

LAO PDR: BIS ASSESSMENT TABLE
March 2006

PILLAR I – THE LEGISLATIVE AND REGULATORY FRAMEWORK (25%)		
Indicators	Baselines	Findings
<ul style="list-style-type: none"> • Indicator 1 – The country’s procurement legislative and regulatory framework complies with applicable obligations deriving from national and international standards (15%) 	<ul style="list-style-type: none"> • <i>Baseline (a)</i> – The legislative and regulatory framework is structured, consistent, and accessible to users and all interested stakeholders. It applies to and covers the following (20% of Indicator) <ol style="list-style-type: none"> 1. Contracting entities at all levels, including government authorities, municipalities, regional authorities and utilities/state-owned enterprise, are covered (5%) 2. All areas of procurement – works, goods and consulting services (10%) 3. All procurement using public funds, irrespective of contract value (5%) • <i>Baseline (b)</i> – Procurement methods (15% of Indicator) <ol style="list-style-type: none"> 1. Open, competitive procurement of goods, works, and services is used, except in well-justified cases clearly defined in the legislative and regulatory framework (5%) 2. International competitive tendering methods that are consistent with international standards are defined for specific contracts (e.g., where monetary thresholds exist) and are compatible with overall economy gains still achievable for the public (5%) 3. Negotiated procedures and direct purchasing only under well defined and justified circumstances, subject to controls (5%) • <i>Baseline (c)</i> – Advertising rules and time limits (10% of Indicator) <ol style="list-style-type: none"> 1. Accessible publication of 	<p>Yes. This is provided in Article 3 of the Implementing Rules and Regulations (IRR) of the Procurement Decree.</p> <p>Yes. This is provided in Article 3 of the IRR.</p> <p>Qualified. The Procurement Decree does not cover procurement for defense and security purposes. See Article 3.2 of the IRR.</p> <p>Yes. Required in Articles 4 to 8 of the IRR.</p> <p>Yes. Required in Article 9 of the IRR.</p> <p>Yes. Required in Articles 4 to 8 of the IRR. Conditions on Direct Contracting are also found in Article 8.4.</p> <p>Yes. This is found in</p>

	<p>opportunities for competitive procurement is required (3.33%)</p> <p>2. Publication of the results of contract awards based on defined thresholds is required (3.33%)</p> <p>3. Minimum time limits for submission of tenders and applications are consistent with method of procurement, national conditions, and, when applicable, international requirements (3.33%)</p> <ul style="list-style-type: none"> • <i>Baseline (d)</i> – Rules on participation and qualitative selection (10% of Indicator) <ol style="list-style-type: none"> 1. Fair, predictable and defined rules for participation that rely on qualifications and ability to perform the requirement (3%) 2. Use of price preferential clauses is limited and controlled (3%) 3. If a debarment process is provided, it allows for due process and appeal (2%) 4. Rules for participation of government-owned enterprise provide for equal treatment in competitive procurement (2%) 	<p>Article 4 (d) and Article 14 of the IRR.</p> <p>Qualified. Limited posting. Article 24 of the IRR only provides for posting in the office of the procuring entity or project owner. Line agencies can post in bulletin boards</p> <p>Qualified. Minimum time limits are provided in Article 14 of the IRR, but there is allowance of accelerated procedure where the grounds for justification are not clear and are on a case by case basis.</p> <p>Yes. The Procurement Decree provides for criteria that are similar to international guidelines, e.g., World Bank and ADB.</p> <p>Yes. The Procurement Decree and the IRR are similar with World Bank Guidelines in this regard.</p> <p>Yes. Complaints may be raised to the Chairman of Tendering Committee, and subsequently to the PrMO</p> <p>Yes. The Procurement Decree and the IRR are similar with World Bank and ADB Guidelines in this regard.</p>
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	<ul style="list-style-type: none"> • <i>Baseline (e)</i> – Tender documentation and technical specifications (10% of Indicator) <ol style="list-style-type: none"> 1. The minimum content of the tender documentation is specified (2%) 2. Where possible, technical specifications are neutral with reference to international standards (4%) 3. Content of tender documentation is relevant to meeting requirements and implementing the process (4%) • <i>Baseline (f)</i> – Submission, receipt and opening of tenders (15% of Indicator) <ol style="list-style-type: none"> 1. Tenders are opened in public in a defined way that ensures the regularity of the proceedings (3.75%) 	<p>Yes. The Procurement Decree and its IRR provide for minimum content and requirements. Article 4 (a) of the IRR also contains a general provision on the necessary information that tender documents must contain.</p> <p>Qualified. The Two-Stage Bidding under Article 11 of the IRR allows for negotiations prior to the 2nd stage, whereby the procuring entity may negotiate with each supplier or contractor the content of the submitted initial offer, keeping confidential the content of conducted negotiations. Complaints on unclear specifications and high standards for goods procurement, and high qualification requirements for civil works have been raised to PrMO – especially for foreign funded projects.</p> <p>Yes. The IRR stresses the need of documents that take the requirements and budget into account. Article 31 also provides for required contract provisions.</p> <p>Yes. Article 4 (i) of the IRR provides for this.</p>
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	<p>2. There is a clear requirement to maintain records of proceedings and process and to make them available for review/audit (3.75%)</p> <p>3. Maintenance of security and confidentiality of tenders before bid opening is required (3.75%)</p> <p>4. Modalities for submitting and receiving tender documents are well defined (3.75%)</p> <ul style="list-style-type: none"> • <i>Baseline (g)</i> – Tender evaluation and award criteria (15% of Indicator) <ul style="list-style-type: none"> 1. Objective, fair and pre-disclosed criteria for evaluation and award of contracts are required (5%) 2. A clear methodology for evaluating tenders based on price and other fully disclosed factors expressed in monetary terms or pass/fail criteria is required (5%) 3. Evaluators are required to maintain confidentiality during the evaluation process (5%) • <i>Baseline (h)</i> – Complaint review procedures that provide for fair, independent, and timely implementation and allow the award to be redirected, if necessary, are in place (5% of Indicator) 	<p>Yes. This is a task of the Tendering Committee. Also, reporting to the State Inspection Authority is required in some instances.</p> <p>Yes. Article 4 (h) of the IRR provides for submission of sealed envelopes.</p> <p>Yes. Article 4 (h) of the IRR provides for this.</p> <p>Yes. The Procurement Decree and the IRR provide for criteria similar with World Bank and ADB criteria.</p> <p>Yes. The Procurement Decree and the IRR are similar with World Bank Guidelines in this regard.</p> <p>Yes. Article 4 (h) and Article 26 of the IRR provide for Confidentiality.</p> <p>Yes. Articles 33, 34 and 35 of the IRR provide for this.</p>
<ul style="list-style-type: none"> • Indicator 2 – The country has appropriate regulations, documentation, and tools to support implementation of its framework (10%) 	<ul style="list-style-type: none"> • <i>Baseline (a)</i> – Implementing regulation that provides defined processes and procedures not included in higher level legislation (20% of Indicator) • <i>Baseline (b)</i> – Model tender documents for goods, works, and services (20% of Indicator) • <i>Baseline (c)</i> – Procedures for pre-qualification (10% of Indicator) 	<p>Yes. The IRR.</p> <p>No. These are still to be drafted.</p> <p>Yes. Article 10 of the IRR provides for pre-qualification of bidders in case of large-scale,</p>

	<ul style="list-style-type: none"> • <i>Baseline (d)</i> – Procedures suitable for contracting for services or other requirements in which technical capacity is a key criterion (10% of Indicator) • <i>Baseline (e)</i> – User's guide or manual for contracting entities (20% of Indicator) • <i>Baseline (f)</i> – General Conditions of Contracts for public sector contracts covering goods, works and services consistent with national requirements and, as applicable, international requirements (20% of Indicator) 	<p>technically complex and high value projects.</p> <p>Yes. The Procurement Decree and the IRR are similar with World Bank and ADB Guidelines in this regard.</p> <p>No. Still to be drafted.</p> <p>No. These are still to be drafted.</p>
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PILLAR II—INSTITUTIONAL FRAMEWORK AND MANAGEMENT CAPACITY (25%)		
Indicators	Baselines	Answers/Comments
<ul style="list-style-type: none"> Indicator 3 – The public procurement system is mainstreamed and well integrated into the public sector governance system (9%) 	<ul style="list-style-type: none"> <i>Baseline (a)</i> – Procurement planning and data on costing is part of the budget formulation process and contributes to multi-year planning (30% of Indicator) <i>Baseline (b)</i> – Budget Law and financial procedures support timely procurement, contract execution, and payment (10% of Indicator) <i>Baseline (c)</i> – Procurement actions are not initiated until budget appropriations have been made (20% Indicator) <i>Baseline (d)</i> – Contract execution is subject to budgetary controls to ensure sufficient funding for contract (20% Indicator) <i>Baseline (e)</i> – Budgeting system provides for timely release of funds to make payments against contractual obligations (20% of Indicator) 	<p>No. Agencies are required to submit Annual Procurement Plans (APP), but there is difficulty in drafting the APP, because of reallocation of the budget for line agencies. As such, there is uncertainty in actual planning due to budgetary constraints.</p> <p>No. Field data and interviews show delays in payment for national-funded projects. This is due to delayed revenue collections, which causes delayed budget releases.</p> <p>Yes. Line agencies are not allowed to procure without an annual budget.</p> <p>No. No further certification of funds availability is required prior to contract signing.</p> <p>No. Field data shows delays in payment of contracts due to lack of funds, particularly for national-funded contracts, resulting to higher liabilities due to accrued interests.</p>
<ul style="list-style-type: none"> Indicator 4 – The country has a functional normative/regulatory body (the Body) (8%) 	<ul style="list-style-type: none"> <i>Baseline (a)</i> – The status and basis for the normative/regulatory (the Body) is covered in the legislative and regulatory framework (35% of Indicator) <i>Baseline (b)</i> – The Body has a defined set of responsibilities that include at least the following: providing advice to 	<p>Yes. The creation of the PrMO is based on the Procurement Decree, its IRR and Ministry of Finance Decision No. 2382/MOF. (the “PrMO Charter”)</p> <p>Yes. The PrMO is given the functions mentioned, and gives advice to line</p>

	<p>contracting entities; drafting amendments to the legislative and regulatory framework and implementing regulations; monitoring public procurement; providing procurement information; managing statistical databases; reporting on procurement to other parts of government; developing and supporting implementation of initiatives for improvements of the public procurement system; and providing implementing tools and documents to support training and capacity development of implementing staff. The responsibilities should also provide for separation and clarity so as to avoid conflict of interest and direct involvement in the execution of procurement transactions (30% of Indicator)</p> <ul style="list-style-type: none"> • <i>Baseline (c)</i> – The Body’s organization, funding, staffing, and level of independence and authority (formal power) to exercise its duties should be sufficient and consistent with the responsibilities (35% of Indicator) 	<p>agencies that need assistance on the application of the procurement regulations. Moreover, the PrMO has access to procurement records and documents in line agencies. It should be noted, however, that the IRR contains several provisions whereby the participation of the PrMO is required during procurement transactions. Ex. Extension of Bid Validity, substantial reduction in the scope of contract documents in case of rejection of bids, and Approval of Bid Evaluation.</p> <p>No. The PrMO only exists as a Division within the MOF, and as such, may not have enough ascendancy over higher procuring entities. Also, the PrMO only has a staffing complement of 4, including the Director.</p>
<ul style="list-style-type: none"> • Indicator 5 – The country has institutional development capacity (8%) 	<ul style="list-style-type: none"> • <i>Baseline (a)</i> – The country has a system for collecting and disseminating procurement information, including tender invitations, requests for proposals, and contract award information (15% of Indicator) • <i>Baseline (b)</i> – The country should have a sustainable strategy to provide training, advice, and assistance to help government and private sector participants understand what the rules and regulations are and how they should be implemented (30% of Indicator) 	<p>No. A central portal such as an e-procurement system still has to be developed.</p> <p>Qualified. There is no institutionalized procurement training program and course managed by the central government. However, the PrMO provides assistance to line agencies undertaking procurement activities. In 2005, the PrMO organized a dissemination</p>

	<ul style="list-style-type: none"> • <i>Baseline (c)</i> – The country has systems and procedures for collecting and monitoring national procurement statistics (25% of Indicator) • <i>Baseline (d)</i> – Quality control standards are disseminated and used to evaluate staff performance and address capacity development issues (30% of Indicator) 	<p>seminar on the Procurement Decree and IRR and one Training of Trainers' Program.</p> <p>No. A system for collecting and monitoring procurement statistics still has to be developed.</p> <p>No. Although the Procurement Decree and its IRR mandate this, the system still has to be developed, and information/data on procurement activities and contract awards do not exist.</p>
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PILLAR III – PROCUREMENT OPERATIONS AND MARKET PERFORMANCE (25%)		
Indicators	Baselines	Answers/Comments
<ul style="list-style-type: none"> Indicator 6 – The country's procurement operations and practices are efficient (10%) 	<ul style="list-style-type: none"> <i>Baseline (a)</i> – The level of procurement competence among government officials within the entity is consistent with their procurement responsibilities (20% of Indicator) <i>Baseline (b)</i> – The procurement training and information programs for government officials and for private sector participants are consistent with demand (10% of Indicator) <i>Baseline (c)</i> – There are appropriate administrative systems for public procurement operations, and information databases to support performance monitoring and reporting and to respond to the information needs of other related government systems (20% of Indicator) <i>Baseline (d)</i> – The entity level has internal control mechanisms governing procurement operations at the contracting level, including a code of conduct, separation of responsibilities as a check/balance mechanism, and oversight/control of signature/approval authority (20% of Indicator) <i>Baseline (e)</i> – There are established norms for the safekeeping of records and documents related to transactions and contract management (20% of 	<p>No. Field data shows that there is a lack of training programs at the line agency level, that most procurements are project based, and that actual procurement in some cases is undertaken by consultants.</p> <p>No. There are no regular procurement training and information programs currently being undertaken for the public and private sectors.</p> <p>No. Although the data exists in the project offices, no administrative system exists to collect these and develop an information database on procurement at the central level.</p> <p>Qualified. Although field data shows that some agencies have internal audit units, and have separate offices for approvals, recording and custody of assets, these have to be institutionalized and strengthened throughout the bureaucracy. Line agencies have Departments of Inspections that may be further developed and regularized to perform the functions of internal control.</p> <p>No. There is no system for recording and documenting procurement and contract transactions</p>

	<p>Indicator)</p> <ul style="list-style-type: none"> • <i>Baseline (f)</i> – There are provisions for delegating authority to others who have the capacity to exercise responsibilities (10% of Indicator) 	<p>institutionalized at the line agency level. Standard procedures for data collection and records safekeeping have to be developed.</p> <p>Yes. The Procurement Decree and the IRR provide for delegated authority. Specifically, Part V (Organization and Mandate of the Tender Committee) of the IRR considers authorized representatives.</p>
<ul style="list-style-type: none"> • Indicator 7 – The country’s public procurement market functions well (10%) 	<ul style="list-style-type: none"> • <i>Baseline (a)</i> – The country’s public procurement market has sufficient numbers of participants to provide for domestic competition (15% of Indicator) • <i>Baseline (b)</i> – The public sector pays prices for goods, works, and services that are comparable to prices paid for similar requirements in the domestic markets (15% of Indicator) • <i>Baseline (c)</i> – The quality and consistency of the private sector’s submissions to the government should be sufficient to allow the award and completion of contracts (20% of Indicator) 	<p>No. Field data shows much room for improving competition, particularly for national-funded projects, where an average of 3 to 5 bidders participate.</p> <p>No. Contract prices tend to be higher than those in the domestic market, especially in the case of national-funded procurements, due to limited competition and delays in payment.</p> <p>Qualified. Based on interviews with PrMO and field data, there is a need to improve the quality of bidders’ submissions. This may be done through the issuance of Standard Bidding Documents. However, it should be noted that there is an issue on the language of the bidding documents, because local bidders find it difficult to read English provisions. There is still no procurement training</p>

	<ul style="list-style-type: none"> • <i>Baseline (d)</i> – Bidders participate in response to competitive tender invitations at a rate that is consistent with the capacity of the marketplace (20% of Indicator) • <i>Baseline (e)</i> – The private sector demonstrates confidence in the legal and regulatory framework governing the procurement process by participating in it and using its complaint or protest mechanisms (30% of Indicator) 	<p>program for suppliers and contractors.</p> <p>No. Based on field data, the private sector is discouraged from participating in the government biddings, especially for national-funded projects, because of delays in payment and small contract amounts.</p> <p>No. Field data shows concerns on transparency, efficiency and delays in payment. There is also a lack of complaint/protest mechanisms within line agencies. Bidders also only tend to raise complaints verbally.</p>
<ul style="list-style-type: none"> • Indicator 8 – The country has contract administration and dispute resolution provisions (5%) 	<ul style="list-style-type: none"> • <i>Baseline (a)</i> – Clearly defined procedures for undertaking contract administration responsibilities include efficient and streamlined inspection and acceptance procedures, quality control procedures, and methods to review and issue contract amendments in a timely manner (50% of Indicator) • <i>Baseline (b)</i> – Contracts include dispute resolution procedures that provide for an efficient and fair process to resolve disputes arising during the performance of the contract (25% of Indicator) • <i>Baseline (c)</i> – Procedures exist to enforce the outcome of the dispute resolution process (25% of Indicator) 	<p>Yes. The Procurement Decree and its IRR provide for contract supervision and administration, variation orders and amendments. But it should be noted that the responsibility of supervision is given to the PrMO, which means that this office has to be given sufficient resources to perform this function in addition to its other tasks.</p> <p>Yes. The Procurement Decree and its IRR require this.</p> <p>Yes. Under the Economic Arbitration Decree No. 106/PM, dated 15 July 1994, or any other mediation or arbitration selected and agreed by the</p>

ANNEX "A"

		parties. In 2005, the Economic Arbitration Decree has been approved into Law.
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PILLAR IV –INTEGRITY OF THE PUBLIC PROCUREMENT SYSTEM (25%)		
Indicators	Baselines	Answers/Comments
<ul style="list-style-type: none"> Indicator 9 – The country has effective control and audit systems (8%) 	<ul style="list-style-type: none"> <i>Baseline (a) – A legal framework, organization, policy, and procedures for internal and external control and audit of public procurement operations are in place to provide a functioning control framework (25% of Indicator)</i> 	<p>No. Although a National Audit Agency exists, there is a need to create a strong legal framework for internal audit. Moreover, both internal and government external audits lack institutional frameworks for effective government-wide operations. Existing internal controls only function when a problem arises.</p>
	<ul style="list-style-type: none"> <i>Baseline (b) – Enforcement and follow-up on findings and recommendations of the control framework provide an environment that fosters compliance (25% of Indicator)</i> 	<p>No. Enforcement and follow-up on findings and recommendations have to be strengthened, because of the lack of a control framework in most line agencies.</p>
	<ul style="list-style-type: none"> <i>Baseline (c) – The internal control system provides timely information on compliance to enable management action (20% of Indicator)</i> 	<p>No. There is currently no system for data gathering, monitoring and evaluation, and the internal control system has to be institutionalized.</p>
	<ul style="list-style-type: none"> <i>Baseline (d) – The internal control systems are sufficiently defined to enable performance audits to be conducted (10% of Indicator)</i> 	<p>No. Since there is no monitoring and evaluation system, there is no indication of performance audits. This aspect is highlighted due to the absence of permanent procurement offices and positions. Most audits undertaken are only financial audits. As such, the Terms of Reference for auditors may also be revised to provide for more comprehensive audits.</p>
	<ul style="list-style-type: none"> <i>Baseline (e) – Auditors are sufficiently</i> 	<p>Qualified. The</p>

	<p>informed about procurement requirements and controls systems to conduct quality audits that contribute to compliance (20% of Indicator)</p>	<p>auditors are required to orient themselves on the procurement regulations. There are generally no problems between the line agencies and the auditors.</p>
<ul style="list-style-type: none"> • Indicator 10 – The country has an efficient appeals mechanism (5%) 	<ul style="list-style-type: none"> • <i>Baseline (a)</i> – An independent complaint review system gives participants in the public procurement process a right to file a complaint within the framework of an administrative and judicial review procedure (25% of Indicator) • <i>Baseline (b)</i> – Decisions are deliberated on the basis of available information, and the final decision can be reviewed and ruled upon by a body (or authority) with enforcement capacity under the law (15% of Indicator) • <i>Baseline (c)</i> – The complaint review system has the capacity to handle complaints efficiently and a means to enforce the remedy imposed (25% of Indicator) • <i>Baseline (d)</i> – The system operates in a fair manner, with outcomes of decisions balanced and justified on the basis of available information and with decisions aimed at correcting the procurement process rather than compensating for loss of contracting opportunity (10% of Indicator) • <i>Baseline (e)</i> – Decisions are published and made available to all interested parties and to the public (15% of Indicator) 	<p>Yes. This may be found in Part VIII (Supervision, Sanctions and Dispute Resolution) of the IRR.</p> <p>Yes. Under Article 33 of the IRR, complaints are filed with the Chairman of the Tender Committee, subject to reference to the PrMO. Reports have to be submitted by the Tender Committee to the State Inspection Authority (SIA) and the PrMO.</p> <p>No. Although the MOF is given sufficient power under Article 34 of the IRR to resolve disputes arising from complaints, its instrumentality – the PrMO – would need to be strengthened and capacitated.</p> <p>Qualified. The basic data needed for reaching informed decisions seem to be lacking, as there exists no data gathering and monitoring system at both the national and line agency levels.</p> <p>No. There is no clear requirement to publish decisions. However, there is a move to post decisions in procurement bulletins</p>

	<ul style="list-style-type: none"> • <i>Baseline (f)</i> – Administrative review body or authority is independent from the regulatory body, the executing agency, and audit/control agency (10% of Indicator) 	<p>in the future.</p> <p>No. The PrMO in this case is both an administrative review body and a regulatory body.</p>
<ul style="list-style-type: none"> • Indicator 11 – The public has broad access to information (4%) 	<ul style="list-style-type: none"> • <i>Baseline (a)</i> – Information is published and distributed through available media with support from information technology when feasible (50% of Indicator) • <i>Baseline (b)</i> – Systems are in place to collect key data related to performance of the procurement system and to report regularly (25% of Indicator) • <i>Baseline (c)</i> – Records are maintained to validate data (25% of Indicator) 	<p>Yes. In Lao newspapers. In case of international bidding, English newspapers and international publication is also required.</p> <p>No. The system still has to be developed, and the key data have to be identified.</p> <p>Qualified. Although agencies are required to maintain records, the contents of the records have to be defined.</p>
<ul style="list-style-type: none"> • Indicator 12 – The country has ethics and anti-corruption measures in place (8%) 	<ul style="list-style-type: none"> • <i>Baseline (a)</i> – The legal and regulatory framework for procurement, including tender and contract documents, includes provisions addressing corruption, fraud, conflict of interest, and unethical behavior and sets out (either directly or by reference to other laws) the actions that can be taken with regard to such behavior (20% of Indicator) • <i>Baseline (b)</i> – The legal system defines responsibilities, accountabilities, and penalties for individuals and firms found to have engaged in fraudulent or corrupt practice (20% of Indicator) • <i>Baseline (c)</i> – Rulings and penalties are perceived as being enforced (15% of Indicator) • <i>Baseline (d)</i> – The government has an anti-corruption program that provides, 	<p>Yes. Article 36 of the IRR addresses the issue of corruption, fraud, conflict of interest and collusion. It also generally provides for the actions that may be taken in case of such violations.</p> <p>Yes. Specific penalties are found in the Anti-Corruption Law.</p> <p>Qualified. Field data shows that line agencies do not practice blacklisting of suppliers and contractors. However, there have been instances where some penalties have been imposed in case of default.</p> <p>Yes. The legislature has recently passed</p>

	<p>and enforces, special measures to prevent and detect potential fraud and corruption in public procurement in accordance with criminal laws (10% of Indicator)</p> <ul style="list-style-type: none"> • <i>Baseline (e)</i> – Stakeholders (private sector, civil society, and ultimate beneficiaries of procurement/end-users) support the creation of a procurement market known for its integrity and ethical behaviors (10% of Indicator) • <i>Baseline (f)</i> – The country should have in place a secure mechanism for reporting fraudulent, corrupt, or unethical behavior (10% of Indicator) • <i>Baseline (g)</i> – Codes of conduct/codes of ethics for participants in the public financial management system provide a system for indicating who is accountable for specific decisions (15% of Indicator) 	<p>an Anti-Corruption Law already approved by the National Assembly.</p> <p>No. There is no clear indication of a strong CSO involvement, and the Procurement Decree and its IRR does not support one.</p> <p>Yes. A body exists where complaints may be filed, including those pertaining to procurement – the SIA under the Prime Minister’s Office.</p> <p>Yes. Code of Conduct/Ethics may be found in the Anti-Corruption Law.</p>
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Legend:

 - Mandatory Baselines