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CRISIS RESPONSES AND CORRUPTION IN EMERGENCIES

POLICY BRIEF

WESTMINSTER STATION

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INTRODUCTION

Corruption in emergencies is detrimental to emergency response outcomes. It leads to waste and fosters public mistrust affecting public willingness to cooperate with government disaster measures. This research assesses the corruption risks that arise in the use of emergency powers, in relation to emergency procurement and in development financing in emergencies.

While many studies on corruption in emergencies address challenges with emergency spending, this research further considers the gaps in our understanding of these issues and provides recommendations for interventions to make emergency responses less vulnerable to fraud and corruption. The research adopts a framework for analysis that examines the regulatory and policy landscape and practices for emergency responses focusing on four dimensions: people, processes, challenges, and interventions; in five selected countries: the United States, the United Kingdom, Hungary, South Africa, Nigeria; and also looks at the World Bank as a donor.

KEY TAKEAWAYS

EMERGENCY POWERS

In adopting emergency powers, government authorities modify or suspend anti-corruption procedures and safeguards to swiftly address the urgency of the crisis. Emergency powers further impose restrictions on accessing information through limitations on freedom of information requests creating a risk of non-transparency and making it difficult for citizens to have oversight over the use of emergency powers and the implementation of emergency measures. This lack of transparency is compounded by a lack of accountability where emergency powers grant public officials protection from liability for measures taken during an emergency.

- Emergency powers grant executive and regulatory authorities extensive discretionary powers, which introduce procedural uncertainty which is a corruption risk as it allows officials to act outside established rules, opening regulatory gaps for fraud and corruption. The use of emergency powers by officials carries corruption risks in implementing decisions that reinforce state capture, foster authoritarianism, suppress dissent, opposition and the media.
- Emergency powers suspend procedural safeguards, ethical requirements and limit officials' accountability for actions taken during a crisis. Freedom of information requests are often limited, impacting transparency and making it difficult for civil society and citizens to monitor and hold public officials accountable.
- Emergency funds allocated by emergency powers often do not comply with regular disbursement and expenditure frameworks. In the USA and South Africa, for instance, these financial inflows are accompanied by measures that suspend or postpone legislative review and approvals. Officials may use funds as they see fit and answer questions later.
- In relation to the use of emergency powers, corruption risks arise from the urgency and the pressure to respond to the crisis. Urgency creates a risk that the response may not be well-considered, that needs may not be accurately determined, and spending might occur in an uncoordinated manner, resulting in waste, fraud and corruption.

EMERGENCY PUBLIC CONTRACTING

Emergency public procurement systems undergo severe strain during an emergency. There is a balancing act between procurement objectives of competition and transparency and the tensions brought about by an emergency. Most countries award contracts directly to preferred suppliers without any competition during emergencies. Corruption risks arise in the use of direct awards owing to the lack of competition, transparency, and the removal of publication requirements. Various aspects of the procurement process are modified, postponed, accelerated or suspended during an emergency. These include:

- The contractor verification process is removed, eliminating a process that controls access to public opportunities. The contractor selection process relies on non-competitive and non-transparent direct awards. This lack of competition often leads to exorbitant pricing across all the countries studied.
- The process for contractual formalities is also affected, with some countries permitting contracts to be concluded informally, waiving bid guarantees and modifying payment terms to provide advance payments to contractors.
- The contract implementation process is affected, with inadequate monitoring and oversight, leading to substandard, short or non-delivery in some cases.
- Transparency in public procurement is correlated to the quality of governance and to procurement practices rather than to regulatory requirements. Transparency is limited in emergency contracting with many countries waiving requirements for publication of procurement information.
- The implication is that during an emergency, legal requirements on transparency are less likely to be complied with in countries with higher levels of corruption. Limiting transparency affects the ability to verify that procurement decisions complied with legal requirements and were free of corruption.
- During emergencies, many countries centralize purchases through a central purchasing authority or a state-owned enterprise. Centralization increases coordination and reduces reliance on contracting authorities that may be integrity weak spots but can magnify the consequences of unethical procurement. There are additional corruption risks when state-owned entities are used for emergency procurement as it is easier for politicians to interfere with their operations.
- In emergency public procurement, officials benefit from an increase in discretion and powers, temporarily modifying roles, authority and affecting accountability. These increases affect the financial thresholds for direct awards and the discretion to formalize a contract.
- In some countries, there is protection from accountability for actions or omissions taken during an emergency. Emergency public contracting also has implications for conflict of interests and the duty to declare conflicts is often suspended in an emergency.
- Corruption risks also arise from operational difficulties, which include inadequate digital or electronic procurement systems, which mean analog systems are used, with limited means of creating a verifiable audit trail.
- Another operational challenge is the lack of coordination among different levels and agencies of government. In federal systems, the research found conflicts between regional and central governments and between different contracting authorities leading to inaccurate assessment of requirements, duplication and waste.

EMERGENCY DEVELOPMENT AID

In the disbursement of emergency aid, donors like the World Bank relax their control measures, such as risk assessments to ensure funds are properly used. Borrowers may procure using their domestic procurement processes, circumventing the World Bank's procurement regulations. Corruption risks arise from the shortened approvals process for emergency loans, and the absence of country and borrower agency risk assessments. These corruption risks impact the effectiveness of donor funds, increase public debt without the required returns, undermine sustainable development and affect donor

willingness to support developing and least developed countries. Unsustainable public debt further hampers countries' ability to support vulnerable groups and facilitate recovery from a crisis.

- For procurements funded by emergency aid, corruption risks arise from the suspension of donor integrity controls in the procurement process. The contractor verification process is shortened and direct awards are permitted.
- Donors also permit borrowers to rely on the borrower's domestic procurement rules, meaning that there will be less control over the procurement process by the donor. Contractual formalities are also relaxed, and advance payments are permitted, which creates a risk of contractor fraud.
- During emergencies, donors also permit retroactive financing, where funds are disbursed for completed expenditures. This creates corruption risks as it is difficult for donors to ensure funds are properly used.

RECOMMENDATIONS

We group the recommendations into systemic recommendations which address structural issues that create corruption risks; strategic recommendations, which are proactive and designed to mitigate corruption risks and operational recommendations which affect the day-to-day implementation of emergency responses.

SYSTEMIC		
EMERGENCY POWERS Strengthen anti-corruption measures Develop crisis preparedness framework Avoid limitations on accountability	EMERGENCY CONTRACTING Develop crisis purchasing framework Implement data analytics Domestic stockpiling and production capacity Improve coordination, capacity and clarity for crisis purchasing	EMERGENCY DEVELOPMENT FINANCING Crisis readiness plans for project implementation units Clarify emergency procurement framework Decentralize and simplify aid approvals process
STRATEGIC		
Increase transparency Adopt civil society monitoring	Strengthen monitoring and oversight Adopt civil society monitoring	Determine levels of transparency and reporting required for funded contracts Increase reliance on civil society monitors
OPERATIONAL		
	Deploy full electronic procurement systems Implement ethical due diligence for suppliers Implement framework contracts Maintain updated supplier lists Improve contract management	Improve crisis contract management Implement ethical due diligence for suppliers Simplify the aid reporting system Adopt framework contracts Maintain updated supplier lists

SYSTEMIC

Strengthen anti-corruption measures in the use of emergency powers: Countries must strengthen anti-corruption measures prior to the emergency (the pre-response phase) and prioritize anti-corruption measures during the active emergency response phase. This includes ensuring emergency powers are limited in time, with an end date and scope and are a proportional response to the emergency.

- **Avoid blanket limitations to public officials' accountability:** Actions to limit public officials' accountability, must also be limited to actions taken in good faith. Countries must avoid the use of blanket accountability waivers for public officials.
- **Develop a crisis preparedness and crisis purchasing framework for emergency responses:** To address the risks from increased and extra budgetary inflows from urgency, from the suspension of procedural safeguards and from procedural indeterminacy, countries must create or improve their crisis preparedness frameworks and infrastructure. To address the corruption risks in emergency contracting, countries must include a crisis purchasing framework within the crisis preparedness infrastructure.
- **Coordination, capacity and clarity for crisis purchasing:** A crisis purchasing framework must coordinate the different parts of the emergency response framework, address crisis management capacity, maintain oversight and contract management functions, flexibly manage changing requirements in an emergency and provide clarity on approvals, roles, responsibilities for emergency contracting.
- **Develop crisis readiness plans for implementation units expending donor funds:** Multilateral and bilateral donors must work with country project implementation units to develop crisis readiness plans that contain the modalities for spending emergency funds and will decentralize and simplify the aid approvals process.
- **Data analytics for emergency public contracting:** Countries must adopt data analytics in emergency contracting to ensure that requirements are properly assessed, limiting the waste or danger that can arise from excess or under-purchasing. Data analytics must integrate information on domestic stockpiles and manufacturing capabilities for emergency goods. Taiwan used analytics to monitor domestic stockpiles of face masks during COVID-19 and this prevented shortages.
- **Domestic production capacity, stockpiling for emergency public contracting:** The corruption risks from the pressure to buy and the inability to verify suppliers can be mitigated if countries maintain adequate stockpiles of emergency goods, using inventory analytics to manage stockpiles and prevent obsolescence.
- **Ensuring domestic self-sufficiency for emergency goods:** In the face of potential export restrictions and trade stoppages in an emergency, all countries must have a minimum level of self-sufficiency and engage with the private sector to understand their domestic capacity in depth.

STRATEGIC

The corruption risks in emergency contracting also require countries to strengthen monitoring and oversight by public control agencies. They can do this by:

- **Creating transparency and using data:** Countries must create an environment of transparency where civil society and citizens can monitor emergency contracts through accessible and up-to-date information on emergency contracts. Here we can leverage civil society's role to:
- **Monitoring the use of emergency powers and emergency contracts:** Countries must utilize civil society to monitor the use of emergency powers and emergency public contracts to address the integrity gaps that arise from the suspension of ethical requirements and procedural safeguards.
- **Providing oversight and supervision over donor funded contracts:** Donors must increase reliance on civil society monitors and private sector purchasing agents where borrowers have limited procurement capacity.

OPERATIONAL

Countries must address the systems and processes used in the day-to-day implementation of emergency responses. They can do this by implementing:

- **Electronic procurement systems for emergency contracting:** Countries must improve electronic procurement systems as they shorten contract processing times, minimize delays and generate data for analytics, monitoring and reviews. Digital platforms also increase the quality of contract implementation and can lead to lower prices.
- **Ethical/integrity due diligence for suppliers in emergency contracting:** Countries and donors must adopt measures to assess a supplier's ethical competence through an assessment of corporate values, culture, compliance frameworks and commitment to ethics.
- **Improve contract management:** Contract management is sidelined in emergencies, and this creates risks of (corrupt) contractor default. Emergency contracting and donor procurement frameworks must devote significant attention to contract implementation and management.
- **Implement framework contracts and maintain updated supplier lists for emergencies:** Framework contracts and reliance on supplier lists pose less of a corruption risk than direct awards. Countries and donors should ensure that framework contracts are maintained for common items that are required in a crisis.

COMPARING COUNTRIES' AND DONOR APPROACHES TO EMERGENCY POWERS, CONTRACTING AND DEVELOPMENT FINANCING

Our research examined domestic approaches to emergency powers, emergency contracting and emergency development financing. There are dissimilarities in country approaches to the use of emergency powers, with more symmetry in domestic and donor approaches to emergency public contracting.

Emergency powers are granted to executive bodies through executive decrees or emergency legislation to implement an emergency response. The research found that in Hungary and the USA, there is an extensive use of executive decrees to address facets of an emergency, while South Africa, Nigeria and the UK rely more on legislation, which may be fast-tracked through parliament, although UK Ministers may adopt executive measures to address gaps in the emergency response framework. The emergency powers in the countries studied, except Nigeria, require a declaration of emergency to trigger executive powers and procurement flexibilities. In the USA, there are provisions which limit public officials' liability for actions done in an emergency, which is not seen in the other countries.

In relation to emergency contracting, the research found that most of the countries utilize framework contracts, negotiations or direct awards in emergency contracting and all countries limit the requirements for publication and transparency. Most of the countries centralize purchases to some extent, and they all relax contractual and payment formalities, whilst increasing public officials' powers and discretion. The UK and the US stockpile emergency goods, but Hungary, South Africa and Nigeria do not, although all countries attempt to stimulate domestic production during emergencies. One benefit of the COVID-19 pandemic was an increase in the publication of open procurement data, tracking emergency contracts.

In relation to development financing in emergencies, the research found that donors like the World Bank dispense with the control measures, which usually accompany the

disbursement of funds. Borrowers can further dispense with reliance on the World Bank’s procurement regulations which are used for procurements funded by the World Bank. The World Bank also permits borrowers to use direct awards for funded projects.

EMERGENCY POWERS						
	HUNGARY	NIGERIA	SOUTH AFRICA	UNITED KINGDOM	UNITED STATES	WORLD BANK
Use of executive decrees	✓	X	X	✓	✓	NA
Declaration of emergency	✓	X	✓	✓	✓	NA
Fast-track legislation	✓	✓	✓	✓	✓	NA
Suspend accountability	X	X	X	X	✓	NA
Suspend ethical requirements	X	X	X	X	✓	NA
Budget re-allocation	✓	✓	✓	✓	✓	NA
Pre-response anti-corruption measures	✓	✓	✓	✓	✓	NA
Active response anti-corruption measures	X	✓	X	✓	✓	NA
Post-response anti-corruption measures	✓	✓	✓	✓	✓	NA
Proportionality of measures	✓	X	X	✓	✓	NA
EMERGENCY CONTRACTING						
Framework contracts	✓	X	✓	✓	✓	✓
Direct awards	✓	✓	✓	✓	✓	✓
Negotiations	✓	X	✓	✓	✓	✓
Limit transparency and publication	✓	✓	✓	✓	✓	✓
Centralized purchases	X	✓	✓	✓	✓	NA
Modify contractor verification	✓	X	X	✓	✓	✓
Relaxed contractual and payment formalities	✓	✓	X	✓	✓	✓
Increase officials’ powers	✓	✓	✓	✓	✓	✓
Increase in use of digital data portals	✓	✓	✓	✓	X	✓
Stockpiling/ domestic manufacturing	X	✓	✓	✓	✓	NA

CORRUPTION RISKS IN EMERGENCY CONTRACTING

We highlight the main corruption risks in the countries studied across three dimensions of our analytical framework: people, process and challenges. People include: suppliers/contractors, procurement officials, and politicians who are stakeholders in emergency contracting. Processes cover the procedures used to implement emergency contracting and are divided into primary and secondary processes. The primary processes are those required by statute and secondary processes are those often devised to address practical problems. The challenges cover regulatory, technical and political/cultural challenges that present corruption risks in emergency responses. Regulatory challenges arise from the emergency legislation that introduces new requirements and flexibilities into the procurement system and from the legal/policy requirements of emergency contracting. Technical challenges accompany the practical implementation of emergency procurement and are categorized as operational, financial, and informational challenges. Political/cultural challenges refer to the political and country cultural environment that impact procurement integrity. These political and cultural challenges are usually exacerbated during emergency contracting.

PEOPLE	PROCESS		CHALLENGES				
	PRIMARY PROCESSES	SECONDARY PROCESSES	REGULATORY	TECHNICAL			POLITICAL/CULTURAL
				OPERATIONAL	INFORMATIONAL	FINANCIAL	
Increased financial thresholds and approval limits	Modified contractor selection	Payment flexibilities	Change in procurement rules				Favoritism and bias
Increased discretion	Modified contractor verification	Tax flexibilities	Inadequate approvals process	Lack of coordination	Lack of publication of procurement information	Advance payment	Undue influence
Limited accountability	Limited transparency and publication	Contract risk reversal	Direct awards	Inaccurate needs assessment	Inadequate documentation and records		Procurement practices different from legal rules
Conflicts of interests	Payment flexibilities		Limited oversight and monitoring	Inability to increase procurement capacity			Whistleblowing reticence
				Inadequate e-procurement			Political uncertainty
				Limited contract monitoring			Allocation of federal/state powers

KNOWLEDGE GAPS

An important aim of our research was to present the knowledge gaps in corruption in emergency responses. These gaps are put into three categories: people, process, and institutional/systemic. We examine the knowledge gaps that create corruption vulnerabilities in the relationships between people (suppliers/contractors, procurement officials, and politicians), procurement processes and institutions (contracting authorities, regulators, multilateral donors) and systemic issues that affect the emergency contracting framework.

EMERGENCY CONTRACTING		
PEOPLE	PROCESS	INSTITUTIONAL/SYSTEMIC
<ul style="list-style-type: none"> Understanding relationships between suppliers and officials Relationship between state capture and procurement corruption Political party financing and procurement corruption in Africa Impact of beneficial ownership verification on procurement corruption Understanding the impact of behavioural tools on procurement corruption Procurement brokers and consultants on procurement corruption Impact of framework contracts and supplier lists on emergency contracts and corruption Clarity on mitigating the risk of politically exposed persons in a developing country context, where successful businesses are connected to politics 	<ul style="list-style-type: none"> Understanding selection criteria for direct awards Measuring value for money within emergency procurement Correlation between contract completion rates and corruption. Understanding fraud risks in advance payments Negotiations in direct awards 	<ul style="list-style-type: none"> Understanding relationship between emergency decrees and emergency procurement corruption. Understanding procurement centralization corruption Whistleblowing in an emergency Relationship between political instability and procurement corruption Research on addressing political connections and procurement corruption in Africa Relationship between societal inequalities and procurement corruption Increased regulation and procurement corruption Bridging the gap between procurement practices and regulation Level of contract oversight and management in an emergency
EMERGENCY DEVELOPMENT FINANCING		
<ul style="list-style-type: none"> Contractor compliance programs and integrity 	<ul style="list-style-type: none"> Different approach to sanctioning the public sector Safeguarding retroactive financing facilities 	<ul style="list-style-type: none"> Political instability and development aid Understanding national budget risks

We present these knowledge gaps based on our review of the literature and interviews with stakeholders across the countries examined and the World Bank. It is hoped that the knowledge gaps will spur future research that will assist in developing useful anti-corruption interventions that will address areas where gaps are identified.

CONCLUSION

The research has discussed the corruption risks and the interventions necessary to address these risks. In addition, we have highlighted the anti-corruption knowledge gaps, which may affect our understanding of corruption risks in emergencies. There are four urgent priorities for future research. These are:

- Understanding the gap between emergency procurement practices and regulation and the corruption risks posed by this gap.
- Understanding the selection criteria for direct awards.
- Understanding the relationship between political connections and procurement corruption in Africa, where successful businesses are often connected to government and politicians.
- Understanding the level of contract oversight and management in an emergency.

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