



Institute for Development  
of Freedom of Information

# 2020 Report of Transparent Public Procurement Rating

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# Main Findings

- Public Procurement Legislation of nearly all evaluated countries lay out the basic principles and general framework of the procurement process, makes it operational and indicates how the law must be applied to specific circumstances;
- In most of the cases, public procurement legislation is accessible in a single governmental website, however, access to these documents in an electronic machine-readable format still constitutes a challenge in many participant countries;
- Public procurement legislation in all evaluated countries apply to all state budget entities and local government entities, however, the approach varies when it comes to applying the legislation to Legal Entities of Public Law (LEPL), state-owned companies and state non-commercial legal entities;
- The scope of coverage of public procurement legislation in various countries includes all sectors of the economy where competition is possible and exemptions are clearly listed in the legislation;
- In all cases there is a single or several state bodies responsible for managing public procurement, however, in most of the cases these bodies are not entitled to have own income in addition to state funding;
- In many cases electronic means still do not constitute the primary method of conducting public procurement;
- In a number of cases legislation sets preferences for domestic suppliers;
- In all participants countries, the legislation ensures the right to review in the procurement process for tender participants, however, problems are evident in regards to applying the right to potential suppliers as well as to the general public;
- In most of the cases, there is an independent review body in the country with the authority to review complaints and grant remedies, however, civil society members are usually excluded from its composition.

## Findings by the Stages of Public Procurement Process

- Most of the TPPR participant countries demonstrated a lack of transparency at the post-tendering stage of public procurement compared to the earlier stages of pre-tendering and tendering;
- Publishing information on sub-contractors, contract amendments as well as contract performance indicators proved to be particularly problematic;
- Countries usually publish information on tender notices, however, access to the information in a machine-readable format is highly limited;
- Approach to publishing submitted applications, bids and decision of tender committees varies across the countries;
- In cases when evaluation criteria include both price and quality, the winner is rarely chosen using a cost-effectiveness approach consisting of three factors: life-cycle cost, best price-quality ration, environmental and/or social costs;
- Access to submitted complaints and dispute resolution is problematic, especially in machine-readable electronic format;
- Public procurement annual plans are still not published by many TPPR participant countries.

## Findings by the Benchmark Indicators

- Among the six benchmark indicators, Transparency proved to be the most problematic direction of public procurement regulations among the countries covered by TPPR. This is largely explained by the fact that states still face significant problems in the direction of publishing post-tendering information. As for the pre-tendering and tendering phases, information is rarely published in electronic machine-readable format;
- Lower scores in the benchmark indicator of Transparency was one of the major factors negatively affecting the overall evaluations of the countries;
- The least problematic benchmark indicator was the Uniformity of the Legislative Framework since most of the TPPR participant countries have adopted the legislation directed at regulating public procurement, which includes the main principles of conducting state purchases and the legislation is applicable to a wide range of actors determined by the legislation;
- Competitiveness and Impartiality proved to be another well-performing benchmark indicator, which can be explained by the fact that most of the legislations in TPPR participant countries avoid including in itself regulations that would threaten competitiveness and impartiality. However, the picture of implementing these regulations in practice could be significantly different.



# Statistical Analysis

- Based on the overall TPPR evaluation of the participant countries Ukraine leads the TPP rating in the evaluation of 2019-2020. This is due to the fact that major reforms have been implemented in the country in the last two years, which also addressed the shortcoming indicated in the previous TPPR evaluation of Ukraine.
- During the last years, important positive changes have been introduced in the area of public procurement in Moldova. Thus, the country improved its position in the rating and moved from the 12th to the second position.
- Even though a number of positive developments have been seen in Georgia as well, the progress was not as significant as in the case of Ukraine and Moldova, thus Georgia holds the third position in the rating of 2019-2020.
- TPPR participant countries reaching the benchmark of 80% in the evaluation of 2019-2020 are Ukraine, Moldova, Georgia, Philippines and Romania.
- Some of the poorest performing countries in the TPPR evaluation of 2019-2020 are Tajikistan, Papua New Guinea, Burundi, Venezuela, Malawi, Azerbaijan, El Salvador and Zimbabwe. The overall evaluations of the given countries in the rating are below 60%.
- It should be noted that Armenia is not included in the list of countries with poor TPPR performance in the rating of 2019-2020. From the bottom of the rating in 2016-2018 Armenia moved to the middle of the rating. The reason for the latter is the reform executed in the public procurement system of Armenia, thus the evaluation of the country increased accordingly.

## Transparency Environment

- Since the benchmark indicator of Transparency Environment includes 5 questions/indicators only, over ten countries showed 100% performance in the area. These countries include European countries as well as the Philippines, Costa Rica, Bolivia, Tanzania, Kenya, Uganda and El Salvador.

- The countries showing relatively poor performance in this direction in the evaluation of 2019-2020 are Togo, Azerbaijan and Belarus.

## Uniformity of Legislative Framework

- Based on the TPPR evaluation in 2019-2020 up to 10 countries reached the benchmark of 90% in the area of Uniformity of Legislative Framework. The list of well-performing countries is led by Ukraine and Georgia.
- Georgia held the second position in the evaluation of 2016-2018 as well, while Ukraine improved its position and moved to first place in the evaluation of 2019-2020.
- Some of the weak performing countries in the benchmark indicator in both periods were Guatemala, Burundi, Costa Rica and the Czech Republic.

## Efficiency

- The leading countries in the benchmark indicator of Efficiency in 2019-2020 were Ukraine and Romania with a 100% rating. Moldova and Lithuania also scored high in the area.
- In the evaluation of 2016-2018 together with Romania and Lithuania, Albania, Paraguay and Philippines were leading the list, however, they moved down the rating which was caused by the advancement in the area of other TPPR participant countries.

## Transparency

- Ukraine leads the TPPR rating in the benchmark indicator of Transparency in the evaluation covering the periods of 2016-2018 as well as 2019-2020. Georgia is holding one of the leading positions in both of the evaluations as well.
- In 2019-2020 Moldova moved to the top of the rating and held the second position with a score of 96.67%.
- Due to the advancement of these countries in the benchmark indicator of Transparency, Costa Rica moved from the second position in 2016-2018 to the fourth position in 2019-2020.
- The countries performing poorly in the benchmark indicator both in 2016-2018 as well as 2019-2020 are Papua New Guinea, Malawi, Burundi, Tajikistan and Azerbaijan.

## Accountability and Integrity

- During 2019-2020 the TPPR participant countries reaching the benchmark of 90% in the area of Accountability and Integrity were the Philippines, Ivory Coast, Romania and Togo.



- In the rating of 2016-2018, Moldova led the list with 100% in the benchmark indicator of Accountability and Integrity, however, the country scored lower in the benchmark indicators based on the new evaluation and moved from the first to the sixth position in 2019-2020.
- Some of the poorest performing countries in the benchmark indicator of Accountability and Transparency are Belarus, Papua New Guinea, Armenia and Uganda.

## Competitiveness and Impartiality

- Over 10 participant countries of TPPR reached the score of 90% in the benchmark indicator of Competitiveness and Impartiality, Ukraine and Georgia lead the list with 100% evaluation, followed by Albania, Philippines, Mexico and Armenia.
- In the evolution of 2016-2018, Paraguay and Hungary were also included among the leading countries in the benchmark indicator.
- Some of the weak performing countries in regards to Competitiveness and Impartiality are Papua New Guinea, Ecuador, Azerbaijan, El Salvador and Burundi.



# Recommendations

The recommendations below dwell from the most important main findings determined in the process of conducting TPPR evaluations of 40 participant countries.<sup>1</sup>

- » Countries should ensure that their respective public procurement legislations are accessible in a single governmental website in electronic machine-readable format;
- » Public procurement legislation in all evaluated countries should together with state budget entities and local government entities, apply to Legal Entities of Public Law (LEPL), state-owned companies and state non-commercial legal entities;
- » Countries should strive to have a single state body responsible for managing public procurement, and should grant these bodies the right to have their income in addition to state funding;
- » Legislations of various countries should explicitly state that electronic means constitute the primary method of conducting public procurement;
- » They should also avoid setting preferences for domestic suppliers;
- » The right to review in the procurement process should be ensured for tender participants, as well as potential suppliers and the general public;
- » Countries should ensure the existence of independent review bodies with the authority to review complaints and grant remedies. The bodies should be composed of the state as well as civil society representatives.

## Recommendations by the Stages of Public Procurement Process

- Countries should take actions aimed at increasing the level of transparency at the post-tendering stage. This can be achieved, inter alia, by publishing information on sub-contractors, contract amendments as well as contract performance and quality reports;

- Even though most of the TPPR participant countries publish information on tender notices, access to the information should be guaranteed in machine-readable format;
- Countries should also ensure publishing submitted applications, bids and decision of tender committees;
- In cases when evaluation criteria include both price and quality, the winner should be chosen using a cost-effectiveness approach consisting of three factors: life-cycle cost, best price-quality ration, environmental and/or social costs;
- Access to submitted complaints and dispute resolution should be guaranteed in machine-readable electronic format;
- Procuring entities in member states should have a legal obligation to publish public procurement annual plans.

## Recommendations by Benchmark Indicators

- States should strive to implement reforms and amendments to improve their performance in the benchmark indicator of Transparency. This can among the other things be achieved by improving the transparency standards at the post-tendering phase and ensuring that various information on pre-tendering and tendering phases that is already being published is accessible in electronic and machine-readable format;
- Even though most of the legislations in TPPR participant countries avoid including in itself regulations that would threaten competitiveness and impartiality, it also crucial to ensure relevant implementation of these provisions in practice.



# Foreword, Structure and Methodology

The aim of the Transparent Public Procurement Report 2020 is to present the evaluations of Transparent Public procurement Rating (TPPR) of 40 countries, ascertain the main statistical trends, highlight the weakest and strongest performing areas of public procurement, and name the best and the worst-performing countries in regards to the transparency and accountability of their respective public procurement systems.<sup>2</sup>

The report is based on the evaluation of countries worldwide, spread across Europe, Asia, Africa, Oceania and Americas.<sup>3</sup> Specific country evaluations were prepared in close cooperation with TPPR network members (local CSOs or experts). After the finalization of the individual evaluations, they were published on the website [www.tpp-rating.org](http://www.tpp-rating.org) and included in the overall rating.

The TPPR Methodology is envisioned to be a universal methodology for assessing public procurement legislations (PPLs) with the ultimate goal of identifying the strengths and weaknesses of relevant legal frameworks. The Methodology is composed of 64 indicators. Each indicator included in the TPPR Methodology is granted equal weight and receives a maximum of 1 point. With a total of 64 indicators, public procurement legislations are rated on a scale of 0 to 64 (converted to percentages for easier understanding and visualization).

The TPPR Methodology is largely based on international best practice, international standards and aspects of other existing methodologies in the sphere of public procurement, such as EBRD Methodology and Standard<sup>4</sup>, GPA Standard (WTO)<sup>5</sup>, OECD Methodology and Principles<sup>6</sup>, EU Standard (Directive 2014/24/EU)<sup>7</sup>, Open Contracting Data Standard (OCDS).<sup>8</sup>

<sup>2</sup> The list of 40 countries included in the TPPR rating is available at: <https://www.tpp-rating.org/page/eng/about>

<sup>3</sup> When determining the geographical allocation of a country to a specific region IDFI followed the following logic: [Member states of the Council of Europe](#) covered by TPPR were allocated to the region of Europe, while all other countries within the scope of TPPR were divided based on their geographical allocation provided by the [UNdata](#).

<sup>4</sup> European Bank of Reconstruction and Development, webpage of Public Procurement, available at: <https://www.ebrd.com/what-we-do/sectors/legal-reform/public-procurement/sector-assessments.html>

<sup>5</sup> World Trade Organization, Agreement on Government Procurement, available at: [https://www.wto.org/english/tratop\\_e/gproc\\_e/gp\\_gpa\\_e.htm#:~:text=The%20GPA%20is%20a%20plurilateral,are%20parties%20to%20the%20Agreement.&text=The%20text%20of%20the%20Agreement%20establishes%20rules%20requiring%20that%20open,bx%20ensured%20in%20government%20procurement](https://www.wto.org/english/tratop_e/gproc_e/gp_gpa_e.htm#:~:text=The%20GPA%20is%20a%20plurilateral,are%20parties%20to%20the%20Agreement.&text=The%20text%20of%20the%20Agreement%20establishes%20rules%20requiring%20that%20open,bx%20ensured%20in%20government%20procurement)

<sup>6</sup> Organization for Economic Development and Reconstruction (OECD), Methodology for Assessing Public Procurement Systems, available at: <http://www.oecd.org/meps/initiative/methodology/>.

<sup>7</sup> Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC Text with EEA relevance, available at: <https://eur-lex.europa.eu/legal-content/EN/TEXT/?uri=celex%3A32014L0024>.

<sup>8</sup> Open Contracting Data Standards (OCDS), Open Contracting Partnership, available at: [https://standard.open-contracting.org/latest/en/getting\\_started/](https://standard.open-contracting.org/latest/en/getting_started/).

The indicators are separated into 5 groups (benchmark indicators) that represent the key characteristics (values) of a well-functioning, transparent and accountable public procurement system: **Uniformity of the Legislative Framework, Efficiency, Transparency, Accountability and Integrity, Competitiveness and Impartiality**. The methodology also includes 5 indicators that are used to assess legal components **that are not directly part** of the public procurement legislation but are crucial in terms of creating a transparent environment necessary for the proper functioning of any public procurement system. These indicators are grouped separately under the ‘**Transparency Environment**’.

Indicators are also arranged according to the procurement process: **Pre-tendering Phase** – procurement processes leading up to the publication of a notice of intended procurement, **Tendering Phase** – Procurement processes between the publication of a notice of intended procurement and selection of a tender winner; **Post-tendering Phase** – procurement processes after the selection of a tender winner.

### ***Limitations***

Public procurement systems vary significantly by country. The TPPR Methodology is intended to be applicable on a global scale, meaning that the indicators cannot be too specific and cannot cover all the possible variations and exceptions. It also needs to be taken into consideration that the report includes evaluations of TPPR participant countries based on applicable public procurement legislation. The scope to which the legislation and relevant regulations are implemented in practice is outside the scope of the methodology.



# Statistical Analysis 2016-2020

As of October 2020, the network of TPPR includes civil society organizations and independent experts from 40 countries.<sup>9</sup> Thus, IDFI in close cooperation with its partner organizations included the evaluations of these countries in TPPR. The statistical analysis presented in this chapter is divided into two parts based on the years that the evaluation applies. Based on this characteristic the statistical analysis is presented separately for the years of 2016-2018 and 2019-2020.<sup>10</sup>

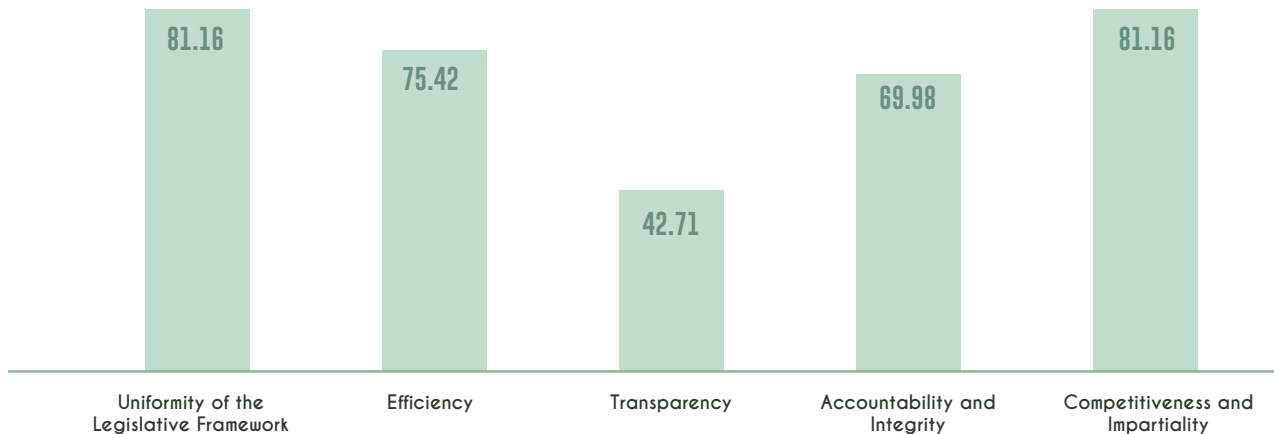
## Average by Benchmark Indicator

Based on the data collected from 2016 through 2020 it is obvious that Transparency constitutes one of the most challenging benchmark indicators. The indicator aims at identifying to what degree various information on different stages of public procurement is publicly accessible in an electronic, machine-readable format. The average score of the benchmark indicator equals to 42.71%. Countries scored low in the benchmark indicator of Accountability and Integrity as well. The benchmark indicator takes into consideration such aspects as the existence of a mechanism of consultation aimed at receiving feedback and identifying problems in public procurement; sanctions for the violation of applicable legislation; the necessity of providing justification for using the non-competitive procedure; conflict of interest in public procurement; internal and external audit of the procurement operations, etc. The average score in the benchmark indicator equals to 69.98%.

<sup>9</sup> The list of the partner organizations and individual experts representing 40 countries of TPPR network is available at: <https://www.tpp-rating.org/page/eng/about>.

<sup>10</sup> A number of countries have been evaluated twice, thus they will be included in the statistical analysis of 2016-2018 as well as 2019-2020. In order to see the progress made by these countries based on the old and new evaluations please see the individual chapters of the TPPR countries under the heading of Country Evaluations in the full version of the report available in English only.

## Average by Benchmark Indicator



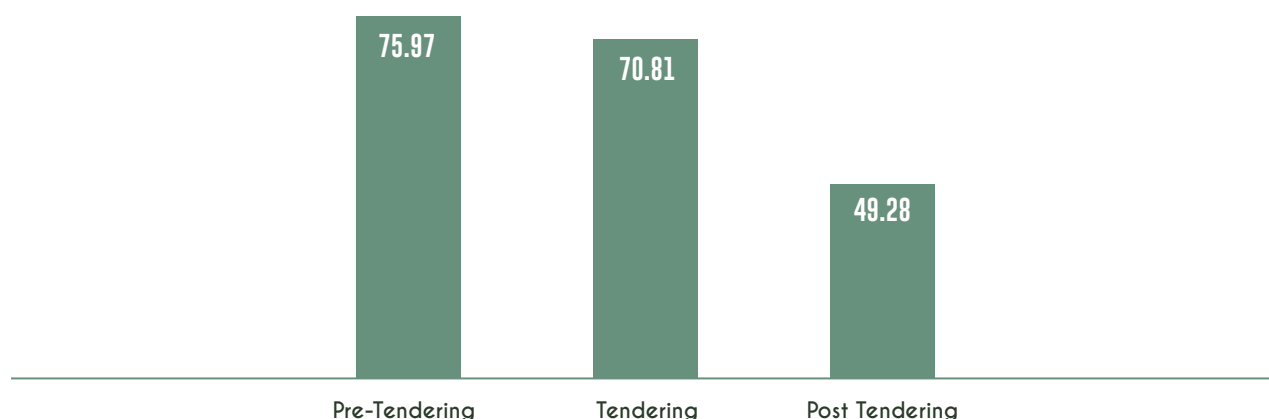
The benchmark indicator of Efficiency also proved to be somewhat problematic, with an average score of 75.42%. The benchmark indicator looks at whether PPL establishes a single official point of access (i.e. an online portal) for all procedures and information related to public procurement; whether PPL obligates procuring entities to publish public procurement annual plans; whether procuring entities may seek consultations for planning procurement; whether PPL stipulates that in cases when evaluation criteria include both price and quality, the winner shall be chosen using a cost-effectiveness approach, such as life-cycle cost, best price-quality ratio, environmental and/or social costs, etc.

Based on the collected data countries perform relatively well in the benchmark indicators of Uniformity of the Legislative Framework as well as Competitiveness and Impartiality. In both of the cases, the average score equals to 81.16%.

## Average by the Stage of Public Procurement

As for the performance of the countries by the stage of the procurement process based on the collected information, it is obvious that countries face most of the challenges in regards to ensuring transparency and accountability of the procurement process at the post-tendering phase. The average score equals to 49.28%. This is evidenced by individual country evaluations as well, when states rarely have regulations ensuring access to various post-tendering information such as procurement contracts and their amendments, information on sub-contractors, quality check and inspection reports, etc. The average score for the tendering phase equals to 70.81%. The data collected from 2016 to 2020 demonstrate that transparency and accountability of the procurement process are ensured to the highest level at the pre-tendering stage, with an average score of 75.97%.

## Average by the Stage of Public Procurement



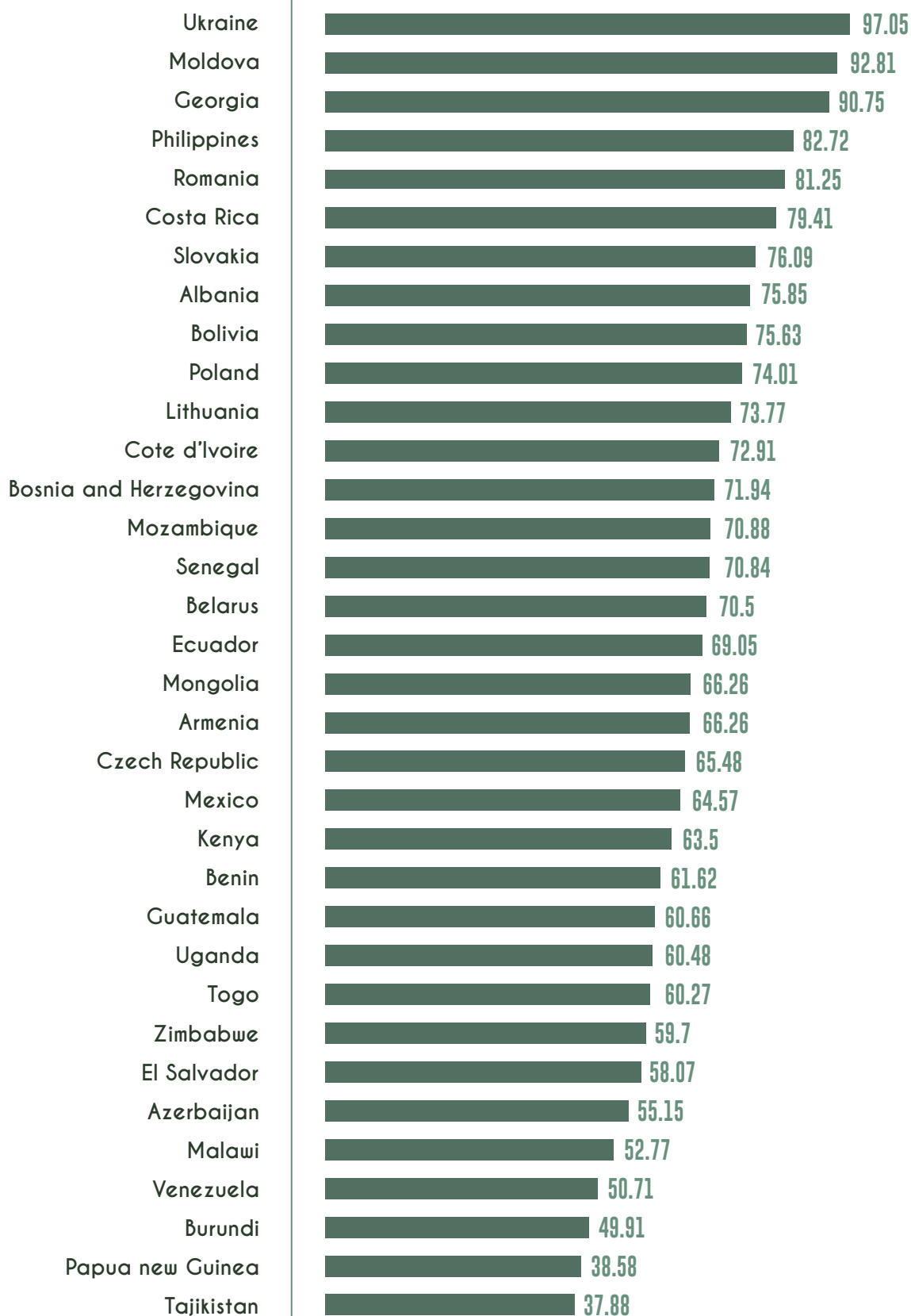
## TPPR Rating 2019-2020

Ukraine leads the TPP rating in the evaluation of 2019-2020 with the highest score of 97.05%. This is due to the fact that major reforms have been implemented in the country in the last two years, which also addressed the shortcomings indicated in the previous TPPR evaluation of Ukraine. During the last years, important positive changes have been introduced in the area of public procurement in Moldova. Thus, the country improved its position in the rating and moved from the 12th to the second position. Even though a number of positive developments have been seen in Georgia as well, the progress was not as significant as in the case of Ukraine and Moldova, thus Georgia holds the third position in the rating of 2019-2020. TPPR participant countries reaching the benchmark of 80% in the evaluation of 2019-2020 are Ukraine, Moldova, Georgia, Philippines and Romania.

Some of the poorest performing countries in the TPPR evaluation of 2019-2020 are Tajikistan, Papua New Guinea, Burundi, Venezuela, Malawi, Azerbaijan, El Salvador and Zimbabwe. The overall evaluations of the given countries in the rating are below 60%. It should be noted that Armenia is not included in the list of countries with poor TPPR performance in the rating of 2019-2020. From the bottom of the rating in 2016-2018 Armenia moved to the middle of the rating. The reason for the latter is the reform executed in the public procurement system of Armenia, thus the evaluation of the country increased accordingly.



## TPPR - Rating 2019-2020



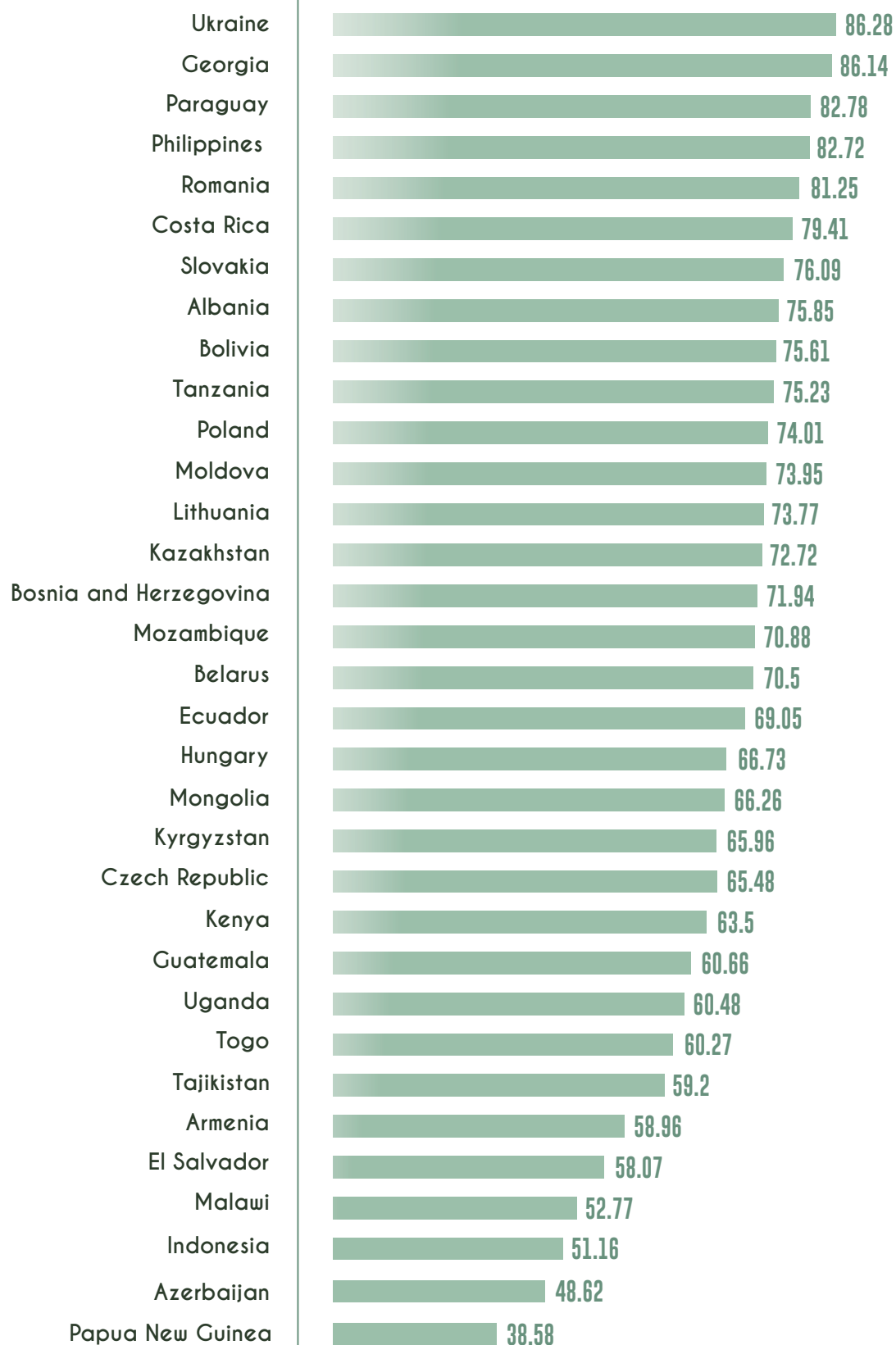
\*The given chart reflects the score of Moldova, based on the evaluation of 2018-2020.

## TPPR Rating 2016-2018

Based on the overall TPPR evaluation of the participant countries, covering the period of 2016-2018 the states leading the rating are Ukraine, Georgia, Paraguay, Philippines and Romania. The evaluation of all of these countries exceeded the benchmark of 80%. Ukraine is at the top of the evaluation with 86.28%, followed by a close competitor Georgia with 86.14%. The evaluations of Paraguay and the Philippines also stand particularly close, with 82.78% and 82.72% respectively. Looking at the evaluations below it is evident that some of the developed countries from Europe as well as developing countries from South America and Africa lead the rating. This is explained by the fact that the main focus of TPPR is public procurement legislation. The methodology does not go beyond the legislative framework and thus does not reflect the extent to which the regulations are implemented in practice.

Some of the countries at the bottom of the evaluation are Papua New Guinea, Azerbaijan, Indonesia, Malawi, El Salvador, Armenia, Tajikistan and Zimbabwe. The TPPR evaluation of the given countries is below the benchmark of 60%, thus indicating significant shortcomings in the public procurement legislation applicable at the given countries.

## TPPR - Rating 2016-2018



\*The given chart reflects the score of Moldova, based on the evaluation of 2016-2017.



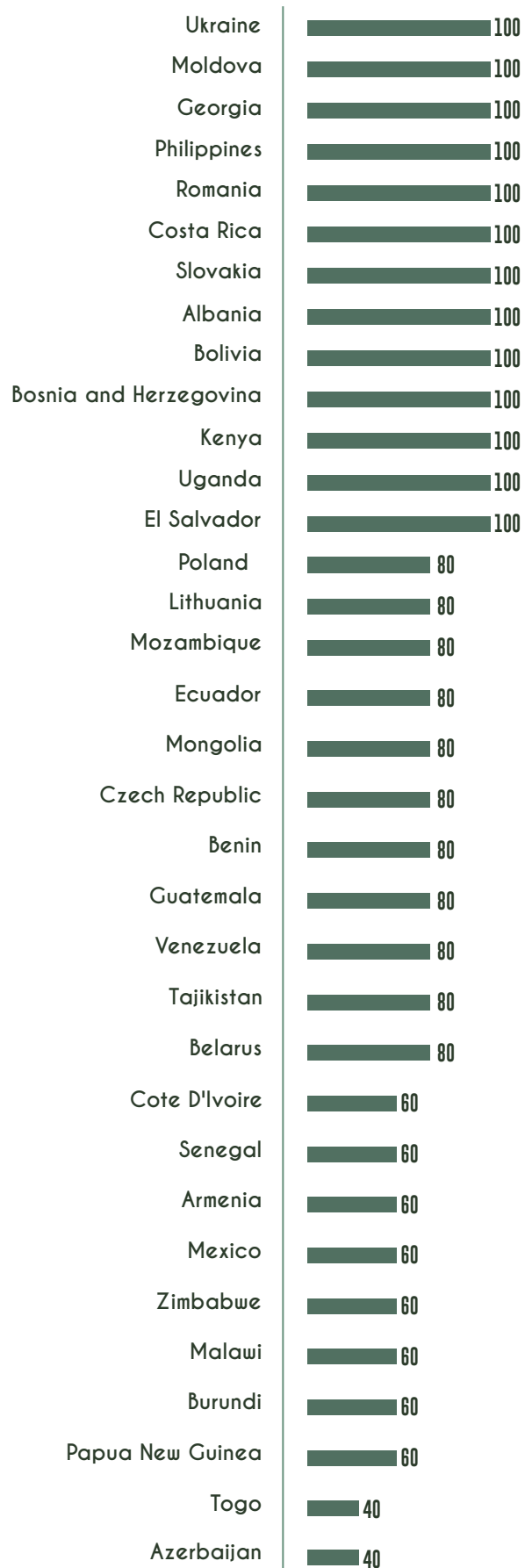
# Rating by Benchmark Indicators

## Transparency Environment

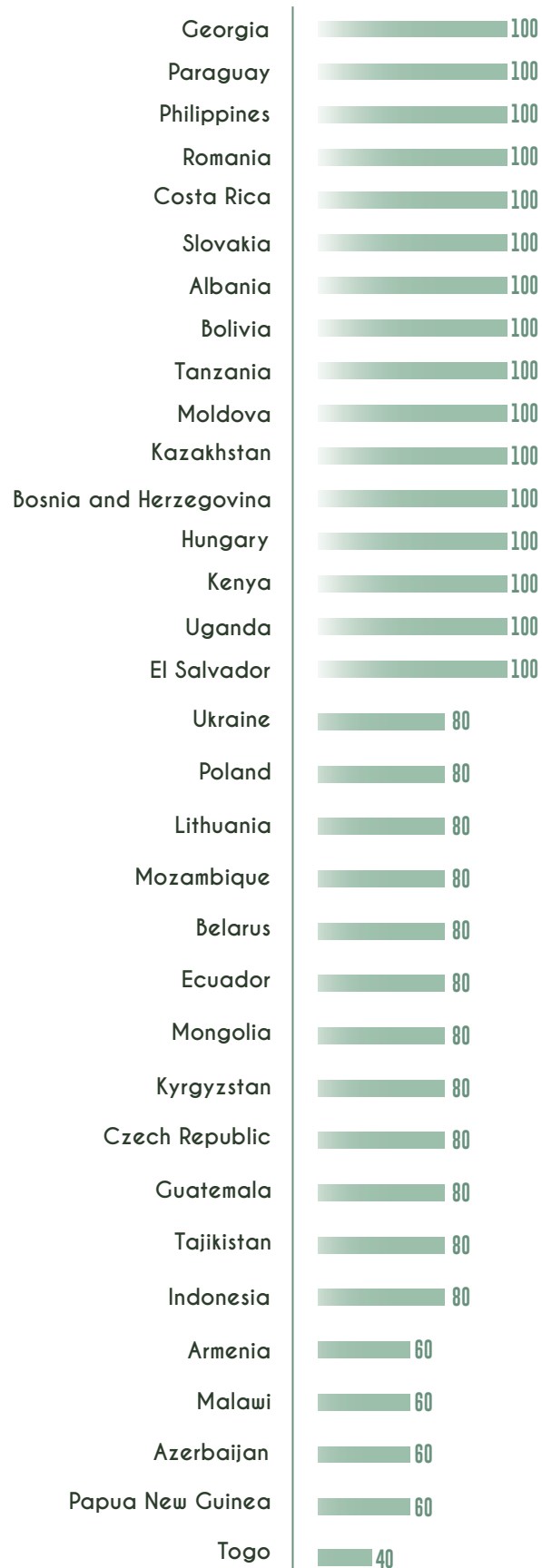
The questions included in the benchmark indicator of Transparency Environment aim at giving a general picture of transparency in a given country, they do not per se relate to public procurement, however, the topics covered in the questions have a significant impact on the performance of a public procurement system in a given country. There are 5 indicators included in Transparency Environment and they aim to ascertain whether:

1. Business registry is publicly available in a given country;
2. Budgets of all public procuring entities are publicly available;
3. Public officials are required by law to file asset declarations;
4. A given country has adopted legal provisions ensuring the right to request public information;
5. Legislation includes provisions regulating whistleblower protection;

## TPPR - Rating 2019-2020



## TPPR - Rating 2016-2018



Since the benchmark indicator of Transparency Environment includes 5 questions/indicators only, over ten countries showed 100% performance in the area. These countries include European and Eastern European countries as well as the Philippines, Costa Rica, Bolivia, Kenya, Uganda and El Salvador. A number of European (among them the EU member) countries scored 80% in the benchmark indicator. The countries showing relatively poor performance in this direction in the evaluation of 2019-2020 are Togo, Azerbaijan and Papua New Guinea. The decrease in the number of countries with a 100% rating in the rating of 2019-2020 compared to 2016-2018 is caused by the fact that a number of countries with a 100% rating in 2016-2018 have not been re-evaluated in 2019-2020.

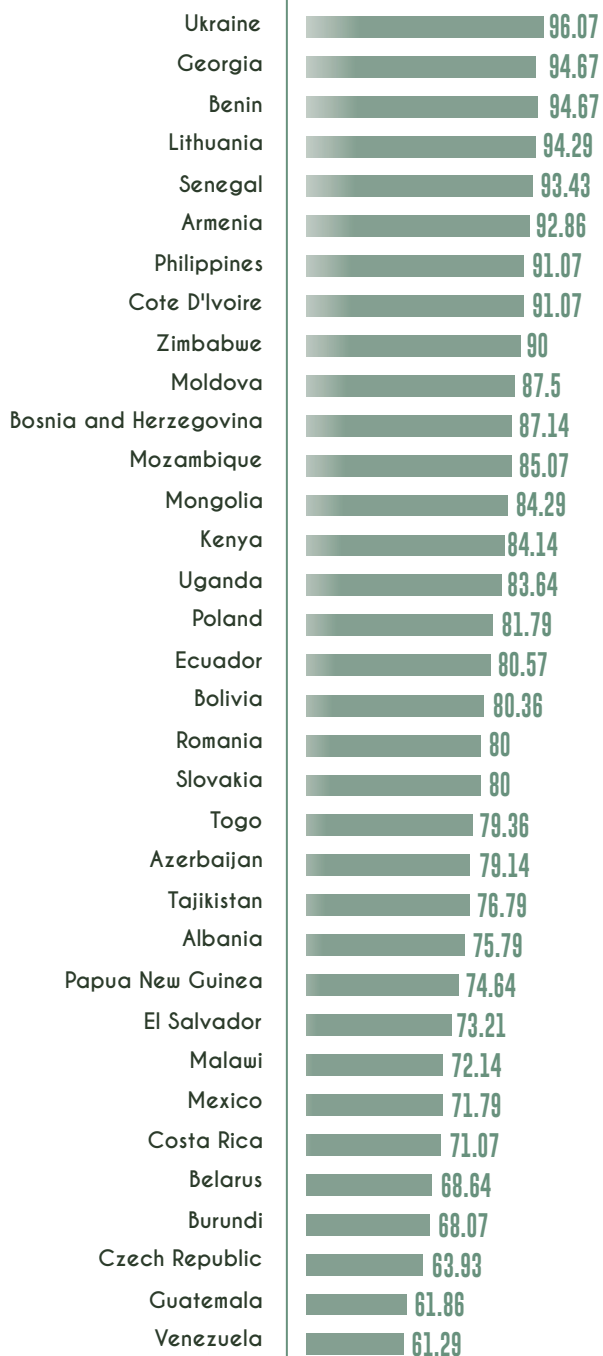
## Uniformity of Legislative Framework

The benchmark indicator of the Uniformity of Legislative Framework includes 14 indicators and evaluates whether:

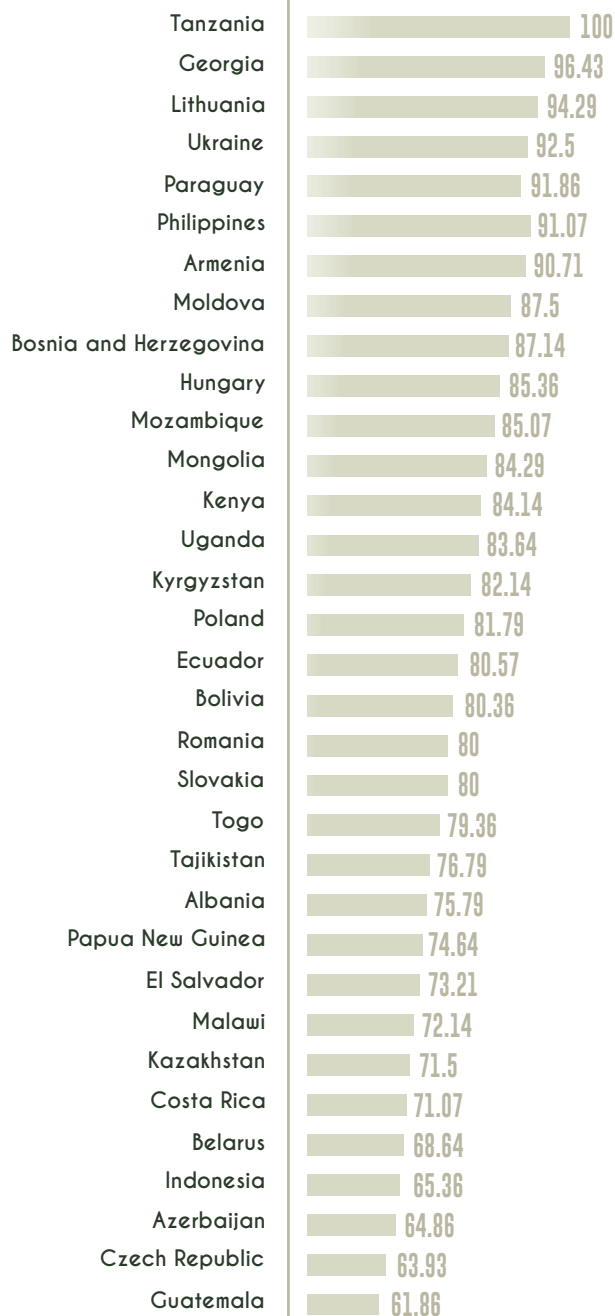
1. Public Procurement Legislation (PPL), which may include primary and secondary legislation, lays out the basic principles and general framework of the procurement process, makes it operational and indicates how the law must be applied to specific circumstances;
2. PPL (including primary and secondary legislation) is available in a single and accessible place;
3. PPL applies to all state budget and local government entities (including their respective Legal Entities of Public Law (LEPLs), state-owned companies and non-commercial legal entities) and all exempted entities are clearly indicated;
4. The scope of coverage of PPL includes all sectors of the economy where competition is possible and exemptions are clearly listed in the PPL;
5. PPL determines a separate state body (procurement regulatory body) responsible for managing public procurement or assigns this function to a subordinate public body(ies);
6. PPL stipulates that the procurement regulatory body is responsible for at least coordination and monitoring (i.e. data collection and analysis as opposed to regulation and control) of public procurement activities;
7. PPL stipulates that each procuring entity has a staff member(s) responsible for conducting procurement activities;
8. PPL ensures the right to review (complaints), for all interested parties, including general public, tender participants and potential suppliers;
9. PPL ensures the right to review throughout the procurement process;
10. PPL ensures the existence of an independent (from parties involved in a procurement dispute) review body with the authority to review complaints and grant remedies;
11. PPL defines the composition, powers, responsibilities and decision-making procedures of the body (tender commission or a person) responsible for conducting tender within the procuring entity;

12. PPL stipulates that provided that it does not use this provision for the purpose of avoiding competition among suppliers or in a manner that discriminates against foreign suppliers or protects domestic suppliers, a procuring entity may use non-competitive procedure;
13. PPL defines specific procedures for modifying contracts;
14. PPL stipulates that procurement contracts must include dispute resolution procedures.

### TPPR - Rating 2019-2020



### TPPR - Rating 2016-2018



Based on the TPPR evaluation in 2019-2020 up to 10 countries reached the benchmark of 90% in the area of Uniformity of Legislative Framework. The list of well-performing countries is led by Ukraine and Georgia. Georgia held the second position in the evaluation of 2016-2018 as well, while Ukraine improved its position and moved to first place in the evaluation of 2019-2020. Some of the weak performing countries in the benchmark indicators in both periods were Guatemala, Burundi, Costa Rica and the Czech Republic. In 2019-2020 the newly evaluated countries of Venezuela, Burundi and Mexico were added to this list.

## Efficiency

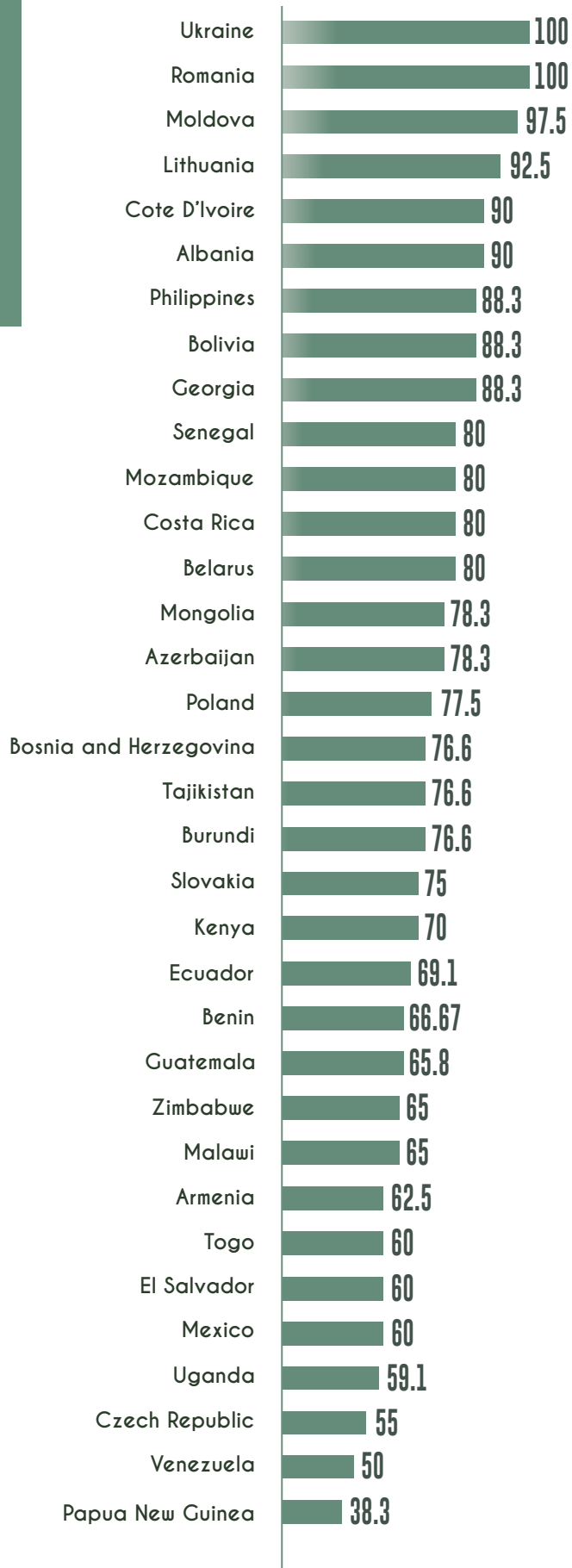
The benchmark indicator of Efficiency aims at identifying the effectiveness of a public procurement system in a given country. The benchmark indicator includes 8 indicators and looks at whether:

1. PPL stipulates that electronic means is the primary method of conducting public procurement and of communication between procuring entities and tender participants;
2. PPL establishes a single official point of access (i.e. an online portal) for all procedures and information related to public procurement;
3. PPL obligates procuring entities to publish as early as possible in each fiscal year a notice regarding their future procurement plans - "public procurement annual plan" and the information that needs to be included in the annuals;
4. Legislation stipulates that the planning of procurement and estimation of associated expenditures are part of the state budget formulation process;
5. Minimum monetary thresholds exist for different types of procurement;
6. PPL stipulates that procuring entities may seek consultations for the purpose of planning procurement (drafting of tender documentation) from independent experts or market participants; and whether in such cases, these experts or market participants may not take part or benefit from tenders they helped plan unless it can be demonstrated that there is no conflict of interest (as defined by the national legislation);
7. PPL stipulates that procuring entities may require tender candidates to confirm the validity of their bid with a bid security that is refunded once the procedure is completed;
8. PPL stipulates that in cases when evaluation criteria include both price and quality, the winner shall be chosen using a cost-effectiveness approach, such as life-cycle cost, best price-quality ratio, environmental and/or social costs.

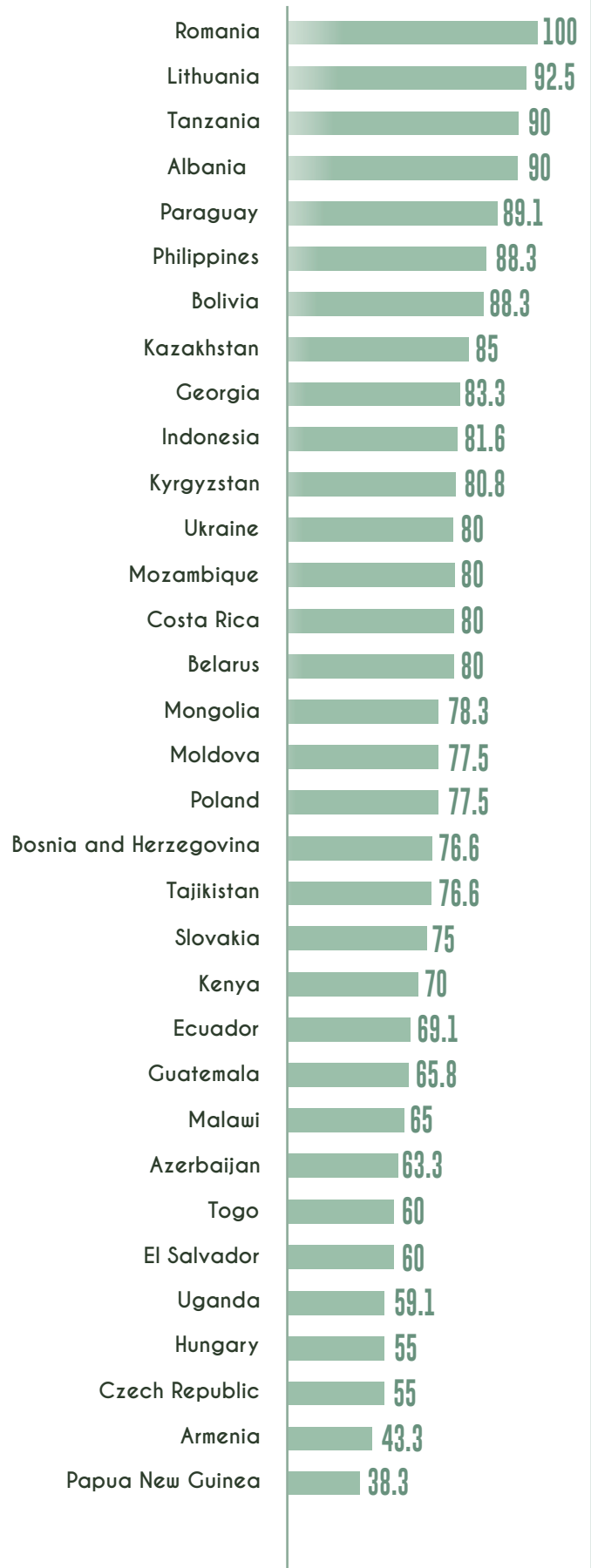
The leading countries in the benchmark indicator of Efficiency in 2019-2020 were Ukraine and Romania with a 100% rating. Moldova and Lithuania also scored high in the area. In the evaluation of 2016-2018 together with Romania and Lithuania, Albania, Paraguay and Philippines were leading the list, however, they moved down the rating which was caused by the advancement in the area of other TPPR participant countries.



## TPPR - Rating 2019-2020



## TPPR - Rating 2016-2018



## Transparency

The benchmark indicator of Transparency aims at identifying to what degree various information on different stages of public procurement is publicly accessible in an electronic, machine-readable format. The benchmark indicator includes 18 indicators and aims to ascertain whether:

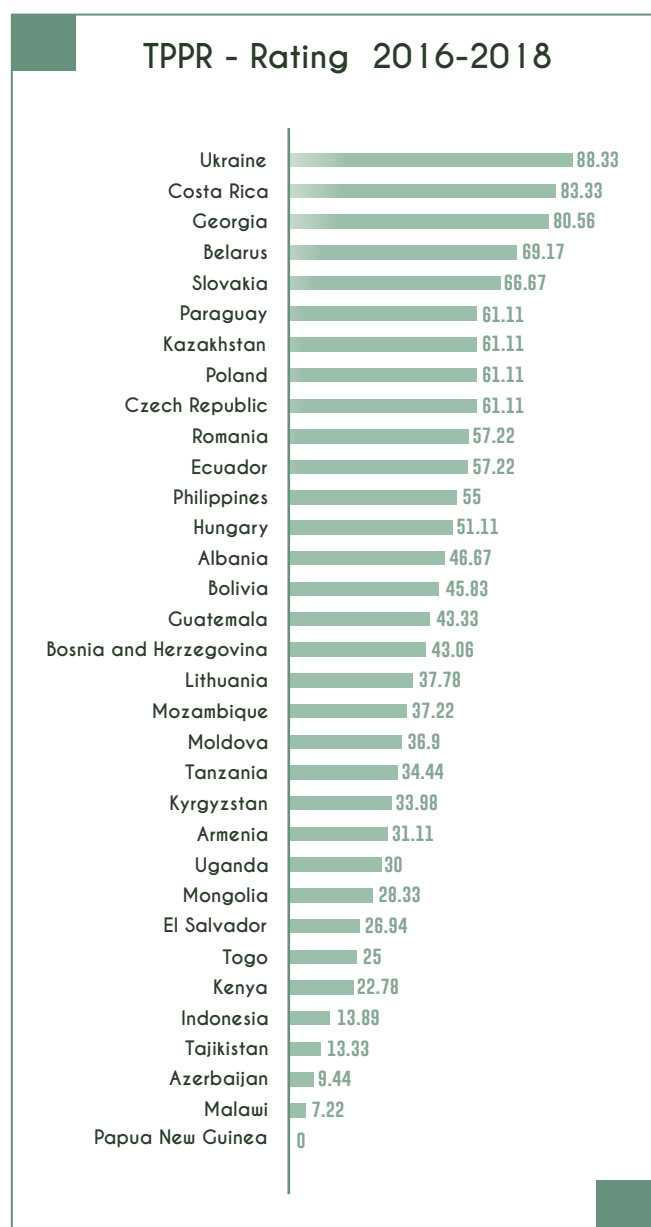
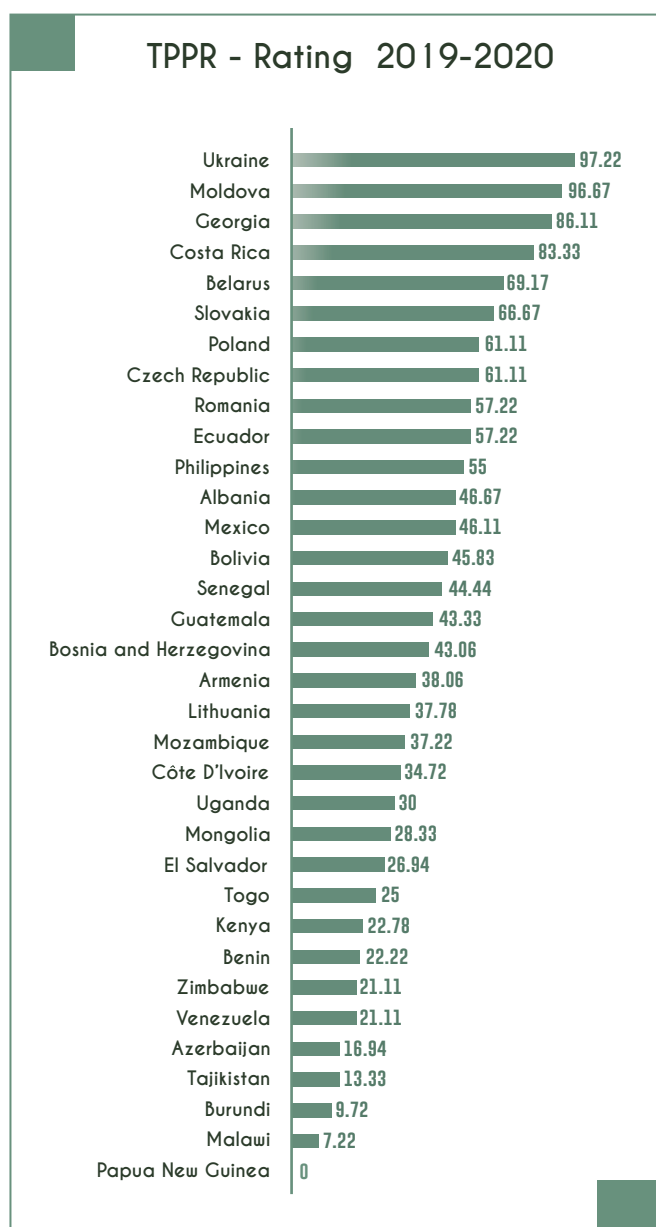
1. PPL ensures electronic, machine-readable and free of charge access to notices of intended procurement (including tender documentation), either the full text or key information contained in these documents; as well as:
2. To submitted complaints, either the full text or key information contained in these documents;
3. To dispute resolutions (of the independent review body), either the full text or key information contained in these documents;
4. To public procurement annual plans of all procuring entities or key information included in these documents;
5. To tender documentation amendments, either the full text or key information contained in these documents;
6. To tender candidate applications (all documents needed for the request to participate in a tender), either the full text or key information contained in these documents;
7. To information about the bids offered by tender participants;
8. To decisions of the tender commission, either the full text or key information contained in these documents;
9. To procurement contracts, either the full text or key information contained in these documents;
10. To contract amendments, either the full text or key information contained in these documents;
11. To contract performance information (acceptance act and milestone reports), either the full text or key information included in these documents;
12. To payment receipts, either the full text or key information contained in these documents;
13. To any inspection and quality control reports, either the full text or key information contained in these documents;
14. PPL stipulates that procuring entities shall inform each tender participant of the decision reached about the winner of the tender, including failure to do so, as soon as it is made, but no later than the end of the following working day;
15. PPL ensures that on request from the tender participant the procuring entity shall as quickly as possible inform: any unsuccessful tender candidate of the reasons for the rejection of its request to participate; any unsuccessful tender participant of the reasons for the rejection of its bid;

16. PPL includes the list of information that the notice of intended procurement/tender documentation must include;

17. PPL stipulates that the information on subcontractors must be made public upon successful conclusion of tender;

18. PPL stipulates that all procurement-related documentation must be maintained in electronic form for a period of at least 10 years; in paper form for a period of at least 3 years.

Ukraine leads the TPPR rating in the benchmark indicator of Transparency in the evaluation covering the periods of 2016-2018 as well as 2019-2020. Georgia is holding one of the leading positions in both of the evaluations as well. In 2019-2020 Moldova moved to the top of the rating and held the second position with a score of 96.67%. Due to the advancement of these countries in the benchmark indicator of Transparency, Costa Rica moved from the second position in 2016-2018 to the fourth position in 2019-2020. The countries performing poorly in the benchmark indicator both in 2016-2018 as well as 2019-2020 are Papua New Guinea, Malawi, Burundi, Tajikistan and Azerbaijan.



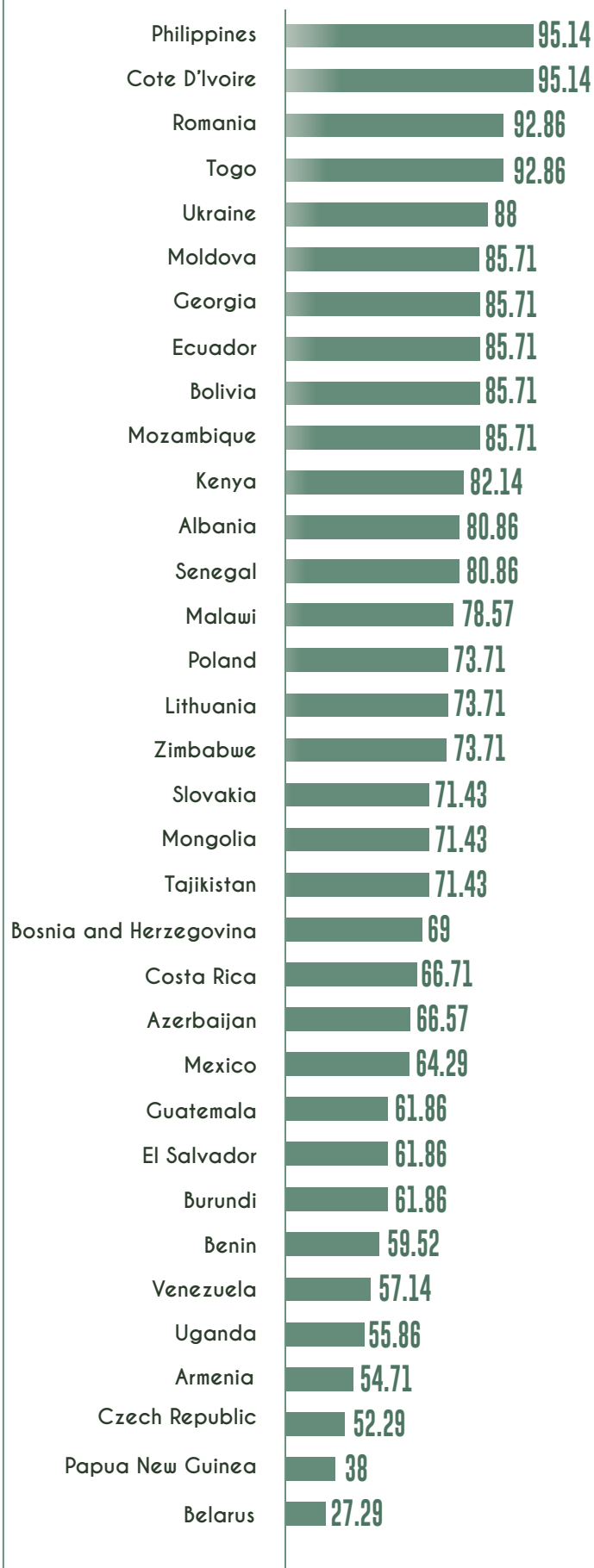
## Accountability and Integrity

The benchmark indicator of Accountability and Integrity includes 7 indicators and aims to ascertain whether:

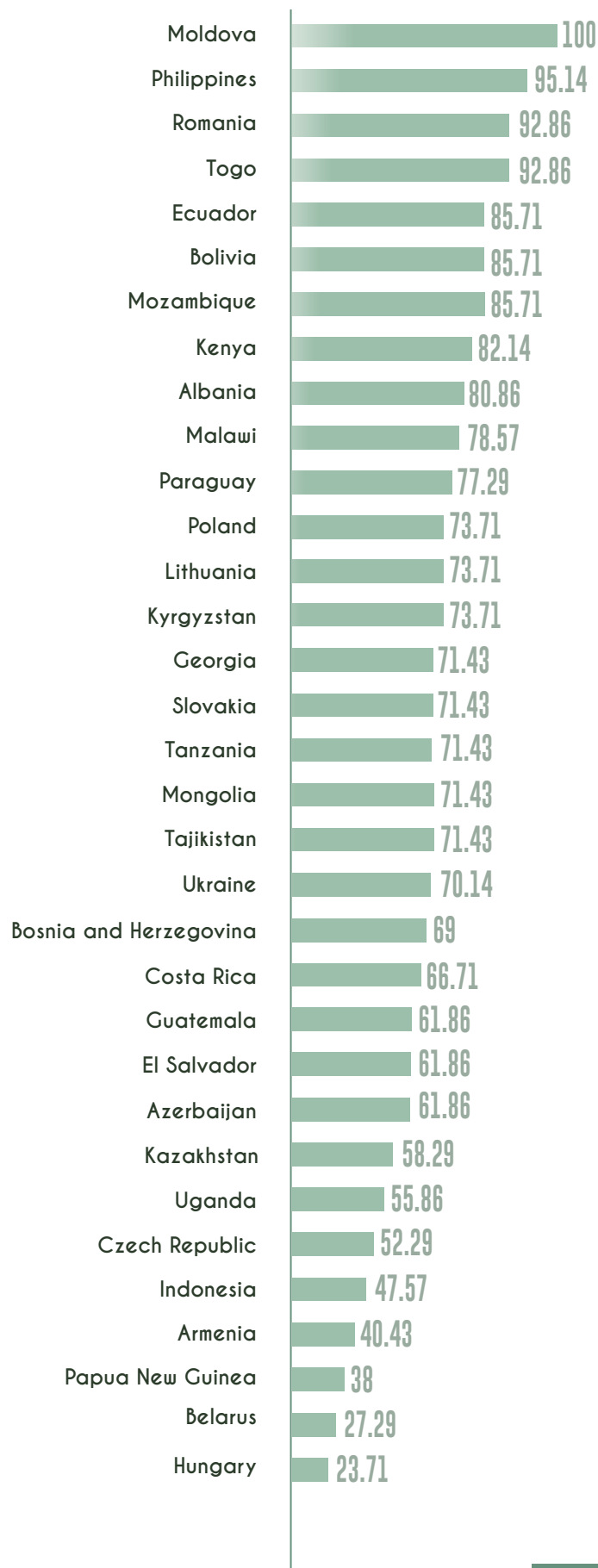
1. Legislation provides for a mechanism of consultation with the private and civil society sectors that is aimed at receiving feedback and identifying problems in the procurement system;
2. PPL references sanctions for violations of the legislation;
3. Legislation explicitly defines fraud and corruption/abuse of public office and spells out the individual responsibilities and consequences for government employees and private firms or individuals found guilty of fraud or corruption;
4. PPL stipulates that procurement process should not normally be initiated until the appropriate financial resources have been identified;
5. PPL stipulates that justification for using a non-competitive procedure must be made public by the procuring entity;
6. Legislation explicitly defines conflict of interest and includes mechanisms for its prevention;
7. PPL stipulates that public procurement operations must be subject to internal and external audit conducted by qualified specialists.

During 2019-2020 the TPPR participant countries reaching the benchmark of 90% in the area of Accountability and Integrity were the Philippines, Ivory Coast, Romania and Togo. In the rating of 2016-2018, Moldova led the list with 100% in the benchmark indicator of Accountability and Integrity, however, the country scored lower in the benchmark indicator based on the new evaluation and moved from the first to the sixth position in 2019-2020. It should be noted that regardless of the decrease in the given benchmark indicator the overall TPPR evaluation of Moldova increased significantly from 2016-2018 to 2019-2020.<sup>11</sup> Some of the poorest performing countries in the benchmark indicator of Accountability and Transparency are Belarus, Papua New Guinea, Armenia and Uganda.

## TPPR - Rating 2019-2020



## TPPR - Rating 2016-2018



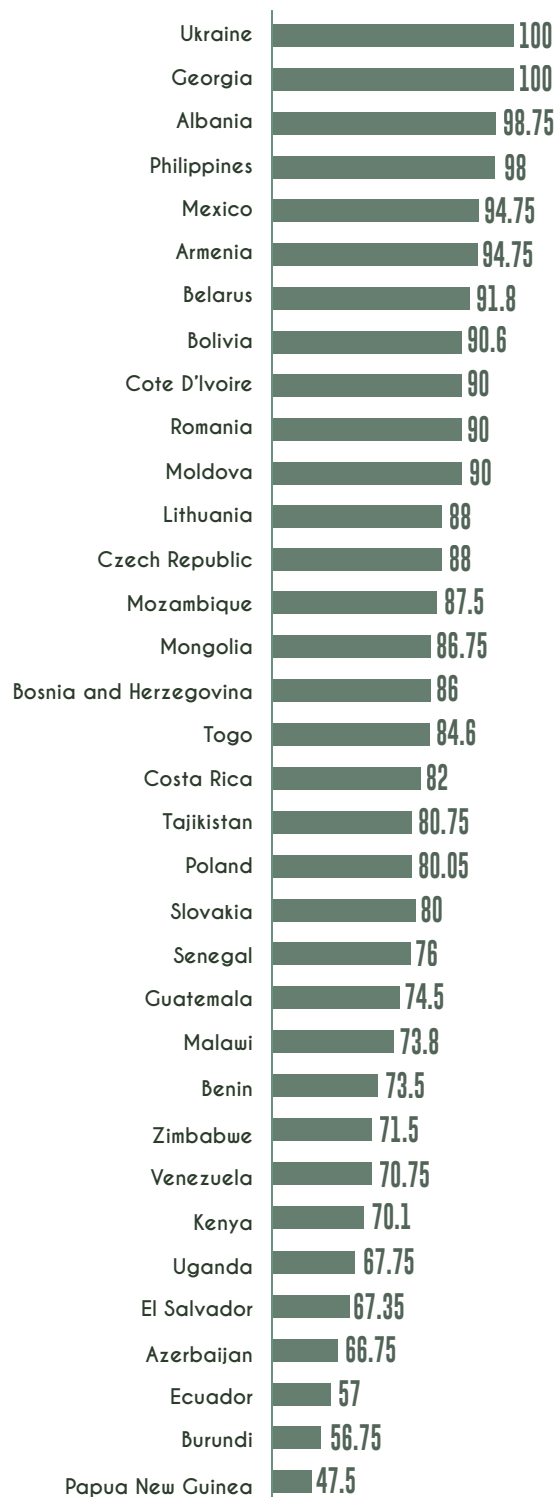
## Competitiveness and Impartiality

The benchmark indicator of Competitiveness and Impartiality includes 10 indicators and aims to ascertain whether:

1. Legislation requires that software used for electronic procurement and related communication shall be non-discriminatory, free to use and interoperable with the ICT products in general use and shall not restrict economic operators' access to the procurement procedure;
2. PPL ensures that tender candidates must be given equal treatment, without regard to nationality, residency or political affiliation;
3. PPL stipulates that a procuring entity shall, consistent with its own reasonable needs, provide sufficient time (based on the GPA standard - Article XI) for candidates to prepare and submit tender application;
4. PPL stipulates that open tender is the default procedure for any public procurement, and all exceptions are clearly listed by the PPL;
5. PPL stipulates the information that the notice of intended procurement/tender documentation must include (e.g. CPV codes, timeframe, procurement method, brief description of goods, services or works, etc.);
6. PPL stipulates the financial information that the notice of intended procurement/tender documentation must include (e.g. payment conditions, bids security, source of funding, etc.);
7. PPL defines all eligibility criteria for participation in tender that must include at least capabilities with the respect to personnel, equipment, and construction or manufacturing facilities; financial position; grounds of restriction for participation;
8. Unless justified by the subject-matter of the contract, technical specifications shall not refer to a specific make or source, or a particular process which characterizes the products or services provided by a specific economic operator, or to trademarks, patents, types or a specific origin or production with the effect of favouring or eliminating certain undertakings or certain products;
9. PPL stipulates that award decisions must be made solely on the basis of evaluation criteria that have been precisely specified in advance in the tender documentation;
10. PPL stipulates that upon modification of any criteria and requirements set out in tender documentation prior to the completion of tender application submission period, a procuring entity shall transmit in writing all such modifications to all tender candidates and give additional adequate time (either by extending or restarting the time) to allow such candidates to modify and re-submit amended tender applications.

Over 10 participant countries of TPPR reached a score of 90% in the benchmark indicator of Competitiveness and Impartiality. Ukraine and Georgia lead the list with 100% evaluation, followed by Albania, the Philippines, Mexico and Armenia. In the evolution of 2016-2018, Paraguay and Hungary were also included among the leading countries in the benchmark indicator. Some of the weak performing countries in regards to Competitiveness and Impartiality are Papua New Guinea, Ecuador, Azerbaijan, El Salvador and Burundi.

### TPPR - Rating 2019-2020



### TPPR - Rating 2016-2018





# Rating by the Stages of Public Procurement Process

## General Characteristics

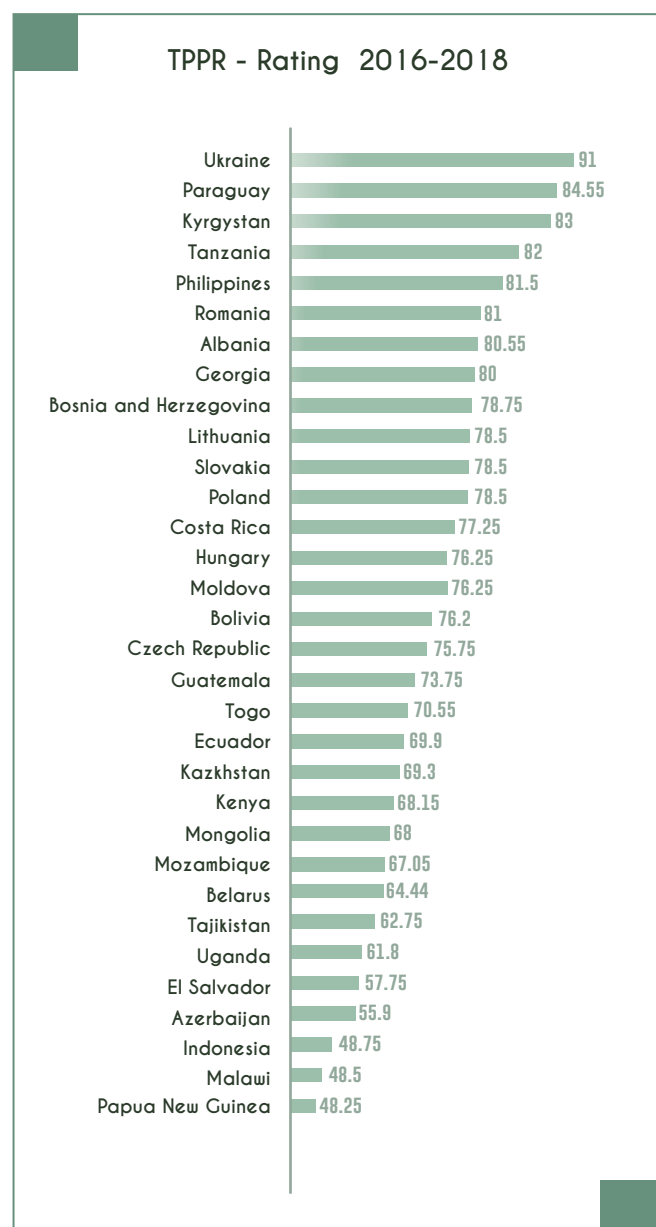
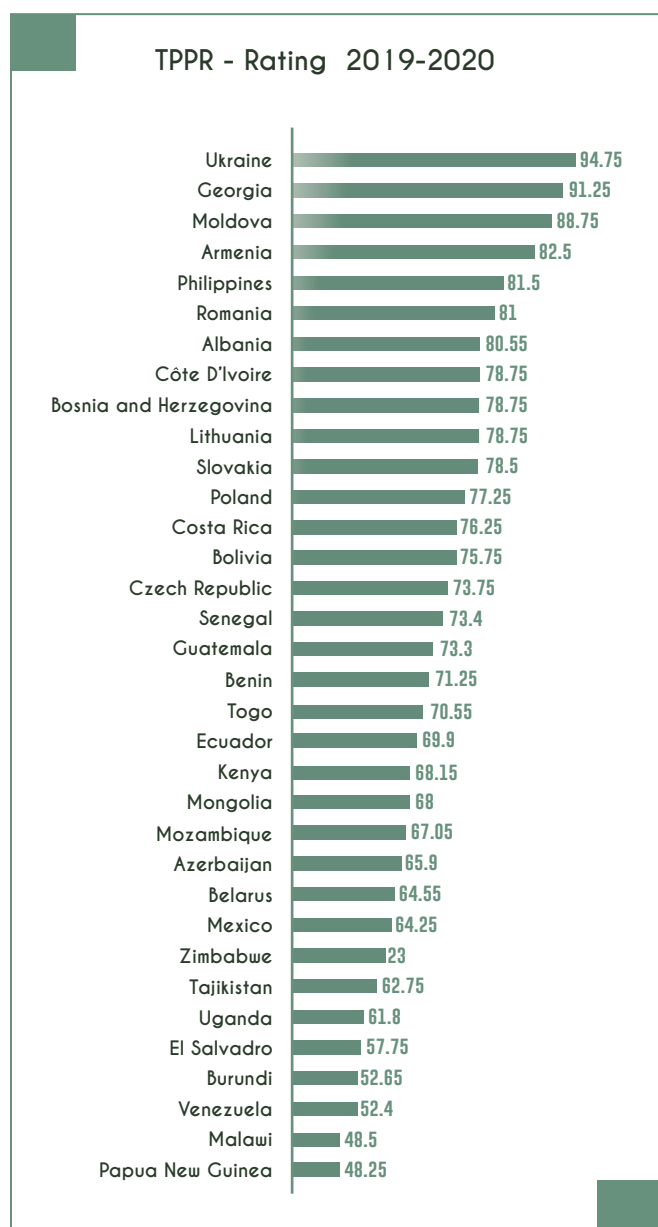
The benchmark indicator of General Characteristics includes such questions related to the process of public procurement which are significant at any point of the tendering phase and which do not relate to a single phase of pre-tendering, tendering or post-tendering stage. The questions included in the General Characteristics have a significant impact on the overall conduct of public procurement. The benchmark indicator aims to ascertain whether:

- The scope of coverage of PPL includes all sectors of the economy where competition is possible and whether all exemptions are clearly listed in the PPL;
- PPL determines a separate state body (procurement regulatory body) responsible for managing public procurement;
- Legislation provides for a mechanism of consultation with the private and civil society sectors that is aimed at receiving feedback and identifying problems in the procurement system;
- PPL stipulates that electronic means is the primary method of conducting public procurement and of communication between procuring entities and tender participants;
- PPL establishes a single official point of access (i.e. an online portal) for all information related to public procurement;
- PPL ensures that tender candidates of equivalent status must be given equal treatment, without regard to nationality, residency or political affiliation;
- PPL stipulates that a procuring entity shall, consistent with its own reasonable needs, provide sufficient time (based on the GPA standard - Article XI) for candidates to prepare and submit tender applications;
- PPL stipulates that each procuring entity has a staff member responsible for conducting procurement activities;



- PPL references sanctions for violations of the PPL;
- PPL ensures the right to review (complaints), for all interested parties, free of charge, for all interested parties, including general public, tender participants and potential suppliers;
- PPL ensures the existence of an independent (from parties involved in a procurement dispute) review body with the authority to review complaints and grant remedies;

In the rating of 2019-2020 Ukraine and Georgia, lead the rating in regards to the General Characteristics of the Procurement Process with 94.75% and 91.25% respectively. Thus, both of the countries exceeding the benchmark of 90%. Moldova scored high as well with 88.75%. It should be noted that the rating changed significantly compared to the evaluation of 2016-2018. Even though Georgia and Moldova were not included among the leading countries in the rating of 2016-2018, the changes implemented in the countries had a positive impact on their rating as they moved up the rating to the second and third positions in 2019-2020. Some of the weak performing countries in regards to the benchmark indicator are Papua New Guinea, Malawi, Venezuela, Burundi, Azerbaijan and Indonesia.



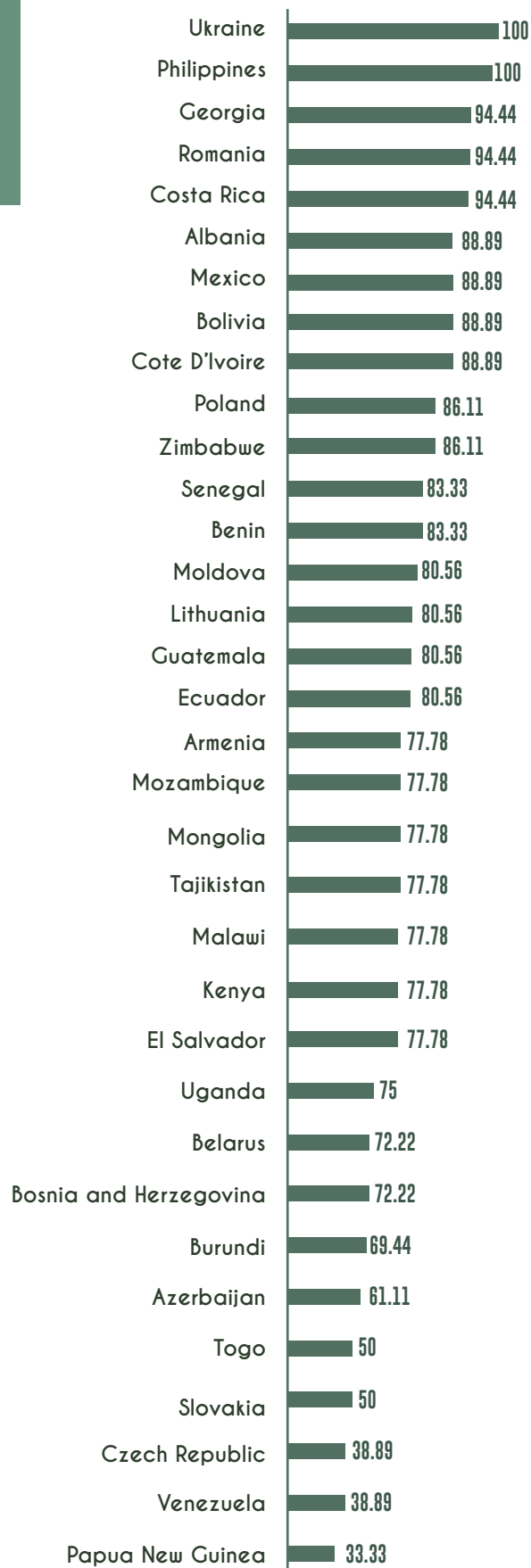
## Pre-Tendering Phase

The benchmark indicator of the pre-tendering phase evaluates the level of legislative transparency and accountability of public procurement at the very outset of the process, beginning from planning public procurement and publishing relevant annual procurement plans and ending with the decision of using a relevant procurement process. The benchmark indicator inter alia aims to evaluate whether:

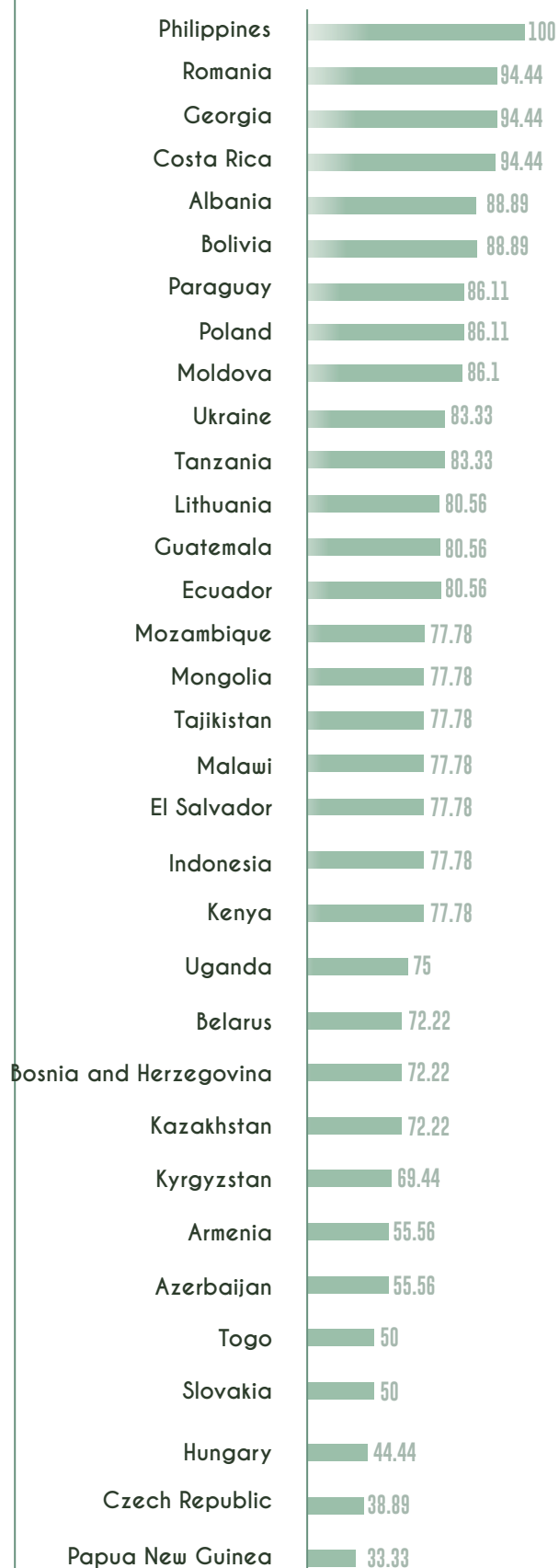
- PPL obligates procuring entities to publish as early as possible in each fiscal year a notice regarding their future procurement plans - "public procurement annual plan" and whether the public procurement annual plans are accessible in electronic, machine-readable format free of charge;
- PPL stipulates that procurement process should not normally be initiated until the appropriate financial resources have been identified;
- Minimum monetary thresholds exist for different types of procurement;
- PPL stipulates that open tender is the default procedure for any public procurement, and whether all exceptions are clearly listed by the PPL;

In the rating of 2019-2020, Ukraine and the Philippines showed the best performance at the pre-tendering stage with a 100% rating. Georgia, Romania and Costa Rica follow Ukraine and the Philippines with an evaluation of 94.44%. The most significant change since the evaluation of 2016-2018 is evidenced in the case of Ukraine when from the 10th position in 2016-2018 the country moved to the first position in 2019-2020. Some of the weak performing countries in regards to the regulations governing the pre-tendering phase are Papua New Guinea, Venezuela, Czech Republic and Hungary, all of which scored less than 50%.

## TPPR - Rating 2019-2020



## TPPR - Rating 2016-2018



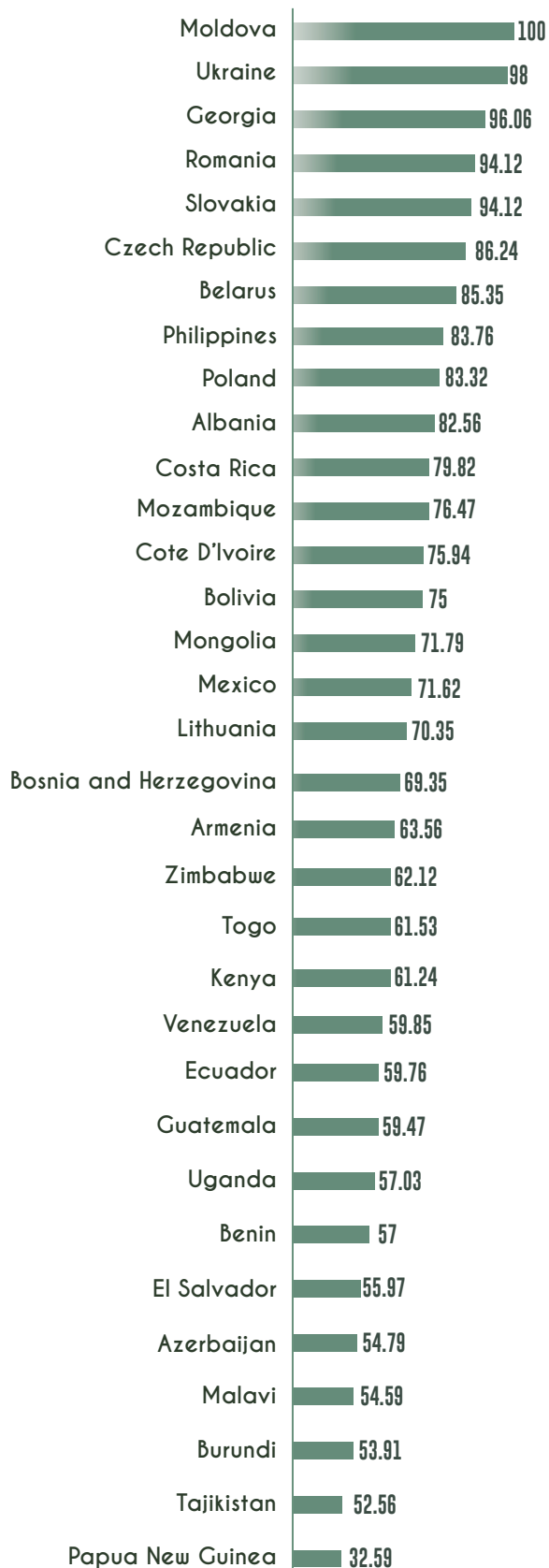
## Tendering Phase

The benchmark indicator of the Tendering Phase evaluates the legislative regulations applicable to the procurement process from the stage of publishing notices of intended procurement to the stage of taking decisions regarding the outcome of the procurement process (e.g. declaring the winner). The benchmark indicator *inter alia* aims to evaluate whether:

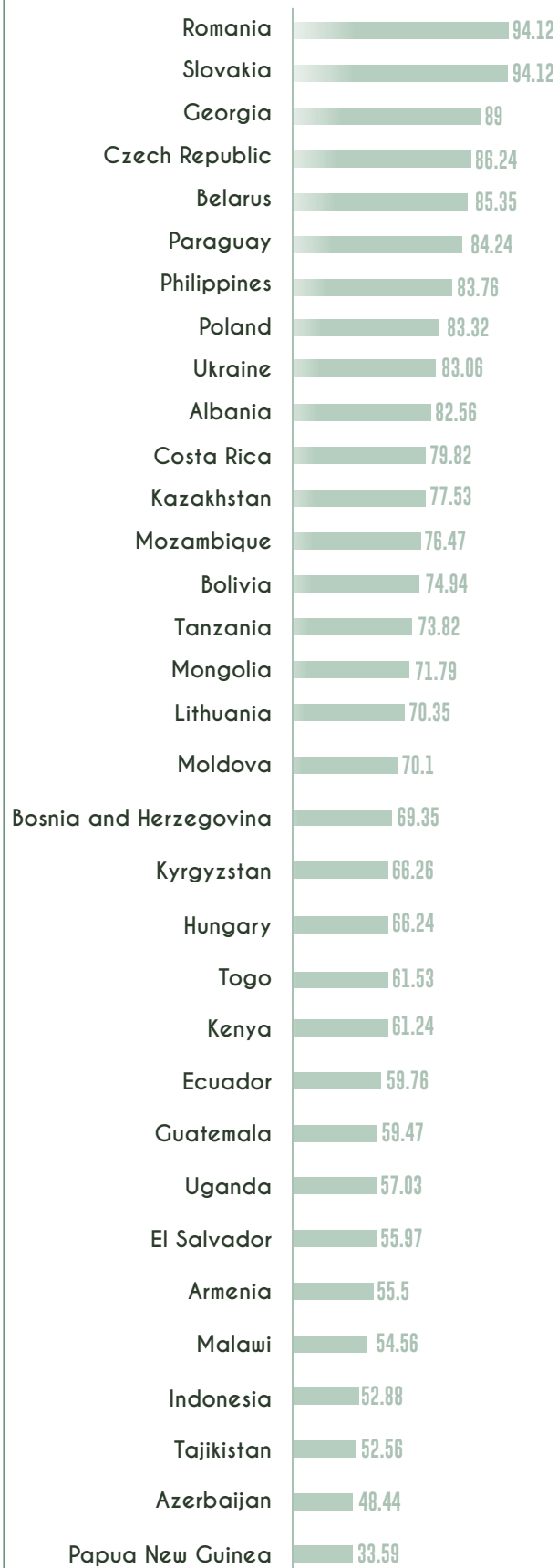
- PPL includes detailed regulations on the information that the notice of intended procurement / tender documentation must include;
- PPL defines all eligibility criteria for participation in tender;
- PPL stipulates that procuring entities may seek consultations for the purpose of planning procurement (drafting of tender documentation) from independent experts or market participants;
- PPL ensures electronic, machine-readable and free of charge access to notices of intended procurement, tender documentation amendments, tender applications, submitted bids and decisions of the tender commission;
- Legislative explicitly defines conflict of interest in the procurement process and includes mechanisms for its prevention;
- PPL stipulates that award decisions must be made solely on the basis of evaluation criteria that have been precisely specified in advance in the tender documentation;
- PPL stipulates that procuring entities shall inform each tender participant of the decision reached about the winner of the tender, including failure to do so, as soon as it is made, but no later than the end of the same working day;
- PPL stipulates that in cases when evaluation criteria include both price and quality, the winner shall be chosen using a cost-effectiveness approach.

Romania and Slovakia led the rating in regards to regulations governing the tendering stage in 2016-2018, however, both of the countries moved down the rating by three steps as Ukraine, Georgia and Moldova improved their ratings and took the first three positions in the evaluation of 2019-2020. Based on the graphs below Papua New Guinea has the most room for improvement in regards to the regulations at the tendering phase, with a score of 32.59%. All of the other countries exceeded the benchmark of 50% in the evaluation of 2019-2020.

## TPPR - Rating 2019-2020



## TPPR - Rating 2016-2018



## Post-Tendering Phase

The benchmark indicator of the post-tendering phase evaluates the level of legislative transparency and accountability of public procurement after the procurement process is concluded by either choosing the winner or failing to award a contract. The benchmark indicator inter alia aims to evaluate whether:

- PPL stipulates that upon successful conclusion of tender (upon choosing and announcing of the winner) relevant detailed information must be made public;
- PPL ensures electronic, machine-readable and free of charge access to procurement contracts, their amendments, contract performance information, payment receipts, inspection and quality control reports;
- PPL defines specific procedures for modifying contracts;
- PPL stipulates that procurement contract must include dispute resolution procedures;
- PPL stipulates that public procurement operations must be subject to internal and external audit conducted by qualified specialists.

The evaluation of Ukraine and Moldova in regards to the transparency and accountability at the post-tendering stage stands considerably higher than all other TPPR participant countries. The evaluation of all other countries is below the benchmark of 80%. Georgia holds the third position in the rating of 2019-2020 with 76.92%. Some of the countries with much room for improvement at the post-tendering stage are Guatemala, Burundi, Papua New Guinea and Indonesia. It should be noted that the position of Azerbaijan improved from 28.46% in 2016-2018 to 40.77% in 2019-2020.

## TPPR - Rating 2019-2020



## TPPR - Rating 2016-2018





# Country Evaluations

## Country Evaluations

The given chapter presents individual evaluations of public procurement legislative transparency and accountability in all 40 countries included in the TPPR rating. The countries are listed under the subheadings based on their Geographical location – Africa, America, Europe, Asia and Oceania. Member states of the Council of Europe covered by TPPR are grouped under the heading of Europe.<sup>12</sup> All other countries within the scope of TPPR are divided based on their geographical allocations provided by the UNdata.<sup>13</sup>

## Europe



### Albania

#### Overview

Albania joined the network of TPPR in 2018. The evaluation of public procurement legislation of Albania was conducted by the Albanian Institute of Science – an organization that promotes scientific activity and applied research to solve socio-economic problems, increase transparency, and strengthen civic engagement.<sup>14</sup> The TPPR team from IDFI reviewed the evaluation and published it on the website.<sup>15</sup> It must be noted, that the representative of the AIS notified us that no major amendments have been introduced in the public procurement legislation of Albania since 2018, meaning that the evaluation is also applicable to 2019 and 2020 years.

<sup>12</sup> Member states of the Council of Europe (CoE), available at: [https://www.coe.int/en/web/portal/47-members-states?fbclid=IwAR16QXQR50q8d7Pi5PVg4A8vWGNJE1ELoFRN\\_h19E4DHEUjvZYPgVliqk2l](https://www.coe.int/en/web/portal/47-members-states?fbclid=IwAR16QXQR50q8d7Pi5PVg4A8vWGNJE1ELoFRN_h19E4DHEUjvZYPgVliqk2l)

<sup>13</sup> UNdata is an internet-based data service which brings UN statistical databases within easy reach of users through a single entry point, available at: <http://data.un.org/en/index.html?fbclid=IwAR2V4EvBydJUPfxkLWVcjLeUgeSNKpX76YEBW9lqIR38zpbSRbXJPB5JvzA>

<sup>14</sup> For more information visit: <http://ais.al/new/en/about-ais/>

<sup>15</sup> <https://www.tpp-rating.org/page/eng/country/albania>



# Public Procurement Regulations

Public procurement in Albania is mainly regulated by Law No. 9643 dated 20.11.2006 On Public Procurement: the law sets out rules and procedures applying to the procurement of goods, works and services by contracting authorities.<sup>18</sup> The law aims to promote efficiency in public procurement procedures, ensure better use of public funds, promote competition among economic operators and guarantee integrity, public trust and transparency in public procurement procedures.

Public Procurement Legislation covers constitutional, central and independent central institutions, local governing units, any entity that has legal personality, is financed or managed by the government and is established to pursue a general and non-economic or commercial interest. PPL applies to organizations established by the above-mentioned public bodies too.

The procurement system in Albania is decentralized since each public entity executes its own public procurement processes.

PPL determines the Public Procurement Agency as a central procurement regulatory body with a legal and public personality reporting to the Prime Minister, and financed from the State Budget. The duties and competencies of the Public Procurement Agency are mainly focused on the following:

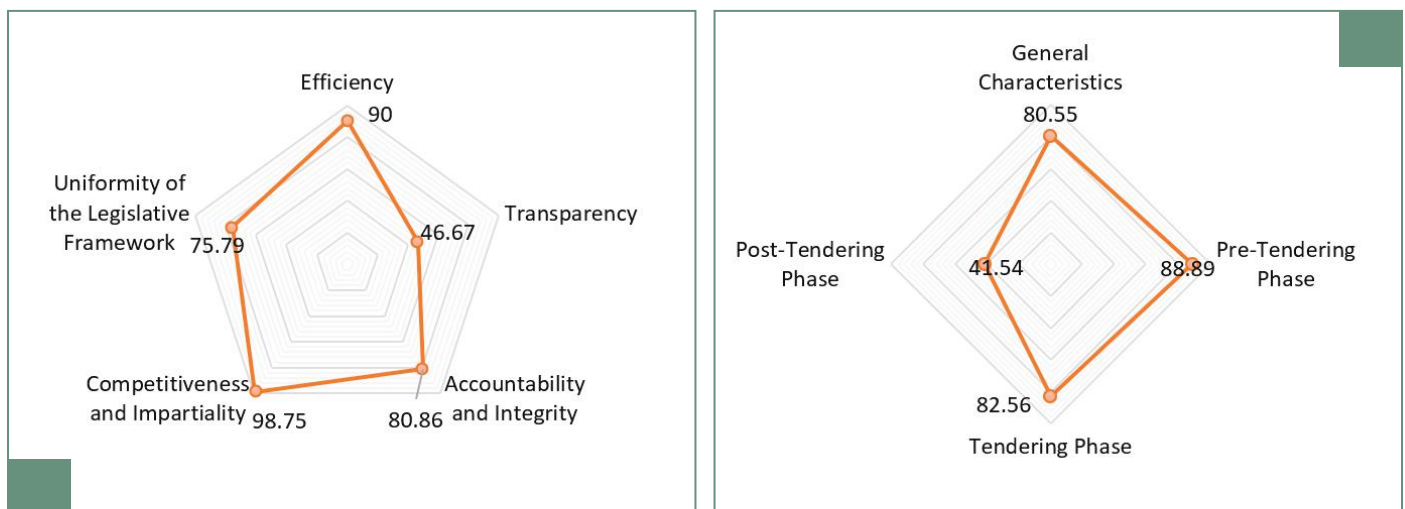
- Preparation of project-proposals for public procurement regulations, public auctions and those in the field of concessions/public-private partnerships, preparation of Standard Tender Documents and issuing the necessary instructions to assist the contracting authorities undertaking these procedures;
- Verification of the implementation of public procurement, concessions and public auction procedures after the phase of contract signature and in case of infringements of the legal and sub-legal provisions, penalizes with fines or proposes administrative measures;
- Monitor the progress of the public procurement system, and the implementation of measures and activities to achieve and maintain a completely transparent and efficient system of concessions/public-private partnerships;
- Preparation and publication of Public Notices Bulletin;
- Exclusion of economic operators from participation in public procurement, concessions or public auctions for a period of 1 to 3 years;
- Promotion and organization of trainings for central and local government officials, involved in public procurement activities.

<sup>18</sup> Public Procurement Legislation of Albania is available at: <http://www.app.gov.al/legislation/public-procurement/law/>

## Evaluation

The overall evaluation of PPL in Albania equals to 75.85%. Based on the stage of the procurement process the country has the highest performance at the stage of pre-tendering phase – 88.89%, post-tendering phase was evaluated with the lowest score compared to other stages with 41.54%.<sup>17</sup>

As for the benchmark indicators, Albania was granted the highest score in the area of Competitiveness and Impartiality – 98.75%. The legislation has also scored well in regards to the benchmark indicators of Efficiency and Accountability and Integrity with 90% and 80.86% respectively. The lowest performance compared to other benchmark indicators was demonstrated in the benchmark indicator of Transparency – 46.67%.



Low performance in the benchmark indicator of Transparency is mainly caused by the lack of legal guarantees to access contract performance information, payments receipt, inspection and quality control reports. Where PPL does grant access to public procurement-related documents, it is guaranteed only in electronic but non-machine-readable format. For instance, public procurement annual plans, notices of intended procurement tender documentation amendments, tender candidate applications, information about the bids offered by tender participants, submitted complaints, decisions of the tender commission, dispute resolutions and, public procurement contracts are not accessible in a machine-readable format. Moreover, PPL (including primary and secondary legislation) is available only in non-machine-readable format. Relevant state entities are not obliged by the law to maintain all procurement-related documentation in electronic or paper format. PPL does not define specific procedures for the acceptance of final products and processing of final payments, nor for modifying contracts.

## Recommendations

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Based on the evaluation of the public procurement system and legislation of Albania the it is evident that the country still has to undergo reforms aimed at increasing the level of transparency and accountability in the public procurement system. The main steps to be taken in this direction are:

- Ensuring that potential suppliers, as well as the wider public, have full access to public procurement related documents in a free, electronic and machine-readable format;
- PPL (including primary and secondary legislation) should become accessible in a free, electronic and machine-readable format;
- Ensuring that the legislation sets the obligation for procuring bodies to maintain all the procurement related documentation for a set period of time;
- Defining clear procedures for the acceptance of final products and processing of final payments;
- Adopting detailed regulations on the process of modifying contracts and ensuring access to contract amendments in electronic, machine-readable format.

## Overview

The evaluation of public procurement legislation of Armenia was conducted twice. Firstly in 2016 when Armenia joined the TPPR Network. The evaluation was conducted by the Freedom of Information Center of Armenia (FOICA). FOICA is based in Yerevan and promotes the application of Freedom of Information Law, contributing to the transparency and openness of the Armenian government.<sup>18</sup> The overall evaluation of PPL in Armenia in the years of 2016-2018 equalled 58.96.<sup>19</sup>

After the reform, in 2019, the Public Procurement Legislation of Armenia was evaluated once again,<sup>20</sup> this time by the National Center of Public Policy Research (NCPPR) – an organization also based in Yerevan, which focuses on public finances' monitoring including public procurement, economic and social policy research, and regional development issues.<sup>21</sup>

## Public Procurement Regulations

The public procurement system in Armenia is regulated by the Law on Procurement adopted on December 12, 2016.<sup>22</sup> The type of procurement system is mixed. The Law provides opportunities to conduct procurements both electronically and on paper. The Law has separate articles on documents, their validity and e-procurement. PPL applies to public administrative and local self-governmental bodies, state institutions, Central Bank, private entities, foundations, associations (unions) and non-commercial legal entities founded by state or having more than 50% state-owned shares, as well as legal persons receiving state funding in the form of donation or grant.

Instead of establishing a separate public procurement regulatory body, relevant functions fall within the mandate of the Ministry of Finance. The public procurement system built on the website of the Ministry of Finance serves as the venue for accessing various public procurement related information.<sup>23</sup> Relevant legal acts as well as annual public procurement reports and other relevant information can be accessed on the website.

Public procurement review procedures in Armenia are conducted through the Procurement Complaint Appeal and Review Board (PCARB). The members of the board are appointed for the term of five years by the President of Armenia upon the nomination from the Prime Minister.

<sup>18</sup> For more information visit: <http://www.foi.am/en>

<sup>19</sup> Detailed TPPR evaluation of Armenia in 2016-2018 available at: [https://www.tpp-rating.org/public/uploads/PPL%20Assessments%20ENG/PPL\\_Assessment\\_Armenia\\_16\\_18.pdf](https://www.tpp-rating.org/public/uploads/PPL%20Assessments%20ENG/PPL_Assessment_Armenia_16_18.pdf)

<sup>20</sup> Detailed TPPR evaluation of Armenia in 2019 available at: [https://www.tpp-rating.org/public/uploads/PPL%20Assessments%20ENG/PPL\\_Assessment\\_Armenia\\_19.pdf](https://www.tpp-rating.org/public/uploads/PPL%20Assessments%20ENG/PPL_Assessment_Armenia_19.pdf)

<sup>21</sup> For more information visit: <http://policyobserver.am/?lang=en>

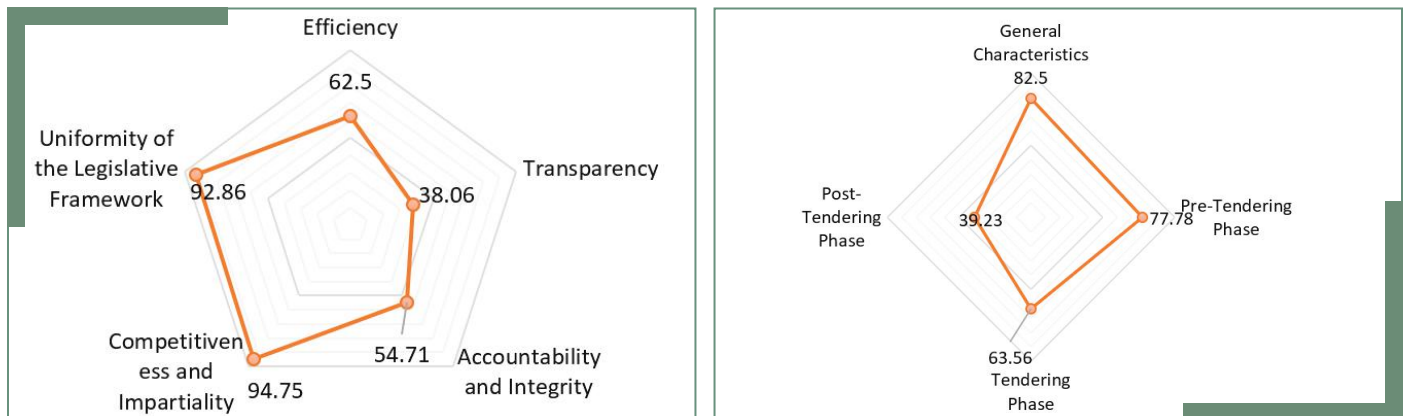
<sup>22</sup> Public Procurement Legislation of Armenia is available at: <https://gnumner.amen>

<sup>23</sup> Website of the Ministry of Finance of Armenia, available at: <https://gnumner.am/>

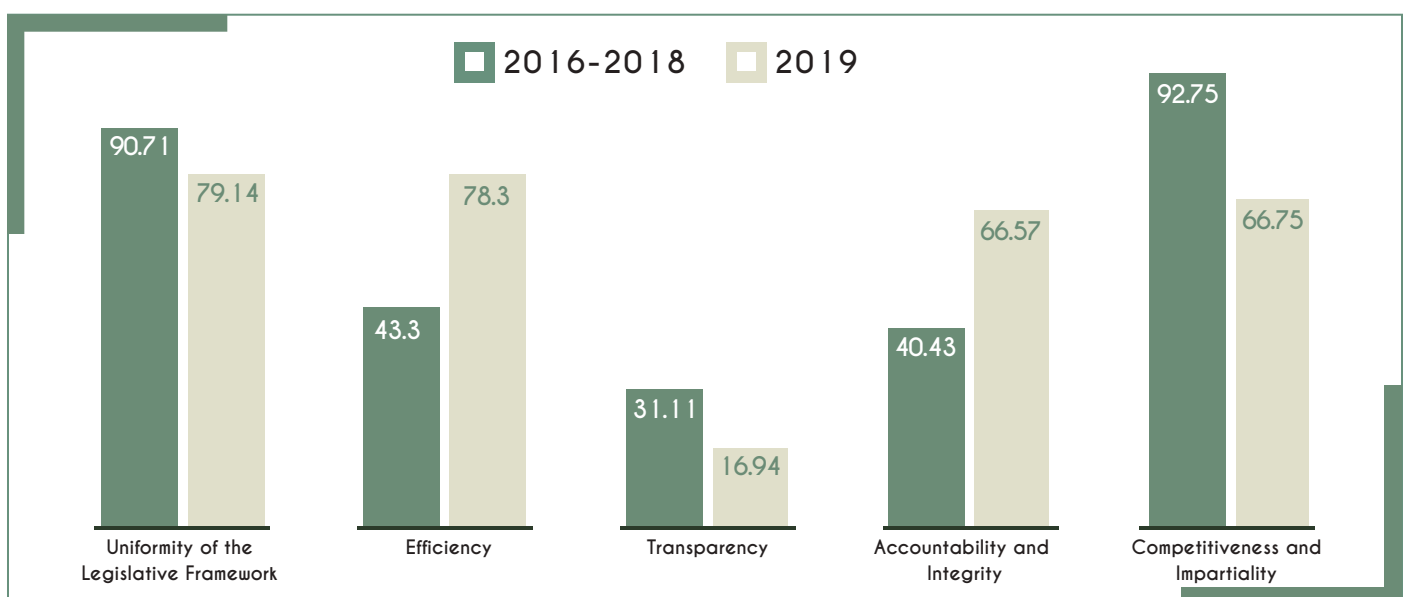
## Evaluation

The overall, most recent evaluation of PPL in Armenia equals 66.26%. Based on the stages of the procurement process the country has the highest performance at the pre-tendering phase – 77.78%, post-tendering phase was evaluated with the lowest score compared to other stages - 39.23%.<sup>24</sup>

As for the benchmark indicators, Armenia was granted the highest score in the area of Competitiveness and Impartiality – 94.75%. The lowest performance compared to other benchmark indicators was demonstrated in the benchmark indicator of Transparency – 38.06%.



It should be noted that the most recent evaluation of Armenia showed considerable improvement in the overall score and all stages of procurement (Pre-tendering, Tendering and Post-tendering). However, it also demonstrated considerable setbacks in three benchmark indicators. Progress was demonstrated in the benchmark indicators of Efficiency and Accountability and Integrity. In the assessment of 2016-2018 Efficiency was evaluated with 43.3%, while in 2019 the figure increased to 78.3%. Similarly, the score of Armenia in the benchmark indicator of Accountability and Integrity increased from 40.43% in 2016-2018 to 66.57% in 2019.



<sup>24</sup> Detailed TPPR evaluation of Armenia, available at: [https://www.tpp-rating.org/public/uploads/PPL%20Assessments%20ENG/PPL\\_Assessment\\_Armenia\\_19.pdf](https://www.tpp-rating.org/public/uploads/PPL%20Assessments%20ENG/PPL_Assessment_Armenia_19.pdf)

Relatively low performance in several benchmark indicators, including Transparency, is mainly caused by the following shortcomings:

- The business registry is not publicly available;
- Public officials are not required to file declarations;
- PPL does not reference sanctions for violations of the PPL;
- The decision to use a non-competitive procedure is not necessarily made public by the procuring entity;
- Key information/documents related to public procurements are either not accessible at all, not free of charge, non-machine readable, or only accessible on paper;
- There is no legal obligation for procuring bodies to maintain all the procurement-related documentation.

## Recommendations

Based on the evaluation of the public procurement system and legislation of Armenia it is evident that the country has a long way to go to establish more accountable and transparent public procurement procedures. Some of the main steps to be taken in this direction are:

- Business registry becoming publicly available;
- Obliging public officials by law to file asset declarations;
- PPL must prescribe sanctions for violating the rules of PPL;
- Procuring entities should be obliged to justify using a non-competitive procedure, publish relevant decisions and maintain all the procurement related documentation;
- Providing full access to public procurement related documents in a free, electronic and machine-readable format for bidding participants and the wider society;

## Overview

Azerbaijan's PPL was also evaluated twice. Firstly in 2016 (the evaluation applied to 2016-2018 years) and secondly in 2019. The earlier evaluation was conducted by Transparency International Azerbaijan (TI-Azerbaijan) - an organization based in Baku, working on raising public awareness, researching and identifying reasons and forms of corruption in Azerbaijan.<sup>25</sup> The overall evaluation of PPL in Azerbaijan in the years 2016-2018 equalled to 48.62%.<sup>26</sup> The most recent evaluation of Public Procurement Legislation covering the year 2019 was prepared by the independent expert Farhad Mehdiyev.<sup>27</sup>

## Public Procurement Regulations

Public procurement in Azerbaijan is mainly regulated by the Law of Azerbaijan on public procurement (27.12.2001) and relevant amendments (the last amendment was adopted on December 28, 2018).<sup>28</sup> The Law applies to all state bodies, including organizations and enterprises, with more than 30% of the shares owned by the state. However, the Law does not apply to the local self- government entities - municipalities. The status of municipalities is defined separately from state bodies under the Constitution. A separate decree establishes the general parameters that guide municipal procurement, however, the document has considerable gaps.<sup>29</sup>

The PPL of Azerbaijan does not exempt key sectors of the economy from the jurisdiction of the law on public procurement. However, it significantly curtails the competitiveness of the bidding process by allowing preferences for local businesses.

Until January 2016, the State Procurement Agency was the regulatory body overseeing the area of public procurement. The Presidential Decree of January 2016 liquidated the Agency and delegated its responsibilities/functions to the Ministry of Economy. As such, the Ministry is not a subordinate body. Currently, the State Agency for Antimonopoly Policy and Protection of Consumer Rights under the Ministry of Economy performs the duties of a public procurement regulatory body.

## Evaluation

The overall, most recent evaluation of PPL in Azerbaijan equals 55.15%. Based on the stage of the procurement process the country has the highest performance at the pre-tendering

<sup>25</sup> For more information visit: <http://transparency.az/eng/>

<sup>26</sup> Detailed TPPR evaluation of Azerbaijan in 2016-2018 available at: [https://www.tpp-rating.org/public/uploads/PPL%20Assessments%20ENG/PPL\\_Assessment\\_Azerbaijan\\_2016\\_1.pdf](https://www.tpp-rating.org/public/uploads/PPL%20Assessments%20ENG/PPL_Assessment_Azerbaijan_2016_1.pdf)

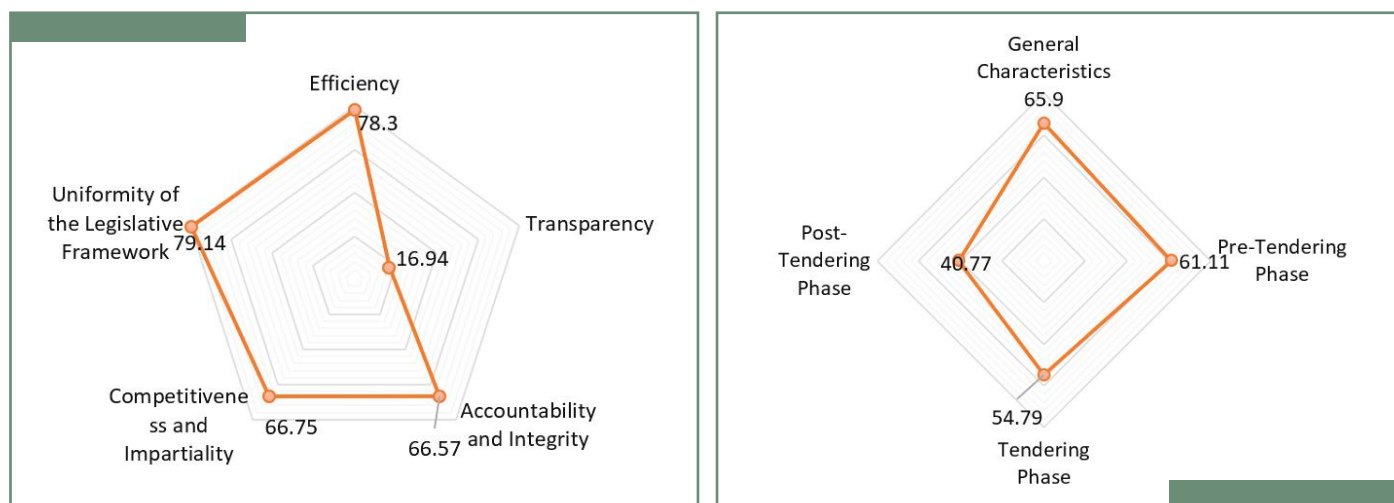
<sup>27</sup> Detailed TPPR evaluation of Azerbaijan in 2019 available at: [https://www.tpp-rating.org/public/uploads/PPL%20Assessments%20ENG/PPL\\_Assessment\\_Azerbaijan\\_2019.pdf](https://www.tpp-rating.org/public/uploads/PPL%20Assessments%20ENG/PPL_Assessment_Azerbaijan_2019.pdf)

<sup>28</sup> Public Procurement Legislation of Azerbaijan is available at: <https://www.tender.gov.az>

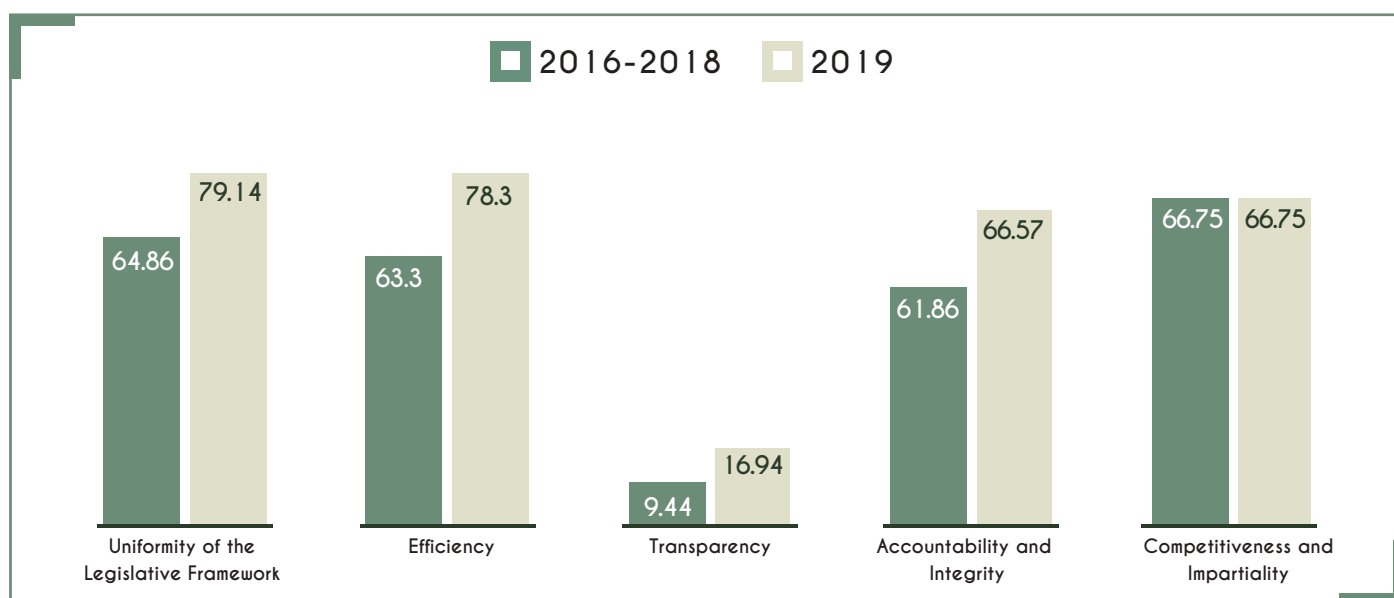
<sup>29</sup> Accessible on: <http://e-qanun.az/framework/4377>

phase – 61.11%, while the post-tendering phase was evaluated with the lowest score compared to other stages - 40.77%.<sup>30</sup>

As for the benchmark indicators, Azerbaijan was granted the highest score in the area of Uniformity of Legislative Framework – 79.14%. The lowest performance compared to other benchmark indicators was demonstrated in the area of Transparency – 16.94%.



It should be noted that the most recent evaluation of Azerbaijan demonstrates considerable progress in every stage of the procurement and in almost every benchmark indicator, except for the benchmark indicator of Competitiveness and Integrity, the evaluation of which has not changed.



Relatively low performance in several benchmark indicators, especially in transparency, is mainly caused by the reason that the state procurement system lacks transparency and efficiency, the legislative framework leaves space for collusive and corrupt practices and public oversight over the procurement system is not ensured by the law.



Even though the legislation has several structural problems, according to the TPPR assessment most prominent issues arise during the post-tendering phase. In terms of values, Azerbaijan has the most drawbacks in the transparency of the system.

Azerbaijan's regulatory environment is not generally conducive to conducting fair and competitive procurement. This makes it very difficult to identify potential conflicts of interest that may influence the outcome of tenders.

PPL does not adequately provide for the accountability and integrity of the procurement process. Tenders are off-limits to the public; civil society organizations do not have an oversight role in the tender process. The information on tender results that is publicly disclosed is inadequate to gauge the efficiency and integrity of the bidding process. PPL does not ensure access to tender-related documents, such as tender candidate applications, bids offered by tender participants, decisions of tender commissions, contract information, etc.

## Recommendations

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Based on the evaluation of the public procurement system and legislation of Azerbaijan it is evident that the country has a long way to go to establish more accountable and transparent public procurement procedures. Some of the main steps to be taken in this direction are:

- Business registry/budgets of all public procuring entities becoming publicly available;
- Obliging public officials by law to file asset declarations;
- Establishing a mechanism of consultation with the civil society sector that would be aimed at receiving feedback and identifying problems in the procurement system;
- Amending PPL to oblige the procuring body: a) to justify using a non-competitive procedure and making the decision public; b) to have a staff member responsible for conducting procurement activities;
- Ensuring that tender participants, as well as the wider society, have full access to public procurement related documents at all stages of procurement in a free, electronic and machine-readable format;
- Strengthening quality control and inspections procedures and ensuring the publicity of relevant documents.

## Overview

Belarusian Institute for Public Administration Reform and Transformation BIPAR joined the TPPR network in 2017. BIPART is a research project that aims to promote public administration reform in Belarus through advocating for the modernization of governance and promoting the implementation of best practices.<sup>31</sup> The evaluation of the Belarusian PPL covers the period of 2017-2019 years.<sup>32</sup>

## Public Procurement Regulations

Public procurement in Belarus is mainly regulated by Law No. 419-3 dated 13.17.2012 on Public Procurement.<sup>33</sup> After the adoption, the law introduced several major novelties. Firstly, procurement procedures were unified and six types of public procurement procedures were introduced: open tender, closed tender, e-auction, request for quotation, single source (direct) procurement and exchange bidding. Information on public procurement was made more accessible through a procurement website - <http://www.icetrade.by>, which accumulates information on public procurement as well as statistics and legal acts that regulate public procurement.

The scope of coverage of PPL does not include all sectors of the economy where competition is possible (building and construction industry, certain services in the area of healthcare and medicine, as well as the area of information and communication technology (ICT) are excluded from the scope of the Public Procurement).

PPL determines the Council of Ministers of the Republic of Belarus as a public procurement regulatory body. The duties and competencies of the Council of Ministers of the Republic of Belarus in the field of public procurement are mainly focused on the following:

- Implementation of a unified state policy;
- Concluding/implementing intergovernmental treaties;
- Defining electronic trading platforms for open tenders, electronic auctions and procedures for requesting price proposals;
- Establishing preferential regulations related to the goods (works, services) of domestic production;
- Where necessary, determining additional requirements for goods (works, services) that are the subject of public procurement;
- Establishing model forms of procurement contracts;

<sup>31</sup>For more information visit: <http://sympa-by.eu/en/bipart/about>.

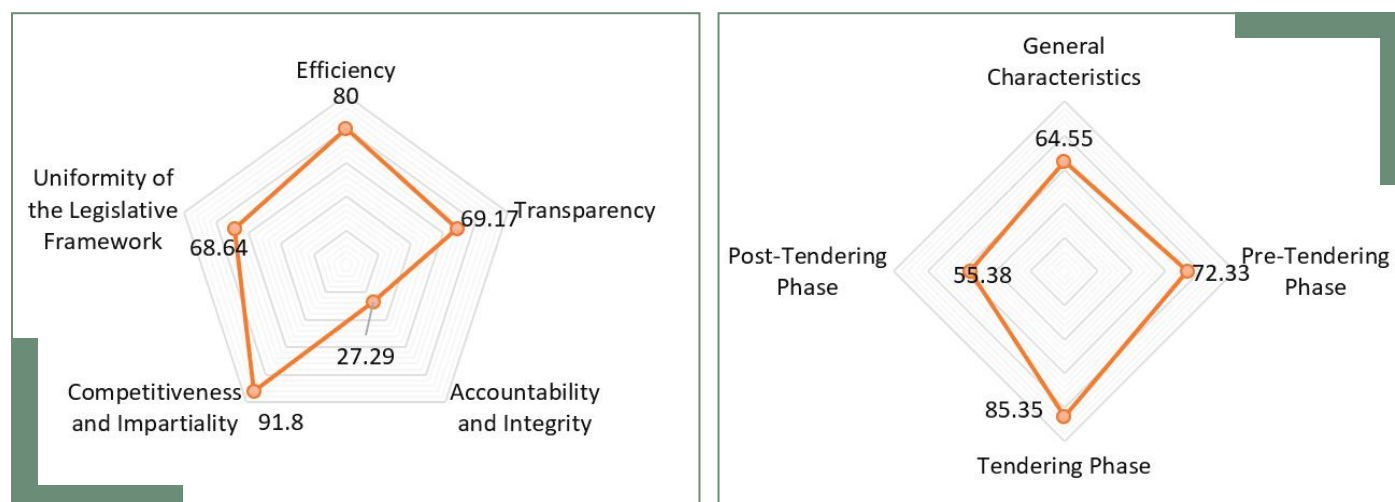
<sup>32</sup><https://www.tpp-rating.org/page/eng/country/belarus>

<sup>33</sup>Public Procurement Legislation of Belarus is available at: <https://www.pravo.by/document/?guid=3871&p0=H11200419>

## Evaluation

The overall evaluation of PPL in Belarus equals to 70.5%. Based on the stage of the procurement process the country has the highest performance at the stage of tendering phase – 85.35%, post-tendering phase was evaluated with the lowest score compared to other stages with 55.38%.<sup>34</sup>

As for the benchmark indicators, Belarus was granted the highest score in the area of Competitiveness and Impartiality – 91.8%. The legislation has also scored respectively well in regards to Efficiency– 80%. The lowest performance compared to other benchmark indicators was demonstrated in the area of Accountability and Integrity– 27.29%.



The poor performance of Belarus in a number of benchmark indicators and particularly in the area of Accountability and Integrity is mainly caused by the lack of:

- Mechanisms of consultation with the civil society sector that would be aimed at receiving feedback and identifying problems in the procurement system;
- Sanctions for violation of PPL;
- Individual responsibilities and consequences for government employees and private firms or individuals found guilty of fraud or corruption;
- The legislative definition of conflict of interest and relevant preventive mechanisms;
- A legal provision stating that the procurement process should not normally be initiated until the appropriate financial resources have been identified;
- A legal provision stating that justification for using a non-competitive procedure must be made public by the procuring entity;
- Legal obligation for public procurement operations to be subject to internal and external audits.

<sup>34</sup> Detailed TPPR evaluation of Belarus, available at: [https://www.tppr-rating.org/public/uploads/PPL%20Assessments%20ENG/PPL\\_Assessment\\_Belarus\\_16\\_19.pdf](https://www.tppr-rating.org/public/uploads/PPL%20Assessments%20ENG/PPL_Assessment_Belarus_16_19.pdf)

Moreover, the PPL in Belarus does not stipulate that each procuring entity has a staff member responsible for conducting procurement activities. Even though the e-platform is fully functional, the PPL does not stipulate that electronic means are the primary method of conducting public procurement. Regardless of the above-mentioned, the legislation stipulates that notices of intended procurement, tender documentation, bids offered by potential suppliers, decisions of tender commissions, contracts and contract performance information have to be published and available in a machine-readable format.

## Recommendations

Based on the evaluation of the public procurement system and legislation of Belarus it is evident that the country has a long way to go to establish more accountable public procurement procedures. Some of the main steps to be taken in this direction are:

- Establishing a mechanism of consultation with the civil society sector that would be aimed at receiving feedback and identifying problems in the procurement system;
- Establishing sanctions for violation of PPL and legal responsibilities for government employees and private firms or individuals found guilty of fraud or corruption;
- Establishing a legislative definition of conflict of interest and its prevention mechanisms;
- Amending PPL to guarantee quality internal and external audit for public procurement operations;
- Amending PPL to oblige the procuring body: a) not to initiate procurement, until locating appropriate financial recourses; b) to justify using a non-competitive procedure and making the decision public; c) to have a staff member responsible for conducting procurement activities; and d) use electronic means as the primary method of conducting public procurement and communication.

## Overview

In TPPR Network Bosnia and Herzegovina (BiH) is represented by Transparency International (TI). TI BiH works towards researching and identifying reasons and forms of corruption and raising public awareness on the topic.<sup>35</sup> The evaluation of public procurement legislation of BiH was conducted in 2018 and originally covered the period of 2016-2018.<sup>36</sup> However, the representative of TI BiH notified us that no major amendments have been introduced in the public procurement legislation since 2018, meaning that the evaluation was also applicable to 2020.

## Public Procurement Regulations

The current PPL in BiH was adopted in May 2014 and entered into force in November 2014. The law was prepared in line with the EU Directives, as well as other legal acts in BiH.<sup>37</sup> The new PPL of BiH takes into account a wide range of legal acts that are closely related to the public procurement system. The PPL covers every institution in BiH at the cantonal, city, or municipal levels including any entities personality with legal personality, financed or managed by the government and established to pursue a general and non-economic or commercial interest (more detailed conditions can be seen in Article 4 of the PPL).

An independent Public Procurement Agency is established in BiH. The duties and competencies of an agency are mainly focused on the following:

- Drafting legal documents to improve the effectiveness of public procurement;
- Developing electronic information systems;
- Promoting awareness about public procurements and their goals, procedures, and methods;
- Publishing manuals and instructions, as well as drafting and updating standard forms and models;
- Providing technical assistance to contracting authorities and bidders;
- Establishing the system of monitoring procurement procedures;
- Publishing analysed information about public procurement procedures and awarded public procurement contracts;
- Drafting annual reports to BiH Council of Ministers.

<sup>35</sup> For more information visit: <https://www.transparency.org/country/BiH>.

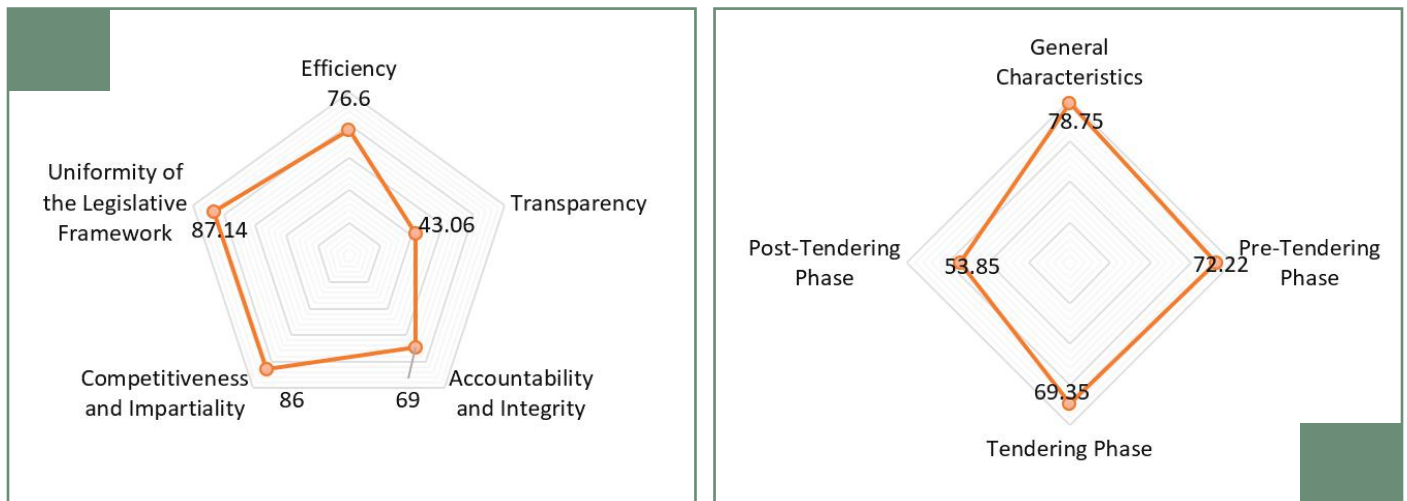
<sup>36</sup> <https://www.tpp-rating.org/page/eng/country/bosniaandherzegovina>

<sup>37</sup> Public Procurement Legislation of BiH is available at: [https://www.javnenabavke.gov.ba/legislative/zakoni/Novi\\_ZJN\\_BiH\\_en.pdf](https://www.javnenabavke.gov.ba/legislative/zakoni/Novi_ZJN_BiH_en.pdf)

## Evaluation

The overall evaluation of PPL in BiH equals to 71.94%. Based on the stage of the procurement process the country has the highest performance at the pre-tendering phase - 72.22%, post-tendering phase was evaluated with the lowest score compared to other stages - 53.85%.<sup>38</sup>

As for the benchmark indicators, BiH was granted the highest score in the area of Uniformity of the Legislative Framework - 87.14%. The legislation has also scored well in regards to Competitiveness and Impartiality - 86%. The lowest performance compared to other benchmark indicators was demonstrated in the area of Transparency - 43.06%.



Low performance in the benchmark indicator of Transparency is mainly caused by the lack of transparency and feedback mechanisms in the PPL of BiH. PPL does not oblige procuring entities to inform each tender participant of the decision reached about the winner of the tender, including failure to do so. Information on subcontractors is not publicly available. PPL does not define the procedures for inspection and quality control procedures and respectively, access to any inspection and quality control reports is not guaranteed. Moreover, justification for using a non-competitive procedure is not necessarily made public by the procuring entity and the right to review is only guaranteed for tender participants.

PPL of BiH does guarantee access to certain public procurement information, however, it is not accessible in a machine-readable format. Such information includes public procurement annual plans, notices of intended procurement, tender documentation amendments, decisions of the tender commission, dispute resolutions, public procurement contracts and contract amendments. Moreover, access to tender candidate applications, information about the bids offered by the tender participant, submitted complaints, contract performance information, payment receipts and information about bids offered by the tender participant are only available on paper.

## Recommendations

Based on the evaluation of the public procurement system and legislation of BiH the following steps need to be taken for increasing the level of procurement transparency in the country:

- Obliging procuring entities to inform each tender participant about the winners of the tender procedures;
- Publishing information on subcontractors;
- Defining specific procedures for inspection and quality control, and ensuring access to relevant reports/documents;
- Obliging procuring entities to justify using a non-competitive procedure and ensuring access to relevant decisions;
- Ensuring that tender participants are given sufficient time to prepare and submit the tender applications;
- Right to review must be guaranteed for all interested parties, including the general public, tender participants and potential suppliers;
- Providing full access to public procurement related documents in a free, electronic and machine-readable format.

## Overview

Oživení is a TPPR member organization from the Czech Republic striving to reduce the level of corruption, conflict of interest, clientelism and other forms of abuse of public power for private gain.<sup>39</sup> Conducting the TPPR evaluation of the Czech Republic was made possible with close cooperation with Oživení. The evaluation covers the period of 2016-2020.<sup>40</sup>

## Public Procurement Regulations

Public Procurement in the Czech Republic is regulated by the Act. No. 134/2016 on public procurement, which besides the conventional procurement procedures incorporates concessions.<sup>41</sup>

The Czech Republic does not have a separate agency for public procurement management, however, the function is performed by the Ministry for Local Development, which is responsible for drafting legislation on public procurement (primary and secondary legislation) and ensuring the operation of public procurement information system. Ministry also monitors the public procurement market and publishes relevant annual reports.

The Czech Republic has a public procurement portal - <https://nen.nipez.cz>, where contract notices and results of the competition are published. All relevant documents regarding the tender procedures are published on the portal - tender documentation, questions from bidders, reports on the evaluation of bids, signed contracts, the interim and final prices of the contracts, etc. Nevertheless, electronic procurement is not the primary method of conducting public procurement.

## Evaluation

The overall evaluation of PPL in the Czech Republic equals to 65.48%. Based on the stages of the procurement process the country has the highest performance at the tendering phase - 86.24%, pre-tendering and post-tendering phases both were evaluated with lower scores of 38.89% and 38.46% respectively.<sup>42</sup> As for the benchmark indicators, Czech Republic received the highest score in the area of Competitiveness and Impartiality - 88%. The lowest performance compared to other benchmark indicators was demonstrated in the area of Accountability and Integrity– 52.29%.

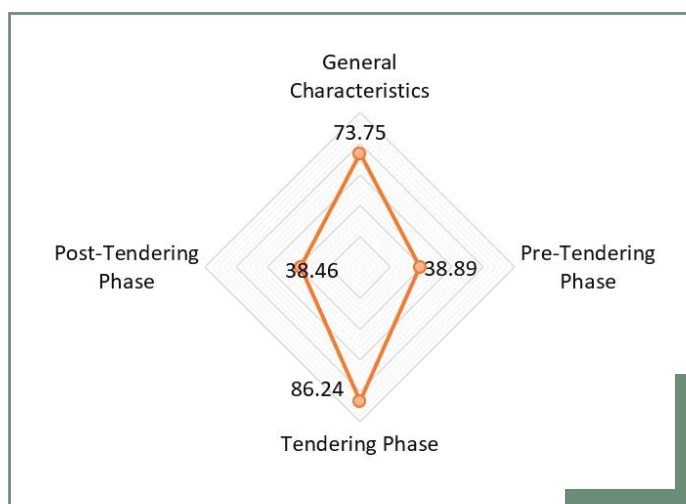
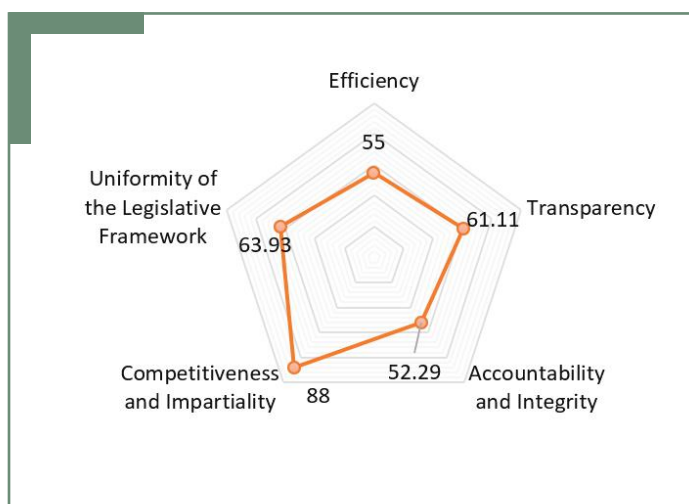
<sup>39</sup>For more information visit: <https://www.oziveni.cz/english/>

<sup>40</sup><https://www.tpp-rating.org/page/eng/country/czechrepublic>

<sup>41</sup>Public Procurement Legislation of Czech Republic is available at: <http://www.portal-vz.cz/cs/jak-na-zadavani-verejnych-zakazek/Legislativa-a-Judikatura/Legislativa/Zakon-o-zadavani-verejnych-zakazek-a-jeho-provade-ci-predpisy/Uplne-aktualni-zneni-zakona-o-zadavani-verejnych-zakazek>

<sup>42</sup>Detailed TPPR evaluation of Czech Republic, available at: [https://www.tpp-rating.org/public/uploads/PPL%20Assessments%20ENG/PPL\\_Assessment\\_Czech\\_16\\_20.pdf](https://www.tpp-rating.org/public/uploads/PPL%20Assessments%20ENG/PPL_Assessment_Czech_16_20.pdf)





Some of the aspects negatively affecting the PPL evaluation of the Czech Republic are:

- Absence of the mechanism of consultation with the private and civil society sectors;
- Lack of regulations obliging the procuring entity to have a staff member responsible for conducting procurement activities;
- No legal guarantees to access submitted complaints, public procurement annual plans, tender candidate applications, information on subcontractors, contract performance information, payment receipts, and, inspection and quality control reports;
- Lack of obligation for procuring bodies to publish key information about their procurement plans;
- Absence of inspection and quality control procedures as well as the regulations subjecting public procurement operations to internal and external audits conducted by qualified specialists.

## Recommendations

Based on the evaluation of the public procurement system and legislation of the Czech Republic it is evident that the country has to undergo reforms to establish more transparent and accountable public procurement procedures. Some of the main steps to be taken in this direction are:

- Establishing a mechanism of consultation with the civil society sector that would be aimed at receiving feedback and identifying problems in the procurement system;
- Providing full access to public procurement related documents in a free, electronic and machine-readable format for tender participants as well as for the wider society;
- Defining the composition, powers, responsibilities and decision-making procedures of the body responsible for conducting tender within the procuring entity;
- Amending PPL to define the procedures for inspection and quality control as well as internal and external audits of procurement contracts and ensuring access to relevant reports and documents.

## Overview

Georgian PPL was evaluated twice by IDFI itself in 2017 and 2020. The earlier overall evaluation of PPL in Georgia equalled to 86.14%,<sup>43</sup> while the most recent evaluation demonstrated progress with an overall score of 90.75%.<sup>44</sup> This was caused by a number of important amendments positively affecting the TPPR evaluation of Georgia.

## Public Procurement Regulations

Along with the Constitution of Georgia, the main legislative acts in the area of public procurement are the Law on Public Procurement, the Statute of the State Procurement Agency (SPA) approved by the Government of Georgia as well as orders issued by the Chairperson of the SPA.<sup>45</sup> Procurement procedures determined by the World Bank, UN, EBRD, ADB, KFW and EIB may be applied when conducting public procurement, if these organizations are involved in the legal relations related to the implementation of the procurement.

The law of Georgia on Public Procurement determines the general legal, organizational and economic principles for conducting public procurement. The SPA ensures rational expenditure of funds designated for state procurement, promotes healthy competition, ensures a fair and non-discriminatory approach to participants and takes relevant steps for the publicity of procurement information inter alia through running and maintaining the Unified Electronic System of State Procurement. Since 2010, all tenders in Georgia are 100% electronic. The electronic platform [www.spa.gov.ge](http://www.spa.gov.ge) is user-friendly and provides free access to the vast spectrum of public procurement information. Since its launch, the e-platform has considerably increased the efficiency of public procurement procedures in Georgia.

According to the legislation, dispute over the state procurement process is heard by an independent and impartial Dispute Resolution Council, the purpose of which is to resolve cases in a timely, efficient and fair manner. The Council is not a subsidiary of any state entity and is official. At the level of the municipalities Mayor's Offices adopt annual procurement plans, which are later approved by the SPA. Public procurement is conducted by the local financial-municipal departments via the online procurement system. Mayor's Offices are responsible to provide Municipal Councils with the report on the implementation of Procurement Plans on an annual basis.

<sup>43</sup>Detailed TPPR evaluation of Georgia 2017 available at: <https://www.tpp-rating.org/page/eng/country/Georgia/2017>

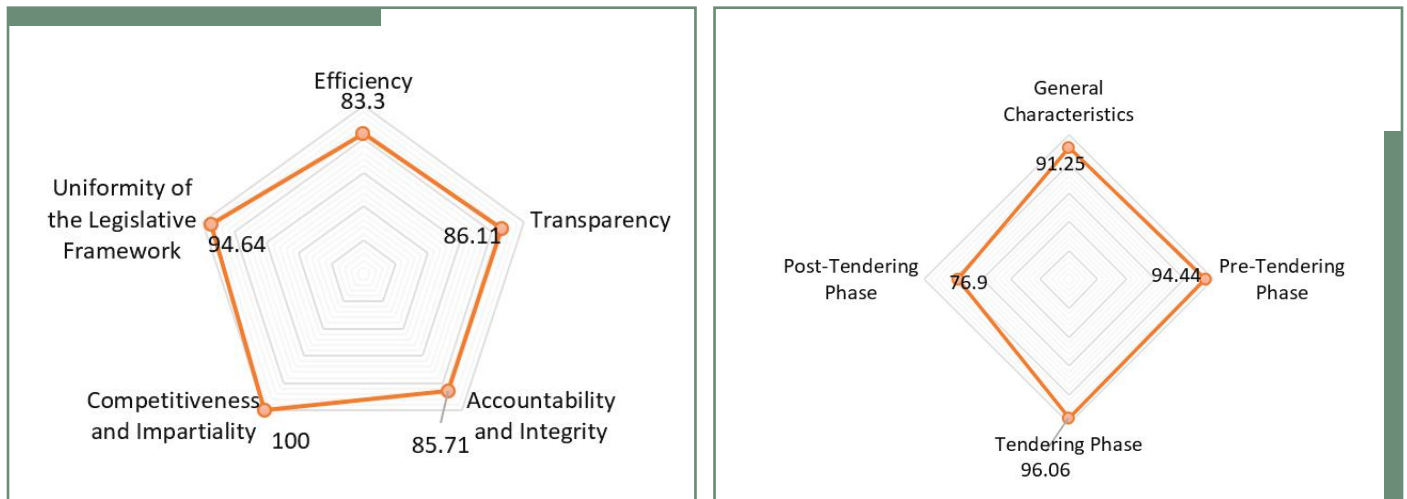
<sup>44</sup>Detailed TPPR evaluation of Georgia 2020 available at: [https://www.tpp-rating.org/public/uploads/PPL%20Assessments%20ENG/PPL\\_Assessment\\_Georgia\\_20.pdf](https://www.tpp-rating.org/public/uploads/PPL%20Assessments%20ENG/PPL_Assessment_Georgia_20.pdf)

<sup>45</sup>Public Procurement Legislation of Georgia available at: <http://procurement.gov.ge/ELibrary/LegalActs.aspx?lang=en-US>

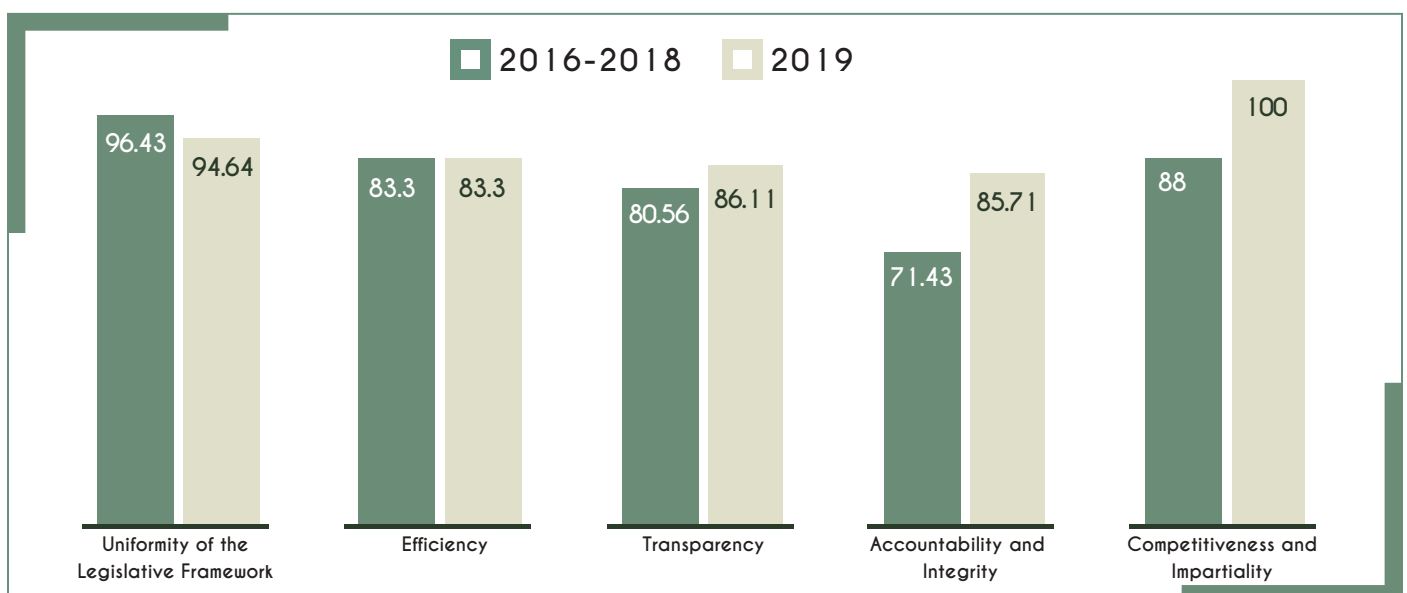
## Evaluation

The overall evaluation of PPL in Georgia equals to 90.75%. Based on the stage of the procurement process the country has the highest performance at the tendering phase – 96.06%, post-tendering phase was evaluated with the lowest score compared to other stages with 76.92%.

As for the benchmark indicators, Georgia was granted the maximum score in the area of Competitiveness and Impartiality - 100%. The lowest performance compared to other benchmark indicators was demonstrated in the benchmark indicator of Efficiency- 83.3%.



It should be noted that the most recent evaluation of Georgia demonstrates progress in a number of benchmark indicators such as Transparency, Accountability and Integrity and Competitiveness and Impartiality. The TPPR assessment confirms that Georgia's procurement legislation ensures transparency, efficiency and a competitive environment of the procurement system. According to the assessment, Georgia is one of the leading countries included in TPPR in terms of transparency, with relevant information on tender documentation (including its amendments), being publicly available in a machine-readable format, free of charge.



Despite Georgia's high performance in the assessment, the evaluation identified a number of areas for improvement. The number of exceptions from conducting direct procurement remains a problem as their abundance creates solid ground for the inefficiency of the procurement system, moreover, the legislation does not provide for a mechanism of consultation with the private and civil society sectors aimed at identifying existing problems in the public procurement system. The legislation does not guarantee access to the information on subcontractors. The right to review is limited to tender participants and does not extend to the wider public. In addition, access to relevant procurement-related information is only ensured in electronic but non-machine-readable format.

## Recommendations

Based on the evaluation of the public procurement system and legislation of Georgia it is evident that the country has to take the following steps aiming at further developing its public procurement system:

- Ensuring that the legislation provides for a mechanism of consultation with the private and civil society sectors that is aimed at receiving feedback and identifying problems in the procurement system;
- Ensuring access to the Information on subcontractors;
- Together with tender participants and potential suppliers extend the right to review to the wider public;
- In cases when evaluation criteria include price and quality ensure that legislation stipulates that the winner should be chosen using a cost-effective approach taking into consideration life-cycle as well as environmental and social costs;
- Publishing all public-procurement related information in a free, electronic and machine-readable format.

## Overview

In the TPPR network, Hungary is represented by K-monitor, a civil society organization fighting against corruption and promoting transparency of public spending in the country. K-monitor manages open data websites, conducts research and advocates for reforms both on the national and local levels.<sup>46</sup> The TPPR evaluation of Hungary was conducted in 2018 and covers the years of 2016-2018.<sup>47</sup>

## Public Procurement Regulations

After joining the European Union (EU), Hungary began the process of harmonizing its procurement system with the standards set by relevant EU regulations. The new public procurement law was adopted in 2015 and entered into force on November 1st of the same year. The primary legal text regulating the area of public procurement is the Act CXLIII of 2015 on Public Procurement (PPL), which defines national rules on public procurement procedures and concessions and implements the EU Directives 2014/23/EU, 2014/24/EU and 2014/25/EU.<sup>48</sup> In addition to the main legislative act, public procurement regulations also include several governmental and ministerial decrees, the aims of which are to regulate matters such as centralized procurements, the order of publication and standard forms. The particularity of the PPL of Hungary is that it has multiple exemptions for simplified procedures below EU thresholds. For instance, the procurement of groceries, sport and cultural services are exempt from the PPL.

Hungary has two bodies responsible for the management and coordination of the public procurement system, the Procurement Management Office (PMO) and the autonomous Public Procurement Authority (KH). The PMO has primary responsibility for drafting legislation related to public procurement. At the same time, it provides support and guidance to contracting authorities. The KH acts more as an analytical resource centre of the public procurement system. It publishes operational and statistical information via annual reports, as well as the official Public Procurement Bulletin and the central register of award procedures. Based on its analytical products, it also issues non-binding guidance documents, organizes training sessions and seminars for relevant interested parties.

## Evaluation

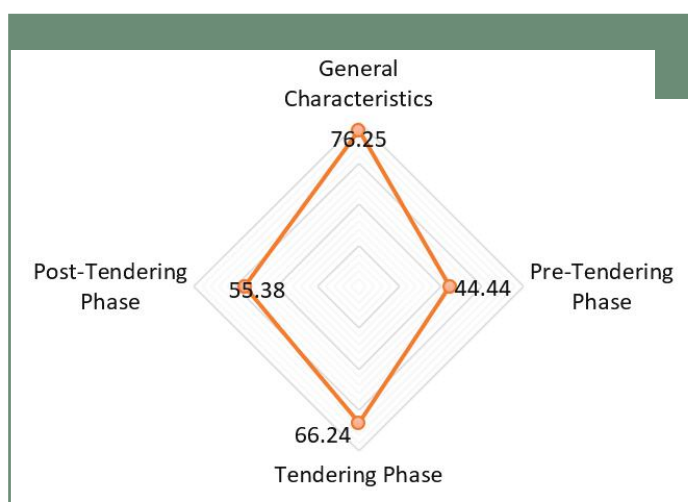
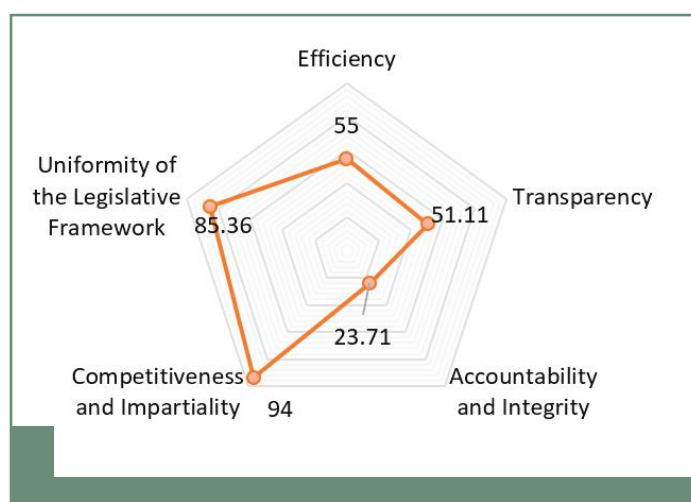
The overall evaluation of PPL in Hungary equals to 66.73%. Based on the stage of the procurement process the country has the highest performance at the stage of tendering phase – 66.24%, pre-tendering phase was evaluated with the lowest score compared to other stages

<sup>46</sup> For more information visit: <http://k-monitor.hu/home>

<sup>47</sup> <https://www.tpp-rating.org/page/eng/country/hungary>

<sup>48</sup> Public Procurement Legislation of Hungary is available at: <https://www.kozbeszerzes.hu/torveny/act-cxliii-of-2015-on-public-procurement/7/23/187/>.

with 4.44%.<sup>49</sup> As for the benchmark indicators, Hungary was granted the highest score in the area of Competitiveness and Impartiality- 94%. The lowest performance compared to other benchmark indicators was demonstrated in the area of Accountability and Integrity - 23.71%.



Relatively low performance in several benchmark indicators is caused by the lack of:

- Mechanisms of consultation with the private and civil society sectors;
- Legal stipulation obliging the procuring entity to have a staff member responsible for conducting procurement activities;
- Legal obligation for procuring entities to publish public procurement annual plan;
- Legal obligation to plan procurement and estimate associated expenditures simultaneously to state budget formulation process in a fiscal year;
- A legal provision stating that justification for using a non-competitive procedure must be made public by the procuring entity;
- Explicit legal prohibition for the experts providing consulting services to take part/benefit from tenders;
- Procedures for inspection and quality control;
- Legal guarantees to conduct quality internal and external audits checks of public procurement operations.

## Recommendations

Based on the evaluation of the public procurement system and legislation in Hungary it is evident that the country has to take relevant steps in such directions of public procurement as:

- Establishing a mechanism of consultation with the private and civil society sector that would be aimed at receiving feedback and identifying problems in the procurement system;

- Amending PPL to oblige the procuring body to have a staff member responsible for conducting procurement activities;
- Providing full access to public procurement related documents in a free, electronic and machine-readable format for tender participants and the wider society;
- Obliging the procuring entities to publish as early as possible in each fiscal year a notice regarding their future procurement plans - "public procurement annual plan"/to plan procurement and estimate associated expenditures simultaneously to state budget formulation process in a fiscal year;
- Explicitly prohibiting the experts providing consulting services to take part/benefit from tenders;
- Envisioning procedures of quality control and inspection;
- Obliging public procurement entities to include dispute resolution mechanisms in contracts;
- Subjecting public procurement operations to internal and external audits conducted by qualified specialists.

## Lithuania

### Overview

The transparent public procurement evaluation of Lithuania was prepared in cooperation with Transparency International (TI) – Lithuania.<sup>50</sup> The organization is based in Vilnius, and works towards promoting civic accountability and anti-corruption initiatives in Lithuania. The TPPR evaluation of Lithuania was conducted in 2018 and covers the period of 2016-2018.<sup>51</sup>

### Public Procurement Regulations

Procurement activities in Lithuania are regulated by the Law on Public Procurement and its sub-legal acts. The Law came into force in August 1996, and was subsequently amended in order to meet the requirements of the EU Directives on public procurement. One of the major amendments was introduced in 2012.<sup>52</sup> The objective of the law is to ensure the effective and transparent conduct of public procurement procedures. It regulates the procedure for managing and conducting public procurement, including the performance of public sales-purchase contracts and dispute settlement procedures, and defines the rights, duties and liabilities of those participating in public procurement.

As a member of the EU, PPL of Lithuania complies with the standards and procedures of the EU Directives. Public Procurement Office is an institution operating under the Ministry of Economy, which coordinates the procurement activities, ensures compliance of contracting authorities

<sup>50</sup> For more information visit – <https://www.transparency.lt/en/>

<sup>51</sup> Lithuania – Public Procurement Legislation Assessment, 2018, TPPR, available at: [https://www.tpp-rating.org/public/uploads/PPL%20Assessments%20ENG/PPL\\_Assessment\\_Lithuania\\_16\\_18.pdf](https://www.tpp-rating.org/public/uploads/PPL%20Assessments%20ENG/PPL_Assessment_Lithuania_16_18.pdf)

<sup>52</sup> Republic of Lithuania Law on Public Procurement, 13 August 1996 No I-1491, available at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/badfca72b36811e982dae1db4290b1a9?positionInSearchResults=0&searchModelUUID=58d0aad4-7a70-432a-a05e-c2387e35e6b7>



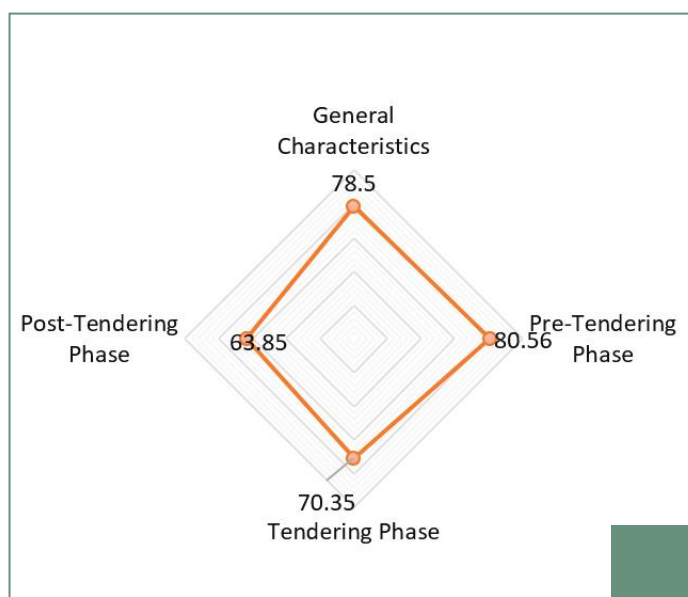
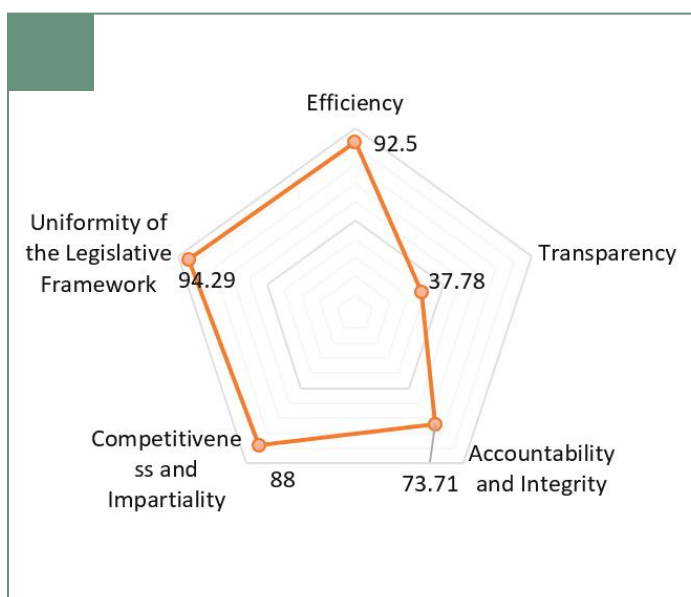
with the requirements of the PPL and supports appropriate planning of procurement and performance of public contracts.

A single portal for hosting public procurement procedures and information is at place in Lithuania.<sup>53</sup> Electronic means is the primary method of conducting public procurement. However, the procedures are not 100% electronic and paper-based procurement is still an option.

## Evaluation

The overall score of public procurement transparency in Lithuania equals to 73.77%.<sup>54</sup> Among the five benchmark indicators, the poorest performance is observed in the case of Transparency, as the PPL does not ensure publicity of texts of complaints, texts of decisions of dispute settlement, tender candidate applications, or bids. The highest scoring benchmark indicator is the Uniformity of the Legislative Framework with 94.29%. Primary and secondary legislation on public procurement is available for free on Public Procurement Office website.<sup>55</sup> The scope of coverage of PPL includes all sectors of the economy where competition is possible and exemptions are clearly listed in the PPL. Moreover, PPL determines a separate state body responsible for managing public procurement.

As for the stages of procurement, the best performance is observed at the stage of the pre-tendering phase – 80.56%. The tendering phase scored 70.35%, while the post-tendering phase was evaluated with the lowest score of 63.85%. This is due to the fact that most of the post-tendering information, e.g. contracts and their amendments are not published in a machine-readable format. Moreover, contract performance information and relevant receipts are not published for public scrutiny.



<sup>53</sup>Public Procurement portal of Lithuania, available at: <https://cvpp.eviesiejiirkimai.lt/>

<sup>54</sup>TPPR, webpage of Lithuania - <https://www.tpp-rating.org/page/eng/country/lithuania>

<sup>55</sup>Public Procurement Office of Lithuania, Laws and Regulations, available at: <https://vpt.lrv.lt/en/legal-information/laws-and-regulations>



## Recommendations

Based on the gaps and challenges identified by the TPPR assessment of Lithuania, some of the main recommendations for improving the level of PPL transparency in the country are as follows:

- Lithuania must ensure public access to the full scope of procurement information, especially at the post-tendering stage. E.g. information on the contract performance indicators and relevant receipts. Monitoring and evaluation of contract performance is vital for ensuring the best value of the public finances spent on procurement;
- The information that is already being published should be available in a machine-readable format, thus enabling anyone interested to conduct their thorough analysis and use the information for data processing and statistical deliberations;
- Lithuania must ensure that upon successful conclusion of tender procedures, information on the classification of goods, works or services (CPV codes) as well as the data on the number of bids received and relevant amounts are publicly available.

## Moldova

### Overview

Including the evaluation of Moldova in TPPR was made possible as a result of close cooperation with the independent think-tank organization - Expert-Grup, based in Chisinau. The organization is specialized in economic and public policy research. As an independent organization, Expert-Grup reflects the ideals of young intellectuals from Moldova, who have established the organization with the purpose of contributing to the country's development.<sup>56</sup>

Within the auspices of TPPR, the first evaluation of Moldova was prepared in 2016 and covered the period of 2016-2017.<sup>57</sup> The second evaluation was conducted in 2018, due to the significant changes introduced in the public procurement legislation of Moldova. The evaluation conducted in 2018 covers the period of 2018-2020, dwelling from the fact that since 2018 no significant changes have been made to the regulations in Moldova, which would have affected the TPPR evaluation of the country.<sup>58</sup>

## Public Procurement Regulations

Until recently, the Republic of Moldova had a mixed and centralized public procurement system, the functioning principles of which were laid out in the Public Procurement Law (PPL) adopted in

<sup>56</sup> For more information visit - <https://www.expert-grup.org/en/>

<sup>57</sup> Moldova - Public Procurement Legislation Assessment, 2016, TPPR, available at: [https://www.tpp-rating.org/public/uploads/PPL%20Assessments%20ENG/PPL\\_Assessm\\_Mold\\_16\\_17.pdf](https://www.tpp-rating.org/public/uploads/PPL%20Assessments%20ENG/PPL_Assessm_Mold_16_17.pdf)

<sup>58</sup> Moldova - Public Procurement Legislation Assessment, 2018, TPPR, available at: [https://www.tpp-rating.org/public/uploads/PPL%20Assessments%20ENG/PPL\\_Assessm\\_Mold\\_18.pdf](https://www.tpp-rating.org/public/uploads/PPL%20Assessments%20ENG/PPL_Assessm_Mold_18.pdf)

2007. The centralization of the system was reflected in the concentration of the review and approval process into the hands of the Public Procurement Agency (PPA). The procuring procedures could be completed both in electronic and paper formats. The electronic procurement system was introduced gradually and not all procuring authorities were included in the system, being left only with the paperback method of procurement.

In recent years, the Republic of Moldova signed the Association Agreement (AA) with the EU, which stipulated steps necessary for adjusting Moldova's PPL to the European legal standards. New legislation was drafted, which was adopted in 2015 and entered into force in May of 2016.<sup>59</sup> The new Law transposed clauses of the 2004 EU Directive and partially of the 2014 Directive in the field of procurement into the national legislation. Despite the legal changes in PPL, challenges still remained in a number of key directions. First of all, the new Law did not improve the transparency framework of the procurement system. Clear stipulations of obligatory publication and disclosure of all procurement documentation were not included in the legislation, rather procuring entities were given the discretion to grant access to this information or refuse access. Moreover, the reformed electronic system did not support the efficiency standards of a well-functioning e-system.

To overcome the mentioned challenges the Ministry of Finance engaged in a crucial project of electronic system restructuring. With the financial and technical assistance of the European Bank of Reconstruction and Development (EBRD) further reforms were implemented with the aim of developing the existing electronic platform. The new e-procurement system was planned to resemble Ukraine's Prozorro e-system and would make all procurement procedures purely electronic, thus ensuring the highest standards of transparency and efficiency. For this purpose, Moldova developed the public procurement portal – MTender.<sup>60</sup> The portal aims to support public procurement from the stage of planning to the stage of contract execution and makes the process of procurement more effective and less time-consuming.

PPL legislation in Moldova covers all state budget entities, local government entities, legal entities of public law and state non-commercial legal entities, however, state-owned companies are not included in PPL.

## Evaluation

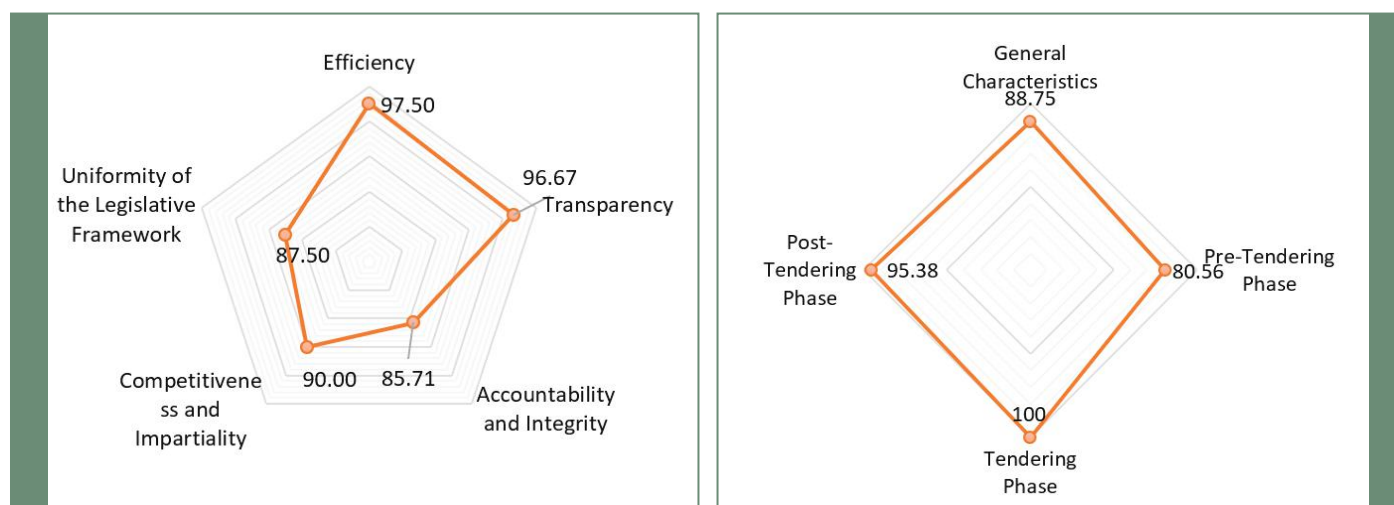
Based on the newest assessment of TPPR public procurement transparency in Moldova is evaluated with an overall score of 92.81%.<sup>61</sup> Moldova is performing particularly well in such benchmark indicators as Efficiency – 97.5% and Transparency – 96.67%. The country received a high evaluation in all other benchmark indicators as well. The same is true for the stages of public procurement, with 80.56% at the pre-tendering, 100% at the tendering and 95.38% at the post-tendering phases. It is notable that public procurement legislation regulating the stage of the post-tendering phase is evaluated with a particularly high score in Moldova. This is significant taking into consideration that transparency at the post-tendering phase constitutes a significant problem for most of the countries evaluated in TPPR.

<sup>59</sup>Public Procurement Law of Moldova, 2015, available at: [https://www.legis.md/cautare/getResults?doc\\_id=113104&lang=ro](https://www.legis.md/cautare/getResults?doc_id=113104&lang=ro)

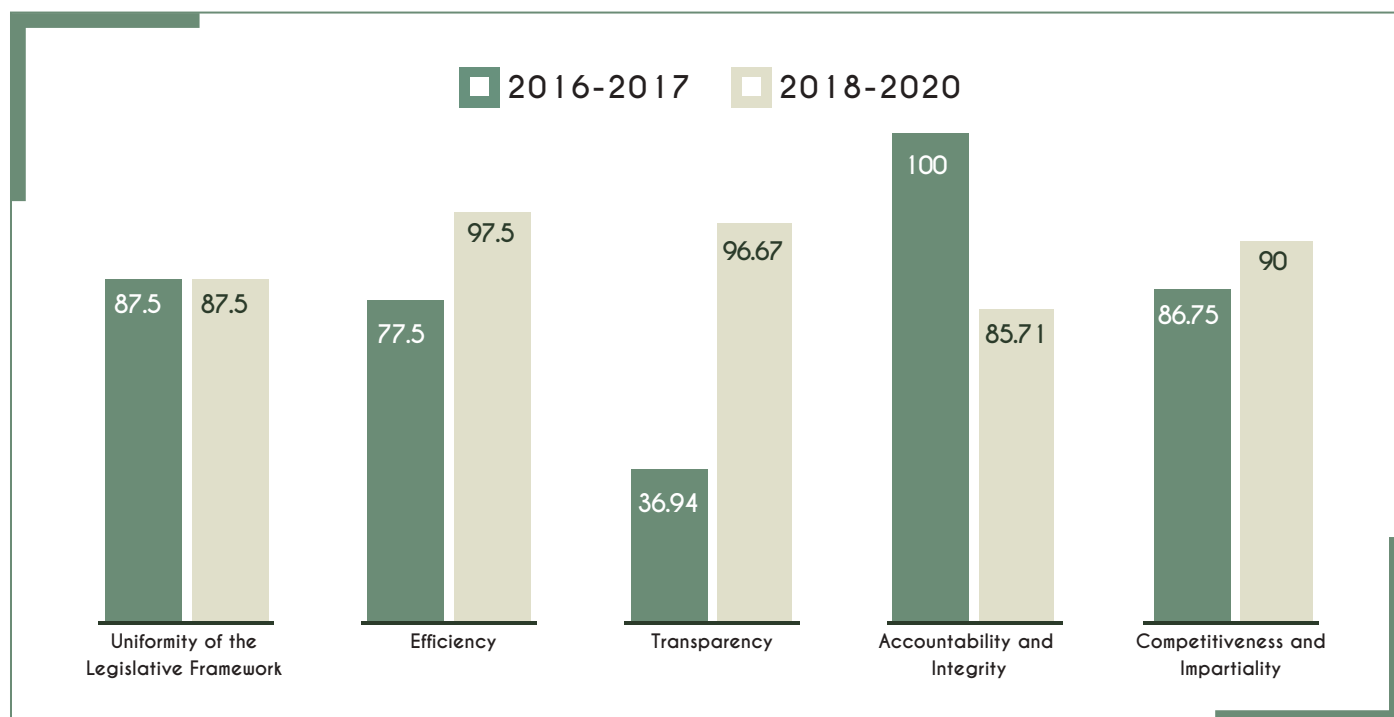
<sup>60</sup>Public Procurement Portal of Moldova – MTender, available at: <https://mtender.gov.md/en>

<sup>61</sup>TPPR, webpage of Moldova, 2018-2020 - <https://www.tpp-rating.org/page/eng/country/Moldova/2020>

A relatively low score at the pre-tendering phase is caused by the lack of legal regulations which would set the mandatory requirement of initiating the procurement process only after appropriate financial resources have been clearly identified. Moreover, PPL in Moldova does not obligate procuring entities to publish information on the source of funding in their annual procurement plans.



It should be noted that the newest evaluation of Moldova with the overall score of 92.81%, shows considerable improvement compared to the evaluation of 2016 when the transparency level of public procurement legislation in Moldova was evaluated with the score of 73.95%.<sup>62</sup> The chart below demonstrates that the considerable progress of Moldova in TPPR evaluation is mostly caused by the sharp increase in the benchmark indicator of Transparency. In the assessment of 2016-2018 the benchmark indicator was evaluated with 36.04%, while in the new evaluation of 2018-2020 with 96.67%.



<sup>62</sup> TPPR, webpage of Moldova, 2016 - <https://www.tpp-rating.org/page/eng/country/Moldova/2016>

## Recommendations

- Together with state budget entities, local government entities, legal entities of public law and state non-commercial legal entities, PPL should also cover state-owned companies/enterprises;
- When publishing annual plans of public procurement, procuring entities should also indicate relevant sources planned to fund procurement contracts;
- PPL legislation in Moldova should unambiguously state that the procurement process should only be initiated after appropriate financial resources have been allocated.

## Poland

### Overview

Conducting the TPPR evaluation of Poland was made possible through close cooperation with ePaństwo Foundation, an organization based in Warsaw, Poland. ePaństwo works towards developing open government and civic engagement. Experts of the organization use the power of the Internet and new technologies to open public data and make it available to citizens.<sup>63</sup> The TPPR evaluation of Poland originally covered the period of 2016-2018, however, the evaluation was extended to 2019 and 2020. IDFI received information from its partners in Poland, highlighting that a number of significant changes have been introduced in the PPL of Poland during 2019, however the amendments would be coming into force in January 2021. Thus, the existing TPPR evaluation of Poland is applicable to the years 2016-2020.<sup>64</sup>

### Public Procurement Regulations

Public procurement legislative framework currently in force in Poland consists of the EU law and relevant Polish legislation. Other than standard directives of the EU, the European Commission's standard form for the European Single Procurement Document applies directly in Poland. The primary legal document regulating public procurement in Poland is the Act of 29 January 2004 on Public Procurement, complemented by secondary legislation regulating various technical aspects of public procurement.

Some of the most relevant secondary legislative acts regulate the details of such procedures as the average exchange rate of the Zloty to the Euro constituting the basis for calculating the value of a contract; types of documents that the contracting authority may require from the

<sup>63</sup>For more information visit – <https://epf.org.pl/en/>

<sup>64</sup>Poland – Public Procurement Legislation Assessment, 2018, TPPR, available at: <https://www.tpp-rating.org/page/eng/country/poland>

The evaluation does not reflect the new legal amendments in Poland, which will enter into force in January 2021.

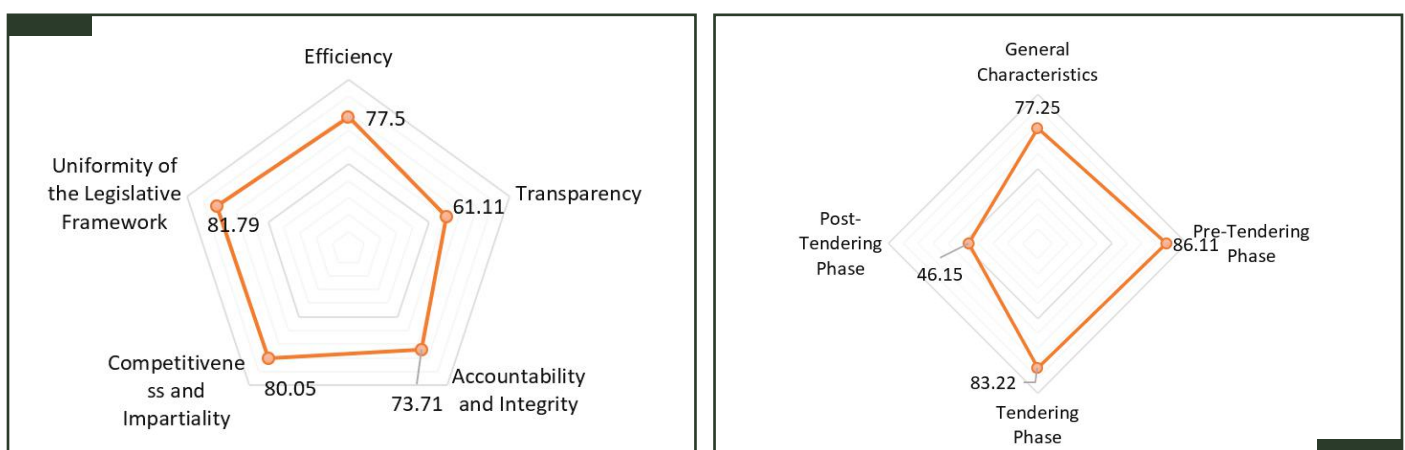
contractor in the contract award proceedings; rules of procedure concerning the examination of appeals; types of costs in the appeal proceedings and the manner of their settlement etc. Most of the secondary legislation is issued by the President of the Council of Ministers and the Minister of Economic Development.<sup>65</sup>

The PPL regulates all types of public procurement, including sectors such as defense and utilities. There are two separate acts regulating private-public partnerships (PPPs), and work and services concessions. There are also a few examples of specific legislation that regulate procurement in very narrow areas, such as the construction of energy plants.

The Polish Public Procurement Office (PPO) was established in 1995 following the adoption of the Act on Public Procurement on 10 June 1994.<sup>66</sup> PPO plays a policy-making and coordinating role for the whole public procurement system in Poland. It is an independent unit within the Polish government. The President of PPO is appointed by the Minister responsible for the economy. Some of the key duties of PPO include preparing drafts of legislative acts on public procurement, checking the regularity of conducted procedures, preparing and conducting training programs and maintaining international cooperation on issues relating to public procurement.

## Evaluation

The overall TPPR evaluation of Poland equals to 74.01%.<sup>67</sup> The evaluation does not reflect the new legal amendments in Poland, which will enter into force in January 2021. Based on the TPPR evaluation of Poland, compared to other benchmark indicators the country performed well in the benchmark indicators of Uniformity of Legislative Framework, Competitiveness and Efficiency, with scores fluctuating between 77-81%. The evaluation is considerably lower for the indicators of Transparency and Accountability and Integrity, with 61.11% and 73.71% respectively. During the procurement process, the lowest level of transparency was demonstrated at the post-tendering phase – 46.15%.



PPL of Poland is available in a single and accessible place in a machine-readable format free of charge. PPL applies to all public entities, including legal entities of public law, state-owned companies as well as state-owned non-commercial legal entities. According to the legislation, electronic means is the primary method of conducting public procurement and communication

<sup>65</sup> Public Procurement legislation of Poland, available at: <https://www.uzp.gov.pl/en>

<sup>66</sup> Website of the Polish Public Procurement Office (PPO), available at: <https://www.uzp.gov.pl/en/role-and-functions>

<sup>67</sup> TPPR, webpage of Poland, 2016-2020 - <https://www.tpp-rating.org/page/eng/country/poland>

between procuring entities and tender participants. Tender related complaints are reviewed by an independent review body. Access to dispute resolution documents is ensured in a machine-readable format free of charge. Procuring entities publish annual procurement plans, which are made public in electronic form. An open tender is the default procurement procedure in Poland and all exceptions are clearly listed by the PPL. Information on sub-contractors is made public upon the successful conclusion of tender procedures.

Regardless of the above-mentioned public procurement system is Poland still faces a number of shortcomings, namely:

- The legislation does not provide for a mechanism of consultation with the private and civil society sectors that is aimed at receiving feedback and identifying problems in the procurement system;
- Right to review is not extended to the wider public and covers tender participants and potential participants only;
- The independent public procurement review body established in Poland does not include civil society members;
- Access to complaints, annual procurement plans and bids is ensured in an electronic but non-machine readable format;
- The legislation does not include guarantees for accessing tender candidate applications;
- Access to contracts is ensured in an electronic, non-machine-readable format;
- No information is published on contract performance, inspection and quality control.

## Recommendations

In order to further improve the public procurement system in Poland the following recommendations should be taken into consideration:

- Ensuring that the legislation provides for a mechanism of consultation with the private and civil society sectors that is aimed at receiving feedback and identifying problems in the procurement system;
- Extending the right to review to the wider public;
- Including civil society representatives in the composition of the independent public procurement review body;
- Ensuring access to complaints and annual procurement plans in an electronic, machine-readable format;
- Including guarantees in the legislation for accessing tender candidate applications;
- Ensuring access to contracts in electronic, machine-readable format;
- Published information on contract performance, inspection and quality control.

## Overview

In order to conduct the TPPR evaluation of Romania IDFI partnered with the Bucharest-based organization Expert Forum (EFOR). EFOR is a think tank organization, set up by four well-known experts in public policy and public governance reform. The main areas of operation covered by the organization are administration reform and public sector integrity; decentralization, regional development, public finance; justice and anticorruption reform; social policy and pensions; energy and transport; and healthcare.<sup>68</sup> TPPR evaluation of Romania was conducted in 2018 and covers the period of 2016-2018.<sup>69</sup>

## Public Procurement Regulations

As Romania is a member of the EU, its public procurement legislation (PPL) reflects the values, principles and procedures provided by the EU Directives, namely - Directive 2014/24/EU, Directive 2014/25/EU and Directive 2014/23/EU. The main regulation of PPL of Romania (excluding the secondary legislation) is Law no. 98/2016 on Public Procurement, Law no. 99/2016 on Utilities Procurement and Law no. 100/2016 on Works Concession Contracts and Services Concession Contracts. There are additional special rules applicable to procurement in the sectors of defense, transportation and procurement with European Funds. PPL legislation of Romania sets regulations for ensuring the existence of a well-functioning public procurement system, based on principles of accountability and competitiveness.

The law defines a single portal of public procurement, which is used for conducting procurement and publishing relevant information. This is a relatively new public procurement portal, which fits contemporary standards of public procurement transparency, such as – availability of machine-readable information, possibility to download data existing on the portal.<sup>70</sup> Certain public procurement-related information is still stored on the old public procurement portal.<sup>71</sup> Additionally, there is a separate portal for media-related procurement conducted through EU funds,<sup>72</sup> as well as for procuring agricultural products, services and works.<sup>73</sup>

## Evaluation

The TPPR evaluation of Romania equals to 81.25%.<sup>74</sup> Romania has a solid legislative framework when it comes to the pre-tendering and tendering phases of public procurement, hence the

<sup>68</sup> For more information visit – <https://expertforum.ro/en/>

<sup>69</sup> Romania – Public Procurement Legislation Assessment, 2018, TPPR, available at: [https://www.tpp-rating.org/public/uploads/PPL%20Assessments%20ENG/PPL\\_Assessment\\_Romania\\_16\\_18.pdf](https://www.tpp-rating.org/public/uploads/PPL%20Assessments%20ENG/PPL_Assessment_Romania_16_18.pdf)

<sup>70</sup> Public Procurement portal of Romania, available at: <http://e-licitatie.ro/pub/participants>

<sup>71</sup> Older version of the Public Procurement portal of Romania, available at: <https://www.e-licitatie.ro/pub>

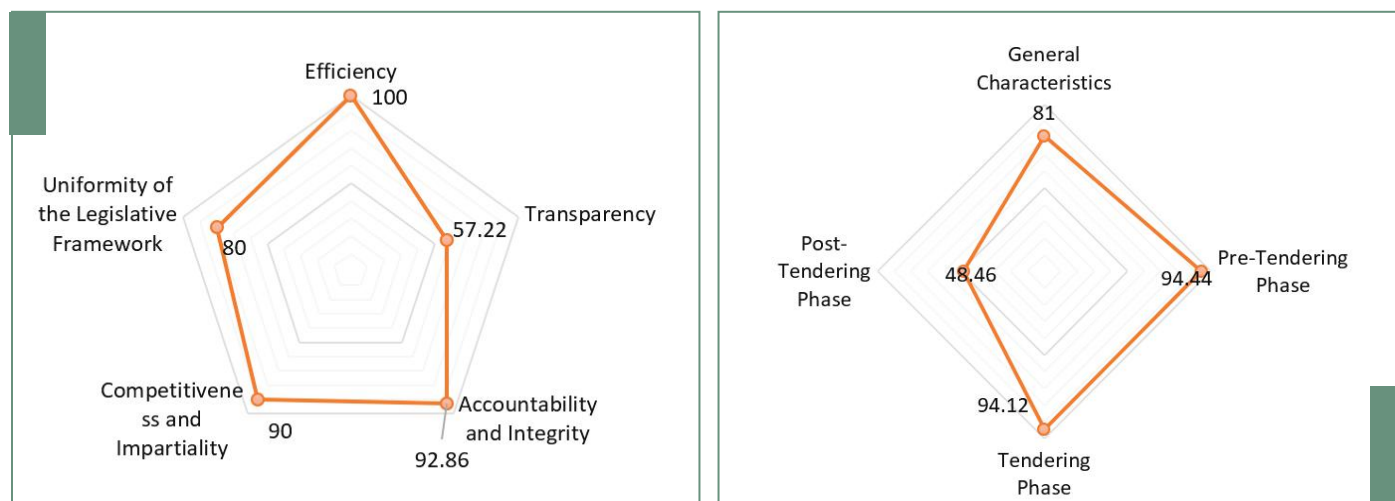
<sup>72</sup> Portal of Romania for media related procurement, available at: <http://publicitatepublica.ro/index.php>

<sup>73</sup> Website for procuring agricultural products, services and works in Romania, available at: <https://achizitii.afir.info/>

<sup>74</sup> TPPR, webpage of Romania – <https://www.tpp-rating.org/page/eng/country/romania>



evaluation of 94.44% at the pre-tendering and 94.12% at the tendering stage. The legislation and sub-legal acts ensure that the planning and announcement of tenders are transparent and efficient, it provides legal ground for fair treatment during the tendering phase and possibility for legal remedies (dispute settlement procedures are available). Nevertheless, Romania has considerable flaws when it comes to transparency in the post-tendering phase (contract implementation phase). Most of the information about this phase is absent from the legal framework, thus the evaluation of PPL at the post-tendering phase equals to 48.46%.



Some of the main problematic areas negatively effecting the TPPR score of Romania are:

- The separate state body (procurement regulatory body) responsible for managing public procurement in Romania is not authorized to have income in addition to state funding;
- The legislation provides for a mechanism of consultation with the private and civil society sectors, however, it is not mandatory to use the mechanism on a regular basis;
- The right to review is limited to tender participants only;
- The review body of public procurement does not include civil society members in its composition;
- PPL of Romania does not ensure access to submitted complaints regarding the procurement process;
- Access to procurement contracts, contract amendments, contract performance information, as well as inspection and quality control reports is not guaranteed by the legislation.

## Recommendations

Regardless of the high score of Romania in TPPR it is obvious that progress needs to be made in a number of directions in order to ensure full transparency of public procurement in the country. Namely, the recommendations are as follows



- Legislation should guarantee that the separate state body (procurement regulatory body) responsible for managing public procurement in Romania is authorized to have income in addition to state funding;
- In addition to ensuring the mechanism of consultation with the private and civil society sectors, the legislation should also set the obligation of using the mechanism on a regular basis;
- The right to review should not be limited to tender participants only and should also extend to potential suppliers as well as the wider society;
- The composition of the review body of public procurement should include civil society members;
- PPL of Romania should ensure access to submitted complaints regarding the procurement process;
- Access to procurement contracts, contract amendments, contract performance information, as well as inspection and quality control reports has to be guaranteed by the legislation.

## Slovakia

### Overview

Conducting the TPPR evaluation of Slovakia was made possible through cooperation with Transparency International (TI) – Slovakia, an organization based in Bratislava. TI Slovakia works towards raising public awareness, researching and identifying reasons and forms of corruption in Slovakia. TI Slovakia also renders legal aid to witnesses and victims of corruption and assists the government in drafting policy and legislative acts.<sup>75</sup> The TPPR evaluation of Slovakia was conducted in 2018 and covers the period of 2016-2020 since no major amendments were introduced to the legislation which would affect the evaluation.<sup>76</sup>

### Public Procurement Regulations

The main legal act regulating public procurement in Slovakia is the Law on Public Procurement and on Amendments to Certain Acts of 2015.<sup>77</sup> The Office for Public Procurement established in 2000 is an independent central authority of government headed by a chairperson. The two vice-chairpersons and the counselor are the other Office authorities.<sup>78</sup>

The Office for Public Procurement represents the Slovak Republic externally in the field of public procurement, participates in expert working commissions of the EU and actively cooperates

<sup>75</sup> For more information visit – <https://transparency.sk/sk/>

<sup>76</sup> Slovakia – Public Procurement Legislation Assessment, 2018, TPPR, available at: [https://www.tpp-rating.org/public/uploads/PPL%20Assessments%20ENG/PPL\\_Assessment\\_Slovakia\\_16\\_20.pdf](https://www.tpp-rating.org/public/uploads/PPL%20Assessments%20ENG/PPL_Assessment_Slovakia_16_20.pdf)

<sup>77</sup> Public Procurement legislation of Slovakia, available at: <https://www.uvo.gov.sk/legislativametodika-dohlad-2ab.html>

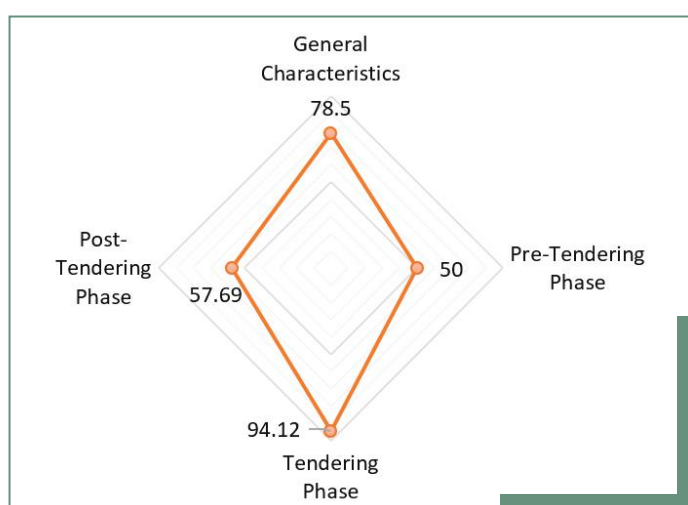
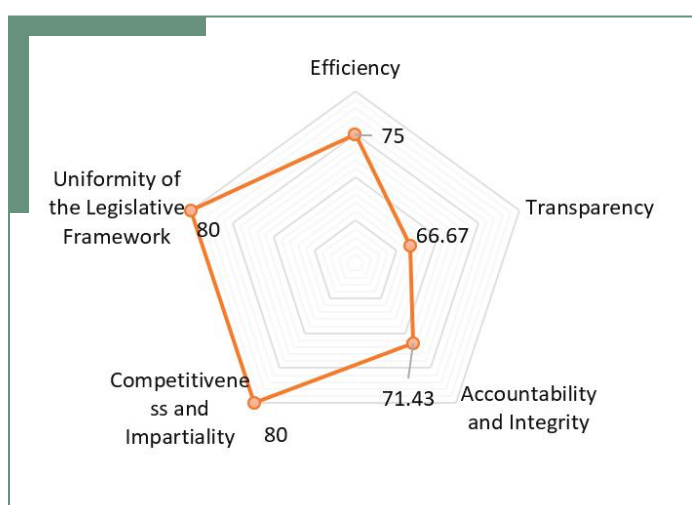
<sup>78</sup> Website of the Office for Public Procurement of Slovakia, available at: <https://www.uvo.gov.sk/o-urade-2aa.html>

with the foreign partner institutions. The Office is an expert guarantor in the field of public procurement ensuring the implementation of the principles of transparency, equal treatment and non-discrimination together with the principles of economy and cost-effectiveness. Its main role is to ensure that public procurement regulations are implemented in practice and followed by the actors of procurement. The Office publishes crucial documents from the public procurement field such as the decisions of the Office, methodological guidance of the Office, and other documents, which come out from the process of awarding contracts by contracting authorities/contracting entities.

Public procurement legislation in Slovakia is applicable to all state budget and local government entities, their respective Legal Entities of Public Law (LEPLs), state-owned companies and non-commercial legal entities. There is a single official point of access (i.e. an online portal) for all procedures and information related to public procurement.<sup>79</sup>

## Evaluation

According to the TPPR evaluation of Slovakia, public procurement legislation is assessed with an overall score of 76.09%.<sup>80</sup> The country scored relatively high in the benchmark indicators of Competitiveness and Impartiality as well as in Uniformity of the Legislative Framework, which should be caused by the harmonization of the country's legislation with the EU standards. However, according to the TPPR assessment of Slovakia, the benchmark indicator of Transparency scored considerably lower - 66.67%. It is noteworthy that unlike the assessment of the other countries Slovakia showed much room for improvement at the pre-tendering and post-tendering stages of procurement, with 50% and 57.69% respectively. Regardless of the above-mentioned, the country scored particularly high in regard to the transparency standards at the tendering stage.



PPL legislation of Slovakia covers all sectors of the economy where competition is possible and all exemptions are clearly listed in the legislation. Moreover, electronic means is the primary method of conducting procurement and public procurement is conducted through a single official point of access. Public procurement regulations ensure the right to review which is not only limited to tender participants and extends to potential suppliers as well as the general public. Access to dispute resolutions is guaranteed to anyone interested in a machine-readable format. Regardless of the abovementioned, there are various shortcomings in the legislation which negatively affect the assessment of Slovakia in TPPR, namely:

- Relevant legislation of Slovakia does not provide for a mechanism of consultation with the private and civil society sectors that is aimed at receiving feedback and identifying problems in the procurement system;
- Even though there is an independent review body with the authority to review complaints, representatives of the civil society are not included in its composition. Moreover, the legislation does not ensure access to submitted complaints;
- Procuring entities are not required to publish annual procurement plans;
- Access to procurement contracts is limited to a non-machine-readable format, while access to contract amendments is not guaranteed by the legislation at all;
- No access is ensured to the inspection and quality control documents.

## Recommendations

In order to further improve the procurement system Slovakia should consider taking additional steps in the following directions:

- Ensure that relevant legislation provides for a mechanism of consultation with the private and civil society sectors that is aimed at receiving feedback and identifying problems in the procurement system;
- Include the representatives of the civil society in the composition of the independent review body and ensure access to submitted complaints;
- Set the requirement for the procuring entities to publish annual procurement plans;
- Guarantee access to procurement contracts as well as their amendments in machine-readable format;
- Ensure that the legislation guarantees access to the inspection and quality control documents.

## Overview

Ukraine was one of the first countries included in the TPPR evaluation. This was made possible through the close cooperation with Transparency International – Ukraine, based in Kyiv. TI Ukraine is an accredited chapter of the global movement Transparency International with a comprehensive approach to the development and implementation of change for the reduction of the corruption level.<sup>81</sup> The first TPPR evaluation of Ukraine was conducted in 2017,<sup>82</sup> which was then revised in 2019 to cover and reflect some of the major changes in the legislation.<sup>83</sup>

## Public Procurement Regulations

Public procurement regulations in Ukraine have evolved from 1993 (1993 - first Governmental regulation, 2000 – first Public Procurement Law) to the most recent amendments incorporated in the new Law of Ukraine On Public Procurement.<sup>84</sup> Since May 2016 Ukraine is a member country of the General Procurement Agreement of WTO (World Trade Organisation).

Some of the major changes introduced in the PPL of Ukraine at the early stages of the reforms were:

- Completely electronic procurement procedures/operations, ensuring free public access to practically all procurement information.
- A new definition of the procuring entities, in line with the relevant definition of the contracting entities in the EU Directive 24/2014.
- A significant decrease in the number of exceptions from the scope of the public procurement rules – decrease from 43 to 18 exemptions (with 2 temporary), most of which are compatible with the EU requirements.
- Introduction of three procurement procedures – open tender, competitive dialogue and negotiated procedure.
- E-auction (based on price only or multi-criteria) became the sole evaluation method for tender procedures.
- Simplification of participation in tenders through a self-declaration approach (only winner provides documents confirming qualification compliance to requirements).

One of the main novelties of the legislative reform was the development of the e-tendering system Prozorro.<sup>85</sup> The system was designed at the initiative of civil society organizations and

<sup>81</sup> For more information visit – <https://ti-ukraine.org/en/about/>

<sup>82</sup> Ukraine – Public Procurement Legislation Assessment, 2017, TPPR, available at: [https://www.tpp-rating.org/public/uploads/PPL%20Assessments%20ENG/PPL\\_Assessment\\_Ukraine\\_2016\\_2018.pdf](https://www.tpp-rating.org/public/uploads/PPL%20Assessments%20ENG/PPL_Assessment_Ukraine_2016_2018.pdf)

<sup>83</sup> Ukraine – Public Procurement Legislation Assessment, 2019, TPPR, available at: [https://www.tpp-rating.org/public/uploads/PPL%20Assessments%20ENG/PPL\\_Assessment\\_Ukraine\\_2019.pdf](https://www.tpp-rating.org/public/uploads/PPL%20Assessments%20ENG/PPL_Assessment_Ukraine_2019.pdf)

<sup>84</sup> Public Procurement legislation of Ukraine, available at: <https://e-tender.ua/en/training-tenders/teoriya-zakupivel-3/zakonodavstvo-ukrayini-v-sferi-publichnih-zakupivel-8>

<sup>85</sup> Public Procurement Portal of Ukraine, available at: <https://prozorro.gov.ua/en>

financed by several private IT firms. The system ownership has been transferred to Transparency International Ukraine and later by the end of 2015 – to the Ministry of Economic Development and Trade.

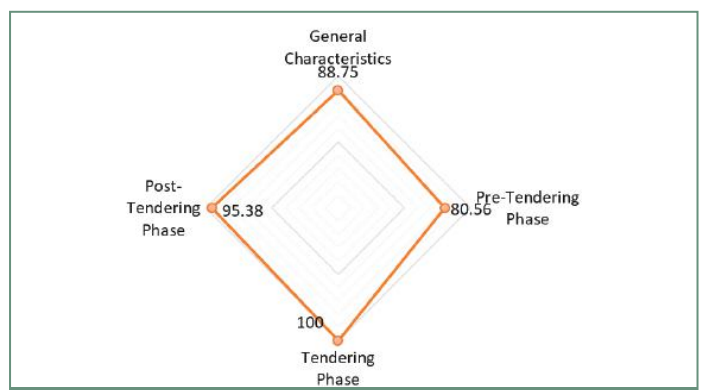
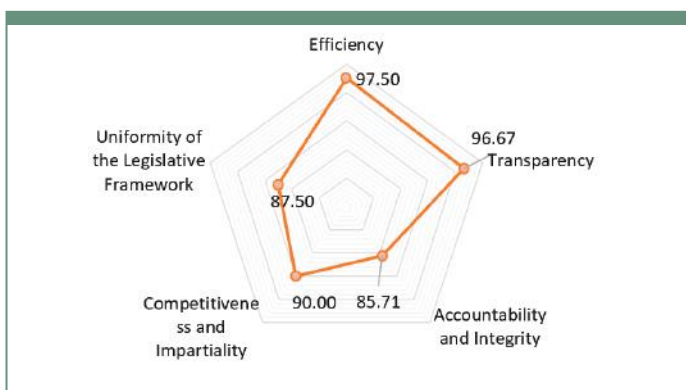
On 29 August 2019, a new draft law on Amendments to the Law of Ukraine on Public Procurement was initiated. The amendments went into force in August 2020 and further improved public procurement legislation in Ukraine. Namely, the new law on Public Procurement enabled procuring entities to:

- Protect themselves against price dumping. The system automatically identifies anomalously low price offers, after which a procuring entity has the responsibility to verify such offers;
- Organize more professional procurement due to the transition from “tender committees” to “authorized procurement officials”;
- Reject participants who failed to implement agreements before;
- Protect themselves against “tender trolls”: it will be impossible to withdraw a complaint;
- Use non-price criteria for assessing proposals;
- Buy certain goods in a timely and effective manner through electronic catalogs;

The amendments enable suppliers to participate in more tenders since all procurement from UAH 50,000 are to be held through Prozorro (based on a new simplified procedure if it is pre-threshold procurement); applicants are entitled to recover appeal fees; they can fix errors in tender proposals within 24 hours from the moment of submitting documents and are entitled to jointly participate in tender proposals. Moreover, the legislation introduced new regulations according to which the management and authorized officials of a procuring entity can be held personally responsible for the violation of procurement legislation.

## Evaluation

Based on the newest assessment of TPPR public procurement transparency in Ukraine is evaluated with an overall score of 97.05%.<sup>86</sup> Ukraine showed almost maximum performance in 4 benchmark indicators out of 5. The only benchmark indicator with a relatively low score is Accountability and Integrity. As for the stages of the procurement process, Ukraine was evaluated with 100% at the pre-tendering, 98% at the tendering and 96.15% at the post-tendering phase.



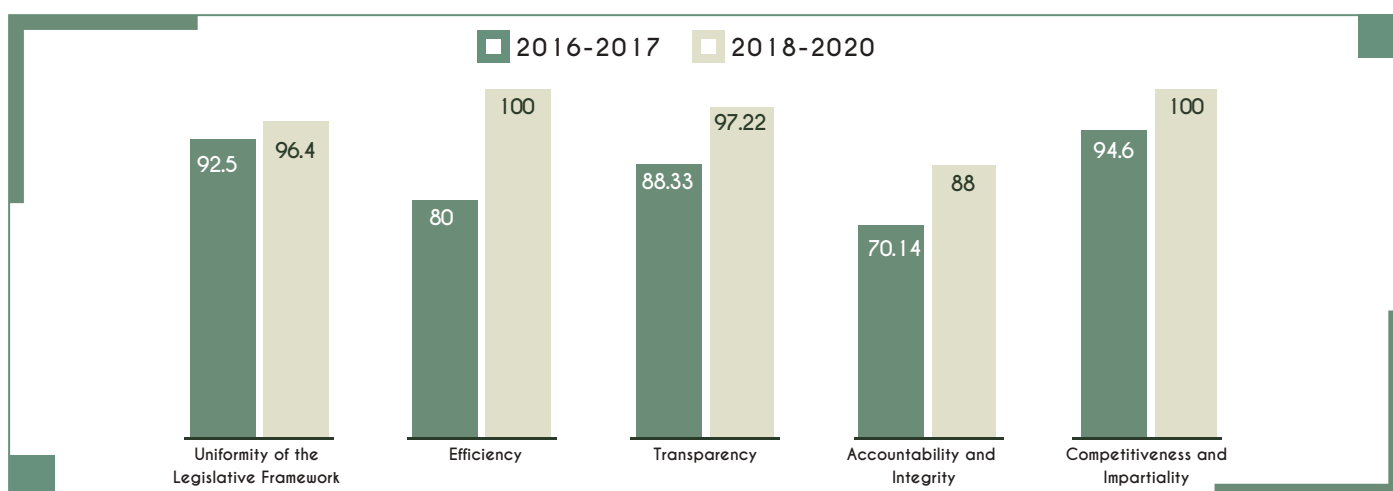
<sup>86</sup> TPPR, webpage of Ukraine - <https://www.tppr-rating.org/page/eng/country/ukraine>.

PPL legislation of Ukraine applies to all state budget and local government entities, including their respective Legal Entities of Public Law (LEPLs), state-owned companies and non-commercial legal entities. Exceptions from the general rule are clearly listed in the legislation. Moreover, the scope of PPL includes all sectors of the economy where competition is possible. The legislation provides for a mechanism of consultation with the private as well as civil society sectors. Electronic means is the primary method of conducting procurement and open tender constitutes the default procedure of public procurement. Access to various procurement information is ensured in an electronic, machine-readable format, e.g. submitted complaints, dispute resolutions, public procurement annual plans, notices of annual procurement, their amendments, submitted bids and applications, decisions of a procurement commission, etc. Information on subcontractors is also publicly available. Moreover, inspection and quality control reports and information are accessible in machine-readable format free of charge.

According to the TPP assessment of Ukraine some of the few shortcomings in public procurement legislation can be summed up as follows:

- Although the legislation provides for a mechanism of consultation with the private as well as civil society sectors, it does not include the obligation of using the mechanism on a regular basis;
- Even though PPL ensures the existence of an independent (from parties involved in a procurement dispute) review body with the authority to review complaints and grant remedies, the body does not include civil society members;
- The legislative framework does not prohibit the participation of former public officials in public procurement procedures for a reasonable period of time after leaving office;
- Access to procurement contracts is ensured in an electronic but non-machine readable format.

The chart below demonstrates the considerable progress of Ukraine in TPPR. Progress is evident in each public procurement benchmark indicator. The highest increase of 20% is evident in the case of the benchmark indicator of Efficiency. Much progress has also been achieved in the direction of the Accountability of Integrity.



## Recommendations

Even though Ukraine shows one of the highest performance in TPPR there still is little room for improvement, namely:

- Together with state budget entities, local government entities, legal entities of public law and state non-commercial legal entities, PPL should also cover state-owned companies/enterprises.
- When publishing annual plans of public procurement procuring entities should also indicate relevant sources planned to fund procurement contracts.
- PPL legislation in Moldova should unambiguously state that the procurement process can only be initiated after appropriate financial resources have been allocated.



## Indonesia

### Overview

Indonesia joined the network of TPPR in 2018. The evaluation of public procurement legislation of Indonesia was conducted by Indonesia Corruption Watch (ICW) – an organization that promotes democratic and corruption-free governance with a just outlook on the economy, social aspects, and gender.<sup>87</sup> The TPPR team from IDFI reviewed the evaluation, agreed on the final draft with the representative of the ICW and published the evaluation on the website.<sup>88</sup>

### Public Procurement Regulations

Public procurement in Indonesia is regulated by relevant Presidential Decree, which throughout its existence has changed several times. Currently the Presidential Decree no. 16 of 2018 serves as the primary legal text on public procurement.<sup>89</sup> Additionally, supporting documents and rules spell out specific procurement procedures and provide guidance and technical instructions on the process of participating in public procurement.

Public Procurement in Indonesia is carried out in a decentralized manner. Each governmental institution, both at the central and regional levels, has a special unit tasked with organizing procurement, both electronically and manually. Economic operators willing to participate in procurement need to register as suppliers at special portals (Lembaga Pelelangan Secara Elektronik (LPSE)) provided by each government institution.

Public procurement regulatory body in Indonesia is the National Public Procurement Agency (LKPP- Lembaga Kebijakan Pengadaan Barang/Jasa Pemerintah). The agency runs the Electronic Procurement System. E-tendering procedures conducted through the Electronic Procurement System is regulated by Regulation Number 9 of 2018. In addition, the system includes e-Catalogs containing the lists, types, technical specifications and prices of certain goods, works and services from various services providers.

<sup>87</sup> For more information visit: <https://antikorupsi.org/en/web/about-icw>

<sup>88</sup> <https://www.tpp-rating.org/page/eng/country/indonesia>

<sup>89</sup> Public Procurement Legislation of Indonesia is available at:

[https://jdih.lkpp.go.id/?utm\\_source=website&utm\\_medium=referral&utm\\_campaign=referral\\_website&utm\\_term=peraturan%20lkpp&utm\\_content=textlink](https://jdih.lkpp.go.id/?utm_source=website&utm_medium=referral&utm_campaign=referral_website&utm_term=peraturan%20lkpp&utm_content=textlink)

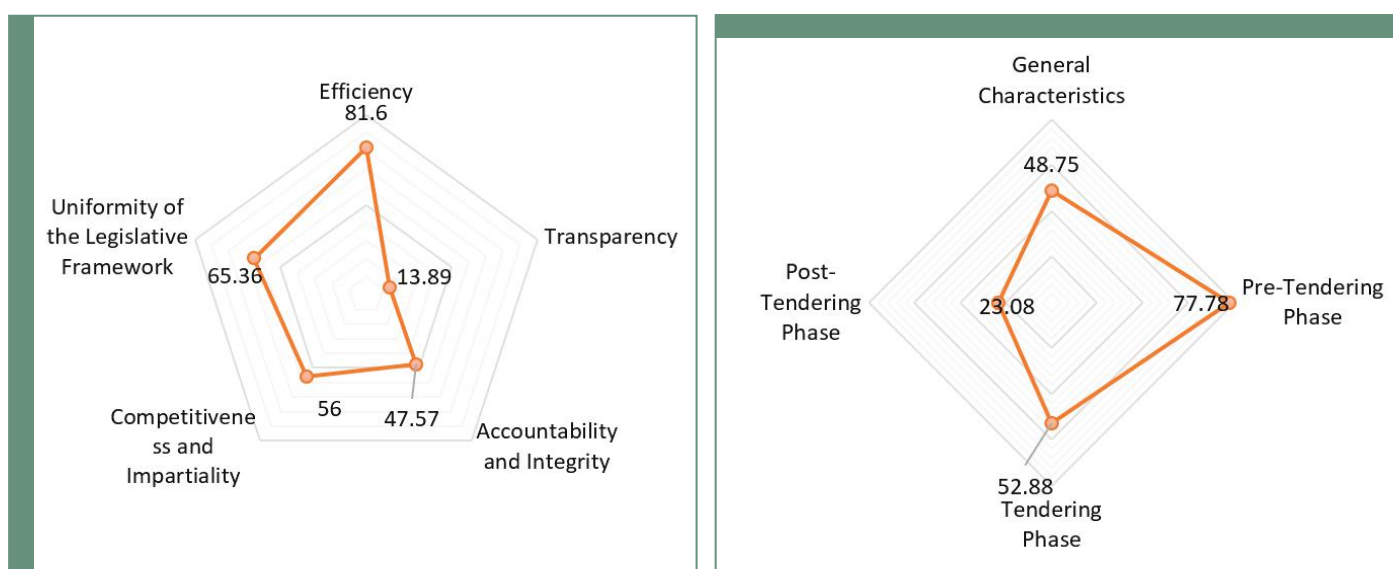


According to Presidential Decree, there are various methods of public procurement that combine electronic and paper-based procedures in Indonesia. Both procedures apply simultaneously and have equal weight in the legal framework, although the existing version of the decree and its sub-legal acts prioritize e-procurement mechanisms for all types of procurement.

## Evaluation

The overall evaluation of PPL in Indonesia equals to 51.16%. Based on the stages of the procurement process the country has the highest performance at the pre-tendering phase - 77.78%, post-tendering phase was evaluated with the lowest score compared to other stages - 23.08%.<sup>90</sup>

As for the benchmark indicators, Indonesia received the highest score in the area of Efficiency - 81.6%. The lowest performance compared to other benchmark indicators was demonstrated in the area of Transparency – 13.89%.



Considerably low performance of the PPL in Indonesia in almost every benchmark indicator is caused by the following factors:

- The business registry is not publicly available;
- The scope of coverage of PPL does not include all sectors of the economy;
- Lack of the mechanism of consultation with the private and civil society sectors;
- PPL does not guarantee sufficient time for candidates to prepare and submit tender applications;
- Lack of access to review procedures throughout the procurement process;
- Absence of an independent (from parties involved in a procurement dispute) review body;

<sup>90</sup> Detailed TPPR evaluation of Indonesia available at:  
[https://www.tpp-rating.org/public/uploads/PPL%20Assessments%20ENG/PPL\\_Assessment\\_Indonesia.pdf](https://www.tpp-rating.org/public/uploads/PPL%20Assessments%20ENG/PPL_Assessment_Indonesia.pdf)

- Lack of legal obligation to publicize decisions on using non-competitive procedures;
- Absence of the obligation to publicize post-tendering information after the successful conclusion of tender procedures;
- No legal obligation for procuring bodies to maintain all procurement-related documentation;
- Lack of legal obligation for public procurement operations to be subject to internal and external audit;
- Absence of legal guarantees to access such procurement-related information as submitted complaints, dispute resolutions, tender documentation amendments, tender candidate applications, information about the bids offered by tender participants, procurement contracts, contract amendments, contract performance information, payment receipts, any inspection and quality control reports;
- Public procurement annual plans, notices of intended procurement, decisions of the tender commission are only accessible in a non-machine-readable format.

## Recommendations

The TPPR evaluation of Indonesia identified that the country has a long way to go to establish more transparent and accountable public procurement procedures. Some of the main steps that needs to be taken in this direction are:

- Making business registry publicly available;
- Extending the coverage of PPL to all sectors of the economy where competition is possible;
- Establishing a mechanism of consultation with the private and civil society sector aiming at receiving feedback and identifying problems in the procurement system;
- Establishing an independent review body and guarantying access to review procedures through the procurement process;
- Setting the legal obligation to justify using a non-competitive procedure and publishing relevant decisions;
- Amending PPL to oblige the procuring body to maintain all procurement-related documentation;
- Subjecting public procurement operations to internal and external audit checks conducted by qualified specialists;
- Providing full access to public procurement related documents in a free, electronic and machine-readable format, including submitted complaints, dispute resolutions, tender documentation amendments, tender candidate applications, information about the bids offered by tender participants, procurement contracts, contract amendments, contract performance information, payment receipts, inspection and quality control reports, public procurement annual plans, notices of intended procurement and decisions of the tender commission.

## Overview

The TPPR of Kazakhstan was prepared in cooperation with Zertteu Research Institute (ZRI) – an organization with a mission to provide quality, relevant, interdisciplinary and critical research to enhance the capacity of partners and transform challenges into new opportunities.<sup>91</sup> The TPPR evaluation of Kazakhstan was conducted in 2018 and covers the period of 2016-2018.<sup>92</sup>

## Public Procurement Regulations

Public procurement in Kazakhstan is regulated by the Law of 2015 on State Procurement.<sup>93</sup> PPL applies to ministries, state agencies, companies and enterprises in which the state holds more than 50% of the shares. As Kazakhstan is part of the Eurasian Economic Union (EEU), the PPL of the country complies with the standards of the Union. In 2014 the law was amended to allow economic operators from member countries of the EEU to participate in public procurement tenders on equal terms with domestic suppliers.

The procurement system in Kazakhstan is decentralized with different governmental agencies and companies managing specific procurement projects. The functions of law-making, monitoring and coordination are divided between two state entities. The Ministry of Finance of Kazakhstan develops procurement policies and the Committee for Public Procurement is responsible for enforcing the laws and regulations on public procurement, as well as gathering statistical information on public procurement.

Kazakhstan has a single portal for hosting public procurement information. All procedures are 100% electronic and paper-based procurement is not applicable for competitive procedures. The new portal – [www.goszakup.gov.kz](http://www.goszakup.gov.kz) offers detailed information (most of it in JSON format) on every stage of public procurement procedures. However, the legislation does not set clear standards regarding the publication of certain procurement-related information and the format of their publication.

## Evaluation

The overall evaluation of PPL in Kazakhstan equals to 72.72%. Based on the stages of the procurement process the country has the highest performance at the tendering phase - 77.53%, post-tendering phase was evaluated with the lowest score compared to other stages - 61.54%.<sup>94</sup>

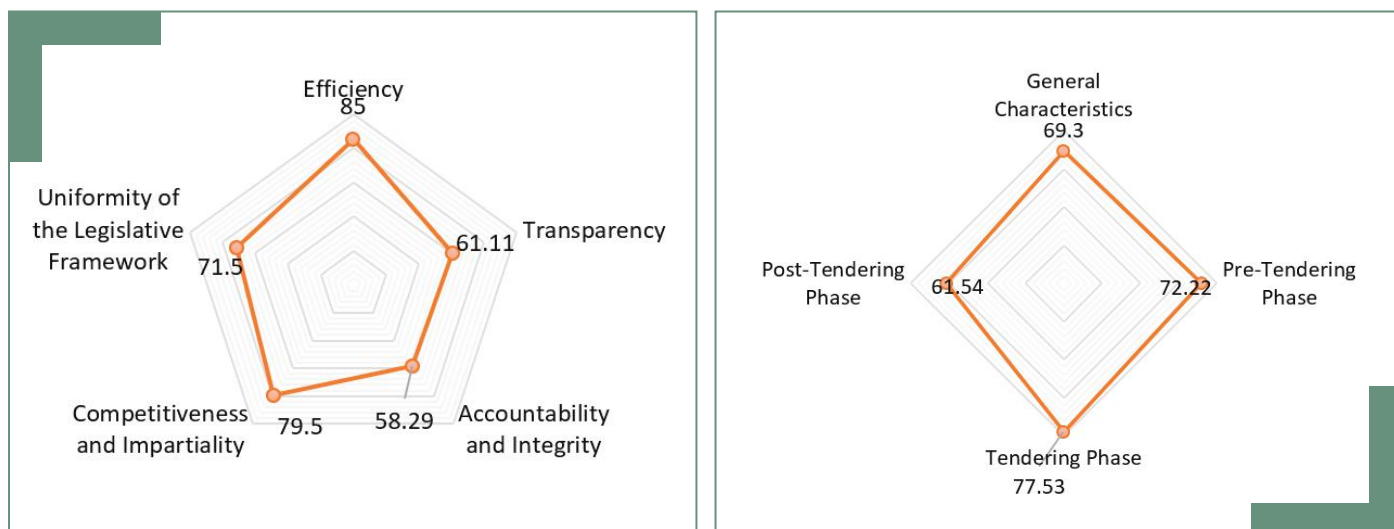
<sup>91</sup> For more information visit: <http://zertteu.org/o-nac/misсия-i-cenности/>

<sup>92</sup> <https://www.tpp-rating.org/page/eng/country/kazakhstan>

<sup>93</sup> Public Procurement Legislation of Kazakhstan is available at: <https://wiki.goszakup.gov.kz/pages/viewpage.action?pageId=327768>

<sup>94</sup> Detailed TPPR evaluation of Kazakhstan available at: [https://www.tpp-rating.org/public/uploads/PPL%20Assessments%20ENG/PPL\\_Assessment\\_Kazakhstan\\_rus\\_16.pdf](https://www.tpp-rating.org/public/uploads/PPL%20Assessments%20ENG/PPL_Assessment_Kazakhstan_rus_16.pdf)

As for the benchmark indicators, Kazakhstan was granted the highest score in the area of efficiency - 85%. The lowest performance compared to other benchmark indicators was demonstrated in the area of accountability and integrity - 58.29%. The country also scored low in the benchmark indicator of Transparency - 61.11%.



The relatively low performance of Kazakhstan in a number of benchmark indicators is caused by the following factors:

- PPL does not guarantee sufficient time for candidates to prepare and submit tender applications;
- PPL does not ensure the existence of an independent review body;
- Lack of definition of the powers of the tender commissions;
- The decision to use a non-competitive procedure is not necessarily made public by the procuring entity;
- There is no legal obligation for procuring bodies to maintain all the procurement related documentation;
- Lack of legal guarantees to access such procurement-related information as dispute resolutions, tender candidate applications, information about the bids offered by tender participant, payment receipts, inspection and quality control reports;
- Access to submitted complaints is available only in a non-machine-readable format.

## Recommendations

Based on the evaluation of the public procurement system and legislation in Kazakhstan it is evident that the country has to undergo reforms to establish more transparent and accountable public procurement procedures. Some of the main steps that needs to be taken in this direction are:

- Introducing legal guarantees for potential suppliers to have sufficient time to prepare and submit tender applications;
- Establishing an independent review body with the authority to review complaints and grant remedies;
- Defining the composition, powers, responsibilities and decision-making procedures of the body (tender commission or a person) responsible for conducting tender within a procuring entity;
- Amending PPL to oblige the procuring body to justify using a non-competitive procedure and making the decision public;
- Amending PPL to oblige the procuring body to maintain all the procurement related documentation;
- Ensuring that tender participants, potential suppliers and the wider public have access in electronic and machine-readable format to such information as submitted complaints, dispute resolutions, tender candidate applications, information about the bids offered by tender participant, payment receipts, inspection and quality control reports.

## Overview

Conducting the TPPR evaluation of the Kyrgyz Republic was made possible through the close cooperation with the Forum on Official Development Assistance (FODA).<sup>95</sup> FODA strives to improve the quality of life of the wider society through implementing various activities aimed at increasing the efficiency of official development assistance. The TPPR evaluation of Kyrgyzstan was conducted in 2018 and covers the period of 2016-2018.<sup>96</sup>

## Public Procurement Regulations

Over the past four years, the public procurement system of Kyrgyzstan went through significant reforms both at the legal and technical levels. A new Law on Public Procurement was adopted and is being implemented throughout the country.<sup>97</sup> The law is in line with the best international practices (the UNCITRAL model law). Moreover, based on the law and with the support from the Asian Development Bank, Kyrgyzstan has developed a well-functioning electronic public procurement system. All public procurement procedures have to be conducted through the system.

Regardless of the above-mentioned public procurement reform in Kyrgyzstan encountered a number of difficulties which require relevant action. Despite the introduction of the electronic system, the website [www.zakupki.gov.kg](http://www.zakupki.gov.kg) has some operational shortcomings. These shortcomings include insufficient server capacity, lack of feedback options, and modules such as consulting services, two-stage bidding, framework agreement, filing complaints, etc. The absence of these modules does not allow procuring entities to fully implement the Law on Public Procurement. Also, in the context of Kyrgyzstan joining the Open Government Partnership (OGP) initiative, there is a need to integrate the electronic public procurement system with information systems run by other state entities.

Taking into account that IT technologies are being actively introduced into all processes of state administration in Kyrgyzstan and that the development of electronic public procurement is one of the essential directions in the field of digital transformation, the state entity responsible for managing public procurement needs to continue to further develop the electronic public procurement system.

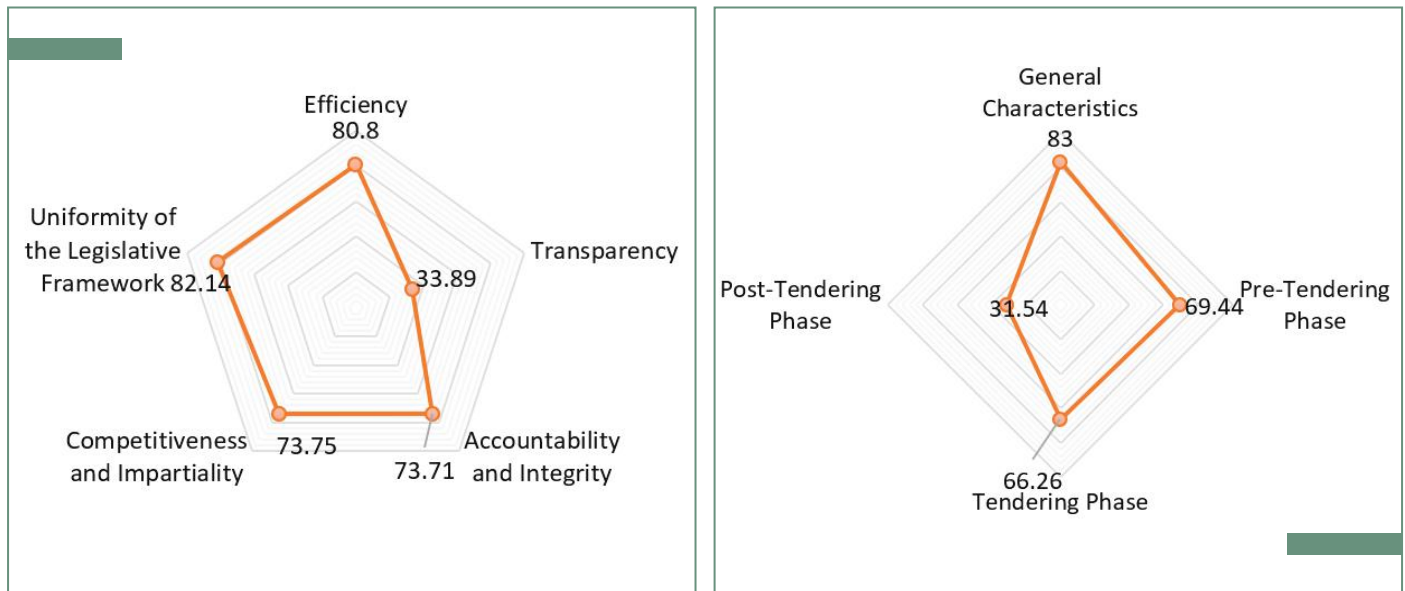
<sup>95</sup> For more information visit: <http://www.ogp.el.kg/en/oo-forum-po-oficialnoy-pomoshchi-razvitiyu-0>

<sup>96</sup> <https://www.tpp-rating.org/page/eng/country/kyrgyzstan>

<sup>97</sup> Public Procurement Legislation of Kyrgyz Republic is available at: <http://zakupki.gov.kg/popp/home.xhtml?cid=1>

# Evaluation

The overall evaluation of PPL in the Kyrgyz Republic equals to 65.96%. Based on the stage of the procurement process the country has the highest performance at the pre-tendering phase – 69.44%, post-tendering phase was evaluated with the lowest score compared to other stages with 31.54%.<sup>98</sup> As for the benchmark indicators, the Kyrgyz Republic received the highest score in the area of Uniformity of Legislative Framework - 82.14%. The lowest performance compared to other benchmark indicators was demonstrated in the area Transparency - 33.89%.



Some of the most significant aspects negatively affecting the TPPR evaluation of Kyrgyzstan are:

- PPL does not guarantee sufficient time for tender candidates to prepare and submit tender applications;
- The decision to use a non-competitive procedure is not necessarily made public by the procuring entity;
- PPL does not define the procedures for the acceptance of final products and processing of final payments, nor for modifying contracts;
- The legislation does not guarantee access to such procurement-related information as procurement contracts, contract amendments, contract performance information, payment receipts, inspection and quality control reports;
- Access to submitted complaints, dispute resolutions, public procurement annual plans, notices of intended procurement, tender documentation amendments, tender candidate applications, information about the bids offered by tender participants and decisions of the tender commission are only available in a non-machine-readable format.

<sup>98</sup> Detailed TPPR evaluation of Kyrgyz Republic available at: [https://www.tpp-rating.org/public/uploads/PPL%20Assessments%20ENG/PPL\\_Assessment\\_Kyrgyzstan\\_16\\_18.pdf](https://www.tpp-rating.org/public/uploads/PPL%20Assessments%20ENG/PPL_Assessment_Kyrgyzstan_16_18.pdf)

## Recommendations

Even though significant reforms have been implemented in the area of Public procurement in Kyrgyzstan, TPRR evaluation identified significant room for improvement in the area. Some of the main steps to be taken in this direction are:

- Ensuring that potential tender participants are given sufficient time to prepare and submit tender applications;
- Setting the obligation for procuring entities to justify using non-competitive procedures and publishing relevant decisions;
- Define procedures for the acceptance of final products and processing of final payments;
- Regulating the process of amending procurement contracts and publishing relevant information;
- Ensuring access in electronic, machine-readable format to the above-listed public procurement information.

## Mongolia

### Overview

Conducting the TPRR evaluation of Mongolia was made possible through the close cooperation with the local NGO Public Procurement Partnership. The organization is based in Ulaanbaatar and works on researching issues related to public procurement law and practice\*. The evaluation was conducted in 2016 and covers the period of 2016-2020.<sup>99</sup>

### Public Procurement Regulations

Since 2008, the Government of Mongolia has been working towards the goal of introducing international best practices in the public procurement system of the country, aiming at improving existing laws and regulations. With this aim, the government established an electronic procurement (eProcurement) system, which facilitates the purchase and sale of goods, works and services.<sup>100</sup> The website is run by the Government Procurement Agency (GPA).<sup>101</sup> GPA puts in place necessary e-Procurement tools to reduce risks of corruption and simplify the process of participating in public procurement for small and medium-sized enterprises (SMEs).<sup>102</sup> GPA was established in 2012 and constitutes a public procurement regulatory agency operating under the Deputy Prime Minister.

\* For more information visit: <http://www.cso-pprp.com>

<sup>99</sup> Mongolia – Public Procurement Legislation Assessment, 2016, TPRR, available at: [https://www.tpp-rating.org/public/uploads/PPL%20Assessments%20ENG/PPL\\_Assessment\\_Mongolia\\_16\\_20.pdf](https://www.tpp-rating.org/public/uploads/PPL%20Assessments%20ENG/PPL_Assessment_Mongolia_16_20.pdf)

<sup>100</sup> Public Procurement website of Mongolia, available at: <http://www.e-tender.mn/en/tenders/>

<sup>101</sup> Government Procurement Agency (GPA) of Mongolia – <http://www.e-tender.mn/en/>

<sup>102</sup> Developing public procurement reform in Mongolia, EBRD, 2014, available at: <https://www.ebrd.com/news/2014/developing-public-procurement-reform-in-mongolia.html>



The declared goals of GPA are:

- To make bidding procedures transparent and fair;
- To use allocated budget economically and effectively for organizing bidding procedures;
- Promote equal opportunities for competition and ensure accountability;
- To organize all bids through electronic means and enhance the ways of distributing relevant news, information, bidding notices and the results of selection procedures on the website;
- To plan and implement the unified policy for developing the capacity, technology and software of the Agency;
- To provide professional support and training sessions for the units of the Agency in provinces, as well as public and private sectors;
- Support capacity building of procurement specialists.

The Public Procurement Law of Mongolia (PPLM) came into force in May 2000 and was amended multiple times (including in 2007, 2009, 2011, 2013, 2015 and 2016). The law was drafted in 1999 with technical assistance from the Asian Development Bank and is based on the UNCITRAL model law on procurement. The law was designed to comply with international best procurement practices and share the common objectives of public procurement systems. The law regulates public procurement of goods, works and services (consultancy and non-consultancy) and covers the majority of public procurement activities. Some of the areas falling outside the scope of PPLM are procurement procedures connected with national security and state secrets; procurement of works and services related to maintenance of national roads, executed by the relevant state-owned legal entity; and procurement of works, goods and services related to the activities of the Development Bank of Mongolia.

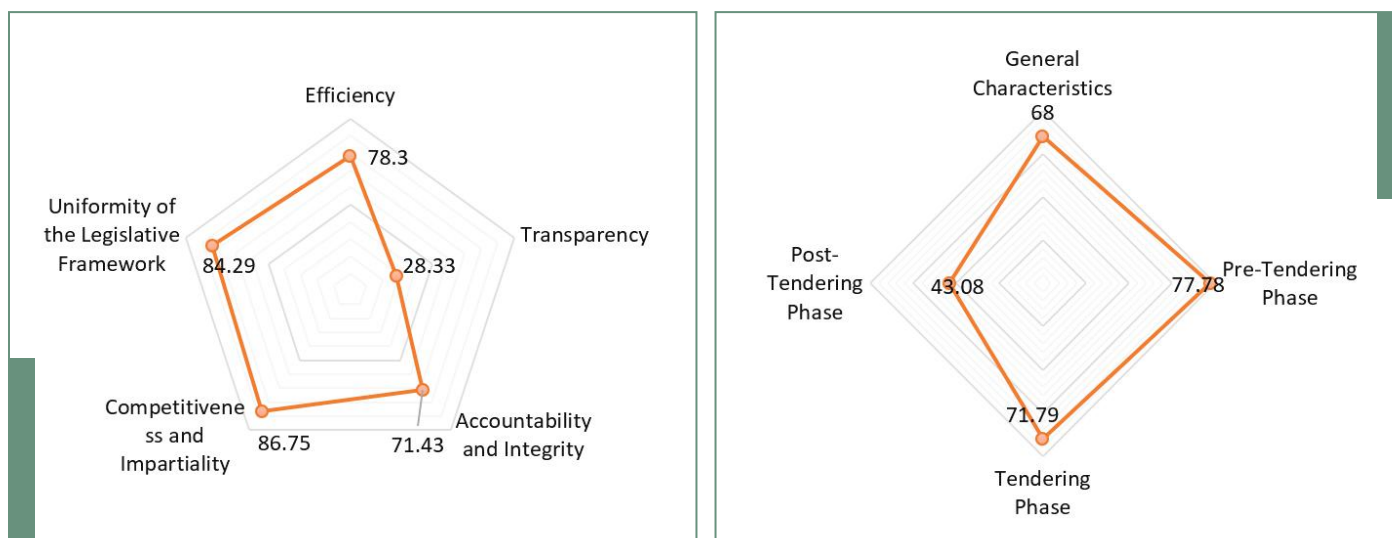
## Evaluation

According to the TPPR evaluation of Mongolia, public procurement legislation is assessed with an overall score of 66.26%.<sup>103</sup> Regardless of the multiple reforms which have been implemented in Mongolia the benchmark indicator of Transparency scored considerably low – 28.33%. This is mainly by the fact that electronic form does not constitute a primary method of conducting procurement. Moreover, the right to review the texts of complaints is only guaranteed to the tender participants, wider society or potential suppliers are not granted access to them.

Other benchmark indicators fluctuate between 70%-84%, with the highest score of 86.75% in Competitiveness and Impartiality. Similar to the trend observed in other countries the lowest level of transparency in public procurement is observed at the post-tendering phase with only 43.08%. The legislation does not include any provisions that would direct relevant entities to publish procurement contracts or their amendments. No information is available regarding the sub-contractors. Contract performance information is not being published either. Provisions on

<sup>103</sup> TPPR, webpage of Mongolia, 2016–2020 – <https://www.tpp-rating.org/page/eng/country/Mongolia/2020>

quality control and inspection are poor and do not include the obligation of publishing the documents. It is also problematic that the public procurement review body in Mongolia does not include members of CSO organizations in its composition.



## Recommendations

Some of the main recommendation aimed at improving the performance of Mongolia in TPPR could be summed up as follows:

- The coverage of PPLM should extend and cover state-owned companies as well as state non-commercial legal entities;
- GPA should be entitled to have its own income in addition to state funding;
- Electronic means should become the primary method of conducting procurement;
- Public procurement review body should include members from CSO organizations;
- Information on subcontractors should be made publicly available;
- Information on contract performance and quality control should be made publicly available.

## Overview

With the aim of evaluating the transparency level of public procurement legislation in Papua New Guinea (PNG) IDFI partnered with the local branch of Transparency International – TI Papua New Guinea (TIPNG).<sup>104</sup> TIPNG envisages being a leading, reputable and well-established organization in PNG working with like-minded individuals and organizations to combat corruption. TPPR evaluation of PNG was conducted in 2018 and covers the period of 2016-2018.<sup>105</sup>

## Public Procurement Regulations

The Public Finances (Management) Act of 1995 (PFMA), the Public Finances (Management) Regulation of 1996 (PFMR) and the National Procurement Act of 2018 (NPA) regulate the procurement of government contracts in PNG.

The National Procurement Act establishes the National Procurement Commission and the Board of the National Procurement Commission. The Commission is a Statutory Body.

The Public Finance and Management Act establishes a public procurement committee - APC Committee. The committee is not an independent body and is formed by the Heads of Departments of Finance, Treasury and National Planning and Monitoring. The Secretariat of the APC Committee is established within the Department of Finance.

Public procurement legislation of PNG applies to all procurement activities carried out by public and statutory bodies, irrespective of the source of funding for the procurement activities. The NPA defines public bodies as any agencies providing state services established under Part VII of the Constitution; and provincial or local governmental entities established under the Organic Law on Provincial Governments and Local-level Governments. Under the same regulation, statutory bodies include any authorities or legal entities established by an Act of the Parliament or performing public or official functions; any bodies, state authorities or legal entities (corporate or unincorporated) established by Provincial or local Governments; or any subsidiary statutory bodies which do not constitute public entities.

## Evaluation

According to the TPPR assessment, PPL in PNG was evaluated with an overall score of 38.58%. Compared to the other indicators the country demonstrated the best performance in the benchmark indicator of Uniformity of the Legislative Framework – 74.64%. Other benchmark

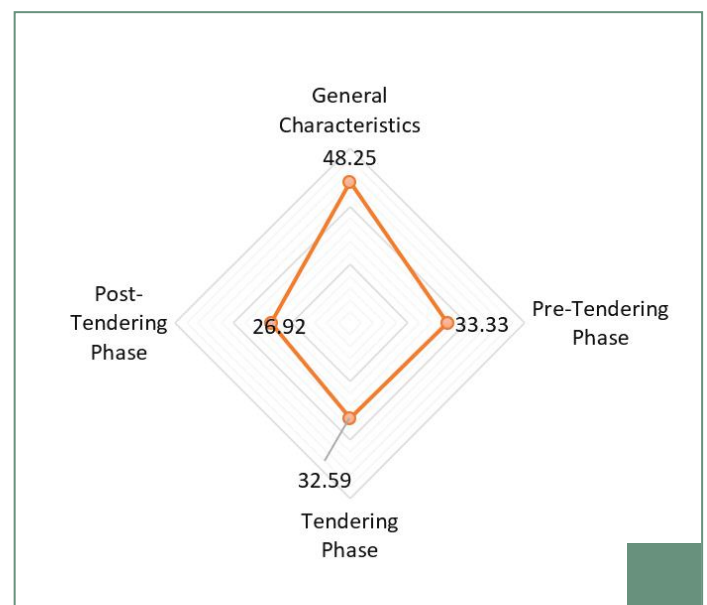
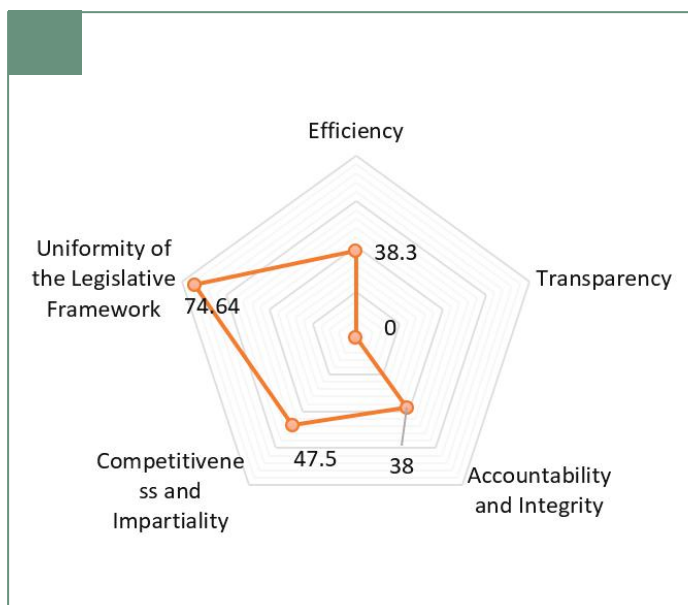
<sup>104</sup> For more information visit – <http://www.transparencypng.org.pg/>

<sup>105</sup> Papua New Guinea – Public Procurement Legislation Assessment, 2018, TPPR, available at: [https://www.tpp-rating.org/public/uploads/PPL%20Assessments%20ENG/PPL\\_Assessment\\_PNG\\_16\\_18.pdf](https://www.tpp-rating.org/public/uploads/PPL%20Assessments%20ENG/PPL_Assessment_PNG_16_18.pdf)

indicators were evaluated with considerably lower scores – 18.3% and 47.5%, while the benchmark indicator of Transparency proved to be most problematic with 0%. Looking at the stages of the procurement process the evaluation of PNG fluctuates between 32%-34% at the pre-tendering and tendering phases. The figure falls to 16.92% in the post-tendering phase.

Based on the TPPR evaluation of PNG the following constitute the most significant topics negatively affecting the assessment of PNG:

- The legislation does not include any provisions on the mechanisms of consultation with private and civil society actors aimed at receiving feedback and identifying problems in the procurement system;
- Electronic means does not constitute the primary method of conducting public procurement;
- The Supply and Tender Board of PNG with the authority to review complaints lacks the guarantees of independence and impartiality and no civil society actors are included in its composition;
- The legislation does not guarantee access to submitted complaints and dispute resolution documents;
- There are no legal obligation to publish annual procurement plans;
- In cases when procuring entities use non-competitive procedures relevant justifications are not published for public scrutiny;
- PPL does not ensure access to procurement notices, submitted applications, bids or the final decisions. Moreover, no information is published regarding the execution of contracts, quality control and inspection or subcontractors.



## Recommendations

Based on the TPPR evaluation of PNG it is obvious that the country needs to implement significant reforms in order to ensure a high-level of transparency and accountability in the procurement process and minimize risks of procurement-related corrupt practices. In order to do so some of the main recommendations are:

- Ensuring that electronic means is the primary method of conducting public procurement;
- Strengthening the independence guarantees of the Supply and Tender Board of PNG and ensuring that civil society actors are included in its composition;
- Guarantying access to submitted complaints and dispute resolution documents;
- Implementing the practice of publishing annual procurement plans;
- Publishing relevant justifications for using non-competitive procedures;
- Ensuring access to procurement notices, submitted applications, bids and the final decisions;
- Published information regarding the execution of contracts, quality control and inspection or subcontractors;
- Developing the mechanisms of consultation with private and civil society actors aimed at receiving feedback and identifying problems in the procurement system.

## Overview

TPPR evaluation of the Philippines was conducted in cooperation with the Institute for Leadership, Empowerment, and Democracy – iLEAD. iLEAD is a non-profit think tank consultancy that focuses on strategic policy work to strengthen democratic institutions, in areas such as fiscal astuteness, empowerment and protection of civic spaces.<sup>106</sup> The TPPR evaluation of the Philippines originally covered the period of 2016-2018, however, the evaluation was extended to 2019 and 2020, after IDFI received confirmation from its partners in the Philippines, highlighting that no major amendments have been introduced in the legislation that would have affected the TPPR evaluation of the country. Thus, the existing TPPR evaluation of the Philippines is applicable to the years of 2016-2020.<sup>107</sup>

## Public Procurement Regulations

In 2002, the Congress of the Philippines passed Republic Act No. 9184 on Government Procurement Reform, aiming at unifying public procurement legislation in the Philippines. The act was one of the main milestones in the process of reforming public procurement. The Government Procurement Reform Act along with its implementing rules and regulations (IRR), mandates certain transparency and accountability measures to help combat corruption and inefficiency in public procurement. It specifically stresses that information and communication technology (ICT) should play a central role in the process of reforming public procurement in the country. Based on the bill government procurement in the Philippines is conducted based on the principles of transparency, public monitoring and aims at ensuring integrity in public procurement.<sup>108</sup>

IRR is applicable to all procurement of any branch, agency, department, bureau, office, or instrumentality of the Government of Philippines, including government-owned and/or -controlled corporations (GOCCs), government financial institutions (GFIs), state universities and colleges (SUCs), and local government units (LGUs).

The Government Procurement Reform Act and its implementing rules and regulations created an e-procurement portal, PhilGEPS, which serves as the primary source of information on government procurement. All public tenders are conducted through the portal.<sup>109</sup>

<sup>106</sup> For more information visit – <http://ilead.ph/about-us/>

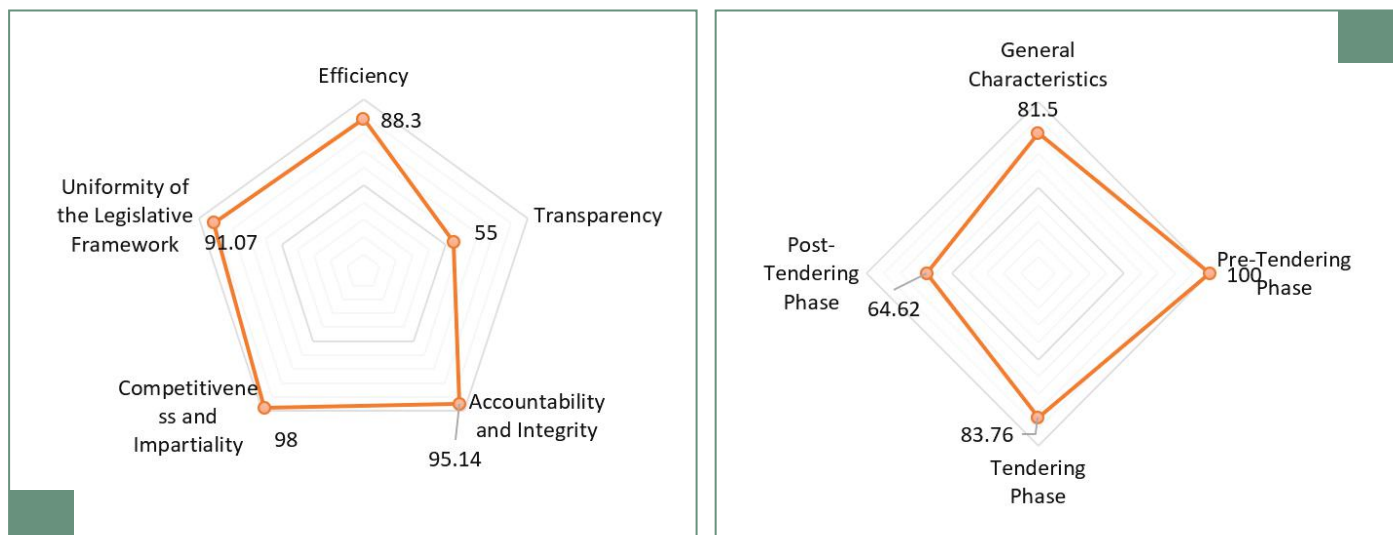
<sup>107</sup> Philippines – Public Procurement Legislation Assessment, 2018, TPPR, available at: <https://www.tpp-rating.org/page/eng/country/philippines>

<sup>108</sup> Public Procurement legislation of Philippines, available at: <https://www.uvo.gov.sk/legislativametodika-dohlad-2ab.html>

<sup>109</sup> Public Procurement Portal of Philippines, available at: <https://www.philgeps.gov.ph/>

## Evaluation

According to the TPPR assessment, PPL in the Philippines is evaluated with an overall score of 82.72%.<sup>110</sup> The country scored particularly high (above 88%) in all benchmark indicators, with the exception of Transparency. The benchmark indicator of Transparency was assessed with 55%. The Philippines also scored high on the pre-tendering and tendering phases, however, challenges were identified at the post-tendering stage and the country was evaluated with a score of 64.62%.



Philippines scored high in TPPR evaluation dwelling from the fact that various information, particularly on the pre-tendering phase including tender announcement, submitted bids and applications are accessible for the wider public. PPL is accessible in a single place in a machine-readable format free of charge. The legislation ensures the existence of a mechanism of consultation with the private and civil society sectors aiming at receiving feedback and identifying problems in the procurement system. Public procurement plans are published annually in a machine-readable format. An open tender is the default procedure for conducting procurement and all exceptions are clearly defined in the legislation. Public procurement procedures are subject to internal and external audit checks.

A number of shortcomings are still evident in the public procurement system of the Philippines, namely:

- The state body responsible for managing public procurement is not entitled to have income in addition to state funding;
- Access to submitted complaints is ensured but is only limited to paper-based information;
- The legislation does not include provisions ensuring access to dispute resolution documents;
- Tender candidate applications, information on bids, contract amendments as well as contract performance and quality control reports are not accessible in electronic, machine-readable format;
- Information on subcontractors is not made publicly available.

<sup>110</sup> TPPR, webpage of Philippines, 2016–2020 – <https://www.tpp-rating.org/page/eng/country/philippines>

## Recommendations

Based on the above-mentioned the following steps need to be taken with the aim of further improving the public procurement system in the Philippines:

- Ensuring that the state body responsible for managing public procurement is entitled to have income in addition to state funding;
- Guaranteeing access to submitted complaints in electronic, machine-readable format free of charge;
- Ensuring access to dispute resolution documents;
- Including the provisions in the legislation which would guarantee access to tender candidate applications, information on bids, contract amendments as well as contract performance and quality control in electronic, machine-readable format;
- Publishing information on subcontractors.

## Tajikistan

### Overview

TPPR evaluation of Tajikistan was conducted in close cooperation with an independent expert from Tajikistan Parvina Ibodova. The evaluation of Tajikistan was conducted in 2018 and covers the period of 2016-2018.<sup>111</sup>

### Public Procurement Regulations

The main legal act regulating the area of public procurement in Tajikistan is the Law of 2006 on Public Procurement of Goods, Works and Services. The Law applies to all public procurement procedures carried out on the territory of the Republic of Tajikistan, with the exception of those related to national defence, national security, state secrets, precious metals and precious stones, as well as to the elimination of the consequences of emergencies.<sup>112</sup>

The purpose of the law is to ensure economy and efficiency of public procurement, develop competition among suppliers (contractors), ensure transparency and impartiality of public procurement procedures, improve the activities of executive authorities, state enterprises (institutions) and other organizations and develop market relations in the field of public procurement.

<sup>111</sup> Tajikistan – Public Procurement Legislation Assessment, 2018, TPPR, available in Russian at: [https://www.tpp-rating.org/public/uploads/PPL%20Assessments%20ENG/PPL\\_Assess\\_Tajikistan\\_rus\\_16\\_18.pdf](https://www.tpp-rating.org/public/uploads/PPL%20Assessments%20ENG/PPL_Assess_Tajikistan_rus_16_18.pdf)

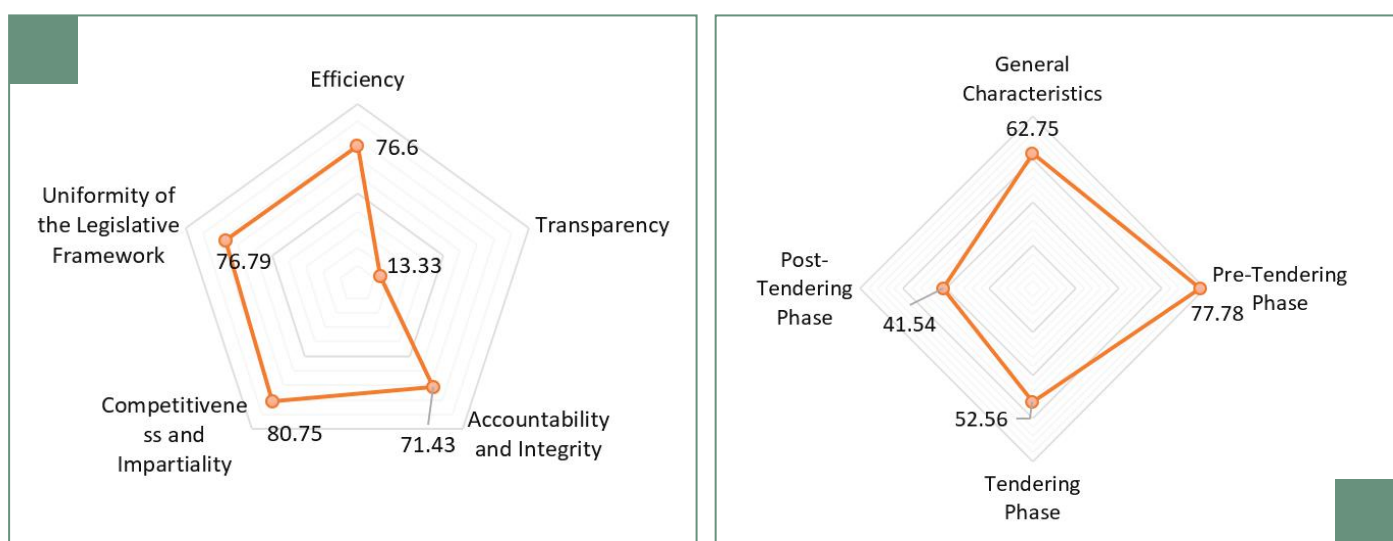
<sup>112</sup> Public Procurement legislation of Tajikistan, available at: [http://base.mmk.tj/view\\_sanadholist.php](http://base.mmk.tj/view_sanadholist.php)



The main state body in the area of public procurement is the Procurement Unit. The Unit ensures compliance with procurement procedures established by the law, publishes information in the public procurement bulletin, prepares necessary documentation in cooperation with a relevant state entity, develops procurement plans and reports, etc. It is also responsible for managing the public procurement website of Tajikistan.<sup>113</sup> The Ministry of Finance oversees the public procurement procedures conducted based on the Law on Public Procurement of Goods, Works and Services. Procurement procedures relating to coal, oil and gas are published and handled by the Ministry of Economy and Ministry of Energy and Water Resources.

## Evaluation

According to the TPRR evaluation of Tajikistan, the overall score of the country is 37.88%.<sup>114</sup> This is mainly caused by a considerably low assessment in the benchmark indicator of Transparency – 13.33%. The evaluation of the country in other benchmark indicators is significantly higher and fluctuates between 71-81%. As for the stages of the procurement process, the country showed particularly much room for improvement in regards to the regulations applicable to tendering and post-tendering stages, with the scores of 52.56% and 41.54% respectively. The pre-tendering stage on the other hand was evaluated with the score of 77.78%.



There are a number of factors positively affecting the TPRR evaluation of Tajikistan. The country has a single point of access to procurement-related information, the coverage of PPL is broad and covers relevant private companies. An open tender is the primary method of public procurement and all exceptions are clearly listed in the legislation. There is a separate entity responsible for the implementation of public procurement legislation. Moreover, the legislation ensures the existence of an independent review body with the authority to review complaints. Procuring entities have the legal obligation to prepare annual procurement plans.

<sup>113</sup> Public Procurement website of Tajikistan, available at: <http://test.zakupki.gov.tj/reestr-zakazov-v-elektronnoy-forme/>

<sup>114</sup> TPRR, webpage of Tajikistan, 2016-2018 – <https://www.tpp-rating.org/page/eng/country/tajikistan>

However, there are a number of significant shortcomings in the public procurement legislation of Tajikistan, some of the most significant ones include:

- The legislation does not provide for a mechanism of consultation with the private and civil society sectors that is aimed at receiving feedback and identifying problems in the procurement system;
- Electronic means does not constitute the primary method of conducting public procurement;
- The right to review is limited to tender participants only;
- Civil society representatives are not included in the composition of the independent review body;
- The legislation does not guarantee access to submitted complaints or dispute resolutions;
- The legislation does not oblige procuring entities to publish justifications for using non-competitive procedures;
- The legislation does not ensure access to the notices of intended procurement, their amendments, candidate applications, bids, the decisions of the procurement commissions or the information on subcontractors;
- Procurement contract are accessible in an electronic but non-machine readable format, while their amendments are not made public;
- Contract performance information as well as inspection and quality control reports are not publicly available.

## Recommendations

Based on the above-mentioned the following steps need to be taken with the aim of improving the public procurement system in Tajikistan:

- Developing a mechanism of consultation with the private and civil society sectors aimed at receiving feedback and identifying problems in the procurement system;
- Ensure that electronic means constitute the primary method of conducting public procurement;
- Extending the right to review to prospective suppliers and the general public;
- Including the civil society representatives in the composition of the independent review body;
- Guaranteeing access to submitted complaints and dispute resolution documents;
- Setting the requirement of publishing the justifications for using non-competitive procedures;
- Ensuring access to the notices of intended procurement, their amendments, candidate applications, bids, the decisions of the procurement commissions and the information on subcontractors;
- Guaranteeing that procurement contract as well as their amendments are publicly accessible in electronic machine-readable format;
- Ensuring access to contract performance information as well as inspection and quality control reports.



## Benin

### Overview

The inclusion of Benin in the TPPR Network is a result of close cooperation with the Social Watch.<sup>115</sup> The Social Watch is an organization based in Montevideo, striving to promote and advocate for the policies aiming at eradicating poverty. TPPR evaluation of Benin was prepared in 2019 and covers the same year.<sup>116</sup>

### Public Procurement Regulations

Two main legal acts governing the process of public procurement in Benin are the Public Procurement Code of Benin and the Law on Fighting against Corruption and Other Related Offenses.<sup>117</sup>

The texts and practices relating to public procurement are based on five main principles recognized by the Public Procurement Code of Benin. Namely, the principles of economy and efficiency of the acquisition process, freedom of access to public procurement, equal treatment of candidates, transparency of procedures, and binding character of the regulations regardless of the amount of procurement.

The institutional framework is made up of three bodies: public procurement and internal control bodies, the central body responsible for monitoring the public procurement procedure, and the regulatory body. The central control body for the public procurement procedure is the National Directorate for Public Procurement Control (DNCMP).

Delegations for the national public procurement control (DDCMP) are created at the level of each state department. They are dismemberments of the National Directorate of Public Procurement Control and operate under its mandate.

The regulatory body is the Public Procurement Regulatory Authority (ARMP). It is placed under the supervision of the Presidency of the Republic. It has a legal personality and enjoys administrative and financial management autonomy.

<sup>115</sup> For more information visit: <https://www.socialwatch.org>

<sup>116</sup> <https://www.tpp-rating.org/page/eng/country/benin>

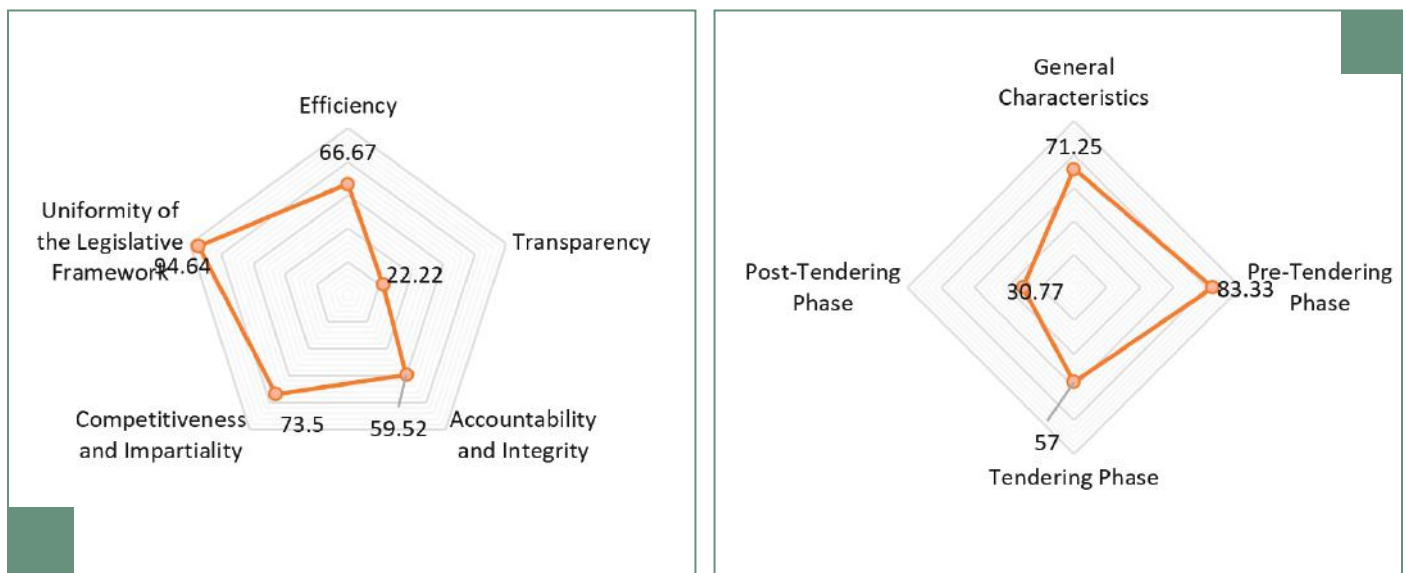
<sup>117</sup> Public Procurement Legislation of Benin Republic is available at: [https://armp.bj/index.php?option=com\\_k2&view=itemlist&layout=category&task=category&id=2&Itemid=592](https://armp.bj/index.php?option=com_k2&view=itemlist&layout=category&task=category&id=2&Itemid=592)

This mission of ARMP is:

- Assisting competent national authorities within the framework of the definition of policies and the elaboration of the regulations in matters of public procurement and public service delegations;
- Training of all stakeholders in public procurement and the development of the professional framework;
- Implementation of independent technical audit procedures and imposing sanctions;
- Non-jurisdictional settlement of disputes arising from the award of public contracts;
- The amicable settlement of disputes arising from the performance of public contracts.

## Evaluation

The overall evaluation of PPL in Benin equals to 61.62%. Based on the stage of the procurement process the country has the highest performance at the stage pre-tendering phase - 83.33%, post-tendering phase was evaluated with the lowest score compared to other stages with 30.77%.<sup>118</sup> As for the benchmark indicators, Benin was granted the highest score in the area of Uniformity of Legislative Framework - 94.64%. The lowest performance compared to other benchmark indicators was demonstrated in the area Transparency - 22.22%.



Relatively low performance in some benchmark indicators, and particularly in the area of Transparency is caused by the following factors:

- Budgets of public procuring entities are not publicly available;

- PPL is available in a single and accessible place only in non-machine-readable format;
- The legislation does not provide for a mechanism of consultation with the private and civil society sectors;
- Electronic procurement is not a primary method of conducting public procurement and related communication;
- Existing software of public procurement is primarily used for communication, rather than for conducting public procurement procedures;
- The decision to use a non-competitive procedure is not necessarily made public by the procuring entity;
- PPL does not define the procedures for inspection and quality control;
- There is no legal obligation for procuring bodies to maintain all the procurement-related documentation;
- The legislation does not guarantee access to such procurement related information as: dispute resolutions, tender documentation amendments, information about the bids offered by tender participant, decisions of the tender commission, procurement contracts, contract amendments, contract performance information, payment receipts, inspection and quality control reports;
- Public procurement annual plans, notices of intended procurement and tender candidate applications are only available in a non-machine-readable format.

## Recommendations

Based on the evaluation of the public procurement system and legislation in Benin the following steps should be taken with the aim of improving the level of transparency and accountability of the public procurement system:

- Budgets of all public procuring entities must become publicly available;
- Public Procurement-related legislation must be accessible in one place, in a free, machine-readable and electronic format;
- A mechanism of consultation with the civil society sector aimed at receiving feedback and identifying problems in the procurement system should be established by the legislation;
- <https://marches-publics.bj> must become a single official point of access for conducting public procurement and accessing on public procurement related information;
- Procuring entities should have the obligation to justify using a non-competitive procedure and publish relevant decisions;
- Legislation should define the procedures for inspection and quality control and relevant document/reports should be made publicly available;

- Procuring entities should be directed to maintain all the procurement related documentation;
- Legislation should guarantee access to the above-listed public procurement information in electronic, machine-readable format.

## Burundi

### Overview

The inclusion of Burundi in the TPPR Network is a result of close cooperation with the independent expert Ella Ndikumana (of ABUCO-TI Burundi). The evaluation of public procurement legislation of Burundi was conducted in 2020.<sup>119</sup>

### Public Procurement Regulations

Public procurement in Burundi is regulated by the law of 2018 (Loi N°1/04 du 29 Janvier 2018 portant modification de la Loi N°1/01 du 4 février 2008 portant Code des Marchés Publics).<sup>120</sup> The PPL applies to all public contracts on purchasing works, goods and services. The law covers legal persons governed by the public and private law, as well as legal persons benefiting from special or exclusive rights.

The procurement system in Burundi is decentralized with different entities responsible for conducting procurement in relevant sectors of governance. However, there are three main bodies playing the leading role in the process of public procurement in Burundi, namely those in charge of procurement established with the Contracting Authority, the National Directorate of Public Procurement Control and the Public Procurement Regulation Authority.

Even though Burundi does not have a unified electronic system of public procurement, some relevant information can be found on the website of the Public Procurement Regulation Authority - <http://www.armp.bi/>.

### Evaluation

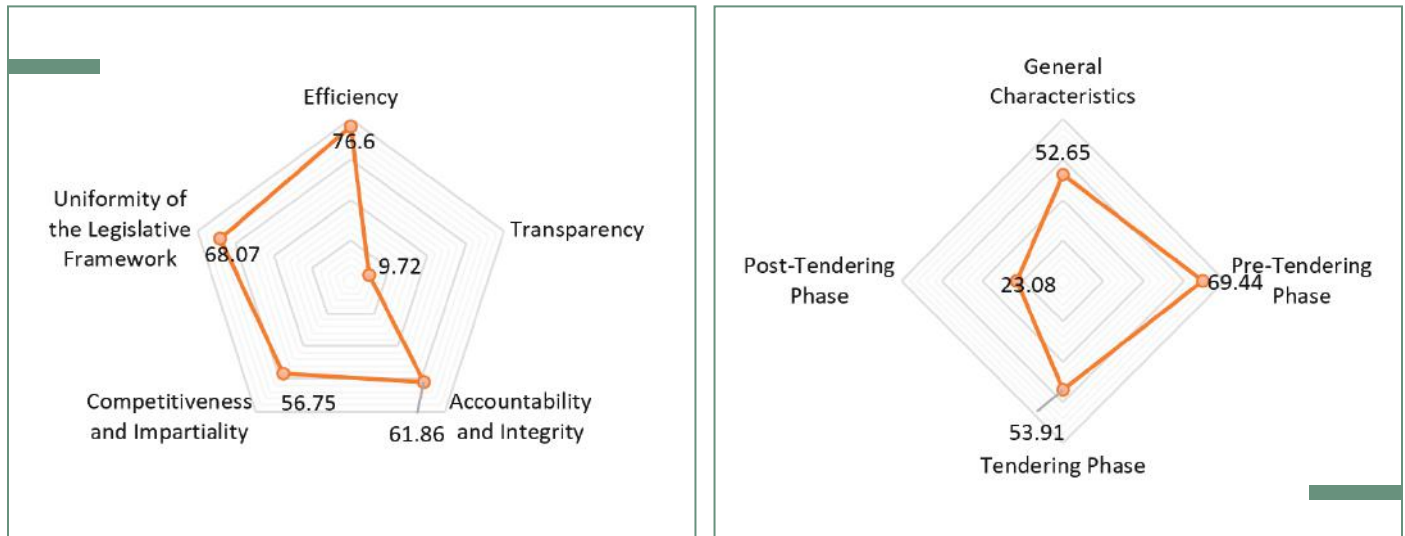
The overall evaluation of PPL in Burundi equals 49.91%. Based on the stage of the procurement process the country has the highest performance at the stage of pre-tendering phase - 69.44%, post-tendering phase was evaluated with the lowest score compared to other stages with 23.08%.<sup>121</sup>

<sup>119</sup> <https://www.tpp-rating.org/page/eng/country/burundi>

<sup>120</sup> Public Procurement Legislation of Burundi is available at: <http://www.armp.bi/index.php/lois>

<sup>121</sup> Detailed TPPR evaluation of Burundi available at: [https://www.tpp-rating.org/public/uploads/PPL%20Assessments%20ENG/PPL\\_Assessment\\_Burundi\\_20.pdf](https://www.tpp-rating.org/public/uploads/PPL%20Assessments%20ENG/PPL_Assessment_Burundi_20.pdf)

As for the benchmark indicators, Burundi was granted the highest score in the area Efficiency - 76.6%. The lowest performance compared to other benchmark indicators was demonstrated in the area of Transparency - 9.72%.



The poor performance of the country in almost every benchmark indicator is mainly caused by the following factors:

- Budgets of procuring entities are not publicly available;
- The scope of coverage of PPL does not include all sectors of the economy;
- The legislation does not provide for a mechanism of consultation with the private and civil society sectors;
- Electronic means is not the primary method of conducting public procurement;
- PPL does not guarantee sufficient time for tender candidates to prepare and submit tender applications;
- Lack of legal obligations to plan procurement and estimate associated expenditures in line with the state budget planning process;
- Open tender does not constitute the default procedure for public procurement;
- Public procurement operations are not subjected to internal and external audit checks;
- The legislation does not guarantee access to such public procurement information as submitted complaints, dispute resolutions, tender candidate applications, information about the bids offered by tender participants, decisions of the tender commission, procurement contracts, contract amendments, contract performance information, payment receipts, inspection and quality control reports.
- Public procurement annual plans, notices of intended procurement and tender documentation amendments are only accessible in a non-machine-readable format.

## Recommendations

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Based on the evaluation of the public procurement system and legislation of Burundi it is evident that the country has a long way to go towards establishing a transparent and accountable public procurement system. Some of the main steps to be taken in this direction are:

- Budgets of all public procuring entities must become publicly available;
- The coverage of PPL should extend to all sectors of the economy where competition is possible;
- Establishing a mechanism of consultation with the private and civil society sectors aimed at receiving feedback and identifying problems in the procurement system;
- Introducing legal guarantees stipulating that open tender constitutes the primary method of conducting public procurement;
- Ensuring that tender participants are given sufficient time for preparing and submitting tender applications;
- Obliging procuring entities to have staff members responsible for conducting procurement activities;
- Ensuring that procuring entities maintain all procurement-related documentation;
- Introducing legal guarantees aiming at planning procurement and estimating associated expenditures in line with the state budget formulation process;
- Subjecting public procurement operations to the internal and external audit checks conducted by qualified specialists;
- Providing full access to the above-listed public procurement-related documents in a free, electronic and machine-readable format.



## Overview

To evaluate public procurement legislation of Côte d'Ivoire IDFI partnered with Social Justice.<sup>122</sup> The organization is based in Abidjan and aims to establish a fairer society by promoting transparency and combating corruption. TPPR assessment of Côte d'Ivoire was conducted in 2020.<sup>123</sup>

## Public Procurement Regulations

The public procurement system in Côte d'Ivoire has undergone two major reforms. The first reform of 1999 was the result of a diagnostic study carried out on the initiative of the Ministry of Economy and Finance based on recommendations from ministries, institutions, multilateral and bilateral donors and the private sector. The objective was to put in place a more efficient and transparent public procurement system that would lead to the establishment of an enabling environment and the improvement of public expenditure management. The result of the second reform was Ordinance No. 2019 - 679 of July 24, which applies to all procurement of government contracts in Côte d'Ivoire.<sup>124</sup>

Public procurement procedures in Côte d'Ivoire are decentralized in the sense that different public entities implement and carry own tender announcements. Two public entities play the leading role in the area of public procurement policy:

- The Public Procurement Directorate (DMP) which emanates from the Ministry of the Economy and Finance undertaking the overall coordination of public procurement;
- The National Regulatory Authority for Public Procurement (ARNMP), which is institutionally connected with the Presidency of the Republic and ensures that existing legislation, is duly implemented.

Entities subject to procurement regulations are:

- State, municipalities, public national agencies and associations established by public entities based on the existing legislation;
- State institutions, structures or bodies created based on the Constitution, relevant laws or regulations. For instance, such public institutions include the Presidency of the Republic, the National Assembly, and the Economic, Social, Environmental and Cultural Council, as recognized by the laws of Côte d'Ivoire;
- State-owned entities and private companies financed by the state;
- Private entities acting on behalf of the state or in a public capacity.

<sup>122</sup> For more information visit: <https://socialjustice-ci.net/public/>

<sup>123</sup> <https://www.tpp-rating.org/page/eng/country/ivorycoast>

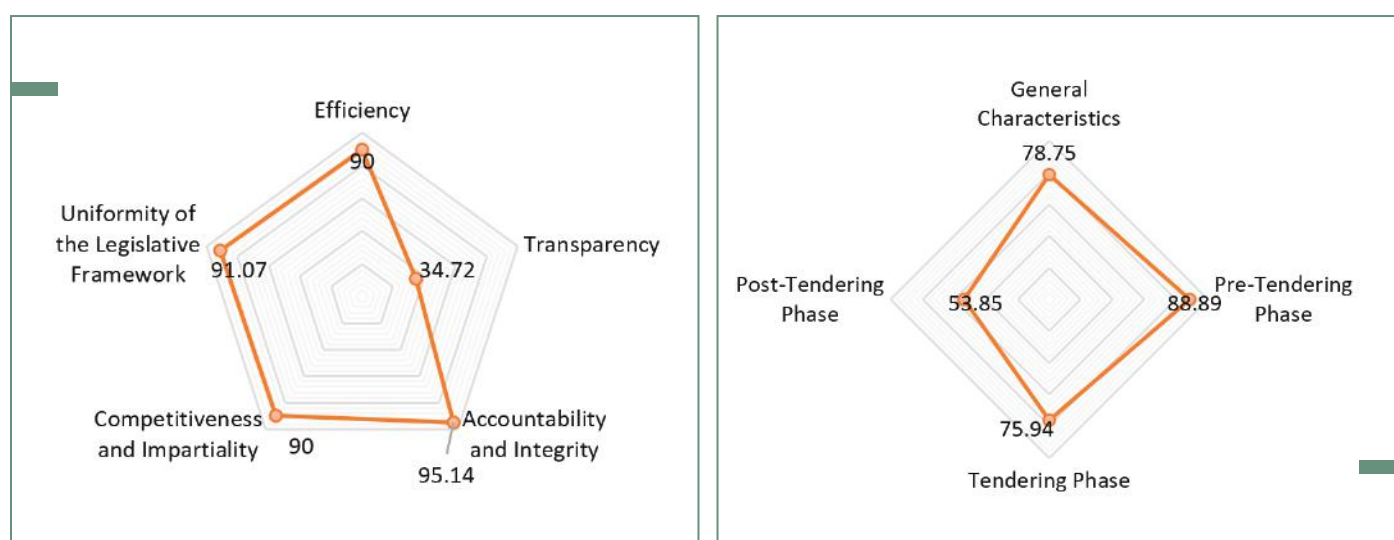
<sup>124</sup> Public Procurement Legislation of Côte d'Ivoire is available at: <https://www.anrmp.ci/textes-91094/lois>

Type of contracts subject to procurement regulations are contracts aimed at purchasing works, goods or services, and mixed contracts combining any of the three.

A portal containing all information on public procurement is available in Côte d'Ivoire. Public procurement procedures are not yet electronic, thus paper-based procurement is still in place.

## Evaluation

The overall evaluation of PPL in Côte d'Ivoire equals to 72.91%. Based on the stage of the procurement process the country has the highest performance at the stage of pre-tendering phase – 88.89%, post-tendering phase was evaluated with the lowest score compared to other stages with 53.85%.<sup>125</sup> As for the benchmark indicators, Côte d'Ivoire scored 90% or higher in all benchmark indicators, with the exception of Transparency. The latter received a significantly lower evaluation of 34.72%.



The poor performance of Côte d'Ivoire in a number of benchmark indicators and particularly in the area of Transparency is caused by the following factors:

- The business registry is not publicly available;
- Budgets of public procuring entities are not publicly available;
- Electronic means is not the primary method of conducting public procurement in the country;
- Right to review is limited to tender participants;
- Key information on concluded tenders is not publicly available;
- The legislation does not guarantee access to public procurement annual plans, tender candidate applications, bids offered by tender participant, procurement contracts and its amendments, contract performance, payment receipts, and, inspection and quality control reports;
- Decisions of the tender commission are only accessible on paper;

- Access to submitted complaints, dispute resolutions, notices of intended procurement and tender documentation amendments is only available in the non-machine-readable format.

## Recommendations

Based on the evaluation of the public procurement system and legislation of Côte d'Ivoire it is evident that the country has to take relevant steps to increase the level of public procurement transparency. Some of the main steps to be taken in this direction are:

- Abolishing the practice of conducting paper-based tenders and developing a software which would ensure that electronic means constitute the primary method of conducting public procurement;
- Business registry becoming publicly available;
- Ensuring public access to the budgets of procuring entities;
- Extending the right to review to potential suppliers as well as the general public;
- Ensuring access to public procurement related information, at the pre-tendering, tendering and post-tendering stages in electronic and machine-readable format;
- Providing the right to review for all interested parties.

## Kenya

### Overview

The evaluation of public procurement legislation of Kenya was conducted by the Institute for Economic Affairs (IEA) in 2018. IEA is a think-tank organization providing the platform for informed discussions to influence public policy in Kenya.<sup>126</sup> The TPPR team from IDFI reviewed the evaluation of Kenya, agreed on the final draft with the representative of the IEA and published the evaluation on the website.<sup>127</sup> Since 2018 Significant amendments have been introduced to the public procurement legislation of Kenya, however the existing TPPR evaluation of the country does not reflect these changes.

### Public Procurement Regulations

Public procurement in Kenya is regulated by the Public Procurement and Asset Disposal Act, adopted in December 2015.<sup>128</sup> The procurement system is decentralized, with each procuring entity conducting procurement procedures separately, using standardized tender documentation. The public procurement (PP) law has some transparency elements, but mostly

<sup>126</sup> For more information visit: <http://www.ieakenya.or.ke/about/overview-of-iea-kenya>

<sup>127</sup> <https://www.tpp-rating.org/page/eng/country/kenya>

<sup>128</sup> Public Procurement Legislation of Kenya is available at: <http://www.ppoa.go.ke/2015-08-24-14-47-43/the-act>

accommodates paper-based procurement that is prevalent in the country. Electronic procurement constitutes a type of tender procedure (electronic reverse auction) and is used on rare occasions.

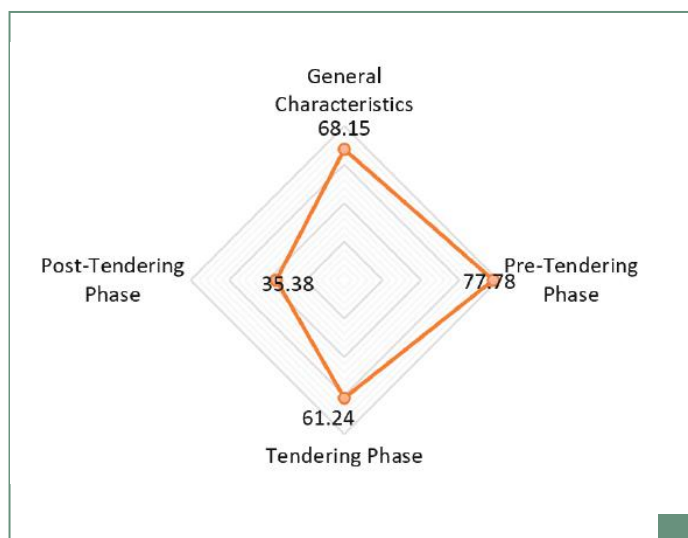
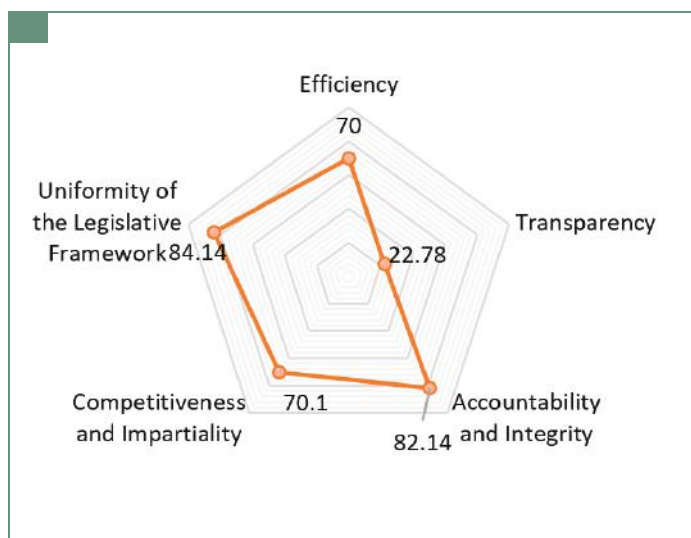
The National Treasury has the mandate of policy development in the area of public procurement, while the Public Procurement Regulatory Authority (PPRA) is granted the authority to monitor procurement procedures, collect and analyse data, develop standard documentation and act as a dispute resolution body.

In June 2018, the President signed Executive Order No. 2 requiring all procuring entities to publish procurement information. This includes detailed information on successful tender participants, subjects of the procurement, members of the Evaluation and Inspection Committees, etc. The order directs the National Treasury to ensure that all procurement procedures are conducted through the e-procurement module by January 1, 2019. The National Treasury already runs an e-procurement system, however, it is part of the Integrated Financial Management System and is only accessible for registered suppliers.

Under the presidential Executive Order, the PPRA runs a public procurement information portal, where procuring entities are required to upload tender notices and results on a monthly basis. However, the portal is not fully functional, since significant public procurement information is absent from the system.

## Evaluation

The overall evaluation of PPL in Kenya equals to 63.5%. Based on the stage of the procurement process the country has the highest performance at the stage of pre-tendering phase – 77.78%, post-tendering phase was evaluated with the lowest score compared to other stages with 35.38%.<sup>129</sup> As for the benchmark indicators, Kenya was granted the highest score in the area of Uniformity of Legislative Framework - 84.14% and Accountability and Integrity - 82.14%. The lowest performance compared to other benchmark indicators was demonstrated in the area Transparency - 22.78%.



Some of the most important aspects negatively affecting the TPPR evaluation of Kenya are:

- Absence of a single official point of access (i.e. an online portal) for public procurement related information;
- Lack of legal guarantees to publish the decisions on using non-competitive procedures;
- Lack of explicit legal prohibition for the individuals providing expert services to participate in or benefit from procurement procedures;
- Absence of dispute resolution procedures in procurement contracts;
- Lack of legal guarantees ensuring access to almost every key document/information related to the public procurements;

## Recommendations

Based on the evaluation of the public procurement system and legislation of Kenya it is evident that the country has a long way to go towards establishing more transparent and accountable public procurement procedures. Some of the main steps to be taken in this direction are:

- Establishing a single official point of access (i.e. an online portal) for all procedures and information related to public procurement;
- Amending PPL to oblige the procuring entities to justify using a non-competitive procedure and publishing the decisions;
- Ensuring that the individuals providing expert services cannot participate in or benefit from tender contracts;
- Obliging public procurement entities to include dispute resolution mechanism in contracts;
- Providing full access to public procurement related documents in a free, electronic and machine-readable format.

## Overview

In order to conduct the TPPR evaluation of Malawi IDFI partnered with Malawi Economic Justice Network (MEJN).<sup>130</sup> MEJN is a network of civil society organizations committed to championing people-centered and participatory economic governance for poverty reduction. The evaluation was conducted in 2018 and covers the period of 2016-2018.<sup>131</sup>

## Public Procurement Regulations

The public procurement system in Malawi is regulated by the Public Procurement and Disposal of Assets Act (2017) and other secondary legislation.<sup>132</sup> Prior to 2003, Malawi had a centralized procurement system characterized by the presence of the Central Tender Board (CTB) that was responsible for all procurement above a prescribed threshold for Government Ministries and Departments. The Central Government Stores (CGS) used to procure for Government Ministries and did its own procurement without much control from the Government. This was one of the gaps that led to the enactment of the Public Procurement Act (PPA) of 2003, which decentralized procurement responsibility to procuring entities and established the Office of the Director of Public Procurement (ODPP) as a public office with the responsibility of regulation, monitoring and oversight of public procurement in Malawi. However, lack of limited enforcement mechanisms led to the enactment of the Public Procurement and Disposal of Assets Act (2017) which established the Public Procurement and Disposal of Assets Authority (PPDA) as an impartial and independent institution responsible for the regulation, monitoring, oversight and enforcement of public procurement and disposal of assets in Malawi. PPDA runs the PP information platform, which offers only limited information on public procurement in the country.<sup>133</sup>

Director General of PPDA is appointed through a competitive procedure and unlike other oversight bodies is not appointed by the President. This provides opportunity for greater independence of the procurement authority. The PPDA is equipped with relatively wide authority, which includes investigation and sanctioning of procuring entities, and granting permission to use the direct procurement procedure.

<sup>130</sup> For more information visit - <https://www.facebook.com/MalawiEconomicJusticeNetwork/>

<sup>131</sup> Malawi - Public Procurement Legislation Assessment, 2018, TPPR, available at: [https://www.tpp-rating.org/public/uploads/PPL%20Assessments%20ENG/PPL\\_Assessment\\_Malawi\\_16\\_18.pdf](https://www.tpp-rating.org/public/uploads/PPL%20Assessments%20ENG/PPL_Assessment_Malawi_16_18.pdf)

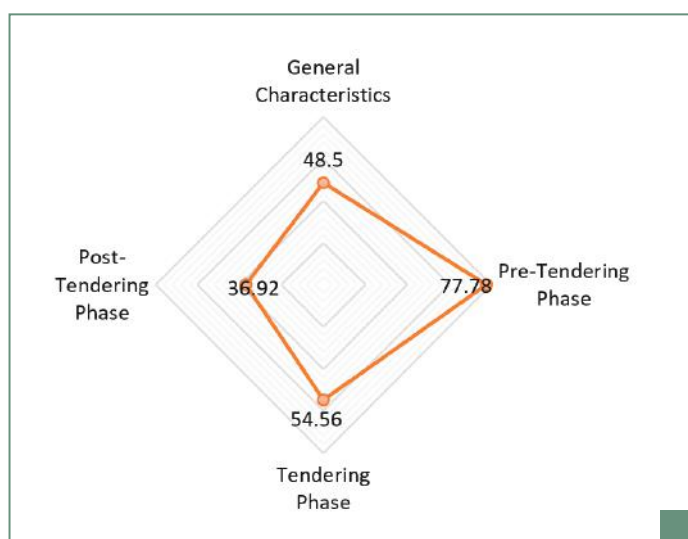
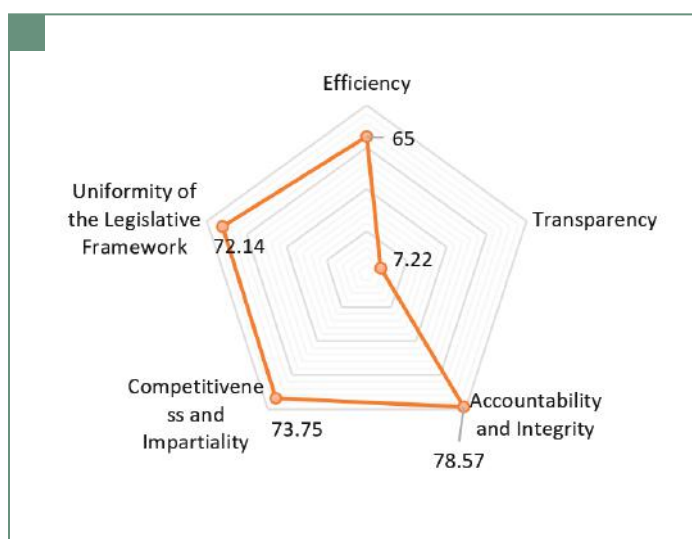
<sup>132</sup> Public Procurement legislation of Malawi available at: <https://www.ppda.mw/legal-instruments/>

<sup>133</sup> Website of the Public Procurement and Disposal of Assets Authority of Malawi, available at: <https://www.ppda.mw/>

## Evaluation

The overall TPP rating of Malawi is slightly higher than half of the possible maximum score and equals to 52.77%.<sup>134</sup> The considerably low score is greatly determined by the alarmingly poor performance in the benchmark indicator of Transparency, where the country scored only 7.22%. The scores of the country in other benchmark indicators are higher and fluctuate between 65% and 78%. As for the stages of public procurement, Malawi scored the highest in the pre-tendering phase, while the score gradually decreased with the advancement of the procurement process, with 54.56% at the tendering and 38.93% at the post-tendering stage. Some of the main problematic areas negatively effecting the TPPR score of Malawi are:

- Paper-based public procurement procedures;
- Lack of access to PPL (only on paper);
- Exclusion of state-owned companies and state non-commercial legal entities from the scope of PPL;
- Lack of consultation mechanisms with the private sector or civil society aimed at identifying problems in the procurement system;
- No single official point of access for all procedures and information on public procurement;
- No independent review body entitled to hear the complaints and grant remedies;
- No obligation of publishing annual procurement plans;
- Lack of legal provisions ensuring access to the notices of public procurement, submitted bids and bid securities, decisions of tender commission and post-procurement information, such as signed contracts, information on sub-contractors, contract performance, quality control and monitoring.



<sup>134</sup> TPPR, webpage of Malawi - <https://www.tpp-rating.org/page/eng/country/malawi>

The fact that the PPDA enjoys a high degree of independence and is equipped with wide authority is in line with the best international standards of having an independent public procurement authority with relevant resources and legal authority to impartially monitor the system and make sure the PPL is being followed in practice. In this way, the PPDA has good potential that needs to be further harnessed by establishing clearer legal functions, ensuring that there is no duplication of authority, and equipping the Authority with more resources to carry out its responsibilities. However, the PPDA is unable to fulfil one of its main functions – collection of procurement information from procuring entities, who, despite being obligated by law to keep records of all procurement activities and send them to the PPDA, often fail to do so. This problem also negatively affects the PP information platform run by the PPDA.

## Recommendations

Relevant stakeholders should consider the option of transitioning to a fully centralized open e-procurement system, which would be run by the PPDA and would enable the agency to fulfil its functions with much greater efficiency. Some of the more specific recommendations are:

- Ensuring that electronic means is the main method of conducting procurement;
- Granting easy access to PPL;
- Including state-owned companies and state non-commercial legal entities within the coverage of PPL;
- Including the mechanisms of consultation with the private sector or civil society aimed at identifying problems in the procurement system in PPL;
- Establishing a single official point of access for all procedures and information on public procurement;
- Developing an independent review body entitled to hear the complaints and grant remedies;
- Publishing annual procurement plans;
- Ensuring access to the notices of public procurement, submitted bids and bid securities, decisions of tender commission and post-procurement information, such as signed contracts, information on sub-contractors, contract performance, quality control and monitoring.



## Overview

To evaluate public procurement legislation of Mozambique IDFI partnered with Associação Academia e Estudos para o Desenvolvimento (AED).<sup>135</sup> The Organization is based in Matola, Mozambique. The experts of AED work towards promoting fair socio-political and economic reforms and advocate for the protection of human rights, better management of public resources and respect for the rule of law. TPPR assessment of Mozambique was conducted in 2020 and covers the period of 2016-2020.<sup>136</sup>

## Public Procurement Regulations

Public procurement in Mozambique is regulated by the decree of 2016 titled 'Regulation for the contracting of public works, supply of goods and provision of services to the state'. The new regulation was adopted with the aim of addressing the challenges in the decree of 2010 and increasing the transparency of public procurement.<sup>137</sup>

The regulation has a wide coverage and applies to all bodies and institutions of the public administration, municipalities, legal entities of public law as well as state-owned private companies.

The government body responsible for oversight of the Procurement Regulation is the Unit for the Supervision of Acquisitions (Unidade Funcional de Supervisão das Aquisições – UFSA). The Procurement Regulation requires that all procurement procedures are governed by a number of principles including legality, public interest, transparency, openness, equality, competitiveness, impartiality, and sound financial management. In addition, procurement processes must be decentralized wherever possible as indicated by UFSA, and must strive to optimize the benefits of procurement.

The procurement system in Mozambique is decentralized since each public entity executes its own public procurement processes. In general, the UFSA is responsible for ensuring, among other duties, coordinating the inspection and supervision of activities related to public procurement and providing technical guidance on procurement procedures. It is also responsible for preparing and managing the training program on public procurement and conducting quantitative and qualitative analysis necessary for developing and implementing public procurement policies.

Mozambique established the public procurement portal within the UFSO, which hosts information related to public procurement legislation, registration requirements, a list of potential eligible suppliers as well as tenders and direct contracts.<sup>138</sup>

<sup>135</sup> For more information visit – <https://www.facebook.com/aedmoz/>

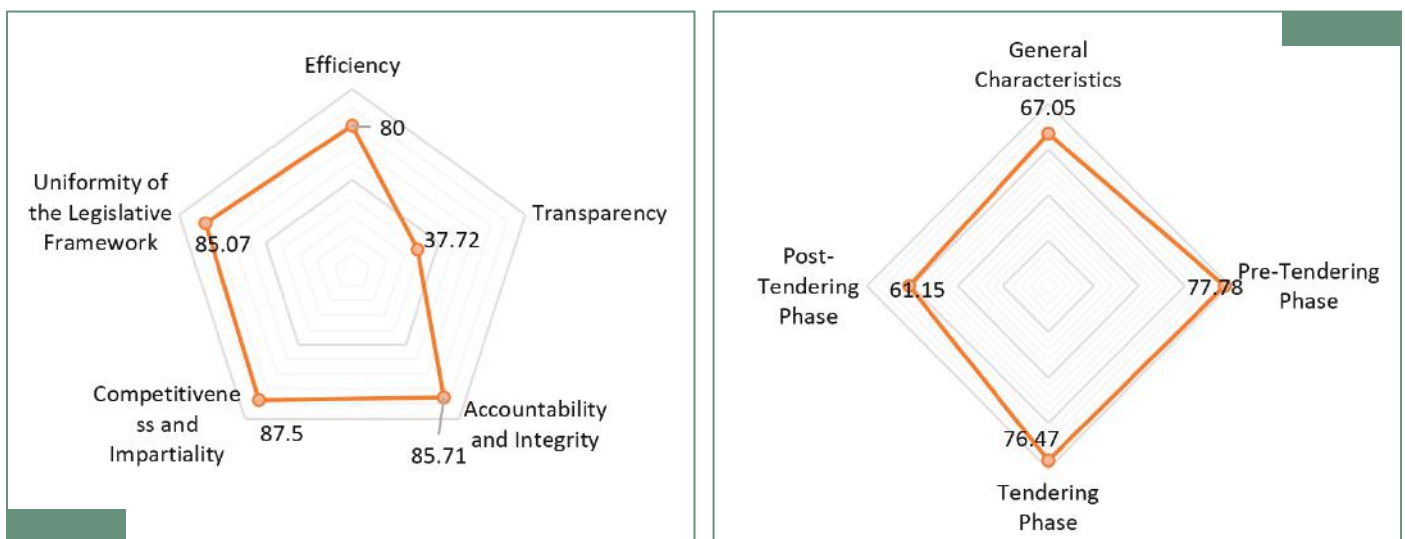
<sup>136</sup> Mozambique – Public Procurement Legislation Assessment, 2020, TPPR, available in Spanish at: [https://www.tpp-rating.org/public/uploads/PPL%20Assessments%20ENG/PPL\\_Assessment\\_Mozambique\\_16\\_20.pdf](https://www.tpp-rating.org/public/uploads/PPL%20Assessments%20ENG/PPL_Assessment_Mozambique_16_20.pdf)

<sup>137</sup> Public Procurement Legislation of Mozambique, available at: <http://www.ufsa.gov.mz/leis.php>

<sup>138</sup> Public Procurement website of Mozambique – UFSO, available at: <http://www.ufsa.gov.mz/concursos.php>

# Evaluation

According to the TPPR assessment of Mozambique, public procurement legislation in the country is evaluated with an overall score of 70.88%.<sup>139</sup> According to the TPPR evaluation, the best performing benchmark indicator in the case of Mozambique is Competitiveness and Impartiality – 87.5%. The country also scored high in the Uniformity of the Legislative Framework – 85.07% and Accountability and Integrity – 85.71%. However, Mozambique scored poorly in the Benchmark indicator of Transparency – 37.72%, which also negatively affected the overall score of the country. The level of public procurement legislation transparency at the pre-tendering and tendering stages was evaluated with approximately 76-78%. The country scored considerably low at the post-tendering phase – 61.15%.



The low level of transparency in the area of public procurement in Mozambique is largely determined by the following gaps in the legislation:

- Lack of the mechanism of consultation with the private sector and civil society actors aimed at determining and addressing gaps in PPL;
- Failure to ensure by the legislation that electronic means is the primary method of conducting public procurement;
- Right to review the complaints limited to tender participants only;
- Including civil society actors within the composition of the public procurement review body;
- Access to submitted complaints and relevant outcomes limited to hard copies only, no access to the information in electronic and machine-readable format;
- No obligation of the public entities to publish annual procurement plans and relevant sources of financing;
- Access to all procurement information at the pre-tendering, tendering and post-tendering stages limited to hard copies only. The legislation does not provide for access to the information in an electronic and machine-readable format.

## Recommendations

Based on the shortcoming discussed above Mozambique should consider the following in order to strengthen the transparency and accountability of its public procurement system:

- Developing the mechanism of consultation with the private sector and civil society actors aimed at determining and addressing gaps in PPL;
- Guaranteeing by the legislation that electronic means is the primary method of conducting public procurement;
- Ensuring that the right to review is extended to the wider society and prospective suppliers;
- Including civil society actors within the composition of the public procurement review body;
- Obliging public entities to publish annual procurement plans and relevant sources of financing;
- Ensuring access to all procurement information at the pre-tendering, tendering and post-tendering stages in an electronic and machine-readable format.

## Senegal

### Overview

In order to evaluate public procurement legislation of Senegal IDFI partnered with the Citizen Forum – a civil society association operating in Senegal, the main aim of which is to fight against corruption and promote transparency, accountability and integrity in the process of state resource management and governance.<sup>140</sup> The TPPR assessment of Senegal was conducted in 2019.<sup>141</sup>

### Public Procurement Regulations

Due to the desire to strengthen the transparency and efficiency in public spending, the public procurement legislation of Senegal has undergone a number of changes over the last two decades.<sup>142</sup> Amendments modernized the public procurement system and introduced innovations to promote sound procurement practices.<sup>143</sup>

Public procurement in Senegal is regulated by the Decree No. 2014-1212 of September 22, 2014. The Decree applies to all public or private entities, national companies and public limited companies with a majority public shareholding. The procurement system is in line with the

<sup>140</sup> For more information visit – [https://www.facebook.com/forumcitoyen18/?\\_rdc=1&\\_rdt](https://www.facebook.com/forumcitoyen18/?_rdc=1&_rdt)

<sup>141</sup> Senegal – Public Procurement Legislation Assessment, 2019, TPPR, available in French at: [https://www.tpp-rating.org/public/uploads/PPL%20Assessments%20ENG/PPL\\_Assessment\\_Senegal\\_2019.pdf](https://www.tpp-rating.org/public/uploads/PPL%20Assessments%20ENG/PPL_Assessment_Senegal_2019.pdf)

<sup>142</sup> Decree No. 2002-550 of 30 May 2002 on the Public Procurement Code, repealed the Decree No. 82-690 of 7 September 1982, thus, Senegal moved from the Public Procurement Codes 2007-545 of 25 April 2007 and 2011-1048 of 27 July 2011 to the Public

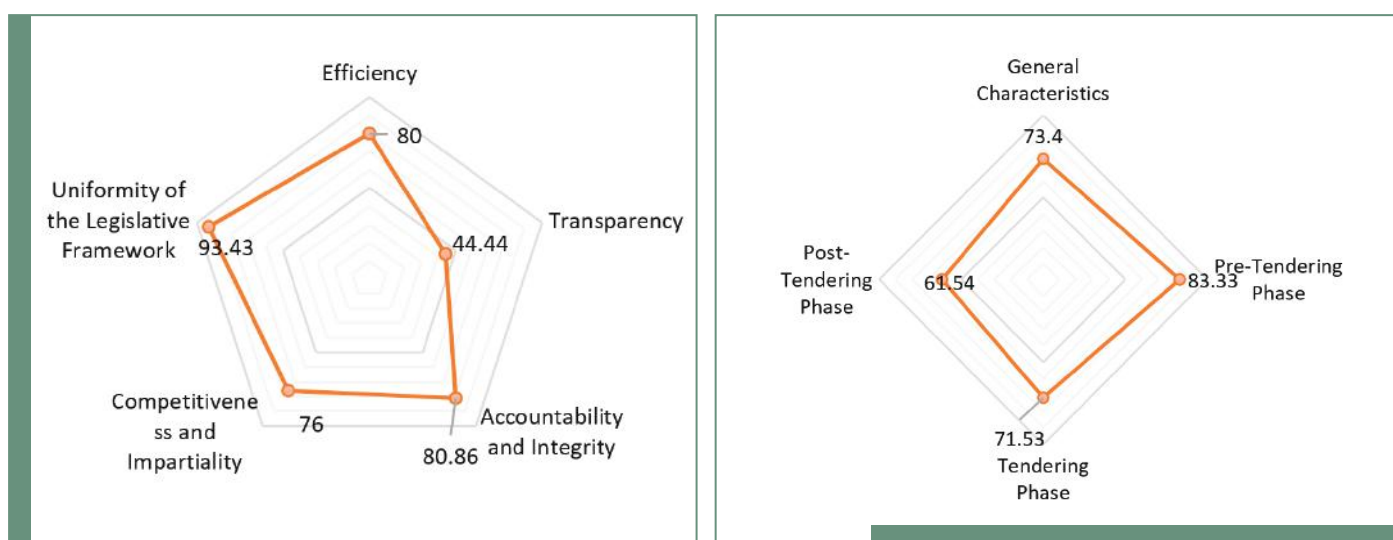
<sup>143</sup> Public Procurement Legislation of Senegal, available at: <http://www.marchespublics.sn/>

the regulations on public procurement set by the West African Economic and Monetary Union (Directive n°05/2005/CM/UEMOA of 9 December 2005). Senegal has a Public Procurement Portal where all relevant legislation and information on procurements can be found.<sup>144</sup> Decree No. 2014-1212 safeguards the general interest and public funds, enhances the transparency of procurement procedures and ensures healthy competition between candidates.

The regulatory bodies of public procurement in Senegal are the Central Directorate for Public Procurement (established by the Decree 2007-547 of 25 April 2007) and the Public Procurement Regulatory Authority (established by Decree 2007-546 of 25 April 2007). The regulatory bodies conduct a priori and a posteriori control of public procurement contracts. Since 2018, Public Procurement Regulatory Authorities started to promote e-procurement by making available an online training module and public service delegation agreements to take advantage of the opportunities offered by digital technology. This can be considered as a fundamental prerequisite for a reform of the legislation on the digitization of procurement procedures.

## Evaluation

According to the TPPR assessment of Senegal, public procurement legislation in the country is evaluated with an overall score of 70.84%.<sup>145</sup> As noted above the subject of the evaluation is PP regulations and it does not reflect the extent to which PP legislation is implemented in practice. According to the TPPR evaluation, the best performing benchmark indicator in the case of Senegal is the Uniformity of the Legislative Framework – 93.43%. Other benchmark indicators with the exception of Transparency, fluctuate between 76% and 80%. As for the benchmark indicator of Transparency, according to the TPPR assessment, the area constitutes one of the main problematic directions of public procurement in Senegal, hence the score of 44.44%. Regarding the stages of the procurement process, Senegal showed high performance at the pre-tendering phase – 83.33%, however, significant problems remain at the post-tendering phase – 61.54%.



<sup>144</sup> Public Procurement website of Senegal, available at: <http://www.marchespublics.sn/pmb/>

<sup>145</sup> TPPR, webpage of Senegal, 2019 – <https://www.tpp-rating.org/page/eng/country/senegal>  
[https://www.tpp-rating.org/public/uploads/PPL%20Assessments%20ENG/PPL\\_Assessment\\_Senegal\\_2019.pdf](https://www.tpp-rating.org/public/uploads/PPL%20Assessments%20ENG/PPL_Assessment_Senegal_2019.pdf)

A lower score in the benchmark indicator of Transparency as well as at the post-tendering stage in Senegal is caused by the following gaps in the procurement system:

- Electronic means does not constitute the primary method of conducting public procurement in Senegal;
- The legislation allows domestic preferences;
- The right to review is ensured for tender participants and potential suppliers;
- The legislation does not include any provisions on accessing submitted complaints or dispute resolution documents;
- PPL does not ensure access to tender documentation, candidate applications, submitted bids, procurement contracts and their amendments;
- Contract performance information, quality check and inspection reports are not publicly available either;
- Information on subcontractors is not made public.

## Recommendations

Based on the shortcoming discussed above Senegal should consider the following in order to strengthen the transparency and accountability of its public procurement system:

- Ensuring that electronic means is the primary method of conducting public procurement;
- Excluding domestic preferences in its legislation;
- Guaranteeing the right to review for the wider society, in addition to the tender participants and potential suppliers;
- Include provisions on accessing submitted complaints and dispute resolution documents in the legislation;
- Ensuring access to tender documentation, candidate applications, submitted bids, procurement contracts and their amendments;
- Publishing contract performance information, quality check and inspection reports;
- Publishing information on subcontractors.

## Overview

The transparent public procurement evaluation of Tanzania was prepared in cooperation with the Institute of Public Accountability – Wajibu, founded to foster the environment that supports and promotes public accountability in Tanzania.<sup>146</sup> The TPRR evaluation of Tanzania was conducted in 2018 and covers the period of 2016-2018.<sup>147</sup> IDFI and its partner organization Wajibu, are currently working towards renewing the evaluation of Tanzania and including it in the rating of 2019-2020.

## Public Procurement Regulations

Public procurement in Tanzania is regulated by the Public Procurement Act, 2011 (PPA) and its amendment act of 2016 (PPAA), which serves as an addendum to the act of 2011. The legislative framework of Tanzania also includes sub-legal and sector-specific acts, which spell out the rules and procedures of public procurement activities in Tanzania.<sup>148</sup>

In Tanzania, the public procurement law applies to any ministry, department or agency of the government, as well as any corporate or statutory body or authority established by the government. Public procurement law also covers state-owned companies and local government authorities. The public procurement system in Tanzania is decentralized, meaning that all entities covered by the law conduct public procurement activities individually through means available in the country.

Tanzania has a national electronic public procurement system. TANEPS (Tanzanian National e-Procurement System) is an e-portal created to facilitate public procurement processes in Tanzania. According to the Public Procurement Regulations of 2013 TANEPS is a web portal containing all information relating to public tenders. Since TANEPS is a relatively new electronic platform, currently it is piloted in only 100 selected procuring entities for procuring common use items, medicines and medical supplies, consistent with Regulation 342(1) of GN No. 446. Additionally, TANEPS allows access to public procurement data. The information can be viewed online, but cannot be downloaded as bulk for analytical purposes.<sup>149</sup> Tanzania's new TANEPS has the potential to comply with the best international practice and adopt open contracting standards to allow unhindered access to public procurement data in a machine-readable format.

The Public Procurement Regulatory Authority (PPRA) is the body charged with regulatory functions, which is responsible for the implementation of the PPL in Tanzania. PPRA has oversight powers on all public procurement activities carried by each procuring entity in the country.

<sup>146</sup> For more information visit – <http://www.wajibu.or.tz/>

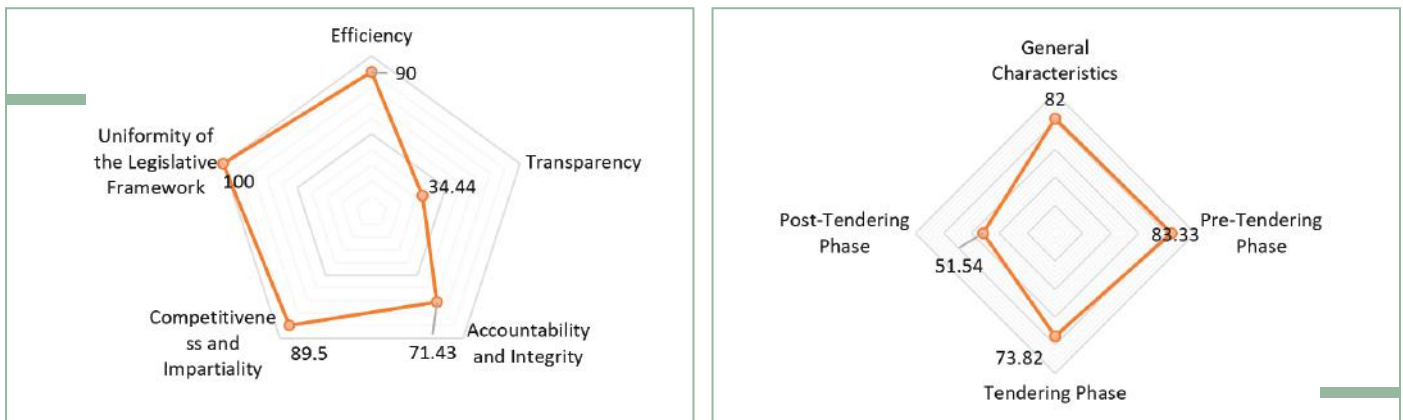
<sup>147</sup> Tanzania – Public Procurement Legislation Assessment, 2018, TPRR, available at: [https://www.tpp-rating.org/public/uploads/PPL%20Assessments%20ENG/PPL\\_Assessment\\_Tanzania.pdf](https://www.tpp-rating.org/public/uploads/PPL%20Assessments%20ENG/PPL_Assessment_Tanzania.pdf)

<sup>148</sup> Public Procurement Legislation of Tanzania, available at: <https://www.ppra.go.tz/index.php/2012-03-07-08-56-44/public-procurement-act.ipsu>

<sup>149</sup> Public Procurement portal of Tanzania, available at: <https://tanzania-demo.eurodyn.com/epps/home.do>

# Evaluation

The overall score of the legislative transparency of public procurement in Tanzania equals to 75.23%.<sup>150</sup> Among the 5 benchmark indicators, the poorest performance is observed in the case of Transparency – 34.44%. However, the country scored particularly high in the benchmark indicators of Competitiveness and Impartiality – 89.5%, Efficiency – 90% and the Uniformity of the Legislative Framework – 100%. The post-tendering phase demonstrated to be most problematic in regards to the transparency of public procurement procedures and was evaluated with 51.54%.



It is noteworthy that the PPL legislation of Tanzania stipulates that electronic means is the primary method of conducting procurement and establishes a single official point of access for all procedures and information related to public procurement. The right to review is ensured for tender participants as well as prospective suppliers and the general public. Procuring entities have the obligation to prepare and publish annual public procurement plans. Moreover, open tender is the primary method of conducting procurement and all exceptions are clearly listed in the legislation.

Regardless of the abovementioned, there are a number of significant shortcomings in the legislation which negatively affect the TPRR evaluation of Tanzania, namely:

- The legislation does not provide for the mechanism of consultation with the private sector and civil society aimed at receiving feedback and identifying problems in the procurement system;
- Even though Tanzania has an independent review body authorized to review complaints and render decisions, the relevant information is not published for public scrutiny;
- Access to annual procurement plans is limited to non-machine readable format;
- PPL does not oblige procuring entities to publish justifications of using non-competitive procedures;
- No access is guaranteed to candidate applications, bids, information on subcontractors or contract performance;
- Procurement contracts are accessible in non-machine-readable format, while their amendments are not made public at all.

<sup>150</sup> TPRR, webpage of Tanzania - <https://www.tppr-rating.org/page/eng/country/tanzania>



## Recommendations

Based on the gaps and challenges identified by the TPPR assessment of Tanzania, some of the main recommendations for improving the level of PPL transparency in the country are as follows:

- Ensuring that the legislation provides for the mechanism of consultation with the private sector and civil society aimed at receiving feedback and identifying problems in the procurement system;
- Publishing detailed information on the complaints submitted at the independent review body and relevant decisions;
- Guaranteeing access to annual procurement plans in machine-readable format;
- Setting the requirement for the procuring entities to publish justifications of using non-competitive procedures;
- Guaranteeing access to candidate applications, bids, information on subcontractors and contract performance;
- Ensuring that procurement contracts as well as their amendments are published and accessible in a machine-readable format.

## Togo

### Overview

In order to conduct the TPPR evaluation of Togo IDFI partnered with the Lomé based organization – ANCE Togo. The organization works in such directions as transparency of public finances, environmental governance, public health and local governance.<sup>151</sup> TPPR evaluation of Togo was conducted in 2018 and covers the period of 2016-2018.<sup>152</sup>

### Public Procurement Regulations

The two main laws regulation public procurement in Togo are Law No. 2014-014 of October 22, 2014 on Modernizing State's Activities for Developing Economy and Law No. 2009-013 on Public Contracts and Public Service Delegation.<sup>153</sup> PPL legislation of Togo applies to all state budget and local government entities, including their respective Legal Entities of Public Law (LEPLs), state-owned companies and non-commercial legal entities. The scope of coverage of PPL includes all sectors of the economy where competition is possible and all exemptions are clearly defined by the legislation.

The public entity responsible for the implementation of public procurement legislation in Togo is the Public Procurement Regulatory Authority (ARMP).<sup>154</sup> ARMP is an independent administrative

<sup>151</sup> For more information visit - <https://www.ancetogo.org/>

<sup>152</sup> Togo - Public Procurement Legislation Assessment, 2018, TPPR, available at: [https://www.tpp-rating.org/public/uploads/PPL%20Assessments%20ENG/PPL\\_Assessment\\_Togo\\_16\\_18.pdf](https://www.tpp-rating.org/public/uploads/PPL%20Assessments%20ENG/PPL_Assessment_Togo_16_18.pdf)

<sup>153</sup> Public Procurement legislation of Togo available at: <http://armp.tg/lois/>

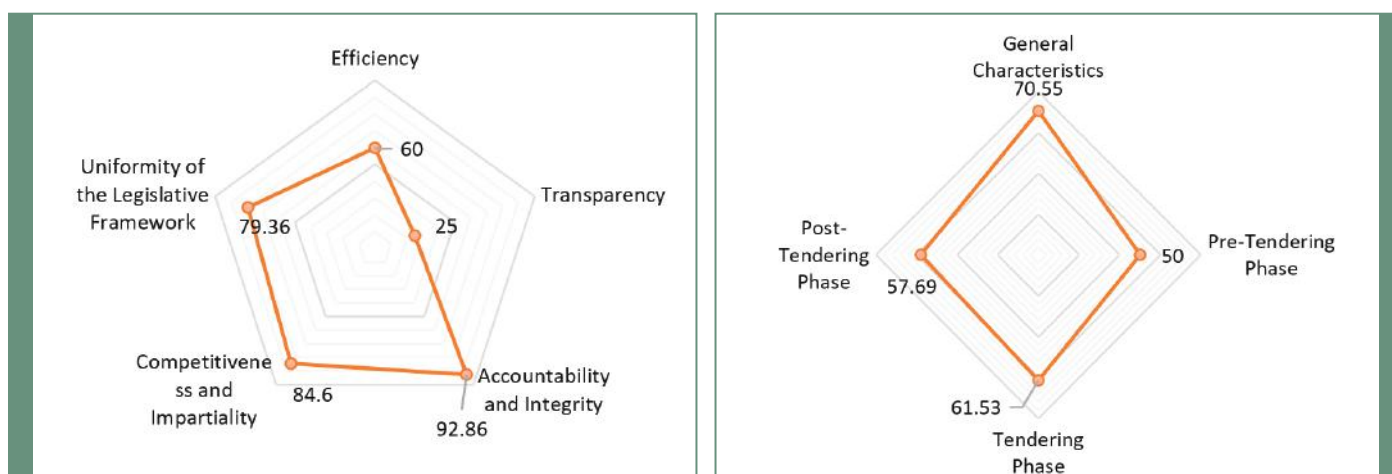
<sup>154</sup> Website of the Public Procurement Regulatory Authority (ARMP), available at: <https://staging.armp.togo.com/>



authority which enjoys functional and organic independence on all issues relating to its mission. Its headquarters are located in Lomé. The National Directorate of Public Procurement Control (DNCMP) is another public entity playing a crucial role in monitoring procurement procedures. Public procurement regulatory bodies in Togo provide training sessions on public procurement for relevant officials, develop a professional framework and performance evaluation, and ensure execution and control of public contracts. The public entities work in the direction of communication with the civil and private sectors, disseminating information within the wider society and raising awareness on various topics of public procurement. In order to execute its mandate, the ARMP relies on an organizational architecture based on three bodies: the Regulatory Council, the Dispute Resolution Committee and the General Directorate.

## Evaluation

The TPRR evaluation of Togo equals to 60.27%.<sup>155</sup> Togo has a solid legislative framework when it comes to the benchmark indicators of Accountability and Integrity, Competitiveness and Impartiality as well as the Uniformity of the Legislative Framework. However, the TPRR evaluation identified significant problems in the benchmark indicator of Transparency, where Togo scored 25%. As for the stages of the procurement process, the evaluation of Togo fluctuates between 50% and 60%, thus showing considerable room for improvement.



TPPR identified a number of positive observations in regard to the public procurement system of Togo. PPL determines a separate state body (procurement regulatory body) responsible for managing public procurement which is also entitled to have own income in addition to the state funding. The legislation provides for a mechanism of consultation with the private and civil society sectors that is aimed at receiving feedback and identifying problems in the procurement system. PPL establishes a single official point of access for all procedures and information related to public procurement.

However, the public procurement system of Togo also faces a number of shortcomings. Some of the main problematic areas negatively affecting the TPRR score of Togo are:

<sup>155</sup> TPRR, webpage of Togo – <https://www.tppr-rating.org/page/eng/country/togo>

- The legislation provides for a mechanism of consultation with the private and civil society sectors, however, it does not oblige relevant entity to use the mechanism on a regular basis;
- Electronic means does not constitute the primary method of conducting procurement in Togo;
- The right to review is limited to tender participants only;
- The independent review body with the authority to review complaints and grant remedies does not include civil society representatives in its composition;
- PPL does not ensure access to submitted complaints or dispute resolution documents;
- Procuring entities have no obligation to publish annual procurement plans;
- No access is ensured to procurement notices, their amendments, tender candidate applications, submitted bids, decisions of the tender commission, signed contracts, their amendments, contract performance information, information on inspection or quality control reports.

## Recommendations

In order to ensure high-level transparency in the area of public procurement of Togo progress needs to be made in a number of directions. Namely, the following recommendations should be taken into consideration:

- Even though the legislation provides for a mechanism of consultation with the private and civil society sectors, it should also ensure that relevant entity is directed to use the mechanism on a regular basis;
- Electronic means should constitute the primary method of conducting procurement in Togo;
- The right to review should be limited to tender participants and should also include potential suppliers and the general public;
- Civil society representatives should be included in the composition of the independent review body with the authority to review complaints and grant remedies;
- PPL should ensure access to submitted complaints and dispute resolution documents;
- Procuring entities should have the obligation to publish annual procurement plans;
- PPL should guarantee access to procurement notices, their amendments, tender candidate applications, submitted bids, decisions of the tender commission, signed contracts, their amendments, contract performance information, information on inspection or quality control reports.

## Overview

Conducting the TPPR evaluation of Uganda was made possible through close cooperation with Africa Freedom of Information Centre (AFIC) – a pan-African NGO and resource centre that promotes the right of access to information through comparative research, regional advocacy, information-sharing and capacity building.<sup>156</sup> The TPPR evaluation of Uganda was conducted in 2019 and covers the period of 2016-2020.<sup>157</sup>

## Public Procurement Regulations

The main legal act regulating the area of public procurement in Uganda is the Public Procurement and Disposal of Public Assets Act (PPDA act) of 2003. The act sets up the Public Procurement and Disposal of Public Assets Authority (PPDA) as the principal regulatory body for public procurement and disposal of public assets in Uganda. Some of the recent amendments introduced in the legislation of Uganda inter alia strengthened and enhanced the role of PPDA in the process of executing its regulatory mandate.<sup>158</sup>

The main mandate of PPDA is to ensure the application of fair, competitive, transparent, non-discriminatory, and value for money procurement and disposal standards and practices; harmonize the procurement and disposal policy systems and practices of the central and local governments as well as relevant statutory bodies; set standards for the public procurement and disposal system in Uganda; monitor the compliance of procuring entities with relevant regulations; and build procurement and disposal capacity in Uganda.<sup>159</sup>

The procurement portal of the Government of Uganda serves as an official point of access for all procedures and information related to public procurement.<sup>160</sup>

## Evaluation

The overall TPPR evaluation of Uganda equals to 60.48%.<sup>161</sup> Based on the TPPR evaluation of Uganda, compared to other benchmark indicators the country performed well in the benchmark indicator of Uniformity of Legislative Framework – 83.64%. The benchmark indicator of Competitiveness and Impartiality was evaluated with 67.75%. Other benchmark indicators were evaluated with scores below 60%, with the most problematic being Transparency with only 30%.

<sup>156</sup>For more information visit – <https://africafoicentre.org/>

<sup>157</sup>Uganda – Public Procurement Legislation Assessment, 2019, TPPR, available at: [https://www.tpp-rating.org/public/uploads/PPL%20Assessments%20ENG/PPL\\_Assessment\\_Uganda\\_16\\_19.pdf](https://www.tpp-rating.org/public/uploads/PPL%20Assessments%20ENG/PPL_Assessment_Uganda_16_19.pdf)

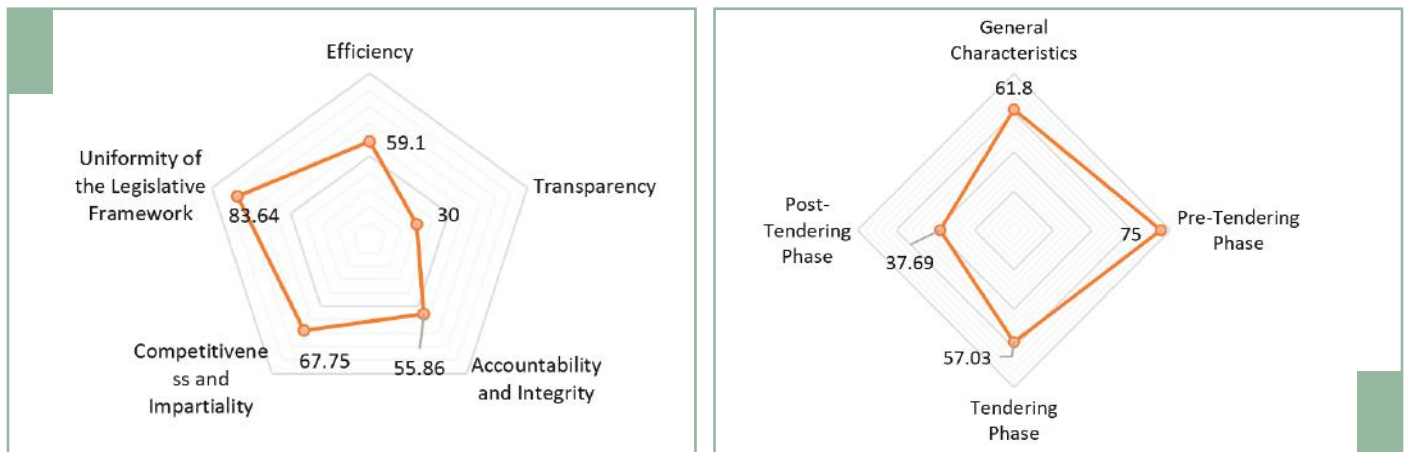
<sup>158</sup>Public Procurement Legislation of Uganda available at: <https://www.ppda.go.ug/download-reports/legal/ppda-act/>

<sup>159</sup>Website of the Public Procurement and Disposal of Public Assets Authority of Uganda, available at: <https://www.ppda.go.ug/>

<sup>160</sup>Government of Uganda Procurement Portal, available at: <https://gpp.ppda.go.ug/#/public/bid-invitations>

<sup>161</sup>TPPR, webpage of Uganda, 2016-2019 – <https://www.tpp-rating.org/page/eng/country/uganda>

As for the stages of the procurement process, Uganda showed much room for improvement in regards to the regulations applicable to the post-tendering phase as the country only received 37.60% at the given stage. Pre-tendering and Tendering phases were assessed with 75% and 57.03% respectively.



The scope of PPL coverage in Uganda is wide and includes central as well as local government entities, legal entities of public law and state-owned companies. The legislation defines a separate state body responsible for managing public procurement and ensures the existence of an independent review body with the authority to review complaints. Procuring entities publish their annual procuring plans and access to them is guaranteed in an electronic and machine-readable format. Open tender constitutes the default procedure for conducting public procurement. However, the TPPR assessment of Uganda demonstrated ample room for improvement. Some of the problematic issues in the public procurement system of Uganda are:

- Although the legislation provides for the mechanism of consultation with non-state actors, it is limited to civil society members and does not extend to the private sector. Moreover using the mechanism on a regular basis is not mandatory;
- The legislation of Uganda does not stipulate that electronic means constitute the primary method of conducting procurement;
- The right to review in the procurement process is limited to tender participants;
- The independent review body authorized to hear complaints does not include civil society members in its composition;
- Access to submitted complaints and dispute resolutions is limited to electronic but non-machine-readable format;
- PPL does not ensure access to tender candidate applications, submitted bids, decisions of the tender commission, information on subcontractors, procurement contracts, their amendments, or information on the quality check and contract performance.

## Recommendations

In order to improve the public procurement system in Uganda the following recommendations should be taken into consideration:

- The mechanism of consultation with non-state actors, should extend to the private sector and should be used on regular basis;
- Electronic means should constitute the primary method of conducting procurement;
- The right to review in the procurement process should extend to potential suppliers and the general public;
- The independent review body authorized to hear complaints should include civil society members in its composition;
- Access to submitted complaints and dispute resolutions should be guaranteed in machine-readable format;
- PPL should ensure access to tender candidate applications, submitted bids, decisions of the tender commission, information on subcontractors, procurement contracts, their amendments as well as quality check and contract performance information.

## Zimbabwe

### Overview

With the aim of evaluating the transparency level of public procurement legislation in Zimbabwe IDFI partnered with the local organization Symacon Solutions. The organization is based in Harare, Zimbabwe, and works on such topics as system development and capacity building in governance, finance and human resources, organizational development and project management solutions.<sup>162</sup> The TPPR evaluation of Zimbabwe was conducted in 2019.<sup>163</sup>

### Public Procurement Regulations

In recent years a number of reforms were implemented in Zimbabwe in the area of public procurement. The reforms in public procurement culminated in the drafting of a new Public Procurement Bill which was enacted into law, Public Procurement and Disposal of Public Assets Act in October 2017.<sup>164</sup> The scope of coverage of PPL in Zimbabwe includes all sectors of the economy where competition is possible and exemptions are clearly listed in the legislation.

<sup>162</sup>For more information visit - <http://symaconsolutions.com/>

<sup>163</sup>Zimbabwe - Public Procurement Legislation Assessment, 2019, TPPR, available at: [https://www.tpp-rating.org/public/uploads/PPL%20Assessments%20ENG/PPL\\_Assessment\\_Zimbabwe\\_19.pdf](https://www.tpp-rating.org/public/uploads/PPL%20Assessments%20ENG/PPL_Assessment_Zimbabwe_19.pdf)

<sup>164</sup>Public Procurement Legislation of Zimbabwe, available at: [http://www.praz.gov.zw/index.php?option=com\\_phocadownload&view=category&id=1&Itemid=705&lang=en](http://www.praz.gov.zw/index.php?option=com_phocadownload&view=category&id=1&Itemid=705&lang=en)

PP legislation in Zimbabwe covers all state budget entities, local government entities and state-owned companies. Public Procurement and Disposal of Public Assets Act established a Public Procurement Regulatory Authority of Zimbabwe (PRAZ) which is a regulatory and oversight body responsible for setting standards, issuing guidelines and monitoring compliance of procuring entities with the set standards. PRAZ has the mandate to ensure that public procurement and the disposal of public assets in Zimbabwe is conducted in a transparent, fair, honest, cost-effective and competitive manner.<sup>165</sup>

The Authority is no longer involved in the adjudication and awarding of tenders contracts, instead, the mandate is transferred to Accounting Officers in various state departments. Public procurement in relevant entities is managed by Procurement Management Units (PMU) which report directly to the Accounting Officers. The Public Procurement Regulatory Authority of Zimbabwe plays a supervisory and monitoring role in the process.

## Evaluation

According to the TPPR assessment PPL in Zimbabwe was evaluated with an overall score of 559.7%. Compared to the other indicators the country demonstrated the best performance in the benchmark indicator of Uniformity of the Legislative Framework – 90%. The other benchmark indicators fluctuate between 65% and 73%, with the exception of the benchmark indicator of Transparency, which was evaluated with a considerably lower score of 21.11%. Looking at the stages of the procurement process Zimbabwe scored high at the pre-tendering stage – 86.11%, however, the post-tendering phase showed much room for improvement with a score of 33.08%.



PPL of Zimbabwe determines a separate state body overseeing the public procurement procedures and compliance with set standards. It also stipulates that each procuring entity should have a staff member responsible for conducting procurement activities. The right to review is ensured throughout the procurement process and it is reserved for tender participants as well as potential suppliers. Procuring entities are obliged to publish procurement plans on annual basis. Moreover, in the case when procuring entities refer to non-competitive procedures, they are directed to justify the need of avoiding a competitive procedure. However, there are a number of significant challenges in the public procurement system and legislation of Zimbabwe. Based on the TPPR evaluation the following constitute the most significant topics negatively affecting the assessment of Zimbabwe:

- The legislation does not provide for a mechanism of consultation with the private and civil society sectors that is aimed at receiving feedback and identifying problems in the procurement system;
- Electronic means does not constitute the primary method of conducting public procurement;
- PPL does not establish a single official point of access (i.e. an online portal) for all procedures and information related to public procurement;
- Even though the right to review is ensured for potential suppliers, the general public cannot exercise the right;
- Access to submitted complaints and dispute resolutions is not ensured in electronic or machine-readable format;
- Annual procurement plans are accessible on paper only;
- Notices of intended procurement, their amendments and decisions of tender commissions are only accessible on paper as well;
- Moreover, tender candidate applications, submitted bids, procurement contracts, contract amendments, as well as information on contract performance and quality control are not made public.

## Recommendations

Based on the TPPR evaluation of Zimbabwe it is obvious that the country needs to implement significant reforms in order to ensure a high level of transparency and accountability in the procurement process and minimize risks of procurement-related corrupt practices. In order to do so, some of the main recommendations are:

- Legislation should provide for a mechanism of consultation with the private and civil society sectors that is aimed at receiving feedback and identifying problems in the procurement system;
- Electronic means should constitute the primary method of conducting public procurement;
- PPL should establish a single official point of access (i.e. an online portal) for all procedures and information related to public procurement;
- The right to review should be extended to the general public;
- Legislation should guarantee access to submitted complaints and dispute resolutions in electronic, machine-readable format;
- Annual procurement plans should be published and accessible online;
- Legislation should ensure access to the notices of intended procurement, their amendments and decision of tender commissions in electronic, machine-readable format;
- Moreover, tender candidate applications, submitted bids, procurement contracts, contract amendments, as well as information on contract performance and quality control should be made public.





## Bolivia

### Overview

Bolivia joined the network of TPPR in 2018. The evaluation of public procurement legislation of Bolivia was conducted by an independent expert Rafael Lopez Valverde. The TPPR team from IDFI and expert agreed on the final draft and the evaluation was published on the website.<sup>166</sup> It must be noted, that the expert notified us that no major amendments have been introduced to the public procurement legislation of Bolivia since 2018, meaning that the evaluation is also applicable to 2020.

### Public Procurement Regulations

The Law on Government Control Administration (1990) and more recent secondary legislation, such as the Supreme Decree N181 on Basic Rules of the System of Administration of Goods and Services (2009), regulate Bolivia's public procurement system.<sup>167</sup> The procurement system lays out the basic principles and the general framework of the procurement process, makes it operational and indicates how the law must be applied to specific circumstances. However, there is no separate state body directly responsible for managing public procurement in Bolivia, rather, the function is assigned to individual public servants within each public entity, directly designated as such by the maximum executive authority (MAE).

The Ministry of Economy and Public Finances is the main governing body in charge of the public procurement system in Bolivia, however individual public entities are still responsible for the relevant execution of their own procurement processes.

There is one single centralized website: [www.sicoes.gob.bo](http://www.sicoes.gob.bo) and its use is mandatory. The system requires that all tenders be published on the SICOES website.

### Evaluation

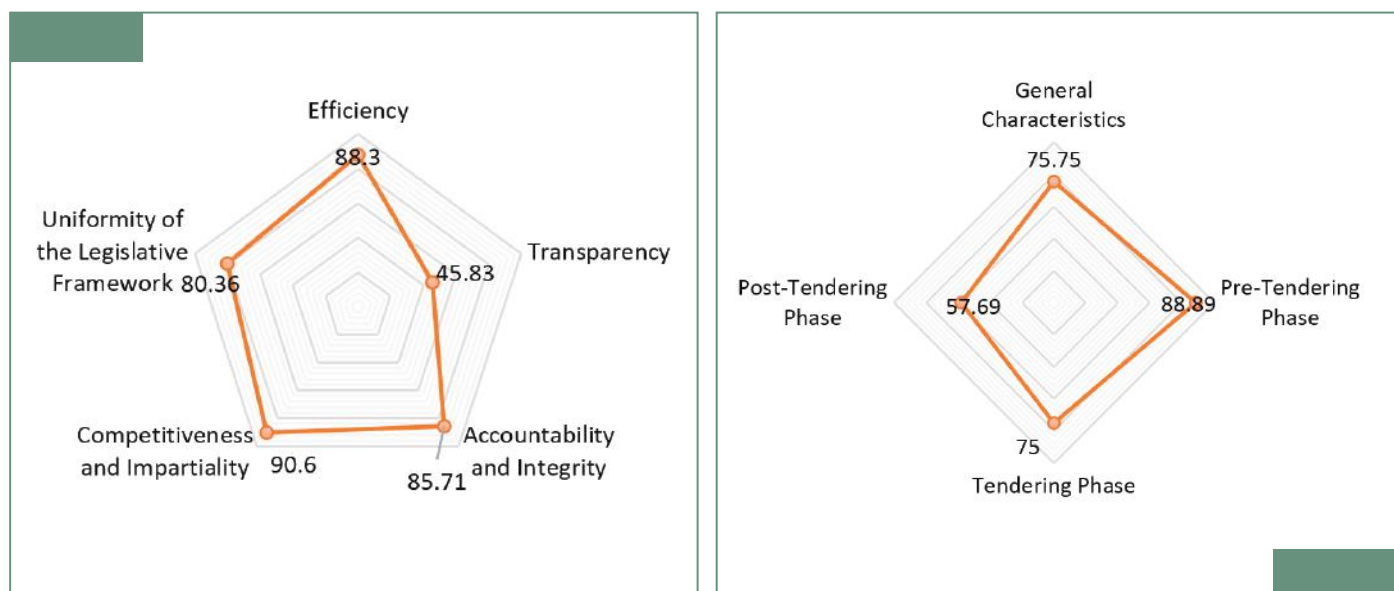
The overall evaluation of PPL in Bolivia equals to 75.63%. Based on the stage of the procurement process the country has the highest performance at the pre-tendering phase - 88.89%, post-tendering phase was evaluated with the lowest score compared to other stages with

<sup>166</sup> <https://www.tpp-rating.org/page/eng/country/bolivia>

<sup>167</sup> Public Procurement Legislation of Bolivia is available at:  
<https://www.sicoes.gob.bo/portal/normativa/decretos.php>.



57.69%.<sup>168</sup> As for the benchmark indicators, Bolivia was granted the highest score in the area of Competitiveness and Impartiality - 90.6%. The legislation has also scored high in regards to Efficiency- 88.3%, as well as Accountability and Integrity - 85.71%. The lowest performance compared to other benchmark indicators was demonstrated in the area of Transparency - 45.83%.



Some of the shortcomings in the TPPR evaluation of Bolivia are mainly caused by the following factors:

- PPL does not oblige the procuring entities to provide access to the tender candidate applications, information on subcontractors and payment receipts;
- Information about the bids offered by tender participants is only accessible on paper;
- Access to submitted complaints, dispute resolutions (of the independent review body), public procurement annual plans, decisions of the tender commission, procurement contracts, contract amendments, contract performance information (acceptance act and milestone reports), and inspection and quality control reports are available only in non-machine-readable format;
- The legislation does not provide for the mechanism of consultation with the private and civil society sectors;
- PPL does not ensure the existence of an independent review body;
- While the tender announcements are published online, applying online is not possible. Tenders are always conducted through formal paper-based channels.

<sup>168</sup> Detailed TPPR evaluation of Bolivia, available at: [https://www.tpp-rating.org/public/uploads/PPLx20Assessmentsx20ENG/PPL\\_Assessment\\_Bolivia\\_16\\_20.pdf](https://www.tpp-rating.org/public/uploads/PPLx20Assessmentsx20ENG/PPL_Assessment_Bolivia_16_20.pdf)

## Recommendations

Based on the evaluation of the public procurement system and legislation of Bolivia some of the main steps to be taken in the direction of improving the public procurement system in Bolivia are:

- Establishing a mechanism of consultation with the private and civil society sectors that would be aimed at receiving feedback and identifying problems in the procurement system;
- Establishing an independent review body with the authority to review complaints and grant remedies;
- Providing full access to public procurement related documents in a free, electronic and machine-readable format for bidding participants as well as for the wider society;
- Amending PPL to oblige the procuring bodies to maintain all the procurement related documentation for a specific period of time;
- Amending the practice of conducting heavily paper-based tenders.

## Costa Rica

### Overview

To conduct the TPPR evaluation of Costa Rica IDFI partnered with Citizen Center for Studies for an Open Society (ACCESA) - an organization focused on developing research and innovative tools, using information and communication technologies (ICT) to encourage active citizen participation, promote transparency, accountability and access to information.<sup>169</sup> The TPPR evaluation of Costa Rica was conducted in 2018. In 2020 the representative of ACCESA notified us that no major amendments have been introduced to the public procurement legislation of Costa Rica since 2018. Thus, the evaluation of 2018 is also applicable to 2020.<sup>170</sup>

### Public Procurement Regulations

The main legislative acts regulating the topic of public procurement in Costa Rica are Administrative Contracting Law No. 7494 and Regulation of the Law on Administrative Contracting No33411.<sup>171</sup>

<sup>169</sup> For more information visit: <http://accesa.org/nosotros/>

<sup>170</sup> <https://www.tpp-rating.org/page/eng/country/costarica>

<sup>171</sup> Public Procurement Legislation of Costa Rica is available at: <http://www.pgrweb.go.cr/scij/>

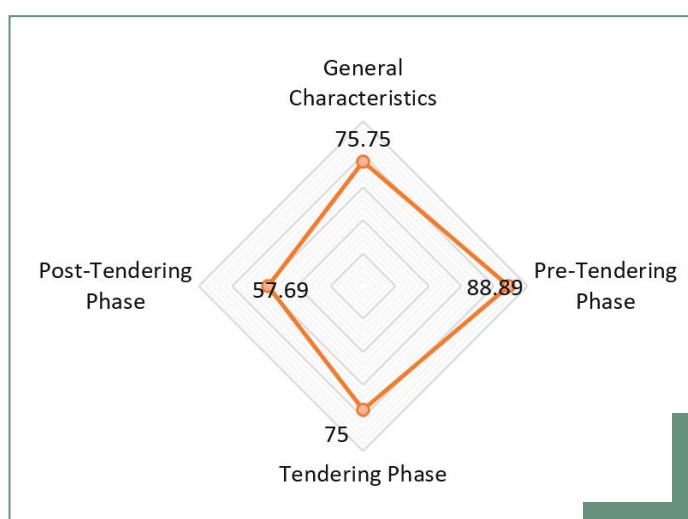
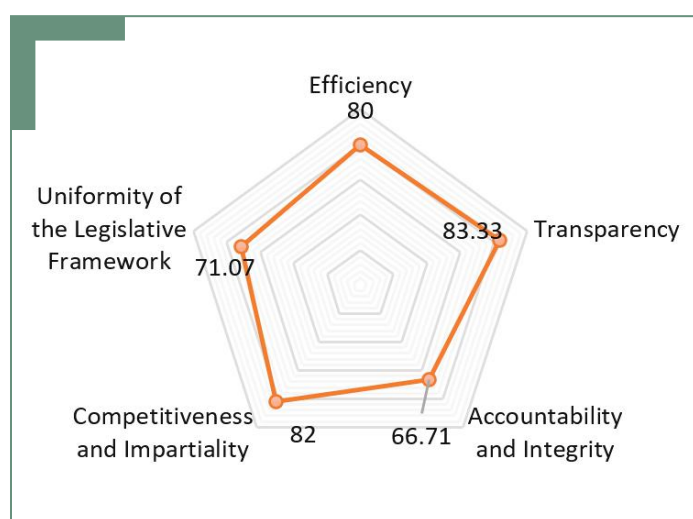
PPL applies to all state budget and local governmental entities, including their respective Legal Entities of Public Law (LEPLs), state-owned companies and non-commercial legal entities. Excluded from its application are non-state public entities and public companies with more than 50% of private financing/shares. Moreover, due to the nature of their operation, a number of public institutions conduct procurement through internal regulations and only follow the general principles and rationale of the PPL in Costa-Rica. For instance, the companies of ICE Group (Instituto Costarricense de Electricidad) conduct procurement based on the Regulation for the Contracting Processes of the Companies of the Costa Rican Electricity Institute. The National Institute of Insurance is also exempt from the PPL application.

The legislation stipulates that all procurement procedures must be carried out digitally through a free online portal SICOP. All documents and information related to procurement procedures must be uploaded to the portal. The legislation also stipulates that all these documents must be presented in open and interoperable formats in order to ensure their neutrality, equal access and integrity.

Regardless of the above-mentioned by the date of conducting the evaluation, Costa Rica faced problems in regards to the application of the legal provisions in practice, since many public institutions were not conducting their procurement through the SICOP system.

## Evaluation

The overall evaluation of PPL in Costa Rica equals to 79.41%. Based on the stages of the procurement process the country has the highest performance at the pre-tendering phase – 94.44%, post-tendering phase was evaluated with the lowest score compared to other stages with 65.38%.<sup>172</sup> As for the benchmark indicators, Costa Rica was granted the highest score in the area of Transparency - 83.33%. The legislation has also scored high in regards to Competitiveness and Impartiality - 82%. The lowest performance compared to other benchmark indicators was demonstrated in the area of accountability and integrity - 66.71%.



<sup>172</sup>Detailed TPRR evaluation of Costa Rica, available at: [https://www.tpp-rating.org/public/uploads/PPLx20Assessmentsx20ENG/PPL\\_Assessment\\_Bolivia\\_16\\_20.pdf](https://www.tpp-rating.org/public/uploads/PPLx20Assessmentsx20ENG/PPL_Assessment_Bolivia_16_20.pdf)

Some of the factors negatively affecting the TPPR evaluation of Costa Rica are:

- PPL does not determine a procurement regulatory body;
- The legislation does not provide for any a mechanism of consultation with the private and civil society sectors;
- PPL does not guarantee sufficient time for candidates to prepare and submit the tender application;
- The legislation does not stipulate that winners should be declared based on a cost-effectiveness approach;
- Procurement contracts do not necessarily include dispute resolution procedures;
- Public procurement operations are not necessarily subjected to internal and external audits.

## Recommendations

Based on the evaluation of the public procurement system and legislation of Costa Rica it is evident that the country still has to undergo reforms that would lead to more accountable public procurement procedures. Some of the main steps to be taken in this direction are:

- Determining a separate state body (procurement regulatory body) responsible for managing public procurement or assigning this function to a subordinate public body(ies);
- Establishing a mechanism of consultation with the private and civil society sector that would be aimed at receiving feedback and identifying problems in the procurement system;
- Guaranteeing that candidates are entitled to be provided with sufficient time for preparing and submitting tender applications;
- Adopt legal provisions stipulating that in cases when evaluation criteria include both price and quality, winners shall be chosen using a cost-effectiveness approach;
- Including dispute resolution procedures in procurement contracts;
- Subjecting public procurement operations to internal and external audit checks conducted by qualified specialists.

## Overview

Conducting the TPPR evaluation of Ecuador was made possible through active cooperation with Ciudadanía y Desarrollo, an organization based in Quito. The organization advocates for the protection of the rule of law, democratic principles and individual freedoms and promotes citizen participation, public oversight, transparency, open government and public innovation.<sup>173</sup> The TPPR evaluation of Ecuador was finalized in 2020 and published on the website.<sup>174</sup>

## Public Procurement Regulations

Public procurement in Ecuador is regulated by the Organic Law on the National Public Procurement System adopted in 2008 (and further amended in 2009, 2013, 2014, 2015, 2016, 2017 and 2018) and its Regulation adopted in 2009 (and further amended in 2009, 2010, 2011, 2013, 2015, 2016, 2018 and 2020).<sup>175</sup> The PPL applies to all institutions at all levels of governance as well as to private companies with more than 50% of state-owned shares.

The public procurement system in Ecuador is led by the national procurement regulatory agency (Servicio Nacional de Contratación Pública - SERCOP), which is a technical-regulatory body with its own legal personality and administrative, technical, operational, financial and budgetary autonomy. This agency also develops and adopts policies, conditions and guidelines for public procurement.

Ecuador has a single web platform for public procurement, which is obligatory to use for all entities subject to the Law and it is managed by the National Public Procurement Service. In line with relevant regulations public procuring entities have to publish relevant public procurement-related information on SERCOP.

## Evaluation

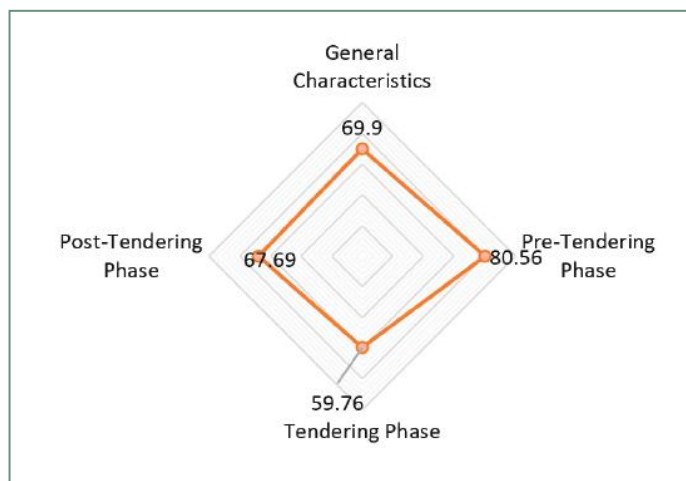
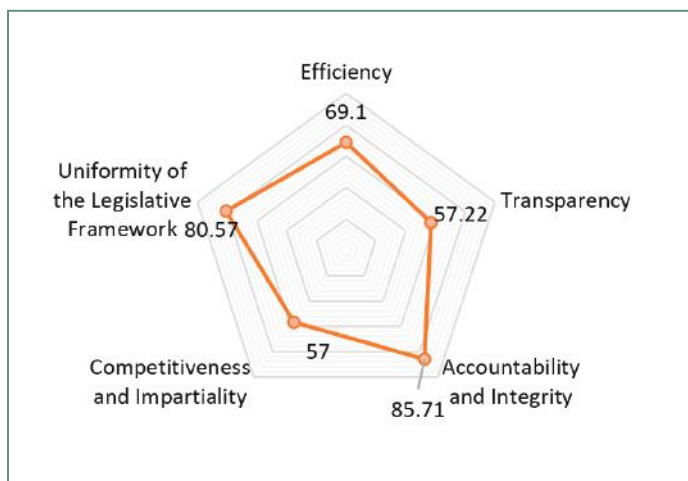
The overall evaluation of PPL in Ecuador equals to 69.05%. Based on the stages of the procurement process the country has the highest performance at the pre-tendering phase – 80.56%, while the tendering phase was evaluated with the lowest score compared to other stages with 59.76%.<sup>176</sup> Looking at the benchmark indicators, Ecuador was granted the highest score in the area of Accountability and Integrity - 85.71%. The lowest performance compared to other benchmark indicators was demonstrated in the areas of Competitiveness and Impartiality - 57% and Transparency – 57.22%.

<sup>173</sup>For more information visit: <https://www.ciudadaniaydesarrollo.org/sobrefcd/>

<sup>174</sup><https://www.tpp-rating.org/page/eng/country/ecuador>

<sup>175</sup>Public Procurement Legislation of Ecuador is available at: <https://portal.compraspublicas.gob.ec/sercop/anexos/>

<sup>176</sup>Detailed TPPR evaluation of Ecuador, available at: [https://www.tpp-rating.org/public/uploads/PPL%20Assessments%20ENG/PPL\\_Assessment\\_Ecuador\\_16\\_20.pdf](https://www.tpp-rating.org/public/uploads/PPL%20Assessments%20ENG/PPL_Assessment_Ecuador_16_20.pdf)



The main aspects negatively affecting the TPPR evaluation of Ecuador are:

- Absence of the regulations regarding the mechanism of consultation with the private and civil society sectors;
- Limited access to submitted complaints, dispute resolutions, tender candidate applications, payment receipts, inspection and quality control reports;
- Absence of legal provisions stipulating that open tender is the default procedure for any public procurement;
- Lack of legal provisions directing procuring entities to maintain all the procurement related documentation;
- Legal preferences for domestic suppliers;
- Lack of legal provisions on conflict of interest in regards to the consultants of a procurement process to participate in or benefit from the same tender procedure.

## Public Procurement Regulations

Based on the evaluation of the public procurement system and legislation of Ecuador it is evident that the country has to undergo reforms to establish more transparent, impartial and accountable public procurement procedures. Some of the main steps to be taken in this direction are:

- Establishing a mechanism of consultation with the civil society sector aiming at receiving feedback and identifying problems in the procurement system;
- Amending PPL to oblige procuring entities to appoint staff members responsible for conducting procurement activities; to maintain all the procurement related documentation for a specific period of time; and to provide unsuccessful tender participants with the reasons for rejecting their bids upon such request.
- Providing full access to public procurement related documents in a free, electronic and machine-readable format;

- Ensuring that open tender constitutes a default procedure for conducting public procurements;
- Abolish national preference;
- Explicitly prohibit the consultants of a procurement process to participate in or benefit from the same tender procedure.

## El Salvador

### Overview

La Fundación Nacional para el Desarrollo (FUNDE) (TI El Salvador) joined the TPPR network in 2018. FUNDE generates thought, analysis and development proposals and influences different socioeconomic actors and centres of power, to improve the living conditions of the society, especially the poor and marginalized sectors.<sup>177</sup> The TPPR evaluation of El Salvador was conducted in 2018 and covers the period of 2018-2020.<sup>178</sup>

### Public Procurement Regulations

The Procurement and Contracting Law of the Public Administration regulate the public procurement procedures in El Salvador. The law was adopted in 2019.<sup>179</sup> Before the introduction of the new law, the Procurement and Contracting Law of the Public Administration (LACAP) adopted in 2000 was applicable in the country. PPL in El Salvador applies to all state budget and local governmental entities, including their respective Legal Entities of Public Law (LEPLs), state-owned companies and non-commercial legal entities.

A separate public body (procurement regulatory body) responsible for managing public procurement in El Salvador is the Public Administration Procurement and Contracting Regulatory Unit (UNAC). The Regulatory Unit is responsible for overseeing and monitoring the process of public procurement.

According to the legislation of El Salvador, public procurement is conducted based on the principles of non-discrimination, free competition, equality, ethics, transparency and decentralization.

### Evaluation

The overall evaluation of PPL in El Salvador equals to 58.07%. Based on the stage of the procurement process the country has the highest performance at the pre-tendering phase -

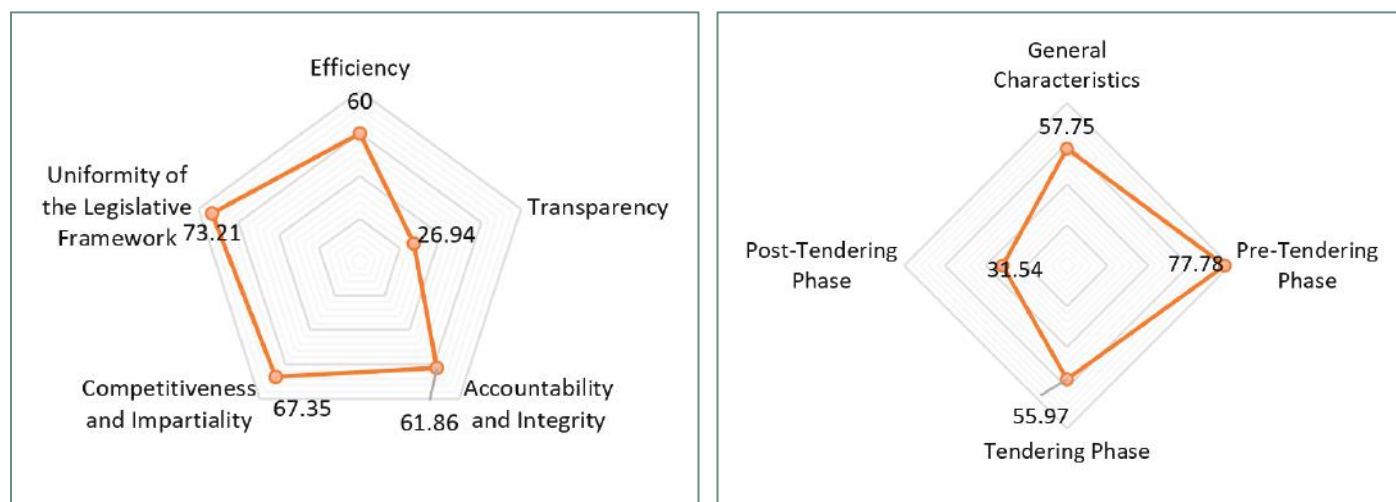
<sup>177</sup> For more information visit: <http://www.funde.org/quienes-somos>

<sup>178</sup> <https://www.tpp-rating.org/page/eng/country/elsalvador>  
<https://www.tpp-rating.org/page/eng/country/elsalvador>

<sup>179</sup> Public Procurement Legislation of El Salvador is available at:  
[https://www.mh.gob.sv/pmh/es/Temas/Ley\\_de\\_Acceso\\_a\\_la\\_Informacion\\_Publica/Marco\\_Normativo/Compras\\_Publicas.html](https://www.mh.gob.sv/pmh/es/Temas/Ley_de_Acceso_a_la_Informacion_Publica/Marco_Normativo/Compras_Publicas.html)



77.78%, post-tendering phase was evaluated with the lowest score compared to other stages with 31.54%.<sup>180</sup> As for the benchmark indicators, El Salvador was granted the highest score in the area of Uniformity of Legislative Framework - 73.21%. The lowest performance compared to other benchmark indicators was demonstrated in the area transparency - 26.94%.



Some of the main shortcomings of the public procurement system in El Salvador are as follows:

- Open tender does not constitute a default procedure for conducting public procurement;
- Absence of an independent (from parties involved in a procurement dispute) review body;
- Lack of legal guarantees to access to review procedures throughout the procurement process;
- Absence of explicit legal prohibition for experts in individual procurement procedures to participate in or benefit from the same tender procedures;
- Lack of the mechanism of consultation with the private and civil society sectors;
- Absence of legal guarantees to subject public procurement operations to mandatory internal and external audit checks conducted by qualified specialists;
- Lack of legal provisions guaranteeing access to such procurement-related information as public procurement annual plans, notices of intended procurement (including tender documentation), tender candidate applications, information about the bids offered by tender participants, submitted complaints and dispute resolutions, information on subcontractors, procurement contracts, contract amendments, contract performance information (acceptance act and milestone reports), payment receipts, inspection and quality control reports.



## Recommendations

Based on the evaluation of the public procurement system and legislation of El Salvador it is evident that the country has a long way to go to establish more transparent and accountable public procurement procedures. Some of the main steps to be taken in this direction are:

- Guaranteeing that open tender constitutes a default procedure for conducting public procurement;
- Establishing an independent procurement review body and guarantying access to review procedures throughout the procurement process;
- Explicitly prohibiting experts in individual procurement procedures to participate in or benefit from the same tender procedures;
- Establishing a mechanism of consultation with the private and civil society sectors aimed at receiving feedback and identifying problems in the procurement system;
- Subjecting public procurement operations to the internal and external audit checks conducted by qualified specialists;
- Providing full access to public procurement related documents in a free, electronic and machine-readable format.

## Guatemala

### Overview

Conducting the TPPR evaluation of Guatemala was made possible through the close cooperation with the domestic organization Acción Ciudadana (AC). AC became a member of the TPPR network in 2018. The organization works towards establishing an informed society and promotes transparency in public management.<sup>181</sup> The TPPR evaluation of Guatemala covers the period of 2016-2018.<sup>182</sup>

### Public Procurement Regulations

The public procurement system in Guatemala is regulated by the Law on Public Contracts and other legal acts.<sup>183</sup> The law determines the Directorate General for State Procurement, under the Ministry of Public Finance, as the body responsible for managing and regulating the system and developing relevant policy documents bases on the procurement statistical analysis. The Directorate is also responsible for running and developing the central public procurement

<sup>181</sup> For more information visit: <http://accionciudadana.org.gt/quienes-somos/>

<sup>182</sup> <https://www.tpp-rating.org/page/eng/country/guatemala>

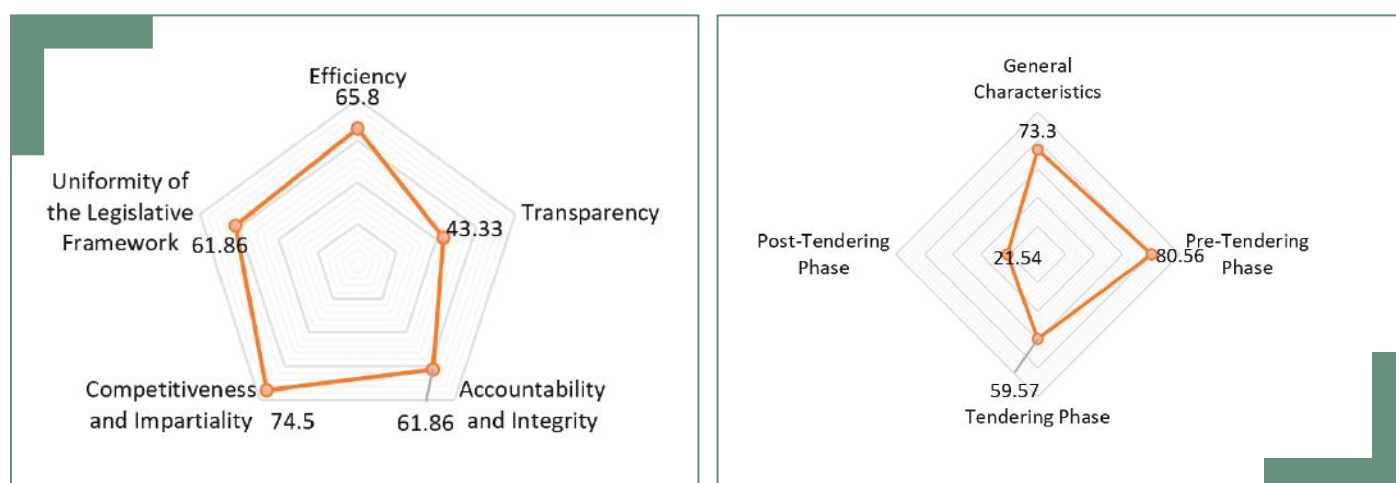
<sup>183</sup> Public Procurement Legislation of Guatemala is available at: <http://www.guatecompras.gt/info/legislacion.aspx>

information system - the Guatecompras. The use of this platform is obligatory for all procuring entities. They are obliged to upload in the system a broad spectrum of public procurement-related information regarding all stages of public procurement.

Regardless of the above-mentioned public procurement system in Guatemala is not fully electronic, since the conduct of paper-based tender procedures is still allowed. Maintaining a partially paper-based procurement system is a considerable impediment to the efficiency and modernization of public contracting in Guatemala. Moreover, the country faces challenges in regards to the consistency of uploading required procurement-related information and documents in the electronic system.

## Evaluation

The overall evaluation of PPL in Guatemala equals to 60.66%. Based on the stage of the procurement process the country has the highest performance at the pre-tendering phase – 80.56%, post-tendering phase was evaluated with the lowest score compared to other stages with 21.54%.<sup>184</sup> As for the benchmark indicators, Guatemala was granted the highest score in the area of Competitiveness and Impartiality - 74.5%. The lowest performance compared to other benchmark indicators was demonstrated in the area transparency - 43.33%.



Some of the main factors negatively affecting the TPRR evaluation of Guatemala are:

- The legislation does not provide for a mechanism of consultation with the private and civil society sectors;
- PPL does not stipulate that each procuring entity must have a staff member responsible for conducting procurement activities;
- PPL does not establish an independent review body;
- Open-tender does not constitute a default procedure for conducting procurement;
- Absence of explicit legal prohibition for experts in individual procurement procedures to participate in or benefit from the same tender procedures;

- Lack of legal guarantees to access such procurement-related information as contract performance information, payment receipts, inspection and quality control reports;
- Access to a wider range of procurement-related information is only available in a non-machine-readable format, namely: submitted complaints, public procurement annual plans, notices of intended procurement, tender documentation amendments, tender candidate applications, information about the bids offered by tender participants, decisions of the tender commission, procurement contracts and contract amendments;
- PPL does not define specific procedures for modifying contracts;
- Contracts do not necessarily include dispute resolution procedures;
- PPL does not oblige respective procuring entities to maintain all procurement-related documentation for a specific period of time.

## Recommendations

Based on the evaluation of the public procurement system and legislation of Guatemala it is evident that the country has to take relevant steps aimed at establishing transparent and accountable public procurement procedures. Some of the main steps to be taken in this direction are:

- Establishing a mechanism of consultation with the private and civil society sector that would be aimed at receiving feedback and identifying problems in the procurement system;
- Amending PPL to oblige the procuring entities to have a staff member responsible for conducting procurement activities;
- Establishing an independent review body and guarantying access to review procedures throughout the procurement process;
- Making open tender the default procedure for any public procurement;
- Explicitly prohibit experts in individual procurement procedures to participate in or benefit from the same tender procedures;
- Providing full access to public procurement related documents in a free, electronic and machine-readable format.

## Overview

The TPPR evaluation of Mexico was prepared in cooperation with Contraloría Ciudadana, an organization based in Mexico City, working proactively towards the continuous improvement of public institutions, through the promotion of informed and responsible citizen participation. The organization is perceived within the Mexican society as the one promoting transparency and accountability of public and private institutions.<sup>185</sup> The TPPR evaluation of Mexico was conducted in 2020.<sup>186</sup>

## Public Procurement Regulations

Public procurement conducted for the Federal government in Mexico is divided into two sections based on the object of the procurement: a) goods, leases, and services and b) public works and related services. Each section is specifically regulated by very similar laws, both published in 2000: The Public Procurement, Leases, and Services Law and the Public Works and Related Services Law.<sup>187</sup> These laws apply to most of the federal ministries, agencies, and publicly-funded operators. Other relevant laws applicable to public procurement in the federal sphere include those on budgeting and accountability (mainly, the Federal Budget and Fiscal Responsibility Law) and the general law on transparency (General Transparency and Access to Public Information Law).<sup>188</sup> Additionally, public procurement regimes coexist for the 32 subnational parties (31 states and Mexico City, the capital) and State-owned enterprises (namely, the industries of oil and electricity).

In the federal sector, procurement in Mexico is decentralized and operated by each ministry or public agency with the authority to execute its budget. Monitoring and coordination are conducted by the Ministry of Finance (Secretaría de Hacienda y Crédito Público, SHCP), while inspection, audit and law enforcement in procurement is the responsibility of the Ministry of Public Administration (Secretaría de la Función Pública, SFP). As part of public expenses, procurement is also overseen by Congress via the Federal Superior Audit (Auditoría Superior de la Federación, ASF.)

The main portal for retrieving information on the ongoing public procurement procedures in the federal government is the Compranet system, which collects information concerning each stage of the procedures.<sup>189</sup> The SHCP operates Compranet. Additionally, the main features of concluded procedures are part of the mandatory information published by the National Platform of Transparency (NPT). The information inter alia includes procurement data from the subnational level and information concerning state-owned enterprises. SFP oversees NPT as part of the National Transparency System and the National Anticorruption System.

<sup>185</sup> For more information visit - <http://www.contraloriaciudadana.org.mx/>

<sup>186</sup> Mexico - Public Procurement Legislation Assessment, 2018, TPPR, available in Spanish at: [https://www.tpp-rating.org/public/uploads/PPLx20Assessmentsx20ENG/PPL\\_Assessment\\_Malawi\\_16\\_18.pdf](https://www.tpp-rating.org/public/uploads/PPLx20Assessmentsx20ENG/PPL_Assessment_Malawi_16_18.pdf)

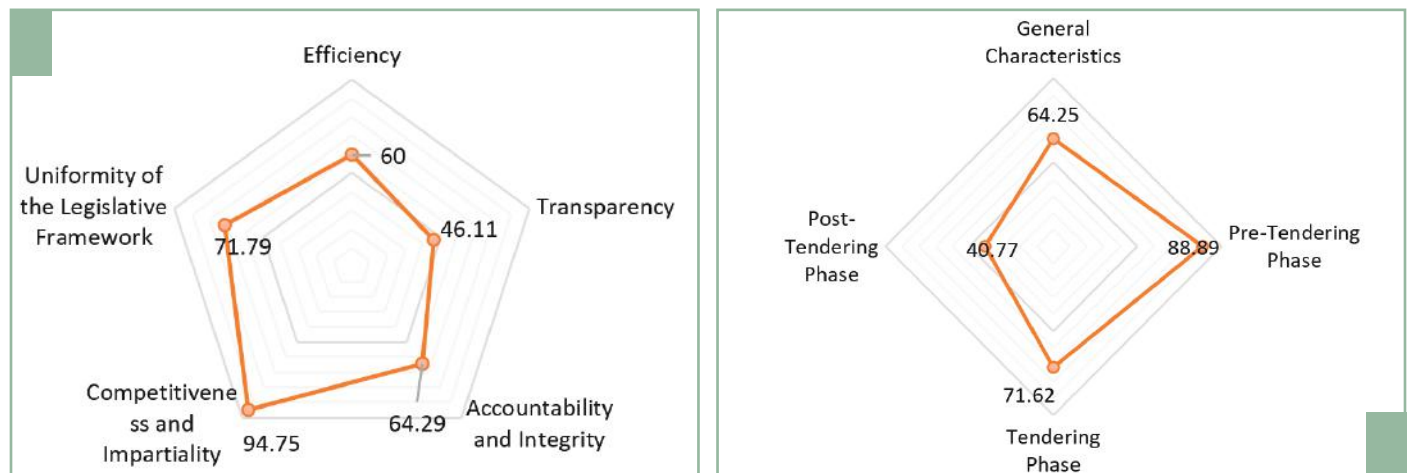
<sup>187</sup> Public Procurement Legislation of Mexico available at: <https://compranetinfo.hacienda.gob.mx/uncp/>

<sup>188</sup> Ibid.

<sup>189</sup> Public Procurement website of Mexico - Compranet, available at: [https://compranet.hacienda.gob.mx/web/login.html?fbclid=IwAR1AqRTIS\\_94XbUEJznVVZ0NU9PXQuqRmm9rdlcY9IOM17FKcJNbqI-xHM](https://compranet.hacienda.gob.mx/web/login.html?fbclid=IwAR1AqRTIS_94XbUEJznVVZ0NU9PXQuqRmm9rdlcY9IOM17FKcJNbqI-xHM)

# Evaluation

The overall TPRR evaluation of Mexico is 64.57%.<sup>190</sup> The system of public procurement in Mexico scored particularly high in the benchmark indicator of Competitiveness and Impartiality – 94.75%. The evaluation in the benchmark indicators of Transparency and Efficiency on the other hand demonstrated significant room for improvement as the country scored 46.11% and 60% respectively. As for the stages of the procurement process, Mexico scored high at the pre-tendering phase – 88.89% and showed poor performance at the post-tendering phase – 48.77%.



Particularly low evaluation in the benchmark indicators of Transparency, Efficiency and Accountability as well as at the stage of post-tendering phase are mainly caused by the following shortcomings:

- Exclusion of state-owned companies from the scope of PPL;
- No relevant provisions in the legislation establishing a separate state body (procurement regulatory body) responsible for managing public procurement;
- Lack of mechanisms of consultation with the private and civil society sectors that is aimed at receiving feedback and identifying problems in the procurement system;
- The right to review the complaints is reserved to tender participants only. The wider public or potential suppliers are not entitled to access the complaints or the key information included in them;
- No independent review body with the authority to review complaints and grant remedies;
- No cost-effective approach guaranteed by the legislation in cases when evaluation criteria include both price and quality;
- No legal guarantees ensuring that anyone interested has access to such information as dispute settlement resolutions, sub-contractors, contract amendments, contract performance information, inspection and quality control procedures and relevant reports.

<sup>190</sup> TPRR, webpage of Mexico – <https://www.tpp-rating.org/page/eng/country/mexico>

## Public Procurement Regulations

The recommendations below are based on the shortcoming identified in the TPPR evaluation of Mexico. In order to strengthen the level of public procurement transparency Mexico should consider the following:

- Including state-owned companies within the scope of PPL;
- Establish a separate state body (procurement regulatory body) responsible for managing public procurement;
- Guarantying mechanisms of consultation with the private and civil society sectors that is aimed at receiving feedback and identifying problems in the procurement system;
- Ensuring the right to review the complaints for the wider public ND potential suppliers;
- Establishing an independent review body with the authority to review complaints and grant remedies;
- Guaranteeing cost-effective approach in cases when evaluation criteria include both price and quality;
- Ensure that anyone interested has access to such information as dispute settlement resolutions, sub-contractors, contract amendments, contract performance information, inspection and quality control procedures and relevant reports.

## Paraguay

### Overview

Conducting the TPPR evaluation of Paraguay was made possible through the partnership with the local organization TEDIC. TEDIC is based in Asunción, Paraguay and works extensively towards protecting the digital rights of individuals. The mission of TEDIC is to protect civil rights on the Internet and foster spaces for interaction and exchange of knowledge.<sup>191</sup> The TPPR evaluation of Paraguay was conducted in 2018 and covers the period of 2016-2018.<sup>192</sup>

## Public Procurement Regulations

The Public Procurement Law (PPL) of Paraguay was approved and ratified in 2003, thus establishing the public sector contracting system.<sup>193</sup> The law regulates the pre-bidding, bidding, post-bidding and contracting stages, thus enshrining the guiding principles for the entire process of procurement.

<sup>191</sup> For more information visit - <https://www.tedic.org/en/who-we-are/>

<sup>192</sup> Paraguay - Public Procurement Legislation Assessment, 2018, TPPR, available at: [https://www.tpp-rating.org/public/uploads/PPL%20Assessments%20ENG/PPL\\_Assessment\\_Paraguay\\_sp\\_16\\_18.pdf](https://www.tpp-rating.org/public/uploads/PPL%20Assessments%20ENG/PPL_Assessment_Paraguay_sp_16_18.pdf)

<sup>193</sup> Public Procurement legislation of Paraguay, available at: <https://www.contrataciones.gov.py/buscador/marco-legal.html>

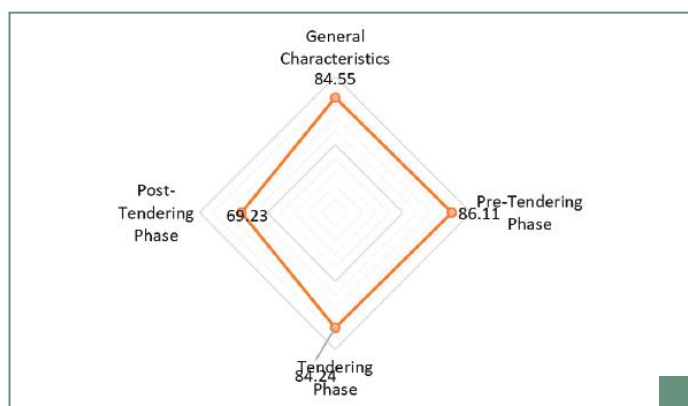
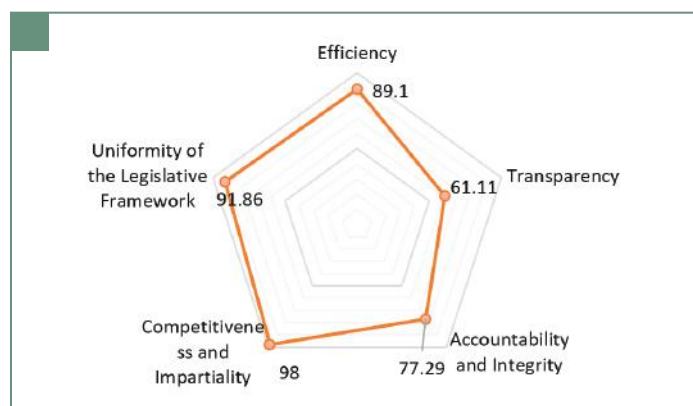
The law establishes the public sector Contracting System, with the purpose of regulating the process of planning, programming, budget, contracting and executing procurement procedures. The PPL applies to all state budget and local government entities, including state-owned companies, and state owed non-commercial legal entities. The scope of coverage of PPL includes all sectors of the economy where competition is possible and all exemptions are clearly listed in the PPL.

Article 5 of the law foresees the creation of an autonomous and self-sufficient institution called the National Directorate of Public Procurement. The Directorate is created under the Ministry of Finance but is independent in the management of its own resources. The Mission and vision of the Directorate is to regulate and optimize the Public Procurement System, support all relevant stakeholders in the process of public procurement and ensure transparency of the procedures.<sup>194</sup> The National Directorate of Public Procurement also runs and maintains the public procurement portal of Paraguay.<sup>195</sup>

It should be noted that PPL of Paraguay restricts access to the procurement system for foreign bidders and includes provisions on domestic preferences. According to Paraguayan legislation access to public procurement for foreign bidders (not domiciled in Paraguay) is restricted to the following cases: obligation under an international treaty, agreements with international organisations (such as a loan agreement with a multilateral institution) or insufficient local supply (Article 18 of Ley 2051 of 2003). Companies from countries with no reciprocal treatment for Paraguayan firms can be excluded from bidding.<sup>196</sup>

## Evaluation

According to the TPPR evaluation of Paraguay, public procurement legislation is assessed with an overall score of 82.78%.<sup>197</sup> Paraguay scored particularly high in the benchmark indicator of Competitiveness and Impartiality – 98% as well as the Uniformity of the Legislative Framework – 91.86%. The benchmark indicator of Transparency on the other hand scored the lowest and was evaluated with 61.11%. As for the stages of procurement, the level of PP transparency at the post-tendering and tendering phases was evaluated with nearly identical scores which fluctuate between 84% and 86%. A considerably low score is evident at the post-tendering phase – 69.23%.



<sup>194</sup> Website of the National Directorate of Public Procurement, available at: <https://www.contrataciones.gov.py/dncp/institucional.html#misionvision>

<sup>195</sup> Public Procurement website of Paraguay, available at: <https://www.contrataciones.gov.py/buscador/licitaciones.html>

<sup>196</sup> Access2Markets, European Commissions, Discrimination in Public Procurement, 22.06.2020, available at: [https://madb.europa.eu/madb/barriers\\_details.htm?is5ps=false&barrier\\_id=11410](https://madb.europa.eu/madb/barriers_details.htm?is5ps=false&barrier_id=11410)

<sup>197</sup> TPPR, webpage of Paraguay, 2016–2018 – <https://www.tpp-rating.org/page/eng/country/paraguay>



Paraguay has a single point of accessing public procurement legislation. The legislation provides for the mechanism of consultation with the private sector, however, no such mechanisms are ensured for consulting the civil society. The right to review is guaranteed by the legislation for the tender participants as well as the general public and potential suppliers. Moreover, according to the legislation access to procurement information, such as notices of intended procurement, tender documentation amendments, decisions of the tender commission is guaranteed and the information has to be published in an electronic and machine-readable format. However, there still remain a number of shortcomings in the PP regulations of Paraguay, namely:

- The legislation does not guarantee consultation mechanisms with the civil society actors aimed at receiving feedback and identifying problems in the procurement system;
- The independent review body of public procurement does not include civil society members in its composition;
- Access to submitted complaints and dispute resolutions is ensured in an electronic but non-machine readable format; the same is true in case of tender applications and submitted bids;
- Access to public procurement annual plans is also available in an electronic but non-machine readable format;
- Information on subcontractors, as well as contract performance, quality checks and inspection, are not made publicly available.

## Recommendations

Although Paraguay scored considerably high in TPPR evaluation, there still is room for improvement in such directions as:

- Guarantying consultation mechanisms with the civil society actors aimed at receiving feedback and identifying problems in the procurement system;
- Including civil society members in its composition of the independent review body of public procurement;
- Ensuring access to submitted complaints, dispute resolutions, tender applications and bids in electronic, machine-readable format;
- Ensuring access to public procurement annual plans in an electronic, machine-readable format.
- Publishing information on subcontractors, as well as contract performance, quality checks and inspection.



## Overview

Venezuela joined the network of TPPR in 2019. The evaluation of public procurement legislation in Venezuela was conducted by Despacho de Abogados Gil & Rosas - a Law Firm specialized in public governance with a focus on public procurement.<sup>198</sup> The organization was founded in 2013 and provides consultation and training sessions on various subjects of governance including public procurement. The TPPR team from IDFI reviewed the TPPR evaluation prepared by the organization, agreed on the final draft with the representative of Despacho de Abogados Gil & Rosas and published the evaluation on the website.<sup>199</sup>

## Public Procurement Regulations

Public procurement in Venezuela is mainly regulated by three legal instruments:<sup>200</sup>

- Decree No. 1.399 on the Rank, Value and Scope of Public Contracting dated November 19, 2014;
- The Bylaws of the Law of Public Contracting, published on May 19, 2009; and
- The Constitutional Law Against Economic War for the Rationality and Uniformity in the Acquisition of Goods, Services and Public Works, published on January 11, 2018.

Public Procurement Legislation covers ministries, state agencies, public universities, companies and enterprises in which the state holds at least 50% of the shares, foundations established by public entities and social associations receiving state funding. It is applicable at the central as well as regional and municipal levels (centralized and decentralized public entities and companies).

The procurement system in Venezuela is decentralized since each public entity executes its own public procurement processes. Law-making is conducted exclusively at the central governmental level by the National Assembly. Other public entities adopt sub-legal normative acts.

The National Contracting Service develops procurement policies mainly addressing technical affairs related to the National Registry of Contractors. It also collects and analyses statistical information on public procurement. Venezuela does not have a centralized public body to enforce the application of the public procurement legislation, however public procurement constitutes one of the areas covered by the audit procedures executed by the Organs of Fiscal Control.

<sup>198</sup> <http://www.gilrosas.com.ve/nuestra-firma>

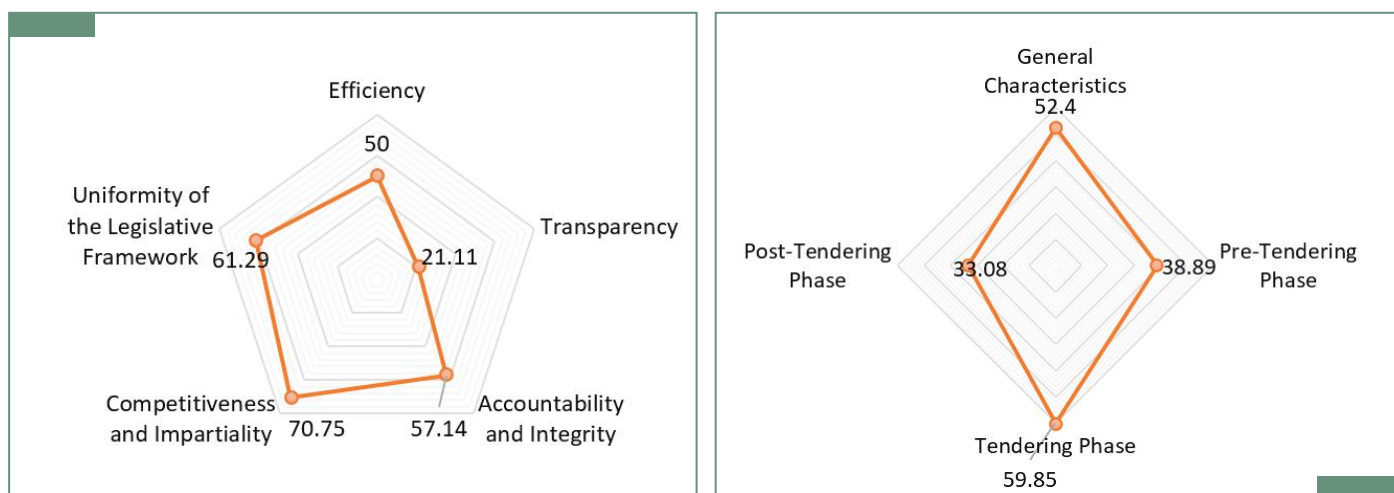
<sup>199</sup> <https://www.tpp-rating.org/page/eng/country/venezuela>

<sup>200</sup> Public Procurement Legislation available at the following link: <http://www.snc.gob.ve/sobre-el-snc/base-legal>

Venezuela does not have a single public procurement portal. The portal of the National Contracting Service only includes initial information on open tenders. However, information on various stages of procurement is not published. No information is published regarding three other types of public procurement either (close tender, price consultation and direct procurement).

## Evaluation

The overall evaluation of PPL in Venezuela equals to 50.71%. Based on the stage of the procurement process the country has the highest performance at the tendering phase – 59.85%, post-tendering phase was evaluated with the lowest score compared to other stages with 33.08%.<sup>201</sup> As for the benchmark indicators, Venezuela was granted the highest score in the area of Competitiveness and Impartiality – 70.75%. The legislation has also scored well in regards to the Uniformity of Legislative Framework – 61.29%. The lowest performance compared to other benchmark indicators was demonstrated in the area of Transparency – 21.11%. PPL of Venezuela also showed poor performance in regards to Efficiency – 50%.



In Venezuela, all public procurement procedures are almost completely paper-based. Electronic means are only used for notification purposes, and all procurement-related documentation is kept in hard-copies. Information sent through electronic means is printed on paper and added to the files. Although public procurement legislation establishes the possibility of conducting electronic procedures, at this time all procedures are paper-based.

Public procurement transparency in Venezuela has been facing increasing challenges since 2014, when the new Law of Public Contracting limited access to public contracting files to bidding participants and only after the completion of the procedures. Regular citizens, associations, or participants that disqualified from procurement procedures have no legal right to access procurement information.

## Recommendations



Based on the evaluation of the public procurement system and legislation in Venezuela it is evident that the country still has a long way to go for establishing transparent and accountable public procurement procedures, which would be based on the principles of free and fair competition and would be free of corruption risks. Some of the main steps to be taken in this direction are:

- Establishing a separate public body responsible for managing public procurement which would be authorized to have income in addition to state funding;
- Eliminating the practice of heavily paper-based public procurement procedures;
- Developing a single official point of access (i.e. an online portal) for all procedures and information related to public procurement;
- Publishing public procurement information in a machine-readable format and ensuring free access to it for the bidding participants as well as for the wider society.



# Annex - Terminology

This report uses universally accepted procurement terminology as well as a few terms of its own design, in order to make key distinctions easier.

**Acceptance act** – A document signed by parties through which they agree on the terms by which a bargain is concluded.

**Bid** – Price offered by a tender participant during the bidding procedure.

**Bid Security** – A refundable amount of money paid by tender candidates validating their participation in a tender.

**Coordination** – Providing assistance to economic operators and procuring entities to engage in procuring activities.

**Day** – In the context of this methodology a day implies a calendar day.

**Economic Operator** – business or other organization which supplies goods, works or services.

**Legal entity of public law (LEPL)** (Public Legal Entity) – Organization created by the government or a government body, but separated from state management, and performing public authority independent of state control.

**Machine-readable** – A data format that can be processed (i.e. extract, transform and process) by a computer.

**Monitoring** – Data collection and analysis.

**State non-commercial legal entity** – A body governed by public law, having legal personality, not having an industrial or commercial character, and funded or managed, for the most part, by state entities.

**Non-competitive procedure (direct procurement)** – A type of public procurement procedure that does not involve prior publication of a notice of intended procurement.

**Notice of intended procurement** – A call for participation in an open tender issued by procuring entities.

**Open tender** – A type of tender, in which any economic operator can request participation.

**Post-tendering phase** – procurement processes after the selection of a tender winner.

**Pre-tendering phase** – procurement processes leading up to the publication of a notice of intended procurement.

**Procurement regulatory body** – a state body responsible for managing the public procurement system without necessarily incorporating lawmaking and law enforcement functions.

**Procuring entity** – A state budget and local government entity (including their respective LEPLs and state owned companies).

**Public procurement annual plan** – A document issued by procuring entities that contains information about all procurements planned within a fiscal year.

**Tender** – A type of public procurement procedure that involves bidding.

**Tender application** – An economic operator's official request to participate in a tender that includes all the documents requested by the procuring entity.

**Tender candidate** – An economic operator willing to participate in a tender.

**Tender commission** – A group of persons within a procuring entity responsible for conducting procurement (this function can also be performed by a single person).

**Tender documentation** – A collection of documents containing full information about the procurement, such as its subject-matter, technical requirements/specification, eligibility and evaluation criteria, draft contract conditions etc.

**Tender participant** – An economic operator that has been allowed to participate in a tender.

**Tendering phase** – procurement processes between publication of a notice of intended procurement and selection of a tender winner.



