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GovRisk

The International Governance & Risk Institute

Combating corruption and efficiency in public procurement How to achieve an adequate balance?

Jorge Claro
President - INPRI
Senior GovRisk Expert

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What is public procurement?

A broad definition of public procurement accepts that it is not just processing, acquiring and taking delivery of something, rather it represents:

“the *art* of acquiring goods, works and/or services efficiently and effectively, at the lowest possible cost, in adequate quantities and quality, in a timely manner, at the correct place and for the benefit of citizens as a whole through a contract.”

Importance - high visibility

Many reasons:

- Magnitude of the resources
- Impact on society
- Effect on SMEs
- Extensive corruption
- Enormous cost of inefficiency

Magnitude and impact

- Large volume - 15% of GDP
- Large number of processes
- Large number of public employees
- Affects all the activities of the State
- Impacts the whole of society
- Translates budget into action

Basic concepts

- In the private sector, public procurement includes production planning and inventory management (“supply management”)
- In the public sector, public procurement is directly related to spending, which is planned and executed through the budget

Sequence

- **Budget** = the political expression of government
- **Budget spending** = public procurement
(procurement is therefore always a political issue)
- **Public procurement** = the “art” of obtaining strategic goods, works and services
- **Good practices** = efficiency, effectiveness, transparency, value for money
- **Value for money** = on time, right quality, within the budget, at a good price

Economic impact

Examples:

- USA - GSA only more than 34 billion dollars a year
- Europe - more than 330 billion a year
- UN - 11 to 12 billion a year
- Panama (2006-2012) 16 billion dollars

Economic impact of corruption

- Throughout the world, bribery amounts to \$20 - \$40 billion dollars a year
- Equivalent to 20% - 40% of the total annual amount of Official Development Aid (ODA)

Economic impact of corruption

- 50% of funds assigned to the healthcare sector in Ghana never reaches the clinics and hospitals
- The cost of a domestic drinking water connection in developing countries is around 30% higher because of corruption

German Martin Luther University of Halle-Wittenberg, PricewaterhouseCoopers and Germany's TNS-Emnid, 2007

Raymond Baker Global Financial Integrity <http://www.gfintegrity.org/>
<http://www.sigar.mil/pdf/quarterlyreports/Jan2011/Lowres/Jan2011.pdf>

Economic impact of corruption

- German companies lose more than 6 billion euros a year through corruption, embezzlement and fraud.
- Approximately 50 billion dollars as proceeds of corruption are deposited each year in accounts in western banks and tax havens
- An additional 250 billion in laundered money from developed and transitional economies is estimated to be deposited in US banks each year

Economic impact of corruption

- According to Mexico's Centre for Private Sector Economic Studies (CEESP), in that country:
 - the cost of corruption represents 10% of GDP
 - In order to operate in the local market, private sector companies assign a similar proportion of their earnings to “corruption”

The fight against corruption

- Given the importance, size and visibility of the matter, as well as its impact on economies and development, the world has decided to address the problem of corruption
- Conventions
 - UN
 - OAS
 - OECD
 - African Union

Combating corruption

- Entities
 - Transparency International
 - World Bank
 - World Bank Institute
 - OAS
 - UN Office on Drugs and Crime

Combating corruption

- Global efforts in tackling corruption concentrate on reducing corrupt procurement and increasing its visibility
- Substantial increase in local control
- Many entities involved

Combating corruption

- Country
 - Comptrollers
 - Suppliers
 - Internal and external audits
 - Court of accounts
 - Anti-corruption offices and czars

Combating corruption

Consequences

- Stiffer laws, policies and procedures
- More entities and committees
- Broader roles for external entities
- Better tools for control
- More research and prosecution of minor suspicions of fraud or corruption
- Involvement of civil society

Combating corruption

Politicians have included this subject in political campaigns, promising voters that they will reinforce policies and procedures even more, with further scrutiny of the activities of public procurement officials

Perception of corruption

- Despite the efforts to fight corruption in the region, there is a generalised perception that it has increased in recent years

Perception of corruption

- In May 2011 the former Auditor General of Colombia said in his audit report on 852.143 contracts: *“Public procurement has been enmeshed as never before in extremely grave cases of corruption, to the extent that several entities and regions have been entirely captured by it; similarly, apathy and ineptitude have led to the failure of hundreds of regional and national procurement processes”*

Perception of corruption

- International surveys on the perception of corruption in the region are not favourable
- Transparency International is one of the bodies that measures corruption and although its methodology has been questioned by some, it still reflects a serious problem in the region

TI corruption perceptions index

	Arg	Bol	Bra	Chi	C. Rica	Ecu	El Sal
2012	102	105	69	20	48	118	83
2011	100	118	73	22	50	120	80
2010	105	110	69	21	41	127	73
2009	106	120	75	25	43	146	84

TI corruption perceptions index

	Gua	Nic	Pan	Par	D. Rep	Uru	Ven
2012	113	130	83	150	118	20	165
2011	120	134	86	154	129	25	172
2010	91	127	73	146	101	24	164
2009	84	130	84	154	99	25	162

Control vs effectiveness - reflections

- Many countries have stepped up the fight against corruption with a series of measures and laws
- According to the Attorney General's office, Colombia has two million regulations for the public sector
- There is a law prohibiting the use of paper in the public sector, but electronic systems are still under development and the Attorney General's office requires a signed copy of all the contract documents

Control vs effectiveness - reflections

- In the end, excessive control creates opportunities for corruption
- Furthermore, the emphasis on combating it is increasing the general perception that it has increased enormously

Regulation vs efficiency

In highly regulated countries with better controls, officials tend to:

- avoid making decisions
- seek guidance and support in decision-making
- obey the letter of the law or regulations
- seek protection through audits and controls

Control vs effectiveness - reflections

- Excessive control creates “opacity” in the system and “paralysis” among public officials
- It also overloads the functional structure, increasing transaction costs and making the process highly bureaucratic

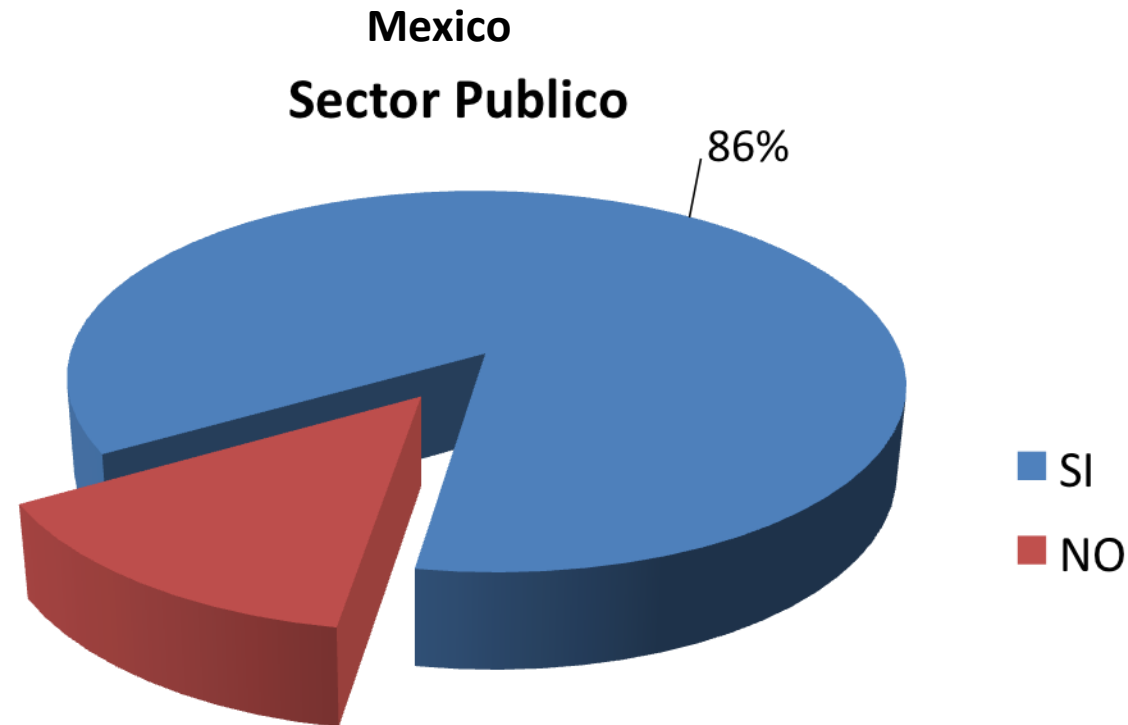
Four-country study

- In 2012 with the assistance of IDB, IDRC and OCR Services, Jorge Claro and Nikos Passas carried out a study in four countries of the region of the potential effects of combating corruption in public procurement:
 - Colombia
 - Jamaica
 - Mexico
 - Peru

Study methodology

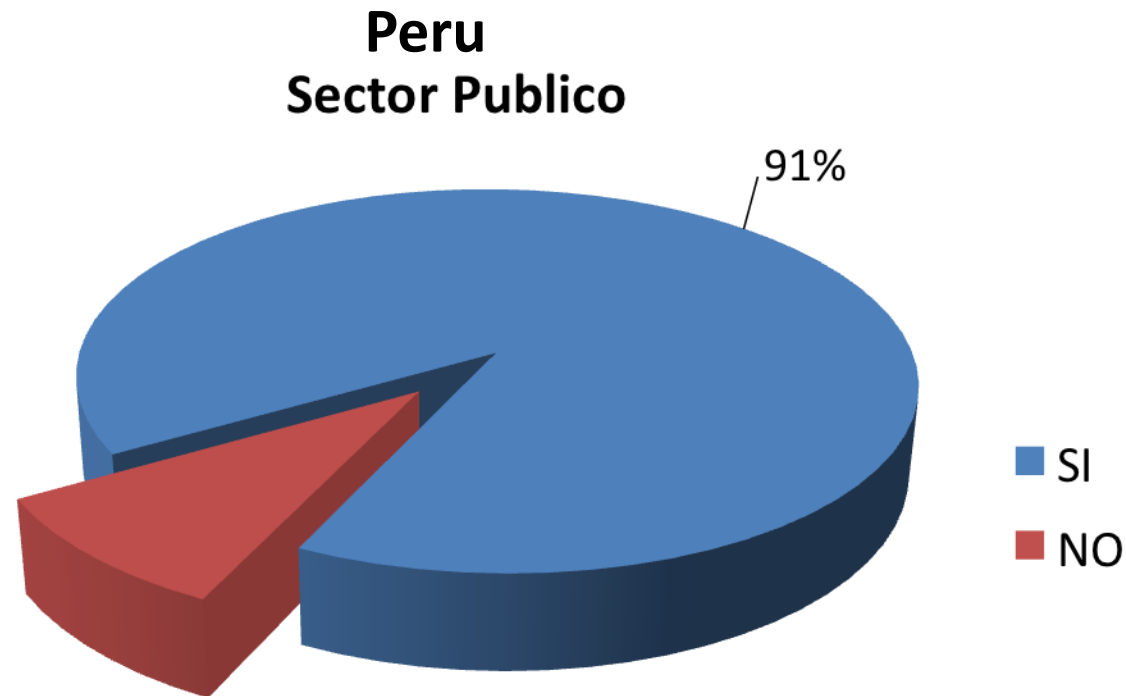
- The study was based on:
 - An analysis of the legal and institutional framework
 - An analysis of anti-corruption measures
 - Opinion surveys of public officials and businessmen
 - Visits to the countries
 - Personal interviews
 - Conversations with experts

Do anti-corruption measures affect procurement policies and methods?



86.1% of public sector interviewees thought that anti-corruption goals and measures are affecting procurement policies and procedures and their implementation, even when this is not explicit

Do anti-corruption measures affect procurement policies and methods?



90.5% of public sector interviewees thought that anti-corruption goals and measures are affecting procurement policies and procedures and their implementation, even when this is not explicit

Replies to certain questions

Question	Private sector		Public sector	
	Yes %	No %	Yes %	No %
1. Is the legal framework efficient and instrumental in promoting competition and low prices?	24	76	53	47
2. Is the legal framework too rigid to adapt to market conditions?	62	38	76	24
3. Is there any anti-corruption legislation linked to procurement legislation?	78	22	81	19

Survey results

Question	Private sector		Public sector	
	Yes %	No %	Yes	No
4. Are they sufficient and applied correctly?	18	82	31	69
5. Are payments required to "facilitate" procedures, obtain licences and permits or to receive payments?	63	37	18	82
6. Is the procurement system clear and consistent?	44	56	29	71

Survey results

Question	Private sector		Public sector	
	Yes %	No %	Yes	No
7. Does your job pose special challenges as a result of anti-corruption measures?	71	29	71	29
8. Have procurement processes improved in the last 5 to 10 years?	86	14	51	49

Survey results

Question	Private sector		Public sector	
	Yes %	No %	Yes	No
9. Do the regulations assign a role to civil society in monitoring public procurement?	67	33	57	43
10. Are there indications that suppliers or public officials look for ways to avoid complying with procurement legislation and rules?	64	36	79	21

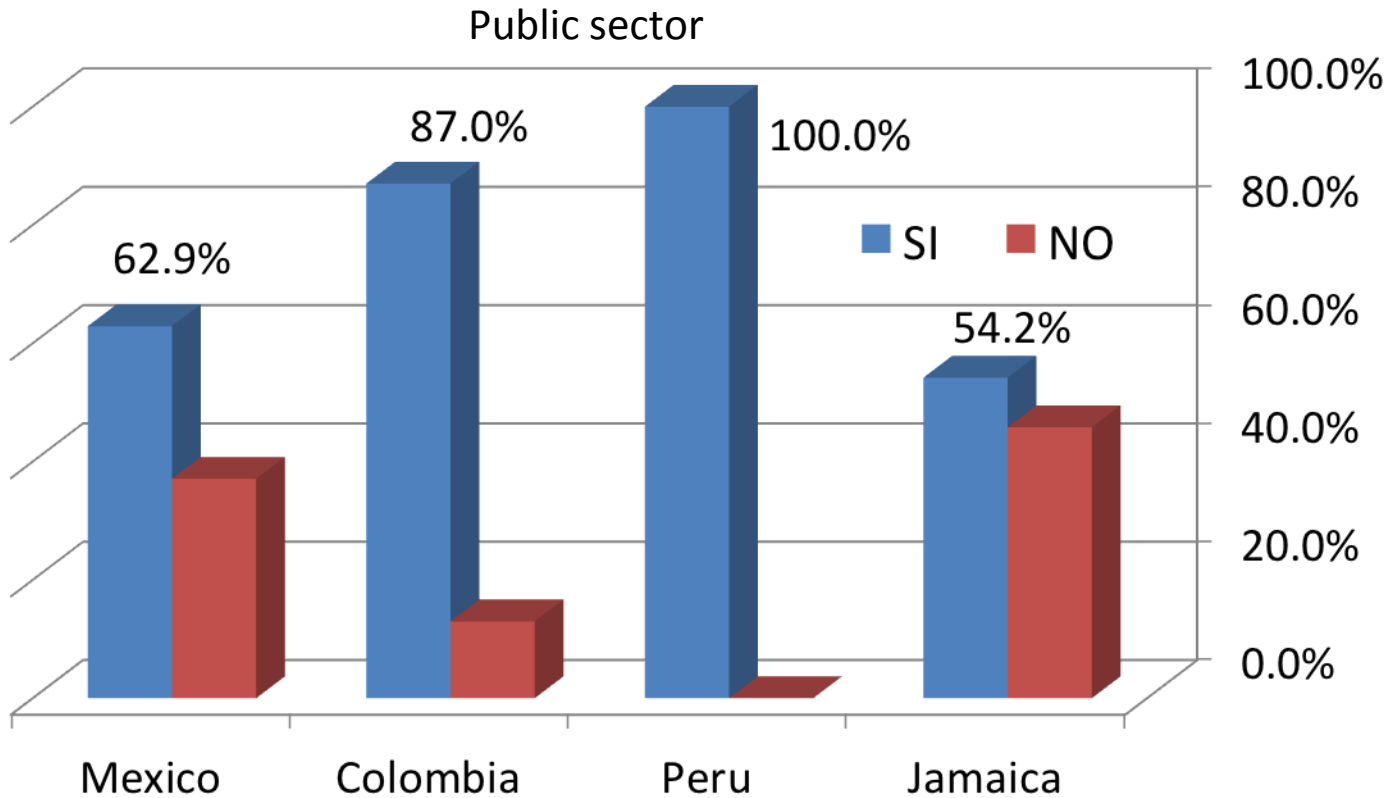
Findings

- Proliferation of laws, rules and regulations
- Very frequent regulatory changes and amendments
- Obsolete legislation remains in force
- Unnecessary requirements
- Unnecessary complexity

Findings

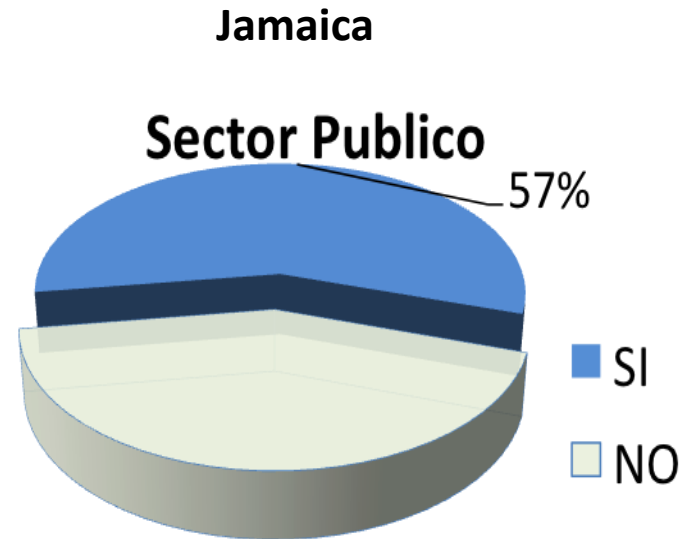
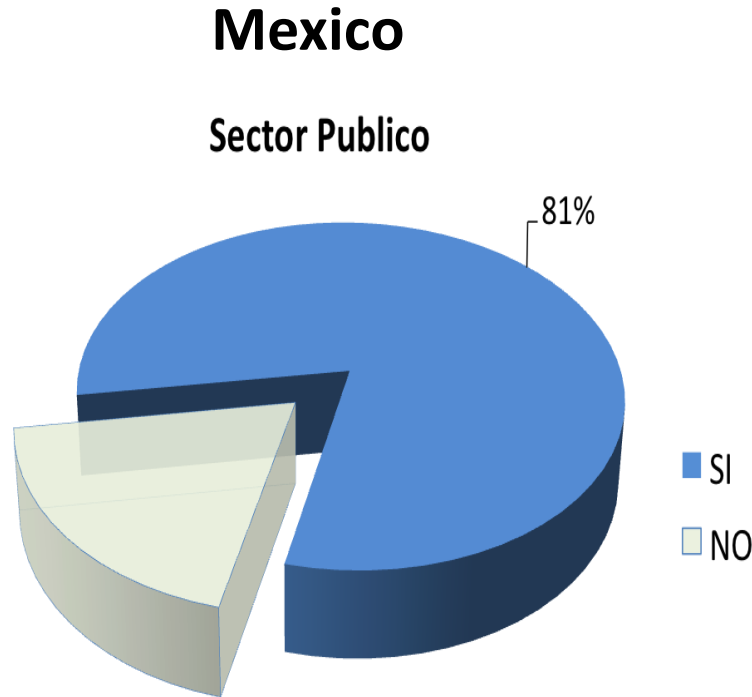
- Documentation frequently excessive and costly
- “Paperless” processes are not always possible or “feasible”
- Serious regulatory conflicts
- Regulations are applied in an incoherent manner
- Excessive rigidity
- Legal uncertainty

Is the legal framework too rigid?



The majority believe that the legal framework for procurement is too rigid to adapt easily to changes in the market and other variables that affect public procurement

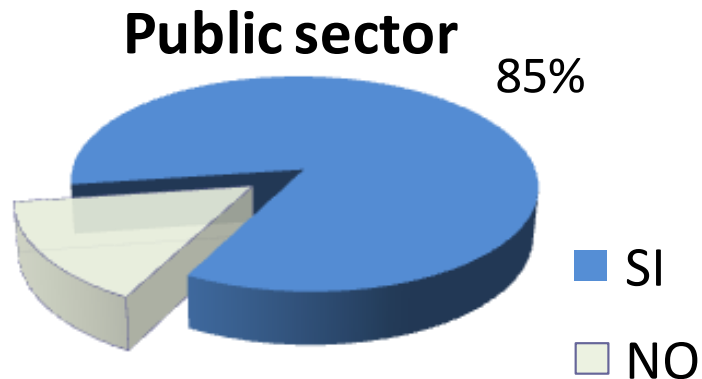
Rigidity in the application of procedures



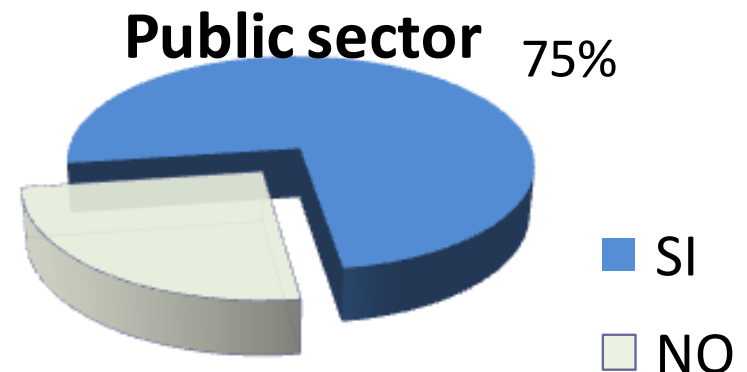
81% of interviewees in the public sector in Mexico and 57% in Jamaica feel that they are required to apply procurement procedures in too strict or rigid a manner

Rigidity in the application of procedures

Colombia



Peru



85% of interviewees in the public sector in Colombia and 75% in Peru feel that they are required to apply procurement procedures in too strict or rigid a manner

Effects

- Long and inefficient processes
- Contracts cannot be signed or implemented due to time limits
- Higher cost
- Less competition
- Disadvantages for SMEs and local companies
- Perverse incentives: paralysing effect on public officials that prevents decision making and further delays the process

Effects

- Less initiative – reluctance to make decisions for fear of personal sanctions and public humiliation
- Excessive emphasis on price and numbers, due to complete ignorance of quality and the quality-price relationship
- Furthermore, the "use it or lose it and get less next time" principle leads to bad decisions and resources wasted on unnecessary or poor quality goods, works or services

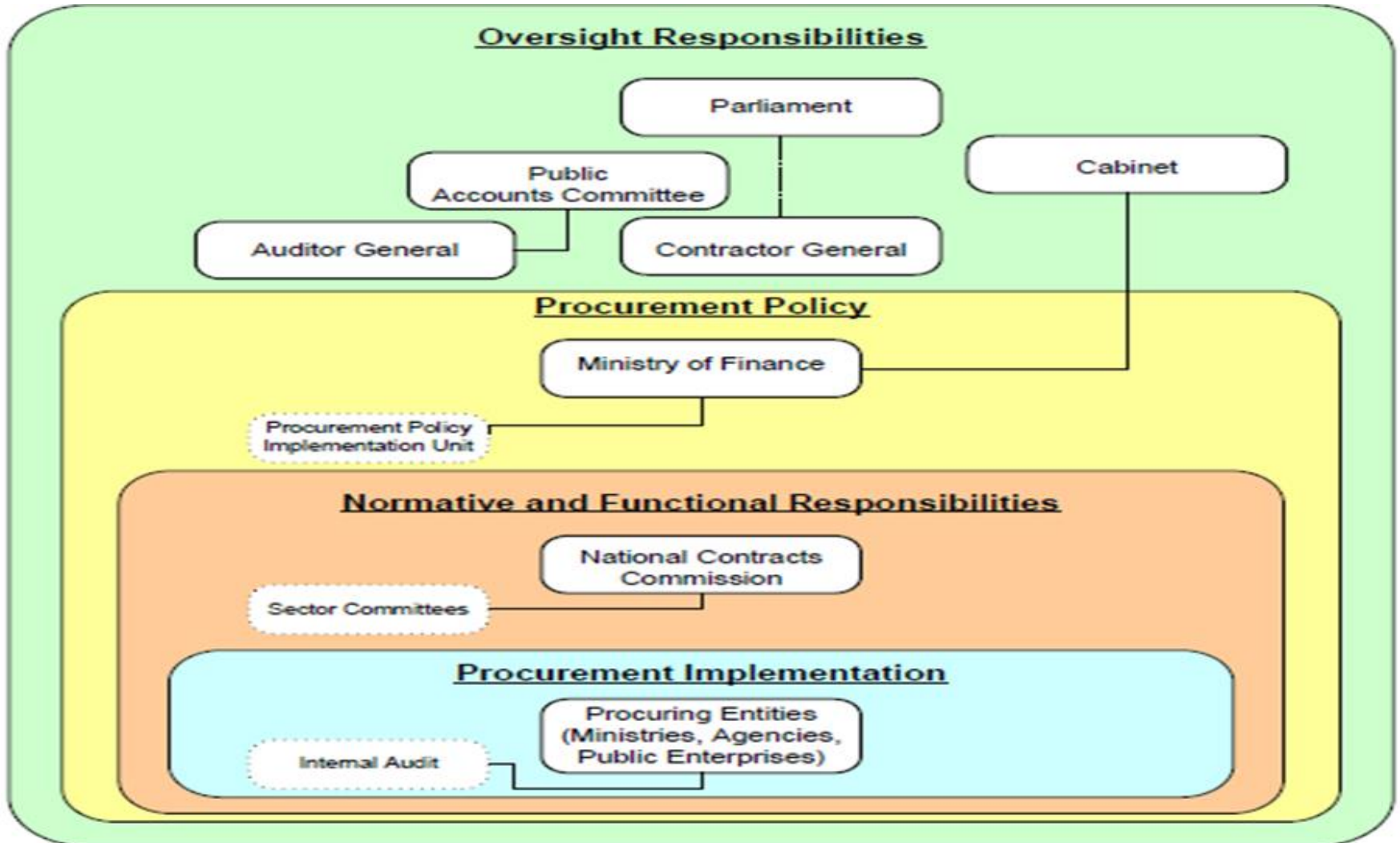
Is better control and supervision the answer?

Country	Date of Legislation	Number of articles in the legislation	Number of articles in regulations and manuals	Combined number of pages
Peru	2009	70	298	222
Jamaica	2006	Regs. 40 Policy 40	Guidelines in 4 volumes Regs. + Policy	228 55
Costa Rica	2006	113	227	161
Ecuador	2008	105	163	90
Honduras	2001	158	275	91
USA	1984 (2005)		Items: 53 Clauses: 325 Subsidiary items: 36 Segment: Hundreds Forms: Hundreds	1987

Control vs. effectiveness

- Emphasis on reforms and the fight against corruption by governments and international organisations has helped to create an awareness of the importance of this subject among the population
- Nevertheless, there is a balance and it appears that the pendulum has swung too far from the “mid point”

Jamaica as an example



Approval process in Jamaica

- Head of Public Procurement
- Procurement Committee
- Director of the Agency
- Board of directors (when applicable)
- Permanent Secretary
- Sectorial Committee
- National Contracts Commission
- Ministry of Finance
- Cabinet Infrastructure Committee
- Cabinet

Problems identified

- A belief that corruption can be combated with laws and regulations - legislation does not solve problems
- A tendency to legislate for all contingencies, encouraged by auditors, lawyers, comptrollers, politicians and external influences such as foreign aid donors, consultants and the application of institutional standards

Problems identified

- Laws and regulations designed empirically by lawyers, economists and comptrollers
- Authors who are not necessarily familiar with the complexities and demands of public procurement and often do not consult the main stakeholders

Problems identified

- The lack of a professional team of public procurement experts to enforce modern legislation and regulations and to use common sense for smart procurement decisions rather than just what the regulations say
- Little recognition of a strategic approach and the important role that public procurement plays in national development

Professionalism and culture

- The existing approach is limited to experts in processes and control, dedicated to the correct application of procedures and rules and the use and application of lists and red flags, who lose sight of the wider picture and the key purpose of public procurement

Process vs results

Presentation of Peru's Public Procurement Act discusses necessary changes in the country:

- *“This change required a new approach in line with the worldwide trend in public procurement, which assumes a change in how the system operates, based on the experience of market-based strategies or, in other words, **abandoning procedure-centered management**, on strict compliance with legal requirements, **in favour of a results-based system**”.*

Recommendations

- Build capacity and professionalise procurement
- Simplify the legislative framework
- An in-depth review of policies and procedures
 - Tackle institutional weaknesses
 - Increase coordination between institutions

Recommendations

- Provide ongoing and interdisciplinary training in strategy and public management, including accounting, auditing, procurement, the legal framework, public ethics and other matters

Recommendations

- Establish data-based control systems
- Encourage smart procurement decisions rather than obsessive compliance with procedures and rules instead of basic necessities
- A new approach towards acquiring what makes sense rather than what is cheapest

Recommendations

- Generate a change to a culture based on basic principles and values in which we can be confident that everyone will act correctly because they know and respect the values and culture of the organisation and because the culture inspires adhesion and responds to the organisation's vision and mission, with adequate controls and process verification

Recommendations

- Use not only sanctions but also rewards for successful management
- Promulgate regulations adapted to needs, rather than needs subject to regulations

In summary

- Given excessive bureaucracy and control it appears essential to rethink the fight against corruption in its entirety because it is obvious, as the figures show, that the existing system to “combat it” and additional legislation, regulations and manuals is not working
- Solving these problems is not a fight or combat, but a matter of management, knowledge and specialisation

In summary

- Combating corruption is essential, but it must be done intelligently and effectively, using common sense and measures that include all available techniques

Thank you for your attention

Questions and clarifications

Jorge Claro

President and CEO of INPRI

Senior GovRisk Expert



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