

FISCALIZANDO

Journal



Editorial

Dear readers,

It is a pleasure for the Office of the Comptroller General of the Republic of Peru, as the Presidency of the OLACEFS for the triennium 2019-2021, to present the 25th



edition of the Fiscalizando Journal, an annual publication specialized in government control and superior oversight, the purpose of which is to promote knowledge and experiences within our Regional Organization.

This issue has research articles of the SAIs of Argentina, Costa Rica, Colombia, Mexico, Peru, the Dominican Republic and the associate member of Tocantins (Brazil), distributed in research articles submitted by the OLACEFS links and the 3 winning articles of the CAJ International Research Competition 2018.

The topics presented in the 25th edition of the Fiscalizando Journal are focused on the 2030 Agenda, citizen participation, fight against corruption, big data, public works, public-private partnerships, among others.

This publication focuses on the exchange of experiences, free participation and skills acquisition to achieve our purpose of being a leading organization in government control.

Nelson Shack Yalta
President
Latin American and Caribbean
Organization of Supreme Audit
Institutions

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THE SUPREME AUDIT INSTITUTION AS A COLLABORATOR IN THE PROMOTION OF THE RULE OF LAW

The native “peoples” and “communities” within the framework of the 2030 agenda

Author: Tamara Goldberger¹
SAI Argentina



Abstract: the article analyzes national space regulations used in public policies aimed at indigenous “peoples” and “communities.” It indicates the implications emanating from the use of these categories, the ways in which each one affects public policies and their cycles and describes the unique relationship and alignment between some of the norms and the category of “people” or “community.” In addition, it goes in depth in the importance of considering the recommendations of the United Nations and the International Labor Organization in relation to the inclusion of ILO Convention 169 and the United Nations Declaration on the Rights of Indigenous Peoples in any situation related to aspects of the 2030 agenda and the Sustainable Development Goals (SDGs). For the cases of the Supreme Audit Institutions, it would imply paying attention to the follow-up made to the States in relation to the preparation and inclusion of the SDGs in their agenda, as well as the oversights made to any public policy that is linked to indigenous peoples and/or communities, or that impacts them. The case raised, for a particular group, considers the role of the Supreme Audit Institutions as collaborators in the promotion of the rule of law.

Key words: 2030 Agenda, Sustainable Development Goals, Indigenous Peoples, Indigenous Communities, ILO Convention 169, United Nations Declaration on the Rights of Indigenous Peoples, environment, public policies.

The 2030 Agenda and ILO Convention 169

The International Labor Organization (ILO) and the United Nations have made explicit their recommendations for governments to incorporate both the Convention on Indigenous and Tribal Peoples (ILO Convention 169) and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) into the implementation of the 2030 Agenda. These specific requests, which are made to the States, fall within the importance given to these two tools. In the case of Argentina, differences arise as a result of applying ILO Convention 169, with respect to applying only the domestic law that usually encompasses indigenous policy in Argentina, 23.302. The result of the comparison gives consistency and coherence to the recommendations of the international bodies, which are also detailed in this document.

¹ Field auditor; Environmental Management Control Department, Planning and Special Project Management. General Audit of the Nation. Argentine Republic. Holder of a Degree in Anthropological Sciences (Universidad de Buenos Aires). Higher Diploma in “Environmental Conflicts and Participatory Planning”, Latin American Department of Social Sciences (FLACSO).

The Indigenous and Tribal Populations Convention of 1957 (number 107) was the first international instrument that globally addressed the living conditions of indigenous peoples. It is currently considered surpassed because, in 1989, the Conference adopted a new Convention, number 169. The latter is based on the recognition of the aspirations of indigenous peoples to assume control of their own institutions and ways of life and of their economic development, within the framework of the States in which they live. The Convention is based on the principles of equality, consultation, participation and cooperation, and is a framework for participatory democracy, social peace and sustainable development (ILO, 2015,1).

It is remarkable that, at the international level, there has been the very recent adoption of the 2030 Agenda for Sustainable Development. Within that framework, the ILO has made another attempt to strengthen its action as a way to “contribute to initiatives to overcome exclusion and discrimination against indigenous and tribal peoples and achieve the goal of inclusive and sustainable development for all” (ILO, 2015, 2). In addition, the ILO considers that there is still “a great lack of knowledge of the content and implications of the Convention among policy-makers and decision-makers, among ILO principals, and among indigenous and tribal peoples, especially at the local level” (ILO, 2015, 3). Precisely, both the consultation and the participation of indigenous peoples are decisive to achieve coherence in public policies and improve the results that governments deliver to the population; achieve objectives agreed by multiple

stakeholders; reconcile interests through agreements and create more favorable environments for sustainable development. However, the ILO points out gaps in the application of the provisions of the Convention regarding: consultation and participation in the case of specific development projects and regarding development plans and public policies (ILO, 2015, 4).

The 2030 Agenda and UNDRIP

The 2030 Agenda for Sustainable Development considers a framework that is based on the principles of human rights, equality, non-discrimination, sustainability and the participation of rights holders. It includes six direct references to indigenous peoples. However, the United Nations identifies important challenges for indigenous peoples to exercise their rights within the framework of the Sustainable Development Goals, particularly at national levels. Regarding the agenda, the body recognizes intrinsic limitations: certain priorities of these peoples are not reflected in the 2030 Agenda, including the principle of free, prior and informed consent; the right to development based on self-determination; the lack of legal recognition of indigenous peoples and their individual and collective rights; the lack of a development approach that takes into account cultural particularities and the protection of their different cultures and ways of life. In view of these absences, the United Nations Organization (UN) states (2017, 2) that for indigenous peoples not to be left behind it is essential that UNDRIP be fully respected in activities aimed at achieving the Sustainable Development Goals because it constitutes a framework of minimum standards for

the survival, dignity, well-being and rights of the world's indigenous peoples.

The UN then provides guidance on how to ensure the inclusion of indigenous peoples in the implementation of the 2030 Agenda, considering its various dimensions: human rights, environment, social inclusion, equality, participation and economic progress. It is worth noting that there are 73 global agenda goals that have strong links with UNDRIP (UN, 2017, 3).

Explicit references to indigenous peoples in the 2030 Agenda refer to the goals of doubling the agricultural productivity of small-scale indigenous farmers (goal 2.3) and ensuring equal access of indigenous children to education (goal 4.5). The 2030 Agenda and the UN also include the firm commitment to empower indigenous peoples (UN, 2014, 3) and get them to participate in activities aimed at achieving the Objectives and examining the progress made. At the national level, States are encouraged to include the contributions of indigenous peoples in periodic and inclusive reviews of progress (UN, 2015,38). Of the 22 voluntary national reviews that were examined at the 2016 high-level political forum, only seven included references to indigenous peoples in their reports.

In the global indicators proposed to measure the security of land rights (indicators 1.4.2 and 5.a.1) reference is made to the "type of tenure". This allows us to capture the dimension of collective territorial rights as an essential aspect to measure the collective relationship of indigenous peoples with territories and resources. The indicator on the perception of peoples with regard to

discrimination on grounds that are prohibited by international law of human rights is also of particular importance (indicator 10.3.1 and 16.b.1), and could be used to track progress in relation to the experiences of discrimination of indigenous peoples, where it would also be possible to consider, in countries that have ratified it, the inclusion of Convention 169 in the planning, implementation and evaluation of all public policies assigned to them.

Some countries have reported good practices in national reports: Norway stressed that the Sámediggi (Sámi Parliament) would participate in the follow-up of the Sustainable Development Goals and that indigenous peoples had been consulted during the preparation of the voluntary national review. The Finland report indicated that one of the members of the National Commission on Sustainable Development, mandated to follow up on the 2030 Agenda, was an indigenous representative, the President of the Sámi Parliament of Finland. These good practices discourage discriminatory behaviors that, among other things, are those that favor the situation of inequality: The poverty of indigenous peoples is usually the result of structural discrimination. The 2030 Agenda aims to guarantee practices that tend to eliminate the discrimination they suffer. The inclusion of ILO Convention 169 and UNDRIP collaborate in stressing the close link that peoples have with territories and "resources": for them, land is not an economic and productive asset. It is an element that constitutes their identity, culture and relationship with ancestors and future generations. Therein lies the importance of guaranteeing their territorial rights established in international law.

Law 23.302²

Sanctioned and promulgated in 1985, Law 23.302 was a valid attempt by the nascent democracy to improve the destinies of the native peoples. This law declares "of national interest the attention and support to aborigines and indigenous communities existing in the country, and their defense and development for their full participation in the socio-economic and cultural process of the Nation, respecting their own values and modalities. To that end, we will implement plans that allow their access to land ownership and the promotion of their agricultural, forestry, mining, industrial or artisanal production in any of their specializations, the preservation of their cultural patterns in education plans and the protection of the health of their members" (article 1). Likewise, it defines as indigenous communities the groups of families that are recognized as such by the fact of descending from populations that inhabited the national territory at the time of the conquest or colonization of indigenous or Indians, the members of said community. The legal status will be acquired through registration in the Register of Indigenous Communities and will be extinguished by cancellation" (article 2).

ILO³ Convention 169 recognizes new rights to the native Peoples. Mainly it revalues and underlines the "collective" aspects of the Peoples, from their modes

of organization and representation to the clear categorization of who will be considered indigenous. The reference to the "Peoples" category highlights and organizes a particular territorial and spiritual order, different from that granted by the "communities" category, an individual element or segment of that other major order, the people. The limitation presented by Law 23.302 is that the precepts they inspired were within the provisions of ILO Convention 107 (1957), where it was still considered that the communities should be integrated into the socio-economic process of the Nation, without taking into account, among other novelties that it introduces, the "prior, free and informed" consultation that was clearly determined in the new ILO Convention 169.

Conclusion

The situation of contemplating only the law 23.302 so that the States grant rights curtails the possibility of fully exercising the rights that emerge from the situation or condition of Native Peoples. In addition, it goes against the very spirit of the recommendations of multilateral bodies, such as the ILO and the United Nations itself, since from law 23.302 there is no power to generate any kind of representativeness of the "indigenous peoples". Law 23.302 has a validity of 33 years in national law. The non-introduction of the content of ILO

2 Available at <http://servicios.infoleg.gob.ar/infolegInternet/anexos/20000-24999/23790/texact.htm> Consulted 2018/12/5.

3 Convention 169 was ratified in Argentina by Law N° 24.071, enacted on March 4 and promulgated on April 7, 1992 (Official Gazette 92/4/10). The Executive Branch issued the instrument of ratification on April 17, 2000, and deposited said instrument in the ILO on July 3 of that year. The Convention clearly indicates the requirement that Indigenous Peoples be consulted in relation to all issues that affect them. It also promotes active, informed, prior and free participation in policy development and formulation processes that affect them. Article 6 indicates that the consultation with Indigenous Peoples must be carried out through appropriate procedures, in good faith, and through their representative institutions.

Convention 169 by governments -for the preparation and materialization of norms, plans, projects and programs that affect or impact on the native peoples-, in countries that have ratified it, is a matter to be addressed in the audit plans and processes. This omission appears as contrary to the constitutional legality and the spirit of the SDGs themselves which struggle for non-discrimination and social peace. Finally, it should be remembered that after the enactment of Law 23.302, the constitutional reform of the year 94 took place, where article 75 subsection 17 recognized the ethnic and cultural preexistence of Argentine "indigenous peoples". Therefore, ensuring as auditors that the states that ratified Convention 169 invoke it when developing policies and plans means providing collaboration in promoting the rule of law and social peace, contents considered in the goals of the 2030 agenda.

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THE PREVENTION OF CORRUPTION FROM OVERSIGHT AND CONTROL

Autor: Daniel Sáenz Quesada¹
SAI Costa Rica

Abstract: Based on the results of the National Corruption Prevention Survey of 2017 and the results of the application of the Institutional Management Index (IGI), the parameters that determine the behavior of the agents involved in the management of the Public Treasury are identified, in order to propose actions and instruments for the prevention of corruption, according to the initiatives proposed in the United Nations Convention against Corruption. It is concluded that the reinforcement of the elements related to the control environment effectively modify these incentives and that, based on non-traditional tools of superior oversight, corruption in the management of the Public Treasury can be prevented.

Key words: prevention of corruption, management indexes, ethics audit, control environment.

In Costa Rica and not very different in other areas, efforts to combat corruption on the management of the Public Treasury have been focused on the detection and punishment of corruption events. The progress with regard to preventive aspects is still incipient.

Preventing corruption involves taking action to prevent events from occurring in public management. It is necessary to identify and modify those individual incentives and cultural patterns of those who manage public institutions, of those who transact with them, and of the citizenship when interacting and controlling the management of the Public Treasury. Therefore, corruption is prevented by creating full public management and by promoting citizenship consistent with this as well.

Some interesting data obtained from a National Corruption Prevention Survey², conducted by the SAI of Costa Rica in 2017, gives indications about some risks in which we must work to prevent corruption. This survey included a module dedicated exclusively to public officials, in which they were asked if there were a number of elements in their institution related to the control environment and that in some way they are directed towards the correct behavior of a public servant. These were nine factors related to (1) knowledge of the governing ideas of the institution (mission, vision and values), (2) knowledge of the code of ethics, (3) if they were trained in ethical behavior in the public service, (4) if they knew their duties and responsibilities according to

1 Graduated from the career of Economics at Universidad de Costa Rica (1993). He holds a Master's degree in Applied Economics with a major in socioeconomic evaluation of projects of Pontificia Universidad Católica de Chile (1997). He works in the Office of the Comptroller General of the Republic of Costa Rica as Manager of the Technical Secretariat of the Division of Operational and Evaluative Inspection, an Area in charge of managing the quality of superior inspection processes.

2 3208 people, including citizens, public officials and suppliers of goods and services in the public sector, were surveyed by telephone. These perception surveys are carried out with personnel and resources of the SAI of Costa Rica, and all the methodological rigor that is required to guarantee the inference of the results obtained is ensured. For more details see <https://cgrfiles.cgr.go.cr/publico/docswb/enpc/index.html>

the position manual, (5) if they knew the rules on conflict of interest, improper use of public goods or to avoid payments or gifts for an illicit favor, (6) if they knew about corruption risk assessment exercises in their institution, (7) if there is transparency in institutional information, (8) if there is citizen participation in decision making and (9) if the processes are technified.

Based on the degree of compliance with these elements, a perception index of the control environment was constructed, which could be associated with each survey to find the relationships between level of control environment and the perception of corruption risks in the institution.

For this last issue, we asked about the perception as to the good institutional work underway to prevent corruption from occurring, whether in the last few years they had witnessed any act of corruption in their institution, whether they trusted the whistle-blowing channels and whether they trusted the administrative contracting and personnel hiring processes.



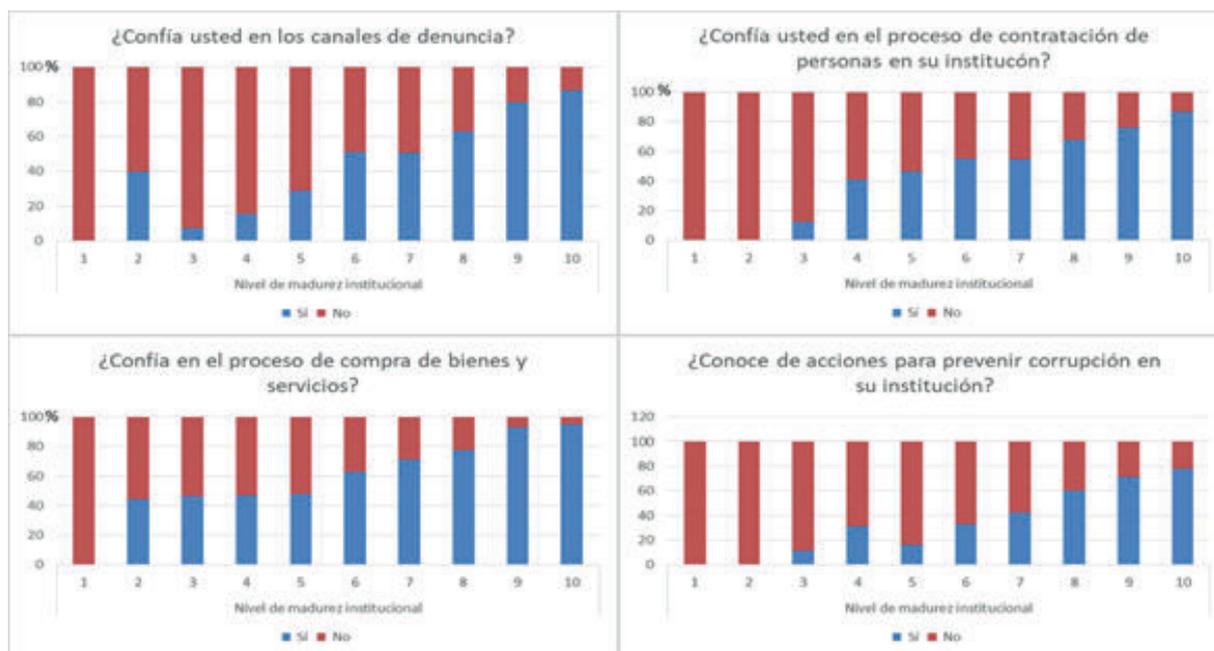
The results show that for institutions with a very low level of control environment, all public officials surveyed believe that good work is not done to prevent corruption, while in institutions with a high level of control environment,

confidence is total. Likewise, in institutions with a low level of institutional maturity, it is more common to find people who admit to having witnessed some act of corruption, while that percentage is much lower in institutions with greater institutional maturity.



According to what public officials indicate, a preventive action of great effect to prevent corruption is the strengthening of the institutional elements for the control environment. However, the most important thing is that there are objective measurements that give greater certainty about what should be done to reduce the risk of corruption.

Therefore, there is a great benefit in spending time and effort in promoting the existence and knowledge of an institutional strategic framework, in disseminating the ethical framework strongly, in training public servants in ethical behavior, in defining and disseminating among the officials their duties and responsibilities, in defining and training about the rules on incompatibilities in the public service, in carrying out and disseminating an assessment of corruption risks, in promoting transparency, in giving greater citizen participation in decision making and in technifying internal processes.



In this regard, the Office of the Comptroller General of the Republic of Costa Rica has two instruments that have had a great impact on strengthening internal control in public institutions to promote integrity, that is, how the correct incentives are created on the different operators in an inspection and control system.

A first instrument is the Management Indices, self-assessment tools that apply to all public institutions between December and February of each year. The Office of the Comptroller General sends a questionnaire to each institutional hierarchy with about 110 variables on aspects that a public institution must comply with and which are contemplated in the laws, in the lower level regulations and in sound practices. Of these variables, approximately one third is aimed at improving institutional efficiency, one third towards the promotion of transparency in public information and one third in aspects related to the prevention of corruption. The answers are sent to the Office of the Comptroller the Comptroller General through a

certification signed by the institutional hierarchy, and the institution must have a file that shows the existence of the elements that it has reported as fulfilled.

Traditionally the institution verifies the 20 largest institutions or those that have obtained the highest ratings. In addition, more than 60 internal audit units verify the files of their own institution. If compliance with any variable has been reported and there is no evidence in the files, that rating would go down.

From the results already verified, a qualification is obtained by institution and an institutional list with the degree of compliance is created, which is published by the Office of the Comptroller General. This has created a healthy competition among public institutions to obtain the best position and a higher rating.

This is an instrument of easy application, of low cost and that brings great benefits, because it creates the necessary incentives to strengthen

internal control in institutions, but mainly to improve efficiency, promote transparency and prevent corruption. Therefore, there is a very interesting work for external control agencies that consists in the creation of markets where they do not exist, that is, in the creation of the necessary incentives to promote control actions that are positive for public management.

Another instrument that is very useful and that is also aimed at strengthening the control environment of the institutions has been the Ethics Audit Guide³, which is a tool that allows you to determine effectiveness and identify opportunities for improvement in integrity.

To facilitate this, the Office of the Comptroller General of Costa Rica issued in 2008 a "Technical guide for the development of ethics audits", which is a technical guidance for conducting ethics audits. The guide establishes the concepts, scopes and methodologies, and contributes to the systematic development of ethics audits and the constant improvement of the institutional internal control systems. It is not mandatory, but is offered to internal auditors, active management and any professional, as an option to execute this type of audit.

According to the data obtained by the Institutional Management Index, by January of this year 57% of the institutions report having carried out at least one ethics audit in the last five years, either by the administration itself, by the internal audit or by an external auditor.

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³ You can obtain the Guide and the instruments in the following link.
<https://www.cgr.go.cr/03-documentos/auditoria-etica.html>

BIG DATA AND THE USE OF NEW TECHNOLOGIES IN THE SUPERIOR AUDIT OFFICE OF THE FEDERATION

Abstract: The New technologies have been rapidly incorporated into our societies. The Supreme Audit Institutions are not foreign to their impact. Hence, the Superior Audit Office of the Federation (ASF) uses them to make their oversight work more efficient, which has made it easier to detect irregularities during audits and, in this way, increase the transcendence of their work and improve the accountability process.

Key words: New technologies, superior oversight, big data, artificial intelligence, public account review, fight against corruption, accountability.

Introducción

The new technologies have been rapidly incorporated into our societies, transforming our ways of communicating and almost every aspect of human life. Governments are not exempt from their influence and have integrated them into the performance of their daily activities.

The Supreme Audit Institutions are not foreign to the impact of the new technologies; these have gained an

Author: David Rogelio
Colmenares Páramo -
Superior Audit Office of the
Federation of Mexico (ASF)



undeniable relevance in the review of government accounts, where their potential to innovate has been recognized, when analyzing and linking a large amount of data in a short time. This has facilitated the detection of possible fraud and acts of corruption, the execution of performance audits and evaluation of results and, in general, obtaining information and forecasting on the development of trends or systemic problems faced by governments (Van Ooijen, 2019).

There are technological tools that facilitate and contribute to both the efficiency and to the efficacy of the audit and government control work, among which are the following:

- Blockchain¹ technology, which can be used in audit processes, in which a chain of custody must be established for the required and collected digital evidence.
- The use of the cloud increases the accessibility of information in real time, and decreases the response times of the tools and applications for performing audits.

¹ Blockchain is the combination of several technologies that generate secure networks and allow reliable transactions among several people or organizations, which use Distributed Ledger Technologies (DLT) to safeguard verified information, through blocks that form a chain. Each block is closed with a kind of cryptographic signature that allows to open the next block. This guarantees that the encrypted information has not been manipulated, which generates confidence in the transaction, allows a secure transfer of values and data between the parties, without the need to resort to an authority that guarantees the authenticity of the information, for example.

- Finally, artificial intelligence, which allows processing large data sets in order to detect irregular behavior patterns. Additionally, and based on these patterns, predictive models can be generated based on "machine learning", which allow the identification of additional behaviors.

The Organization for Economic Cooperation and Development (OECD) and the World Bank consider that the use of these technologies will make the difference in the fight against corruption and in accountability processes. Regarding the use of blockchain, the OECD considers that this technology has the potential to transform the functioning of the public sector, including government oversight, since its characteristics can increase the transparency and traceability of goods, data and financial assets (OCDE, 2019).

The World Economic Forum, through its Anti-Corruption Initiative, has recognized that technology is the main driver for change in the fight against corruption. The use of Big Data, Data Analytics, blockchain, mobile applications and digital governance systems² are valuable tools to prevent, detect, investigate and prosecute corruption (World Economic Forum, 2019).

The use of the new technologies in the ASF

Aware of both the recommendations of international bodies and their benefits,

the Mexican Supreme Audit Institution (SAI) has begun to use the new technologies in the performance of its activities in order to maximize the impact of the oversight and to process, in relatively short periods of time, a greater amount of information. The foregoing takes into account that in Mexico it is estimated that the federal dependencies perform thousands of transactions each year. These are the averages:

- 200 thousand procurement contracts;
- 220 million suppliers' invoices for government bodies;
- 3 billion invoices coming from subcontracted suppliers;
- 400 million payments issued by the Ministry of Finance and Public Credit.

And in terms of resources, we have the responsibility of reviewing public spending, which amounts, on average, to 5.6 billion pesos.

Big Data and data analytics

According to the UN, at least 90% of existing data worldwide has been generated in recent years. However, most of it comes from the daily interactions with digital products and services, such as phones, credit cards and social media. This is what is known as big data³.

² Digital governance, in addition to the use of information technologies in public administration, to make the processes more efficient, aims to ensure that the needs of the beneficiaries are met.

³ Big Data or massive data, is characterized by its large volume, the high speed with which it is generated and its variety, since it comes from various sources and is in different formats. In general, there is a concern as to its veracity, since there is uncertainty regarding its accuracy. The Public Sector Research Centre (2015).

Big data, together with open data⁴, crowd-sourcing, the new information and communication technologies, the internet of things, and artificial intelligence produce new knowledge that complements the data obtained by statistics, surveys and other media. They integrate high-quality, more detailed, timely and relevant information, which allows for better decision-making in the public sphere (UN, 2017).

We must bear in mind that the data with possible relevance for public institutions comes from various sources and can be obtained in different ways; the large volume, variety and speed with which the data are produced require new techniques and tools for their processing and interpretation.

Thus, in order to manage and analyze this amount of information, it is indispensable to use Big Data and Data Analytics, which allows to infer relationships, establish dependencies and make predictions of results and behaviors. This has allowed the ASF to make better decisions regarding the planning and execution of audits, thus enhancing its results in the oversight of public resources.

Data from various relevant sources of information have been integrated into a common repository, called "ASF Big Data," which allows the analysis of large amounts of data during the planning and execution of audits.

The first source of information is the Mexican government entities themselves, which generate a large

amount of information which, by legal provision, is public and accessible on their websites. The institution periodically collects and updates the following information:

- The public budget allocated to each of the 335 federal government bodies, with detailed information on their function, program, chapter and item;
- The public spending executed by each one of said bodies, linked to data pertaining to their related function, program, chapter and item.
- The public procurement contracts undertaken by federal and local bodies, with information on the procurement, bidding and contracting processes; periods, quantities; supplier information, and the link to digital documents;
- The unified registration of suppliers, with detailed information on each of the suppliers that provide their services to government bodies, such as their tax identification numbers, the size of their business, their sector and products.
- And finally, the sanctioned suppliers and information on suppliers disabled by the Tax Administration Service (SAT) and the Ministry of Public Administration (SFP) to participate in government contracting processes.

⁴ Open data is data that can be used, reused and redistributed freely by any person and that is subject only to the requirement of attribution and to be shared in the same way as it appears. Dietrich, et al. (s.f.).

The second source of information comes from the information collected thanks to the signing of agreements for the exchange of information with the Federal Treasury (TESOFE) and the Tax Administration Service (SAT) to export the information from their databases to the ASF. These agreements allow accessing to new sources of information, considered as big data:

- Invoices: they contain information (customer, name and identity number of the supplier, date, amount, taxes, electronic invoice number), dividing the government suppliers into two levels, namely:
 - First level, which involves suppliers who invoice directly a government body, and
 - Second level, which refers to suppliers who invoice another supplier, who, in turn, invoices directly a government body.
- Payments to the Federal Treasury are another source of information. In this case, the vast majority of government payments by federal authorities are processed by the Treasury. The information pertaining to each payment is recorded in a database that is exported to the ASF.

The adoption of a collaborative approach to managing the information allows the consolidation of skills, favors interoperability and avoids expensive duplication.

Finally, the third source of information is the news generated by the audited institutions themselves. The ASF has an internal service that reviews all the relevant news generated by the news

media regarding the Mexican government. The news analysis focuses on an internal source that contains a summary of the news, the date, source, the related government body and a link to the news.

Thus, the big data of the SAI of Mexico is made up of a unified repository, which includes the databases described above; that is, the common sources and the big data proper. This is known as the big data architecture.

Because the information collected from these three sources has different standards of information quality and format, the classification and cleanup processes are executed prior to the data analytics –carried out with tools specialized in data quality–:

- In order to carry out the analytical processes, it is necessary to standardize the names and national tax identification numbers of bodies and suppliers, since not all sources of information have a tax identification number, or the names of the bodies or suppliers are incomplete, or they only use abbreviations. It is also necessary to standardize the format of dates and quantities.
- In addition, data cleanup is required to eliminate duplicate records or incomplete information, such as names and addresses.

Subsequently, different types of data cross-checking are performed, which provide relevant information, for example:

- Suppliers with non-existent transactions; that is, not identified

and authorized by the SAT, and existing contracts with a government body.

- Suppliers who participate in procurement when they have been previously disqualified for some irregularity.
- News about suppliers and government bodies.
- Suppliers that use ghost companies for invoicing purposes.
- One last example of data cross-checking are the payments made by bodies with information pertaining to the payments made by TESOFE.

Aside from being cross-checked, the data are analyzed. For example in:

- Acquisition trends. These can be compared annually and involve total consolidated amounts by entity, type and acquisition process, in addition to suppliers with larger amounts.

- Contracts that appear to show some irregularity, which can be identified by the amount, type of acquisition or relevant news related to the subject.
- Checking the budget and acquisition trends; using the budget of reported expenses. The expenses are compared against the amounts contracted with annual estimates, in order to verify their reasonableness.
- The transactions with sanctioned suppliers: the acquisitions and invoices to companies sanctioned by the SAT or the SFP, which are analyzed in a consolidated manner.

The use of Artificial Intelligence in superior oversight

Moreover, the ASF uses artificial intelligence tools, which allow reviewing sets of large, heterogeneous databases, and identify various patterns that could indicate possible irregularities in the spending of public funds.



For example, one of the attributions of the audit institution is to inspect the use of the so-called "federalized spending"; that is, public resources of federal origin exercised by the governments of federal entities and municipalities, through their different agencies and entities, as well as other institutions at the sub-national or municipal level, such as state public universities.

Compliance with this attribution proves to be very complex due to the large amount of information that must be analyzed. Previously, this work was carried out through statistical samples, which were reviewed according to the material and human capabilities of the institution. Whereas now, we have artificial intelligence, which allows us to review information very rapidly and, thereby, accelerate the results of the oversight.

Thanks to the use of technological tools, for example, in the oversight of federal resources assigned to a federal entity, patterns were identified among some local agencies, several of their municipalities and ghost companies, as well as the amounts billed by each of these companies to each of these public bodies. That is to say, we obtained detailed, accurate and relevant information regarding how much the different ghost companies billed to each state government agency and to which municipalities and to which bodies.

Thus, with the use of these tools in the oversight, we contribute to the accountability process and promote citizen participation by providing people with truthful and objective information about the government's work and issuing recommendations for its improvement, which allows generating a positive impact on the daily lives of all Mexicans.

New opportunities and conclusions

One of the main objectives of Mexico's SAI is to strengthen its proximity to its citizens. Thanks to the digital transformation, it is possible to establish new bridges and communication channels with the people. This is why the ASF Citizen Application was made available to the public, which allows citizens to learn about the activities of the Audit Office and, specifically, the individual reports of each of the audits performed on the government's institutions.

The use of the new technologies and big data has provided the following results:

- Increased reliability and accuracy in the planning and execution of the audit.
- By cross-checking the data, we facilitate and speed up the detection of irregularities, such as contracts entered into with sanctioned suppliers, as well as payments and invoices with suspicious behavior.
- The transparency and accountability mechanisms are strengthened.

In that sense, the ASF faces a task to be developed. The Mexican regulation grants it the right to request any type of information from government bodies, but it is necessary to formalize an official requirement with each one of them, by source of information. To facilitate and make this process more efficient, the Mexico's SAI is currently working on a proposal for a legislative reform to simplify the rules for the exchange of information by digital means.

In addition, we are planning to include new sources of information in the big

data repository, such as: more levels of suppliers, information on government public servants, the inclusion of social media information and the beneficiaries registration system.

Finally, the ASF is currently evaluating expanding the use of artificial intelligence tools with the ability to recognize patterns and natural language in order to extract relevant information about irregular behavior, relationship networks, overpriced purchases, location and bank information of the bidders in order to detect potential risks and to improve the detection of irregularities during the audit processes.

In conclusion, the work of superior oversight may enhance its scope and social impact, thanks to the use of big data, open data, data analytics, crowd-sourcing, the new information and communication technologies, the internet of things and artificial intelligence, thanks to the generation of high-quality, detailed, timely and relevant information to improve the accountability process and, thereby, fight against corruption more efficiently.

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CITIZEN CONTROL MONITORS, THE EXERCISE OF SOCIAL CONTROL THAT IS REVOLUTIONIZING THE MECHANISMS OF PREVENTION AND DETECTION IN PUBLIC WORKS

Author: Abraham Flores Vargas¹
SAI Peru

Abstract: Corruption in Peru has become the country's main problem, according to various surveys at the local level during the past few years. In this context, one of the most recurring scenarios for these actions takes place in the execution of public works, which has aroused much interest among the citizenry. The citizen control monitors program allows to mitigate these risks in the execution of public works, working in coordination with the citizenry in order to detect in a timely fashion those situations of noncompliance of the norms, which places at risk all of the works and their proper execution.

Key words: Citizen monitor, Social control, citizen surveillance, works monitoring, citizen participation, detection, oversight, citizen control.

Citizen control monitors

In Huancavelica, located above 3600 m.a.s.l., two Citizen Control Monitors (CCM) arrive after a long walk and accompanied by personnel from the General Controllorship of the Republic of Peru (CGR). The work that they are visiting is a water and sanitation infrastructure that involves the construction of some water reservoirs that will benefit 49,570 inhabitants. The first impression of the construction workers and the citizenry is their

astonishment when seeing that the work is being overseen by citizens with the presence of the State. This social control mechanism allows to conduct oversights in the execution of public works in coordination with civil society, thus succeeding in expanding significantly the number of works overseen under the coverage of the Controllorship.

In Peru, the technical management in the execution of public works devolves to the work's resident, who must be a chartered engineer and qualified with at least two years' worth of experience in this type of infrastructure. The professional who represents the executing entity is the work supervisor, who meets the same requirements as the resident and supervises, among other aspects: the schedule, cost, safety, occupational health, technical norms and quality of the works. The work's resident and supervisor are essential professionals during construction. The absence of either one of them puts these projects at risk inasmuch as it would be impossible to determine whether the work is being conducted under the quality standards that are established in the engineering of each project. A recurring problem in the execution of public works is the absence of the work's resident or the supervisor. The Citizen Control Monitors verify, among other aspects, the presence of these professionals.

¹ Civil engineer. Master's Degree in Construction Management and studies for a Master's Degree in Road Engineering. More than ten years' worth of experience in the execution and supervision of public and private works at the three levels of government, and interested in the fields of project management, project management in road infrastructure and implementation of plans and programs in the transport sector. Currently working at the General Controllorship of the Republic of Peru as a Specialist in the Citizen Control Monitors Program from the Department of Citizen Participation.

The citizen monitors, after having been trained by the Controllershship, visit these works in a coordinated manner, having been provided with safety gear and with the coverage of insurance against accidents. This experience modernizes and innovates the work that the Controllershship had been conducting with the citizenry, thus strengthening its oversight role. As far as the works are concerned, never before had they worked with the citizens in a coordinated manner, turning them into strategic partners.

The first results are motivating: so far, the citizen control monitors have visited more than 562 public works, identifying more than 875 situations of noncompliance, among which the following stand out: the absence of the work's resident or supervisor, technical deficiencies, noncompliance of the safety norms and occupational health, works of deficient quality and they even accomplished the application of two

penalties due to noncompliance within the deadlines of execution of the contracts. This innovative practice will revolutionize the prevention and detection mechanisms of the supreme audit institutions, thus substantively extending the coverage of these entities.

Background

During the summer of 2017, Peru was hard hit by the El Niño Coastal Phenomenon, which was characterized by intense rains and the spate of the main rivers of the Pacific slope, producing overflows and floods mainly in the north of the country. In its aftermath, many efforts were made to reconstruct the infrastructure that had collapsed, thus developing an initiative called Reconstruction with Changes, which comprises more than 20 thousand works in 13 of the 24 regions of the country. This is the context in which the General Controllershship of the



Visit by citizen control monitors at the work site: improvement and extension of the potable water system in the locality of San Cristobal, Huancavelica, Peru.

Republic of Peru developed several mechanisms in order to oversee this sizeable sum of money which, according to the first estimates exceeded 19 billion soles. One of these mechanisms, characterized by its innovative nature, was the one called Citizen Control Monitor in the Reconstruction with Changes, which is currently applied in works with budgets coming both from the Reconstruction with Changes and from other sources of financing.

Materials and Methods

In order to implement this mechanism, the necessary normative framework was constructed in order to institutionalize this practice and work in a coordinated manner with the citizenry. In February of 2019, the government approved Directive N° 004-2018-CG/DPROCAL "Voluntary Participation of Citizen Control Monitors in the Reconstruction with Changes", an instrument that allowed the

implementation of the mechanism in the country's 22 regions. Promoting the periodic visits of a citizen to a public work represented a great challenge. Counting on the implemented normative framework, it was necessary to guarantee the safety and integrity of the citizens, and to that end, it was necessary to provide them with personal protection equipment, as well as an insurance policy against accidents. The visits made by these citizens were also conducted in close coordination with the Peruvian Police Force, in order to prevent any risk during the visits to the work sites.

Process for the implementation of the CCM

- 1) The process begins with the drive for citizen monitor candidates, by using social networks (mass drive) and invitations at universities and technical schools (local drive).

Figure 1.- CCM Process



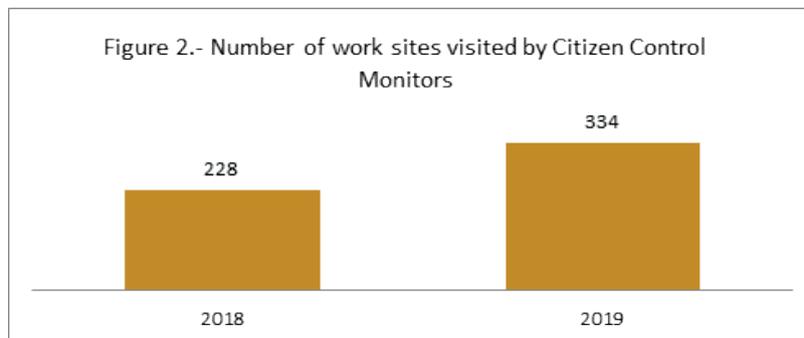
Source: Crafted by the author

- 2) The Controllership reviews the compliance with the requirements demanded in the approved normative (not having a police or judiciary record, not belonging to any political party, among others). The citizens that qualify are trained and evaluated.
- 3) The volunteers who pass the Controllership's course are accredited as Citizen Control Monitors.
- 4) Prior to the visit to the work site, the citizens receive a personal protection kit and an insurance against personal accidents.

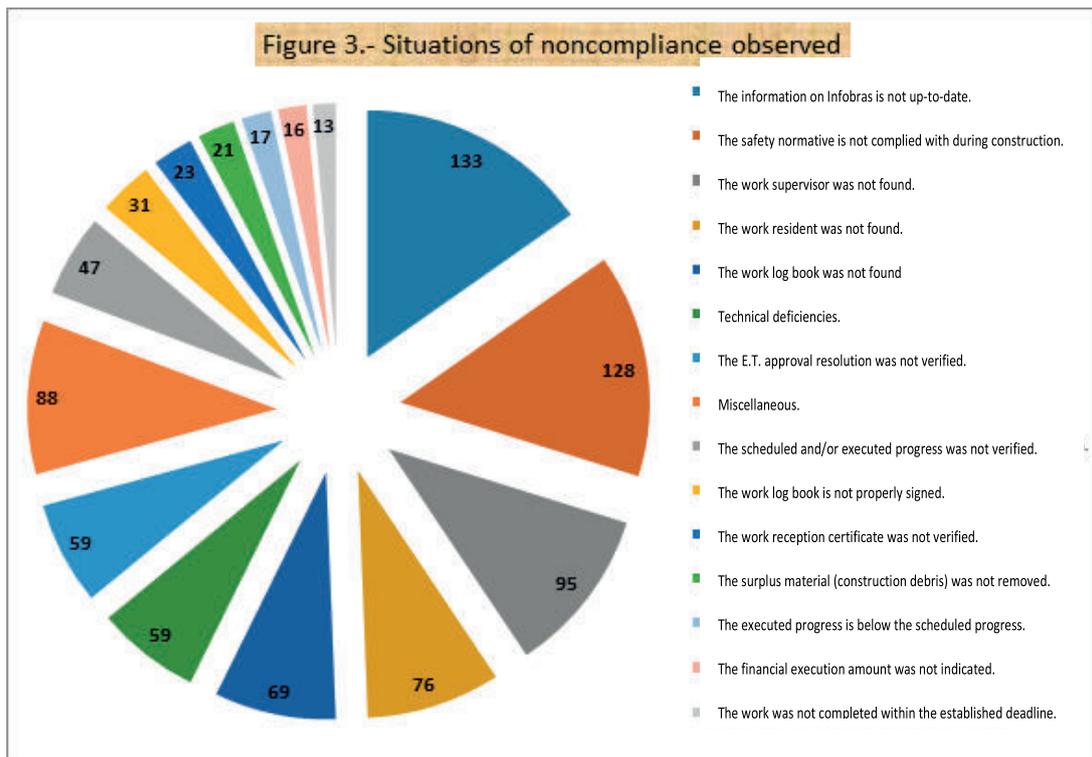
- 5) The citizen monitors visit the work sites at random.
- 6) The information gathered by the monitors is sent to the Controllership by digital means.
- 7) The Controllership becomes aware of those situations of noncompliance reported by the monitors and proceeds according to each case.

Results

So far, 562 works work sites have been visited in 22 regions of the country, the goal being to visit work sites in the entire



Source: Department of Citizen Participation, cut-off date: 2019.07.16.



Source: Crafted based on the information the Citizen Participation Department.

Table 1: Situations of noncompliance observed

Situations of Noncompliance	Number	Percentage (%)
The information on Infobras is not up-to-date.	133	15%
The safety normative is not complied with during construction.	128	15%
The work supervisor was not found.	95	11%
The work resident was not found.	76	9%
The work log book was not found.	69	8%
Technical deficiencies.	59	7%
The E.T. approval resolution was not verified.	59	7%
Miscellaneous.	88	10%
The scheduled and/or executed progress was not verified.	47	5%
The work log book is not properly signed.	31	4%
The work reception certificate was not verified.	23	3%
The surplus material (construction debris) was not removed.	21	2%
The executed progress is below the scheduled progress.	17	2%
The financial execution amount was not indicated.	16	2%
The work was not completed within the established deadline.	13	1%
TOTAL	875	100%

Source: Department of Citizen Participation.

country. The total budget of the works visited by the Citizen Control Monitors exceeds 1,500 million soles and the results of this mechanism in terms of detection are conclusive. This practice has allowed us to identify 875 situations of noncompliance communicated to the Controllershship through 562 work site visit reports written by the CCM.

The situations observed by the citizen monitors put at risk the quality of the works being executed. So far, 562 work sites have been visited, with a cumulated budget that exceeds one and a half billion soles.

Discussion on the results

The Citizen Control Monitors Program has allowed us to identify 875 situations of noncompliance in areas that the Controllershship had not reached. This practice has extended the coverage of the National Control System. The mechanism identifies early the irregular

facts, thus allowing this supreme audit institution to adopt immediate preventive and corrective measures, alleviating the load of complaints in these matters.

The field data from this report were collected up to July of 2019. The mechanism is being implemented in 2 new regions and, by the end of this year, we will have probably tripled the number of works visited by citizen control monitors, thus considerably expanding the coverage of the CGR.

Conclusions

The Citizen Control Monitors are revolutionizing the prevention and detection mechanisms in public works. Working in a coordinated fashion with the citizens represented a huge challenge in logistical and economical terms for the Controllershship. This practice, however, shows immediate results that benefit directly the population.

The large amount of situations of noncompliance observed by the Citizen Monitors has substantively contributed to the National Control System, also originating the start of other control services from the intervention of these monitors.

The risks identified by the citizen control monitors will also serve as inputs for the improvement of the normative framework concerning the execution of public works. The problems identified at the work sites visited are recurrent and put at risk the management of these works in terms of efficiency, efficacy, quality and normative compliance.

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EXTERNAL AND INTERNAL CONTROL IN THE DETECTION OF FINANCIAL CRIMES

Author: Dennys Salazar
SAI Peru

Abstract: Taking as reference the great world frauds that occurred during the last century and at the beginning of the present, government intervention is evaluated through norms that regulate internal control and the expected effect of these measures, establishing "risk assessment" as a constant in similar situations in other parts of the world.

In that sense and emphasizing a preventive approach to it, this situation arises in the country and in the public sphere within the framework of the economic theory of crime -criminal deterrence of anti-corruption control-, and through the application of control mechanisms that deter and reduce the commission of crimes.

In this regard, it should be noted, for the specific case of a public servant, that the decision to commit a crime has their behavior as a parameter. This is verified through the Code of Ethics, which defines their functional actions, and is translated into the behavior that emanates from them.

Key words: Enron Corp., Gary Stanley Becker, Sarbanes-Oxle Act, fraud, deterrence model

Context

Although organized crime represents one of the main threats to legal stability and socio-economic development, being a frequent modality in crimes against public administration; it is also no less

true that in the light of the results of recent years, they have been revealed.

Meanwhile, this has been aggravated by the immediate or scant response of the states to the events presented, leading to a series of alternate situations that led to the inefficiency of results and deficiencies in the established controls.

In fact, the crimes that occurred show a common denominator and are associated with the conspiracy, fraud and financial maneuvers that affect companies and, in some cases, reach public entities that might be involved.

In sum, these crimes constitute one of the main problems faced by the states through their administrations. And that in the search to give a solution to them, it has been decided to implement preventive measures that contribute to the early detection of these irregularities.

This task within the stages of the administrative process is linked to the control stage, specifically with the Risk Assessment component, whose content states:

"(...)The risk assessment consists of the identification and analysis of the factors that could affect the achievement of the objectives and, based on this analysis, determine the way in which the risks should be managed and controlled, (...)"

Table n° 1: List of objectives and actions regulated by the Sarbanes – Oxley Act

n°	Objectives	Actions
1	Setting new standards for corporate committees and hearing committees.	Indicating the responsibility of management to establish and maintain an adequate internal control structure and procedures for financial reports; and
2	Setting new accounting standards and criminal penalties for corporate managers.	criminal and civil penalties for violations of the stock market
3	Setting independent standards for external auditors.	Assessment or evaluation services, legal opinions and other opinions.
4	Setting a public company accounting (PCAOB) under the Securities and Exchange Commission (SEC) to register the public accounting firms.	Setting and/or adopting standards of auditing, quality control, ethics, independence, and other standards
5	The CEO and the CFO must certify the financial statements to the supervisory bodies and state that they reasonably present the company's financial position. They will be subject to criminal penalties if there is any material and intentional error in the financial statements	Setting and maintaining controls and procedures that ensure that the relevant information, including that of the subsidiaries that make up the company, is communicated.

Source: <http://www.eafit.edu.co/escuelas/administracion/consultorio-contable/Documentos/boletines/auditoria-control/b5.pdf>

Thus, interventions carried out in this regard have been limited by an analysis of the internal situation, without considering in the analysis the external situation that in the long term is what determines the result of a management, reflected in the achievement of its objectives.

In this way, having an entity that regulates and supervises the operations of companies would represent one of the biggest challenges for the audit carried out in companies, which have been frequently affected during part of the last century and at the beginning of this.

As an example of this situation we have the one originated in 2001 in the USA with the Enron Corp. case, which involved the auditing firm Arthur

Andersen and produced a severe global impact crisis, slowed down only by legislative measures.

In this context, the measures adopted by the government entities were aimed at preventing this situation from repeating itself, all based on changes of an organic nature, together with an improvement in internal controls; which led to the establishment of autonomous bodies and new standards that guarantee efficient and effective internal control.

Thus, as part of these measures, controls were implemented through the promulgation of the Sarbanes Oxley Act,¹ which was created in response to multiple frauds, administrative corruption, conflicts of interest,

¹ It is a federal law of the United States. Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, 116 Stat. 745 (July 30, 2002)

negligence and misconduct of some professionals and executives in the Enron case.

However, these measures failed to avoid the global crisis of 2008², which was produced due to inadequate risk management and compensation policies of large banks; aggravated by an incentive system, based on insolvent debt securitization practices that were sold as profitable products.

At this point we conclude that the investigation of a fraud is due to poor controls in the administration, finding a similar situation in different areas, regardless of ideologies, nationalities and beliefs.

Now, if we draw a parallel with the situation presented in the public sector of the country; this is less in terms of amounts, but greater in frequency and in the modality we indicated at the beginning of this document.

In this regard, it is worth noting that the methods used for this purpose have been evaluated focusing on the consequences and not on prevention, being observed from the purpose of the audit of the financial statements, being a static analysis of the financial situation of an entity.

Therefore, it is necessary to indicate that preventive controls represent a tool that puts at the service in the verification of deficiencies and possible irregularities around the destination of resources represents a relevant element for the detection of possible financial crimes.

Economic theory of crime: Criminal deterrence of anti-corruption control

The criminal policy of anti-corruption control is linked to the set of mechanisms generated by the control system in the detection of crimes produced in an environment of criminal organization in order to deter the behavior of private public agents.

In this sense, for the application of the elements of the theoretical model of criminal deterrence proposed by Gary Becker (1968), in his work "Crime and punishment: an economic approach."³, through the following approach:

What is the degree of rationality and deterrence of the corruption control mechanisms applied by the State, regarding the behavior of citizens?,

In order to respond to the previous questioning, on aspect to be considered is the fact that the behavior of a citizen is associated with an environment of stimuli, according to the circumstances, while behavior is a set of actions in which individuals conduct themselves in relation to everybody else⁴, according to a moral, social or cultural norm; that is to say, the behavior of a citizen. For the case in question, we are referring specifically to a public servant who commits him/herself to a Code of Ethics.

It is at this point that the behavior of an individual will consider possibilities against the environment that is presented, assessing the risks of each decision you make, and the possibility of

2 Crisis of subprime mortgages or garbage mortgages

3 Gary Becker, G.S. Becker, "Crime and punishment: an economic approach," *Journal of Political Economy*, vol.76, pp.169-217,1968.

4 <http://www.eumed.net/libros-gratis/2007b/288/18.htm>

occurrence of an adverse event will be the situation that finally defines your decision.

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CHAMBER OF ACCOUNTS OF THE DOMINICAN REPUBLIC IN THE PROCESS OF IMPLEMENTING A QUALITY MANAGEMENT SYSTEM

Author:

Mileidy García Bautista¹
SAI Dominican Republic



Abstract: A Management System is defined as a set of related elements, oriented in a process-based way of working, with an articulated policy to achieve objectives, in pursuit of the quality of a product or service. The Chamber of Accounts of the Dominican Republic, based on the provisions of Law 1-12 of the National Development Strategy (NDS), in Strategic Axis N° 1 "Establishing a certifiable quality management model that guarantees functional, effective and agile procedures in the provision of public services and that takes into account its articulation in the territory and the needs of the different population groups", focuses on the adoption of a Quality Management System, within the Framework of the Mexico - Spain - Dominican Republic Triangular Cooperation Project **"Transfer of Good Governance Practices in Quality Management System and Performance Evaluation."**

Key words:

Implementation, system,
management, quality, process,
policy

A Management System is a set of related elements, oriented in a process-based way of working, with an articulated

policy to achieve objectives, in pursuit of the quality of a product or service.

Given its importance, the Chamber of Accounts of the Dominican Republic (CCRD), based on the provisions of Law 1-12 of the National Development Strategy (NDS), in the Strategic Axis N° 1 "Establishing a certifiable quality management model that guarantees functional, effective and agile procedures in the provision of public services and that takes into account its articulation in the territory and the needs of the different population groups", focuses on the adoption of a Quality Management System (QMS).

The above-mentioned system is part of the Mexico - Spain - Dominican Republic Triangular Cooperation Project, called: "Transfer of Good Governance Practices in Quality Management System and Performance Evaluation," product of the agreement signed with the Superior Audit Office of Puebla, in order to align work policies, processes and resources with the achievement of the strategic objectives defined in the Institutional Strategic Plan and the improvement of overall performance.

The implementation of the Quality Management System in the CCRD is based on international standards

¹ Director of Planning and Development of the Chamber of Accounts of the Dominican Republic. Graduated in Industrial Engineering, with graduate studies in Senior Management (Finance Concentration) and, Business Administration and Management.



approved by the ISO (International Organization for Standardization), specifically the ISO 9001:2015 standard.

The adoption of a Quality Management System brings inherent benefits, of which we can highlight the following: a) implementing a work methodology oriented to the defined processes with a view to achieving the objectives, b) studying existing work processes and guide them to meet customer needs, c) defining how to perform our day-to-day tasks and how they should be carried out efficiently, effectively and economically with the resources we have, and d) developing a strategy based on knowledge of the objectives set and considering the human, economic and infrastructure resources we have

The QMS implementation project is categorized as a successful project, since it has been implementing technical capabilities, and over time it will have a high impact on the institution, due to the identification of the key processes and their documentation.

During the implementation process we were in charge of the preparation of a Process Map that incorporates the Deming Cycle (PDCA), Plan-Do-Check-Act, the process

interaction matrix, the identification of the stakeholders, the analysis of the restrictions associated with the Institutional Strategic Plan, the identification of risks, the design of the Process Model, the Quality Plan and the Quality Manual.

One of the main elements is the quality policy of the CCRD "Conducting the external superior oversight in accordance with the applicable regulations and standards, with highly qualified ethical human resources and suitable infrastructure, within a framework of continuous improvement, promoting environmental sustainability and good governance, to satisfy stakeholders". To achieve the scope of the execution of this policy, seven (7) objectives and their respective action plan were defined.

The defined objectives are:

- 1) Conducting the oversight of public resources according to current regulations, in a timely and effective manner.
- 2) Promoting ethics and integrity at the level of all employing habit, observing applicable national and international good practices, for the development of oversight functions.

- 3) promoting a culture of environmental sustainability at the level of all CCRD servants through educational sessions and social responsibility actions.
- 4) Guaranteeing the effectiveness and systematicity of the institutional processes, through the implementation, evaluation and control of the Quality Management System.
- 5) Effectively managing the professional technical skills of the entity's servants
- 6) Adapting and maintaining the infrastructure, in order to ensure the effective functioning of the QMS.
- 7) Continuously improving the necessary processes in order to guarantee the satisfaction of the needs of the stakeholders.

During the process, we also design and implement a dissemination plan in order to disseminate, at all organizational levels and in the external stakeholders, the defined elements.

Aware of the importance of having management tools that contribute to institutional strengthening, CCRD continues to document the processes and complete the corresponding elements in order to achieve continuous improvement in terms of quality, efficiency, effectiveness, scope of the objectives and satisfaction of the stakeholders.

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BRAZILIAN COURTS OF AUDIT AND THE CHALLENGE OF COMMUNICATING WITH A LIQUID SOCIETY: the example of the institutional relationships established by the Tocantins TCE with ATM and UVET



Autores:

José Costandrade de Aguiar¹

Júlio Edstron S Santos²

Luciano Pereira da Silva³

EF Tocantins



Abstract: This article, prepared with the use of the literature review technique and empirical analysis of the situation of the financial, political, budgetary and social crisis in Brazil since 2010, has shown that it is necessary to expand the communication tools between the Court of Audit and organized civil society. It has already been pointed out that the Courts of Audit have maintained constant and fruitful dialogues with society in general, even with documented results obtained from the social control carried out in association with the community, seeking to broaden the debate on the need to increase interactions between the Courts of Audit and organized civil society, which is one of the many challenges for the 21st century, especially with the Association of Municipalities of Tocantins (ATM, by its Portuguese acronym) and the Union of Counselors of the State of Tocantins (UVET, by its Portuguese acronym).

Likewise, it has been shown that since their first constitutional provision, the powers of the Courts of Audit have evolved, with special emphasis on the 1988 Constitution, which has now instrumentalized the Courts of Audit, both for the exercise of supervisory functions, with regard to the promotion of democratic actions, and for the inclusion of citizens in the exercise of the external control, as it happens with the social control carried out jointly with the society.

Key words: finance, budget, interaction, civil society, oversight, audit institution, communication, institutional relationships.

1 President and Counselor of the Court of Audit of the State of Tocantins. Holder of a Degree in Law from the Federal University of Piauí, Postgraduate Degree in Educational Administration, University of Brasilia - UNB, Law of Civil Procedure, Tiradentes University and Studies in Politics and Strategy at ADESG/UFT. Degree of Doctor of Philosophy in Law from Universidad del Museo Social Argentino - UMSA, Degree of Doctor of Philosophy in Legal and Social Sciences. In Tocantins, he has held several relevant positions, including the position of Secretary of Community Development of Palmas, Coordinator of the Accounting Sciences course at Tocantins University Foundation. - Unitins, public defender and state prosecutor, among others. Since the year 2000, he cumulatively held the positions of president of Instituto Social Divino Espírito Santo - Prodivino, and Secretary of State for Labor and Social Action. He was president of IRB 2010/2011 and 2012/2013.

2 Holder of a Degree of Doctor of Philosophy in Law from University Center of Brasilia - UNICEUB. Degree of Master in International Economic Law from UCB/DF. General Director of Instituto de Contas October 5 Professor TCE-TO of IDASP/Palmas. Member of the research groups Center for Advanced Studies and Research of the Third Sector (NEPATS) of UCB/DF, Public Policy and Juspositivism, Jasmoralism and Political Justice of UNICEUB. Executive Editor at REPATS, Email: edstron@yahoo.com.br

3 Head of the Counseling Office, President of the Court of Audit of the State of Tocantins. Holder of a Degree in Law from the Lutheran Palms University Center. Specialized in Rule of Law and Fight against Corruption, at Higher School of the Judiciary; in Public Management at the IEPE Postgraduate Institute and in Public Management with an emphasis on external control at the Brazilian Institute of Postgraduate and Extension (IBPEX).

It is worth mentioning that the Courts of Audit, as well as all other control instruments, must act to prevent and, where appropriate, hold individuals or legal entities responsible for causing damage to public funds, and avoid the practice of infantilizing the Public Administration, as taught by the professor and minister of the Court of Audit of the Union, Bruno Dantas (2018), as a replacement of the democratic legitimacy conferred by the vote, due to the decisions taken by the technical and/or legal bodies, discarding the possibility of using administrative discretion.

Moreover, concepts and numbers, which indicate that today's society is increasingly complex, plural, connected and multifaceted, were also presented, generating demands, problems and challenges of all types, including being considered as liquid by the thinker Zigmunt Bauman, which leads to the challenge of aligning speeches for the promotion of citizenship, rights and also the control of state actions.

Therefore, the main point of this article is to demonstrate the possibility of aligning the intensification of the dialogue of the Courts of Audit with organized civil society, seeking to promote democratic experimentalism, that is to say, conditions must be created so that problems can be resolved through consensus created by the Public Administration and the society.

THE LIQUID SOCIETY ACCORDING TO THE THEORY OF ZYGMUNT BAUMAN: the recognition of the latest news about Brazil

The current situation in the West has already received several names, as

postmodern, for Jurgen Habermas (2012), complex, as idealized by Antony Giddêns (2007), risky, as theorized by Ulrich Beck (2011), or as a liquid modernity, according to Zygmunt Bauman (2017).

The common point in each of the above-mentioned theorists is that today's Western society faces problems in recognizing the essential rights of its citizens and poses challenges for the protection of human beings and of the planet itself.

What differs most from Bauman's theory (2017) compared to all others is that society is witnessing a "liquid" era, in which there is a dispersion of personal and social relationships, which fit every circumstance that is present today. "Fluids show, in a simple language, that liquids, unlike solids, do not maintain their shape easily. Fluids, so to speak, do not fix space or waste time" (p. 8); that is to say, there is a multifaceted reality in which desires, beliefs and intentions are increasingly differentiated from each other.

As a result of a liquid society, there is also the challenge of complying with an increasingly complex set of rights that can collide with each other at any time, which causes an effect of confrontation or even judicialization. This brings with it insecurity and, in some occasions, disagreement with the necessary classical and solid institutions, such as the State and its bodies.

Due to the plurality of values, civil society also fits various spectra. For example, there is a coexistence in spaces very close to the association of search engines and non-governmental organizations to protect the natural environment. As a consequence, there

there is a crisis of identity and legitimacy of the arguments, generating the doubt: Who speaks for today's society? Zigmunt Bauman's answer is that everyone does it!

For this, it is taken into account that organized civil society is the set of personalized or non-personalized entities that make up the non-state sphere and act in a subsidiary way to the State, to specify the rights, guarantees and control provided for in the Brazilian Constitution, as indicated in the national and international literature, on this topic of relevance for the present. Therefore, as there are no procedural conditions for holding plebiscites, referendums or even public hearings, it is necessary at all times to establish communication channels with this monitoring of society.

This communication is one of the proposals of the Court of Audit of the State of Tocantins (TCE), which invests human and financial resources to improve its communication with the Association of Municipalities of Tocantins (ATM) and the Union of Counselors of the State of Tocantins (UVET), which are non-profit representative entities that can reverberate information for managers and the entire Tocantins society.

The strategy is to strengthen relationships with these institutions, as they represent 139 mayors, almost 1 400 councilors. Therefore, the TCE is approaching the local leadership of a population of 1 555 229 people estimated in 2018, who can act as citizens to protect public resources. However, it is emphasized that this stratagem does not exclude any other mechanism of approach with local authorities or even with citizens, but,



quite the contrary, reveals its means of social inclusion, such as the Ombudsman of the TCE and projects to encourage social control, such as the Group of Studies of Administrative Law (GEDA) and the Training of Public Agents (FORMAP), which receive more than 5 000 people per year.

To this end, periodic meetings are held with the leaders and members of ATM and UVET, at the headquarters of the TCE of Tocantins and also in duly programmed places, to resolve doubts and strengthen the bonds of communication and trust between the entities. It is important to know that, in addition to these institutional meetings, the TCE offers free training courses for its jurisdictions, disseminating knowledge about its actions in regional terms, even with specific programs such as FORMAP, as well as the projects: "Citizen Agenda" and "Knowing the TCE", which together receive more than 10 000 people a year in the state of Tocantins.

With these actions, the Court of Audit of the state of Tocantins approaches liquid society and, in addition to hearing its demands, improves with the

personas al año en el estado de Tocantins.

contributions of organized civil society and the individual participations that may arise during the execution of its tasks, recognizing "(...) that it is essential to create a mechanism for the direct participation of the population, of citizens, in the power of the State, gradually overcoming the outdated and anti-democratic liberal dichotomy between the State and society" (QUADROS, 2009, p. 101).

These actions seek to establish the conditions so that the Public Administration is more efficient and, therefore, the fundamental rights, duties and guarantees are fulfilled, with the collaboration of state agents and especially with the help of civil society.



Therefore, following Bauman's path (2017), in a liquid society environment, it is necessary that all institutions seek to prepare to communicate and act in situations that are taking place without precedent, bringing challenges to State's actions and, consequently, to the realization of fundamental rights and guarantees.

THE COURTS OF AUDIT AND THE CHALLENGE OF EFFECTIVE FUNDAMENTAL RIGHTS AND EXTERNAL CONTROL

With the recognition of the paradigms of the liberal and social State, the need to promote control of state actions and especially the activities of the Public Administration itself was established, through the creation of internal and external control bodies, such as the Courts of Audit, which gradually gained relevance and began to hold public administrators and state entities responsible for illegalities, misuse of the purposes or the commission of crimes against the public fund in Brazil.

We must not forget that historically only with the second Brazilian constitution, that is to say, the Republican Constitution of 1891, the Court of Audit was recognized with its constitutional status, and its functions were also described in the original work of the unusual jurist Rui Barbosa (1934), which was written more than a century ago, but it is still quite relevant because, according to the author, the Courts of Audit are:

(...) a system that protects the legal order against abuses of power in the administration and the legislature, a system by which the acts of the legislative branch are defended against those of the executive branch and the provisions of the constitution against the laws that transgress them (1934, p. 448)

From its beginnings to the present, external control has constantly evolved, concluding that "by virtue of the prerogatives and guarantees

granted by the Federal Constitution of 1988, the control bodies are positioned as key pieces for institutional development" (DANTAS; DIAS. 2018, p. 105).

It is emphasized that the Courts of Audit, of the Union, of the states, as well as of the municipalities, in addition to the supervisory function, exercise the prerogative of promoting the induction of the development of the Public Administration and of the society itself, to develop inter-institutional dialogues and with the liquid society.

In a didactic way, internal and external control instruments must act increasingly strongly against illegalities and the misuse of public funds, to avoid damages and hold individuals or legal entities responsible for causing damage to the population, such as serious cases of corruption documented in Brazil. However, this cannot replace the democratic legitimacy conferred by the vote, or in the lesson of Minister Bruno Dantas:

The control of hypertrophy generates the infantilization of public management. Regulatory agencies and public managers in general have avoided making innovative decisions for fear of having to question acts. Or worse: they do not decide simple matters by waiting for the prior approval of the TCU. To remedy this, a dose of consequentialism must be introduced. (DANTAS, 2018, p. 4).

Therefore, today's society cannot adapt to any excess, whether from private agents or from the Public Administration in a broad sense,

including control bodies, such as the Courts of Audit. Therefore, the Courts of Audit must act as inducers of legality and regularity and also have the challenge for the 21st century to promote the improvement of democracy by proposing inter-institutional dialogues with organized civil society, or even as indicated by the doctrine in this subject:

The transposition to the State of Democratic Law brought to the courts of audit an extension of the scope of the external control activity, that, leaving aside only the focus on legality, based on the positivist and formalist technique of subsumption for the purpose of the control law, acquires a new aspect to also syndicate the legitimacy and economy of public spending, even of the application of subsidies and exemption of income, according to the provisions of art. 74 of the Federal Constitution. (ELIAS, 2011, 45).

Continuing with the questions asked from the state, liberal and social models, it seeks to realize the paradigm of the State of Democratic Law, which aims, in addition to the realization of rights, fundamental guarantees and control of public resources, to insert the need for citizen participation as a criterion for the legitimacy of state actions, due to the republican foundation of citizenship, as provided in article 1, item II, of the Citizen Constitution.

It should also be remembered that the current model of the State of Democratic Law (EDD) is a constitutional paradigm under

construction, because its contours are not yet fully defined, and they are mainly characterized by the duty to recognize the citizenship and dignity of the human being, as the basis of all state action, as well as distinguish themselves from their predecessors by the recurrent consensual difficulties, since society is currently complex, antagonistic and even liquid, according to the theory of Bauman (2003), according to the most varied situations.

One of the main scientific advances recognized in EDD is to understand that it is a means for the realization of a participatory and inclusive citizenship, with the insertion of people in the decision-making processes and the generation of results of public activities, as representative councils and, in this way, act in the crystallization of fundamental rights and guarantees, with the participation of organized civil society, acting as "an interpretative key of contemporary democratic Constitutional Law and theoretical support for the proper interpretation and application of current Brazilian Constitutional Law" (CATTONI, 2002, p. 25).

The realization of fundamental rights in EDD is one of the current and 21st century challenges, mainly, even for the control carried out by the Courts of Audit, since social groups seek the precedence of the distribution of financial resources, which are increasingly scarce. Although large amounts of the portfolio are invested, as shown in the table below, based on public information published by the Integrated Planning and Budget System (SIOP) of the Federal Government, including data by the end of 2018.

Official notes show that between 2014 and 2018, there was a federal investment of exactly the following values in the area of culture, education, health and public safety R\$ 1 105 560 612 513, 25; that is, one trillion, one hundred five thousand five hundred, five hundred sixty million, six hundred twelve thousand, five hundred thirteen reais and twenty five cents were given to the Public Administration, generating great planning, execution and control challenges, with the inclusion of the Courts of Audit.

We advance that despite the high value executed in the federal budget and the considerable advances already witnessed by Brazilian society, these rights still need improvements in the Brazilian State, with the feeling that the Public Administration still needs to be more efficient, which requires the maintenance and improvement of the Courts of Audit, as agents of external control of goods, resources and public interests, as stated in the Republican Constitution of 1988, when "(...) allows to verify the aspirations of society in the realization of public spending, its interests and prioritization" (SCARR, MACEDO SCARR, 2018, p. 1254).

Therefore, from the Absolute State model of the 15th to 17th centuries to present, there was a structural change due to factors such as worldization (SILVA, 2015) and globalization (BAUMAN, 1999), which provided advances in the areas of telecommunications and transport, but also challenges such as the greater volatility of national and international markets, driven by these factors. It has been theorized that there should be a cooperative democratic constitutional State, which is networked with

public and private actors, both internally and internationally, as indicated by Peter Haberle (2003), acting in a fabric of protection of rights, guarantees and fundamental controls of the Public Administration and of liquid society.

An example of the need to establish networks with the performance of state and social agents is the allocation of public resources by the Union, emphasizing that this federative entity has the largest public budget in Brazil and should encourage the development of essential areas such as health, education, public safety and culture, as shown in the graph below, extracted from the public data available at SIOP, which points to state investments in real time and, therefore, it is an example of compliance, accountability and governance tools.

It is worth mentioning that the fundamental rights: culture, education, health and public safety were chosen for the test in this chapter, since they characterize the largest budgets of the Union and the astonishing amounts of money allocated, in millions of reals, demonstrate a sense of lack of investments in these areas so sensitive to Brazilian society and mainly demonstrate the lack of realization in these rights, leaving a feeling that there is still much to do!

According to the previous table, one of the necessary considerations when analyzing the data contained in the material prepared with the SIOP data, is that the resources were allocated. However, it is necessary to review the administration and public management

techniques, especially from the point of view of the constitutional principle of efficiency and the fundamental duty of accountability, which requires prior, concomitant and supervisory action by the Courts of Audit.

Until this part of the text, it has been made clear that there has been progress in the construction of the state and Brazilian public administration in recent years, that public management has aligned with the EDD model, including a complex and current system of internal and external control, with the participation of the liquid society. Therefore, the Courts of Audit, while controlling illegalities, are challenged to promote democratic dialogue with organized civil society, as is the case of the Court of Audit of Tocantins, which has been institutionally adapting with ATM and UVET.

FINAL REMARKS

The 21st century presents many challenges for the entire social and state structure. In this article, we have discussed the possibility of intensifying communication between the Courts of Audit and organized civil society, which, as a general rule, is the recipient of public policies that enforce fundamental rights, duties and guarantees.

To this end, the main foundations of the evolution of the Western State were summarized, from its beginning to the present day, through the State of absolutist, liberal, social and democratic Law, to recognize that each one has its own characteristics, but they all identify with the

Ano Exercício	Função (desc.)	Dotação Atual	Empenhado	Pago	RP Pago	Total Pago
2014	06 - Segurança Pública	10.638.076.369,00	8.945.185.298,87	7.233.237.067,17	1.496.751.971,10	8.729.989.038,27
2014	10 - Saúde	100.313.538.371,00	94.065.346.000,55	86.327.540.676,13	7.518.600.406,75	93.846.141.082,88
2014	12 - Educação	102.438.345.117,00	93.897.290.662,71	80.903.901.144,69	13.296.878.806,81	94.200.779.951,50
2014	13 - Cultura	3.051.053.656,00	1.835.787.687,63	908.005.916,14	627.042.636,78	1.535.048.552,92
Total 2014		216.441.013.513,00	198.743.609.649,76	175.372.684.804,13	22.939.273.821,44	198.311.958.625,57
2015	06 - Segurança Pública	10.807.229.620,00	9.035.951.435,95	7.753.719.483,82	1.138.256.047,74	8.891.975.531,56
2015	10 - Saúde	113.007.419.766,00	102.093.782.976,83	93.864.923.546,90	6.347.319.203,79	100.212.242.750,69
2015	12 - Educação	115.501.163.942,00	103.779.651.895,30	88.600.739.991,53	9.436.931.899,36	98.037.671.890,89
2015	13 - Cultura	2.797.362.737,00	1.867.416.088,67	855.175.441,96	913.886.102,00	1.769.061.543,96
Total 2015		242.113.176.065,00	216.776.802.396,75	191.074.558.464,21	17.836.393.252,89	208.910.951.717,10
2016	06 - Segurança Pública	10.343.532.369,00	9.715.492.478,72	8.423.101.067,63	1.276.066.932,56	9.699.168.000,19
2016	10 - Saúde	112.333.047.757,00	108.268.384.482,46	100.190.605.307,83	8.536.244.819,32	108.726.850.127,15
2016	12 - Educação	109.900.303.710,00	106.738.195.557,73	95.184.512.946,82	13.911.819.367,51	109.096.332.314,33
2016	13 - Cultura	2.335.013.589,00	1.939.529.497,35	951.534.715,35	1.119.226.043,03	2.070.760.758,38
Total 2016		234.911.897.425,00	226.661.602.016,26	204.749.754.037,63	24.843.357.162,42	229.593.111.200,05
2017	06 - Segurança Pública	11.548.518.830,00	10.860.870.233,63	9.133.214.442,06	1.020.888.956,16	10.154.103.398,22
2017	10 - Saúde	120.356.455.929,00	117.602.483.172,47	102.713.827.690,68	6.446.994.008,69	109.160.821.699,37
2017	12 - Educação	115.111.614.994,00	111.405.469.319,37	101.815.707.371,61	9.453.255.961,13	111.268.963.332,74
2017	13 - Cultura	2.183.255.676,00	1.904.144.069,80	1.020.637.184,93	881.132.545,55	1.901.769.730,48
Total 2017		249.199.845.429,00	241.772.966.795,27	214.683.386.689,28	17.802.271.471,53	232.485.658.160,81
2018	06 - Segurança Pública	12.851.324.098,00	12.498.748.754,98	8.820.453.903,29	1.398.865.925,98	10.219.319.829,27
2018	10 - Saúde	121.864.792.265,00	120.876.845.472,00	108.179.162.954,58	12.445.288.288,95	120.624.451.243,53
2018	12 - Educação	114.309.381.798,00	112.236.392.167,94	95.590.465.024,47	7.922.570.796,83	103.513.035.821,30
2018	13 - Cultura	2.102.005.530,00	2.004.483.305,71	988.669.602,21	913.456.313,41	1.902.125.915,62
Total 2018		251.127.503.691,00	247.616.469.700,63	213.578.751.484,55	22.680.181.325,17	236.258.932.809,72
Total Geral		1.193.793.436.123,00	1.131.571.450.558,67	999.459.135.479,80	106.101.477.033,45	1.105.560.612.513,25

Fonte: SIOP

realization of fundamental rights and guarantees, as well as with the control of state actions.

It was shown that the Court of Audit was constitutionally recognized by the Republican Constitution of 1891 and received more attention from the current Citizen Constitution, with supervisory powers and also promoting citizenship, with the stimulus of social control, which has documented results and can help mainly in concomitant control that is currently being debated in the Courts of Audit.

However, it was recognized that forms of internal and external control, as

exercised by the Courts of Audit, should be used in a way that promotes the construction of a democratic public space and not to infantilize the Public Administration, as demonstrated by Dantas (2018).

Therefore, the Courts of Audit must act in a preventive, concurrent and superintendent manner to curb immoralities, illegalities and, above all, to prevent the incorrect application of public resources, but they should not undermine the autonomy and discretion of public administrators who have democratic legitimacy to establish their priorities in the context of the Democratic Rule of Law.

Therefore, the central point of this chapter was to demonstrate that there is a challenge for the 21st century for the Courts of Audit to improve their dialogue with organized civil society, with institutional dialogues with ATM and UVET as examples.

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PARTICIPATION AND PUBLICATION OF KEY PROFESSIONAL STAFF IN THE EXECUTION OF PERUVIAN PUBLIC WORKS

Authors:

María Eyzaguirre Berrios
Alfonso Flores Mello
SAI Peru

Abstract: In the simultaneous control services, the Office of the Comptroller General of the Republic of Peru, hereinafter the Controllership, identified that the key professional staff, in charge of the execution of the works, did not participate in the execution of the works, thus generating the risk of affecting the quality of the public works. Moreover, the contracting norm does not demand the definition of its participation (whether it is to be permanent and direct or partial), functions, information generated, nor the fines or the reduction of the variable general expense and the rates, in the face of a contractual noncompliance. Also, the Infobras software application used by the Controllership does not demand the registration of all the staff participating in the execution of the works.

In that sense, the research conducted proposes modifications in the contracting regulations and the standard conditions of the OSCE regarding the demands of the key professional staff during the execution of a public work. Also, it proposes to register in the software application Infobras the staff participating in the execution and supervision of public works, which will allow to improve citizen control and to alert in a timely manner as to the simultaneity of their participation in the execution of two or more works, as well as inaccurate documentation submitted during the contracting processes by the bidders in charge of the public works.

Key words: Key professional staff, public works, participation, functions, information generated, fine, Infobras.

The contracting of public works in Peru is currently conducted by virtue of the "State Contracting Law N° 30225" and its regulations, which demand solely on the part of the work's executor, the permanent and direct presence of the "work's resident", who must be an engineer or an architect, depending on the type of work to be contracted, demanding that they must have two years' worth of experience in the specialty, defining their functions and information generated during the work (see table n°1).

It is worth mentioning that the OSCE, through Directive N° 001-2017-OSCE/CD¹ standardized the conditions for the public bidding for contracting the execution of works, specifying that the information on the key professional staff would be provided through the profile and position, in strict relation to the general expenses of the technical dossier, underscoring that:

- It is only possible to request the academic bachelor's degree or professional title; that is to say, other qualifications may not be requested (such as, courses,

¹ Conditions and request of standard expression of interest for the selection procedures to invoke within the framework of Law N° 30225. Approved by Resolution N° 001-2017-OSCE/CD dated March 31 of 2017, amended through Resolution N° 017-2017-OSCE/CD and through Resolution N° 015-2018-OSCE/PRE dated March 16, 2018.

Table n° 1

Participation of the work's resident in the execution of public works

PROFILE	PARTICIPATION IN THE WORK	FUNCTIONS	INFORMATION GENERATED
Engineer or architect, certified professional, qualified and specialized. Two years' worth of experience in the specialty.	Permanent and direct, may not provide services at more than one work at the same time.	Represents the contractor as person technically in charge.	Recorded in the work site log book. Valuation of general variable costs and expenses for their payment and miscellaneous.

Source: Regulations of the State Contracting Law**Produced by:** Research team

seminars, diploma courses, talks or other), titles (a second specialty) or academic degrees (master's, doctorate and/or post-doctorate).

The experience must be in accordance with their functions and fees established in the general expenses and the existence of such professionals in the market must be verified.

- Years of association membership or professional activity must not be requested.

It is worth indicating that this requirement for staff qualification is very important, since it is part of the minimum requirements. That is to say, in the event that the company should fail to accredit one of the professionals and/or should not fulfill the profile, they may not access the following stage of evaluation and, therefore, it shall be disqualified and shall not participate in the selection process.

In addition to this norm, the National Building Regulations was approved in the year 2006, which describes the positions of project manager and work site manager (or commonly called work's resident) for building and urban conditioning works, as shown in table n° 2.

It follows from the statements that the contracting normative does not

determine that the requirement of professionals defines specifically their participation in the execution of the works, their functions and information generated of the key professional staff; which proves to be in accordance with the provisions contained in the internal control norms, which establish that the work and functions of the professionals must be clearly defined, as well as the obligation of generating information to facilitate the review of what has been executed and, therefore, we propose the following:

- Participation in the execution of works
 - a) Permanent and direct, this pertains to the exclusive participation in the works, not being able to provide services at more than one work at the same time as resident, work supervisor or other specialty, aside from providing private or public work. Moreover, the minimum period of work and/or tasks in which they are to participate, whichever is the longer, must be detailed.
 - b) Partial, this pertains to the non-exclusive participation in the work and, therefore, they may provide services at more than one work site at the same time, in any type of specialty. The minimum period of work and/or tasks in which they are to participate must be detailed.

- Functions, describe the works to be accomplished in compliance with their

Table n° 2

Participation of the project manager and the professional of the work site in the execution of the works

POSITION / PROFILE	PARTICIPATION IN THE WORK	FUNCTIONS	INFORMATION GENERATED
Project manager: Professional title, training and experience, certified and qualified	Not detailed	<ul style="list-style-type: none"> Managing the execution of the project and solving the contingencies Having at their disposal qualified professionals for the development of the Project 	<ul style="list-style-type: none"> Defining the possible modifications to the Project.
Professional in charge of the work site: Professional title of Architect or Civil Engineer. In the case of specialized works, the Professional in Charge must have the corresponding specialization .	Direct	<ul style="list-style-type: none"> Executing directly the work, managing the construction processes and fulfilling the quality requirements. Solving the contingencies in the execution of the work. 	<ul style="list-style-type: none"> Recorded in the work site log book. Signing the work's start and handover certificates. Producing and organizing the information on the construction processes.

Source: National Building Regulations - G.030 Rights and Responsibilities

Produced by: Research team

specialty and/or technical support. If applicable, produce the competent normative reference, such as safety and protection, environmental impact, ministry of the environment, culture or other that are applicable, to be consigned in the functions of the professional in charge.

- Information generated, describe the documentation generated and duly signed in compliance of their functions, such as materials quality assays, work quality tests, reports,

certificates or other, generated for each valuation of the works, as well as the opportunity and/or deadline for handover of the works.

Now then, after reviewing five selection processes from different types of works and budgets, it was determined that the requirement from the entities does not define objectively the following: i) participation in the work, ii) functions, iii) information generated and iv) delivery of the information generated from the key professional staff during the execution of the work, as shown in the following table:

Table n° 3

Key professional staff in the execution of public works

TYPE OF WORK	HOSPITAL	TREATMENT PLANT	HIGHWAY	SCHOOL	SANITATION
PUBLIC BIDDING	Bidding-1-2015-GR.TACNA	Bidding-4-2017-VIVIENDA	Licitación-9-2016-GRTACNA	Licitación-5-2017-GRTACNA	Licitación-4-2017-EPSTACNA
BUDGET	80 million dollars	28 million dollars	5 million dollars	4 million dollars	0.8 million dollars
PROFESSIONAL STAFF	12	13	12	8	7
PROFILE	Yes and training	Si	Si	Si	Si
PARTICIPATION IN THE WORK: Full time or part time	As per proposal (not defined by the entity)	Not detailed	Yes, does not record the period	Not detailed	Not detailed
FUNCTIONS	Not detailed	Not detailed	Partial description	Not detailed	Not detailed
INFORMATION GENERATED	Not detailed	Not detailed	Partial description	Not detailed	Not detailed
DELIVERY OF INFORMATION GENERATED	Not requested	Requests the works completed	Not requested	Not requested	Not detailed

Source: Electronic contracting system of the State and appendix n.º 2

Produced by: Research team

As per these statements, it is recommended to modify the standard base for Directive N° 001-2017-OSCE/CD, approved through Resolution N° 064-2018-OSCE/PRE, published in the official gazette El Peruano on August 9, 2018, in chapter III Requirement, with the following text:

"Moreover, in this section must be consigned the key professional staff for the execution of the work, detailing their position, minimum profile, participation in the work, functions and information generated, in strict observance of the technical dossier (in accordance with the breakdown of the general expenses analysis of the technical dossier), (...)".

Furthermore, regarding the information generated by the key professional staff entered into the entity, it is

recommended to modify article 166.- Valuations and quantities of the Rules of Application of the State Contracting Law, in the following sense:

"The contractor must submit to the inspector or supervisor, on the last day of each period provided for in the conditions, the information generated and attendance of the key professional staff who participated, as per chapter III Requirement of the integrated conditions, during said period. Otherwise, the corresponding variable general expenses shall be deducted from the professionals who should have participated, and the corresponding fine shall be applied, as well."

Regarding the fine, it is suggested to modify chapter III Requirement of the standard conditions:

"In this section, in addition to the penalty for tardy compliance, the following penalties must be included:

Penalties			
N°	Assumptions for the application of the penalty	Calculation method	Procedure
1	(...)		
3	<i>If the contractor or their staff should fail to submit, on the last day of each period provided for in the conditions, to the inspector or supervisor the information generated and attendance of the key professional staff who participated during said period.</i>	<i>Five thousandths (5/1000) of the amount of the valuation of the period for each day of said impediment.</i>	<i>As per the report from [CONSIGN INSPECTOR OR SUPERVISOR OF THE WORK, ACCORDINGLY].</i>
4	<i>If any technical staff from the Key Professional Staff should not participate in the execution of the work in the periods established in the requirement.</i>	<i>Five thousandths (5/1000) of the amount of the valuation of the period for each day and for each professional.</i>	<i>As per the report from [CONSIGN INSPECTOR OR SUPERVISOR OF THE WORK, ACCORDINGLY]. And recording it in the work site log book for each day and the professional who did not participate in each of the valued periods."</i>

Moreover, from the review of the record of the key professional staff in the software application Infobras of the Office of the Comptroller General of the

Republic, the registration of the data from the work's resident and the work's supervisor or inspector was observed as follows:

Table n° 5

Publication of the key professional staff in the execution of public works

TYPE OF WORK	HOSPITAL	TREATMENT PLANT	HIGHWAY	SCHOOL	SANITATION
PUBLIC BIDDING	LP-1-2015-GOB.REG.TACNA	LP-4-2017-VIVIENDA	LP-9-2016-GRTACNA	LP-SM-5-2017-GOB.REG.TACNA	LP-4-2017-EPSTACNA
RESIDENT	YES	NO	YES	YES	YES
SUPERVISOR	YES	NO	YES	YES	NO
KEY PROFESSIONAL STAFF	NO	NO	NO	NO	NO

Source: Electronic contracting system of the State

Produced by: Research team

To that effect, it is suggested to modify the item "d. Details of the work's resident" from the User's manual - Information system for public works for entities of March 2015 - Version 4.0, with the following text:

"d. Details of the key professional staff for the execution of the work

This is the section for recording the key professional staff who participate during the execution of the work.

First, proceed to record the following details:

(...)

Then, fill in the following fields: • C.I.P/C.A.P/OTRO (Association of Engineers of Peru/ Association of Architects of Peru/ Other) • Profession • Specialty¹ • Start date of the contract² • End date of the contract² and • Participation³.

1. Consign the position according to the technical offer of the contractor (work by indirect pre-supposed management) or staff from the Entity (work by direct pre-supposed management).

2. Details according to the participation in the work by each

professional consigned in chapter III Requirement of the integrated conditions of the selection process (work by indirect pre-supposed management) or schedule for the participation of the key professional staff of the Entity (work by direct pre-supposed management).

3. Consign whether it is Permanent and direct (Corresponding to the exclusive participation in the work and, to that effect, they may not provide services at more than one work site at the same time, in any type of specialty, resident or work supervisor or other private or public work. The minimum period of work and/or tasks in which they are to participate must be detailed) or Partial (Corresponding to a non-exclusive participation in the work, and, to that effect, they may provide services at more than one work site at the same time, in any type of specialty. The minimum period of work and/or tasks in which they are to participate must be detailed).

It is necessary to point out that, if the participation being defined is of the Permanent and direct type, the computer system will not allow the registration of

the same professional in another work site during the defined period.

It is also important to underscore that the proposals for the modification of the current normative and software applications do not involve high expenses for their implementation. On the contrary, they would have the following impact:

- The variable general expenses of the key professional staff from the entities will be accredited and this will avoid payment for work not performed.
- This will allow the National Control System the identification in less time of presumably false or inaccurate documentation submitted by the contractors in the selection processes, in order to alert about risks through their control departments.
- It will improve social control in public works, given that they will have access to information on the professional staff who participate in the execution of their works.

- National Building Regulations, published on June 8, 2006, in force as of June 9, 2006.
- Internal Control Norms, approved through Controllershship resolution N° 320-2006-CG, in force as of November 4, 2006.
- Infobras - User's Manual - Information system on public works for entities, March 2015 – Version 4.0.
- Website of the State contracting system – SEACE - <http://portal.osce.gob.pe/osce/content/accesos-al-seace>.
- Website of the Supervisory board of the State Contracting Organismo Supervisor de las Contrataciones del Estado - OSCE - www.osce.gob.pe/.
- Website of the National Information System on Public Works – INFObras - <https://apps.contraloria.gob.pe/ciudadano/>.
- Website of the Office of the Comptroller General of the Republic of Peru - http://www.contraloria.gob.pe/wps/wcm/connect/cgrnew/as_contraloria/as_portal

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- Directive N° 001-2007-OSCD/CD
- Conditions and request of standard expression of interest for the selection procedures to be evoked within the framework of Law N° 30225.

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MIGRATION OF CONTROL PROCESSES IN PUBLIC PROCUREMENT AT SICOP (INTEGRATED PUBLIC PROCUREMENT SYSTEM): A VALUE-ADDED EXERCISE¹

Author:

Elard Gonzalo Ortega Pérez
SAI Costa Rica

Abstract: This document sets forth a proposal for the Supreme Audit Institutions (SAI) to orient their controls on public procurement toward electronic procurement systems in each country, thus obtaining the advantages of the technology for their endeavor, but also in order to render more transparent their products and results in a better way. As for Costa Rica, we take the incipient case of the project for the entry of prior controls in terms of administrative contracting into the Integrated Public procurement System (SICOP), which is the national platform for electronic public procurement and describe how this project fits within a value-added control that the national SAI must generate along several conceptual axes that rely upon the information and communication technologies, in the achievement of the country's objectives.

Key words: Controles previos, sistemas electrónicos de compras, controles eficientes, controles de valor agregado, políticas públicas y gobiernos nacionales.

Introduction

In Costa Rica, between 13% and 15% of the GDP is invested in public procurement, which is quite similar to

the percentage devoted in the rest of the world, and, therefore, as in other countries, we must take advantage of this investment strategically in order to achieve sustainable development objectives under the application of environmental, social, innovation-related, MSMEs-related², women-related, among others. Thus, by virtue of the large size of these amounts and the relevance of these objectives, it is necessary to define controls that are transparent, timely, efficient and independent, so as to guarantee the healthy investment of public funds, free competition and equality among the participants.

Theoretical framework

a) Accountability and the smart use of controls

In the case of Costa Rican public contracting, the CGR has prior competencies in special authorizations, such as the promotion of an exceptional procedure, as well as the approval of contracts. It also possesses competencies in terms of contractual resources, which are similar to those exercised by the Contractual Resources Courts in the case of Spain or by the Government Accountability Office in the United States of America. In that sense,

¹ This document is a summary of the document Prior controls in terms of public procurement: using the national platform for public procurement in order to add value to the oversight, presented in the context of the Research Contest CAJ 2018. For space economy reasons, we have reduced or deleted some of the quotations. The analysis is not featured in any official document from the Office of the Comptroller General of the Republic of Costa Rica (CGR), but, rather, it constitutes a conceptual proposal as to how the use of SICOP must be articulated for the challenging and prior control processes of the CGR, from the standpoint of who participates as the project leader at the Administrative Contracting Division.

² INTERNATIONAL TRADE CENTER, Opening markets for women traders, 2015, p. 40.

the CGR has the ability to review the dossiers of the recourses in the bidding procedures for larger amounts and the challenge of final actions, both in the awards and in the eventualities of a void or unsuccessful bidding process.

These types of controls exercised by the CGR have been recognized by the OCDE as controls that move ahead towards the integration of efficacy, efficiency and economy, reflecting good practices in an efficient system for the supervision of the performance of the public contracting processes and those of the institutions³. Thus, it is the task of the SAI to oversee the investment of public funds and transparency in the public contracting activity, but nowadays we are confronted with the challenge of reinventing the way in which the policies and procedures are being executed, in order to identify which practices may be corrected in order to increase the likelihood of achieving the objectives in terms of infrastructure, public health, education, citizen safety, etc. In the same case, the linking of the subsequent controls under alert systems, red flags or other systems, may improve considerably its likelihood if we are successful in designing its application within the contracting procedures promoted electronically. However, for the purposes of this analysis, we shall emphasize on prior controls.

Aside from providing information on specific projects of national interest, the systematized information on the refusals or authorizations for exceptional procedures, as well as for contract approvals, allows to follow up

on the timing and the compliance with the conditions or terms. Such is also the case with the amount of resources, the amounts involved, the periods of time since the invitation up to the challenge, the resolution times and the amount of additions or clarifications submitted regarding the resolutions; all of which not only enhances the monitoring of possible institutional weaknesses or by government sectors, but also in order to answer a fundamental question in the exercise of accountability: **who controls those who control?**

b) Using technology is not optional

The amendment of article 40 and the addition of article 40 bis to the Law on Administrative Contracting (Law No. 9385 of August 23, 2016, that amends precisely Law No. 7494 and which went into effect in September of 2017) make it mandatory that every contractual activity regulated by the Law on Administrative Contracting or any other special regime, must be processed through SICOP. This opened the possibility for prior controls, in particular, and the oversight competencies, in general, over public purchases, to be also integrated into that electronic platform, thus facilitating the strategic planning that have been designed by the CGR with the information technologies. The inclusion of prior control processes into SICOP allows the consolidation of the platform and a more efficient use of the resources from the entities that are overseen; thus allowing to homogenize the recording of information performed on various systems, such as the Contractual Activity Information

³ OCDE, Supreme Audit Institutions and good governance: supervision, information and vision, Studies by the OCDE on public governance, Paris, 2017, pp. 128.

System (SIAC) from the CGR. Therefore, using SICOP gradually allows oversight to not only reduce costs, but also make more efficient the use of resources and help in the consolidation of a single platform for the CGR, the entities that are overseen and the citizenry themselves.

Objectives and development

In the project for the entry of administrative contracting processes, we have viewed the migration of authorization, approval and recursive matters processes. The work methodology with the Head of SICOP shall be conducted through work sessions with the CGR, with the participation of Radiografica Costarricense S.A. (RACSA), which is the public company that has assumed the operation of the System. The operator interfaces at the CGR will be conducted, in principle, under four main stages: a. definition of requirements, b. design, c. development, concept testing and pilot plan, and d. Deployment.

In the definition of requirements, it is necessary to consider not only the data that is indispensable in accordance with the normative for the validity and the exercise of competencies, but also the strategic information for decision-making that is expected to be generated and the innovating proposal of a system that allows to add value for those who interact with the complex issues of administrative contracting and the competencies of the CGR. Transversally to the project, it devolves to the CGR to coordinate with the Head of the System and RACSA the training plans for the officers, the definition of contingency plans and the resolution of

legal issues associated with the handling of information in the minimal conditions required by an SAI, responsibilities over the storage and availability of the information (response times, among others).

Hence, conceptually, the architecture of the modules must take into consideration a relationship between the SAI, the National Government and Civil Society, where the sensitive information generated from the modules or interfaces of the CGR guarantee necessarily that accountability that is materialized in this specific proposal, as can be seen in Figure 1.

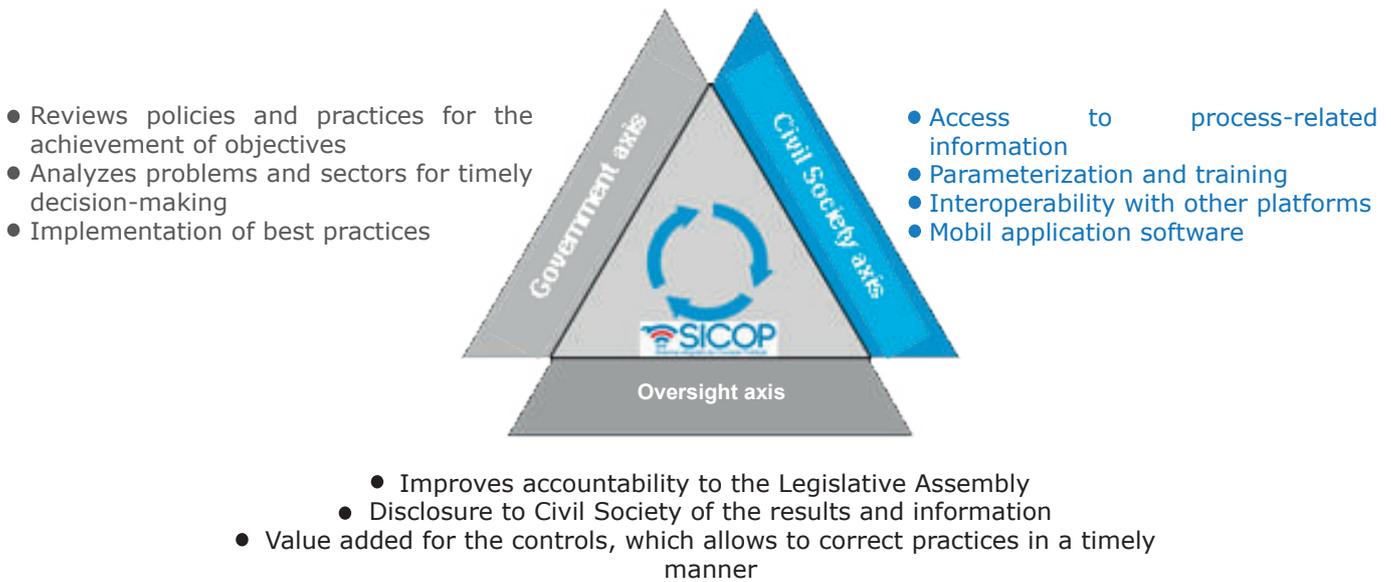
a) Civil Society Axis

In order to consolidate this demand for information, it becomes necessary to propose a series of minimum requirements for the technical developments to be carried out:

i. Access to information on the controls exercised by the CGR

In the definition of requirements it is necessary to carry out pilot test scenarios with users from civil society who may allow us to define that the operation and structuring of requirements guarantee a simple access to the information, with the idea that the democratic principle of free access to public information is not left as a theoretical proposal. Additionally, the simple definition of the interfaces for consultation must allow the user to access the information in several ways. The use of electronic systems implies for the CGR an internal regulation that guarantees risk management in

Figure 1. Relevant actors
Use of SICOP for accountability



order to provide quality information and in a timely manner. The information must be offered in real time so that a company that is part of a process and a citizen do not have different information within the process that may be consulted from anywhere. Moreover, the development of the modules and interfaces requires respecting the principle of technological neutrality, as a substantive principle, in the use of technologies, not only regarding the compatibility with the internet browsing software, but also regarding the information storage formats.

ii. Parameterization of the processes

The parameterization of the modules and interfaces necessary to file recourses will allow the System to warn the user about legal deadlines and provisions, without prejudice to the fact that the user may continue with the transaction by their own decision. These possibilities may prove to have extraordinary

relevance for MSMEs in the filing of recourses of objection to the cartel or against the final action before the CGR, so that the System itself will advise the user as to the potential errors according to the normative regulations. Thus, we reduce the possibilities of rejection due to an obvious inadmissibility of the recourses, but, above all, this expands the possibilities for controls over actions that in other cases would justify a rejection at the threshold of the recursive management.

iii. The use of mobile software applications

Nowadays, the CGR avails itself of the use of an app that allows navigating the information associated with news, presenting complaints and learning about audit reports issued recently, which is easily available on Apple's App Store or on Google Play. The use of SICOP requires RACSA to develop in the mid-term an application that allows

the users to use their smartphones in order to carry out their consultations regarding formalities, submitting procedures and receiving notifications, among many other possibilities.

b) Government axis

From reading the 2015-2018 National Development Plan that structured the Government of the Republic for the previous period, it follows that practically all of the projects or programs proposed in different areas share the same risk: the formality of administrative contracting and the deadlines⁴. The planning of the projects demands not only to have a clear idea of the times for the procedures and the controls, but also to understand potential flaws in the maturity of the projects and in the definition of the contractual objects, as well as generating lessons learned pertaining to the dynamics of the evaluation of results of a project or even of specific sectors made up of different entities and public organizations, as is the case in the health, education or infrastructure sectors. Having the information from the CGR on SICOP allows the Government of the Republic to scale trends and practices in public contracting, also implementing the necessary changes in the policies and in institutional management, in order to better achieve the objectives. These data allow us to articulate strategies together with the CGR as to how to amend practices to reduce times and improve the likelihood of success of the projects.

c) Oversight and accountability axis

The use of the platform offers advantages in accessing the information and in the disclosure of the CGR, but it definitely generates challenges associated to the organizational culture and the understanding that once the electronic processes have been submitted in real time, new requests for information will arise, that must be attended to in a timely manner. The design of the modules must allow maintaining the same strategic information that is presented nowadays in terms of contracting at the Legislative Assembly in the annual reports, but also the use of smart alerts allows the CGR staff to generate early warnings or to amend practices that could later mean the absolute nullity of the procedure and, thus, materialize the risks mentioned in the National Development Plan.

Conclusions and recommendations

1. The incorporation of prior controls with the existing technological tools for administrative contracting under SICOP constitutes an unbeatable alternative for the transformation of integral oversight through the information technologies.
2. The automatic generation of information poses different requirements on the part of relevant actors, which implies for the CGR the definition of new schemes for social and institutional dialog in order to attend to complex demands in a timely fashion the quality and reliability standards that it upholds.

⁴ The full document may be consulted at the following link:
<https://www.mideplan.go.cr/component/content/article?id=1273>

3. The use of SICOP demands a change in the organizational culture from the physical dossier to the electronic one, the timely training and the management of technical and legal risks.
 4. The implementation of the new technologies requires from the CGR the definition of a strategy of prior dissemination to civil society and to the relevant actors in administrative contracting.
 5. The CGR must structure monitoring activities in order to solve legal and technical inconveniences that are inherent to any first stage where these technologies are used.
 6. An evaluation period must be defined for the migrated processes and to assess how the oversight activities have been developed. Once the period has concluded, evaluation tasks shall be applied through technologies that include not only officers from the CGR or from the Administration, but also civil society.
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ROAD CONCESSION CONTRACTS UNDER THE SCHEME OF PUBLIC-PRIVATE PARTNERSHIPS, AN INSTRUMENT FOR CONNECTING PRIVATE CAPITAL TO STATE CAPITAL. RELATIONSHIP WITH FISCAL CONTROL FROM THE RISK ALLOCATION ANALYSIS

Author:

Sandra Milena Velez Ortiz
SAI Colombia



Abstract: This research includes a proposal for the risk allocation analysis in a performance audit that is eventually conducted to a concession contract under the scheme of Public-Private Partnerships, collecting the proposal of the international experience of the Audit Institutions for evaluation, since, there is no clear direction from the legislative point of view for the issue of renegotiation in concession contracts under the scheme of Public-Private Partnerships.

Key words: Risks, information asymmetry, financial leverage, uncertainty, pecuniary criminal clause, performance audit, demand risk transfer.

In accordance with the provisions of article 8 of Law 1508 of 2012, Public-Private Partnerships are defined: "...Public-private partnerships are an instrument for connecting private capital, which are embodied in a contract between a state entity and an individual or legal entity of private law, for the provision of public goods and their related services, which involves **the risk retention and transfer between the parties and payment**

methods, related to the availability and level of service of the infrastructure and/or service..." (Bold and underline added).

Beyond the provisions of Law 1508 of 2012, Law 1682 of 2013 and CONPES 3760 of 2013, which are the most important norms regarding Fourth Generation concessions in Colombia, it is important to mention the most important characteristics of a concession contract under the APP scheme:

- The design and construction risk is assumed by the concessionaire and the market and rate risk is assumed by the State.
- The information flow available to the State is not the same as that available to the private (information asymmetry), before which the State must face situations such as adverse selection, moral hazard, agency conflict¹, (Villarreal, 2016) and therefore, the State must always try to shield the process and guarantee its transparency.
- High financial leverage by the Banking (both for conventional loans and financing of multilateral organizations). This is because

¹ The agency conflict can be defined in a private company, when the owner is at the same time the administrator, the agency problem does not exist, since in this case the interests of the shareholder and the administrator are equal, being the same person. On the other hand, when the company has various shareholders (even more so if it is public, so the property is atomized), the agency problem arises. In this case, with the company's property rights perfectly defined, it is in the interest of the shareholders to appoint a board of directors that, through a governing body, operates the company. Recovered from: <https://www.eleconomista.com.mx/opinion/Problema-de-agencia-20160321-0014.html>

according to a study made by the Inter-American Development Bank, the infrastructure of Latin America and the Caribbean has traditionally been financed through debt; however, with the financial crisis, equity gained ground at the end of the last decade. Nevertheless, it is important to keep in mind that almost all debt financing is over-the-counter (transactions that are carried out directly between two parties without going through the Stock Exchange), a clear indication of the lack of depth of the region's markets. (Inter-American Development Bank, 2015).

The funders (Private, Investment, Multilateral Banking) only make disbursements as long as property and socio-environmental risks have been mitigated by the concessionaire. The financing of the concession contracts under the APP scheme are composed of a significant number of contracts, most of which are movable collaterals on shares, trade establishments, rights, among others.

In accordance with the criteria outlined by the World Bank, (Bull, 2017) in order to locate and mitigate the risks, 4 steps must be taken:

- Establishing the financial viability and return on investment of the project.
- Performing qualitative and quantitative analyses that allow indexing and analyzing traffic and toll sensitivity.
- Establishing and mitigating risks, which can occur through 4 models: risk-retention models -high traffic risk and low financial viability-, in which the State retains most

significant risks; **shared risk models**, in which there is high traffic risk and high financial viability in which both the State and the concessionaire share the risks, and the **guaranteed minimum income model** and profit sharing mechanisms are given.

- **Risk-injection model** -Reasonable traffic risk and low financial viability-. This can be used to separate the traffic risk from other risks in order to prevent the private sector from relying solely on toll revenues.
- **Risk Model -Reasonable** traffic risk transfer and high financial viability, in which everything is transferred to the end user and flexible contractual terms are given, this model is more appropriate for projects that offer low risk and high profitability. Governments must take due diligence measures to ensure reasonable traffic risks in order to avoid bankruptcy or renegotiation.

Perspective of Fiscal Control versus Risk Allocation, based on the interpretation of article 32 of Law 1882 of 2018

The World Bank Infrastructure Group on the topic of contracting in infrastructure works under the Public-Private Partnerships scheme, said that less than a third of the economies analyzed (135 economies and 82 countries among which are members of the OCDE and Latin America, including Colombia) have adopted specific methodologies that ensure the consistency of the projects throughout their evolution. However, 15% of the economies analyzed do not contemplate specific regulatory provisions regarding the issue of renegotiation of concession contracts under the APP scheme (Public-Private

Partnerships), and 35% of the economies have not regulated the early termination of these types of contracts and the materialization of the contractual risks that may arise. (World Bank, 2018).

Therefore, with the issuance of Law 1882 of 2018, which modified article 32 of Law 1508 of 2012 in which a change was made in relation to the early termination of infrastructure concession contracts, in the following terms:

"...Paragraph 1. In the contracts of Public-Private Partnership signed or to be signed, when a judicial authority declares the absolute nullity of the state contract, or when an administrative or judicial authority or the respective contracting state entity orders its termination originating in a cause of absolute nullity, in the liquidation the updated value of the costs, investments and expenses, executed by the contractor must be recognized, including interest, except compensation and payments received by the contractor by virtue of compliance with the contractual object. These factors will be updated with the historical consumer price index (CPI) from the moment of their occurrence, until the month immediately before the liquidation date..."

The provisions of this paragraph shall also apply to the liquidation of the transport infrastructure concession contracts previously signed in accordance with the validity of Law 1508 of 2012. ...". (Underline added).

However, one year after the publication of this research, the Constitutional Court of Colombia, through Judgment C- 207 of 2019, ruled on the

unconstitutionality claim filed by the General Comptrollership of the Republic, with the understanding that from the liquidation of the concession contract under the APP scheme, the recognitions as refunds will be directed to the payment of the external liabilities of the project with third parties in good faith. With the remainder, refunds may be recognized in favor of the contractor, or the member or partner of the contracting party, in cases where it is not proven that he acted with willful conduct in the commission of a crime or an administrative infraction, giving rise to the nullity of the contract due to illegal object or cause, or that he participated in the conclusion of the contract knowing this illegality.

Therefore, from the Performance Audit, it is intended to provide new analytical perspectives and the identification of possibilities for improvement, based on an analysis of the financial models and the legal context, by which it can be determined if there is a balance in the financial model proposed by the concession, when comparing the yields or profits that the concession business obtains as such (toll revenues), against the cost of the debt of the credits necessary to cover the works, seeking that the latter do not exceed the revenue collected (Acosta, 2016).

Proposed methodology for a Performance Audit based on international experience

In the Performance Audit Guide approved by the General Comptrollership of the Republic, this process is defined as an independent, objective and reliable review of fiscal management and the results and impacts of public administration in

order to determine if the institutional policies, programs, plans, projects, actions, systems, operations, activities or organizations of the monitored subjects operate in accordance with the principles of economy, efficiency and efficacy; and if there are areas for improvement. (General Comptrollership of the Republic, 2017).

For this research, the proposals given by the Canadian Audit and Accountability Foundation, the Office of the Auditor General of India, and the Court of Auditors of the European Union were examined whose report came out in April 2018 in which they analyzed 12 Public-Private Partnership projects, examined under the concession contract, worth \$29.2 billion of Euros. In these countries, the figure of the concession under the APP scheme has been running for more than 15 years, and constitutes a good reference for a possible examination of it.

Risks and their negative materialization during the execution of a concession contract under the APP scheme can be interpreted as follows, as established in the conclusions of the report of the Court of Auditors of the European Union (see Table 1).

The Office of the Auditor General of India (Comptroller & Auditor General of India, 2009) offers a methodological proposal that should be taken into account to examine the approach and scope of the audit in the following terms:

1. Value and period of the concession, aspects of the financial model² such as: rate, traffic levels, state contributions, risk allocation, possibility or not of activation of contingent liabilities.
2. Construction phase of the concession.
3. Agreements and commitments of experts to guarantee the levels of quality and service in the functional units.
4. Contractual clauses regarding operation and maintenance, return on investment, satisfaction of road users and allocation of traffic risk and revenues from tolls.

Likewise, when auditing the allocation of risks, one must also take into account whether the valuation factors were adequate in the event that the risks related to traffic, and to the loss of expected revenue from the collection of toll fees, are activated. The key here is to establish whether or not there were too optimistic estimates in the structuring stage, which would result in revenues being below projected.

In the Colombian case, these concession contracts operate under the Project Finance scheme, which consists of supporting debt resources with the long-term cash flow of the project and not with shareholders' equity (General Comptrollership of the Republic, 2009, pp. 24-25), which cannot accurately predict the variables that may

² For an adequate estimate of a financial model for a concession contract under the APP scheme, from the economic offer approved for the concessionaire, a cash flow methodology at current prices must be considered, taking into account the CAPEX (investment) and OPEX (Operation and Maintenance) values, Average Cost of the Capital Structure and other macroeconomic variables of financing according to the duration of the concession (The value of financial closures given by multilateral banks plays a fundamental role, the proportion that must be maintained between debt and equity (investors' capital)).

Table 1

RISK	MATERIALIZATION OF THE RISK TO BE EXAMINED IN THE AUDIT PROCESS
Financing at all costs the construction of the project by the concessionaire may complicate and delay the financial closure, increase its costs and expose the private partner to increase the financial risk.	For one of the aforementioned case studies, the acquisition stage was delayed for three years, consequently, the process was extended to 5 years, due to difficulties in achieving financial closure.
Risk allocation could be influenced by the negotiation skills of the parties involved, with unsatisfactory results. The risk allocation must be influenced by the statistical treatment given to the project.	The risk allocation has sometimes been inconsistent or inappropriate, with excessive transfer of demand risk to the private partner. (In Colombia the demand risk is transferred to the State).
<p>The public partner must relieve private partners and funders of evaluations to projects that include objectives that are not in line with the public interest. The payment of infrastructure works by units, in some cases without properly placing them in the budget, can discourage the construction of appropriate requirements for large-scale projects.</p> <p>(In the Colombian budget analysis, the accounting treatment of the obligation generated in a concession contract under the APP scheme is outside the balance sheet).</p>	<p>Many of the projects audited under the APP methodology were chosen without a robust analysis that demonstrated that their eligibility criteria were due to the maximization of the value for money and that effectively protected public interests, through various methods of contractual selection.</p> <p>The formula of a Public-Private Partnership does not prevent the State from suffering the consequences of formulating overly optimistic economic scenarios in relation to future demand and planned infrastructure.</p>

influence the long term of the execution of the contract, in particular the total costs associated with the project.

Therefore, the audit team must have the necessary elements to determine against the financial model of this contract, that there is a risk of activation of the contingent

liability, (debt with possibility of occurrence if the concessionaire does not achieve the minimum traffic indexes estimated in the financial model and whose difference must be paid by the State if this concessionaire does not comply), as provided by CONPES 3760 of 2013. The above, among other things, because within the eligibility analysis of the APP

project, there are not enough elements to demonstrate that, at a phase following the structuring of the contract, the project can maintain its value for money using the public-private comparator methodology. (National Planning Department, p. 63).

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