On Pandemics and Other Demons: Coronavirus-related Corruption and How to Prevent it

By:

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With 164 countries hit by the Covid-19 health crisis, there is a second, silent epidemic brewing that will determine the effectiveness of the national and international funding directed to mitigate and recover from the effects of the first: corruption[2]. Unnoticed by many, corruption is the second biggest threat to our already weak health care systems. Corruption takes many shapes in times of crisis, improper procurement decisions is one of them. In *corona times*, emerging corruption trends in the health care sector are taking advantage of the greater demand for medical goods and the resource deficit. If not addressed properly, the possible consequences of corruption might echo louder than the pandemic itself in the most unequal regions of the globe, such as the Americas and Africa, particularly in countries where corruption networks had already permeated into the health care system.

Despite the fast-paced responses that a pandemic requires from a government, this post argues that the high corruption risks that comes with streamlined purchasing procedures could be prevented (or at least lessened) with three measures: 1) transparency of data and information related to the aids, budgets, funds, programs and plans created for the pandemic; 2) civil-society-based monitoring mechanisms and 3) tailored-made anticorruption policies that target previously-identified corruption patterns in the health care system.

Coming into force on June 3 1997, the Inter-American Convention Against Corruption (IACAC) is the first anti-corruption treaty in the world and has been ratified by all nations in the American continent, with the exception of Cuba. The high number of signatory parties signals a unanimous consent in the Americas as to the need to prevent and sanction corruption. Opposed to its United Nations equivalent, the IACAC sets an standard as to what conducts should be within the notion of corruption in the Americas and what minimal measures should governments take to prevent it. Specifically, Article 3 to the Convention requires state parties to create, maintain and strengthen "systems of government hiring and procurement of goods and services that assure the openness, equity and efficiency of such systems". Likewise, Article 10 of the United Nations Convention Against Corruption (UNCAC) requires state parties to take "such measures as may be necessary to enhance transparency in its public administration". Coming into force on December 14th, 2005 and with similar high number of states parties (187 Countries), the UNCAC, includes three main actions as part of this duty: 1) the adoption of procedures or regulations that allow the general public to obtain – when appropriate – information on the organization, functioning and decision-making processes of its public administration, 2) the simplification of administrative procedures and 3) the publishing of relevant information.

In the COVID-19 context, countries around the world have forgone strict procedures implemented to ensure that government purchases are transparent, efficient and corruption-free claiming they represent an impediment for quick procurement of goods. An example of these are the *Guidance from the European Commission on Using the Public Procurement Framework in the Emergency Situation Related to the COVID-19 Crisis* under which several European countries have suspended EU public procurement

directives. It is thus important to discuss whether international acquired anti-corruption duties can be temporarily suspended in times of pandemic.

While neither treaty provides for a temporary suspension two arguments for its suspension could be raised. First, that anti-corruption duties are procedural mechanisms to protect substantive human rights and thus should be suspended if the later are suspended. Recognized by the Inter-American Human Rights System as a phenomenon that produces differential enjoyment of human rights but not as a human right on itself, it could be argued that international anti-corruption duties may follow the same path that the substantive rights protected through its application. Thus, if human rights are subject to suspension or derogation under Article 27 of the American Convention on Human Rights, so should be the mechanisms to prevent its violation, such as those under IACAC. Second, under UNCAC an argument could be made that by including the words "when appropriate" it was the intent of the drafters to include a standard of reasonableness that limits its application to ordinary times and not to times of emergency such as pandemics.

Countering such arguments, on March 26 Transparency International (TI) issued a set of guidelines for *Public Procurement During States of Emergency* which points at the minimum requirements that a public awarded should meet during a crisis to ensure the Integrity of Contracts. Transparency International guidelines that governments should 1) Administrate the pandemic´s budget with efficiency, effectiveness and impartiality; 2) Provide real-time transparency on information related to the crisis; 3) At the end of the pandemic, issue a report on the results of the allocation of resources; 4) Ensure economic competition; and 5) Monitor public expenditure during the emergency. Reinforcing the case for fighting corruption during COVID-19, on April 10, 2020 the Inter-American Commission on Human Rights issued resolution 1/2020 (Pandemics and Human rights) in the midst of the coronavirus pandemic. Among the human rights that the report acknowledges must be protected in times of pandemics are those protected by Article 13 of the American Human Rights Convention (AHRC), which includes freedom of expression and the right to access information related to the emergency. Furthermore, the Commission specifically addressed the issue of corruption in the region and warned about the possible violations to the right to life due to

acts of corruption in the health care system.

Quarantine should not stop the fight against corruption, but strict compliance with existing legal framework might be an unrealistic challenge in times of emergency. However, the lessening of procurement procedures comes at a high cost: the lower the legal standard the higher the likeliness of corruption. As it has been pointed out elsewhere and as prior pandemics have shown, times of emergency are seen as an opportunity to further profit from corruption: during the Ebola outbreak the Red Cross acknowledged the loss of $5 milliondollars to fraud and corruption; in post-war Iraq, the U.S. government acknowledged corruption as the main barrier for its reconstruction and, during COVID-19, Italy has been accused of granting contracts to alleged fraudsters and Romania of purchasing poor quality masks from a company set up to practice an aroma-therapy.

Is there a midpoint that allows faster procurement procedures and more effective government responses without dropping the ball against coronavirus-related corruption? According to the World Health Organization, the lesson learned from the SARS outbreak was that "Information should be communicated in a transparent, accurate and timely manner" not only for outbreak control, but also as an strategy for "reducing the health, economic, and psychosocial impact of major infectious disease events". Thus, a reasonable alternative to the crossroad might be for states to provide a) real-time transparency of a reasonable scope of information; b) develop independent monitoring mechanisms; and c) create anticorruption strategies tailor-made to fit corruption practices in the health care industry.

a) Transparency

As stated by the IACHR, the higher the context of inequality the higher the need for transparent information related to the pandemic[3]. At least in the Americas, the right to freedom of expression and access to information is not suspended during the pandemic. Even with a legitimate concern to protect the private data of the victims of covid-19, the Commission stresses that governments should strive for a reasonable balance to provide transparency of information related to the pandemic and protection of private date[4]. Information should be made available proactively, in detailed and in formats

accessible to all people, particularly vulnerable groups[5] such as indigenous people[6].

b) Monitoring mechanisms from civil society

When extraordinary rules govern the allocation of funds, real-time independent monitoring and auditing actions becomes of the highest important. These monitoring mechanisms require a group of citizens collecting, systematizing and analyzing public data related to the pandemic (such as health statistics, documents and rules related to the budget and aids intended for the pandemic, etc). The collection of this data creates evidence upon which the post-pandemic reports issued by the government may be examined and scrutinized.

Ideally, these mechanisms should be run by civil society organizations (CSO) to ensure that resources are used efficiently and with integrity. Two example of these independent monitoring mechanisms are #EPICENTRO, the website where over 30 CSOs provided transparent data and oversight to the resources allocated for the reconstruction of Mexico City after the 2017 earthquake, and #SusanaVigilancia, a play on words to name the citizen´s watchdog that is inspired by the superhero created by the Mexican government for its campaign against covid-19 (Susana Distancia). Led by Tojil and Transparencia Mexicana, in coordination with other CSO and citizen participation committees, this transparency mechanism has obtained immediate reactions: 30 out of 32 Mexican states condensed all COVID-19 related information in a specific website, with some of them disclosing procurement information in direct response to the initiative.

c) Anticorruption strategies tailored to the health-care sector

Corruption in the health care sector is no news. CSOs and journalists have documented corruption cases in the healthcare system all over the world. But in the context of the coronavirus pandemic, corruption in the health care system will be on the rise. Regular anticorruption strategies might work, but in countries where a prior pattern of corruption has been identified it is much more efficient to develop tailor-made strategies that addresses all the variables involved. For instance, in the case of Mexico several CSOs have documented the fraudulent system through which millions of dollars are pulled from the

Mexican health care system and “paid” to inexistent corporations. In this context, a proper anti-corruption policy would require to address the legal or operational factors that permitted such frauds.

Conclusion

The surge of Covid-19 itself was allegedly related to corrupt and illegal trade of wildlife in China and the later concealment of data related to the outbreak by the Chinese government and similar conversations have sparked discussions about the possible hiding of the antidote. In this framework of distrust, transparency and citizen-run monitoring mechanisms might be the only way to safeguard human rights from public and private corruption. No matter how many funds are disbursed throughout the global south, if the aids and funding allocated to the combat of the coronavirus and its economic and social effects are not handled properly, the collateral damage of corruption might be greater than the pandemic itself.

Covid-19 will challenge the meaning of “normal” within many aspects of law, and anticorruption practices will not be the exception. Strategizing specific policies to target corruption during the pandemic, and, in specific, the health care sector, will be essential. Transparency and open data paired with civil-society monitoring mechanisms will be necessary for states to avoid the fertile conditions for corruption that emergency situations generate. Addressing improper procurement decisions is just the first step. Sure, emergencies require quick response, but improper procurement of the necessary resources might have longer consequences than the crisis itself. In the face of a global pandemic, addressing corruption issues will not only save money, it will also save lives.

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[1] This paper builds on the practical knowledge acquired through the *Mechanism for monitoring plans, programs and funds approved by the Mexican Government to face the COVID-19,* implemented by TOJIL and Transparencia Mexicana since March 23, 2020. I thank Estefania Medina and Eduardo Bohorquez for their leadership and guidance through the development of this project.

[2] The estimated worth of corruption in the health care sectors is $500 billion dollars annually.

[3]IACHR, Resolution 1-2020 refers to the Americas as “the region of greatest inequality on the planet, characterized by profound social divides where poverty and extreme poverty are problems that cut across all countries of the region, along with the lack of or poor access to drinking water and sanitation; food insecurity, environmental pollution and the lack of adequate housing.”

[4] IACHR, Resolution 1-2020, Pandemic and Human Rights in the Americas, Preamble, B.II, page 6.

[5] Íbid, p 12.

[6] Ibíd. p 15.

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