary⁸ and process notes⁹ around how they went about sharing the documents and analysing them, which produced a solid ‘behind-the-scenes’ view of the decisions they made.

Open contracting for everyone - not just citizens

Often, framing around open contracting is focused on improving the relationship between “citizens and their governments.” This is true more broadly within the open data movement – the principles of the Open Data Charter are focused on the rights of citizens¹⁰, as does the Open Government Declaration¹¹.

However – there are at least 10 million people around the world who are stateless and as such, denied a nationality¹². In 2015, the United Nations Population Fund estimated that 244 million people (3.3% of the world’s population) are living

outside their country of origin¹⁵. Depending on interpretations of ‘citizens’ in the above principles, that could mean that both of these groups of people are excluded from having their rights and needs focused upon in open data and open contracting efforts.

Taking a Responsible Data approach, the rights of all people reflected in and affected by the data should be prioritised, regardless of their nationality or immigration status.

Listening for feedback

If done correctly, open contracting has the potential to inform all sorts of advocacy and activism, across numerous sectors and political lines. For that to happen, OC advocates need to be particularly aware of power imbalances and how contracting could best inform or strengthen rights-based work of the most marginalised groups.

This could mean explicitly including people who otherwise wouldn’t be involved in OC conversations or events to be involved; creating diverse advisory committees to advise on the impact that OC efforts might be having among disparate groups in society; or supporting groups with less experience in OC and open data work, to make the most of contracting information.

SAFETY AND SECURITY OF INTERMEDIARIES

As discussed, open contracting advocates may well come into contact with powerful institutions who are less than pleased to see their dealings made public. Interviewees expressed particular concern with regards to sectors known to have heavy mafia involvement.

Hivos’ strategy around open contracting focuses on supporting those intermediaries to open up

contracting data and use it in strategic ways in their countries and regions. This is a good way of empowering people with the best knowledge of political context to make decisions that affect them – but it still means some responsibility for supporting them lies with Hivos.

Through the Digital Defenders programme, Holistic Security principles are being drawn up for Hivos, which should be referred to for more detail.

Some broad areas to think about are:

- **Planning for the worst:** ensuring ‘emergency funds’ are easily accessible and appropriately sized for the number of intermediaries who might need support at any time, from covering emergency evacuation, to legal fees or family protection.
- **Safety in numbers:** if particularly controversial documents are made available, is there a way of ensuring that multiple people across various countries or regions cover the case, to reduce the possibility that a single individual or entity is blamed?
- **Choosing battles strategically:** relating to the earlier section on thinking longer-term, are there particular sectors that it would be more strategic to tackle at a later date, once more support for open contracting has been garnered?

Contracts don’t always become available as the result of public processes. Sometimes, they can be leaked by whistleblowers – who then might be at risk themselves as a result of sharing that leak more broadly.

Even if they aren’t official intermediaries working with Hivos, ensuring their safety and wellbeing also needs to be a priority – particularly if the reason

they are at risk is that they were making contracting data available.

Notes

1. Open Contracting Partnership: <https://www.open-contracting.org/why-open-contracting/>
2. Open Contracting Partnership: <https://www.open-contracting.org/why-open-contracting/showcase-projects/>
3. Sunil Abraham, “Privacy vs. Transparency: An Attempt at Resolving the Dichotomy”, The Centre for Internet & Society, 14 November 2014: <https://cis-india.org/openness/blog-old/privacy-v-transparency>
4. Cindy Kroon, “Getting personal - is it our business to mind yours?”, *Open Contracting*, 23 February 2017: <https://www.open-contracting.org/2017/02/23/getting-personal-business-mind/>
5. Open Data Charter, *Principles*, 25 September 2015: <https://opendatacharter.net/principles/>
6. Linda Poon, “A Playbook for How Cities Should Share and Protect Data”, *Citylab*, 27 February 2017: <https://www.citylab.com/life/2017/02/how-cities-handle-open-data-protection-privacy-harvard-research/517566/>
7. Jonathan Watts and John Vidal, “Environmental defenders being killed in record numbers globally, new research reveals”, *The Guardian*, 13 July 2017: <https://www.theguardian.com/environment/2017/jul/13/environmental-defenders-being-killed-in-record-numbers-globally-new-research-reveals>
8. Vice News, “The true story behind the secret 9-month Paradise Papers investigation”, *Vice News*, 13 November 2017: <https://news.vice.com/story/the-true-story-behind-the-secret-9-month-paradise-papers-investigation>
9. Frederik Obermaier and Bastian Obermayer, “How We Reported the Paradise Papers”, *Süddeutsche Zeitung*, 5 November 2017: <https://projekte.sueddeutsche.de/paradisepapers/wirtschaft/answers-to-pressing-questions-about-the-leak-e574659/>
10. Open Data Charter, *Principles*, 25 September 2015: <https://opendatacharter.net/principles/>
11. Open Government Partnership, *Open Government Declaration*, September 2011: <https://www.opengovpartnership.org/open-government-declaration>
12. UNHCR, *Ending Statelessness*: <http://www.unhcr.org/stateless-people.html>
13. United Nations Population Fund, *Migration*: <http://www.unfpa.org/migration>

Responsible Data