



 **TRANSPARENCY
INTERNATIONAL**
Global Health

 **TRANSPARENCIA
MEXICANA**

SECRET CONTRACTS — PREVENTING VACCINE INEQUITY

POLICY BRIEF

PROCUREMENT AND VACCINE EQUITY

The COVID-19 pandemic has demonstrated how access to urgently needed health resources, such as vaccines, can be obstructed by opaque procurement processes during health emergencies, to the detriment of lower-income nations.

The inequitable distribution of the COVID-19 vaccine has been highlighted on multiple occasions, with poorer countries waiting longer to receive supplies.

Once vaccines had been developed, their rapid procurement was a top priority for governments around the world. Many rapidly abandoned public procurement guidelines and arranged deals with contracts that, in many instances, were **never published** – in full or redacted – despite the research and development process of the vaccines being **heavily financed by public funding**.

As the focus on global health policy shifts towards **improving preparation for and response to future pandemics**, we have identified **six key findings** from the COVID-19 pandemic. These are based on evidence our research at Transparency International Global Health and Transparencia Mexicana and a literature review. We found:

KEY FINDINGS



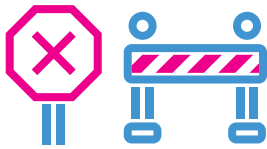
- 1 A lack of contract transparency.** To date, only a few vaccine contracts have been published. Of those that are publicly available, many are heavily redacted. A report by Transparencia Mexicana analysing 39 contracts from 15 countries and the European Union (EU) with different pharmaceutical companies in December 2021 showed that more than half (59 per cent) of the obtained contracts did not even contain basic information on the entire contract value or the unitary price paid for the vaccine. A further 15 per cent only gave partial information with which calculations could be done manually. Almost three in four (74 per cent) gave no information on delivery schedules. In most cases, redactions were justified with blanket explanations, such as protecting national security interests, or commercial and intellectual property interests of the manufacturers. They did not explicitly indicate the reason for each redaction.

CASE STUDY

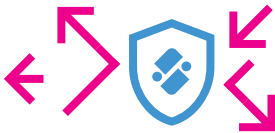
In countries in which procurement policy demands the release of contracts, non-disclosure has been based on exemption clauses. For example in Mexico, the Supreme Court denied a request from the National Transparency Institute (INAI) based on Freedom of Information requests to publish the contracts. The information in the contracts was classified as confidential until 2025. The exemption was based on the argument that Mexico would allegedly not be able to secure any further vaccines if this information were public – posing a threat to national security. When questioned by civil society organisations and the media, President Lopez Obrador publicly committed to disclosing all contracts. Six months after that statement, the unredacted contracts have not been published. In contrast, a local administrative court in Colombia forced the government to publish its contracts - including price information – on COVID-19 vaccines in November 2022.



2 Opacity of pricing has diminished equitable access. How much each government and multilateral body is paying for the vaccines remains largely unknown. Pricing is included in the redactions from most published contracts. This has weakened the bargaining power of lower and middle-income countries in negotiations with pharmaceutical companies. It may be a contributing factor to the higher unit prices paid by countries with a lower GDP per capita for the same vaccine, as shown by [UNICEF's COVID-19 Vaccine Market Dashboard](#): The prices paid for the Moderna vaccine, for example, range between US\$ 7 (COVAX), US\$ 15 (United States), US\$ 21.50 (Argentina), US\$ 28.88 (Botswana) and US\$ 40 (Kuwait). This has limited the scope for these countries to protect their populations.



3 Limited effectiveness of Freedom of Information Requests (FOIRs). FOIRs presented a way for civil society to reveal contract details. However, out of the 17 FOIRs submitted by Transparency International Chapters and other civil society organisations around the world, more than three quarters (13) were rejected or are still ongoing legal procedures. With many contracts, especially those negotiated directly with national governments, national governments opted to either amend or introduce new legislation in order to ensure that release of contract information could not be mandated through FOIRs.



4 Indemnification clauses. Clauses are included in medical contracts to protect developers against being held liable for unknown, adverse risks that might occur. Governments take liability and seek to indemnify the developer in case of a civil claim in order not to discourage them from future pharmaceutical and other medical development. The I&L clauses in almost all COVID-19 contracts were heavily redacted.

The few unredacted I&L clauses not only protect developers from legal claims arising from rare adverse effects but any kind of claim made against the developer and supply chain partners, and issues in the distribution and administration of the ordered doses.

Additionally, some manufacturers asked to reserve the right to demand collateral protection from governments, which would give them the option to seize sovereign assets, e.g., embassies, in case they could not cover legal costs otherwise. This placed a high burden on governments particularly in lower- and middle-income countries (LMICs).



5 Publicly funded vaccine development. The development of the COVID-19 vaccines would not have been possible without large amounts of 'push-funding' – funding given by governments to vaccine manufacturers for the research and development (R&D) of a vaccine, as well as other companies further down in the supply chain. The vaccine developed by AstraZeneca and the University of Oxford was 97-99 per cent financed by public and charitable funding. Funding was also given via Advanced Purchasing Agreements (APAs), in which governments agreed to buy a certain number of a product yet to be developed and produced.

By July 2021, the biggest investors, the EU and the US, had given US\$22.8bn and US\$18.6bn of public funding respectively to various pharmaceutical companies. Despite this large public investment, citizens were given a very limited opportunity to scrutinise how their money had been spent (see point 1) and the risks their governments were taking with regards to the indemnification and liability



6 Obtaining information on contract details has been dependent on investigative journalism and whistleblowers. With FOIRs often not succeeding, a lot of the contract terms and conditions that have become public were either leaked or published by investigative journalists. This avenue is dependent on whistleblower protection in a country and cannot be seen as a functioning strategy to surface government information, which should be publicly available.

POLICY RECOMMENDATIONS

- 1 **When a medical intervention needed for fighting a health emergency is in higher demand than supply, regionally or globally, there is an increased and critical need for transparent and open procurement.** The vaccine inequity experienced in the COVID-19 pandemic has revealed the need for contract transparency when it comes to urgently needed public goods in health emergencies. To ensure that access to medical interventions is more equitable in future health emergencies, the **Global Accord on Pandemic Preparedness and Response** which is currently being drafted by World Health Assembly member states should stipulate the following:
 - a. Contracts of purchases of medical interventions should be released in full and at maximum 90 days after conclusion of the contract. Emergency procurement legislation should incorporate this guideline and be accordingly reviewed where necessary.
 - b. The released contracts should be transparent on key contractual terms and conditions, including the total price paid and the price per unit or dose of the product, clauses on liability and indemnification, procured quantity, delivery agreements and provisions on what happens in case of cancellation of the agreement of either party.
 - c. Redactions should only occur if they can be justified on the grounds of public interest. Should this be the case, the decision-making process that led to the redaction needs to be clarified for each redacted part of the contract respectively. No blanket explanations, such as the protection of national security interests or commercial interests, should be given.
 - d. Contractual information needs to be published in an open data format so that it is easily accessible to the public. This means publication on a public server and without restrictions such as a password or firewall. Open data is essential to reduce the risk of market distortions in medicines pricing and ensure that the public can scrutinise the contracts.
- 2 **The World Health Organisation (WHO) should provide guidance on the drafting of contracts for medical interventions in health emergencies.** The pre-agreed, standardised indemnity and liability clauses arranged by COVAX in negotiation with vaccine developers facilitated the rapid conclusion of contracts for all countries eligible for subsidised vaccines. Similarly, the WHO should develop a toolkit with model clauses, or, at minimum, guidelines for the development of terms and clauses applicable to agreements for the procurement of medical interventions in health emergencies. These should include stipulations for the public disclosure of the contracts as stated above and should be based on the most advanced standards for transparency in national procurement that can be found globally. This will enable countries to formulate agreements without high legal costs.
- 3 **Emergency response frameworks on global, regional, national and sub-national level should include the application of transparent procurement mechanisms.** Next to including contract transparency in the Global Accord, it also needs to be embedded in other health emergency response frameworks that are drawn up on different levels – especially as the Global Accord will be non-binding. This way, it can be ensured that contract transparency is considered a priority also for national and sub-national actors. Pooled procurement mechanisms such as COVAX should champion transparency and provide LICs with model clauses to be embedded in agreements. Transparent procurement mechanisms to be embedded include open contracting, establishment of beneficial ownership registers and live audits.
- 4 **Make disclosure of purchasing contracts conditional upon the provision of large volumes of ‘push-funding’ for research and development of medical interventions.** APAs and ‘push’-funding were vital to the R&D process of the COVID-19 vaccine. However, governments have been scrutinised for not having mandated greater transparency already in this early stage of the vaccine cycle, despite the use of public money and agreeing to take on the developmental risks. During health emergencies, we suggest that full publication of contracts is mandated by government in their push-funding agreements.

5 **Establishment of a WHO pricing database to which governments anonymously report prices for urgently needed public goods (medicines, vaccines, supplies) during health emergencies.** Making pricing information accessible is vital to ensure that governments can make evidence-based decisions on how much to pay for a specific medical product. It ensures that no government is overpaying for a product and that lower-income countries can afford sufficient products. The WHO should establish a pricing database like the [WHO Market Information for Access to Vaccines \(MI4A\)](#), in which the countries are not named, but prices are categorised by region and income level, hence still protecting commercial confidentiality.

6 **Strengthen whistleblower protection as part of pandemic preparedness.** Whistleblowing has played a large part in the COVID-19 pandemic in making contract information publicly available. This would have not been possible without strong whistleblower protection and whistle-blowing mechanisms, which should be included in pandemic preparedness and response planning.



Find out more

The full research for this brief can be found in the following two publications:

<https://www.tm.org.mx/transparencia-en-contratos-vacunas-contra-covid-19-en-el-mundo/>

<https://ti-health.org/wp-content/uploads/2021/05/For-Whose-Benefit-Transparency-International.pdf>



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