
THE COVID-19 PANDEMIC - RICH SOIL FOR THE CORRUPTION

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Abstract: *THIS PAPER AIMS TO DEMONSTRATE THAT THE PANDEMIC OF COVID-19, WHICH HAS AFFECTED THE WHOLE WORLD AND AT ALL LEVELS, WAS IN FACT AN UMBRELLA UNDER WHICH CORRUPTION FOUND "FERTILE GROUND" TO FLOURISH. WE REFER HERE IN PARTICULAR TO CORRUPTION IN THE MEDICAL SYSTEM, WHICH, THROUGH THE PURCHASE OF "COVID-19 PRODUCTS" AT PRICES FAR ABOVE THE NORMAL LIMIT AT THE TIME, LED TO THE ENRICHMENT OF SOME AND THE IMPOVERISHMENT OF OTHERS. THUS, EXAMPLES OF COMPANIES, WHICH DURING THE COVID-19 PANDEMIC DID NOT COMPLY WITH THE RULES RECOMMENDED BY GRECO PRESIDENT MARIN MRČELA, ARE BROUGHT TO ATTENTION THROUGH A PUBLICATION FINANCED BY THE EUROPEAN UNION AND SPECIAL REPORTS OF THE COURT OF AUDITORS. AFTER RESEARCHING OFFICIAL DOCUMENTS, BOTH BEST PRACTICES, CORRUPTION RISK ASSESSMENT AND INVESTIGATIVE JOURNALISM, AS WELL AS THOSE CONTAINED IN THE CASE STUDY, WE CAME TO THE FOLLOWING CONCLUSION, THE STATE OF EMERGENCY DECLARED IN MARCH 2020 HAS FOSTERED CORRUPTION, GRAND CORRUPTION AT THE LEVEL OF POLITICS, BUT ALSO PETTY CORRUPTION AT THE LEVEL OF HEALTH SERVICES.*

Keywords: CORRUPTION, COVID-19 PANDEMIC, "FERTILE GROUND/ SOIL",
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1. Introduction

The Covid-19 pandemic hit in full force in March 2020 (though, China, earlier, December 2019). It affected the whole world and all sectors. Governments and international banks incurred unprecedented spending of public money during the covid-19 pandemic. As with other emergencies, this was not exactly a *black swan* (cf. <https://www.britannica.com/topic/black-swan-event>, an event that cannot be predicted) (Piñeros et al: 2023, 4) it meant borrowing that increased vulnerability to corruption on spending and procurement of public money.



Interestingly, the covid-19 pandemic, like other emergencies in the past has meant "fertile ground" for corruption. Both big corruption in politics, but also small corruption in health services and procurement.

The same article cited above mentions that around \$560 billion is lost globally annually in the public health system, and the procurement sector is one of the most at risk of corruption. Emergencies in the public health system through those increases in urgent needs, flexibility and urgency of resolution have significantly exacerbated corruption in procurement. Emergencies in the public health system through those "increases in urgent needs, flexibility and urgency of resolution" (Piñeros et al, *ibid.*) have significantly exacerbated corruption in procurement and beyond.

2. Transparency International, an organization fighting corruption

At the outbreak of the Covid-19 pandemic, Transparency International, a non-profit, non-governmental organisation that has been active in over 100 countries, including Romania, since its founding in 1993, clarified why corruption in procurement translates into loss of life when it comes to misappropriation of funds intended for public welfare.

The Transparency International report specifically refers to permissible procurement rules and regulations, lack of medical supplies needed to properly manage the pandemic of co-infection-19 and rushed public tenders allowing third parties to bid for medical equipment, all of which have a negative impact on the selection of bidding companies, delivery services, and an increased risk for public resources to be subject to corruption. In this context, the organisation's report continues, the covid-19 pandemic has uncovered an increased level of influence peddling between certain companies and government organisations leading to out-of-control prices. Moreover, restricted access to information and laws, as well as restrictions on the right to be informed, have made it easier to divert civil society's attention from how public money is spent by national governments.

To address this lack of transparency, the Transparency International secretariat in collaboration with 10 other partners implemented the Adaptive Risk-Based Approaches to Anti-Corruption in Covid-19 project, acronym, ARBAC, which is investigating corruption over a two-and-a-half-year period. The project therefore aims to identify acts of corruption against public funds through tailor-made anti-corruption measures, both nationally and internationally.

The ARBAC project together with the partner countries have focused their attention particularly on corruption in procurement, including procurement of vaccines, but also medical supplies such as protective equipment for medical staff.

The Transparency International report also states that one of the reasons for the risks of corruption in procurement during the state of emergency is to be found in Advance Purchase Agreements, known as "no regrets buying" (Piñeros et al.: 2023, 5). Faced with reduced checks and balances and pressure to procure and distribute the vaccines and medical supplies needed to combat COVID-19 as quickly as possible, the 10 partners used a variety of methods to strengthen key anti-corruption frameworks to respond to corruption risks related to COVID-19. They have worked with investigative journalists and civil society organisations working on anti-corruption and transparency and filed access to information requests; in doing so, they have also helped to identify abuses and misuse of public funds and resources allocated to the COVID-19 pandemic.

Here is an overview of how these partners have contributed to significantly reducing the risks of corruption in the funding of emergency interventions (in this case, the COVID-19 intervention) through tailor-made national anti-corruption measures, tools, research, as well as working with civil society and journalists.

To begin with, the Transparency International report deals with Poder Ciudadano (Poder Ciudadano is a non-profit, apolitical foundation that was born in 1989 as an initiative of a group of



people concerned with the defence of civil rights in Argentina. Source: https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwiR6Lb-luH_AhVHSPEDHc3vByoQFnoECA0QAQ&url=https%3A%2F%2Fpoderciudadano.org%2F&usq=A0vVaw2KiEzY93oKkw-rtk4UmkTh&opi=89978449)

(Piñeros et al.: 2023, 5), Transparency International's Argentina branch, for which the first key step was to develop an evidence-based lobbying strategy.

It is worth noting that lobbying strategies have meant identifying relevant documents and processes to be monitored by civil society, detecting information gaps and using freedom of information requests as a lobbying tool. To this end, Poder Ciudadano (the translation of the Argentinean branch, Citizen Power, is also significant) began collecting data on the number of vaccine doses received, the number of vaccination contracts signed and the amount of money invested in the purchase of COVID-19 vaccines. Observatorio de vacunas The COVID-19 Vaccine Observatory (A body of the Ministry of Health whose objective is to provide the population with accurate information. Source: <https://observatoriovacunas covid19.unam.mx>)

Poder Ciudadano has made available to the public information on the vaccination, purchase and distribution of COVID-19. Although Poder Ciudadano requested contracts for COVID-19 vaccines and information about the negotiations, this was refused on the grounds of confidentiality clauses. Since the general good and public resources are at stake, Poder Ciudadano is continuing its efforts to gain access to the contracts through strategic litigation (Litigation will be strategic and will only have real potential to achieve change if there is a clear objective established at the outset. Source: http://mdac.org/sites/mdac.info/files/innovating_european_lawyers_-_training_pack_ro.pdf). Interestingly, websites such as the COVID-19 Vaccine Observatory allow civil society and the general public to access vital information about the vaccines that have been procured and how they have been distributed in different regions of the country.

Poder Ciudadano has also published reports such as COVID-19 Vaccine Watch: Initial Findings and Recommendations to share analyses and diagnoses of the COVID-19 vaccine monitoring and freedom of information processes. The report highlighted the lack of information on vaccine procurement, as well as the minimum transparency and integrity requirements established in vaccine procurement. Considering its findings, Poder Ciudadano recommends:

- That the government guarantee effective access to documents through official channels and publish information openly (and not only following requests from citizens or civil society).
- appropriate procurement tracking strategies be used, through consistent labelling in documents relating to the purchase, distribution, and administration of vaccines.

Based on Poder Ciudadano's experience, in parallel with monitoring and evidence generation, it is essential to build sustainable alliances with CSOs (including Transparency International's other national affiliates), journalists as well as oversight and audit bodies to promote effective protection of rights and accountability and to fight corruption. These alliances contribute effectively to strengthening advocacy strategies (Transparency and Accountability; source: <https://advocacy.ro>) and informing the non-specialist public about these issues.

Another example of good practice, Asociación para una Sociedad más Justa (Association for a More Just Society), (ASJ), Transparency International's Honduran affiliate (Piñeros et al.: 2023, 6), has developed an interactive online platform, Vacunas Abiertas, where they regularly share the results of their evaluation of the introduction of the COVID-19 vaccine in the country. They also did a comparison within the Central American region. On the other hand, Transparency International **Kyrgyzstan** (Source https://images.transparencycdn.org/images/2023_Report_theCOVID-19experience.pdf) produced a study on the analysis of public procurement prices for medicines during the COVID-19 pandemic, with specific recommendations. As part of the study, a total of 2,710 tenders and 2,121 procurements by direct procurement were analysed for the period March 21 March 2020 to



March 2022. The study conducted a comparison of medicine prices before and during the pandemic. Based on its findings, TI Kyrgyzstan held several meetings with the procurement department to discuss changes to the law on public procurement to increase transparency and accountability, which were subsequently considered when drafting the new law.

TI Kyrgyzstan also conducted a corruption risk assessment study in the field of public procurement during the COVID-19 pandemic in the country. TI Kyrgyzstan developed its own web portal¹⁵ with 28 red flags that it identified on the government procurement website. Analysis of the government's procurement web platform also paved the way for exchanges with the Asian Development Bank and the European Bank for Reconstruction and Development, leading to recommendations on how it could be improved.

During the project, Transparency International Lebanon (Piñeros: 2023, 7) developed the Access to Information Index, which measures the Ministry of Public Health's compliance with the regulations on direct disclosure of aspects of aid received as part of the state's response to COVID-19, within the legal framework of the right of access to information. As part of its evidence-based research and advocacy work, TI Lebanon also developed a background report on the country's pandemic preparedness and crisis management, including a detailed stakeholder analysis and information on other governments' responses to COVID-19. The report also included interviews with key witnesses to provide additional context on key indicators of good governance in pandemic management. These indicators included accountability, transparency, effectiveness, leadership, integrity and stewardship. This detailed analysis of the financial management of the Ministry of Public Health and World Bank and UN funds, as well as the results of the access to information monitoring, helped TI Lebanon to develop specific recommendations, combined with communication and advocacy tools, to raise awareness among key stakeholders and the general public of their research findings.

These were included in a practical guide, which complements the evaluation report, accompanied by training videos, and were disseminated at an advocacy meeting with several stakeholders. The meeting culminated in joint efforts by TI-Lebanon, the Knowledge to Practice Institute of the American University of Beirut, which works on good governance in the public health sector, as well as MPs and representatives of relevant local and international organisations. Stakeholders attending the meeting called for more transparency and accountability in the management of the public health sector, as well as budgetary integration of the sector's public financial resources.

Another partner in the ARBAC project, Transparency International Zimbabwe (Piñeros et al.: 2023, 8) organised several meetings with Parliament, attended by various parliamentary portfolio committees such as the Public Accounts Committee and the Health and Childcare Committee. One of these meetings, in July 2022, provided an opportunity to discuss the challenges of public procurement in Zimbabwe in the context of the pandemic. The Public Accounts Committee also drew attention to findings in its own report published in May 2022 in response to a special audit report by the Office of the Auditor General on financial management and use of public resources in addressing the pandemic.

The Committee used the meeting with TI Zimbabwe to amplify its calls to the Zimbabwe Anti-Corruption Commission and the Zimbabwe Republic Police to investigate and prosecute perpetrators who, according to the Office of the Auditor General, have misused COVID-19 resources. The meeting also called on the government to accelerate e-procurement as a "mechanism for institutionalising transparency and accountability in the procurement of COVID-19 public resources".

On February 2, 2023, a similar meeting generated consensus among stakeholders on specific policies that need to be revised to address the misuse of COVID-19 public resources. This included the need for urgent reforms to the country's disaster management legislation, particularly the Civil Protection Act, which has not been amended since 1989. In its current form, the law does not reflect



contemporary developments in disaster management responsiveness and stakeholder inclusiveness, which are necessary for the transparent use of public disaster management resources.

Such commitments demonstrate the role that civil society can play as a mobilising force and as part of successful evidence-based advocacy initiatives. TI Zimbabwe supported these policy dialogues with four key recommendations for the adoption of e-procurement; implementation of the recommendations in the Auditor General's report on the use of COVID-19 resources; establishing the role of parliamentary oversight to monitor abuses in the use of public pandemic resources; and examining gender issues in the use of public pandemic resources COVID-19 assistance funds. All of these efforts have contributed significantly to TI Zimbabwe's efforts to address integrity and accountability gaps in the public procurement system in the context of the pandemic, including recommendations for improving transparency and accountability mechanisms in the delivery of public services and the use of public funds.

3. Example of investigative journalism in the Poder Ciudadano subsidiary

The April 2021 article we refer to deals with confidentiality clauses in contracts for the purchase of covid-19 vaccines, (*Cláusulas..., Clauze, sursa:* <https://poderciudadano.org/wp-content/uploads/2021/04/Cláusulas-de-confidencialidad-en-los-contratos-de-vacunas-contra-el-Covid-19.pdf>). Thus, the above-mentioned article mentions that due to the race against time of the states to procure the COVID-19 vaccines and to ensure the necessary doses for the immunisation of the population, governments had to apply exceptional measures.

These exceptional measures relate on the one hand to the responsibility of laboratories to develop vaccines in record time to start immunising the population and stop the spread of the virus. The urgency obliges the company to adopt mitigation tools and to seek compensation from the company against the possible occurrence of these risks. On the other hand, the exceptional measures relate to the ownership of the vaccines, along with the limited competition that the laboratories that developed them have. Interestingly, in the face of global demand for vaccines, their bargaining power vis-à-vis purchasing countries increases. This gives them the possibility to ask for extensions of jurisdiction, limitation of liability in case of financial or other claims and confidentiality of vaccine purchase contracts.

In the context of contract confidentiality, the article notes, countries have adapted their legislation to the international market for COVID-19 vaccines in order to facilitate procurement and purchasing processes. Thus, in Argentina, the article adds, on 29 October, the National Congress passed the Law on Vaccines to Generate Acquired Immunity against COVID-19 (Law No. 27.573/2020). The clauses that the aforementioned law included made procurement processes more flexible and granted powers and authorisations to the executive to negotiate contracts with pharmaceutical companies. It also states that Article 4 of the law empowers the Executive to include confidentiality clauses in contracts, "in line with the international market for vaccines designed to generate the necessary immunity against COVID-19, in accordance with Law 27.275 on access to public information," the journalistic material quotes. The investigation also talks about Articles 10 and 11 that establish the PEN's obligation to submit these contracts to the Office of the National Audit General and the National Congress, "with appropriate precautions for compliance with confidentiality clauses that may be included therein."

It is also stressed that these exceptions to the usual procedures and requirements that are usually included in international contracts concluded by the Argentine State must not undermine the constitutional rights and processes that allow for control and transparency of government acts and that there is a minimum standard of transparency that States cannot waive as it is linked to the full exercise of fundamental rights. Vaccine procurement and the way it is conducted has a direct impact on public health and people's rights. The article also refers to the millions of dollars spent from state budgets, and the fact that most vaccine research and development has been supported by public funds.



Therefore, the article concludes, it is the duty of the state to ensure the protection of human rights and the democratic exercise of citizen and institutional control. For its part, the private sector, and in particular the pharmaceutical companies from which vaccines are purchased, has an obligation to respect these principles.

As a result, at international level, many efforts have been made to create greater transparency in the pharmaceutical industry. One such effort is the 2019 World Health Organization (WHO) resolution to increase drug price transparency so that it is possible to know and share how much each country pays, which would lead to fairer prices and better access to medicines. Although this resolution is addressed to Member States, pharmaceutical companies should not ignore it, understanding and recognising the impact on global health coverage of the conditions agreed with countries for marketing their products.

Furthermore, the article points out, many pharmaceutical companies are part of or adhere to international initiatives and/or standards promoting responsible and sustainable business, contributing to, and protecting human rights and the environment, as well as business integrity and transparency.

In this sense, the Global Compact principles urge companies to adopt, support and implement, within their sphere of influence, a set of core values in the areas of human rights, labour standards, environment, and anti-corruption. Particularly, Principle 1, the Poder Ciudadano article argues, underlines the obligation of business to support and promulgate a set of core values in the areas of human rights, labour standards, the environment and anti-corruption.

The article also refers to the right of access to public information as a human right derived from the right to freedom of expression and opinion enshrined in Article 19 of the Universal Declaration of Human Rights. When companies negotiate with states, they cannot put their own interests above the rights of individuals and the state's obligation to provide information about its actions.

In addition, the protection of the human right of access to public information is directly linked to the commitment that companies make by adhering to the 10th principle of the Global Compact. This principle requires companies to act against corruption in all its forms, including extortion and bribery. Transparency in dealing with the public sector is an essential mechanism to prevent and reduce the risks of corruption.

In the same line, the OECD Guidelines (*Source:* <https://poderciudadano.org/wp-content/uploads/2021/04/Cláusulas-de-confidencialidad-en-los-contratos-de-vacunas-contra-el-Covid-19.pdf>) or multinational companies also reinforces the obligation of companies to respect human rights as well as the laws of the different countries in which they operate. In addition, the Guidelines emphasise the role of MNEs in the fight against corruption and the need for them to adopt mechanisms to prevent and detect corruption. They stress the importance of legitimacy, integrity, and transparency in the public and private sphere in the fight against corruption, bribery, and other forms of extortion.

Finally, companies adopt regulations on integrity, corruption, ethics, and conduct, as well as programmes to ensure effective compliance. They also produce sustainability reports that show stakeholders how the company is creating value in its environment and contributing to the Sustainable Development Goals.

Adhering to these standards and principles becomes meaningless and loses credibility when companies choose to negotiate with national governments in secrecy and obscurity, preventing access to information about these agreements.

The Poder Ciudadano article offers the following recommendations to avoid direct negotiations with national governments and to avoid restricting access to information. Thus, beyond the obligation for companies not to impede access to public information and to control vaccine procurement processes, active information generation and disclosure by laboratories is a powerful tool for them to



build trust and improve their reputation, to contribute to the Sustainable Development Goals, to promote integrity and sustainable business and to reduce corruption risks.

Accordingly, Poder Ciudadano recommends that, in order to ensure the transparency and integrity of agreements between countries and the pharmaceutical industries, as well as to respect the protection of human rights and collaborate on equitable access to vaccines in order to mitigate the health and economic impact of the pandemic and recommends that pharmaceutical companies that have developed or are developing a vaccine against COVID-19, to consider the negative health and economic impact caused by the pandemic, Poder Ciudadano (Source: <https://poderciudadano.org/wp-content/uploads/2021/04/Cláusulas-de-confidencialidad-en-los-contratos-de-vacunas-contra-el-Covid-19.pdf>). These societies should be summed up to:

1. Respect the principles of transparency, accountability, and the right of access to public information in the negotiation and supply of vaccines with countries.
2. Avoid including confidentiality clauses that affect these principles and rights in contracts with states for vaccine procurement.
3. Publish information on funds received for research, development, production, and distribution of COVID-19 vaccines, including source, amount, and date.
4. Publish information on contracts with states and public and private organisations for the supply of COVID-19 vaccines. It is recommended that at least the following information be published:
 - States and public and private organisations with which the supply of vaccines has been agreed.
 - Quantity of vaccines agreed with each State and public and private organisations.
 - Unit and global price of vaccines agreed with each State and with public and private organisations.
 - Dates of agreements concluded with each State and public and private organisations.
 - Delivery dates and quantities of vaccines agreed with each State and with public and private organisations by date.

Poder Ciudadano has been actively working to control the use of public funds to respond to the COVID-19 pandemic, demanding that the state fulfils its obligation to be accountable and facilitate access to public information. In this way, the aim is to prevent negotiations between the state and companies to reach quick solutions from leading to private interests taking precedence over the public interest and leading to the approval of corrupt acts.

But, as in all negotiations, both sides are responsible if they are conducted outside constitutional and ethical boundaries. Therefore, the private sector involved must also promote mechanisms to ensure the transparency and integrity of these agreements. Pharmaceutical companies today have a unique opportunity to have a positive impact on society globally, not only on people's health, but also by demonstrating a global commitment to fighting corruption.

4. Conclusions

The state of emergency declared in March 2020 encouraged "fertile ground" for corruption, both grand corruption at the political level, but also petty corruption at the health service level. The non-governmental organisation, Transparency International has branches in over 100 countries since its foundation in 1993. Thus, the article brings to the reader's attention examples of good practices of some of the branches of the organization mentioned above, namely Poder Ciudadano, the branch in Argentina, the branch in Honduras, the branch in Kyrgyzstan, the branch in Lebanon and the branch in Zimbabwe.

Among the methods used by these branches are corruption risk assessment in the context of the state of emergency during the pandemic of influenza-19, as well as investigative journalism to identify abuses and improper spending of public money.



Related to investigative journalism, we cover an article by the Argentinean affiliate, Poder Ciudadano, in April 2021, on confidentiality clauses in contracts for the purchase of covid-19 vaccines.



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