

Open Contracting Scoping Study

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# GUINEA

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West Africa Open Contracting Assessment Project

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February 28, 2017

Supported By



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# Open Contracting Scoping Study: Guinea Country Report

**February 28, 2017**

**Submitted by**

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## 1. Executive Summary & Key Recommendations

Guinea is a francophone republic of 245,857 square kilometers in West Africa with a population of 12,608,590 inhabitants. Guinea is a member of the Economic Community of West African States (ECOWAS), however, it is not party to the West African Economic and Monetary Union (WAEMU). As such, the country is not subject to WAEMU community guidelines on public procurement against which member nations' procurement processes are assessed on a routine basis.

Although the country has abundant natural resources – bauxite and iron ore, in particular – Guinea is still classified as a low-income country. Although its GDP has been steadily increasing, the domestic debt of the country is also increasing as bauxite prices have declined over the past years. Guinea's economy is largely dependent on agriculture and mineral production and receives a relatively small amount of Official Development Assistance (ODA) as compared to other countries in West Africa due largely to its weak governance and political instability. The 2014 Ebola epidemic had an even larger negative impact on Guinea's already fragile national economy.

Corruption remains a challenge for Guinea, despite efforts by the Government. Guinea has not adopted an anti-corruption law and ranks 139 out of 168 countries and territories in Transparency International's 2015 Corruption Perceptions Index.<sup>1</sup> The National Anti-Corruption Agency (ANLC) – the state agency tasked with fighting corruption – reports directly to the presidency, but is underfunded and understaffed.

The President of Guinea published in 2012 a new reform on public procurement: the *Code des Marchés Publics* was published in 1997 but this new version allowed to improve the procurement process in place mainly by introducing the separation of the three functions: oversight, procurement and regulation. The adoption of this code, developed with support from the World Bank and the European Union, was one of the preconditions for the World Bank to invest US\$40 million in budget support. However, the Ebola epidemic shifted the priorities of the Government and development partners (DPs), with stakeholder focus only recently shifting back to procurement processes.

The reform outlines the principles of transparency, open competition, anti-corruption, non-discrimination, equality and ethics. It also presents rules and regulations governing procurement, oversight and regulation of procurement activities, based on the principle of the separation of these functions. There are four key actors within this paradigm:

- **The Procurement Entity (PE):** PEs, which are also the beneficiaries of procurements, include all ministries and agencies at the national level, as well as other regional government bodies. They conduct their own procurement with the support and oversight of other entities;
- **Direction Nationale des Marchés Publics (DNMP):** Under the authority of the Ministry of Finance, the DNMP is responsible for carrying out the procurement process;
- **Administration de Contrôle des Grands Projets et des Marchés Publics (ACGPMP):** The ACGPMP is responsible for the oversight of the procurement process, and for the approval of procurement activities (i.e. delivering non-objection certificates during the process);

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<sup>1</sup><https://www.transparency.org/country/#GIN>

- **Autorité de Régulation des Marchés Publics (ARMP):** An independent entity responsible for the regulation of the procurement process.

The implementation of this new reform faces challenges primarily at the institutional level, where three main government entities have some overlap in responsibilities. There are also some practical challenges due to low understanding of the new procurement reform by the agencies and procurement entities, the heavy administrative procedures, and a lack of information technologies.

There are three procurement methods now in effect in Guinea: direct procurement, restrictive bidding, and competitive bidding. The competitive threshold of à priori oversight is set at 5 billion GNF (approximately 540,000 USD). The reform states that procurement entities are authorized to engage with bids under the competitive threshold, in direct procurements up to 10% of the total procurement amount for the entity, and in restrictive bidding. Though prior authorization from the Ministry of Economy and Finances is required, audits and reviews of Government of Guinea data show that these limitations are not respected.

Although some efforts are being made to facilitate citizen input into the procurement process, user engagement in Guinea is limited within the government, the private sector, and civil society. Civil society organizations (CSOs) feel that they could do more if they received additional financial support, so the GoG has incorporated measures aimed at involving CSOs in the procurement process in the new reform. Additionally, members of The Conseil National des Organisations de la Société Civile (CNOSC) participate in the evaluation process and are included in the ARMP regulation commission as observers. It should be noted that however that the private sector and CSO are members of the Regulation Council. However, these measures may not be sufficient to engage citizens.

The GoG is taking some steps towards a more transparent procurement process. However, Guinea lags behind its neighboring countries, especially those countries included in WAEMU. The following recommendations discuss the means to advance the efficiency, integrity, and transparency of the Guinea procurement system.

## Recommendations

### Institutional Arrangement

**Reorganization of the institutional framework of entities involved in procurement:** GoG should pursue a reorganization of the procurement authorities aimed at strengthening their capacity to efficiently implement the reform code. Ideally, the *ACGPMP should be joined with the ARMP to create a unified regulatory agency. The head of that agency should be selected by an independent committee following a public call for application.* This unified agency should also be in charge of a posteriori oversight, including independent audits, assessment of the global procurement system, and the publication of annual reports. The DNMP, by contrast, would be in charge of the a priori oversight, in addition to the technical activities with the PEs (annual procurement plan, conformity checks for all bids and tenders, evaluation and awards).

**Capacity building and professionalization of staff:** One of Guinea's greatest challenges is the professionalization of its procurement staff. This includes a lack of transparency in its institutional culture, though Interviewers shared that this is slowly evolving. Nevertheless, there remains a need to professionalize the procurement staff and help them acquire the skills needed to meet the legal requirements set forth. This could include *systematizing a training program* on the basics of data collection and use, international procurement standards, Guinea's legal environment for procurement, and the importance of transparency for good governance. Procurement professionals may not fully understand the underlying need for open and transparent data until they see the benefits. *GoG and its*

**development partners should invest in continuing education that will help certify procurement professionals.** Additionally, interviewees mentioned a sense of impunity as a primary barrier to achieving increased transparency in the procurement process. A number of government entities suggested that **stronger sanctions would lead procurement staff and contractors to follow the rules.**

### Legal Framework

**Reduce direct contracting:** The existing law limits the use of direct contracting to a maximum of 10% of all contracts on an annual basis for each PE. However, World Bank audits and a review of GoG data on above-threshold procurement find that this limit is not respected. **Enforcing this legal requirement across all PEs should be an urgent priority for ARMP and DNMP.**

**Strengthen proactive disclosure:** That the ARMP publishes procurement statistics on a quarterly basis, in accordance with requirements, is a positive sign. The publication of a transparency charter also indicates that procurement authorities appreciate the importance of disclosure. However, by **requiring disclosure of this information throughout the procurement chain**, GoG could reduce the number of permissions required to conduct procurement (sometimes more than 10 for a single activity), while remaining confident that the process is functioning appropriately. Increasing transparency should reduce the administrative burden throughout the process and bring about efficiency gains. **Information that should be disclosed includes: contract winners, contract amounts, start date, planned completion date, etc.**

**Create mechanisms to ensure the fairness of the bid evaluation process:** The evaluation process should not be kept secret. There should be clear criteria for conducting evaluations, a review process by procurement authorities to ensure that evaluations are done on an impartial basis, an opportunity for losing bidders to receive a briefing on why they were not selected, and an opportunity for losing bidders and external observers to protest the award.

### Policy Context

**Reinforce existing legal requirements with high-level political commitment:** Interviewees noted that the government officials and private companies frequently in violation of existing laws do not suffer the appropriate sanctions. The impunity of government officials who violate direct contracting limits and time period requirements – combined with under-resourced oversight authorities – has created an expectation of “business as usual.” Building on recent efforts in reforming the mining sector, **the President and other high level officials should commit to fair and compliant contracting through effective oversight and auditing, before focusing on more technical aspects of e-Procurement or disclosure.**

**Create an anti-corruption law:** In its efforts for transparency, GoG should **elaborate an anti-corruption law.** With a presence in Guinea already, **the ANLC should be provided with staff well-versed in the anti-corruption mechanism and the appropriate funding.** Further, **representatives from the ANLC should be included in the procurement process** to conform with all laws and regulations.

### Technical Systems

**Investing in appropriate IT tools could help facilitate the transmission of accurate data and improve the transparency, professionalism, and conduct of the procurement process.** GoG should rapidly invest in IT tools for the procurement process. The potential advantages of computerizing the procurement process are many, including: i) speeding up document transmission from one entity to another, ii) enhancing compliance with administrative procedures, iii) reducing opportunities for corruption, and iv) helping entities to gather data and use analytics to improve procurement performance. The installation

of IT tools should be supplemented by intensive capacity building on the both the technical and institutional sides. A training-of-trainers program would also need to be instituted, helping the lead agency train PEs and others in the procurement chain.

Although this represents a significant upfront investment, ***conducting an in-depth technical needs assessment provides an opportunity for DPs to understand the anticipated costs and to build consensus and establish expectations with leadership within the procurement authorities on the practicalities of implementation.*** It is unlikely that Guinea is appropriately prepared to move to an e-procurement system, but ***maintaining at least a basic database of procurement activities, allowing PEs to submit their reports electronically, could result in more up-to-date, accurate data.*** Additionally, the ***use of digital tools would help monitor compliance with basic legal (e.g. limits on direct contracting) and reporting requirements.***

### User Engagement

**Proactively communicate to local communities about opportunities to file complaints:** The complaints process provides an opportunity for citizens in need to gain trust in government. ***GoG should conduct a campaign through community radio and other means to help citizens understand their right to complain*** when procurement implementation is unfair, dishonest, or harmful. This would align well with the government's efforts to rein in mining licenses that have gone awry. It should be noted, however, that mining licenses are regulated by the Mining Code (and not the Procurement Code).

**Build capacity for the CSO representatives on procurement:** Currently, CSO representatives are primarily included in the procurement process as observers rather than as actual actors. They should also benefit from capacity building efforts around procurement in order to better understanding the process and legal requirements. For example, ***CSOs could be included in the creation of annual procurement plans*** to voice areas that are in need of support from the government and/or its development partners. ***CSOs could also be involved in monitoring local contracts to ensure that all deliverables are met on time and that citizens are not adversely affected.***

### Stakeholder Identification

**Create a donor working group on procurement:** This working group would help coordinate investments and efforts to improve procurement integrity and openness in Guinea. For example, while support was given to the government in drafting new legislation, limited funding has gone toward communicating the new laws across government or to capacity building. ***Improved coordination could help ensure the complementarity of efforts and knowledge sharing, and identify priority resource needs within government and civil society.***

**Provide support to civil society for basic procurement monitoring:** This support could include direct monitoring, as well as communication efforts through community radio that inform citizens of their right to lodge complaints on procurement. ***Leveraging existing project monitoring networks (e.g. CNOSEC) and providing training on procurement law and monitoring could help address issues of government impunity.*** Further, by engaging directly with civil society, citizen complaints, which might go ignored, can be followed up on by CSOs.

### Broader Public Financial Management Environment

**Improve broader public financial management environment:** To complement digital tools for procurement, development partners should support GoG toward the installation of an integrated financial management information system (IFMIS) that will include all projects funded by the

government and its partners. Each of those projects should have a unique identifier to facilitate the linkage between national budget and procurement activities.

## 2. Purpose, Methodology & Field Visit Information

### Purpose

This scoping study, supported by the UK Foreign & Commonwealth Office, aims to gauge the state of openness of public procurement processes in Guinea, understand the capacities and interests of key procurement actors, and identify opportunities for procurement reform and the adoption of open contracting principles.

Open contracting refers to a set of [global principles](#) aimed at improving procurement data disclosure and recognizing the importance of public participation in the contracting process. This includes the publication of procurement data in open and structured formats that enable public use and reuse at the user's discretion. Procurement data must thus be "technically" open (e.g. machine readable, free of proprietary software requirements, etc.) and "legally" open (e.g. published in the public domain or in accordance with copy left principles). Furthermore, open contracting refers to the participation of citizens in the procurement process, including the creation and implementation of accountability and redress mechanisms that build trust between citizens and government. Ultimately, open contracting aims to deliver value for money, create a more level playing field for business, reduce fraud and corruption, and improve service delivery.

### Methodology

The [methodology](#) followed by this study, divided into seven parts and accompanied by an [interview guide](#) and [annexes](#), seeks to aid study leads to:

- Document current levels of openness in public contracting in targeted polities;
- Identify and assess existing systems and data sources (including non-public) within government for collecting, analyzing, and sharing procurement data;
- Map key stakeholders and their capacities and enthusiasm for advancing open contracting; and,
- Provide recommendations on realistic targets and use cases for open contracting moving forward.

The seven sections of the methodology covered by this study are: 1) institutional arrangement, 2) legal framework, 3) policy context, 4) technical analysis, 5) user engagement, 6) stakeholder identification, 7) broader public financial management environment.

### Field Visit Information

The interviews took place between November 7th and 11th, 2016. The team conducted an initial interview with the British Ambassador to go through the mission objectives, which also allowed the team to get a better sense of questions that should be answered after the round of interviews. All interviews were held in correspondents' offices. We met with some oversight bodies, including Agence de Contrôle des Grands Projets et des Marchés Publics (ACGPMP), Direction Nationale des Marchés Publics (DNMP), Agence de Régulation des Marchés Publics (ARMP); procuring entities, including the Ministry of Mines, Ministry of Health, etc.; development partners, including the World Bank, IMF and others; and civil society organizations including the Conseil National des Organisations de la Société Civile and Action Mines Guinée. A full list of meetings is available in Annex 1.



At the beginning of all interviews we clearly presented the study objectives and emphasized that it was being done concurrently in other countries. As procurement is often a synonym of corruption, it was important to make all interviewees understand that this study was not aimed at pointing any fingers, but rather at helping improve the procurement process by understanding what is currently being done, what are the challenges, and how should these be addressed. All interviewees answered questions with candor and honesty, which helped the team to identify challenges in the current national procurement process, both at the institutional and technical levels.

### 3. Overview of the General Country Context

Guinea is a francophone republic of 245,857 square kilometers in West Africa with a population of 12,608,590 inhabitants. The president is directly elected by the people and is the head of state and of the government. The unicameral national assembly is the legislative body of the country, and its members are directly elected by the people. The judicial branch is led by the Guinea Supreme Court, and is the highest and final court of appeal in the country.

The current president, Alpha Condé, was democratically elected in 2010 and reelected for a second term in 2015, despite political tensions between the different ethnic groups during the election period. Guinea has faced political turmoil in recent years, as a coup in 2008 brought a military regime to power. The country returned to civilian control in 2010. However, the Freedom House Index gives Guinea a score of “5 out of 7” (seven being the worst) and defines the country as being only “partially free.”<sup>2</sup> In 2013, Guinea was a victim of the Ebola outbreak; the country was put under quarantine until declared Ebola-free in 2015. As can be expected, this outbreak had a sharply negative impact on the country's already fragile economy. As the government failed to pay its debts, some international businesses were forced to close down their activities due to non-payment.

On the economic front, salaries in Guinea are very low. Although the country has abundant national resources, in particular bauxite and iron ore, Guinea is still classified as a low income country. According to the World Bank, the national GDP per capita in 2015 was US\$531.32<sup>3</sup>. Although the country's GDP has been steadily increasing, interviews with various development partners (DPs) reveal that the interior debt of the country is also increasing as bauxite prices have declined over the past years. Guinea's economy is largely dependent on agriculture and mineral production; it is the world's second largest producer of bauxite, and has rich deposits of diamonds and gold. Guinea receives a rather small amount of official development assistance (ODA) as compared to other countries in the West African region mainly because of its weak governance and political instability.

Guinea is a member of the Economic Community of West African States (ECOWAS), however, it is not party to the West African Economic and Monetary Union (WAEMU). As such, the country is not subject to WAEMU community guidelines on public procurement against which member nations' procurement processes are assessed on a routine basis.<sup>4</sup> Nevertheless, international assessments related to procurement in Guinea have been conducted. According to the World Bank audit report that assessed

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<sup>2</sup> <https://freedomhouse.org/report/freedom-world/2016/guinea>

<sup>3</sup> <http://data.worldbank.org/indicator/NY.GDP.PCAP.CD?locations=GN>

<sup>4</sup> For more information, see the Senegal report in this series.

three ministries (employment, youth and health), only 13% of procurement was found to be conducted according to procurement laws.

*According to a World Bank audit of 68 contracts: thirteen percent (13%) were in compliance with regulations, sixty-three percent (63%) were non-compliant, and twenty-four percent (24%) could not be audited for documentary deficiencies.*

The IMF undertook its eighth review in 2016, finding that more than US\$500 million disappeared from the national budget with no clear explanation.

Guinea ranks 139th out of 168 countries and territories in Transparency International's 2015 Corruption Perceptions Index,<sup>5</sup> indicating that corruption in the country remains high.

One sector that has been drawing public attention is the mining sector, as it has long been suspected that licenses are being handed out on a preferential basis. Although there remains a lack of transparency in this domain, the government took important steps towards resolving one of the country's most severe bribery scandals in Simandou by suspending the mining license awarded to BSG Resources by former President Lansana Conté<sup>6</sup>.

Open contracting seems to be a subject of interest to development partners in Guinea (World Bank, European Union, etc.) that have conducted reports and offered recommendations to increase transparency in the procurement process. However, few of these recommendations have been integrated into the national procurement process, even if there is some evidence of evolution towards more transparency and oversight at the national level. The World Bank report mentioned the following recommendations to the Government of Guinea: i) install a central archiving system, ii) implement capacity building, iii) procuring entities (PEs) should ensure that all payments are made on time, and iv) institute delay penalties for the suppliers<sup>7</sup>. There is no mention in the recommendations of providing data in any kind of format. This may be too early in the process as Guinea is already struggling to implement the procurement laws and processes as stated in the national procurement code.

<sup>5</sup> <http://www.transparency.org/cpi2015?gclid=CPm7k-On49ACFQzhGwodyyIAwQ>

<sup>6</sup> <http://www.telegraph.co.uk/business/2016/11/09/rio-tinto-suspends-senior-exec-over-guinea-mine-bribery-claims/>

<sup>7</sup> Audit Externe des marchés publics passés entre 2013, 2014 et le premier semestre 2016



## 4. Institutional Arrangement

The President of Guinea signed in 2012 a new reform on public procurement. The *Code des Marchés Publics* was published in 1997 but this new version allowed to improve the procurement process in place mainly by introducing the separation of the three functions: oversight, procurement and regulation. According to interviewees, the adoption of this code, developed with support from the World Bank and the European Union, was a precondition for the World Bank to invest US\$40 million in budget support.

The reform states that the institutional framework governing procurement processes is based on three main areas: procurement implementation, oversight, and regulation. There are four key actors within this paradigm:

- **The Procurement Entity (PE):** PEs, which are also the beneficiaries of procurements, include all ministries and agencies at the national level, and other regional government bodies. They conduct their own procurement with the support and oversight of other entities;
- **Direction Nationale des Marchés Publics (DNMP):** Under the authority of the Ministry of Finance, the DNMP is responsible of carrying out the procurement process;
- **Administration de Contrôle des Grands Projets et des Marchés Publics (ACGPMP):** The ACGPMP is responsible for the oversight of the procurement process, and for the approval of procurement activities (i.e. delivering non-objection certificates during the process);
- **Autorité de Régulation des Marchés Publics (ARMP):** An independent entity responsible for the regulation of the procurement process.

### Procurement Entities

Within the Government of Guinea (GoG), all public bodies (including ministries and agencies) in the main capital and at the regional level are considered PEs. Because they are also the beneficiaries of the goods and services procured, they are also considered the buyers. All procurement requests must originate from PEs after confirmation of the availability of funds within the national budget or the budget provided by a DP. PEs are responsible for preparing the annual procurement plan (PP) with the support of the DNMP.

PEs can engage in sole-source contracting or restricted bidding for bids that are under 5 billion GNF (approximately 540,000 USD.) In these cases, the Minister of Economy and Finance (MoEF) signs a delegation of authority giving the power of approval to the Sector Minister. When the amount of the bidding is above this threshold, the PE is required to go through the competitive procurement process.

Prior to the Code's adoption, MoEF was the main entity in the procurement process, through its Procurement Division (DNMP). With the new reform, however, each procurement entity should contain a Person Responsible for Procurement (a PRP, which is the equivalent of a procurement unit, in other contexts), and two commissions: the Procurement Commission, which is in charge of opening bids and evaluating tenders; and the Control Commission, which is in charge of à priori oversight and approval of the procurement processes from planning phase to award phase of contracts under the threshold. Both commissions have responsibilities for all tenders (i.e. above and below the competitive thresholds.)

The Code states that the PRP must be included in the procurement process from the planning phase to the award phase. The reform also states that PRP is responsible for collecting procurement data, statistics and performance indicators that are related to the procurement process within their respective PE. In practice, however, PRPs are often unaware that procurement activities are taking place. For PRP who are installed in their respective ministry, they do participate in preparing the annual procurement plan. However, they are not mandatorily included in the rest of the process.

### **The Agence de Contrôle des Grands Projets et des Marchés publics (ACGPMP)**

The ACGPMP is accountable directly to the Presidency. It was created in 1994 and was, at that time, in charge of overseeing all procurement transactions above US\$1 million. Its mandate was extended in 2016, by decree, to all procurement activities.

The ACGPMP was responsible for the à priori approval and à posteriori oversight of all bids greater than or equal to 250 million GNP for infrastructure and 100 million GNP for purchase of goods and services. These thresholds have increased; ACGPMP is presently responsible for à priori oversight of amounts greater than 5 billion GNF and the à posteriori oversight of amounts less than 5 million GND. The oversight mechanisms of the agency include:

- a. Approval of annual procurement plans;
- b. Approval of direct contracting or restricted contracting from the PU;
- c. Issuing notices of non-objection: During the procurement process, the agency must typically award around 10 non-objection notices. These notices are applied to procurement plans, bids, tenders, awards, short lists of awardees, membership of the evaluation commission, and other actions;
- d. Providing the final approval, through a non-objection certificate, when procurement must be cancelled or revised.

The ACGMP also has regional offices that play the same role at the subnational level, but for lesser amounts (100 millions GND for infrastructure and 50 millions GND for goods and services). All procurements above these thresholds must pass through the central agency.

### **Direction Nationale des Marchés Publics (DNMP)**

The DNMP is under the MoEF and is responsible for facilitating procurement implementation. Staff in this entity are the most experienced and knowledgeable officials in procurement as this body was the only entity involved in procurement until a few years ago.

The DNMP's primary role is to assist PEs with bid preparation, bid reception, the evaluation of offers and award selection. The Directorate also makes sure that direct contracting within PEs does not exceed the limit of 10% of total bids and tenders.

The DNMP produces quarterly reports on procurement statistics, which includes the number of contracts awarded, total amount of contracts, type of contracts, and other basic information. This report is submitted to MoEF and the ARMP, and is also published in the Procurement Official Journal<sup>8</sup>. The MoEF website<sup>9</sup> is not accessible; users get a message saying that the site is under construction. The only site that we were able to access is <http://www.jaoguinee.com>, a private website that presents all tender notices received by DNMP.

### **Agence de Régulation et de Contrôles des Marchés Publics (ARMP)**

The ARMP is the entity responsible for the regulation of public procurement and the proper functioning of the procurement system, and is described in all official texts and laws as being an independent entity. However, the President nominates ARMP's Director General (DG) and may cancel the assignment at any time.

This regulatory function is divided into four main missions:

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<sup>8</sup> The team was unable to find this journal online

<sup>9</sup> <http://www.mef.gov.gn>

- a. **Regulation of the system:** The ARMP elaborates draft texts and proposes modifications to the existing legislative and regulatory provisions. It also gives its opinion on any modifications proposed by the government;
- b. **Capacity building:** The ARMP provides training and information to all actors involved in the public procurement chain including CSOs and private companies. This includes collecting data and statistics, providing analysis of the procurement process and archiving procurement information.
- c. **Oversight:** The ARMP is responsible for carrying out a posteriori oversight of the procurement process by implementing regular independent audits and investigations of the procedures for the award and execution of public contracts. ***Yet, since the reform has been made public, no external audit has taken place.*** The ARMP mentioned lack of funding and lack of data as being the main reasons.
- d. **Settlement of disputes:** The ARMP collects complaints and resolves disputes related to procurement procedures and execution of public contracts. Complaints are usually in the form of a phone call or a letter addressed to the entity. According to the ARMP, five procurement activities were suspended in 2015 due to complaints filed.

### ***The Procurement Process: From Planning to Delivery***

**Step 1 (Planning):** By January 1<sup>st</sup> of each year, each Procurement Entity (PE) submits a Procurement Plan (PP) to ACGPMP after being approved by the Parliament and included in the budget. The Parliament approves the national budget, which includes an allocation that then goes into a PP. The PP contains all procurement activities that will be initiated by the PE during the following year. The PP can be revised during the year if needed. Funds allocated to a given PE can be revoked and reallocated to another PE.

**Step 2 (Tender):** After receiving the non-objection certificate from ACGPMP on the annual procurement plan, the Procuring Unit, with the help of the DNMP, prepares tender documents, which must be submitted to the ACGPMP, along with a certificate of availability of funds delivered by the MoEF. The ACGPMP assesses all documents and verifies their conformity with procurement activities as specified in the Code (including use of appropriate templates, and respect of conditions of economy and transparency). The ACGPMP must then deliver a non-objection certificate for the procedure to continue. Notice of invitation to tender is published in local newspapers for national bids, and on relevant websites for international bids. Suppliers have 30 days to respond to a tender (national bids) and 20 days (international bids). All proposals must be submitted in hard copy.

**Step 3 (Award):** Bidders are invited to attend a public bid opening session. An ad hoc commission, consisting of members of the PE, DNMP, ARMP and a civil society representative, is organized to conduct the bid evaluation. The evaluation commission reads publicly the title of each proposal and the name of the bidder, and checks that all of the required documents are provided. After public opening, the evaluation commission will assess the proposals according to criteria that have been defined in the tender notice and will pre-select the awardee. The commission then officially notifies the ACGPMP and submits the original proposals in 3 copies. A notification letter is sent to the successful bidder and also to the unsuccessful bidders highlighting the selection process. A provisional award notice is published in newspapers for 15 days allowing unsuccessful bidders to appeal. If there are no appeals, the ACGPMP issues a non-objection certificate allowing for the pre-selected bidder to officially win the award and a notice of final award is published through the same channels.

**Step 4 (Contracting):** The PE and the supplier sign the contract and a copy is sent to the MoEF for registration.

**Step 5 (Implementation):** The contract is implemented and the PE tracks its execution, while the ACGPMP has the responsibility to oversee its implementation in terms of both financial and physical progress.

This process is the same both for central administration (for example line ministries) and local/decentralized institutions.

## Interagency Communication

At the institutional level, the three main government entities show some overlapping of responsibilities. On the one hand, the DNMP shows a high level of experience in procurement processes, assisting PEs in bids and tenders. However, their mandate stops once a contract has been awarded. Ideally, DNMP should be included in the entire process and not only at the evaluation phase so that the government can benefit from their experience. ACGPMP, by being directly linked to the Presidency, is often perceived as the agency concentrating all attributions in the procurement process (oversight and approval) which could induce confusion.

Finally, ARMP seems to be trying to find its place in procurement. Interviews revealed capacity gaps in ARMP, combined with insufficient funding. Though the new procurement code stipulates that 1% of procurement contract amounts should go to the ARMP to ensure financial independence, this has still not been the case, and ARMP has yet to conduct any independent audits on the procurement process.

## Practical challenges

While the procurement process is codified in the "Code des Marchés Publics," all of the entities described in this section are facing challenges that prevent them from implementing procurement laws and regulations as they are written. The challenges include:

- a. **Lack of capacity:** This issue arose in all interviews as being a critical roadblock to implementation of the Code. All entities recognized that they could use intensive capacity building to better understand the procurement framework prior to implementing their activities.
- b. **The burden of administrative procedures:** All entities reported that the procurement process is long and cumbersome. As such, timelines are never respected. To explain this, they mostly refer to the 10+ non-objection certificates required for most procurements and the fact that all processes have to be done manually.

*"We have suggested to the Government to change the procurement scheme. In our opinion, the best scheme will be to have a Direction Générale des Marchés Publics that will include a control division and a regulation division" (DNMP)"*

*"The delay of 30 days for evaluation and contract award is never respected; this is mainly due to all the back and forth between all entities"*

- c. **Lack of information technologies (IT):** In some ministries, staff responsible for procurement activities do not have computer access. None of the entities involved in the procurement process use software or IT tools to facilitate their work. All documents are printed and hand delivered to the destination entity. DNMP use Microsoft Word to produce a report that has tables and text to describe the quarterly procurement process (i.e number of awards, amount of award, funder, type of award, etc.)
- d. **Change of mentality:** An issue raised, particularly among PRP interviewees, is a sense that their work is not being recognized or appreciated. They are often seen as outsiders – as people trying

to install transparency mechanisms in a traditionally opaque process. As such, they are often excluded from procurement activities on purpose and are left unaware of what is happening.

*"Even if it is clearly stated in the texts that all Ministries should have a PRP, in practice this is not the case. Even when we are installed in a Ministry, we are often not accepted. We are not included in procurement processes and in some cases, we are not even aware of it. Ministry staff keep us out of the loop on purpose. Management is aware of this situation but does nothing about it. In some Ministries, PRP has still not been appointed." (PU)*

*"The biggest challenge for us is to try to change mentalities. The laws can be explicit but if Management is not prepared to change the process, the process will never change. Transparency is not just a result, it is a state of mind." (PU)*

## Recommendations

**Reorganization of the institutional framework of entities involved in procurement:** GoG should pursue a reorganization of the procurement authorities aimed at strengthening their capacity to efficiently implement the Code. Ideally, the **ACGPMP should be joined with the ARMP to create a unified regulatory agency. The head of that agency should be selected by an independent committee following a public call for application.** This unified agency should also be in charge of à posteriori oversight, including independent audits, assessment of the global procurement system and the publication of annual reports. The DNMP, by contrast, would be in charge of the à priori oversight as well as the technical activities with the PEs (annual procurement plan, conformity checks for all bids and tenders, evaluation and awards).

**Capacity building and professionalization of staff:** One of Guinea's greatest challenges is professionalizing procurement staff and reforming the culture of opacity. Interviewers shared that the institutional culture is slowly evolving. Nevertheless there is a need to professionalize procurement staff and to help them acquire skills that will enable them to meet the legal requirements set forth. This could include **systematizing a training program** on the basics of data collection and use, international procurement standards, Guinea's legal environment for procurement and the importance of transparency for good governance. Procurement professionals may not fully understand the underlying need for open and transparent data until they see the benefits. **GoG and its development partners should invest in continuing education that will help procurement professionals get certified in their domain.** Additionally, interviewees mentioned a sense of impunity as a primary reason why increased transparency in the procurement process has been difficult to achieve. A number of government entities suggested that **stronger sanctions would lead procurement staff and contractors to follow the rules.**

*"It seems that every supplier can do anything and simply get away with it." (CNOSC)*



*"One thing that the government should do, is to really apply sanctions. This has not been the case thus far. Fraudulent procedures in procurement are mostly left unpunished and when they are, the sanctions go to the technical staff and not to the person who gives the order" (PU)*

## 5. Legal Framework for Procurement

In 2012, the President of Guinea promulgated the new procurement reform called the "Code des Marchés Publics."<sup>10</sup> Interviews revealed that this new law was a precondition for the World Bank to provide Guinea with a budget support of US\$40 million.

The reform presents rules and regulations governing procurement activities and oversight, based on the principle separating these functions. Article 2 of the law L/2012/020 CNT of the new Code states the principles: transparency, open competition, anti-corruption, non-discrimination, equality and ethics. Some mechanisms for achieving these principles are articulated in the reform and apply to nearly all phases of the procurement process.

### Procurement Methods

All bids below the competitive thresholds can be issued directly by the procurement entity (through sole contracting or restrictive bids) provided that they are pre-authorized by the Ministry of Economy and Finances. According to statistics published by the DNMP for the first half of 2016, only 60 public procurement contracts above the threshold have been approved for a total amount of 12,527,020,715,051 GNF (approximately 1.4 billion USD). The following procurement methods are used in Guinea:

**Direct procurement:** By law, each procurement entity has to right to pass up to 10% of the total procurement amount in direct contracting – a threshold which may be unrealistically low, given availability of quality local suppliers competing in public procurement. In the first half of 2016, 13 of the 60 awarded contracts went through direct contracting for a total amount of 11,978,264,914,223 GNF (approximately US\$1.2 billion.) Although just 22% of contracts during this period have been awarded through direct contracting, these contracts account for over 95% of the total amount of money spent during this period. The DNMP report explains this difference by the fact that "two corporations were recruited for the hydraulic dam project: one for conception, supply and construction of the dam and the second one for the recruitment of an advisory firm responsible for overseeing the whole execution of the project".

**Restrictive bidding (only a small amount of suppliers are contacted):** Six of the 60 contracts (59 percent) have gone through restrictive bidding for a total amount of 43,566,801,862 GNF (approximately 4.6 million USD, or 0.35% of the total amount).

**National competitive bidding:** 41 of the 60 contracts approved in the first half of 2016 have gone through to the competitive bidding process for a total amount of 505,188,998, 966 GNF (approx. 54.4 million USD, or 4.03% of the total amount.) This method is described in detail in the box in Section 4 of this report.

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<sup>10</sup> [https://armpguinee.org//jdownloads/lois\\_et\\_reglements/codedesmarchespublics.pdf](https://armpguinee.org//jdownloads/lois_et_reglements/codedesmarchespublics.pdf)

**International bidding:** DPs have their own procurement processes that they follow mainly because Guinea did not have a clear procurement law until recently. For example, bilateral donors use local procurement processes unless there are contradictory clauses with their national processes.

## Sanctions

Chapter 2 of the procurement reform is devoted to disputes over the execution of public contracts. This section goes over the resolution of disputes either through a friendly settlement or settlement in the court of law. In case of the latter, the competent court is defined in the contract.

Some sources of disputes are defined in terms of ethics and good governance, including the possibility of conflicts of interest and presence of regulatory violations. Any person believing there is malfeasance in the procurement process is responsible for alerting his/her management, the procurement entity, and the ARMP. The complainant can be from a company that has put in a bid or from civil society, and there should be a strictly confidential and secure mechanism such that the complainant cannot be identified.

The chapter also described two types of sanctions:

- a. **Sanctions against public officials:** In the case of illegal activities, public officials can be subject to a temporary or permanent exclusion from the procurement process. The names and titles of the excluded officials should be published in the official procurement journal and are to be shared with consular chambers, employer and trade union organizations, and civil society organizations.
- b. **Sanctions against bidders and contract holders:** These sanctions can be applied if bidders provide erroneous or false information, attempt to corrupt government officials, overcharge for goods and services, use confidential information, do not respect clauses of the contract during its execution, or conduct other violations. For the cases above, sanctions may include: i) confiscation of the guarantees constituted by the bidder during the tender procedure, ii) a temporary exclusion of the business in all procurement activities (the exclusion is extended to all companies where the owner holds the majority of shares), iii) withdrawal of their certification, and iv) charging of a fine in an amount determined by the ARMP. Exclusion is valid for a maximum of 10 years. The ARMP regularly produces a list of all people and companies that are excluded from the procurement process. The link to the list is available through the website, but was not up to date at the time of writing this report (November 2016)<sup>11</sup>.

Implementing the above mechanisms denotes strong will towards improving the procurement process. However, in practice, procedures tend to be less coherent.

- a. As seen in the DNMP report, contracts awarded through direct contracting correspond to 95% of the total amount – far above the acceptable threshold of 10%;
- b. Impunity remains an issue heard in almost all interviews with government entities and CSOs. The predominant view is that if fraudulent activities were punished, the procurement system would be more transparent. Furthermore, interviewees reported that the people punished are rarely the ones who gave the fraudulent order.
- c. The ARMP blacklist is not up to date, so it is difficult to assess which individual/company is prohibited from the procurement chain.

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<sup>11</sup> [www.acgpmp-gn.org](http://www.acgpmp-gn.org)

*"They always go after the small people but almost never after the upper management who gives the order." (PE)*

### Disclosure in the Procurement Code

**Planning phase:** Procurement plans are prepared by the PEs (after confirmation of available funding) with the help of the DNMP. All procurement plans need to be submitted by January each year to be reviewed and approved by the ACGPMP. Once the non-objection certificate is issued by the ACGPMP, the respective procurement entities can proceed. Only activities included in the PP can be implemented. However, funds may be revoked from a given PE and reallocated to another one without notice. For example, the Ministry of Industry stated they had not had any contracts in recent years because the funds allocated to their entity at the beginning of the year get reallocated without notice. Procurement plans are not public and the new reform does not require any entity to make them public.

**Tender phase:** All tender notices and bidding documents are available to the public after receiving the ACGPMP non-objection certificate. This certificate confirms that the appropriate template has been used and that clauses of the documents are not discriminatory or restrictive in any way.

All invitations to bids larger than 10 million GND (for infrastructure) and 5 million GND (for goods and services) must be made public. Article 45 of the reform states that all procurement activities subject to the open-competition principle have to be rendered public through i) the National Procurement Journal and ii) at least three local newspapers. In the case of international bidding, this should be extended to websites. This also applies to invitations to tender featuring expressions of interest. Failure to do so may result in the cancellation of the bid by the ACGPMP. At the regional level, these documents are available to the public, displayed at the mayor's office or the district office.

**Award phase:** The new Code states that all entities involved in evaluation (opening, pre-selection, etc.) are never permitted to disclose any information on the evaluation process. If a member of the team suspects collusion, the procurement law states that the individual will have to inform his/her supervisor(s), the ARMP, and the PE.

All candidates are invited to attend the bid opening. Bid envelopes are opened in front of all candidates and all offers (technical and financial) are read aloud.

**Contract phase:** After the evaluation phase, a candidate is pre-selected (i.e. the adhoc committee decides on a candidate). The information on the selected candidate and the reason for selection is sent to the ACGPMP, along with all other documents received from the other candidates. Following the evaluation, the selected candidate is announced publicly via a letter. There is a 15-day period when other candidates can lodge a complaint about the candidate selection; if there is a valid complaint, ACGPMP has the authority to cancel the selection and organize another evaluation. If no complaints are received, the award is confirmed and the contract is signed with the supplier.

**Implementation phase:** When a contract is signed, the supplier proceeds with the implementation phase of the project. ACGPMP is responsible for the a posteriori oversight of the project (physical and financial progress.), but no information is public.

**Reporting procurement results:** The DNMP produces a quarterly report based on all approved procurement contracts that they have on file. The report is submitted to the Ministry of Finance and is also made public in the official journal. Interviews with DPs revealed that the World Bank Audit report –

first submitted to the Government and then made public through the Ministry of Finance website – was incomplete: only 12 of 60 pages were published on the website.

**Audits:** Although ARMP is responsible for implementing yearly independent audits of the procurement system, this has yet to occur. To date, the only audit done was the one mentioned above by the World Bank, which found that only 13% of sampled procurements met the relevant legal requirements. It should also be noted that this audit report was made partially public through the MoEF website at the insistence of the World Bank.

### Exceptions to the Procurement Process

The mining sector is a very important and controversial sector in Guinea, and there is an official law "Code Minier" that governs this sector. However, the procurement law states no differences between procurement activities related to the mining sector and those related to other public affairs. Furthermore, several groups reported the inactivity of some mining companies and preferential licensing practices. In March 2014, the Minister of Mines announced the withdrawal of 142 mining licenses in Guinea by 2017 – the first step to cleaning up the mining market.

Contracts within the mining sector should follow the same procedure as for the other sectors, and procurement specialists are currently working to integrate the mining sector with the general procurement system.

### Recommendations

**Reduce direct contracting:** The existing law limits the use of direct contracting to a maximum of 10% of the budget for each PE. However, World Bank audits and a review of GoG data on above-threshold procurement find that this limit is not respected. ***Enforcing this legal requirement across all PEs should be an urgent priority for ARMP and DNMP.***

**Strengthen proactive disclosure:** That the ARMP publishes procurement statistics on a quarterly basis, in accordance with requirements, is a positive sign. The publication of a transparency charter also indicates that procurement authorities appreciate the importance of disclosure. However, by ***requiring disclosure of this information throughout the procurement chain***, GoG could reduce the number of permissions required to conduct procurement (sometimes more than 10 for a single activity), while remaining confident that the process is functioning appropriately. Increasing transparency should reduce the administrative burden throughout the process and bring about efficiency gains. ***Information that should be disclosed includes: contract winners, contract amounts, start date, planned completion date, etc.***

**Create mechanisms to ensure the fairness of the bid evaluation process:** The evaluation process should not be kept secret. There should be clear criteria for conducting evaluations, a review process by procurement authorities to ensure that evaluations are done on an impartial basis, an opportunity for losing bidders to receive a briefing on why they were not selected, and an opportunity for losing bidders and external observers to protest the award.

## 6. Policy Context Analysis

While the need for open contracting principles in Guinea is clear, currently there is not a strong policy environment for supporting open contracting efforts. There remain frequent reports of impunity by government officials in ignoring procurement laws and of frequent closed and uncompetitive procurement methods. Despite the passage of laws that promote transparency and fairness in procurement processes, progress has been particularly prevented due to a combination of under-resourced oversight authorities and a “business as usual” government culture. Efforts toward open contracting should focus first on strengthening policy commitment at high levels of government, while simultaneously professionalizing and increasing resources and expectations of ARMP and DNMP to effectively implement sanctions on violating government and private sector participants, in accordance with existing laws.

### Transparency Charter

At present, Guinean officials have little knowledge or understanding of open contracting, although there have been some efforts to improve transparency in the procurement process. In March 2016, GoG released a transparency charter: "La Charte de Transparence et d'éthique dans les marchés publics et délégations de service public incluant les actes d'engagement à respecter la charte<sup>12</sup>." The Charter imposes principles on every procuring entity – in particular, competitive tendering, access to the public order, equal treatment of bidders, economy and efficiency of the acquisition process, and transparency of procedures – regardless of the amount of the purchase. The implementation of these principles reduces corruption, while contributing to a reorganization of the overall public financial management system and reinforcing the credibility of the Government in the eyes of citizens. Although the Charter includes sections implicating PUs and businesses and is available through the ARMP website, it was never mentioned in any of the interviews.

### Addressing Corruption

In spite of some efforts made by GoG to address corruption, it remains a challenge for Guinea. The country has not adopted an anti-corruption law, and ranks 139 out of 168 countries and territories in Transparency International's 2015 Corruption Perceptions Index.<sup>13</sup> The state agency tasked with fighting corruption, the National Anti-Corruption Agency (ANLC), reports directly to the presidency, but is reported to be underfunded and understaffed.

One of the biggest and most recent corruption scandals in Guinea was the exit of Rio Tinto from the iron ore-rich Simandou region. Rio Tinto was awarded exploration licenses for four blocks at Simandou in 1997. The northern two blocks were revoked from the company in 2008, ostensibly because Rio Tinto was not developing the site quickly enough. Months later, the rights to these blocks were assigned to BSG Resources (BSGR), a firm indirectly owned by a Steinmetz family trust at no cost. After the death of former President Conté, BSGR sold 51% of its interest to Vale, a Brazilian mining firm.

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<sup>12</sup> <https://armpguinee.org/index.php/formationrubrique/formationarmp/category/7-supports-de-cours>

<sup>13</sup> <https://www.transparency.org/country/#GIN>

President Alpha Condé, who took power in 2010, set up a committee to review past licenses. This study concluded that BSGR received its blocks through bribery. As a result, the firm was stripped of its concession. The government signed a new deal with Rio Tinto and its Chinese partner, Chinalco, to develop the two southern blocks they still held.

In 2016, Rio Tinto suspended two of their executives after authorities contacted the company about payment of 10.5 millions USD made to a consultant for his help in assisting negotiations with the Government of Guinea. In October 2016, Rio Tinto sold its stake to Chinalco explaining that low iron ore prices made the mine unviable when the general belief was that Rio Tinto was trying to cover bribery from its officials to the Government of Guinea.

## Recommendations

**Reinforce existing legal requirements with high-level political commitment:** Interviewees noted that the government officials and private companies frequently in violation of existing laws do not suffer the appropriate sanctions. The impunity of government officials who violate direct contracting limits and time period requirements – combined with under-resourced oversight authorities – has created an expectation of “business as usual.” Building on recent efforts in reforming the mining sector, ***the President and other high level officials should commit to fair and compliant contracting through effective oversight and auditing, before focusing on more technical aspects of e-Procurement or disclosure.***

**Create an anti-corruption law:** In its efforts for transparency, GoG should ***elaborate an anti-corruption law.*** With a presence in Guinea already, ***the ANLC should be provided with staff well-versed in the anti-corruption mechanism and the appropriate funding.*** Further, ***representatives from the ANLC should be included in the procurement process*** to conform with all laws and regulations.

## 7. Technical Assessment

None of the government institutions participating in the procurement process possess IT tools or software to help manage and implement procurement activities. Some of the relevant staff in particular those in the PU where the data chain begins, do not have access to an office computer. All procurement work is conducted manually. A number of interviewees, having seen e-procurement tools in other countries, were unanimous in agreement that digitizing the tender process would be beneficial to Guinea.

As far as data is concerned, the PRP within each procuring unit and the ARMP are responsible for gathering and archiving procurement data. Interviewees from both bodies suggested that they do not collect data, as there was no demand for it.

The World Bank, through an independent consultant, issued a report in May 2016 on the procurement process in Guinea: "*Audit externe des marchés publics passés entre 2013, 2015 et le premier semestre 2016*". This report was done across three ministries, and the auditor could find that no data existed for 20% of the cases.

Furthermore, the ARMP website is publicly available but not up to date. ACGPMP is also supposed to have a website, but the web link it is not accessible.

In Guinea, all bids should be prepared and published following a pre-existing template, which differ by acquisition type (goods, public work, etc.). Failure to use the appropriate template may result in the cancellation of the bid by the ACGPMP. These standard templates could similarly serve as an initial schema for future investments in IT systems for procurement management. Furthermore, all procurement contracts are registered under a unique number that is kept in DNMP, along with all supporting documents. This unique identification system could ultimately serve as a backbone for future efforts to modernize and digitize procurement processes.

The table below summarizes the information available on the ARMP website, presenting a clear picture of the extremely limited availability of information on procurement in Guinea.

<b>Key Data Categories</b>			
The following information types are among those that procuring entities made public online for January-June, 2016. (A = Always; S = Sometimes; N = Never)			
<b>Planning</b>	<b>Online</b>	<b>Award (cont.)</b>	<b>Online</b>
- Unique IDs for contracting process	N	- Award Amount	S
		- Reasons for award	S
- Procurement plans	N	- Complaints procedure	N
- Consultation documents	S	<b>Contract</b>	
<b>Tender</b>		- Contract documents	N
- Tender document	S	- Contract amount	N
- Bidding document	S	- Contract dates	N
- Bidder names	S	<b>Implementation</b>	
- Tender dates	S	- Milestones	N

- Bidder blacklist	N	- Payments	N
<b>Award</b>		- Evaluation results	N
- Supplier(s)	S	- Procurement process statistics	S

### Recommendations

**Investing in appropriate IT tools could help facilitate the transmission of accurate data and improve the transparency, professionalism, and conduct of the procurement process.** GoG should rapidly invest in IT tools for the procurement process. The potential advantages of computerizing the procurement process are many, including: i) speeding up document transmission from one entity to another, ii) enhancing compliance with administrative procedures, iii) reducing opportunities for corruption, and iv) helping entities to gather data and use analytics to improve procurement performance. The installation of IT tools should be supplemented by intensive capacity building on the both the technical and institutional sides. A training-of-trainers program would also need to be instituted, helping the lead agency train PEs and others in the procurement chain.

Although this represents a significant upfront investment, ***conducting an in-depth technical needs assessment provides an opportunity for DPs to understand the anticipated costs and to build consensus and establish expectations with leadership within the procurement authorities on the practicalities of implementation.*** It is unlikely that Guinea is appropriately prepared to move to an eProcurement system, but ***maintaining at least a basic database of procurement activities, allowing PEs to submit their reports electronically, could result in more up-to-date, accurate data.*** Additionally, the ***use of digital tools would help monitor compliance with basic legal (e.g. limits on direct contracting) and reporting requirements.***



## 8. User Engagement

Although some efforts are being made to facilitate citizen input into the procurement process, user engagement in Guinea is limited within the government, the private sector, and civil society. Civil society organizations (CSOs) feel that they could do more if they received additional financial support, so the GoG has incorporated measures aimed at involving CSOs in the procurement process in the new reform. The primary opportunity for participation in procurement is through the complaints process, although only five contracts were cancelled due to complaints during 2015, indicating either low participation or low responsiveness from GoG.

While CSOs are not currently involved in monitoring contracts, interviews reveal that citizens are more frequently voicing their opinions, during site visits or through radio shows focused on citizen feedback. As an example, CNOSC shared the Beyla example where "the company EGUI-BAT sarl was contracted to build 6 infrastructures in Beyla. Almost 3 years after the contract was awarded, only 40% of the work has been finished when 85% of the funds have been disbursed. These findings were reported in a memo (with pictures taken from the local population and was submitted to the Minister). Until now, nothing has been done."

### Complaints

At the end of the evaluation phase of the procurement process, the evaluation committee pre-selects a supplier. All documents, as well as the selected business, are submitted to the ACGPMP responsible for validating the selection. All other candidates are informed of the winner and have 15 days to appeal the decision. If no complaints have been received during that period, the committee confirms the winning supplier.

Complaints can be *à priori* (candidates can view tender notices and bidding documents as being too restrictive or discriminatory) or *à posteriori* (candidates can appeal the selection of a supplier if they feel the supplier didn't meet all requirements). In 2015, five complaints resulted in the suspension of procurement processes.

However, many citizens remain unaware of the complaints process. According to members of the Conseil National des Organisations de la Société Civile (CNOSC):

*"People in regions and villages don't know they can complain. They think there is nothing they can do about wrong behaviors from international corporations. Regional officials have the tendency to ignore their complaints. We have to hold regional meetings to explain that they have to talk, they have to say something and then have to complain". (CNOSC)*

### Civil Society Engagement

Through the new procurement reform, GoG has incorporated measures aimed at involving civil society organizations (CSOs) in the procurement process. Members of the Conseil National des Organisations de la Société Civile (CNOSC) participate in the evaluation process and are included in the ARMP regulation commission.

### Recommendations

**Proactively communicate to local communities about opportunities to file complaints:** The complaints

process provides an opportunity for citizens in need to gain trust in government. ***GoG should conduct a campaign through community radio and other means to help citizens understand their right to complain*** when procurement implementation is unfair, dishonest, or harmful. This would align well with the government's efforts to rein in mining licenses that have gone awry.

**Build capacity for the CSO representatives on procurement:** Currently, CSO representatives are primarily included in the procurement process as observers rather than as actual actors. They should also benefit from capacity building efforts around procurement in order to better understanding the process and legal requirements. For example, ***CSOs could be included in the creation of annual procurement plans*** to voice areas that are in need of support from the government and/or its development partners. ***CSOs could also be involved in monitoring local contracts to ensure that all deliverables are met on time and that citizens are not adversely affected.***

## 9. Stakeholder Identification

This section aims to identify key stakeholders with respect to public contracting. While all citizens are stakeholders in public procurement, it is important to understand how stakeholders organize themselves and use - or desire to use - contracting information. This section focuses on four key groups: government; civil society networks, and media; the private sector; and international organizations or donor agencies.

### Government stakeholders

The notion that changes in the procurement process will require changes in mentalities was reiterated at the government level; individuals get accustomed to opacity and lack of data within a system that has not been transparent for many years. In addition, PRP in Ministries tend to be relatively young, and find it difficult to promote new strategies among their more senior colleagues. Furthermore, interviewees often believed that staff of the newly created procurement entities were not actually proficient in contracting processes.

One example of the challenges facing government comes from an anecdote about the lack of proper planning. According to one respondent from the CNOSC, the government makes little effort to understand population needs or the potential impacts of procurement activities on local populations:

*When signing the contract with GoG, mining companies have to take some precautions for the wellbeing of local populations. In practice this is never the case. In one region, the extracting company equipment generated so much dust that the land could not be cultivated. Knowing that agriculture is the only means that some people feed themselves, this was unacceptable. Local populations complained to the prefect about the deterioration of their environment and their health, but no serious action was taken against by the Government against the corporation for not respecting the population well being clause of the contract. This happens more than you think because the locals are not informed of their rights. (CNOSC)*

### Civil society/Networks/Media

Given the existing policy environment within government, and persistent lack of transparency, civil society may represent a better opportunity for generating a positive impact on procurement transparency. However, civil society organizations in Guinea are under-resourced and have limited capacity. Civil society organisations interviewed for this study - including Actions Mines Guinea, NRG1, and CNOSCG - are in favor of the change in processes; focused on encouraging local populations to report problems they see in the field, these CSOs feel they promote education and citizen feedback among local populations.

**The CNOSCG**<sup>14</sup> (Conseil National des Organisations de la Société Civile Guinéenne) contributes to the mission of promoting democracy, good governance and harmonious development in a climate of peace through: effective involvement of citizens in the definition, control and implementation of public policies at all levels; effective citizen participation in the electoral process so that it is credible, transparent and peaceful; establishment of social and political dialogue, mediation, national

<sup>14</sup> <http://www.societecivileguineenne-cnosc.org/index.php/mission>

reconciliation, conflict prevention and management; and civic education, information, communication and capacity-building for civil society actors to enable them to effectively play the role of monitoring, advocacy and proposal on issues of national and international interest. The CNOSCG seeks to have a clear mandate and be recognized as an institution capable of taking judiciary actions against companies, especially at the regional level and in the mining sector.

Their mandate and structure allows them to report information that they receive from local populations, including on procurement. For instance, interviewees mentioned a specific project in Beyla where a bid was awarded but never implemented, despite having more than 85% of funding disbursed.

Though CNSOCG has a website, it is not regularly updated and they expressed the need for an IT tool that includes a mobile component. This would allow local populations to communicate and share information on a more regular basis to improve monitoring of the situation on the ground. T

**Action Mines** is one of the NGOs that focuses its citizen engagement activities on the mining sector. The NGO receives funding from DPs (GIZ, OSIWA), and tries to report on activities that are not in line with transparency. Action Mines holds a weekly radio show in a debate format where local populations are invited to call in and share their views, or provide information about questionable activities in the field.

*"Sometimes what we say in those debates or information that we share with local populations are not appreciated by officials. They often call us to ask us where we got that information, when the first rule of journalism is to not divulge your sources" (Action Mines)*

### Private Sector

Interviews revealed that the private sector follows the same process as the one described in the new code for procurement, as long as the PE is a government entity. They can be contracted through direct or restrictive biddings.

When a private sector company wants to issue a tender, they should collect all documents and submit to the ACGPMP to get a visa of non-objection for conformity. These documents should include proofs of regularity of the company. The private company is in charge of evaluation of received offers. Once a candidate has been selected, the company needs to also inform the ACGPMP before issuing the contract and receive a non-objective certificate. The final contract should be registered with the DNMP.

### International organizations/Donor agencies

The World Bank supported the current reform and is still assisting the government in its implementation. However, GoG procurement staff feel that more support is needed; the World Bank should implement phase 2 of this reform, focused mainly on capacity building and on assessing the challenges faced by government procurement staff.

Currently, the donor community (World Bank, AfDB, European Union) is focusing on procurement transparency at the national level. However, donors expressed the fact that there is poor coordination among agencies, making it difficult to concentrate their efforts and maximize effectiveness. To achieve a greater level of transparency, donor coordinate should be reinforced.

*Since the reform has been made official, the World Bank didn't conduct a review. If they have done so, they will have noticed that some PRPs have not been installed. We need to understand the laws before implementing them. (ARMP, DNMP)*

## Recommendations

**Create a donor working group on procurement:** This working group would help coordinate investments and efforts to improve procurement integrity and openness in Guinea. For example, while support was given to the government in drafting new legislation, limited funding has gone toward communicating the new laws across government or to capacity building. ***Improved coordination could help ensure the complementarity of efforts and knowledge sharing, and identify priority resource needs within government and civil society.***

**Provide support to civil society for basic procurement monitoring:** This support could include direct monitoring, as well as communication efforts through community radio that inform citizens of their right to lodge complaints on procurement. ***Leveraging existing project monitoring networks (e.g. CNOSC) and providing training on procurement law and monitoring could help address issues of government impunity.*** Further, by engaging directly with civil society, citizen complaints which might go ignored can be followed up on by CSOs.

## 10. Broader Public Financial Management Environment

The Government of Guinea does not have an integrated financial management information system (IFMIS). While there has been some discussions about World Bank support for such a system, there appears to have been no action taken to date.

The budgeting process is as follows:

1. The draft budget is prepared by the technical departments on the basis of their mission letters and the priorities of the Government;
2. All draft budgets are submitted to the Ministry of Budget for arbitration and validation by the government;
3. Once validated, the draft budget is submitted to the National Assembly (Parliament) for consideration and adoption;
4. Once voted, the President issues a decree validating the budget. This decree is published in the Official Journal.

The budget is presented by the Ministry and includes the following sections:

1. Budget Code
2. A personnel section (salaries, indemnities, goods and services etc.)
3. Projects funded by development partners (total commitment amount for the current year and planned amount for year N+1).

For any activity included in the annual procurement plan, the PE has to confirm that necessary funding is available either on the national budget, by external aid, or by a combination of both. Only in this case will procurement plans for a given PE be accepted by the ACGPMP.

### Recommendations

**Improve broader public financial management environment:** To complement digital tools for procurement, development partners should support GoG toward the installation of an integrated financial management information system (IFMIS) that will include all projects funded by the government and its partners. Each of those projects should have a unique identifier to facilitate the linkage between national budget and procurement activities.

## Annex 1 - List of Interviews

Name	Organization	Position	Date of Interview
Catherine Inglehearn	UK Embassy	Ambassadeur	Le 07/11/2016
Bintou Kaba	UK Embassy	Responsable économique et commercial	Le 07/11/2016
Hassane Diallo	International Monetary Fund	Économiste Principal	Le 07/11/2016
Dansa Kouroumah	CNOSC (Société Civile)	Président	Le 07/11/2016
Manden Guisse	CNOSC (Société Civile)	Membre	Le 07/11/2016
Hassane Gngangadou	CNOSC (Société Civile)	Membre	Le 07/11/2016
Gabriel Haba	CNOSC (Société Civile)	Membre	Le 07/11/2016
Amadou Bah	Action Mines Guinée	Président	Le 08/11/2016
Paul Bomboh	Autorité de Régulation des marchés Publics (ARMP)	Directeur des Statistiques et de la Documentation	Le 08/11/2016
Ibrahima Sory Diallo	Autorité de Régulation des marchés Publics (ARMP)	Directeur Technique	Le 08/11/2016
Amara Somparé	Administration et Contrôle des Grands Projets (ACGP)	Directeur Contrôle de la Passation des Marchés Publics et Délégation de Service Public	Le 08/11/2016
Mamadou Labo Diallo	Administration et Contrôle des Grands Projets (ACGP)	Chef de Division	Le 08/11/2016
Aguibou Béréte	Ministère de l'Industrie	Directeur National de la Promotion du Secteur Privé	Le 08/11/2016

Billy Nankouman Condé	Ministère de l'Industrie	Directeur National de l'Industrie	Le 08/11/2016
Mme Marie Josephine Nsengiyuva	Natural Resource Governance Institute	Coordinatrice Projet d'Appui à la Réforme du Secteur Minier en Guinée	Le 10/11/2016
Almamy Moustapha Touré	Ministère des Mines	Responsable de la Passation des Marchés	Le 08/11/2016
Sema Soumah	Ministère des Mines	Passation des marchés	Le 08/11/2016
Mouctar Keita	Ministère de l'Enseignement Préuniversitaire	Responsable de la Passation des Marchés	Le 11/11/2016
Ibrahima Niang	OSIWA	Directeur	Le 11/11/2016
Mory Sanoh	GIZ (Allemagne)	Directeur des Ressources Humaines et des Contrats	Le 11/11/2016
Boubacar Barry	GIZ (Allemagne)	Chef des Achats	Le 11/11/2016
Alpha Mamoudou Bah	Banque Mondiale	Sr Procurement Specialist	Le 11/11/2016
Olivier Malon	Banque Africaine de Développement	Économiste	Le 10/11/2016
Mamadi Condé	Ministère de la Santé	Responsable de la passation des marchés publics	Le 10/11/2016
Fantamadi Traore	Ministère de la Santé	Passation des marchés	Le 10/11/2016
Lancey Camara	Ministère de la Santé	Passation des marchés	Le 10/11/2016
Lamine Camara	Ministère de l'Économie et des Finances	Directeur National Adjoint des Marchés Publics	Le 09/11/2016
El Hadj Alpha Kabinet Keita	Ministère de l'Économie et des Finances	Chef de Division Administration Générale et Affaires sociales	Le 09/11/2016



## Annex 2: Open Contracting Indicators - Guinea

Indicator	
<b>Section I: Law, Policy, Institutional Setup</b>	
<b>(1) Policy Context</b>	
<p>1a. <b>Political context and top national priorities/ strategic plans</b> create enabling environment for advocacy around open contracting in the country.</p>	<p>Le seul texte de loi officiel qui encourage l'open contracting est le Code des marchés publics qui, repose sur les principes de transparence, d'équité, d'autonomie et de libre accès. Dans la pratique, il y a Commission Nationale de Passation des marchés Publics ainsi qu'une sorte de lettre d'engagement que les membres de la commission signent avant toute passation pour prévenir tous cas de conflits d'intérêts.</p> <p>Tout l'arsenal juridique existe mais l'application pose problème : les interférences constituent la raison principale. Celles-ci biaisent le processus surtout avec l'implication des Ministres qui pensent être absolument maîtres de leurs crédits. Il y a une réticence vis-à-vis du Code des marchés Publics. À titre d'exemple, un Responsable de la Passation des marchés a été révoqué par son Ministre simplement pour avoir exigé le respect des procédures de passation. D'où la vulnérabilité des Responsables de la Passation des marchés Publics et du concept général de transparence dans le processus de passation des marchés.</p>
<p>1b. <b>Key political leaders</b> (prime minister / ministers / president) have expressed publicly visible support for open contracting or open government data.</p>	<p>La volonté politique de mettre en place les instruments juridiques de passation des marchés publics existe, si l'on s'en tient au fait que la réforme a été faite à la demande du Gouvernement. La Banque Mondiale a apporté un financement de 550 000 USD à cet effet. À titre d'exemple, l'ancien Ministre des Finances avait suspendu des cadres de la passation des marchés publics pour faute grave. Le Président de la République, mesurant l'ampleur de la faute, a fini par prendre un décret en lieu et place de la décision du Ministre. Cette sanction s'appliquait à 4 cadres.</p>

	<p>Le constat général est que la volonté politique est plus marquée envers les procédures qu'envers les faits. L'engagement des leaders politiques est perçu comme ni constant, ni fort et parfois laisse planer le doute quant à la sincérité.</p>
<p>1c. <b>Key data owning agencies</b> have expressed publicly visible support to open contracting or broader open data issues. Public Procurement Offices lack of means to publish data</p>	<p>La DNMP est en partenariat avec le Journal des Appels d'Offres et Offres d'Emplois (JAO) et tous les journaux privés de la place pour la publication des avis.</p> <p>Les données publiées par la DNMP, principalement les rapports trimestriels, sont envoyés à toutes les structures notamment à l'ACGP, l'ARMP et le Ministère des Finances. Les données publiées portent sur le volume et la valeur des marches passées y compris ceux de gré à gré. Elles contiennent également des rubriques sur la réglementation pour la formation et l'information du secteur privée et de la société civile. Malheureusement, l'Agence Nationale de Lutte contre la Corruption ne fonctionne plus sinon elle était partie prenante du Comité National de la Reforme des marchés Publics.</p> <p>A noter que seuls les avis et les rapports sont publiés de façon périodique.</p>
<p>1d. <b>Key data-owning agencies</b> have established policies for release of the information related to the: a. planning; b. procurement and c. implementation of all types of public contracts.</p>	<p>Il n'y a pas une véritable politique de diffusion des données relatives à la planification, la passation et la mise en œuvre des contrats publics en Guinée</p> <p>Les structures chargées de la passation des marchés publics manquent d'outils d'aide à la gestion.</p> <p>L'ACGPMP a un site web non entretenu  L'ARMP a un portail mais manque de logiciels et d'outils informatiques  La DNMP publie les informations relatives à la passation des marchés publics dans le journal privé des Appels d'Offres et Offres d'emplois  Les Outils informatiques sont à développer</p> <p>Les textes prévoient la publication des informations sur la passation des marchés publics à toutes les étapes mais les structures avancent souvent comme excuse le manque de moyens. Tout avis qui ne passe pas par ce journal est de nul effet, selon la DNMP. La facturation est</p>

	<p>de 600 000 GNF (soit 65 USD environ) pour une demi-page et de 1 500 000 GNF (163 USD) pour la page entière. Cela constitue une importante source de revenu pour le journal sans omettre le partenariat avec la DNMP. Cependant, il est à noter que la non-publication des informations à toutes les étapes du processus n'entraîne pas forcément une suspension de la procédure qui continue jusqu'à son aboutissement.</p>
<p>1e. <b>Mechanisms for citizens, intermediaries or business to access the information</b> related to the a. planning; b. procurement and c. implementation of all types of public contract.</p>	<p>La loi exige l'accès libre à toute information publique. Cependant, dans les faits, il semblerait que les médias et les citoyens soient empêchés d'avoir accès à une information publique qui pourrait être vue comme sensible.</p> <p>Il existe une loi sur la liberté de la presse et sur l'accès à l'information publique mais elle est faiblement mise en œuvre. Il n'y a aucun mécanisme en place pour véritablement permettre une certaine transparence dans les données rendues publiques.</p>

<b>(2) Legal Framework</b>	
<p>2a. The <b>law/regulations recognize the right of the public to access information related to the a.</b> planning; b. procurement and c. implementation of all types of public contracts.</p>	<p>+ Loi Organique L 2010/ 004/ CNT/ du 24 Novembre 2010 portant Droit d'Accès à l'Information Publique  + Décret D/2012/128/PRG/SGG du 3 Décembre 2012 portant Code des Marchés Publics et Délégations des Services Publics</p> <p>Le Code exige que toute la documentation sur la passation des marchés publics soit mise à la disposition du secteur privé et ce, a toutes les étapes sauf à l'étape d'évaluation où les membres du comité d'évaluation sont tenus, par la loi, au secret absolu. Des sanctions existent et peuvent être prises par l'ARMP qui est la garante de l'intégrité du système. C'est un organe tripartite : Administration, Secteur Privé et Société Civile. Toutefois, il n'y a pas encore eu de cas de sanctions de la part de l'ARMP.</p>
<p>2b. The <b>laws and regulations governing public procurement are easily accessed by the public and clearly outline the process</b> for the planning, procurement, and implementation of public contracts, including requirements related to disclosure of information and participations of stakeholders.</p>	<p>+ Les informations sur la passation des marchés publics sont publiées dans le journal des appels d'offres et offres d'emplois par la DNMP.  + Les Ministères publient généralement dans les organes de presse (journaux privées et sites web) de leurs choix</p>
<p>2c. The law requires publication of the following:  Procurement Plans  Tender Notices  Bidding Documents  Award Notices (including Winner, Price, Reasons and including Non-Competitively Awarded Contracts)  Full Contracts including Technical Specifications  Implementation Details</p>	<p>La loi exige effectivement la publication du plan de passation, les appels d'offres et la notification aux soumissionnaires gagnants. Les soumissionnaires non-retenus ont 7 à 10 jours pour réagir.</p> <p>Il y a document type d'appel d'offres pour fournitures, travaux et prestations. Les principales informations contenues dans ce document type sont :</p> <ul style="list-style-type: none"> <li>- Le Numéro de l'Appel d'Offres ;</li> <li>- L'Objet</li> </ul>

	<ul style="list-style-type: none"> <li>- Le Département</li> <li>- La Date d'Achat</li> <li>- La date limite</li> <li>- La date, le lieu et l'heure d'ouverture des plis</li> <li>- L'attribution</li> <li>- Les motifs de rejets des dossiers</li> </ul> <p>Une fois que l'appel d'offres est clôturé, la documentation est transmise à l'ARMP et au journal des appels d'offres y compris les motifs de rejet. Un modèle de contrat de 4 à 5 pages est joint dans les DAO y compris les spécificités techniques. Les dossiers comprennent les cahiers des clauses techniques, des clauses particulières et des clauses générales. Ces dossiers sont parmi les documents constitutifs du Contrat auquel ils sont annexés. <a href="http://www.philgeps.gov.ph/">http://www.philgeps.gov.ph/</a></p>
<p>Et 2d. Citizen participation rights, in terms of consultation, observation, and monitoring, in the a) planning; b) procurement; or c) implementation of public contracts.</p>	<p>Il n'y a pas de participation directe des citoyens dans les processus de passation des marchés publics. Les représentants de la société civile sont censés défendre les intérêts des citoyens dans les instances de passation des marchés publics. Les organisations de la société civile sont membres de la plupart des instances de passation des marchés publics sans mandat précis.</p> <p>Les rares plaintes de citoyens enregistrées ont été faites soit en contactant certaines organisations de la société civile ou en participant à des émissions de radio nationales leur permettant de s'exprimer. Il est à noter que les plaintes concernent plutôt les failles notées par les populations locales dans l'exécution des projets plutôt que sur la procédure d'attribution des différents marchés.</p>

<b>(3) Institutional setup</b>	
<p>3a. There is a <b>responsible agency with sufficient political weight and competency currently leading on open contracting issues.</b> If not, existence of an agency with demonstrated potential to lead on matters of open contracting.</p>	<p>La DNMP est cette agence. Toutefois, la DNMP est contrôlée par l'ACGP et régulée par l'ARMP ce qui limite beaucoup son pouvoir. La DNMP est aujourd'hui le seul organe qui publie des données trimestrielles sur les différents marchés y compris ceux attribués de gré à gré.</p>
<p>3b. There is a demonstrated track-record of inter-agency mechanisms coordinating open contracting related processes.</p>	<p>Il y a, tel qu'indiqué dans le Code des Marchés publics, une collaboration entre les organes chargés de la passation des marchés publics en Guinée y compris le contrôle et la régulation.</p> <p>Un mécanisme de coordination mis en place par une réunion mensuelle tournante pour discuter des problèmes. Le Procès-verbal est dressé et envoyé à tous. Au cours de ces réunions, des questions juridiques et règlementaires sur les prochaines étapes de la réforme ; les insuffisances du code des marchés publics sont notés et serviront de TdRs pour la poursuite des réformes.</p> <p>+ Des soucis existent dans la coordination des activités de passation des marchés publics et parfois des couacs surviennent entre l'ACGPMP et la DNMP. Avec la toute dernière décision prise par le Ministère des Finances pour relever les seuils de passation des marchés pour la DNMP, les malentendus diminuent.</p>
<p>3c. Overall government's ICT skill base among senior government leaders and civil servants is sufficient to implement open contracting initiatives.</p>	<p>+ Les cadres des structures chargées de la passation des marchés publics ont besoin de renforcement des capacités. Certaines structures telles que l'ARMP manquent de spécialistes en passation des marchés publics. La maîtrise de l'outil informatique et des nouvelles technologies de l'information est un défi pour la plupart des responsables de la passation des marchés publics</p> <p>+ Le partage des données mérite d'être renforcé à travers l'utilisation des nouvelles technologies de l'information et de la communication</p>

Section II: Open Contracting Data & User Engagement	
(4) Technical Context	
<p>4a. <b>Information</b> related to the planning, procurement, and implementation of public contracts <b>is being published in a timely manner and in a useful format.</b></p>	<p>Tous les responsables de passation des marchés publics soumettent un plan annuel de passation des marchés . Les informations sur la passation des marchés publics ne sont pas toujours collectées ni publiées à temps Il n’y a cependant pas d’évidence de publication des détails sur la mise en œuvre et les rapports d’achèvement.</p>
<p>4b. The information in indicator 2c is being collected and published online or offline in a timely manner.</p> <p>Indicators: Procurement Plans Tender Notices Bidding Documents Award Notices (including Winner, Price, Reasons and including Non-Competitively Awarded Contracts) Full Contracts including Technical Specifications Implementation Details</p>	<p>En général, les données sur les attributions et les données sur les soumissions répondent aux exigences La loi exige la publication des documents dans le Journal des Appels d’Offres et Offres d’Emplois mais pas sur des sites Internet publics.</p> <p>La loi n'exige pas de documents approfondis après la remise, tels que les détails de la mise en œuvre et les rapports d'achèvement.</p>
<p>4c. The published information is being published online in an open and structured machine-readable format, using unique identifiers and classifications.</p>	<p>Les informations sur la passation des marchés publics sont publiées dans le journal privé des appels d’offres et offres d’emplois et en ligne sur <a href="http://www.jaoguinne.com">www.jaoguinne.com</a> et <a href="http://www.guineesite.com">www.guineesite.com</a>. Les informations publiées portent sur le numéro de l’appel d’offres, l’objet, le département, la date limite, la date de l’ouverture, l’heure et le lieu, la date d’achat, les motifs de rejet des dossiers etc.</p>

(5) User Engagement	
<p>5a. There is a <b>clear guidance of programs</b> being implemented by procuring entities and oversight authorities <b>to engage with citizens and the private sector</b> in matters of open contracting.</p>	<p>Il n'y a pas d'exemples précis d'engagement du public dans les activités de passation de marchés publics en Guinée</p> <p>Le budget participatif avec l'implication des citoyens n'est pas très développé encore en Guinée –</p> <p>L'engagement des citoyens dans la passation des marchés publics se fait à travers la société civile qui est représentée au sein de l'ARMP. Le secteur privé est le bénéficiaire de la réforme. Il y a des mécanismes pour l'informer sur la passation des marchés publics depuis le début de l'année à travers le journal des appels d'offres, le plan annuel de passation des marchés publics entre autres.</p>
<p>5b. There is <b>evidence of disclosed information being used</b> by the government, private sector, and civil society <b>for policy making, business development, and advocacy.</b></p>	<p>+ Il y a des sites web sensés donnés des informations sur la passation des marchés publics en Guinée mais ils ne sont pas fonctionnels et manquent de visibilité.</p> <p>+ Il n'y a pas beaucoup de situations où les organisations de la société civile utilisent des données contractuelles pour surveiller les activités de passation des marchés publics</p> <p>+ Il n'y a pas évidence que l'information sur la passation des marchés publics est utilisée par le Gouvernement, le Secteur Privé et la Société Civile</p> <p>+ La Société Civile guinéenne à travers le Conseil National des Organisations de la Société Civile (CNOSC) a joué un rôle de watchdog dans le suivi de la mise en œuvre des marchés passés dans le cadre de la fête tournante de l'indépendance de la Guinée.</p>
<p>5c. There is a <b>feedback redress mechanism</b> in place for matters related to public contracting.</p>	<p>+ Il n'y a pas de mécanismes clairs de règlement des différends liés à la passation des marchés.</p> <p>+ Les tribunaux ou le bureau du Médiateur peuvent être contactés pour des plaintes des citoyens contre les services de l'Administration Publique.</p> <p>L'impunité reste encore relativement importante en Guinée.</p>



Section III: Stakeholders & Projects	
Section IV: Current Situation Regarding Advocacy Around Open Contracting	
(8) Current Advocacy Scene	
8e. Characteristics of the general public (attitudes, perceptions, civic empowerment levels, use of social media skills etc.) enable / hinder promotion of open contracting issues.	<ul style="list-style-type: none"> <li>+ La corruption est perçue comme étant très répandue en Guinée par les citoyens</li> <li>+ La Guinée est classée par Transparency International 142e pays sur 176 selon l'Indice de Perception de la Corruption</li> <li>+ La Guinée occupe la 26e place sur les 46 pays de l'Afrique Subsaharienne selon l'IPC</li> </ul>
8f. Existing advocacy targets (government agencies) supports open contracting.	<ul style="list-style-type: none"> <li>+ Il n'y a aucun système de plaidoyer fort pour plus de transparence dans la passation des marchés publics en Guinée.</li> <li>+ L'Agence Nationale de Lutte contre la Corruption n'est pas opérationnelle</li> <li>+ D'autres structures de prévention et de lutte contre la corruption existent mais sont inefficaces car elles manquent de moyens, d'effectif et de soutien de la part des autorités.</li> </ul>
8g. International, national, local channels and mechanisms (fora, platforms, committees etc) for advocacy around open contracting (on an international level, this can be offered by country's participation at the OGP, CSTI, EITI or any other relevant international platform).	<ul style="list-style-type: none"> <li>+ La Guinée est partie prenante de la Convention des Nations Unies contre la Corruption (CNUCC).</li> <li>+ La Guinée a ratifié tous les protocoles de l'UA en matière de lutte contre la corruption</li> <li>+ La Guinée est un pays membre de l'Initiative de Transparence dans les Industries Extractives (ITIE)</li> <li>+ La Loi Anti-Corruption n'est toujours pas adoptée par l'Assemblée Nationale</li> </ul>
(8) Benefits Of Open Contracting	
8h. Procurement system generates sufficient value for money;	<p>- Le Ministère de l'Économie et des Finances a commandité un audit externe des marchés publics passés au titre des exercices budgétaires 2013, 2014 et du premier semestre 2015 concernant vingt-quatre (24) Autorités Contractantes. La mission est arrivée à la conclusion que sur la base de l'échantillon des marchés audités, treize pour cent (13%) sont conformes<sup>1</sup>, soixante-trois pour cent (63%) sont non conformes et vingt-quatre pour cent (24%) desdits marchés n'ont pu être audités pour carence documentaire.</p>

<sup>1</sup> La conformité ou non des marchés audités s'apprécie par rapports aux dispositions des codes de marchés respectifs de 1997 et 2012 et de leurs textes d'application.

	<p>+ Les articles 27 de la loi L97/016 de 1997 et 11, point 4 de la loi L2012/020/CNT de 2012 prévoit les cas limitatifs de recours aux marchés de Gré à Gré. Ce qui ouvre une brèche a la corruption</p> <p>+ Le Gouvernement et ses entités font des achats sur la base du moins-disant et non de la meilleure offre du point de vue de la qualité</p> <p>+ Il n'y a aucun mécanisme clair de contrôle des prix et de la conformité des achats selon les cahiers de charges</p>
8h. Procurement system upholds market fairness;	<p>L'interférence des politiques notamment des Ministres compromet l'égalité des marchés.</p> <p>+ L'Audit du Ministère de l'Économie et des Finances a montré que seuls les marchés de petite taille ont été passés selon les règles de l'art</p> <p>+ Les marchés dont les seuils sont élevés en termes de valeur sont généralement passés par la méthode de gré à gré</p> <p>Par exemple, les entreprises qui ont préfinancées la réalisation d'infrastructures dans les régions dans le cadre des préparatifs de la fête tournante de l'Indépendance Nationale ne sont pas toujours remboursées .</p>
8h. Procurement system is integral: level of fraud and corruption levels are well controlled.	<p>La passation des marchés publics connaît souvent des interférences de la part des autorités contractes :</p> <p>pour les marchés de gré a gré, aucune documentation permettant de vérifier ces différents points n'a été remise aux auditeurs, à savoir : la qualité du marché, la compétitivité des prix, l'inclusion effective de dispositions claires et suffisamment détaillées permettant le contrôle effectif des coûts de revient.</p> <p>Le niveau de contrôle de la corruption et des fraudes éventuelles reste à améliorer.</p>

Priority Recommendations List									
Theme	Recommendation	Text	Difficulty Level	Priority Level	Financial Burden	Lead Stakeholder	Other Stakeholder	Monitoring & Sustainability	Additional Resources/ Initiatives
<b>Strengthening Institutional and Legal Framework for Increased Accountability</b>	<i>ACGMPM should be joined with the ARMP to create a unified regulatory agency. The head of that agency should be selected by an independent committee following a public call for application</i>	This unified agency should also be in charge of a posteriori oversight, including independent audits, assessment of the global procurement system, and the publication of annual reports. The DNMP, by contrast, would be in charge of the a priori oversight, in addition to the technical activities with the PEs (annual procurement plan, conformity checks for all bids and tenders, evaluation and awards).	HIGH - the current institutional arrangement is fairly new. Will be difficult to rearrange.	MEDIUM	LOW	Given the Guinea context, this should be done by the President.	Development Partners, especially the ones who participated in the implementation of the new Code des Marchés could advocate after conducting an initial review of the process.		UNCITRAL Model Law on Public Procurement
<b>Support Capacity Building for Staff and Public</b>	<i>One of Guinea's greatest challenges is the professionalization of its procurement staff. This includes a lack of transparency in its institutional culture, though interviewers shared that this is slowly evolving. Nevertheless, there remains a need to professionalize the procurement staff and help them acquire the skills needed to meet the legal requirements set forth</i>	This is the biggest challenge that was addressed in all interviews and by all stakeholders. The new Code des Marchés publics has been made official but all government agencies, and the responsible staff, candidly mentioned that it is difficult to implement laws you don't understand.	LOW - this is a recommendation that is easy to implement	HIGH	MEDIUM - capacity building is needed at all levels and for all staff responsible of procurement questions.	DP - DPs should take the lead on this effort: they helped the country putting together a procurement law; it only makes sense that they give the country the capabilities to do so.		Including evaluation of the trained staff in annual reviews	
<b>Strengthening Institutional and Legal Framework for Increased Accountability</b>	<i>Government officials and private companies frequently in violation of existing laws do not suffer the appropriate sanctions.</i>	The impunity of government officials who violate direct contracting limits and time period requirements – combined with under-resourced oversight authorities – has created an expectation of "business as usual" Reinforcing sanctions on procurement fraudulent activities will imply a high-level commitment to transparency and fairness in the procurement process.	MED/HIGH	HIGH	LOW/MEDIUM	The President and high government officials	The ones involved in fighting to reduce corruption	Monitor Guinea's corruption index	Invite Guinea to attend international meetings and conferences on transparency and open data and follow up to see what has been implemented etc.
<b>Investing in appropriate IT tools</b>	Investing in appropriate IT tools could help facilitate the transmission of accurate data and improve the transparency, professionalism, and conduct of the procurement process.	GoG should rapidly invest in IT tools for the procurement process. The potential advantages of computerizing the procurement process are many, including: i) speeding up document transmission from one entity to another, ii) enhancing compliance with administrative procedures, iii) reducing opportunities for corruption, and iv) helping entities to gather data and use analytics to improve procurement performance. The installation of IT tools should be supplemented by intensive capacity building on the both the technical and institutional sides. A training-of-trainers program would also need to be instituted, helping the lead agency train PEs and others in the procurement chain	LOW/MED	MED/HIGH	HIGH	Government officials and DPs		Capacity building and refresher trainings	World Bank eProcurement Toolkit; European Bank for Reconstruction and Construction
<b>Engage Citizens, Private Sector and International Institutions to Meet a Variety of Procurement Needs</b>	Proactively communicate to local communities about opportunities to file complaints. The complaints process provides an opportunity for citizens in need to gain trust in government	GoG should conduct a campaign through community radio and other means to help citizens understand their right to complain when procurement implementation is unfair, dishonest, or harmful	LOW	HIGH	LOW	Government officials and DPs	CSOs	Increase in complaints filed and resolved with public announcements	Promote all transparency and open data principles (EITI, IATI, etc.)
<b>Strengthen Data Collection and Publication</b>	Strengthen proactive disclosure. By requiring disclosure of this information throughout the procurement chain, GoG could reduce the number of permissions required to conduct procurement (sometimes more than 10 for a single activity), while remaining confident that the process is functioning appropriately	Increasing transparency should reduce the administrative burden throughout the process and bring about efficiency gains. Information that should be disclosed includes: contract winners, contract amounts, start date, planned completion date, etc.	MED/HIGH	HIGH	LOW	The President and high government officials	CSOs	Suspend the procurement procedure if all transparency requirements have not been met. This will force procurement staff to render all information public	OCSD; Open Contracting Partnership, Development Gateway
<b>Strengthening Institutional and Legal Framework for Increased Accountability</b>	Create mechanisms to ensure the fairness of the bid evaluation process.	The evaluation process should not be kept secret. There should be clear criteria for conducting evaluations, a review process by procurement authorities to ensure that evaluations are done on an impartial basis, an opportunity for losing bidders to receive a briefing on why they were not selected, and an opportunity for losing bidders and external observers to protest the award	LOW	MED/HIGH	LOW	The President and high government officials	CSOs and DP	Reforms achieved of evaluation process	World Bank Benchmarking Public Procurement
<b>Engage Citizens, Private Sector and International Institutions to Meet a Variety of Procurement Needs</b>	Create a donor working group on procurement.	This working group would help coordinate investments and efforts to improve procurement integrity and openness in Guinea. Improved coordination could help ensure the complementarity of efforts and knowledge sharing, and identify priority resource needs within government and civil society.	LOW	MED/HIGH	LOW	DP		Procurement activities and data are included in the agenda and reviewed at all donors meeting - recommendations are provided to the Government and an annual evaluation is done	Open Contracting Partnership
<b>Investing in appropriate IT tools</b>	Improve broader public financial management environment. Install an integrated financial management information system (IFMIS) that will include all projects funded by the government and its partners.	Each project contained in the IFMIS will have a unique identifier to facilitate the linkage with procurement activities.	MED/HIGH	MED	HIGH	DP		Adoption of IFMIS	Development Gateway

## Priority Recommendations List

Theme	Recommendation	Text	Difficulty Level	Priority Level	Financial Burden	Lead Stakeholder	Other Stakeholder	Monitoring & Sustainability	Additional Resources/ Initiatives
<b>Strengthening Institutional and Legal Framework for Increased Accountability</b>	Reduce direct contracting. The existing law limits the use of direct contracting to a maximum of 10% of the total amount of all contracts for each PE.	The limit is never respected	MED/HIGH	HIGH	LOW	The President and high government officials	DPS and CSOs	The quarterly DNMP report will show the number of direct contracting activities including the amounts for each project.	World Bank Benchmarking Public Procurement
<b>Strengthening Institutional and Legal Framework for Increased Accountability</b>	Adopt an anti-corruption law. GoG should elaborate an anti-corruption law	The ANLC is already present in Guinea. It should be provided with staff well-versed in the anti-corruption mechanism and the appropriate funding. Further, representatives from the ANLC should be included in the procurement process to conform with all laws and regulations	MED	HIGH	LOW	The President and high government officials		Anti-corruption law is adopted.	Transparency International, Open Government Partnership
<b>Support Capacity Building for Staff and Public</b>	Build capacity for the CSO representatives on procurement. CSO representatives should also benefit from capacity building efforts around procurement in order to better understanding the process and legal requirements	CSOs could also be involved in monitoring local contracts to ensure that all deliverables are met on time and that citizens are not adversely affected	MED	HIGH	LOW/MEDIUM	The President and high government officials	DPS and CSOs	Initiatives undertaken by CSOs to monitor contracts	Open Contracting Partnership, Hivos
<b>Support Capacity Building for Staff and Public</b>	Provide support to civil society for basic procurement monitoring. This support could include direct monitoring, as well as communication efforts through community radio that inform citizens of their right to lodge complaints on procurement.	Leveraging existing project monitoring networks (e.g. CNOSC) and providing training on procurement law and monitoring could help address issues of government impunity.	MED	MED	LOW/MEDIUM	GoG/DP	CSOs	Initiatives launched to improve citizen understanding of procurement. Number of citizens participating. Developing a procurement degree program.	Open Contracting Partnership, Hivos