



CORPORATE ANTI-CORRUPTION MEASURES TO SUPPORT SUSTAINABLE BUSINESS

Tackling Bribe Solicitation Using the High-Level Reporting Mechanism for Preventing Bribery



Tackling Bribe Solicitation Using the High-Level Reporting Mechanism



Please cite this publication as:

OECD (2020), Tackling Bribe Solicitation Using the High-Level Reporting Mechanism



Government Offices of Sweden

This report has been prepared with the support
of the Government of Sweden

This document is published under the responsibility of the Secretary-General of the OECD. The opinions expressed and arguments employed herein do not necessarily reflect the official views of OECD member countries.

This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

Table of Contents

Foreword	5
Acknowledgements	5
Introduction	7
Methodology and scope	8
What is the High-Level Reporting Mechanism?	11
Case Studies: Colombia, Argentina, Ukraine and Peru	14
Colombia	14
1: 4G Roads at ANI	15
2: Airports and Highways Concessions at ANI	19
3: Metro of Bogotá	20
Argentina	23
Ukraine	26
Peru	28
High-Level Reporting Mechanisms: The essential ingredients for successful implementation	29
An HLRM should fill a genuine gap	29
Belief that an HLRM will indeed fill the gap	30
A reporting mechanism that is genuinely high-level	31
Objectivity, fairness and integrity, real and perceived	33
Sufficient expertise to assess reports	34
Confidentiality at a minimum, if not also anonymity	34
Transparency and publicity	36
Sufficient resources while still maintaining cost-effectiveness	37
Additional elements	39
Conclusion	41

Table of Figures

Figure 1 High-Level Reporting Mechanism (with suggested timelines)	13
Figure 2 Overview of HLRM in 4G Project	18
Figure 3 Reports processed by the Metro Company Bogotá HLRM	23
Figure 4 Correlation between confidence in national government and perception of government corruption (2012)	32

Foreword

The OECD Convention on Combating Bribery in International Business Transactions (Anti-Bribery Convention) was adopted in 1997. Since that time, the number of countries that are Parties to the Convention have grown significantly. Criminal investigations, prosecutions and sanctions for transnational bribery under the Convention has also steadily increased.

Facing an increased threat of criminal enforcement, companies have searched for means to tackle bribe solicitation. This was the context that gave birth to the concept of the High-Level Reporting Mechanism (HLRM) that was developed by the OECD, Basel Institute on Governance, and Transparency International. The Mechanism aims to give companies and sometimes individuals an alternative means for reporting and resolving bribery and corruption issues. This study intends to answer the question: what are the essential ingredients for a successful HLRM?

This study forms part of a three-part project on corporate anti-corruption measures to support sustainable business. The project supports the 2030 Agenda for Sustainable Development and its 17 Sustainable Development Goals (SDGs). SDG 16 specifically deals with “Peace, Justice and Strong Institutions,” and target 16.5 of this goal is “Substantially reduce corruption and bribery in all their forms.” In particular, the target seeks to decrease the “[p]roportion of businesses that had at least one contact with a public official and that paid a bribe to a public official, or were asked for a bribe by those public officials during the previous 12 months.” This target and indicator recognise that the private sector is a primary actor in the supply side of corruption. Tools such as the HLRM may reduce bribe solicitation and thereby strengthen developing countries’ institutions, and promote their sustainable development.

Acknowledgements

The OECD would like to thank the Government of Sweden for their generous financial support of this study. It also thanks the Anti-Corruption Office of Argentina and the Transparency Secretariat of Colombia for providing logistical support for the fact-finding missions. The OECD is also indebted to all of the representatives of

governments, international organisations, companies, business organisations, professional associations and civil society who took valuable time from their busy schedules to contribute to this study.

1 Introduction

Corruption poses a serious challenge to companies doing business in many countries. Bribery is a widespread phenomenon in international business transactions, including trade and investment.¹ Companies claim that they are victimised by bribery because it raises the cost of doing business. Communities also suffer when government contracts are awarded not on merit but on the size of bribes paid. Citizens have to put up with shoddy infrastructure and services. The misallocation of resources through corruption hinders long-term economic development and destabilises democratic institutions.

Preventing corruption and bribe solicitations from business is therefore of utmost importance. The OECD Anti-Bribery Convention recognises that governments should play a role to prevent the solicitation of bribes from individuals and enterprises in international business transactions.² Companies have also been increasingly vocal in seeking government support to address the demand for bribes by public officials.

This was the context in which the OECD, Basel Institute on Governance, and Transparency International developed the concept of the High-Level Reporting Mechanism (HLRM).³ B20 business representatives later expressed their interest in this initiative at the G20 summits in 2011 and 2012.⁴ The Siemens Integrity Initiative supported the work of the OECD and the Basel Institute in developing the HLRMs that are studied in this report. The Mechanism was developed as an innovative concept and tool to give companies and sometimes citizens an alternative means for reporting and resolving allegations of bribery and corruption outside of the usual or established channels. High-level public authorities concerned would then act to rectify the matter.

¹ OECD Anti-Bribery Convention, www.oecd.org/corruption/oecdantibriberyconvention.htm.

² *Ibid.*

³ Heimann, F. (2012), “High-level reporting: overcoming extortion” in Pieth, M. (ed.), *Collective Action: Innovative Strategies to Prevent Corruption*, pp. 210–211, www.collective-action.com/sites/collective.localhost/files/publications/15_heimann-2_0.pdf.

⁴ Pieth, M. (2012), “Collective Action and Corruption”, p. 82, www.collective-action.com/sites/collective.localhost/files/publications/120915_wp_13_collective_action_and_corruption_pieth_final.pdf.

Unlike existing channels of redress (like the judiciary in certain countries), the HLRM would provide solution at speed, since delays in resolving the matter can be just as harmful to companies, government and citizens. To date, the HLRM has been implemented in two countries.

Methodology and scope

This study intends to answer the question of what are the essential ingredients for a successful HLRM. As useful as the HLRM concept may be, it is not and was never meant to be the solution to all types of corruption. Which begs the question: what circumstances have to be in place before an HLRM will achieve its intended goal? The issue is important for countries that are considering whether to replicate an HLRM.

This study examines the HLRM and its functioning to date by relying on two sources of information.

First, the study considered analyses and papers produced by the OECD and Basel Institute on Governance, including:

- Working Paper No. 19: High-Level Reporting Mechanisms in Colombia and Ukraine, <https://www.collective-action.com/publications/674>
- Working Paper No. 25: High-Level Reporting Mechanisms: A Comparative Analysis, https://www.collective-action.com/sites/collective.localhost/files/publications/180928_hlrm_working_paper_no_25_v2.pdf
- Designing a High-Level Reporting Mechanism for Business - A Guidance Note for Governments, https://www.baselgovernance.org/sites/default/files/2019-01/Designing_a_HLRM_EN.pdf
- High-level reporting: overcoming extortion, https://www.collective-action.com/sites/collective.localhost/files/publications/15_heimann-2_0.pdf
- Press release: Basel Institute on Governance, OECD and Colombia sign cooperation agreement on a High-Level Reporting Mechanism, <https://collective-action.com/news/basel-institute-oecd-and-colombia-sign-cooperation-agreement-high-level-reporting-mechanism>

- Roundtable on the pilot High Level Reporting Mechanism in Argentina, https://www.baselgovernance.org/sites/default/files/2019-02/roundtable_on_pilot_hlrm_argentina_en.pdf

This study also relied on information from relevant stakeholders. This included research of publicly available information from the authorities that have implemented HLRMs in Colombia and Argentina. OECD staff also conducted a fact-finding mission and personal interviews of a range of stakeholders:

- Government representatives in charge of HLRMs, including anti-corruption agencies, ministries, oversight institutions and agencies involved with the HLRM. These included: in Colombia, the Transparency Secretariat (*Secretaría de Transparencia*), Bogotá Metro Company, National Infrastructure Agency (*Agencia Nacional de Infraestructura*), and Oversight Institution of Bogotá (*Veeduría Distrital de Bogotá*); and, in Argentina, the Anti-Corruption Office (*Oficina Anticorrupción*), Ministry of Energy, and Ministry of Transportation. Also interviewed was Peru's Secretariat of Public Integrity of the Presidency of the Council of Ministers (*Secretaría de Integridad Pública*). The Secretariat considered whether to implement an HLRM in Peru.
- Experts that served on ad-hoc committees of HLRMs and who were responsible for considering reports submitted to the HLRMs.
- Companies that participated in the public procurement tenders to which HLRMs were available in each of the countries. Despite significant efforts to reach out to the private sector, only approximately ten companies participated in the interviews. Some business organisations and chambers also participated in the study.
- Civil society, academics, law firms and compliance organisations that were or could potentially be involved in HLRMs.
- Representatives of multilateral development banks and international organisations. The Inter-American Development Bank (IDB) was interviewed because of its role in the Bogotá Metro procurement process. This included interviews with procurement experts in Bogotá, Colombia and officials at the Office of Institutional Integrity at IDB Headquarters in Washington, D.C. who were responsible for anti-corruption and integrity. Also interviewed were former representatives of the European Bank for Reconstruction and Development (EBRD) and the OECD Anti-Corruption Network for Eastern Europe and Central Asia. These two bodies played a role in the decision of whether to implement an HLRM in Ukraine.
- Representatives of the Basel Institute on Governance and the OECD, which are the key bodies in designing and promoting the HLRM concept.

The interviewees discussed a range of matters at length, including their experience with implementing and using the HLRMs, their assessment of the success of the mechanism, lessons learned and areas for improvement.

2 What is the High-Level Reporting Mechanism?

According to the Basel Institute on Governance and the OECD, the HLRM can be defined “as a pragmatic not legal tool, which facilitates early reporting of potential cases of corruption or similar issues in order to find fast, cost effective and practical solutions. The mechanism would allow the private sector to raise issues with a high-level office that is external to the public entity where the problem has occurred”.⁵

Upon receipt of a report about bribery or corruption, the high-level office would rapidly analyse the matter and provide a pragmatic response. The goal is to resolve the reported problem before it escalates and to allow interactions between public and private stakeholders to proceed smoothly.⁶

As such, the HLRM would provide an alternative to traditional judicial and administrative procedures for reporting corruption without replacing or undermining them.⁷

One important difference between an HLRM and the traditional judicial and administrative procedure is the direct involvement of senior public officials. The involvement of high-level officials is meant to “overcome businesses’ reluctance to

⁵ Silva, V. and Aiolfi, G. (2018), “Working Paper No. 25: High-Level Reporting Mechanisms: A Comparative Analysis”, Basel Institute on Governance, p.6, www.collective-action.com/sites/collective.localhost/files/publications/180928_hlrm_working_paper_no_25_v2.pdf.

⁶ OECD “High Level Reporting Mechanism (HLRM) for preventing bribery”, www.oecd.org/corruption/hlrm.htm.

⁷ Silva, V. and Aiolfi, G. (2018), “Working Paper No. 25: High-Level Reporting Mechanisms: A Comparative Analysis”, Basel Institute on Governance, p.6, www.collective-action.com/sites/collective.localhost/files/publications/180928_hlrm_working_paper_no_25_v2.pdf.

report bribery solicitation and other corruption issues to governmental entities where these take place. The involvement of senior (“high”) levels of the government enhances co-operation from governmental agencies where a potential corruption issue has occurred. It further prevents concerns by businesses of retribution for reporting bribery solicitation and alike, as the HLRM is situated above and independently of the agencies where issues have been detected.”⁸ An HLRM is also a means for high level officials to express their commitment to fight bribe solicitation.

While this is the basic framework for an HLRM, the features of a deployed mechanism in practice are supposed to be flexible. An HLRM is meant to take into account the legal and political framework from the country. There is no “one solution fits all”. Therefore, the HLRM is adapted according to the institutions existing within a country and the objectives pursued.⁹

The context in which an HLRM is used is also meant to be broad. Examples of situations or systemic problems in which an HLRM could be useful include:

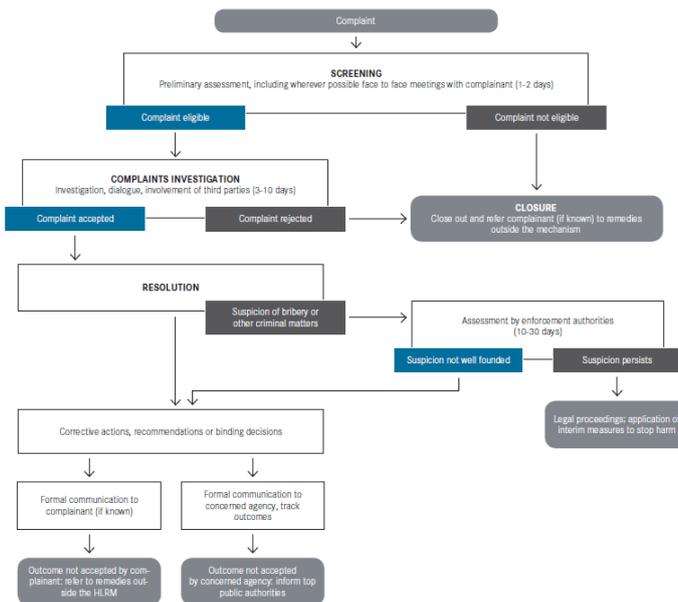
- Restrictive terms of reference that in practice lead to the participation of a single competitor in a public tender, beyond what would be reasonably required from a technical perspective;
- Request for a bribe as a precondition for participation or selection in a public tender;
- Undue delay in customs clearance of perishable and other goods;
- Obstacles imposed for the concession of technical certificates and other documents required to participate in tender procedures;
- Uneven interpretation of regulations, leading to unreasonable difficulties for the attainment or renewal of commercial licenses or the fulfilment of other rights;
- Requests for overpayment of governmental fees;

⁸ OECD “High Level Reporting Mechanism (HLRM) for preventing bribery”, www.oecd.org/corruption/hlrn.htm.

⁹ Silva, V. and Aiolfi, G. (2018), “Working Paper No. 25: High-Level Reporting Mechanisms: A Comparative Analysis”, Basel Institute on Governance, www.collective-action.com/sites/collective.localhost/files/publications/180928_hlrn_working_paper_no_25_v2.pdf.

- Denial or unreasonable delay of value-added tax (VAT) refunds.¹⁰

Figure 1 High-Level Reporting Mechanism (with suggested timelines)¹¹



¹⁰ OECD and Basel Institute on Governance, “The High Level Reporting Mechanism (HLRM): A tool to help prevent bribery and related practices”, www.oecd.org/corruption/High-Level-Reporting-Mechanism-Overview.pdf.

¹¹ Silva, V. and Aiolfi, G. (2018), “Working Paper No. 25: High-Level Reporting Mechanisms: A Comparative Analysis”, Basel Institute on Governance, p. 26, www.collective-action.com/sites/collective.localhost/files/publications/180928_hlrm_working_paper_no_25_v2.pdf.

3 Case Studies: Colombia, Argentina, Ukraine and Peru

This section describes the HLRMs that have been implemented in Colombia and Argentina. It also looks at Ukraine and Peru, which considered the possibility of implementing HLRMs. Efforts were made to gather information about Panama's efforts in 2015 and 2016 to initially launch and later halt the implementation of an HLRM. However, personal interviews were not conducted because of a recent change of government. The description of the efforts in these countries in this study is meant to be an overview. Additional details are available in other publications from the OECD and Basel Institute on Governance.¹²

Colombia

Colombia was the first country to implement an HLRM. There were several reasons why Colombia decided to proceed with this endeavour. First, the private sector was not inclined to report corruption. A 2008 survey on corruption in the private sector found that 31.74% of businesses were asked for a bribe in public procurement, and

¹² For more details on the efforts related to HLRMs in Panama and on HLRMs in other countries, please see Silva, V. and Aiolfi, G. (2018), "Working Paper No. 25: High-Level Reporting Mechanisms: A Comparative Analysis", Basel Institute on Governance, www.collective-action.com/sites/collective.localhost/files/publications/180928_hlr_working_paper_no_25_v2.pdf.

28.4% declared themselves victims of multiple requests (money, favours or gifts) in exchange for a government service. Yet, only 8.52% reported the case.¹³

Stakeholders in Colombia interviewed for this study articulated additional reasons why an HLRM was desirable. Some governmental representatives stated that safeguards were necessary for large-scale infrastructure projects. In their view, “because of how important the projects were and what they represented for the country, it was better to throw everything there”. Moreover, companies stated that reporting corruption through regular channels did not guarantee a response. Reporting to a law enforcement agency would also mean that the procurement process might be halted, which would be counterproductive for the company. Some government officials added that more transparency to the procurement process was needed.

Given these motivations, by the beginning of 2013 the Colombian government decided to implement a pilot HLRM project. Colombian authorities accordingly referred to a concept note on the HLRM developed by the OECD and Basel Institute on Governance and adapted it to the needs and specificities of the Colombian context.

The first HLRM was implemented in 2013 for the 4G Roads project. This was followed by a second and third HLRM for other high-value large-scale infrastructure projects: airports and highways (2016) and the Metro of Bogotá (2018). These HLRMs were implemented by the National Infrastructure Agency (*Agencia Nacional de Infraestructura*, ANI) and the authorities overseeing the Bogotá Metro project, along with the Transparency Secretariat (*Secretaría de Transparencia*, ST) and the Oversight Institution of Bogotá (*Veeduría Distrital de Bogotá*). The HLRM was briefly considered for a fourth project, namely the Colombia Peace Fund. After brief discussions between ST and the *Fondo Colombia en Paz*, it was decided that an HLRM would not be necessary because other existing measures in the project.

1: 4G Roads at ANI

The first HLRM was implemented in the “4G Roads” Project with the aim of producing early warnings of corruption before an investigation or prosecution would be needed. The HLRM was implemented in eight projects for which ANI solicited tenders. Among these projects were highways of major importance for the economic and social development of the country. These highways were also the biggest investments in infrastructure by Colombia, given that they represented an investment of USD 15

¹³ Transparencia por Colombia (2008), Primera encuesta nacional sobre prácticas contra el soborno en empresas colombianas – Resultados, www.anticorrupcion.gov.co/SiteAssets/Paginas/mediciones-nacionales/cuaderno15_primera_encuesta_soborno.pdf.

billion¹⁴ and their success was vital for boosting competitiveness and development of the Colombian economy.¹⁵

The HLRM of the 4G Project included three major characteristics:

- Involvement at the highest level of government;
- Not a permanent but an ad-hoc, pilot mechanism; and
- Involvement of technical experts

The HLRM for the 4G Project involved the government at the highest level. As stated by the Basel Institute on Governance, “the starting point for any HLRM is a strong commitment from the top levels of state authorities, without which the HLRM is unlikely to be effective. Even though the form and scope of the HLRM are flexible, it should embody a set of key principles and functionalities”.¹⁶ With this idea in mind, Colombia designed a mechanism in which the President of Colombia acted as the high-level authority who would oversee the mechanism.

Another main characteristic of the mechanism developed by Colombian authorities was the inclusion of a group of experts who would give technical advice to the high-level authority before any decision was to be taken with regards to the procurement process.

ANI was chosen as a partner for the HLRM pilot project mainly because of its interest in the HLRM. ANI felt that additional controls to prevent corruption in its large projects was needed. The role of ANI in the HLRM was mainly to select the procurements to which the mechanism would be applied, and deciding whether to continue the procurement process if a report submitted to the HLRM is determined to reveal corruption.

The preliminary stages

After months of discussion, the ST began preparing in April 2013 for the launch of the HLRM. This included contracting what would later become the group of experts in

¹⁴ Semana (8 April 2018), “Vías: cambio extremo para Colombia”, www.semana.com/nacion/articulo/programa-cuarta-generacion-4g-cumple-seis-anos/578207.

¹⁵ For more information, please see website of Corporacion Andina de Fomento – Banco de Desarrollo de América Latina (accessed 24 January 2020), www.caf.com/es/conocimiento/visiones/2018/11/vias-4g-para-una-colombia-mas-competitiva.

¹⁶ Wehrlé, F. (2015), “Working Paper No 19: High Level Reporting Mechanisms in Colombia and Ukraine”, www.collective-action.com/publications/674.

charge of reviewing the reports and setting up a protocol for the functioning of the mechanism.

Another distinctive aspect of the HLRM at this stage was that in July 2013, the ST conducted a discussion with the prequalified bidders of the 4G Project. The purpose was to build an integrity pact that would commit companies to maintaining transparency during the process. The integrity pact was designed primarily by ANI after consultations with companies. The pact referred to the HLRM but also contained other anti-corruption provisions, such as a commitment not to engage in lobbying and not to provide gifts or hospitality to public officials involved in the tender process. These additional provisions were the result of ANI's observation of pernicious practices that had occurred over the previous years. The integrity pact was feasible because there was a group of prequalified bidders, and hence companies was identifiable and reachable. Bidders were not obliged to sign the integrity pact as a precondition to submitting a tender, however.

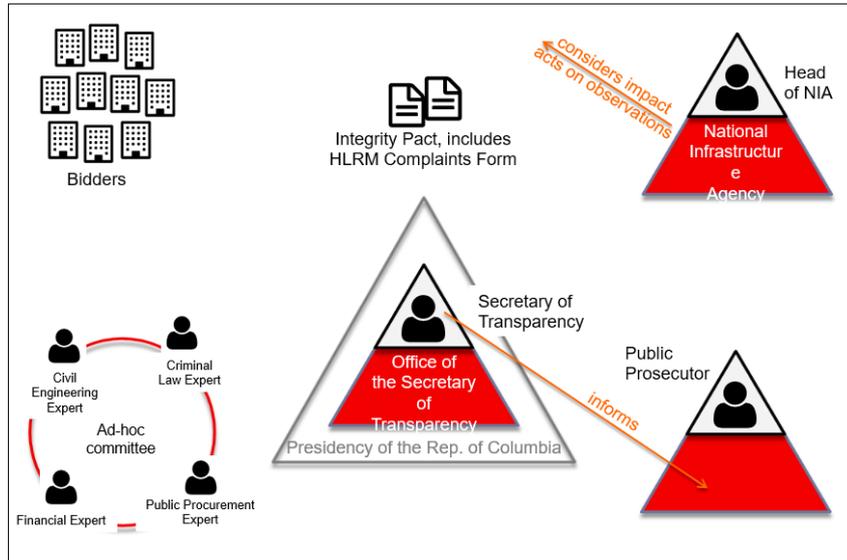
The establishment of the mechanism

Under the HLRM, all reports made by companies were directed to the ST who would then send them to the so-called "group of experts". The group consisted of four experts with background in criminal law, engineering, financial management and public procurement. The ST selected and hired the experts. The selection process took into account practical issues such as the experts' experience, knowledge in relevant fields, and their familiarity to the procurement process of the 4G Project.

Upon receiving a report, the experts analyse the information and reach a consensus decision. They would then pass their assessment to the ST who, at his discretion, could alert the head of ANI or the President of Colombia. If the report reveals criminal conduct, then the information must be submitted to law enforcement authorities.

Figure 2 Overview of HLRM in 4G Project

Source: Transparency Secretariat and Basel Institute on Governance, 2014



The experts for Colombia's 4G projects received compensation for their work by the ST on a monthly basis. In addition to receiving reports under the HLRM, they were also required to produce other deliverables relating to the procurement process and corruption risks of the 4G Projects, e.g. a methodology to identify corruption risks in the infrastructure sector. These documents were given to ANI for their internal processes and were never made public.

In August 2013, the HLRM was formally established at a launch event attended by the President of Colombia, OECD and the Basel Institute on Governance.

The reports

By the end of 2013, all eight projects had been tendered and only one report was received through the mechanism. A consortium participating in the tender inquired about the modification by ANI of technical specifications for a tunnel, notably a location for drilling.

After examining the report, the experts concluded that, instead of corruption, this may have been a case of a lack of information provided by ANI. Therefore, the ST and ANI decided to convene a public hearing with all companies and consortiums involved. At

the end, it was concluded that the drilling location was correctly selected and that the process would move forward as planned.

The entire process of receiving the reports and finding a solution took approximately two weeks, including communicating with the companies, producing the written report and the final public hearing with the pre-qualified bidders.

2: Airports and Highways Concessions at ANI

The preliminary stages

Between the end of 2016 and May 2017, a second HLRM was implemented to deal with high-value concessions.¹⁷ ANI implemented the HLRM for the construction of roads, airports and railways under the framework of the Public-Private Association (*Asociaciones Público Privadas*, APP).

The establishment of the mechanism

This mechanism for the airports and roads concession project differed slightly from the pilot HLRM in the 4G Project in its structure and financing.

In terms of structure, this HLRM for the airports and roads concession project did not include the involvement of the ST. This was mainly because of budget constraints and concerns about the risk of receiving reports without the legal power to do so. Consequently, all of the reports received under the HLRM for the airports and roads concession project were directed to ANI.

Upon receiving a report, ANI would forward the information to technical experts. While the HLRM for the 4G Project had four experts, the HLRM for the ANI airports and roads concession project had only two experts because of financial constraints. One was an expert in procurement law and the other in structured finance.

ANI's role in this HLRM also differed slightly from that in the earlier 4G Project. Like before, ANI continued to decide whether a procurement would continue if a report submitted to the HLRM was determined to reveal corruption. However, for the airports and roads concession project, ANI also financed the HLRM in its entirety, which meant paying for the expert's salary and their subsequent supervision. The arrangement with ANI in regards to additional documents that needed to be produced (certain deliverables or studies) remain the same as in the pilot 4G Project. The experts

¹⁷ Silva, V. and Aiolfi, G. (2018), "Mecanismos de Denuncias de Alto Nivel Un análisis comparativo Argentina, Colombia, Ucrania, Panamá y Perú", p. 8, www.collective-action.com/sites/collective.localhost/files/publications/180928_wp_25_hlrn_spanish.pdf.

therefore worked not only for the HLRM, but were at the same time consultants on risk management for ANI.

The reports

No reports were received through this HLRM, a fact that the ANI attributed to the deterrent effect of the Mechanism.¹⁸

3: Metro of Bogotá

The preliminary stages

By mid-2018, the Transparency Secretariat (ST) decided to become involved with a third HLRM that was implemented for the Bogotá Metro project. The ST's involvement was at the request of the Bogotá Metro Company.

As a first step, a Memorandum of Understanding was signed by the Government of Colombia, Mayor of Bogotá, OECD and Basel Institute on Governance to support the HLRM's implementation. This was done partly to ensure continuity given the upcoming change in government in Colombia. The Memorandum of Understanding was presented as one of the accomplishments of the departing government in the area of transparency and accountability in the infrastructure sector.

As a result of the Memorandum of Understanding, the Bogotá Metro Company (a Colombian state-owned enterprise) started the process of selecting the experts under the HLRM. For this purpose, the Company retained a head-hunter to find suitable candidates. After interviews and examinations, the experts were finally hired by the end of 2018.¹⁹

As part of their work, the experts received training on the procurement process conducted by both the Metro Company and the Inter-American Development Bank (IDB), which partially funded the project. Furthermore, the Metro Company recognised a risk of conflict of interest between the experts and the project. Instead of asking the

¹⁸ Silva, V. and Aiolfi, G. (2018), "Working Paper No. 25: High-Level Reporting Mechanisms: A Comparative Analysis", Basel Institute on Governance, p. 9, www.collective-action.com/sites/collective.localhost/files/publications/180928_hlrm_working_paper_no_25_v2.pdf.

¹⁹ The four experts hired included a procurement lawyer, a financial expert, a compliance expert and an engineer.

company's legal department to deal with this concern on a case-by-case basis, and some protocols were developed to address this issue systematically.

Among the differences between this mechanism and the previous two, is a protocol for receiving reports (*Protocolo de Recepcion de Denuncias*). The protocol helped the experts to organise their work and clearly defined the institutions or individuals who could submit reports to the mechanism (civil society, companies, anonymous reports and others).²⁰ The protocol lists the types of offences that could be reported through the mechanism. These offences are based on the list of illicit practices as defined by the IDB and the World Bank.²¹ The protocol also spelled out how a decision on a report received through the HLRM would be reached (namely, by consensus).

The main source of information for companies about the HLRM was the inclusion of a clause in the tender documents explaining the availability of this mechanism.

The establishment of the mechanism

The HLRM for the Bogotá Metro aimed to allow all involved stakeholders to submit reports to the Mechanism. Usually, the process involves a report being sent to two institutions, the ST and Bogotá's Oversight Institution,²² which then sends the information to the experts. The ST and Bogotá's Oversight Institution do not filter any reports received but forward all reports to the experts.

Once a report arrives at the group of experts, a decision is made on whether they are competent to process the specific report. Experts who were interviewed for this study mentioned that they disagreed in only one case on whether they could accept a report or not. This led them to discuss internal rules and procedures, including internal protocols.

The experts meet as a self-organised committee and developed their own rules and regulations. This included, among others, a requirement that they must decide within

²⁰ Who can file reports with the HLRM? The expert committee can receive reports presented by the following persons: Anonymous reports related to prioritised processes (PLMB), bidders, banking, evaluating committee, Bogota Metro Company officials, public workers, and the media.

²¹ What behaviour can be reported to the HLRM? The "Prohibited Practices" established in the "Sanctions Procedures" applied in relation to allegations of fraud and corruption related to the Inter-American Development Bank ("Bank") Projects.

²² Bogotá's Oversight Institution is a local entity for the city of Bogotá that deals with the prevention of corruption at the local level, promotes social control and deals with the improvement of public management. Their role within the HLRM corresponds to assuring transparency in the procurement process of the Bogotá metro.

one day whether they would accept a report, and reach a final decision within approximately two weeks.

After the experts analyse a report received under the HLRM, they may issue recommendations to the Metro Company. The experts look for corruption offences and other issues surrounding the procurement process that could potentially lead to improvements in the procurement process. The recommendations given may address a number of issues, ranging from compliance improvements to corporate governance.

Once a report is reviewed by the experts, it is forwarded to the Director of the Oversight Institution of Bogotá and the Secretary of Transparency. Both entities then determine whether to transfer the report to law enforcement authorities. The Oversight Institution of Bogotá, Secretariat of Transparency and management of the Metro Bogotá Company also hold meetings to analyse the report.

The Oversight Institution of Bogotá, Secretariat of Transparency and Metro Bogotá Company also discuss the recommendations issued by the experts. Ultimately the Metro Bogotá Company makes an autonomous decision on whether to implement the recommendations. The recommendations of the experts are not binding; they are merely opinions and may or may not be taken into consideration.

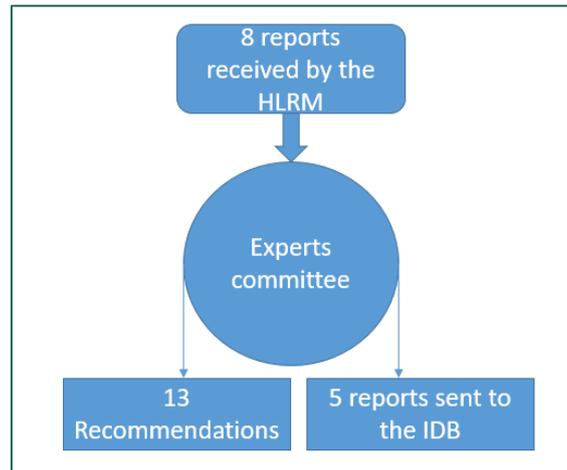
In addition, the experts' recommendations related to "illicit practices" must be sent to the IDB's Washington D.C. offices for analysis and action. The Integrity Division of the IDB would be tasked with the investigation of the illicit practices.

The reports

At the time of this study, the committee of experts received eight reports. Some of the reports were submitted by Colombian public officials based on information in the media. None of the reports required any changes to the procurement process. Nor did any of the reports come from companies participating in the tender. The reports resulted in 13 recommendations by the committee of experts. Five of those reports were sent to the IDB for investigation. Only two involved alleged corrupt practices, such as collusion.

The experts' analysis of a report usually contained a general overview and a recommendation. None of the recommendations directly related to corruption safeguards. They were instead about how to improve the procurement process and corporate governance within the Metro Bogotá Company.

Figure 3 Reports processed by the Metro Company Bogotá HLRM



At the time of this study, the actual construction of the metro project had just begun. It is therefore too early to say whether the project could be completed on time and within budget.

Argentina

Argentina became the second country to implement an HLRM after Colombia. At the time of this study, HLRMs were implemented in two projects.

The preliminary stages

In 2018 and 2019, Argentina decided to implement a pilot HLRM for the country's first Public-Private Participation (PPP) infrastructure projects. The PPP is an agreement between the public and private sectors under which the private sector provides services or tasks that are the responsibility of the public sector. The agreement stipulates shared objectives, regulates the responsibilities of both parties, and provides remuneration for the private party.²³

The reason for choosing PPP projects to pilot the HLRM is two-fold, according to officials who were interviewed for this study. First, as was the case in Colombia, the PPP projects are the biggest infrastructure projects in Argentina. Ensuring the integrity

²³ For more information about Argentina's PPP, see the presentation by the Ministry of Foreign Affairs, <http://Ejapo.cancilleria.gob.ar/userfiles/25.%20Plan%20PPP%20Argentino.pdf>.

of the projects was key. Second, the PPP adjudication process was supposed to be short. Since the HLRM is meant to be fast and practical, bidders in the tender process would not be able to use this mechanism to stop or delay the PPP process. Furthermore, since the awarding process for the PPP projects had a relatively short duration, the government could also see the beginning and the end of the mechanism and consequently evaluate the results.

The establishment of the mechanism

The HLRM has been implemented in two PPP projects to date: “Safety in Roads and Highways”, which was carried out by the National Highways Directorate (*Dirección Nacional de Vialidad*, DNV); and the “Electricity Transmission” Project by the Energy Secretariat. The HLRM was structured and developed in the same format in both cases. The Mechanism is described on the government’s website.²⁴

The HLRMs in these two projects permitted the reporting of four types of misconduct: bribery, influence peddling, bid rigging and conflict of interest. Reports could be made from the beginning of the tender process until 48 hours before the award of the tender, so as to prevent companies that were not awarded the contract from reporting in bad faith. Reports could be made by participants in the tender and officials involved in the PPP, but not NGOs or other stakeholders. Furthermore, reports were kept confidential but anonymous reports were not allowed.

A report could be submitted online²⁵ or in person at the Anti-Corruption Office (*Oficina Anticorrupcion*, OA) through the Admission and Derivation of Complaints Coordination (CADD) Centre. The High-Level Authority, to which the reports are addressed, was the OA itself. The OA would decide within 48 hours (two business days) whether the report concerns one of the four types of eligible misconduct. If the report was eligible, then the CADD forwards the report to the High-Level Body (consisting of the Secretariat of Public Ethics, Transparency and Fight against Corruption, the Secretariat of Integrity and Transparency, and the Anticorruption Research Secretariat). If, to the contrary, the report was ineligible, it may be forwarded to a different channel, such as the regular reporting channel of the OA.²⁶

²⁴ Website of Argentina’s Anti-corruption Office (www.argentina.gob.ar/anticorrupcion/reporte-alto-nivel/formulario).

²⁵ Website of Argentina’s Anti-corruption Office (www.argentina.gob.ar/anticorrupcion/reporte-alto-nivel/formulario).

²⁶ OA’s reporting channel is described on the website of the Government of Argentina, www.argentina.gob.ar/denunciar-un-hecho-de-corrupcion.

If the High-Level Body accepted the report, then it would convene a Group of Experts to examine the report. The Group of Experts consisted of:

- Two technical representatives proposed by the Professional Council of Civil Engineering (CPIC).
- A technical representative proposed by the Anti-Corruption Office.
- A representative of the Anti-Corruption Studies Centre (CEA) of the University of San Andrés.

The Group of Experts' main function was to analyse the report and make recommendations to resolve the situation.

The High-Level Body selected these experts based on their professional background and expertise, although no open or public call for experts was made. Moreover, the experts did not receive compensation for their work.

The Group of Experts would generally analyse a report within 10 working days. In exceptional circumstances, this time limit may be extended.

The High-Level Body would supervise the implementation of any recommendations issued by the Group of Experts. It would also publish the recommendations and decisions taken with regards to reports. The person or company who made the report would be informed of the result of this evaluation.

The reports

Overall, the HLRM received five and nine reports for the "Safety in Roads and Highways" and "Electricity Transmission" Projects respectively. None of the reports reached the Group of Experts because they did not concern eligible types of misconduct.

Summary of Selected Features of HLRMs				
Country and HLRM	Sector	Who can report	Sources of financing	Publicity of the mechanism
Colombia-2013 4G Roads	Infrastructure	Companies	Transparency Secretariat	Integrity Pact Tender Documents
Colombia-2016 Roads and Airports Concessions	Infrastructure	Companies	Infrastructure Agency (ANI)	Tender Documents
Argentina-2018 Safety in Roads and Highways Project	Infrastructure	Companies Officials involved in the PPP	Experts were not paid	Tender Documents Government website (OA and Ministries)
Colombia-2019 Bogotá Metro	Infrastructure	Companies, civil society, media, public officials	Agency in charge of the tender: Bogotá Metro Company	Tender Documents Metro Company website
Argentina-2019 Electrical Transmission Projects	Infrastructure	Companies Officials involved in the PPP	Experts were not paid	Tender Documents Government website (OA and Ministries)

Ukraine

Around September 2012, the European Bank for Reconstruction and Development (EBRD),²⁷ the largest investor in Ukraine, considered the business climate in the country as needing reform so that the bank could continue to disburse its investments. According to interviews conducted and papers consulted,²⁸ the EBRD conditioned continuity of its activities in the country on the implementation of a series of initiatives by the Ukrainian Government to fight corruption, such as an HLRM.

An HLRM for Ukraine was considered but eventually rejected after many of the development steps in the other HLRMs described above were taken. According to persons involved in the decision-making process, there were two main reasons for this decision. First, whether rightly or wrongly, an HLRM was perceived to be more

²⁷ Wehrlé, F. (2015), "Working Paper No 19: High Level Reporting Mechanisms in Colombia and Ukraine", p. 10, www.collective-action.com/publications/674.

²⁸ Wehrlé, F. (2015), "Working Paper No. 19: High Level Reporting Mechanisms in Colombia and Ukraine", p. 13, www.collective-action.com/publications/674.

suites to fighting corruption related to public procurement, and especially tenders for large-scale, high-value contracts.²⁹ However, the private sector considered that corruption in Ukraine extended well beyond this domain and permeated almost every aspect of doing business. An HLRM, however useful in reducing corruption in public procurement, would have left many of the private sector's concerns unaddressed. A much broader anti-corruption tool was necessary.

A second reason why the HLRM was rejected were concerns about corruption at the highest levels of government in Ukraine. By definition, an HLRM requires the involvement of high-level government officials. The integrity of these officials is therefore fundamental to the HLRM's proper functioning. Even if these officials' involvement in corruption is more perceived than real, their association with the HLRM would seriously undermine the private sector's confidence in the mechanism. If an HLRM was to be set up under these circumstances, companies likely would not use the mechanism to resolve their grievances.

Instead, a Business Ombudsman was set up in Ukraine in 2012 and 2013 as an alternative to an HLRM.³⁰ The Business Ombudsman is an independent body that aims to address unfair treatment to businesses on a broad range of issues such as taxation, law enforcement, and gaps in regulations. The Business Ombudsman "provide[s] an avenue for those companies that would prefer a more independent forum through which to address their grievances. Participants highlighted in this context the potential mediation and advisory role of the Ombudsman".³¹ Apart from Ukraine, Business Ombudsmen have also been established in countries such as Georgia and Russia, among others.

²⁹ See also Silva, V. and Aiolfi, G. (2018), "Working Paper No. 25: High-Level Reporting Mechanisms: A Comparative Analysis", Basel Institute on Governance, www.collective-action.com/sites/collective.localhost/files/publications/180928_hlrm_working_paper_no_25_v2.pdf.

³⁰ See also an interview of André Küüsvek, EBRD Director for Ukraine (14 April 2013), "Investment Ultimatum", Ukrainian Week International Edition" <https://ukrainianweek.com/Economics/77378>.

³¹ Wehrlé, F. (2015), "Working Paper No 19: High Level Reporting Mechanisms in Colombia and Ukraine", p. 17, www.collective-action.com/publications/674.

Peru

The government of Peru first expressed interest in developing an HLRM to the Basel Institute and the OECD in 2014. This was followed by an exploratory mission in 2015 that analysed the status of complaint mechanisms within the various ministries in Peru in relation to public procurement.

The HLRM was first considered for the State Contracting Supervision Agency (OSCE) as an alternative and speedy answer for corruption in public procurement processes. Conversations were held on the practical implementation of the mechanism and its interaction with the already existing procurement tribunal.

In this first stage, the HLRM was thought to be quite similar to the one operating in Colombia. The HLRM was supposed to help address corruption in public procurement by issuing early warnings.

Peru's interest in an HLRM continued thereafter. According to the Basel Institute on Governance, discussions within the Peruvian Government continued beyond 2016 with varying levels of intensity subject to political developments and elections.³² The interest in an HLRM was still present in 2017, and the President of Peru reiterated his support for the introduction of a mechanism by mid-2018.³³

In the meantime, the Comptroller General of the Republic (CGR) had taken an interest in enhancing the reporting of corruption, especially by businesses. In 2017, after several meetings with the OECD, the CGR organised a conference on the HLRM in Lima. Eventually, a reporting channel – but not an HLRM – was set up at the CGR for companies to report corruption-related issues. At that stage, the Secretary for Public Integrity of the Council of Ministers of Peru was also considering developing an HLRM, but discussions were put on hold given the existing reporting channel at the CGR.

³² Basel Institute on Governance, www.collective-action.com/initiatives/hlrm.

³³ Silva, V. and Aiolfi, G. (2018), "Working Paper No. 25: High-Level Reporting Mechanisms: A Comparative Analysis", Basel Institute on Governance, p. 14, www.collective-action.com/sites/collective.localhost/files/publications/180928_hlrm_working_paper_no_25_v2.pdf.

4 High-Level Reporting Mechanisms: The essential ingredients for successful implementation

Governments around the world continue to look for efficient means to fight corruption without penalising companies that do business honestly. Unsurprisingly, some of these governments have come across the concept of high-level reporting mechanisms (HLRMs) and have considered implementing them. But is the HLRM suitable for them? Our study of the examples in which HLRMs have been implemented or considered suggests that some circumstances must exist for a successful implementation of the mechanism.

An HLRM should fill a genuine gap

Policy change and innovative tools such as the HLRM do not come easily. Policy continuity is usually more likely than policy change. Once a country has set on a certain policy path, the actors and policies become institutionalised. A change in direction then becomes difficult, necessitating great efforts and costs by those who aspire to it.³⁴

³⁴ Cerna, L. (2013), “The Nature of Policy Change and Implementation: a review of different theoretical approaches”, p. 4
www.oecd.org/education/cei/The%20Nature%20of%20Policy%20Change%20and%20Implementation.pdf.

In the context of anti-corruption, most of the countries that consider implementing an HLRM already have at least some tools or measures to fight corruption, even if only on paper. Criminal justice systems accept complaints for corruption. Most countries have administrative channels to receive complaints about the public service. Some have independent ombudspersons that perform the same function. In the context of public procurement, countries may even have specialised procurement tribunals to resolve disputes.

Therefore, for an HLRM to be effective, there must be an “empirical gap” in the existing framework and measures in a country. For example, a criminal justice system may exist in theory to address corruption complaints, but in practice the judiciary may be ineffective or too slow. There may be administrative channels for complaints, but they may not be trusted by companies, or they may not have the high-level clout to produce results. The current means of recourse may also not have the expertise to address complaints of a technical nature that can arise in some procurements, for example in infrastructure.

Equally important is that the officials implementing an HLRM believe that there is a gap to be filled. This is less obvious than it seems. During the course of this study, some officials stated that their countries’ anti-corruption framework was fine even before an HLRM was implemented. One stated an HLRM was “nice to have”. Another said, “Why not? When it comes to anti-corruption, the more the better.” In short, these officials are supportive of an HLRM, but they do not appear to see it as a very important addition to their anti-corruption arsenal.

Hence, before embarking on the implementation of an HLRM, it would be important to get the relevant stakeholders on-board. Sufficient time and effort should be devoted to convincing officials implementing the mechanism of the added-value of an HLRM. As explained below, a successful HLRM requires substantial effort and resources. Officials must wholeheartedly feel that an HLRM is needed to fill an existing empirical gap if they are to make the full commitment to the cause that is necessary for the HLRM to be successful.

Belief that an HLRM will indeed fill the gap

Political will to fight corruption is of course key to the successful implementation of any anti-corruption measure, including the HLRM. All of the officials who participated in this study amply demonstrated this will and commitment to fight corruption. Some of the HLRMs covered in this study were also implemented after a change of government that brought political will to fight corruption, as some interviewees have

pointed out. However, political will is a necessary but not sufficient condition for successfully implementing the HLRM.

The HLRM is still a relatively novel invention. The concept is beguilingly simple but has enormous potential to help fight corruption in many contexts. In practice, it has only been tried a few times, mainly as pilot projects. It is therefore only at the beginning of building a track record of successful implementation.

It is vital that the authorities implementing an HLRM have a genuine belief that the concept will work, or at least are willing to give it a try. In other words, not only must the officials involved believe that there is a genuine gap to be filled. They must also believe that the HLRM is capable of helping to fill it, or at least has a good chance of doing so. Even if the HLRM is not the total solution to end all corruption in a particular context, the authorities in charge need to believe that the HLRM is sufficiently effective to justify the investment in time, resources and energy in the implementation of this mechanism.

Before embarking on an HLRM, it is therefore important to also devote time and effort to convince the officials implementing the mechanism of the HLRM's effectiveness. This, too, is less obvious than it seems. Some of the officials met during the study thought that an HLRM would not work because it does not have legal force, or that it would not be able to handle "complex corruption schemes". Other officials added that their country lacked a culture of reporting corruption in general. Companies and citizens are therefore unlikely to use the HLRM or any other reporting mechanism. The views of these officials may or may not in fact be true. But dispelling these beliefs would help ensure that the officials make the full commitment needed to make the HLRM successful.

A reporting mechanism that is genuinely high-level

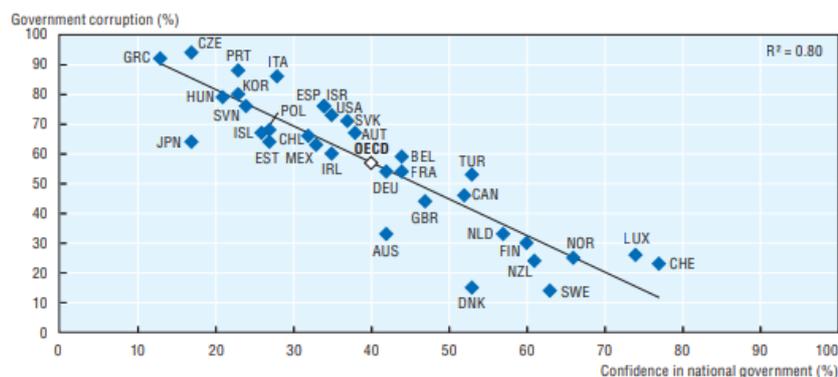
Good managers are necessary in any project, especially when corruption-related matters are the main subject. Those governments interested in implementing the HLRM have to carefully select the right authority to lead and guide the project. This is a difficult task considering that the countries that could most benefit from the HLRM may be the ones with higher levels of corruption and less confidence in the public sector.³⁵ As Figure 4 shows, confidence in national government is inversely proportional to the level of corruption in government. Choosing the right body to lead an HLRM may not be a simple task. Missions by the Basel Institute on Governance

³⁵ Drago Kos, Chairman, OECD Working Group on Bribery in International Business Transactions, "Tackle Corruption to Restore Trust", OECD Yearbook 2014, p. 34 www.oecd.org/forum/oecdyearbook/tackle-corruption-to-restore-trust.htm.

and OECD to support HLRM implementation have therefore focused on this issue intensely.

A further requirement is the need for a high-level authority to oversee the HLRM. As its name suggests, the HLRM should be led by a body at the highest levels of government. This does not necessarily mean the head of state, head of government or even a minister, since the HLRM is meant to be flexible. But the weight of this body is nevertheless instrumental to the HLRM's ability to impose its authority and resolve potential corruption issues.

Figure 4 Correlation between confidence in national government and perception of government corruption (2012)³⁶



When this weighty high-level authority is missing, then problems may be identified but remain unresolved. One of the study's participants referred to an example in which an HLRM made several recommendations to a government entity. The entity, however, has responded to the recommendations with silence for many months. But because the HLRM is not led by a high-level government official with authority over the government entity, it was powerless to compel the entity to implement or even respond to the recommendations.

Without the involvement of a high-level official, an HLRM may also not be used frequently. Private sector representatives stated that the presence of such a high-level official is a factor that they would consider when deciding whether to report a matter

³⁶ OECD (2013), Government at a Glance, p. 35. Data from Gallup World Poll. www.oecd-ilibrary.org/governance/government-at-a-glance-2013_gov_glance-2013-en.

to the HLRM, or whether they would resort to alternatives such as a law enforcement agency. Indeed, one of the HLRMs considered in this study has not received any reports from the companies involved in the tender process. That this HLRM has been implemented without a high-level authority could arguably be one of the reasons.

Objectivity, fairness and integrity, real and perceived

The oversight of an HLRM by a high-level authority can be a double-edged sword, however. As mentioned in the previous section, this high-level authority has substantial power and influence to ensure that recommendations and solutions are implemented. But if this authority does not – or is seen not to – wield this influence fairly and objectively, then the credibility of the HLRM will suffer. When corruption issues arise, companies are unlikely to ask the HLRM for help.

This is an issue of major importance, according to private sector and civil society representatives. Many participants in this study stated that they would not report matters to an HLRM that is operated by an authority which is perceived to be politically-biased. In their view, such an HLRM would become a self-serving mechanism that purposefully fails to address complaints against officials or companies associated with the government. Nor would the HLRM take action that could generate negative publicity for the authorities. Even worse, companies fear that reporting to such a biased HLRM could result in embarrassing leaks of information and reprisals that would jeopardise future business. Staying quiet may be a wiser option.

One obvious criterion is that the authority or agency in charge has to be a respected one with low levels of corruption and conflicts of interest. As one interviewee during the study noted, an HLRM would not be feasible if the high-level authorities in charge of the mechanism are themselves corrupt. The private sector will be unlikely to make any *bona fide* reports of corruption issues to such an HLRM. Even if reports are made, they are unlikely to result in a satisfactory resolution of the issues. In a country with pervasive corruption at the highest levels of government, there may simply not be any authority suitable for overseeing an HLRM.³⁷

³⁷ See also Silva, V. and Aiolfi, G. (September 2018), “Working Paper No. 25: High-Level Reporting Mechanisms: A Comparative Analysis”, Basel Institute on Governance, p. 6, www.collective-action.com/sites/collective.localhost/files/publications/180928_hlrn_working_paper_no_25_v2.pdf.

Sufficient expertise to assess reports

As mentioned at p. 12, the context in which an HLRM is used is meant to be flexible. A mechanism can in theory be designed to address relatively simple matters such as a mere request for a bribe as a precondition for participation or selection in a public tender, or for clearing perishable goods that are unduly delayed at customs. When an HLRM receives a report about these types of problems, the high-level authority overseeing the HLRM may be able to directly intervene with the government body where the issue in question has arisen and effectively resolve the problem immediately.

However, as has been the case, an HLRM may also be asked to address more complex situations or contexts, such as public procurement tenders for large-scale infrastructure projects. Reports that arise from these tenders can raise far more complicated issues, such as whether a particular technical project specification is reasonable from an engineering point of view. The high-level authority overseeing the HLRM may not be familiar with the subject matter in question. It would therefore need advice from relevant technical experts before it can resolve these reports.

It is therefore essential that an HLRM ensures that it has the expertise required to resolve the issues with which it may be tasked. This would require early identification of the types of reports that the HLRM may accept. It would also require determining where adequate expertise may be found. One may have to look outside of government, since the relevant expertise within government may well be in the department or ministry that is the subject of a corruption allegation. Relying on such in-house expertise to resolve the report would obviously result in a conflict of interest.

A decision to seek expertise can have significant cost implications. Several participants in the current study pointed out that external experts outside of government can be very costly depending on the nature of the expertise in question. The price can further increase because the experts may be needed on very short notice, since the HLRM is required to resolve issues very quickly. If experts have to be paid regardless of whether actual reports are received, then it could have a significant negative impact on the cost effectiveness of the mechanism.

Confidentiality at a minimum, if not also anonymity

When reporting situations of corruption and fraud, one of the essential requirements is to protect the reporting person from reprisal. Protection can be enhanced by ensuring the confidentiality of the report. The identity of the entity making the report

should not be made public, and the institution in charge of the reporting mechanism must ensure his/her name will remain secret.

Participants in this study were largely unanimous about the importance of an HLRM to maintain the confidentiality of reports. Many companies and individuals feared that they would suffer reprisals if their reports were leaked. They stated that they would not use an HLRM unless the confidentiality of their reports is guaranteed.

A further option is to allow “anonymous” reporting. An anonymous report does not require the individual making the report to identify him/herself. The institution in charge of the channel would receive a report without any information at all on who the sender was.

Most people agree that anonymity encourages individuals to report. This may be especially true where whistleblowing is considered culturally unsuitable, or where the institutional safeguards to provide adequate protection to whistleblowers are non-existent or too weak.³⁸ Whistleblowers do not have to fear retaliation or retribution because their identities are completely protected, which creates a safer, more open environment.³⁹ Although some countries have legislation in place aimed at whistleblower protection, anonymous whistleblowing may be the easiest way to avoid any repercussions. Many of the individuals who were interviewed for this study expressed these same views.

Others, including some who participated in this study, believe that anonymous reporting may have drawbacks that render reporting systems less effective. When a report contains insufficient information, there are limited options for follow up. Concerns also exist regarding reliability and vindictive allegations since anonymity may make the whistleblower unaccountable and may attract “the cranks, the

³⁸ OECD (2016), *Committing to Effective Whistleblower Protection*, pp. 63-64, <https://www.oecd.org/corporate/committing-to-effective-whistleblower-protection-9789264252639-en.htm>.

³⁹ Compliance Resource Center (2017), *Best Practices For Maintaining An Effective Ethics And Compliance Hotline*, <https://www.complianceresource.com/publications/best-practices-maintaining-effective-ethics-compliance-hotline/>.

timewasters and the querulents”.⁴⁰ It is also argued that protecting whistleblowers without knowing their identity is more difficult.⁴¹

Whether an HLRM should allow anonymous reporting may therefore depend on the circumstances. If the HLRM is intended for countries where the level of trust is very low, then allowing anonymous reporting will likely result in more reports. This could in turn help make the mechanism better known.

Transparency and publicity

Raising the profile of an HLRM is vital. As mentioned above, the HLRM is still a relatively recent innovation. Government officials and the private sector in most countries are not familiar with the concept. Even in places where an HLRM has been implemented, companies and individuals may not know that the mechanism exists, how it functions, or the issues that the mechanism is meant to solve. Without this knowledge, they are unlikely to turn to the HLRM to resolve corruption-related problems. Raising awareness of the HLRM is also an opportunity for the government to engage in a dialogue with the private sector on fighting corruption.

The communication should include not only the existence of an HLRM but also how the mechanism operates. Practical information such as where, when and how to report seems mundane but is useful. Even more important is an explanation of how the HLRM maintains a report’s confidentiality and anonymity (if it is offered). As mentioned above at p. 34, many participants in this study stated that they would not use an HLRM unless their reports are kept confidential. An explanation of how confidentiality is guaranteed would encourage more reporting.

Equally important is publicising information on who and how the HLRM assesses the reports that it receives. As stated above, private sector representatives who participated in the study stated that the presence of a high-level official in the HLRM is a factor that they would consider when deciding whether to report a matter. Many participants also underlined the importance that the authority operating the HLRM and the experts involved are perceived as fair, objective and not politically-biased. These

⁴⁰ Latimer, P. and Brown, A.J. (2008), “Whistleblower Laws: International Best Practice”, University of New South Wales Law Journal, Volume 31(3), pp. 766-794, <http://www.austlii.edu.au/au/journals/UNSWLJ/2008/40.pdf>

⁴¹ OECD (2016), Committing to Effective Whistleblower Protection, p. 63, <https://www.oecd.org/corporate/committing-to-effective-whistleblower-protection-9789264252639-en.htm>.

features of the decision-maker in the HLRM must therefore also be communicated to instil trust and confidence in the mechanism. If the HLRM uses experts, then the selection process and the experts' professional experience and potential conflicts of interest should also be disclosed.

Finally, it is important to publicise the work and outcomes of the HLRM in order to create confidence and trust in the mechanism. As mentioned above, the HLRM is a relatively novel concept that is only beginning to build a track record of success. It is vital that the authorities implementing an HLRM believe that the concept will work. But it is equally important that companies and individuals also have this belief. Otherwise, this would be another reason why they would not resort to the HLRM to address corruption issues that they encounter.

What is the best way of publicising these aspects of an HLRM? The engagement of all stakeholders (private sector, procuring ministry etc.) in the design and implementation of the mechanism is a good approach, according to several stakeholders who participated in this study. Not only would the stakeholders be familiar with the different features of the HLRM, but their involvement in the process from the very beginning would enhance their buy-in.

A robust communication plan to ensure awareness is also essential. The HLRMs that were considered in this study were publicised on the websites of national anti-corruption authorities and portals where public procurement tenders were promoted. Tender documents referred to the HLRM, as did some of the contractual documents that were used in the procurements. Additional awareness-raising could be conducted through attendance at appropriate industry events; promotional materials in print; and engagement with law firms and business organisations.

Sufficient resources while still maintaining cost-effectiveness

Many of the essential ingredients for a successful HLRM described above require resources. Government staff is obviously required to operate the HLRM. A secure, confidential reporting system must be set up. If anonymous reporting is allowed, then an investigation into an allegation may be more time and resource-intensive. The HLRM must also be publicised extensively through websites, print media etc., as well as through direct engagement with relevant stakeholders. The resolution of reports should also be disseminated to demonstrate its utility, and instil public confidence and trust in this novel mechanism.

The amount of resources needed differs for each HLRM. As mentioned many times above, the HLRM is meant to be adapted to the institutions existing within a country, the objectives pursued, and the types of corruption-related problems that the HLRM is to solve. For example, if reports may raise complex, technical questions, then

relevant experts may need to be retained, which would require resources. Hiring experts from outside government may further inflate costs. But even if specialised expertise is not required, a successful HLRM will still require resources for staffing, awareness-raising etc. Hence, several participants interviewed for this study were adamant that an HLRM would not work unless substantial human and financial resources are available.

Given these cost implications, an HLRM would need to be cost-effective if it is to receive sustained support for its continued operation. A project is said to be evaluated on its net benefits (i.e. total benefits minus costs) and whether it is a potential improvement.⁴² Several participants who were interviewed for this study emphasised the importance of proportionality and how it would be best applied to an HLRM. Cost-effectiveness is one of the main criteria to take into account when dealing with resource management for HLRMs. Several participants interviewed for the study noted that the question could arise especially if an HLRM receives a relatively low number of reports despite a significant cost of implementation and operation.⁴³ Others argue that the costs must be balanced against broader benefits such as an improved business climate and increased foreign investment.

A focus on cost-effectiveness should start at the initial planning stages when choosing the projects to which an HLRM applies, according to participants in the study. Several participants opined that HLRMs should be used for high-value projects that are especially important to a specific country in terms of economic development or social impact. The involvement of high-level officials (sometimes the country's president or a minister) in such projects would be more justifiable from a cost-effectiveness perspective.

The study's interviewees also suggested that cost-effectiveness can be enhanced by making an HLRM time-limited. In other words, the mechanism would not be permanent. Instead, it would be on a more case-by-case basis, such as focusing on specific projects in a selected sector.

⁴² Shachter, R.D., "Cost-Effectiveness and Cost-Benefit Analysis for Public Policy Decision-Making", Stanford University Management Science and Engineering, https://web.stanford.edu/class/msande290/290_05_Cost_Effectiveness.pdf.

⁴³ See also Silva, V. and Aiolfi, G. (2018), "Mecanismos de Denuncias de Alto Nivel Un análisis comparativo Argentina, Colombia, Ucrania, Panamá y Perú", p. 11, https://www.collective-action.com/sites/collective.localhost/files/publications/180928_wp_25_hlrm_spanish.pdf.

Additional elements

Finally, participants in this study mentioned additional elements of an HLRM that raise interesting issues which could be of interest when implementing the mechanism in the future.

First, some participants suggested that it would be useful to expand the entities that are eligible to submit reports to an HLRM. For instance, instead of only allowing companies that are part of a tender process to report, other stakeholders (such as NGOs) should also be eligible to submit reports to an HLRM. This is in fact what has occurred in some HLRMs. By permitting additional reporting entities beyond tendering companies, NGOs could therefore alert the HLRM to situations such as collusion among all of the companies participating in a tender. In such cases, the companies are unlikely to report their own wrongdoing to the HLRM. NGOs would have to be counted upon to blow the whistle.

Second, some participants opined that the HLRM should not be restricted to the project tender stage. Instead, the mechanism should continue to consider reports of issues that arise during the implementation of a project. As other studies have noted, corruption in infrastructure projects is not limited to the public procurement stage. In fact, it often arises after a contract has been awarded through project delays and contract renegotiations.⁴⁴ Extending the life of an HLRM to this stage could therefore be useful to address corruption in the entire project cycle.

However, expanding the number of eligible reporters and the duration of an HLRM will impact costs, as several participants interviewed for this study pointed out. The increase in costs could be especially significant if an HLRM is extended to the implementation stage of major infrastructure projects which may take many years or even decades to complete. As already mentioned, cost effectiveness is an essential ingredient for a successful HLRM. Interviewees also noted that expanding an HLRM into the project implementation stage may overlap with other existing redress mechanisms. A decision to expand the scope of an HLRM should therefore be very carefully weighed before it is taken.

A final point relates to the legal basis for an HLRM and its impact on the Mechanism's sustainability. As mentioned at the outset, the HLRM is meant to be informal. The mechanism can be set up quickly on the initiative of a high-level authority. Legislation creating the mechanism is not necessarily required. This informality increases the

⁴⁴ Campos, N., Engel, E., Fischer, R.D., and Galetovic, A. (2019), "Renegotiations and Corruption in Infrastructure: The Odebrecht Case", <https://ssrn.com/abstract=3447631> or <http://dx.doi.org/10.2139/ssrn.3447631>.

HLRM's flexibility to adapt to different contexts. It also makes it relatively easy and quick to implement an HLRM.

However, ease in setting up an HLRM can also mean ease in tearing it down. As some participants in the study pointed out, when there is a change in government or in the personnel of the high-level authority operating the HLRM, then the commitment to the mechanism could also falter. Of course, even if an HLRM is enshrined in legislation, a new government can still repeal the legislation or refuse to implement it. But this is harder to do than shutting down an HLRM that is not backed by legislation, according to several participants interviewed for this study. If this is true, then it could be worthwhile to devote more effort to laying an explicit legal foundation for the HLRM when it is initially established.

Conclusion

As mentioned several times in this report, the HLRM is a relatively new concept. Its use is growing, however, with three mechanisms already in Colombia and two in Argentina. Other countries such as Peru, Ukraine and Panama also have experience with the mechanism. Some early lessons can therefore already be learned.

This study has identified several ingredients that are essential for a successful implementation of the HLRM. Some elements, such as transparency, the need for an HLRM to fill a genuine gap and a belief that it will in fact do so, may seem obvious. Other elements, such as resources and expertise, may be less obvious. For all of these elements, reflection on and planning for these elements from the beginning of the process would be well-advised.

One common theme, however, runs through many of these elements: the importance of building trust in the HLRM. Leaders and analysts have increasingly identified trust as the potentially missing element for better crisis management and better public policies.⁴⁵ Like the majority of reporting channels created around the globe, the HLRM can only be successful if people and companies trust it and therefore use it. This is the underlying reason why the essential elements of a successful HLRM include matters such as impartiality and objectivity of the mechanism, a guarantee of confidentiality in reports, and transparency in the mechanism. It is also why properly communicating these features of an HLRM to the private sector and the public so as to instil trust is essential.

A final point is that this study will not be the last word on HLRMs. As the mechanism continues to be deployed in more projects and countries, it will be further tested in new contexts. New challenges will come up and new lessons will be learned that will shed more light on the essential ingredients for a successful HLRM.

⁴⁵ OECD (2013), Government at a Glance, p. 35. www.oecd-ilibrary.org/governance/government-at-a-glance-2013_gov_glance-2013-en.

www.oecd.org/corruption

