



**TRANSPARENCY
INTERNATIONAL**

**The Integrity Pact
The Concept, the Model and the Present Applications:
A Status Report**

As of December 31st, 2002



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PART A. The Integrity Pact Concept

I. Background and Objectives of the Integrity Pact

1. Originally called the „Islands of Integrity“, the Integrity Pact (IP) concept is a tool developed in the 1990s by Transparency International (TI) to help governments, businesses and civil society which are prepared to fight



corruption to do so in the field of public contracting. The IP helps enhance public trust in government contracting and hence should contribute to improve the credibility of government procedures and administration in general. IPs are developed for contracts to which one of the parties is a central, local or municipal government, a government's subdivision or even a state-owned enterprise (the Authority). The other parties are usually the private entities interested in obtaining such contract, or in charge of implementing it. The IP establishes therefore mutual contractual rights and obligations.

2. The contract and the IP may cover the planning, design, construction, installation or operation of assets by the Authority, the privatization sale of assets, the issuing by the Authority of licenses and concessions, as well as the corresponding services such as consulting services and similar technical, financial and administrative support. Whenever possible, the IP should cover all the activities related to the Contract from the pre-selection of bidders, the bidding and contracting proper, through the implementation, to the completion and operation.
3. The IP is intended to accomplish two primary objectives:
 - (a) to enable companies to abstain from bribing by providing assurances to them that
 - (i) their competitors will also refrain from bribing, and
 - (ii) government procurement, privatization or licensing agencies will undertake to prevent corruption, including extortion, by their officials and to follow transparent procedures; and
 - (b) to enable governments to reduce the high cost and the distortionary impact of corruption on public procurement, privatization or licensing .
4. Beyond the individual contract in question, the IP is of course also intended to create confidence and trust in the public decision making process in general, a more hospitable investment climate and public support – in-country – for the government's procurement, privatization and licensing programs.

II. Main Characteristics

A. Elements

5. The main elements of the concept are:
 - a **pact** (contract) among a government office inviting public tenders for a supply, construction, consultancy or other service contract, or for the sale of government assets, or for a government license or concession (the Authority or the „principal“) and those companies submitting a tender for this specific activity (the „bidders“);
 - an **undertaking by the principal** that its officials will not demand or accept any bribes, gifts etc., with appropriate disciplinary or criminal sanctions in case of violation;
 - a **statement** by each bidder that it has not paid, and will not pay, any bribes “in order to obtain or retain this contract” (thus implicitly excluding facilitation payments; this does not mean that such payments are condoned but only that they are not dealt with in the Integrity Pact),



- an **undertaking by each bidder** to disclose all payments made in connection with the contract in question to anybody (including agents and other middlemen as well as family members etc of officials); the disclosure would be made either at time of tender submission or upon demand of the principal, especially when a suspicion of a violation by that bidder emerges;
 - the explicit acceptance by each bidder that the no-bribery commitment and the disclosure obligation as well as the attendant sanctions remain in force for the winning bidder until the contract has been fully executed;
 - undertakings on behalf of a bidding company will be made “in the name and on behalf of the company’s Chief Executive Officer”;
 - bidders are advised to have a company Code of Conduct (clearly rejecting the use of bribes and other unethical behaviour) and a Compliance Program for the implementation of the Code of Conduct throughout the company;
 - The use of **arbitration** as conflict resolution mechanism
 - a pre-announced set of **sanctions** for any violation by a bidder of its commitments or undertakings, including (some or all)
 - denial or loss of contract,
 - forfeiture of the bid security and performance bond,
 - liability for damages to the principal and the competing bidders, and
 - debarment of the violator by the principal for an appropriate period of time.
6. As such, the IP will establish contractual rights and obligations of all the parties to a governing contract and thus eliminate uncertainties as to the quality, applicability and enforcement of criminal and contractual legal provisions in a given country. This means that applying the IP concept can be done anywhere without the normally lengthy process of changing the local laws.
7. From the outset it has been expected that **Civil Society** in the respective country would play a key role in overseeing and monitoring the correct and full implementation of the IP. Two arguments often raised against such a monitoring role for Civil Society can easily be disarmed:
- Availability of the necessary expertise among the Civil Society monitors: where it does not exist among the regular members, it can be assured by contracting genuine experts; and
 - the legitimate confidentiality of proprietary information, to which Civil Society representatives would gain access, can be protected adequately through an appropriate contractual stipulation.
8. There has been no change in these main elements and objectives. There have only been some broadening of, and refinements to, the concept, as explained below.

1) The Authority’s Commitment

9. Under the IP, the Authority as an entity and those of its officials involved in the specific contracting or project commit to the following:



- No official of the Authority will demand or accept -- directly or through intermediaries -- any bribe, gift, favor, or other advantage for him(her)self or any other person, organization or third party related to the Contract, in exchange for an advantage in the bidding, bid evaluation, contracting and implementation process related to the Contract.
- The Authority will make publicly available all necessary and appropriate technical, legal and administrative information on the envisaged and/or actual Contract.
- None of the Authority's officials will disclose confidential information to a bidder or the contractor providing the bidder or contractor an undue advantage in the procurement for, or implementation of, the Contract.
- All the Authority's officials involved in the bidding, evaluation, contracting and implementation of the Contract will disclose in an appropriate form any conflicts of interest in connection with the Contract. It would be highly desirable that they also disclose their and their family's assets in the same way.
- All of the Authority's officials will report to the appropriate government office any attempted or completed breaches of the above commitments as well as any substantiated suspicion of such a breach.

2) Bidder's or Contractor's Commitment

10. In the context of the IP, the bidders for the Contract or -- as the case may be - the contractor implementing the Contract shall pledge the following, in the name and on behalf of their CEO (or at least the CEO of the national subsidiary of the company):
 - They will not offer, directly or through intermediaries, any bribe, gift, favor, or other advantages to any official (or a relative or friend of his(hers)) of the Authority in exchange for any advantage in the bidding, evaluation, contracting, and implementation of the Contract;
 - They will not collude with other parties interested in the Contract to impair the transparency and fairness of the bidding, evaluation, contracting, and implementation of the Contract;
 - They will not accept any advantage in exchange for unprofessional behavior;
 - In support of the first pledge above, they will disclose all the payments made to agents and other intermediaries, who in any case should not receive more than fair pay for legitimate services. This disclosure should be made preferably by all bidders at the time of bidding, but at the very least by the awardee of the Contract at the time the Contract is finalized.
11. A highly desirable supporting element for the bidders' or contractors' commitment would be proof of existence and application of a company-wide code of conduct forbidding bribery and other unethical behavior.
12. It is evident that, if even one of the competitors does not sign the IP, there is no basis for the pact altogether. However, experience up to now did not demonstrate whether it is better to make the signing mandatory from the start or whether it is better to negotiate the IP with the competitors until agreement is reached on a pact that then will be signed by everybody.



3) Sanctions

13. In case of violations by officials of the Authority, these shall suffer appropriate, predetermined disciplinary or criminal sanctions within the catalogue applicable to the Authority. Such sanctions may include removal to other functions and dismissal from office.
14. In case of infractions by a bidder, it is highly desirable that the sanctions include some or all of the following: denial or cancellation of contract, forfeiture of the bid and/or performance bond, appropriate liquidated damages to the Authority and the other bidders, and blacklisting for future biddings.
15. Whereas the application of sanctions cannot be based on suspicion only, it should not need a criminal conviction. Guilt could generally be assumed on the basis of a “no-contest” statement by the accused party or if, on the basis of the available facts, there are no material doubts.

4) Disputes

16. Disputes over the IP should be resolved through international or, where appropriate, national arbitration. The IP would define the venue and procedure.

5) Monitoring and Supervision

17. A maximum of transparency all along the various steps leading to the Contract and throughout its implementation is the basis for the successful design, setup and implementation of an IP. Such transparency, in turn, calls for extensive and easy public access to all the relevant information including design, justification of contracting, pre-selection and selection of consultants, bidding documents, pre-selection of contractors, bidding procedures, bid evaluation, contracting, contract implementation and supervision. It is highly desirable that there be a forum in which representatives of civil society can discuss the official steps taken in the context of the Contract. At the present time, the Internet provides a nearly ideal platform. Public hearings are also an effective tool. However, access to legitimately proprietary information should remain restricted. There, if necessary, a representative of civil society could be granted the same access as the Authority. But the right of this representative to refer publicly to the proprietary aspects should be strictly specified in close relation to the danger, the suspicion, and the degree of substantiation of corrupt practices.
18. However, to monitor systematically and in detail the above processes in the context of an IP, civil society may delegate these activities to entities professionally equipped to do this, e.g. an Independent Private Sector Inspector General (IPSIG), a suitable government office with no involvement whatsoever in the supervised procedures, a Transparency International National Chapter, or another NGO. In each case the monitoring and supervision procedures should be specified and in particular those for dealing with dangers, suspicions or actual instances of corrupt practices should be



clearly defined. Neither party to an IP should have the right to veto properly designated monitors.

19. The ultimate result of such monitoring and supervision should be a statement at the end of the process that the procedure was clean and did not lead to any incidents related to possible corruption, or -- if this was not the case -- what incidents occurred, how these were dealt with, and what the outcome was in the various cases.

B. Integrity Pacts at Work

16. As described in Part C of this document in detail, more or less complete Integrity Pacts have been used and are now being used in Argentina (City of Moron), Colombia (several), Ecuador, the cities of Bergamo, Genoa and Milano in Italy (municipal contracting in general), in Seoul/Korea and in Pakistan. Essential elements of the IP are being used in other applications elsewhere, among them, the municipality of Bhaktapur/Nepal, in Panama and in the municipality of Avellanada/Argentina.
20. The global overview of experience that emerged from the Bogotá Workshop in 2000, indicates that the IP concept is sound and workable. At this time the political will necessary for its application seems, in many countries, to exist more at the municipal than at the regional or national level. Further, there is convincing feedback that, despite the variety of approaches, there already is a remarkable consistency in the core of the IP designs. All more recently planned and concluded pacts adhere to many if not most of the principles set forth in the present paper. One of the strengths of the concept seems to be that it is flexible enough to adapt to the many local legal structures and requirements as well as to the different degrees governments are willing to proceed along the lines set forth here. Nevertheless, it would appear that these lines contain the essentials that must appear in an IP in order to be designated as such and supported by TI.

PART B. The Model

TI has developed and adjusted the model for the IP on the basis of extensive discussions with governments, international agencies such as the World Bank, the Inter-American Development Bank, the Asian Development Bank, the International Finance Corporation, UNDP, the Court of Arbitration of the International Chamber of Commerce, as well as with the national chapters of TI, other NGOs and representatives of civil society in various countries. The present document reflects the status of development as of July 2000. Most of the issues associated with the IP and the accumulated experience with the concept were thoroughly discussed at an Integrity Pact Workshop in Bogotá/Colombia in June 2000 and continue to be reflected upon within the TI Network.

I. Application

21. **RANGE.** The IP concept is suitable not just for construction and supply contracts, but equally for the selection of:



- (engineering, architectural or other) consultants,
- the buyer/recipient of state property as part of a government's state asset privatization program, or
- the beneficiary of a state license or concession (such as for oil or gas exploration or production, mining, fishing, logging or other extraction rights), or for government-regulated services (such as telecommunications, water supply or garbage collection services).

22. **TIMING.** The IP can and should be applied to the full range of activities concerning a particular investment, sale, license or concession:

- beginning with the feasibility and preparatory stage: Even the preparation of the earliest alternative choice and design documents should be covered – if not, a dishonest consultant can mis-direct the entire preparation process for the benefit of some contractors or suppliers;
- continuing with the selection of the main contractors/suppliers/licensees
- and extending to the implementation of the main activity (execution of the construction or supply contract, especially the compliance with all the contract specifications agreed and all change and variation orders); indeed, for projects such as big dams or toxic plants (such as nuclear power plants), the protection by the IP should continue until the decommissioning and disposal of the project assets.

23. **ABOUT THE SANCTIONS.** The “liability for damages” clause should provide for “liquidated damages”. This consists of a pre-determination of the value of damages (for example a certain percentage of the contract value) which will apply, unless the principal can demonstrate that the actual damage is higher, or the bidder liable for damages can demonstrate that the actual damage is lower. This solution saves many arguments about the level of damages.

One question very often asked is “what kind of evidence is required to be certain of a violation by a bidder” so as to trigger sanctions? Suspicion alone cannot be enough. Clearly, a criminal conviction for bribery is the most persuasive evidence, but a criminal conviction is rarely obtained, and in the few cases it usually comes much too late to be of any help in administering prompt sanctions. German practice is to treat a no-contest statement or an admission of guilt as equally persuasive, and recently the practice is emerging of considering it as adequate evidence of a violation if “on the basis of the facts available there are no material doubts”.

24. **ARBITRATION.** The venue for collecting damages should be arbitration under national or international auspices. Why arbitration rather than normal national jurisdiction?

- Relying on the jurisdiction of a Northern country is likely to be unacceptable to principals in a Southern country; equally, relying on the national jurisdiction of a Southern country is likely to give little comfort to bidders from Northern countries; thus the consensual choice of arbitration.
- Where a well functioning national system of arbitration exists, which commands the confidence of international companies, submitting a dispute to it will save time and costs;



- Where such an accepted national arbitration system does not exist, the parties should provide for “international arbitration by the ICC Arbitration Court under the rules of the International Chamber of Commerce” (or a similar internationally accepted arbitration institution).

Normally, the parties would stipulate from the outset the place of session, the applicable law and the number of arbitrators.

25. **PAYMENT AND ASSET DISCLOSURE AND LIMITS.**

- Considering that “agents” and “middlemen” often are used (sometimes primarily) as instruments for paying bribes, the Model contains a stipulation that payments to agents must not exceed “appropriate amounts for legitimate services”. This language stems from the ICC Rules of Conduct (“Extortion and Bribery in International Business Transactions”, 1996 Revision). In fact, many globally active companies have begun to refrain from using such agents or middlemen.
- “Officials” of the principal will be required to disclose their own and their family assets, on a regular basis, so as to offer a handle if such officials acquire wealth the source of which cannot be explained.
- Consultants commit themselves not only not to pay bribes in order to obtain a contract, but also to design the project or project components in a manner that is totally non-discriminatory, assures wide competition and will not offer advantages to a specific bidder.

26. **ABOUT MONITORING.** While a clear and unrestricted oversight and monitoring role for Civil Society in any country is highly desirable, it is understood that in some countries the government will not, at this time, be prepared to allow Civil Society such a role. In those cases the oversight and monitoring function could be performed in one of several ways:

- The government employs what in some US cases has been called an “Independent Private Sector Inspector General” (or IPSIG); the IPSIG, a private sector company or individual, would of course come with the necessary expertise; such an arrangement can be acceptable provided the IPSIG is given not only full access but also has the contractual right to seek correction of any procedural problems or improprieties and, if no correction takes place, to inform the public of the impropriety. Or:
- The government commits itself to provide full public disclosure of all relevant data regarding the evaluation of the competing bids. This would include a statement, that the evaluation criteria announced in the invitation to tender were fully applied, a list of the bidders and their prices, a list of the bids rejected, including the grounds for rejection, the major elements and aspects of the evaluation process and the specific reasons for selecting the winning bidder. The government should also at this time announce its own cost estimate for the project.

27. One should also remember that the IP can function only if all bidders submit to it. It is therefore highly desirable to make the signing of the IP mandatory. Some countries have chosen to make the signing voluntary, and then begin a campaign to convince all bidders of the advantages of having an IP in place; however, bidders will be prepared to sign the IP only provided all the competitors also sign. If only one bidder refuses to sign, all the others will



withdraw their commitment, since after all the objective is the creation of a level playing field – for all players.

28. A fascinating and possibly highly relevant recent development is the use in several countries of the Internet for total transparency of procurement. In Mexico, all public procurement activities countrywide are recorded and made available in great detail through a website that is accessible to all. In Colombia, a State Contracting Information System (SICE) is meant to be widely accessible. Similar electronic information systems are being applied in Chile and South Korea. The high degree of transparency achieved through this real-time access to public decision making clearly reduces the opportunity for manipulation and should enhance the willingness of officials and bidders alike to commit to a corruption-free contracting procedure, such as through the IP.
29. Finally, experience shows that the political will to reduce corruption and to revive honesty and integrity in government contracting is a sine-qua-non for success. That's why we recommend starting any IP process by establishing the existence of that political will – at the highest available political level. Experience to date shows that it may be easier to establish and nail down that political will at the municipal level than at national government level.
30. It will obviously be much easier to achieve consensus among all the parties involved if the proposal is (i) fully accepted and supported by the host government (at national, state or municipal level) and (ii) put before the commercial parties in cases when there are no major existing vested interests (like a longstanding record of the same companies winning time after time), and in any case (iii) put before the companies at the very beginning of preparing an investment project, before the traditional (project-specific) inroads have been made by the traditional or new actors in the country.
31. In judging the suitability of the IP Model one should take into account that since February 15, 1999, the OECD Convention makes bribing a foreign official a criminal act in all states that have ratified the Convention and in most of those countries the tax deductibility of bribes, which had been allowed previously, has been abolished. Bidders from many countries thus face a fundamentally different legal situation from the one they had operated under for years. They should therefore be prepared to enter into agreements designed to provide a “level playing field” for all competitors irrespective of whether they come from countries bound by the OECD Convention rules or not.
32. We are rarely using the “islands of integrity” term any longer – despite its obvious public appeal - since it suggests that this “island” is surrounded by a morass of corruption. Several governments have objected to the term on these grounds. Indeed, we believe that using an IP for a single major investment project will overall be more effective if the government concurrently is introducing a country-wide anti-corruption or general governance program. TI may offer assistance in designing such a program, but its existence is not a prerequisite for using an IP.
33. There is an increasing number of cases where all the essential principles of the IP are being applied, most of which are briefly described in Part C of this



document. While there is some variety in the approach, the documents and the process, TI greatly appreciates the many efforts by TI-members worldwide to introduce the IP concept as fully as possible and encourages further experimentation with modified applications rather than insisting on a “purist” approach.

34. However, in order to assure consistency of our efforts, National Chapters are requested to maintain close contact with TI-S (through Juanita Olaya (jolaya@transparency.org) and Michael Wiehen (mwiehen@transparency.org) while they discuss and develop “customized” versions of the IP. TI will make every effort to develop a group of Resource Persons who can provide the necessary expertise in response to calls for help from individual National Chapters.

II. A Role for Civil Society

35. In several cases, especially in Argentina, Colombia and Benin, Civil Society and especially our National Chapters there have played critical and highly effective roles in coaxing governments, officials, contractors, the private sector in general and the media into acceptance of the Integrity Pact approach. Two issues that have plagued them consistently were (i) access to expertise and (ii) funding, for their activities both during the preparatory phase and during the much more involved and staff-intensive implementation phase. As far as the expertise is concerned, our group of Resource Persons is slowly growing, but TI-S needs to accelerate and systematize the development and the broad accessibility of such expertise. Especially during implementation, NCs may have to call and rely on technical experts found in the market. That exacerbates the second issue, that of funding for these NC activities. In Benin some of the smaller bilateral donors have in the past been highly supportive and most likely will continue to be supportive. In more developed countries (such as Argentina and Colombia), the cost of NCs exercising this function may have to be covered at least in part by the governments themselves, although one must take extreme care that reliance on government funding will not undermine or jeopardize the all-important independence.
35. When designing the role for Civil Society, one should look at the following criteria (most of which were developed in Panama, Argentina, Colombia and Benin):
 - Monitors should be highly respected people of unquestioned integrity
 - Monitors should possess (or have easy access to) professional expertise
 - where the local members of Civil Society do not possess the required expertise, they should promptly contract such expertise from outside, including where necessary, from overseas; non-availability of expertise means that problems may not be discovered, convincing professional corrective proposals could not be submitted, and the monitors would not gain the respect of the officials
 - Monitors cannot be vetoed by Government
 - Monitors should have free access to all relevant government documents, to all relevant meetings and to all relevant officials
 - Monitors should raise issues and complaints first with the authorities, and only when no corrective action is taken within a reasonable period of time, be free to go public



- Monitors should be prepared to offer a limited Pledge of Confidentiality regarding certain business type information
- Monitors will review the tender documents, the evaluation reports, the award selection decision and the implementation supervision reports, technical as well as financial.

For the experience in Colombia in this regard, please refer also to ANNEX 1.1.

36. In the general interest of TI and all its NCs, it is important that practices and experiences in the next year or two with the exercise of the monitoring function be recorded and shared with others as fully as possible. In response to increasing NC's requests and the need to utilise the synergy of an issue of worldwide concern, TI-S has created the "IP and Public Procurement Programme". Within its functions lies the coordination of the worldwide IP campaign and therefore it is advised that copy of all messages as well as reports regarding this matter should be sent to Juanita Olaya (jolaya@transparency.org), who is in charge of this Programme at TI-S.

III. The Bogota Workshop of June 2000

37. The First International Workshop on Integrity Pacts, held in Bogota/Colombia June 22-24, 2000, brought together practitioners of the IP from around the globe and allowed a useful exchange and sharing of experience. Much of the information supplied to the Workshop and of the changes to the Model and the Status Report agreed at the Workshop has been incorporated into this document. For those interested in further detail a Report on the Proceedings of the Workshop will be found in **ANNEX 11.1**; detailed minutes of the Workshop are attached hereto as **ANNEX 11.3** and are recommended for careful review, especially the paragraphs recording the Workshop discussions on
- Sustaining Government Interest
 - Sustaining Private Sector Interest
 - Maintaining Public Interest and Transparency
 - Regulatory and Legal Hurdles and
 - How National Chapters have started and Sustained the IP Process.

These paragraphs contain a wealth of practical ideas and suggestions that nobody working on an IP should miss.

IV. Conclusions

38. As this global overview of experience with the IP clearly indicates, there is a growing set of applied examples and a remarkable consistency in the approaches to designing an Integrity Pact, despite a wide variety of details. Obviously each IP must be consistent with the local legal structures and requirements. And it must be acceptable to, indeed welcomed by, government authorities; otherwise it is likely to fail, except possibly in cases like the unilateral integrity commitment presently under consideration by the oil industry active in Nigeria.
39. While the IP model is flexible, there are a few essentials without which we may not wish to be associated with a particular effort, such as the following:



- the procurement process will be by open and transparent competition,
- government and bidders commit themselves not to demand, accept, offer or give a bribe to obtain or retain a contract,
- disclosure by bidders of all payments made in connection with this contract,
- strict sanctions against bidders and officials who violate the commitments,
- publication of award decisions including the grounds for selecting the winner, and
- adequate monitoring of the process, preferably through Civil Society.

Annex 11 to this Status Report provides guidance as to what is mandatory and what is optional (though desirable).

40. The Integrity Pact concept is sound and workable. We have convincing feedback from both sides – governments as well as major international contractors and suppliers – that the IP can be an important instrument in reducing the need as well as the opportunity for corruption and thus bringing more integrity and more efficiency into public contracting of all kinds. Let's continue to develop additional cases, go for broader application and in particular, let's make sure that the Civil Society role in designing and implementing the IP is effective. We have a strong tiger by the tail –let's hold on to it!

V. Model Documents

A. Model Explanatory Note

The Integrity Pact
(Transparency International – Integrity Pact)
(TI - IP)

Explanatory Note
by the Government of.....X.....

Background

1. Corruption can have many manifestations, and countries typically develop a complex set of institutions, laws, rules and regulations (the "integrity system") in order to combat corruption.

2. Bribery and extortion in public sector procurement of goods and services are key manifestations of corruption. "Public sector" in this context includes national or provincial governments, administrations of cities, other municipalities or local communities as well as parastatals (state owned corporations) and other organizations carrying out public functions.

3. While until recently the bribery of public officials of another country has not been a criminal act under the laws of any country (except in the United States under the Foreign Corrupt Practices Act of 1977), the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, signed in December 1997 by the member states of the OECD and five additional countries (Argentina,



Brazil, Chile, Bulgaria and Slovakia), which came into force on 15 February 1999, will bring about a major change: Henceforth international bribery of public officials will be a criminal act in all ratifying states. As of this writing, 24 signatories, including some of the largest trading nations such as Japan, Germany and the United Kingdom, in addition to the United States, have already ratified the Convention and thus have made it effective in their own country. Also, all signatory states will abolish the tax deductibility of bribe payments. Thus companies doing international business will face a totally new legal situation with regard to their business practices.

4. Many governments and business leaders have recognized the high risk and cost of bribery and extortion and seek ways to curb and eventually eliminate corruption in such transactions. Many business leaders have expressed their desire to stop paying bribes but are held back by the fear of losing orders if their competitors continue to pay bribes.

5. The Government of XYZ (GOX) has embarked on a program to curb corruption, and use of the Integrity Pact (IP) concept for selected contracts will be an important part of that program. Whenever GOX receives assistance from an International Financing Institution (IFI) or another external donor in this program, the IP will be applied to selected IFI/external donor-financed projects as well.

Purpose of the Integrity Pact (IP)

6. The Integrity Pact (IP) is intended to accomplish two objectives:

- to enable GOX to obtain the desired product at a competitive price and in accordance with the specifications, by avoiding the high cost and the distortionary impact of corruption on public procurement, and
- to enable companies (contractors, suppliers and consultants) bidding for contracts in XYZ to abstain from bribing in order to obtain a contract by providing assurances to them that: (i) their competitors will also refrain from bribing, and (ii) the XYZ government procurement agencies will commit themselves to prevent corruption, including extortion, by their officials and to follow transparent procedures.

7. The IP concept will also be applied when GOX, as part of its privatization program, invites interested companies to tender for the acquisition of government assets, or for the granting of telecommunications, transport, mining, logging or other such licenses.

8. Considering the critical role normally played by consulting engineers (or other consultants) in designing the project, preparing the procurement documents, evaluating the bids and supervising the contract execution, their selection will be subject to the IP concept as well.

9. In XYZ, all forms of domestic corruption are illegal, and GOX will continue to prosecute all offenders.

10. The IP however focuses on bribery in order to obtain or retain a contract or other improper advantage (*). This includes any payments or other favors offered or granted in order to

- (i) win a contract award,
- (ii) get a contract change order (adjusting the price, the specifications, the time frame for implementation or any other important contract components) approved by GOX,

- (iii) get sub-standard or sub-specification performance approved by a public official or the supervising consultant and their staff,
- (iv) circumvent tax, duty, license or other legal obligations, or
- (v) induce an official to breach his/her official duties in any other way.

It also includes the demand for, or acceptance of, any payment or other favor by a consultant in exchange for

- (i) designing a project or parts thereof in a manner that it offers undue advantages to one or several bidders,
- (ii) giving undue advantage to any of the bidders in the evaluation and selection of bidders for a contract award, or
- (iii) refraining from properly monitoring project implementation, reporting violations of contract specifications or other forms of non-compliance, or holding suppliers and contractors fully to their legal obligations.

(*) this language is taken from the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, dated 17 December 1997.

Main Features of the IP

11. The IP is an agreement among GOX (or any one of its agencies or corporations) and those bidders/companies, who participate in the bidding process for the supply of goods or services for a selected contract/project, or for the acquisition of government assets in a privatization procedure, that bribes will not be offered, granted, accepted or sought, both during the bidding/selection process and during implementation of the contract by the successful bidder. The IP has the following main features:

- a formal no-bribery and no-collusion commitment by the bidder, either as part of the signed tender document or in a separate formal document, [supported by a company Code of Conduct and a Compliance Program];
- a corresponding commitment by the government office managing the tendering process (also on behalf of all the officials of that office) not to demand or accept any bribes, and to prevent extortion and the acceptance of bribes by other officials;
- disclosure of all payments to agents and other third parties;
- sanctions by the government office against any officials violating their no-bribery commitment;
- sanctions by GOX against any bidders who violate their no-bribery commitment; and
- an involvement of Civil Society in monitoring the tendering, the bid evaluation, the award decision process and the implementation of the contract;
- [alternatively to the involvement of Civil Society, or preferably in addition to it:] public disclosure of the award decision, including the major elements of the evaluation and the reasons for the selection of the successful bidder.

12. The IP will function as follows:

The government office or agency managing the tendering process, when inviting contractors or suppliers of goods or services to tender for a specific contract, informs the potential bidders that their tender offer must contain a formal commitment, on behalf and in the name of the bidder's CEO, not to offer or grant any payments or favors in order to obtain or retain this contract or other improper



advantage, and not to collude with other actual or potential bidders with the aim of restricting competition. The bidder's commitment will have to cover all managers and employees of the company as well as agents, consultants, subcontractors and consortium partners of the bidder.

When inviting consultants to submit proposals for any services, the government office or agency informs all those invited that their submission must contain a formal commitment not to demand, or accept, any payment or other favor in exchange for

- (i) designing a project or parts thereof in a manner that it restricts competition by offering undue advantages to one or several bidders,
- (ii) giving undue advantage to any of the bidders in the bidding and in the evaluation and selection of bidders for a contract award, or
- (iii) refraining from properly and thoroughly monitoring project implementation, reporting violations of contract specifications or other forms of non-compliance, or holding suppliers and contractors fully to their legal obligations.

GOX on its part has introduced the obligation for all senior officials at the level of Project Manager and above to disclose, on a regular basis, their own and their family's assets and will require each senior official at the level of Project Manager and above associated in some manner with the project to submit a written commitment that he/she has not demanded or accepted, and will not demand or accept, any payment or favor. GOX in general will follow transparent procurement rules.

In substance, these commitments are nothing other than an agreement to respect and apply the existing laws of XYZ and the other party's country of residence.

13. Because a bidding company acts through many employees and agents, it is highly desirable that the company's and CEO's commitments should (not least for the CEO's own protection) be supported by a company-wide no-bribery policy (a "Code of Ethics" or "Code of Conduct") and implemented through a compliance program which assures that all employees and agents will be familiar with, and observe, the no-bribery policy and commitment. Where the company already has a written no-bribery policy in effect, it can furnish a copy of that policy together with the compliance program implementing that policy. Where a company does not have such a policy, or does not have a written compliance program, it can prepare a compliance program for the particular contract.

14. A Code of Conduct and compliance program would normally address the following issues:

- an unequivocal statement of the company's policy prohibiting all forms of bribery and collusion;
- the company's policy regarding gifts and entertainment, travel and lodging expenses, political contributions etc;
- distribution of the policy (in appropriate languages) to all managers and employees;
- an acknowledgment of receipt and acceptance by the employees, to be renewed annually;
- training of employees in the application of the policy;
- internal controls, external audit and record keeping; and
- application of appropriate sanctions (including possibly termination of employment) in case of violation.



15. GOX does not require that every bidder have such a code of conduct, and will not evaluate the no-bribery policy/code of conduct and the compliance program adopted by a bidder at the time of bid submission. Only if and when there is cause to suspect malpractice by one of the bidders, that bidder's policy and compliance program will be reviewed and evaluated. Any shortcomings identified then would be

16. While it is highly desirable that all companies bidding for contracts in XYZ develop and apply a no-bribery policy and a compliance program, its existence is not mandatory under the IP.

Disclosure of Payments to Agents and other Third Parties

17. Agents or other third parties employed by bidders in connection with their effort to obtain or retain a contract will normally be engaged to perform legitimate services and will be paid an appropriate amount for such services. However, agents' commissions are a traditional avenue for the concealing of bribes to government officials. Therefore, GOX requires full transparency of such agents' commissions: All past and intended future payments (such as commissions or any other kind) to agents and other third parties must be disclosed [either at the bidding stage, or on demand by the GOX at a later stage, if and when a suspicion of a violation of the no-bribe commitment by that bidder has emerged] ; the winning bidder must formally record and report to the GOX regularly during the execution stage any and all such payments to agents and other third parties, such reports to be certified by an appropriate senior manager of the winning bidder. [This certification is necessary so that senior managers and the CEO will not be able to disclaim knowledge of malpractice as presently often is the case. This requirement is bolstered by the compliance program which the successful bidder should have in place.]

Sanctions

18. Bidders who violate their no-bribery commitment during the contract tender and award process, or the successful contractor or supplier who violates the no-bribery commitment during the contract execution phase, or consultants who violate their commitment, will be subject to significant sanctions.

19. Sanctions normally will include denial/cancellation of the contract, liability for damages (to the government as well as to the competing bidders), forfeiture of the bid and/or performance security and debarment of the offender from all business with GOX for an appropriate period of time.

20. In cases where GOX debars an offender from government business because of a violation of the no-bribery commitment under an IFI/external donor financed contract, the IFI/external donor should also seriously consider debarring that offender from eligibility for contracts financed by it globally.

21. Damage claims by GOX will be in the form of liquidated damages, where an amount equivalent to [say] 8 (eight) percent of the contract value is pre-agreed as



"the damage" unless either party can demonstrate and prove that the actual damage is larger or smaller. Damage claims by competitors would also be pre-set at an amount equivalent to [say] 1 (one) percent of the contract value, unless higher or lesser damage can be proven.

Claims related to the contract, including claims for damages, would be resolved by arbitration, in accordance with the standard rules for commercial arbitration in XYZ. arbitration. [Alternatively, the government may announce that arbitration will be in accordance with the Rules of Arbitration of the International Chamber of Commerce.]

By empowering unsuccessful bidders to enforce sanctions themselves (through arbitration), their confidence in the integrity of the process as a whole will be increased.

Role for Civil Society

22. GOX will make every effort to employ a process which assures integrity and credibility through a high degree of transparency. The process will normally involve consultation among key parties, which leads to the adoption of a methodology which enjoys the confidence of the private sector as well as civil society. GOX also considers it highly desirable to enlist the support of civil society by providing it access to procurement information for an effective monitoring role - directly or through expert consultants. GOX will also arrange for prior consultation, in appropriate cases in the form of a public hearing or hearings with the key actors.

23. GOX is also considering to adopt [either in addition to the involvement of Civil Society, or possibly in its place] a policy of total transparency of the bidding, bid evaluation, award selection and contracting process, through outright publication of all the critical documents or by giving easy access to relevant documents and information to any interested party.

Concluding Remarks

24. The IP concept will be presented to the respective bidders as early in the process as possible, so as to assure that the new rules are established before interested parties have had the opportunity to enter into different (traditional) arrangements. This means inter alia that for any contracts with pre-qualification procedures (e.g. major civil works contracts) the bidders will be asked to present their commitment as part of their submission for pre-qualification.

25. GOX may begin by testing this IP concept on major contracts for one or several selected projects, or for all projects in a particular sector. Broader application could then follow at a later date when sufficient experience has been gained, and any desirable modifications may have been introduced.

26. The 3 attachments to this memorandum contain:

(a) a model communication from the government to the bidders for the selected contract, which would normally be incorporated into the government's Invitation to Tender;

(b) a model memorandum by the government entitled "Procedures for Bidding for Public Sector Contracts". These "Procedures" would be attached to the government's invitation to bidders.

These model documents would be adjusted to the specific requirements of the selected contract; and

c) a listing entitled "TI Advice regarding the Mandatory or Optional Character of the various Elements of the IP".

27. Applying the Integrity Pact concept will be one step for GOX towards bringing more transparency and integrity into its procurement process. The broader government program to combat corruption will be implemented concurrently as rapidly as possible.

B. Invitation to Tender for Public Sector Contract – Model Communication of Government to Bidders

Model Communication by the Government of XYZ
to all Bidders invited to Tender for the YYY Project
(normally to be inserted in Invitation to Tender or in the
Invitation to Apply for Pre-Qualification)

1. The Government of XYZ (GOX) is committed to fight corruption in public contracting [and is receiving the assistance of the World Bank and the Asian Development Bank in strengthening its procurement laws and procedures]. As part of this program, GOX has reviewed its arrangements for the letting and implementation of public sector contracts against criteria of integrity, transparency and accountability. GOX's position and objective is set forth in an Explanatory Memorandum, dated....., copy of which is attached to this Invitation....

2. In an effort to limit the scope for abuse, GOX is introducing new procedures, which GOX is sure your company will wish to support. The objective is to ensure that there is fair competition for government business, and that competition takes place openly and in a manner that provides fair and equal opportunity for all competitors and integrity and accountability in contract implementation. The new procedures will also apply to the execution of contracts by the successful bidder/supplier. The new procedures are set out in the attached Technical Memorandum entitled "Procedures for Bidding for Public Sector Contracts: The Integrity Pact".

3. As part of its confidence building strategy, GOX will treat the oversight and monitoring of the implementation of these new procedures with the highest priority. GOX will pay particularly close attention to the need to prevent or sanction any case of extortion, or acceptance of bribes, by GOX officials. We are asking all those bidding for GOX business to assist the government by reporting any instances of extortion or bribe-taking occurring.

4. A special office for the investigation and handling of any reports of extortion or bribery in public procurement has been set up in the [Prime Minister's] Office and can be reached as follows:...



C. Model for Government Bidding Procedures in Public Sector Contracts – Integrity Pact

Government of XYZ (GOX)
The Integrity Pact

The following procedures will apply to the letting of contracts for the YYY Project ["Pre-qualification for.....", "Invitation to Tender for....." or "Consultancy Services for....."]. These procedures are in addition to the standard legal and administrative requirements. They will form part of the terms and conditions of each contract and will be actionable, in the event of breach, by the Government of XYZ (GOX) and any of the competing bidders/firms.

1. Each bidder for a supply, construction or other service contract (other than a consultancy) must submit a statement, as integral part of the tender documents, with the following text:

"This Company places importance on competitive tendering taking place on a basis that is free, fair, competitive and not subject to abuse. This Company is pleased to confirm that (i) it has not offered or granted, and will not offer or grant, either directly or indirectly through agents or other third parties, any improper inducement or reward to any public official (in the country where the contract is to be performed, in the home-country of the Company, or in any International Financial Institution), their relations or business associates, in order to obtain or retain this contract or other improper advantage, and (ii) it has not colluded, and will not collude, with others in order to unduly limit competition for this contract. The Company understands the material importance of these commitments to the Government and the Government's reliance upon its commitments.

This Company has a No-Bribery Policy/Code of Conduct and a Compliance Program which includes all reasonable steps necessary to assure that the no-bribery commitment given in this statement will be complied with by its managers and employees, as well as by all third parties working with this company on the YYY Project, including agents, consultants, consortium partners, subcontractors and suppliers. Copies of our No-Bribery Policy/Code of Conduct and Compliance Program are attached.

[In cases where companies participate in the bidding which do not yet have a general no-bribery policy/Code of Conduct: "This Company has developed, for the purposes of this tender, a Compliance Program - copy attached - which includes all reasonable steps necessary to assure that the no-bribery commitment given in this statement will be complied with by its managers and employees, as well as by all third parties working with this Company on the YYY Project, including agents, consultants, consortium partners, subcontractors and suppliers."]

[In cases where a government chooses not to require the existence of a no-bribery policy/Code of Conduct: "This Company will make the necessary arrangements so that this no-bribery commitment will be complied with by all its managers and employees as well as by all third parties working with this Company on this project, including agents, consultants, consortium partners and subcontractors."]

This commitment is submitted in the name and on behalf of this Company's Chief Executive Officer.

[Alternative: In the case of globally-active companies it may be difficult to obtain the commitment "in the name and on behalf of the (international headquarters) CEO", in such cases, one should require a reference to the CEO of the regional headquarters, or the highest possible officer.]

This Company irrevocably agrees with GOX to submit any disputes relating to these arrangements to binding arbitration, under the Rules of Arbitration of the International Chamber of Commerce in force at the date of the request for arbitration.

[Alternative: This Company irrevocably agrees with GOX to submit any disputes relating to these arrangements to binding arbitration, under the rules of arbitration presently existing in XYZ.] Note: In the event of an arbitration there are a number of matters which need to be agreed by the parties. The parties should consider including the following clause and reaching agreement on the matters indicated in square brackets: „[The tribunal shall consist of [one/three] arbitrator[s]. The place of the arbitration shall be [town/city]. The language of the arbitration shall be [English]. Any disputes relating to these arrangements shall be settled in accordance with the laws of [country]].“

2. Each consultant or consultant firm submitting a proposal for a consultancy contract related to the YYY Project must submit a statement, as integral part of its proposal, with the following text:

"This Consultant/ Consultant Firm ("Consultant") places importance on the selection of consultants taking place on a basis that is free, fair, competitive and not subject to abuse. This Consultant is pleased to confirm that (i) it has not offered or granted, and will not offer or grant, either directly or indirectly through agents or other third parties, any improper inducement or reward to any public official (in the country where the contract is to be performed, in the home-country of the Consultant or in any International Financial Institution), their relations or business associates, in order to obtain or retain this contract or other improper advantage, and (ii) it has not colluded, and will not collude, with others in order to unduly limit competition for this contract. The Consultant understands the material importance of these commitments to the Government and the Government's reliance upon its commitments.

This Consultant further confirms that it will not demand or accept any payment or other favor in exchange for (i) designing a project or parts thereof in a manner that it might offer undue advantages to one or several bidders, (ii) giving undue advantage to any of the bidders in the evaluation and selection of bidders for a contract award, or (iii) refraining from properly monitoring project implementation, reporting violations of contract specifications or other forms of non-compliance, or holding suppliers and contractors fully to their legal obligations.

This Consultant has a No-Bribery Policy/Code of Conduct and a Compliance Program which includes all reasonable steps necessary to assure that the no-bribery commitment given in this statement will be complied with by its managers and employees, as well as by all third parties working with this company on the YYY Project, including agents, consultants, consortium partners, subcontractors and suppliers. Copies of our No-Bribery Policy/Code of Conduct and Compliance Program are attached.

[In cases where Consultants participate in the selection process which do not yet have a general no-bribery policy/Code of Conduct: "This Consultant has developed, for the purposes of this proposal, a Compliance Program - copy attached



- which includes all reasonable steps necessary to assure that the no-bribery commitment given in this statement will be complied with by its managers and employees, as well as by all third parties working with this Consultant on the YYY Project, including agents, consultants, consortium partners, subcontractors and suppliers.”]

[In cases where a government chooses not to require the existence of a no-bribery policy/Code of Conduct: "This Consultant will make the necessary arrangements so that this no-bribery commitment will be complied with by all its managers and employees as well as by all third parties working with this Consultant on this project, including agents, consultants, consortium partners and subcontractors.”]

This commitment is submitted in the name and on behalf of this Consultant's Chief Executive Officer.

This Consultant irrevocably agrees with GOX to submit any disputes relating to these arrangements to binding arbitration, under the Rules of Arbitration of the International Chamber of Commerce in force at the date of the request for arbitration.“

[Alternative: This Consultant irrevocably agrees with GOX to submit any disputes relating to these arrangements to binding arbitration, under the rules of arbitration presently existing in XYZ.]

Note: In the event of an arbitration there are a number of matters which need to be agreed by the parties. The parties should consider including the following clause and reaching agreement on the matters indicated in square brackets: „ [The tribunal shall consist of [one/three] arbitrator[s]. The place of the arbitration shall be [town/city]. The language of the arbitration shall be [English]. Any disputes relating to these arrangements shall be settled in accordance with the laws of [country]].“

3. (a) If a bidding company has a subsidiary in XYZ, the no-bribery commitment must extend to that subsidiary and its managers and employees as well. If the tender is submitted by the subsidiary in XYZ, the no-bribery commitment needs to extend also to the parent company and its managers and employees.

(b) Bidders will also be required to submit similar no-bribery commitments from their subcontractors and consortium partners. The bidder may however cover the subcontractors and consortium partners in its own statement, provided the bidder assumes full responsibility.

1. (a) Payments to agents and other third parties shall be limited to appropriate compensation for legitimate services. (b) Each bidder will make full disclosure in the bid documentation of the beneficiaries and amounts of all payments made, or intended to be made, to agents or other third parties (including political parties or electoral candidates) relating to the bid and, if successful, the implementation of the contract. (c) The disclosure of all such payments will be made in the tender documentation. [Alternative: The disclosure will be made upon request by GOX, in particular when some suspicion of wrongdoing emerges.] (d) The successful bidder will also make full disclosure [quarterly or semi-annually] of all payments to agents and other third parties during the execution of the contract. [Alternative: The disclosure will be made upon request by GOX, in particular when some suspicion of wrongdoing emerges.] (e) Within [one year] of the completion of the performance of the contract, the successful bidder will formally certify that no bribes or other illicit commissions have been paid in order to obtain or retain this contract. The final accounting shall include brief details of the goods and services provided that are sufficient to establish the legitimacy of the payments made. (f) Statements required according to subparagraphs (b), (d)

and (e) of this paragraph will have to be certified by an appropriate senior corporate officer of the bidder.

5. In XYZ, all forms of corruption are illegal, and the Government will continue to prosecute offenders.

6. The IP however focuses on bribery in order to obtain or retain the contract or other improper advantage, including collusion with others in order to limit competition for this contract. This includes any payments or other favors offered or granted in order to (i) win a contract award, (ii) get a contract change order (adjusting the price, the specifications, the time frame for implementation or any other important contract components) approved by GOX, (iii) get sub-standard or sub-specification performance approved by a public official or the supervising consultant or his staff, (iv) circumvent tax, duty, license or any other legal obligations that should be met, or (v) induce an official to breach his/her official duties in any other way. It also includes the demand for, or acceptance of, any payment or other favor by a consultant in exchange for (i) designing a project or parts thereof in a manner that it might offer undue advantages to one or several bidders, (ii) giving undue advantage to any of the bidders in the evaluation and selection of bidders for a contract award, or (iii) refraining from properly monitoring project implementation, reporting violations of contract specifications or other forms of non-compliance, or holding suppliers and contractors fully to their legal obligations.

7. If a bidder or consultant fails to comply with its no-bribery commitment, any or all of the following sanctions will apply:

- (i) denial or cancellation of the contract;
- (ii) liability for damages to GOX, in the amount of 8 (eight) percent of the contract value, unless GOX can demonstrate and prove a higher damage, or the bidder can demonstrate and prove a lesser damage;
- (iii) liability for damages to any of the competing bidders, in the amount of 1 (one) percent of the contract value, unless either of the parties can demonstrate and prove a higher or lesser damage;
- (iv) forfeiture of the bid and/or performance security; and
- (v) debarment by GOX from bidding or consideration for further public contracts for such period as the GOX may deem appropriate.

8. The GOX hereby confirms (i) that none of its officials will demand or accept any bribe, gift, favor, or other advantage for himself or any other person, organization or third party, directly or through a friend, relative, or other third party, in connection with this contract, (ii) that it will make publicly available all appropriate technical, judicial and administrative information relating to the contract, (iii) that none of its officials will disclose otherwise confidential information to any outsider who may use this information for an undue advantage in the procurement process for this project, (iv) that none of its officials will commit any other acts of Conflict of Interest, and (v) that its officials will be reminded that they have an obligation to report to the appropriate government office any attempted or completed bribes or other violations enumerated in this paragraph.

9. In case of violation, by any GOX official, of any of the undertakings submitted under paragraph 8 above, appropriate sanctions will be pursued against the official.

10. All disputes between GOX and the bidder and/or consultant relating to these arrangements shall be finally resolved under the Rules of Arbitration of the



International Chamber of Commerce [Alternative: ...under the rules of arbitration of XYZ....] in force at the date of the request for arbitration.

Note: In the event of an arbitration there are a number of matters which need to be agreed by the parties. The parties should consider including the following clause and reaching agreement on the matters indicated in square brackets: [The tribunal shall consist of [one/three] arbitrator[s]. The place of the arbitration shall be [town/city]. The language of the arbitration shall be [English]. Any disputes relating to these arrangements shall be settled in accordance with the laws of [country]].

11. In cases where GOX debars an offender from GOX business because of violation of the no-bribery commitment or other corrupt practices, the IFI/external donor providing financing will also consider debarring that offender from eligibility for contracts financed by it globally.

12. GOX has made special arrangements for adequate oversight and monitoring of the procurement process and the execution of the contract.

In this regard, GOX has provided for public hearings on the procurement process [public hearings may be truly “public”, giving the entire population affected by a project the opportunity to raise questions about project concept or design etc, or “limited public”, meaning the bidders, considering that the bidders usually are the best equipped to see any biases or potential advantages/disadvantages for individual bidders in the design and specifications for the procurement process] and for access by Civil Society to meetings of the [Tender Board] and to all documents relating to the evaluation of the competitive tenders, the award decision process and the execution of the project.

13. GOX has also set up a special office in the [Office of the President] for the investigation and handling of any reports of extortion or bribery in public procurement.

14. The Government will publicly disclose the award decision including the major elements of the evaluation and the reasons for the selection of the successful bidder.

15. Bids which do not conform to the requirements of these procedures will not be considered.

D. TI Advice regarding Mandatory or Optional Character of IP Components

41. The Model IP that is provided in this document contains alternative formulations for various issues depending on the particular circumstances of a case. However, the participants of the Bogota Integrity Pact Workshop (June 2000) agreed that certain components should be mandatory “core elements”, while other elements might be “highly desirable” or simply “optional”. In this Chapter, the conclusions of the Bogota Workshop (in a few places slightly modified) are set forth:



Necessary (Core) Elements of the Integrity Pact:

- (1) A formal Pact (agreement) between the Government/Public Authority and the bidders, NOT one or several unilateral statements:
 - Signing mandatory: *highly desirable element*
 - Signing voluntary: *optional element (but only a Pact signed by all bidders can be a full IP)*
- (2) Undertaking of bidders:
 - not to bribe: *core element*
 - not to collude: *core element*
 - to disclose names of agents/middlemen and all payments to them: *core element*
 - at time of bid submission:
 - disclosing names: *core element*
 - disclosing payments: *optional element*
 - upon request by government (at time of substantiated suspicion of violation): *optional element*
 - commitment “in the name and on behalf of the CEO”: *highly desirable, but with at least the signature “on behalf of the CEO of the national subsidiary of the company”*
- (3) Sanctions applicable to bidders: *core element*
 - loss or denial of contract: *highly desirable*
 - forfeiture of bid and performance bonds: *highly desirable*
 - liquidated damages: *highly desirable*
 - blacklisting: *highly desirable*
- (4) Arbitration (international or national): *core element*
- (5) Agents’ commissions not to exceed fair pay for legitimate services: *highly desirable*
- (6) Bidders have a Company Code of Conduct: *optional element*
- (7) No-Bribery Undertaking by the principal (also on behalf of its officials): *core element*
- (8) Sanctions applicable to the government officials: *core element*
- (9) Officials’ disclosure of assets: *highly desirable*
- (10) Increased transparency of procurement process
 - by placement of all procurement information on the internet: *highly desirable*
 - by holding public hearings on project: *highly desirable*
- (11) Involvement of TI National Chapter (or other NGO): *core element*
- (12) Monitoring of bidding process and execution (especially of change orders): *highly desirable (any of the following options)*
 - by IPSIG (Independent Public Sector Inspector General)
 - by suitable government office (with high degree of independence)



- by TI National Chapter (and its consultants)
- by other NGO

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PART C. COUNTRY EXPERIENCE

I. Most Complete or Ongoing IP Applications

36. The most relevant applications of the IP to date are in **Argentina** (Municipality of Moron), **Colombia**, **Italy** (municipalities of Milano and Genoa) and the City of Seoul, **Korea**, and **Pakistan**. We will describe the experience in those five countries before providing a wider description of IP experience elsewhere, including some country's activities related to preventing corruption in public contracting.

A. ARGENTINA

37. In Argentina, an IP was signed during 2000, between the **Municipality of Morón** and four bidders for a garbage collection service contracting process with an estimated contract award value of about US\$ 48 million during the first four years, with the option of extension. As in all cases in Argentina, a Public Hearing on the bidding document and the terms of the contract (with an attendance of more than 500 people) inspired massive public comments and suggestions (statements by more than 60 of those attending) and led to a significant rewriting of the documents. Ten days after the hearing Morón municipality published on their Internet website the final bidding documents together with an explanation of which of the observations and suggestions from the participants at the hearing they had accepted or denied, and why.
38. The IP was signed on a voluntary basis by all four pre-qualified bidders (one international, three local). It contains all the important features of the IP including a commitment by the bidders not to bribe or collude, to disclose all payments, to report any violations by during the bidding process and during contract execution. The IP required full transparency of the documents, and public disclosure of the award and the major elements of the evaluation and reasons for selecting the successful bidder. Heavy sanctions were to follow, comprising damages payable to the municipality in the amount of 10% of the contract value, and company blacklisting for 5 years. Conflict resolution was provided through national arbitration. The IP also contains corresponding obligations on the governor/mayor of Moron, on behalf of all the city officials, not to demand or accept any bribes and to prevent the extortion and acceptance of bribes by other officials, as well as sanctions against any officials violating their commitment. The IP provides for the involvement of Civil Society, through the participation of Poder Ciudadano, the TI National Chapter in Argentina in monitoring the bid evaluation, the award decision



process, and the implementation of the contract. The final award decision was made for an amount of US\$32 million.

39. Morón's IP model was based on the last IP used by Transparencia Colombia and included the main conclusions from the 1st International Workshop on Integrity Pacts in Bogotá, Colombia, June 22-24, 2000
40. Poder Ciudadano has developed extensive experience in monitoring transparency in public contracting through the use of public hearings and it is the emphasis of their processes. An example of this is the agreement which Poder Ciudadano signed with the Executive Director of the Yacretá Dam Project to provide for public hearings in all further contracts of the company¹.

B. COLOMBIA

41. TICOL, the TI National Chapter in Colombia, has been singularly effective in persuading senior officials and many other public figures of the benefits and advantages of a high degree of transparency in public procurement, and of matching Integrity Pacts with a strong monitoring role for Civil Society. TICOL has achieved, and keeps introducing the application of this procedure to many projects at the national, provincial and municipal level.
42. TICOL has produced a detailed report on its first-year experience, dated July 2000, which is reproduced in full length in **ANNEX 1.1** of the companion Part B, whose reading is advised, including lessons learned, main elements of their Pact and contextual framework.
43. TICOL has succeeded in applying the IP to a wide array of contracts for the procurement of goods and services, for concessions, for privatizations and for the selection of consultants. Also, some IPs involve international and national government agencies like the World Bank, the Interamerican Development Bank, UNDP or the German GTZ. By year 2001, TICOL has accompanied 59 public contracting processes. IPs have been subscribed on 25 of them, involving 189 national and 40 international companies. TICOL has withdrawn in some 12 of the total number of processes. In addition, during year 2002, two more IPs were signed, one in the PCS' (Personal Communication Services) concession process and another for Telecom's (Colombia) Biannual Contracting Plan. They also started an IP process for the National Social Security Institute (ISS) contracting processes of Medicines and Dialysis services.
44. TICOL's approach seeks to foster cultural change. While TICOL started with a "voluntary" form of IP, the requirement that all bidders sign the document and their experience has shown that in practice, once the majority of bidders agree with it, they ask it to be included on a mandatory basis in the bidding requirements.
48. The methodology developed by TICOL includes the following important steps:
 - identify the needed and available human and financial resources at the disposal of TICOL,
 - explore and confirm the unambiguous and effective political will to an IP,
 - construct a Proclamation of Ethical Commitment by the involved Public Officials,

¹ See the August 2000 National Chapter Bulletin (#70) for more information on this project.)



- insist on a full public discussion of the bid specifications for public contracts, by way of public hearings, special meetings with the specific interest sectors, the posting of all the specifications on the Internet or discussion of the specifications with all the bidders,
- establishing an effective give-and-take process between the bidders and the authority,
- TICOL working directly and closely with the bidders,
- the appointment of an effective "arbiter" (somebody with highest respectability and credibility) who will deal with complaints and has the power to impose sanctions,
- signing of the IP by the highest (departmental) official and the highest executive of the bidder,
- close observation and monitoring, by TICOL, of the evaluation and award process and
- a steady issuance of public statements reporting on the views of participating bidders and on the progress of the process itself.

In the following paragraphs specific examples of Integrity Pacts in Colombia are described:

49. For the **Telecommunications project (see ANNEX 1.2)**, about 18 senior officials, including the Vice-President of Colombia and the Minister of Communications, on August 18, 1999 signed a "Pacto de Integridad" in which they commit inter alia:
- to comply with all the relevant laws
 - not to solicit or accept any bribes, and
 - to report any offers of bribes.
51. For this same project, the bidders signed a "Pacto de Integridad" according to which they made the following commitments:
- to comply strictly with all the relevant procurement laws of Colombia, in letter and spirit
 - not to offer or grant any bribes, rewards or bonuses with the purpose of influencing the bid related decisions
 - to notify the President's Office immediately of any offer or demand for payments, favors, gifts etc that may be construed as having been made with the intention of inducing a decision
 - to give special care in their tender offer to cover all actual costs and, for the successful bidder, to avoid requests for budget increases and rate adjustments
 - to sign an ethical behavior commitment with their joint venture partners, subcontractors and vendors that guarantee the honesty of the actions of all those involved in the execution of the contract
 - to inform TI-COL of all payments made to third parties for two years as from the contract date and
 - not to offer employment or consultancies to any of the public servants involved in the bidding process.

The bidders also submit to debarment for five years if there is evidence of a violation of their commitments.



52. TICOL was entrusted with the follow-up of the commitments and the dispute resolution, and was also asked to act as a spokesperson for the IP before national and international public opinion.
53. The bidders were advised of the requirement of a Pact before bid opening, and they worked out, among themselves, a text with which they all could live. The Integrity Pact was also signed as witness by the Executive Director of TICOL.
54. For the telecommunications project, there is also a “**Declaration by Colombian Citizens Responsible for the Design and Execution of the Compartel Program**”, signed inter alia by the members of TICOL, in which the highest standards of acting as monitors under the program are pledged. A copy of this Declaration can be found as **ANNEX 1.3**.
55. Similar documents have been issued for the other projects.. TICOL has been deeply involved in developing this set of documents, but one of the reasons for its success may be that it has cooperated very closely with universities, professional organizations, think tanks and other members of Civil Society.
56. In fact, the privatization of ISAGEN, the largest power generation company of the country, is being readied for the IP approach at this time. The unilateral declarations to be signed both by the government officials and the members of the consultant firm, that is preparing the project, have been drafted, as well as the IP to be delivered to the bidders.
57. TICOL has also announced that it will extend its monitoring to the entire implementation period of projects, concessions etc – to make sure that initially “correct” agreements are not subsequently adjusted and eroded once the limelight of Civil Society has shifted elsewhere.
58. Recently TICOL has started to cooperate in establishing **Integrity Circles (“Circuitos de Integridad”)** among members of a particular industrial group such as manufacturers in a particular sector, exporters etc. What is being worked out are agreements among the members of the group that they will refrain from paying facilitation money, report on violations by members of the group as well as on extortion demands. Each Circle will have access to a “complaint institution” (such as the National Tax And Duty Authority) which will make sure that irregularities will be handled promptly through a sort of tribunal.

C. ITALY

59. In **ITALY**, the TI National Chapter there (TI-IT) approached the mayors and administrations of seven large and midsized municipalities and convinced them of the advantages of the Integrity Pact. The cities of Milano and Genoa as well as of Varese and Bergamo have accordingly introduced a version of the Integrity Pact. reproduced in **ANNEX 2**. This Integrity pact is a mandatory, integral part of every tender offer; without which the tender will not be considered.
60. In Italy, the Integrity Pact is a reciprocal or contractual formal commitment of the Municipality and of all the bidders in a tender process not to offer, accept



or require any bribe in order to obtain the contract or to distort its correct execution. It binds the “personnel, collaborators and consultants of the municipality, employed at any level in the implementation of (the) tender and in checking the execution of the subsequent contract awarded” to the objectives of the IP and refers to the sanctions “foreseen against them in case of non-fulfillment” of the IP.

61. The municipality also promises to make public the most significant data concerning the tender, the list of participants and the relevant prices quoted, the list of the bids rejected with the reasons of rejection and the specific reasons for assigning the contract to the winner, with the certification as to the relevant evaluation criteria set out in the tender documents.
62. The bidder also commits to report to the municipality any attempt of manipulation, irregularity or distortion, during the tender process or during the contract execution, by anyone who has an interest or who is in charge in the tender or by anyone who may influence the decisions concerning the tender. The bidder also declares that he has not made any collusive agreement with other bidders in order to limit the competition by illegal means.
63. The bidder also promises to disclose, at the request of the municipality, any and all payments of any kind with regard to the contract, including payments in favor of intermediaries or consultants; and undertakes that payments to intermediaries and consultants shall not exceed a “fair amount due for legitimate services”.
64. The bidder, in the IP, takes note and accepts that in case of non-fulfillment of the anti-corruption commitments under the IP, a number of sanctions can be applied:
 - denial or cancellation of the contract
 - confiscation of the bid bond or the contract performance bond
 - liability for damage to the municipality (liquidated damages) in the amount of 8% of the contract value (unless higher or lower damage can be proven)
 - liability for damages to any of the competing bidders (liquidated damages) in the amount of 1% of contract value (unless higher or lower damage can be proven)
 - Exclusion of the bidder from tenders of the municipality for an appropriate number of years.
65. The IP and the relevant applicable sanctions remain effective until the complete execution of the contract and the expiration date of the performance bond.
66. Any disputes to the IP shall “be settled according to the arbitration rules of the Chamber of Commerce of (the municipality)”.
67. In each Mayor’s Office, a Special Office is created with the function of examining any discovered case of corruption and/or extortion and of supplying necessary information concerning the IP. The direct telephone number of that office is given.
68. In addition, the “General Terms and Conditions of the Tender Dossier” have been amplified by adding the following: That the IP is required in order to



avoid the opportunities of illegal activities and distortions in tenders..., that the IP aims at assuring fair competition and equal opportunity to all as well as fair and transparent execution of the contract, that the municipality will verify with utmost responsiveness the compliance with the IP by bidders as well as by its own personnel, collaborators and consultants, and that a Special Office for the implementation of the IP has been created in the Mayor's Office.

69. In October 2000 the Milano City Board and Council unanimously approved the use of the IP; soon thereafter six other municipalities in Italy expressed their interest in applying the IP. Furthermore, ASSIMPREDIL, the largest association of companies working on public works in the Milan province welcomed the introduction of the IP and its transparent procedures and called this reform "overdue".
70. The City Manager and the Vice-Mayor of Milan organized a three day forum for all associations and companies of the private sector to explain the aim of the IP and its implementation in the municipal tenders, procurements, and supplies, which will be promoted over the internet. Results will also be posted.
71. This IP (Italy) thus includes all the relevant commitments and clauses of the IP, except that it does not provide for any monitoring role by the TI National Chapter. Nevertheless, TI has remained active in the process despite this gap in the IP. After the original round of implementing the integrity system in the Municipality of Milan, TI-Italy checked the IPs behind the first proposed tenders. Several IPs were distorted, because the government's anti-corruption obligations had been left out. The NC complained to the Mayor and received positive feedback. Tenders were re-issued with the original TI-IP intact. Consequently, Milan may be considered as the first European municipality, which successfully integrated the integrity system into its operations. The latest tenders in Milan have consistently utilized the TI-IP. As a further positive sign, the Mayor of Milan was re-elected with a strong majority, apparently reflecting his integrity drive.
72. During 2002, the Italian press pointed to the importance of the Integrity Pacts while informing on the exclusion of 45 participants of 140 tenders for alleged violation of the clause that forbids collusion among bidders. The suspension of the decision was requested and the Administrative Judge rejected the request. As of July 2002, the final decision (at appeal level) was awaited and the case was sent to the Antitrust Authority.
73. The Municipality of Bergamo decided to join Milan in applying the Integrity Pact. This step has received high exposure in the local press. In the past, TI-Italy faced resistance from the legal office of the Municipality on the ground that the IP is not necessary. TI-Italy and local administrative lawyers prepared a legal study to counter the office's claims. Furthermore, the business community remains interested in the IP approach, but this involvement requires a lot of time and stretches TI's resources.
74. In Varese on the other hand, the Mayor has accepted our proposals, but the middle level of bureaucracy has slowed implementation down. The Mayor has requested TI-Italy to hold sessions on ethics and government responsibility towards the public. Attendance will be mandatory for all government clerks and officials.



D. KOREA

75. In the City of Seoul, **KOREA**, the **Seoul Metropolitan Government (SMG)** in early 2000 acknowledged that corrupt practices in the public sector lead directly to faulty construction and waste of the national budget. It also found that many businesses in Korea realize the fact that the chronically bribery-induced, high-cost business structures should be purged, but that they found it difficult to put such ideals into practice against the backdrop of a generalized bribery culture and fierce competition for business. SMG also noted the “international trend” of adopting anti-corruption measures and to ensure transparency in the business sector, and decided it would adopt the TI Integrity Pact in several stages “in order to create an environment in which contractual transparency and the reduction of corrupt practices would be assured, hand in hand with the imposition of severe sanctions for corrupt practices”.
76. The IP(Seoul) is being implemented through a public-private partnership system between SMG and NGOs, in particular with “People’s Solidarity for Participatory Democracy” (PSPD), the largest and most active civil organization in Korea. The Mayor of Seoul and many senior executives of the city were involved in the preparations, and the Mayor himself, jointly with the Secretary General of PSPD, launched the IP at a press conference on July 10, 2000.
77. The IP was applied in 2000 to contracts offered by City Hall and three subordinate headquarters. A total of 62 contracts worth about \$ 105 million were involved. Beginning in 2001, the IP was being applied also by Seoul's 21 ward offices and City Hall-affiliated public corporations. Since then, the application of the IP in Korea has extended immensely. As of August 2002, it is being applied to all contracts of the SMG in the fields of construction, special services and City Hall's purchase of commodities as well as the contracts of the affiliated public corporations and the 25 autonomous District Offices. From there it has also disseminated to other local governments, educational offices and public corporations, including the Public Procurement Service (PPS, office of the Korean Government) and starting in January 2002, the contracts of the Ministry of Defense.²
78. Within these numerous applications there are different “versions” of the IP. Some of them fall farther from the IP concept as they don't provide for a process-monitoring scheme or assume the form of unilateral oaths.
79. The “**Integrity Pact of Seoul, July 2000**” is reprinted in **ANNEX 3**. It is a very close adaptation of the TI-IP. Anyone wishing additional information on this IP is also directed to the Website of the SMG www.metro.seoul.kr.
80. The IP (Seoul) is a contract between the City and the bidders for a contract subject to tender. The IP is explained to the bidders in a “Letter of Special Note for Bidding”. The commitment not to bribe etc. under the IP in fact is also made individually under oath administered by a city official. The IP is mandatory. Information on the bidding is made very transparent by publicizing

² For more detail see CHOI, Dr. Byoung-Rok “Improving the Integrity pact in Korea”. August 12, 2002.



it in real time on the Internet (in the OPEN System – Online Procedures Enhancement for Civil Applications).

81. The Oath to fulfill the IP states that the bidder shall not
 - engage in bid-rigging, illegal price-fixing or any other fraudulent behavior by bestowing favors on any particular person,
 - offer any bribe, gifts or entertainment in the process of bidding, concluding and executing the contract to a concerned SMG official
 - in the case of any findings of a violation of the IP, accept the restrictions to the qualification for bidding, termination of contract or other punitive measures
 - cooperate with the Ombudsman in monitoring activities
 - Prohibit, preferably in a Company Code of Conduct, any form of bribery and bid rigging and announce that anyone reporting inside corruption shall not be subject to any retaliation.
82. This oath is accompanied by an oath of a senior SMG official to the effect that no officials shall demand or accept any bribe, gift, entertainment or other undue benefits during the bidding process or the execution phase.
83. The IP is also valid for the execution of the contract by the winning bidder. In case of violation, severe sanctions apply, including blacklisting for up to two years and cancellation of the contract. As of August 2002, only one case of blacklisting has been reported to the Ministry of Finance's information system.
84. The IP specifically states that no punitive actions may be taken against anyone who reports inside corruption. Indeed, rewards (of up to 10% of any amount retrieved or saved by the information) are offered to those reporting inside corruption.
85. Among the bidders having and submitting a Company Code of Conduct, the bidder with an outstanding compliance program will be given positive points to be considered in the evaluation of qualification. SMG has listed what it considers the major items that a Company Code of Conduct should cover.
86. For the monitoring and full implementation of the IP, the SMG has introduced an IP Ombudsman System with five Ombudsmen, it employs the well-proven system of public hearings at three critical stages of the process for sizeable construction, supply or consultants contracts (project planning, selection of contractor/supplier/consultant and inspection results on the execution of the contract), and it has introduced an IP Organizational Committee.
87. For all sizeable contracts, Ombudsmen review, inspect and monitor all documents until the completion of the works, they organize the public hearings and they demand corrective measures where needed. As qualification, the Ombudsmen must be persons with respectability, integrity and expertise; candidates are nominated by Civil Society (NGOs). In 2001, PSPD nominated three of them. And two others were nominated by TI-Korea. The term of each Ombudsman is 2 years.
88. Members of the IP Operational Committee are a Vice Mayor, the Director-General of the Audit and Inspection Bureau, the Director of Audit and Inspection and Ombudsmen. When necessary, the Operational Committee is expanded by Director-Generals of concerned Bureaus and civilian experts. Among the tasks of the Operational Committee are the choice of project for



monitoring the IP, reporting, hearing and inspection of IP projects, and education and public relations on the IP.

89. The OPEN System has received the Innovative Management Award of the President of Korea and was presented as one of “best practices” at the OECD High Level Governance Outreach Seminar in Paris. Offices of the Central Government of Korea and several local authorities are presently preparing to introduce the IP system as well.
90. TI-Korea held a seminar on IP in December 2000. And TI-Korea continues to co-operate with the PSPD. A public exhibition in the Center of Seoul was designed to maintain interest in TI in general and in the Integrity Pacts. On May 14, 2001, a delegation from the PSPD visited TI-Berlin to discuss the Integrity Pact and its application in Seoul so far. Although an upcoming conference will determine its utilization in the future, the national government has indicated that the IP might also be used by the national procurement and distribution agency.
91. The IP was also implemented by other cities, provinces, municipalities and public companies, including the Korea Agricultural & Rural Infrastructure Corporation. In March 2001, Public Procurement Service (PPS) of the Korean Government accepted the IP. With e-bid system (Government Bidding Integrated Management System), the IP is a sign of reform in the public procurement administration area. But some of them lack independent Ombudsmen or other monitoring systems.

E. MEXICO

92. In **Mexico** Transparencia Mexicana (TI-M) has signed up to now various Integrity Pacts. The first was done in cooperation with the Government of Mexico City concerning the procurement of the insurance service of Mexico City. The IP was done in the framework of Compranet, which means that a number of integrity clauses were incorporated in the electronic bidding documents. Those declarations were then matched with a corresponding declaration of the public authority. However, the process was ultimately cancelled as the prices offered in the bidding exceeded by far the amount the government had estimated. When the process was cancelled, TI-M withdrew officially. In view of time pressure the contract was then awarded directly, without competition. We are awaiting a copy of the tender clauses. In the other cases, TI-M participated in two IPs at the federal level, based on an agreement with the federal Commission for Electricity, the Minister for Energy, and the Auditor General's Office. The two IPs concern the procurement of insurance service for the Federal Commission (70 Million US\$) and of an Instrument of Public Investment (approx. 500 Mill. US\$). We are awaiting details and documents.

F. PAKISTAN

93. In **Pakistan** (see **Annex 12**), the Management of the Karachi Water & Sewage Board (KW&SB) approved TI-Pakistan Karachi Chapter's proposal to adopt a comprehensive Integrity Pact covering all consulting, construction, and goods and materials for all procurement within the body. The process was undertaken after several meetings and IP workshops organized by TI-



Pakistan for senior members of the board. Citizen watchdogs, including a representative from TI-Pakistan, were placed on the KW&SB Coordinating Committee to enhance transparency. Furthermore, a six or seven member Monitoring Committee, which also includes a representative from TI-Pakistan, has been approved to supervise the implementation of the IP, and a special office of the Managing Director has been created to handle investigations of any reports of extortion or bribery in public procurement. An evaluation committee will evaluate tenders/bids in accordance with predetermined evaluation criteria issued with tender documents to all firms. Finally, a web site, provided free of charge by TI-PAK and endorsed by KW&SB, will allow public access to all important activities and decisions (www.kwsb.gov.pk). The Karachi Electric Supply Corporation KESC has also been approached with the idea of introducing the IP in its tenders.³

94. Under this context the KW&SB applied the IP concept for the contracting process for consultants for its K-II Greater Karachi Water Supply Scheme. The process involved funding provided by the Federal Government of Pakistan via a Presidential Order. The main feature of this process is that the introduction of the IP and along with it the necessity to abide to a transparent process, non discretionary decisions and competitive award process, enabled the participants to amend the standard awarding procedure. The method used seeks to combine technical ability and competitive costs as an award method. It consists of a two step approach: a first step where the technical competence requirement is prequalified and a second step where the least cost method is applied to award the contract among the technically pre-qualified firms. The pre-qualification stage was carried out by an Evaluation Committee comprised of members from the KW&SB including technical representatives from other government Departments. They studied the technical proposal sent by firms who were registered at the Pakistan's Engineering Council, based on criteria that aimed at ruling out all possible discretionary decisions, provided for an evaluation of individual firm's technical capacity, pre-announced marking system and "passing" grade and under a well defined scope of work. The financial proposal was to be sent on a separate envelope. Among those firms pre-qualified, a Steering Committee composed of senior members of the KW&SB and the Sindh Government was to review the results of the Evaluation Committee and Award the Contract. The application of this process allowed the KW&SB to reduce the estimated contracting costs significantly and was monitored by a Coordination Committee that was appointed, by recommendation of TI-Pakistan, by KW&SB and included members of the Administrative, Financial and Technical department and a member of TI-Pakistan. The responsibility of this committee was to set up basic guidelines, develop the evaluation criteria and supervise the implementation of the implementation of the Integrity Pact.

³ See **Annex O Attachments 1-7** for the following: an invitation to firms for the KW&SB contract, the integrity pact, a memorandum of understanding, a public notice to be published by the agency concerned while implementing the IP, a sample of a public bill board to be placed at the construction site, a commitment to be signed by officers and employees of KW&SB, and a code of conduct. A copy of the proposed KW&SB's Freedom of Information Policy is also available at the TI-Pakistan office.

95. TI-PAK is also developing two initiatives that use elements of the Integrity Pact one with the Gulshan Town and another one with the Karachi Traffic Police Department.

G. ECUADOR

96. In June of 1993 in ECUADOR (see ANNEX 5) the Government announced its intention to rid all government procurement of possible bribes and corruption and declared that henceforth all major projects would be subject to a “corporate commitment for transparency”, to support the government’s anticorruption campaign. The commitment entailed to refrain from offering or giving bribes, to disclose all payments to agents or others in connection with the contract, and to instruct all personnel involved to abide by the commitment.
97. This “corporate commitment” was submitted by all bidders for a US\$ 160 million Refinery Rehabilitation Project. The selection process went forward without a hitch, and without any suspicion of bribes having been paid, and at a lower price than had been anticipated. Unfortunately, a new attempt to apply this instrument for a second project (a US\$ 600 million Oil Pipeline Project) was hindered because political developments in the country led to a government change and the project was dropped. The local chapter of TI “Transparencia Ecuador”, then in formation, was involved in this process.
98. In 2002, the Latin American Corporation for Development (CLD), current chapter of TI in Ecuador, signed a Cooperative agreement with the National Telecommunications Council (CONATEL) and the National Secretariat of Telecommunications (NST), to implement Integrity Pacts in telecommunications contracts. Two successful experiences were implemented during the year 2002 regarding the auction for use of telecommunications bands and sub-bands, related with the provision of specific services of Wireless Local Loop (WLL) and Advanced Mobile Services (PCS or SMA). For that purpose, CLD had the cooperation of the Partnership for Transparency Fund.
99. The above mentioned Cooperative Agreement, included three instruments that were implemented during the process:
- i. A “**Code of Conduct**” that was signed by all public officials and employees involved in the bidding process, where they pledged to follow specific procedures on information handling and communications with bidding companies. Also they pledged not to accept to be hired by the company awarded the contract for a period of one year after it was signed;
 - ii. The “**Guidelines for Transparency in the Auction Procedure**”, that outlined the process that was followed and that had been agreed upon by CLD and CONATEL, and that included, among others issues: access to information, careful management of privileged and confidential information and the elimination of discretionary selection criteria. The majority of the suggestions made by CLD were accepted by CONATEL and introduced into the document; and
 - iii. The “**Integrity Pacts**”, to be signed by all bidders.



100. **WLL Auction Process:** since CLD joined this process when it had already started, the IP had to be introduced on a voluntary basis, and it was agreed that it would be implemented only if all bidders accepted it, which, in fact, they did.
101. Seven companies were pre-qualified. Only two of them presented financial offers, which was done during a publicly held session, where more than 60 journalist witnessed the entire process of opening the envelopes and announcing the winners. Therefore only two of the three band blocks available were awarded, but for a price that was above the one estimated for all three blocks, that is US\$ 5.2 million dollars. Furthermore, CLD was pleased to report that PYRAMID RESEARCH in its bulletin "Perspective" issued of July 30, 2002, in the article entitled "Ecuador: WLL Auction Kicks Off Market" concluded that: "The WLL auction is the first since the Ecuadorian market opened in January 2002. Although the process dragged on longer than initially expected – the bidding rules went out for sale on January 28th – the result can be considered an overall victory for regulator CONATEL. From the start, CONATEL was committed to ensuring that the process was transparent and devoid of any irregularities that could compromise its integrity. In fact, the auction took place under the supervision of Transparency International. CONATEL's efforts should pay off in the future as well when the regulator embarks on the process of auctioning other licenses. The relative seamlessness of this first auction should certainly instill confidence in any company considering bidding in the country".
102. **PCS or SMA Auction Process:** The IP was introduced on the early stages of the process, and was mandatory since was part of the auction documents. A "Transparency Commitment" and the "Procedure for Transparent Bids" were also developed.
103. For this auction, three companies were technically pre-qualified, but only one presented a financial offer. As of January 2003, the contract has been awarded in spite of various obstacles, including a law suit filled by one of the companies that provides cellular phone communications. CONCEL/PORTA argued a constitutional rights violation in the process, contending that the amount of the minimum bid for the auction disregarded the right to equal treatment. That is, in their opinion, that the new operator should paid at least the same amount that they paid when awarded a similar contract ten years ago. Therefore, they solicited The Court to suspend the auction process pending their judicial decision. In fact, The Court granted the suspension which put the process on halt for two months. Finally, the Constitutional Tribunal disregarded the suit and ruled in favor of CONATEL. The contract is to be signed during the month of January and the amount will be around US\$ 35 million dollars.
104. CLD prepared a thorough report regarding both processes and in doing so developed a model to prepare such reports, that could be of interest to other chapters. All the documentation developed by CLD for the process, as well as, the bidding documents, official communications, contracts signed and news paper clips have been posted in the Internet at www.licitenet.com/contenido/pi.jsp or can be obtained sending a request to cld@cld.org.ec

II. Past Limited IP Applications, and other activities regarding Public Contracting

105. Past applications of limited aspects of the IP took place in, in **Panama** (1996/97) and in Mendoza Province, **Argentina** (1997/98). Other on going activities related with public procurement wirth while noting are also here included for Argentina, **Colombia** and **Nepal**.

A. PANAMA

106. In **PANAMA** (see **ANNEXES 6.1 and 6.2**), the government in 1996 invited the TI-National Chapter, in its capacity as a member of Civil Society, to provide oversight function for the privatization of 49% of the shares of the Panamanian telephone company. Even though this invitation arrived after the crucial phases of design, preparation of specifications and pre-qualification of bidders, and it thus was too late for introduction of the IP concept, TI-Panama accepted it on condition that it would have access to all relevant documentation, that it would be invited to all INTEL Board of Directors meetings, and that it could publish weekly reports on its activities through the press. These conditions were acceptable to the government. TI-Panama brought in an international telecommunications expert who offered specific recommendations for changing the bidding documents, which the government accepted. The result: All stakeholders agree that the privatization was accomplished in a fair and transparent environment. No claims of corruption were made, and even the losing company stated its contentment with the process. The sale brought in an amount 30% higher than the original estimate.
107. TI-Panama was also called in by government to act as observers in the privatization of the electric company. When TI-Panama replied that, rather than as observers, they would like to come in and apply the IP concept, IFC – which acted as advisor to government – objected on the ground, that use of the IP would probably scare away potential bidders. The government did not press IFC.
108. Since 1998 the IP has been considered in two cases:
- the public selection of the companies that will invest and manage the social security money of civil servants, and
 - the assignment of radio and TV frequencies.
- TI-Panama insisted on the utilization of the full IP, and on that ground the efforts came to a stop.

H. ARGENTINA

109. In **Mendoza Province, ARGENTINA**, the Provincial Governor decided in 1997 to amend the procurement rules, initially for all purchases by the Information Services Department, to include an Integrity Agreement between the Government of the Province and companies interested in bidding for government contracts. Under this agreement, the government commits itself
- to provide for full transparency in its relationship with suppliers
 - to assure that all its employees will act by criteria of impartiality



- to assure that employees will not accept or demand any bribes
 - to train and guide employees toward this end
 - to introduce a Company Undertaking to be submitted by all those wishing to compete for Government business which requires promises
 - not to offer or pay any bribes to government officials
 - to inform the State Prosecutor of any violations
 - to disclose to the State Prosecutor all payments made by the company in connection with this contract
 - to inform the State Prosecutor of all its internal corruption prevention procedures like Codes of Conduct, ethics audits, control systems etc.
 - to introduce a requirement for bidders to deposit a bid bond in the amount of US\$ 20,000 which will be forfeited in case a violation occurs
 - to exclude violators from future contracts, directly or indirectly, with the Province of Mendoza, for a period of 5 years
 - to appoint the State Prosecutor as official in charge of overseeing the implementation of this policy.
110. In **Buenos Aires, ARGENTINA**, a limited Integrity Pact was negotiated for the selection of contractors to build a new subway line – “Linea H” – in Buenos Aires. The total cost of this investment project is estimated at about US\$ 1.200 million. One handicap of this case is that the IP proposals of Poder Ciudadano (the TI-NC) were made after a number of companies or consortia of companies had been pre-qualified, making it difficult to impose new restrictive rules on the selection process. The Government of the City of Buenos Aires (the City Government) had in fact at first argued that the IP needed to be based on a changed law but finally agreed to use the IP on Linea H as a pilot case, assuming voluntary consent by the bidders. It is quite remarkable what Poder Ciudadano actually achieved. Details are shown in **ANNEX 7.1**.
111. The City Government had suggested to the pre-qualified bidders that they sign – voluntarily – a pledge of integrity with the following major elements:
- scrupulous compliance with the legal and ethical principles which the government’s procurement rules are designed to protect, in particular free competition and equality
 - the government and the companies are fully responsible for all actions of their employees
 - in case of a violation, strict sanctions will be applied
 - blacklisting of violators for an appropriate period of time
 - openness and transparency of the bidding process
 - right of complaint for all bidders and citizens alike
 - access of the bidders to certain documents of the bidding process
 - right of City Government or bidders to submit any aspect of the process to audit by an independent expert to be selected by TI, and Government commitment to abide by the ruling.
112. Poder Ciudadano succeeded in arranging a unique series of Public Hearings, at which all important aspects of the project were aired and could be questioned by the public at large, and specific recommendations for changes could be made. This process clearly led to a maximum of transparency of the process. Poder Ciudadano prepared itself for its role at the Hearings and afterwards by training about 35 volunteers consisting of professors, students, business experts and retired persons.. Poder Ciudadano also held several

meetings with representatives of the bidders/consortia at which it discussed the requirements and the advantages of transparency and of the IP. All the companies apparently agreed to sign the IP. The experience with the Hearings is described in **ANNEX 7.2**.

113. In the event, the IP was not consummated because the process had proceeded too far. However, the Hearings produced outstanding positive results.
114. Poder Ciudadano was also called in by the **Municipality of Avellaneda in ARGENTINA** to monitor a public hearing to discuss the feasibility of the construction of a bridge financed by the World Bank. The City of Avellaneda did not have any experience with public hearings, and thus Poder Ciudadano in less than one month trained the staff of the City and then supervised the preparation and execution of the public hearing.
115. Poder Ciudadano usually brings in national and international experts to offer expert advice on specific aspects of the project process, including on technical aspects of the project.
116. Previous good experience in **ARGENTINA** with Public Hearings and access for Civil Society to scrutiny of public documents has led to a most interesting new case of transparency for procurement: Poder Ciudadano (TI Argentina) entered into an agreement with Entidad Binacional Yacyreta (EBY), the international organization in charge of building the Yacyreta Dam on the border between Argentina and Paraguay, under which EBY will lay open for public scrutiny all future public works contracts and establish general mechanisms for transparency, including public hearings. The Yacyreta Dam, originally budgetted at about US\$3 billion, has already cost more than \$10 billion and has become synonymous with corruption. The emphasis of the agreement will be on new contracts, not on identifying and pursuing past defects or violators.
117. The present status and experience in Mendoza Province are not fully known, but it appears that the IP process is not being practiced at the present time.
118. Poder Ciudadano, TI's National Chapter in Argentina, is starting to develop tools to introduce transparency to contract re-negotiation. The impact of the economic situation in Argentina has made this a central topic in public contracting. A first experience was conducted successfully during 2002 with the Moron Municipality⁴, on the renegotiation of a concession contract for the operation of the public line #634 that had been signed for 10 years and was due on 1999. Following an invitation from the Province's Intendent to participate, Poder Ciudadano suggested that the Universidad Tecnológica Nacional and the Universidad de Morón (both Universities) be involved in order to act as overseers of the re-negotiation process. They, along with the Morón municipality and the company, designed a process that included access to all relevant information for the overseers, opportunities for comments on the terms of the renegotiation to all involved and the presence of the overseers during the negotiation. The process brought openness and transparency to the process. The renegotiated contract included a higher contribution (ten times higher as before) on behalf of the contractor to road maintenance materials (pavement).

⁴ Where they had already a previous working experience implementing an Integrity Pact, see #37 above.



I. COLOMBIA

119. A Memorandum of Understanding was signed on April 2002 between TICOL, Ti's National Chapter in Colombia, and the Vice-Comptroller of the Republic of Colombia. The agreement allows for TICOL to gain access to information on the *System of Information for the Vigilance on State Contracting* (SICE, in Spanish). SICE provides for the disclosure of all relevant information about the prices of goods and services acquired by the state in carrying out its duties. The monitoring by Transparencia por Colombia seeks to:
120. Facilitate the dissemination, knowledge, understanding and training of citizens with regard to the SICE.
121. Support the formation of an organised, informed and active citizenry in the fight against corruption, and contribute to a culture of respect and collective protection of the public.

J. NEPAL

122. In **NEPAL**, the TI National Chapter there (TIN) has developed an "Integrity System" designed to ensure that all activities and decisions of public offices are transparent and that no bribes are paid. TIN has drafted a set of model documents which appear to be primarily unilateral commitments (not to bribe and not to accept/demand any bribe, in short). The only "contract" appears to be envisioned between TIN and various government agencies stipulating inter alia that (i) the agency will implement the "Integrity System", (ii) the agency will provide all relevant information to TIN as requested, (iii) the implementation will be monitored by joint teams. (iv) the agency will inform the public about these arrangements, (v) TIN will supply experts for certain aspects of the monitoring and (vi) the agency will continue the Integrity System even after the project in question has been completed (for study purposes). Among the model documents developed are the following:
123. a commitment of the officials and of the employees of the agency not to accept bribes, to set and respect specific payment dates for all contractual payments (late payment being a particular problem there), and to assure full transparency of the agency's activities;
124. a public notice, to be issued by the agency, concerning the quality of service, the prohibition of bribes, an invitation to complain if there is delay and/or illegal activities, and an expectation of full cooperation among all concerned parties;
125. "procurement procedures" (it is not clear who issues those, and what their binding quality is) stressing the need to establish "market prices", stating that no bribes must be paid and stipulating that a supplier submitting and signing a supply contract must commit not to bribe;
126. a public commitment from the agency to include in the Tender Notice (the invitation to tender) the points that (i) the bidder "does not have to make any kind of bribe payment" (we assume this means "must not make any bribe payment") and (ii) if proven that this commitment was violated, the security provided by the bidder would be seized, the firm would be blacklisted and ("other"?) agencies would be made aware of such violation;
127. a commitment by a bidder not to bribe if the bidder is awarded the contract, with the understanding that the contract is cancelled if a violation is proven, that in that case no compensation is paid and the security seized, and submission to legal prosecution; and



128. clauses regarding non-bribery to be included in “the agreement” (will clarify which) including a commitment of (i) officials and employees of the agency not to accept any bribe and (ii) of the successful bidder not to bribe, and accept cancellation of the contract, seizure of the security and submission to legal prosecution.
129. Very interestingly, the Integrity System provides for two instruments designed to enhance the transparency and integrity of the process:
130. the placement of a public billboard at the construction site listing not just the usual information but also the cost estimate, the sources of expenditure, the amount contracted, the date of commencement and of completion of the work, the name of the technical supervisor and of the Project Chief, and an invitation to the public to register any complaint “regarding the quality or any other aspect of the work” at a certain office;
131. an Integrity System Perception Survey among the public of the municipality, to be conducted at the start and completion of the work.
132. This Integrity System was in effect in the city of Bhaktapur and was being considered by other cities as well. Apparently, the impact of the IP (Bhaktapur) became so well known throughout Nepal that many other communities requested information, leading to a set of regional workshops in all five Regions of the country, each with more than 100 participants from the public and private sectors. Beyond the IP itself, TIN has approached the aid giving community and has asked for their commitment to introduce rules and regulations which will protect all development assistance from corruption erosion.
133. In terms of the normal demands on an Integrity Pact, it is not entirely clear yet which of the above commitments are contractual commitments, and which are unilateral statements. However, the models are interesting examples and are therefore reproduced in the **ANNEX 4**.
134. On July 2002 all local elected bodies were dissolved as their term expired and no elected succession has been to date provided. This caused a setback to the further implementation of the tool as appointed officials that substituted them seemed to have resisted the idea.

III. Other Potential Opportunities

135. In October 2000 the **UNDP Administrator**, Mark Malloch Brown (formerly of the World Bank), made a pledge to take the Global Compact to national levels through the UNDP country offices. It has been suggested to UNDP to make the IP one of the tools in promoting the Nine Principles of the Global Compact at national levels. This is being handled by Sirkka Korpola, Director for Business Partnerships in UNDP. UNDP will select 8-10 pilot countries for the Global Compact; this might facilitate getting UNDP support for the efforts of any TI National Chapter interested in pursuing the IP concept.
136. In **PARAGUAY**, the TI National Chapter is becoming involved in the monitoring of a varied number of contracting processes. They monitored the selection of 700 employees for the “Hospital de Clínicas” a state-owned hospital. Also, in cooperation with the ESSAP (spanish acronym for Sanitary



Service Company of Paraguay), TI-Paraguay monitors several contracting processes related to construction, procurement and services. This has been relevant in facilitating access to information and its dissemination and in identifying corruption risks within the process, However, the IP concept is not at this time being applied.

137. In **BENIN**, the government on 22 June 1999 issued a “Code d’Ethique et de Moralisation des Marches Publiques” (a “Code of Ethics” – see **ANNEX 8**) which, in the form of a decree, will be incorporated into existing legislation on public sector procurement. This Code requires both government officials involved in the administration of public procurement and bidders to submit formal commitments to abstain from corrupt practices during the bidding process and the implementation of the contract (see **Formulaire “A” and “B” of ANNEX 8**). This explicit renunciation of corrupt practices in public procurement will be compulsory for all cases of competitive tendering. The Code makes provision for appropriate sanctions in case of violation. The Code also provides for Civil Society ‘s monitoring role in the process, with the possibility to recruit qualified experts to independently evaluate the bidding process and the implementation of the contract.
138. TI-Bénin (with the support of several Resource Persons from TI-S) was actively involved in this initiative and played an important role in guiding the development process of the new code. The TI-IP clearly has provided much inspiration for the Code of Ethics.
139. In the summer of 2000 we were advised that the Kreditanstalt für Wiederaufbau (KfW), the German Government-arm for development assistance (and a corporate member of TI-Deutschland), was prepared to apply the IP Concept to the financing of a major bridge construction project (value DM 47 million) in Cotonou. Unfortunately it appears that that initiative has been allowed to languish.
140. In **NIGERIA**, TI-N and the government in September 1999 held a three-day workshop bringing together the public and private sectors to discuss new ethical rules in the public-private sector interchange. As a part of this workshop several international resource people spent two full days assisting a group of senior Nigerian officials (including several at Permanent Secretary level) develop a very detailed set of technical recommendations on how to change procurement procedures in Nigeria. Among the recommendations is the following:
 - *“TI-Integrity Pact should be introduced on a pilot basis to selected major investment projects, say*
 - *1 World Bank and one African Development Bank funded*
 - *2 Federal Government of Nigeria funded*
 - *2 sample state-funded contracts*
 - *1 licensing contract*
 - *1 privatization process.”*
141. The Report of this Public Sector Procurement Workshop was presented to President Obasanjo on September 16, who instructed his officials to submit it to the Council of Ministers. We can thus expect to have IP discussions in Nigeria in the near future as well.

142. Incidentally, the recommendations contained in the Report of the Workshop on the strengthening of procurement in general might be useful in other countries as well, especially since most of them can be implemented without changes in the law. For that reason, a copy of that Report is attached hereto as **ANNEX 10**.
143. Most recently the oil industry corporations active in Nigeria appear to be considering agreeing among themselves to refrain from all forms of bribery and to so advise the Government of Nigeria. The idea would be to use the IP concept as a model for such an agreement. Such an industry-wide agreement – if it materializes – would create an effective shield against extortion demands and set a most interesting precedent. TI Canada is assisting Nigeria and the oil industry in working out a realistic agreement.
144. The **Heads of State or Government of seven African countries (BENIN, ETHIOPIA, MALAWI, MALI, MOCAMBIQUE, TANZANIA and UGANDA)** in 1998 wrote to the World Bank and requested that future Bank procurement be subject to the IP. The Bank decided that the IP had a chance to succeed only if a number of minimum conditions regarding governance in the country were fulfilled. Unfortunately the Bank set the threshold rather high and the IP has not yet been introduced into any Bank-financed activities in those countries, despite the explicit wish of their governments.
145. In **PAPUA NEW GUINEA**, the TI National Chapter in early 1999 presented the IP Concept to the Government for adoption by the Privatization Council (TPC). Since a recent change in government (effected constitutionally) the new PM has established by legislation a Privatization Commission. TI PNG has again distributed the IP Concept to all the Commissioners and spoken with the minister responsible. The Minister has indicated an interest in talking to TI experts. We are following up.
146. TI PNG had also contracted with the City of Port Moresby Administration regarding the application of the IP to all major contracts to be entered into by the City, including in particular schools and road works. The City Administration however moved very quickly with some of the contracts, making it difficult for TI PNG to insist on, and ensure, a full application of the IP. For the moment the application of the IP is suspended, partly due to a lack of resources in TI PNG, but the process is open for renewal. For details see **ANNEX 9**.
147. **VIET NAM** has also joined the group of countries which consider the application of the IP. Projects jointly financed by the World Bank and by Danish Aid will be reviewed for their suitability for the IP. This process is at an early stage at the time of this writing.
148. In early August 2000 we were advised that the Government of the **State of Terengganu, MALAYSIA**, had decided and announced, right on the heels of establishing an Ombudsman Commission, that it would soon begin to apply the TI Integrity Pact to all public procurement by all local government institutions. We are awaiting details.
149. In **INDONESIA**, a local NGO called Forum Anti Korupsi (FAK) is setting up a Good Governance program based on the Integrity Pact concept in the central

government's Department of Resettlement and Regional Infrastructure, with strong support from the Minister and her top staff. We are awaiting details.

150. Previously, various investment projects under the Technology Ministry, with financing by the Asian Development Bank, had been considered for the IP but the efforts have dragged on without concrete results so far.
151. Very recently, new enquiries have come from the GoI suggesting that the IP will be considered in the context of the World Bank financed **West-Java-Jakarta Environmental Management** project, which is very decentralized and will eventually involve 13 district governments during its nine-year life. It is likely that the IP will be used in the first place in the selection of consultants.
152. The IP Concept has also been considered by the City Administration of **St. Petersburg, RUSSIA**, but to date there has been no follow-up by the government. However, In St. Petersburg we came across a (draft) unilateral "Declaration of Integrity in Business Conduct" (committing to transparency, sanctity of contracts, fair competition, repudiation of corrupt practices and legal settlement of disputes), which is submitted by companies to be listed in a Public Register (in the expectation that eventually only companies listed in this Register will be allowed to submit tenders for government business).
153. In late 2000, TI **LATVIA** joined other NCs and distributed the IP Status Report to relevant offices ion the country, starting a process of promoting the use of the concept.
154. In **Germany**, very early efforts (in 1995) by TI to introduce the IP into the process for building a new international airport near Berlin had enlisted interest among the contractors, but were rejected by the public owners as "an unnecessary complication". The process is still stalled, partly due to corruption and conflict of interest allegations.
155. However, at a recent conference jointly held by the State of Northrhine-Westfalia and TI Deutschland, the Interior Minister announced that the State would introduce the Integrity Pact for major investments. TI is now discussing the modalities with the State authorities.
156. The German Railways Corporation, a corporate member of TI Deutschland, has introduced an Integrity Clause, liquidated damages and blacklisting of corrupt firms in its General Purchase Rules and is in the process of negotiating "guidelines for contracting" with contractor associations. While this is not a true IP, it uses some of the essential elements of the IP to upgrade the contracting procedures of this major civil works investor.
157. In **Switzerland**, the Swiss National Chapter (TI-CH) has taken the Integrity Pact model and cast it in a somewhat different form, called a "Contractual Integrity Agreement-Integrity Clause-Anti-Corruption Clause" for routine inclusion in all "public and competitive private tenders, submissions and contracts for the procurement of goods and services, and as appropriate, for appointments to high level positions." This Integrity Clause is accompanied by "General Provisions." The two documents together (see **ANNEX 13**) contain all essential provisions of the Integrity Pact model. In addition they provide for the establishment and appointment of (i) an independent expert as a neutral observer and control organ of an individual procurement process,



and (ii) an Ombudsperson dealing with complaints or expressions of concern from inside or outside, and requires their cooperation with an independent auditor and with civil society organizations such as TI-CH. The TI Integrity Pact and the Integrity Clause have been discussed with among others, several sections of the Swiss Federal Finance and Justice Departments. So far there appears to be interest, but no actual application as of yet.

158. In the Spring of 1999 we became aware of the fact that the **WORLD COMMISSION ON DAMS** was beginning a thorough reassessment of the procedures for reviewing proposals for large dams (anywhere in the world), including institutional and governance issues. We offered immediately to contribute to this process on a broad scale, and in particular, to help them develop procurement rules applying the IP concept, and subsequently we became deeply involved in the deliberations of the WCD Report. We submitted a comprehensive set of proposals for strengthening procurement in general and also suggested applying the IP principles and concept.
159. The final report of the **WORLD COMMISSION ON DAMS** entitled "Dams and Development – A new Framework for Decision-Making", issued on 16 November 2000 in London, contains several recommendations for the application of the IP, especially in situations and countries where the general procurement laws are inadequate. The recommendations of the WCD are of course equally applicable to all major investment projects and this Report is likely to influence processes and regulations in many countries.
160. We have also received encouraging support for the IP concept from a number of major private **corporations** active in overseas operations. Leading companies in several major sectors have had interesting discussions with their competitor companies with a view to developing a unilateral (supplier) code of conduct with the IP elements included, so as to have an industry-wide umbrella and shield against extortion demands in a given market. This would be a fascinating application of the IP concept.
161. In early 2001 TI-UK convened a Conference on Corruption in the Official Arms Trade, consisting of participants from the Ministry of Foreign Affairs and Trade of the Government of Sweden, the UK government, NGOs, media, arms manufacturing companies, and the academic research community. One of the meeting's main objectives was to identify key steps to reducing corruption in the arms trade and, in so doing, to build on the Stockholm Colloquium 2000 preliminary recommendations, which have provided a reference point to the Swedish Government during its Presidency of the EU. Consequently, it was recommended that **CO-ARM** (the EU Common Foreign and Security Policy on Arms Exports) should consider promoting the Integrity Pact mechanism in relation to large-scale defense contracts. The Swedish Ministry of Foreign Affairs and Trade agreed to activate the question of the IP's applicability.
162. In **Mozambique**, there is much interest in subjecting the 3 billion EURO hydroelectric project Mepanda Uncua to the Integrity Pact. TI-Brazil is assisting the sponsors of this proposal.

PART D. Annexes

I. Annex 1. COLOMBIA.

Annex 1.1 Integrity Pacts in Colombia: The Experience of the First Year (July 2000)-



INTEGRITY PACTS IN COLOMBIA: THE EXPERIENCE OF THE FIRST YEAR JULY 2000

Presentation

Transparency International (TI) is a new and recognized nongovernmental organization dedicated worldwide to the fight against corruption associated with the administration of public-related matters. Since its inception in 1993, TI has placed special emphasis on understanding and combating corruption in the contracting of public resources, one of the most critical and strongly felt aspects of the prospects for failure or success of development programs and projects. To this end, TI has been participating, with various institutional agencies, in strategic alliances directed toward the identification and condemnation of transnational bribery and toward the development of mechanisms, tools, or instruments that will help to contribute transparency, efficiency, and effectiveness to the specific processes of public-sector contracting in the countries.

In this connection, out of TI's possibilities and responsibilities as a nongovernmental organization there have emerged a number of initiatives, including most notably the following two: (1) active participation by TI in the groundwork and debates that led to the approval and subsequent implementation of two important international agreements detailing and condemning transnational bribery – namely, the OECD agreement on the subject and the OAS Inter-American Anticorruption Agreement and (2) TI's designing and implementation of integrity pacts, defined as instruments for facilitating the summoning together of the various direct participants in specific public-resource contracting processes (national and foreign officials and contract tenderers) to commit themselves to abstaining from corrupting said public contracting processes. Active TI members have participated in this complex integrity pact endeavor worldwide, from the conceptual initiatives of Germany and the United States to



the empirical efforts made in Panama, Ecuador, Argentina, Paraguay, and Colombia, by way of the adaptations made in Indonesia, Greece, Italy, and Papua, New Guinea.

In 1998, the year in which Transparency Colombia (TICOL) was formally recognized as a national chapter of TI and began to operate systematically in the country, there began a new presidential period in Colombia characterized by its explicit discourse against corruption and by a programmatic commitment to corruption's defeat. In this context, TICOL was invited, along with various other civil society actors, to discuss and contribute to the construction of the new "presidential program of combating corruption," to be entrusted to the direction of the vice-president's office. As a result of this process, President Pastrana's national development plan, "Change toward the Building of Peace," includes in its anticorruption strategy a guideline calling for the entire public-sector administration to use the integrity pact methodology developed by Transparency International, to be duly implemented in accordance with Transparency Colombia's capabilities, for strengthening transparency, equity, and sustainability of the nation's principal public-resource contracting and investment operations.

For Transparency Colombia to decide formally to include among its work priorities the systematic implementation of integrity pacts, it proceeded between February and April of 1999 to call together a small group of high-level advisors from both the public and private sector recognized both for their broad experience in national and international public contracting and for the impeccable exercise of their professional responsibilities. With these advisors, TICOL evaluated the conditions of the public-sector contracting environment in Colombia, the relevance and viability of mounting a systematic effort to implement integrity pacts, and the principal requirements for adaptation of the integrity pact mechanism to Colombian conditions. In May, once the decision had been made to include the integrity pact strategy in TICOL's action plan and therefore in the national development plan, the instrument was presented to the boards of directors of executive-branch and private-sector organizations involved in the principal public-investment processes, in accordance with the national development plan's guidelines, inviting them to include integrity pacts in their programs. Thus, by direct request from Ministers of State, Directors of Institutes or Administrative Departments, Governors and Mayors, TICOL has become involved in more than forty bidding and contracting processes, with widely varying but always instructive results.*

Following a year of systematic work in the implementation of Integrity Pacts in Colombia, Transparency Colombia has prepared the present analytical summary of its experience. The document is organized into four parts, as follows: (1) key aspects of the environment in which it was decided to implement Integrity Pacts; (2) adjustment of the Integrity Pact concept to Colombia's situation; (3) the Colombian experience in the promotion of Integrity Pacts; and (4) the major lessons learned thus far by TICOL in terms of the map of specific corruption risks during the different main stages of the public contracting process and in terms of the implementation of the integrity pacts themselves.

** TICOL's principal lines of strategy for its work include the following: (1) to join forces and build national and international alliances against corruption; (2) to produce and widely disseminate informational material on the corruption phenomenon; (3) to develop specific mechanisms for corruption prevention; (4) to foster a business ethic of zero tolerance for corruption; and (5) to generate a culture favoring accountability.*

CHAPTER 1



NATIONAL ENVIRONMENT OF THE DECISION TO IMPLEMENT INTEGRITY PACTS IN COLOMBIA

Although integrity pacts have been designed generically by Transparency International and are being used by national TI chapters in many different areas of the world, any analysis of these pacts' characteristics, scope, and achievements should be approached from the standpoint of the nature of the specific institutional, social, political, and cultural conditions of the national environments in which they are being implemented. With respect to the present study, for instance, the local circumstances are clearly colored by the need of the Colombian State's various institutions to take anticorruption stances and actions in response to the huge scandal that erupted in the country after the disclosure of the participation of drug-trafficking money in the country's pre-1998 electoral campaigns. Yet if we go a little deeper into the other conditions prevailing in the country at XX century's end, we discover that alongside the strong political will to undertake the implementation of various anticorruption mechanisms, including TI's integrity pacts, there also exist many institutional conditions that would well support the systematic, generalized, and immediately productive implementation of such mechanisms.

The following four subsections present a summary of the determining conditions of Colombia's public-sector contracting environment as identified by TICOL's select group of advisors regarding the relevance and feasibility of implementing integrity pacts.

1.1 Strengths

- An adequate legal framework already exists in Colombia for furthering efficient, equitable, and transparent public-resource contracting processes. Three indicators show it: (i) Colombia's Contracting Law—namely, Law 80 of 1993, the central axis of all contracting-related legislation in the country—is sufficient, clear, flexible, and widely known by all the parties involved in public contracting; (ii) the Anticorruption Law - namely, Law 190 of 1995 - clearly enacts public officials obligations to prevent the phenomenon, as well as social control mechanisms on public procurement, and (iii) Colombia has already adopted the majority of the instruments defined in the OAS Agreement for countering corruption in the utilization of public resources. At present, work is being done on the description and classification of transnational bribery.
- Colombia has a very broad range of government institutions whose functions and scope encompass the fight against corruption and the overseeing of the administration of public resources. There exist few if any initiatives in this regard that have not already been formally created in Colombia, as witnessed by the existence of the following: the office of the comptroller, the inspector general's office, the attorney-general's office, the office of the auditor, the accountancy office, the ombudsman, Bogotá's overseer's office, the interinstitutional commission against corruption, and various inspection offices, regulatory commissions (for the principal public services), local human rights and public servants inspectors.
- Increasing amounts of power are being given to the country's anticorruption-oriented disciplinary, fiscal, and penal bodies which have gained greater legitimacy before public opinion.
- The 1991 Constitution contains broad guarantees safeguarding citizens' right to participation in the regulation of public-resource use. Mechanisms such as the citizens' overseeing groups are beginning to find an echo in the general public surveillance of the official public-sector administration.
- Colombia's recent history features the definition and implementation of a great abundance of public-sector policies and programs seeking to understand, prevent, analyze, and combat corruption. The most recent four national administrations, including



the present one, have carried into effect presidential programs that expressly address these issues.

- The central government has permanent access to well-qualified human resources that are more than able to conduct transparent and equitable public-sector contracting processes.
- *Furthermore, the country has already had various contracting experiences recognized as successful from the point of view of their transparency, efficiency, and probity (some of them focusing more on ethical commitments than on actual functional arrangements).*

1.2 Opportunities

- There exists growing awareness in broad sectors of Colombian society concerning the complexity, seriousness, and pervasiveness of the so-called phenomenon of corruption, therefore of the importance of its inclusion as a central topic of national discussion. The current debate regarding a constitutional referendum is a clear indicator of this issue.
- Increasingly effective public and private efforts are being made toward reporting, researching, and studying corruption in the management of public-resource investment, - more than corruption scandals which on the contrary contribute to increase dismay and the impotence feeling amid people -. Among those efforts is worth mentioning the public hearings strategy which is being developed by the “elite group” made up by the Inspector General’s Office, the Office of the Comptroller, the Attorney-General’s Office and the Fight against Corruption Presidential Program, through which questioned processes are identified and investigations are initiated.
- The presidential program against corruption, under the leadership of Vice-President Gustavo Bell, is committed to developing other precise and effective official methodologies and mechanisms for preventing corruption in public-sector contracting. Article 4, chapter 2 of the national development plan for the 1998-2000 period, “Change toward the Building of Peace,” includes a provision stating the following:

For the purpose of rallying civil society against corruption, the administration will promote participation in the worldwide program known as “Transparency International: Islands of Integrity,” so that bidders in international and national public contract tenders in Colombia will be bound by anticorruption agreements to fulfill certain contract-related personal and economic responsibilities.

- *The positioning of anticorruption efforts on the wider international agenda generates necessary and welcome pressures on Colombia’s own national agenda.*
- Furthermore, the private sector is exerting greater demand for the creation of a dependable and scrupulous business environment. In the face of the recent corruption scandals and the increasing insecurity about investing in Colombia, different sectors of Colombian society involved in the processes of public-resource contracting have taken a clear stand against corruption and have called for the development of more-effective instruments, based on ethical commitments.
- The private companies interest for developing and implementing in their organizations “live” ethical codes with clear indicators and established follow-up mechanisms, through which they intend to involve all their staff in integrity business practices.
- Efforts developed by a major group of private national and international companies, for establishing or strengthening a high profile entity devoted to the fight against corruption.



1.3 Weaknesses

- In general, a weak acceptance of the formal juridical regulatory system, which rewards the “cleverest.” In public-sector contracting particularly, there exists little inclination on the part of any of the actors involved to observe the legal provisions of the national law on the subject. Public-sector officials as well as the potential bidders in each public contract tender and bidding process know the law and its requirements, but many of them are perennially disposed toward evading it, finding “socially acceptable” ways of getting around it based on culturally widespread practices that circularly argue that the fact that these practices are indeed widespread is justification enough for perpetuating them. (“Everybody else is doing it. Why shouldn’t I?”).
- A lax social control system which does not require accountability from public officials responsible for executing public investment.
- *The impunity with which the norms are violated facilitates the misappropriation of public resources and generates a systematic loss of legitimacy for the government.*
- Exactly who the future recipients and executors of given public-resource investments in Colombia will be has in many instances already been decided upon even before the contracting and bidding process begins, based on preexisting politics-related commitments from campaign promises and from the exigencies of the relationship between the executive branch and other branches of government—most times without even a nod to the principles articulated in the relevant laws and without any thought of placing the collective good over the individual or private good.
- *There also usually exists a large power imbalance between the public-sector employee entrusted with a given contracting matter (who normally is low on the totem pole within the public administration and is transitory as well) and the private-sector business executive who wins the large investment projects (who has contacts at high levels of the public administration and who is always very well informed, even in the face of changes in the administration). This power imbalance that exists between public and private interests even in the largest contract negotiations promotes the subsequent insertion of clauses favoring the bidder, to the detriment of the public well-being.*
- *Often times the in-house teams of ministries and other central-government level organizations as well as those of state and municipal administrations are not fully qualified to prepare the projects and rules pertaining to contract competitions and bidding processes, yet they exercise a near-obsessive opposition to bringing on board the needed experts who should be contracted for this purpose.*
- Furthermore, there exists in Colombia a widespread but erroneous belief that a supposed confidentiality must surround the entire public-sector contracting process and related bidding information, which takes precedence over a proper and sound transparency.
- The lack of sufficient and reliable information about the phenomenon, which prevents the government and the companies from making concrete and well-informed decisions on all aspects to be tackled with priority.

1.4 Risks



- The tension existing between, on the one hand, the desire to produce immediate results characteristic of any public administration elected to a short term in office (in Colombia the president serves four years and governors and mayors three, without reelection) and, on the other hand, the need to provide sufficient time to ensure the adequate structuring of bid processes and to permit full discussion by experts and interested parties. Generally, through deficiencies of planning, only short time spans are provided for most contracting efforts, a restriction that constitutes the principal threat to the transparency and quality of any contracting process.
- *In addition, there exists a very Colombian tendency to believe that all problems can be resolved at the legal level, through the adoption of new laws or regulations, even though the statutes that are already on the books are not properly obeyed. This legal busywork diverts attention away from the true causes of corruption and from the personal and institutional responsibility for its perpetuation and increase.*
- The frequent presence in the contracting of public interest resources of regulations and procedures other than those provided for by the Colombian law - which end up being less transparent - , when resources are managed or come from multilateral financing agencies or technical international cooperation agencies.
- There exist inherent difficulties in trying to promote voluntary ethical commitments and deep cultural changes such as those envisioned by the integrity pacts.
- Furthermore, the widespread war in the country often implies direct interference by armed parties in public investment processes.

CHAPTER 2

ADAPTATION OF THE INTEGRITY PACT TO THE COLOMBIAN SITUATION

When Transparency International decided to formulate integrity pacts, it conceived them generically as “a contract by means of which the proposers of a given international contract bid explicitly commit among themselves and with the respective government to refrain from offering or paying bribes and to pay certain fines in case they should break this commitment.” Different national chapters of TI, particularly in Latin America, have been modifying the basic model in order to implement integrity pacts in accordance with the specific public contracting conditions of their own country. The present chapter describes how Transparencia Colombia (TICOL) and its advisory group have adapted the definition of an integrity pact as well as the methodology for implementing such a pact, being this is a continuous learning process that requires constant revisiting of the integrity pact concept and application method.

2.1 Definition

Integrity pacts are voluntary agreements signed by all of the direct participants in a public-resource- contracting process in order to strengthen the transparency, fairness, and probity of the chosen contractual modality.

The implementation process of each integrity pact is an invitation to a voluntary cultural change. Each pact seeks to bring together different groups of citizens to accept shared regulatory systems linked with a regimen of rewards and punishments above and beyond those already provided for in the local legal framework, thereby giving value-added to that framework within the ethical compass.



2.2 General Purpose

Together with other tools designed for the same purpose, integrity pacts seek to contribute to a transformation of the structural conditions of public-resource contracting, which is seen reflected on indicators such as: (1) adequate structuring of the project; (2) public discussion of the tender documents; (3) in bid evaluation, giving priority to fulfillment of the spirit of the law versus punctilious compliance with the law's purely form-related aspects; (4) commitment by executors to accountability policies; (5) acceptance of the precedence of the collective interest over the private; (6) presence of social control mechanisms; and (7) statement accepting rules and results by participants.

2.3 Specific Objectives

- To increase transparency in public bidding and contracting processes, generating confidence and credibility among public officials, bidders, and public opinion in general with respect to the honesty and transparency with which these processes are carried out.
- To generate a voluntary cultural change on the part of those involved to align their behavior in accord with the ethical principles and legal framework governing Colombian society. (It is hoped that the methodology associated with the application of this tool will reinforce within the participating public institutions the consolidation of an environment favorable to honesty in the development of public contracting and that it will reinforce within the bidders and contractors themselves confidence in the possibility of participating in said contracting within a framework of fairness and the desire to carry out their part of the process in that same spirit.)
- To agree upon rules of the game that would contribute to achieving a better balance of power between the winning company and the public officials handling the contract, particularly in the cases of the largest privatizations and concessions.
- To produce empirical data for a map of corruption risks detailing the environment within which public-resource investment is carried out, by analyzing the shared elements and the peculiarities of the different bidding and contracting processes in terms of the vulnerabilities identified.

2.4 Methodology for the Implementation of Integrity Pacts

The following subsections present the principal stages associated with the implementation of an integrity pact. These stages do not necessarily appear in linear fashion.

- **Identification of Resources**

In order to initialize and guide the signing of an integrity pact, it is essential to identify and secure in a timely manner the resources of all types (technical, human, financial, administrative, and cooperative) needed in order to move ahead responsibly with the task. In TICOL's case, resources have been made available from various sources, including experts' voluntary contribution of their work, international technical cooperation, and contributions by private organizations and by the contract participants interested in promoting the transparency of the process.

- **Realization of Political Will**



The successful implantation of integrity pacts demands the corresponding unambiguous and effective political will on the part of those entrusted with making public-sector expenditures. This political will should be translatable into at least the following three results: (1) the directorship team of the public institution entrusted with conducting the bidding or contracting process shares information on the relevance and feasibility of applying the integrity pact as an ideal mechanism for strengthening the transparency of that process; (2) the highest authority governing the public bidding or contracting process expresses to all participants his or her ethical commitment to protecting the probity of that process and invites all of them to proceed in accordance with the same spirit; and (3) the participating public-sector entity signs an agreement with Transparency Colombia to formalize the former's commitment to the implementation of an integrity pact.

- **Construction of an Ethical Commitment Declaration by Public Officials**

The intention being to stimulate a voluntary cultural change that commits those involved personally to the observance of ethical principles and respect for the public good, the public officials who have any level of responsibility in conducting the bidding or contracting and who can therefore impact the objectivity and transparency of the decisions made during that process should participate in workshops or discussions in order to draw up the map of corruption risks covering the various stages of the process and their own vulnerabilities in this context and in order to define beforehand the specific action commitments that will allow them to protect themselves and the bidding process itself from these corruption risks. In addition, agreement should be reached as to the exact rewards and punishments that will be applicable in cases of fulfillment and non-fulfillment of the commitments so acquired.

The ethical commitment declaration resulting from this exercise describes the obligations acquired by participating officials and constitutes the starting point from which the institution's highest authority can then formally call upon all of the bidders together to sign the integrity pact based upon the commitment to probity already affirmed by the institution's officials.

- **Public Discussion of Tender Documents for Contracts**

The most important moment for the success of the integrity pacts is one that, of course, could be handled separately but which, because of the value-added it gives to the process, should always be programmed as part of the implementation methodology of every integrity pact. The important moment to which we refer is the public discussion of the tender documents or terms of reference with the participation of those involved and experts on the topic in question, in order to ensure that the rules of the game are clear, equitable, feasible, and transparent. Various mechanisms can be used for this discussion, such as qualified public hearings, meetings called with specific interest sectors, the posting of the specifications on the Internet in order to receive and respond to all the pertinent observations, and/or discussion of the specifications with the bidders themselves (as is in fact stipulated by Colombian law). Furthermore, TICOL commits to consulting about the tender documents with independent experts who, under protection of a confidentiality agreement, will give their opinion as to the specifications clarity, transparency, and fairness.

- **Monitoring discussion and answering observations**

Achieving confidence of the process participants depends greatly on getting that its opening to a larger number of observations, suggestions, and questions, goes together with effective answers and supported by the bidder. If there are no answers



or it is simply answered that the entity holds on to its initial position, with no support, the unconformity is greater than if there was never room for questioning. Thus, Transparency Colombia is always monitoring that all observations are properly received, revised and answered.

- **Working with Bidders Themselves**

Based on the general elements of the integrity pact and on the items covered in the declaration of the participating public-sector officials, any parties interested in taking part in the process as bidders should draw up their own map of corruption risks in order to identify the vulnerabilities that are present and the countervailing measures that they must take to gain confidence in the transparency of the contracting process —totally in keeping with Colombian laws and even furthering what they stipulate.

It is important that each bidding firm's management prepare the corruption risk analysis and the firm's necessary countervailing anticorruption commitments during special meetings with the personnel inside the respective enterprise who will be involved in the preparation of the proposal. This will ensure that the head of the company, who is the person who will ultimately be signing the integrity pact, is supported by the strength of the ethical commitments therein assumed by the company's employees. Whenever possible, it is convenient that the bidder develop inside its company an ethical code.

A pivotal aspect of this exercise is bidders' definition of and agreement to the sanctions (and as will be seen later in the present study, the sanctions are not necessarily fines) to which they have agreed to become subject to if they fail to observe the provisions of the integrity pact, and bidders' identification of and agreement on the deliberative body that will serve as arbiter for such cases of possible nonobservance and will hand down decisions in a more expeditious and transparent manner than might the country's traditional juridical system.

- **Appointment of an Arbiter**

As mentioned earlier, another pivotal moment is the signatory parties' naming of a "third" party uninvolved in the decision making process, able to serve as arbiter in case of a complaint about the behavior of any of said signatory parties, and able to assume responsibility for deciding upon the applicability of the predetermined sanctions in each case.

It is essential that the organization selected for this purpose have established procedures and the operational capacity to proceed with the arbitration through examination of the evidential elements, in order to arrive at an equitable decision about the violation of ethical commitments, beyond what might eventually happen at the judiciary level when the ethical violation have a related penal offense and/or an administrative anomaly. It should be an institution not only of great credibility for the signatory parties themselves but also of the highest level of respectability in the eyes of the general public.

- **Signing the Integrity Pact**

The results of the corruption risk analysis are integrated into the text of the integrity pact itself, which will be signed by the highest authority of the contract-tendering organization together with the highest-level representative of each of the bidding enterprises or companies.

The text of the integrity pact fleshes out the commitment negotiated and signed between the public-sector authorities and the bidding firms, in providing for a given accepted regulatory system with its possible rewards and punishments, thereby generating the trust and

confidence necessary so that all parties can acknowledge, value, and protect the probity of that contracting process.

- **Monitoring evaluation and awarding**

Perhaps, this is the most sensitive process stage since here is where risks derived from the possibility of misleading information arise or, from the need of interpreting when, either tender documents have failed to be clear enough or, when reviewing the evaluation reports, bidders contend that there are flaws in the evaluation. Transparency Colombia follows up on this stage as an observer reviewing procedures and studying reports, observations, the related discussion and answers, in order to express its concerns to the public entity when, as per its own judgement, the decisions that are being made may attempt against the transparency and fairness of the process.

- **Regular Issuance of Public Statements**

It is important to promote the fairly regular issuance of public statements by the signers of the integrity pact so that participants, in advancing from stage to stage in the contract process, may publicly confirm their satisfaction with the probity of the process up to that point, based on the information available to them. Providing for such statements at every stage of the process makes it easier along the way to ascertain the exact moment at which any possible doubt may have begun to arise as to the cleanness of the process.

These statements also allows to keep the public updated on the progress of the process and to improve the general perception by citizenry of the characteristics and quality of that process—an important step toward increased project legitimacy.

CHAPTER 3

COLOMBIA'S EXPERIENCE IN THE PROMOTION OF INTEGRITY PACTS

In May 1999, Transparency Colombia (TICOL) launched its strategy of promoting the integrity pact as a tool for fortifying the country's commitment to probity in public-sector contracting. From the very outset of this initiative, the Colombian chapter of TI has been a focus of interest from and support by the Colombian president's anticorruption program, in cooperation with which it summoned together the highest authorities of the executive branch, of enforcement bodies, of multilateral credit agencies, and of technical-cooperation organizations as well as different public-sector and civil-society organizations, for the dual purpose of acquainting them with the integrity pact methodology and of seeking allies for itself in the implementation of this probity mechanism in Colombia.

The general strategy that has been employed thus far has been that of trying out the instrument in various sectors, levels of contracts, modalities of contracting and with various actors, allies and at various levels of the public administration; seeking in this way to evaluate the integrity pact's pertinence and effectiveness in different scenarios. Thus, up to this point, TICOL has worked in public-resource-contracting processes that (1) represent sectors of health, education, energy, infrastructure, and communications, to name a few; (2) relate to projects of varying complexity and magnitude with total values ranging from US\$ 1 million to US\$ 1,400 million; (3) contribute to the establishment of alliances between TICOL and key economic-sector actors such as the chambers of commerce of Bogota and Barranquilla, the UNDP, the German GTZ, the World Bank, and the Inter-American Development Bank; (4) different levels of the Colombian public administration including the national government and also smaller governance districts such as Risaralda, Atlántico, the Mayor's Offices of Cartagena and Bogotá Districts; and (5) represent the three different modalities of public-resource investment which are procurement of goods and services, concessions, and privatizations.



During the course of the barely one year of work since the initiation of its integrity pact promotion strategy, Transparency Colombia has accepted invitations from 52 different public-resource investment projects to accompany them with the integrity pact methodology. The majority of these projects (28) are still in execution with no major problems; others of them (11) have presented difficulties that have obliged TICOL to withdraw; and the remainder have concluded successfully (12 out of 13 with signed integrity pacts and 1 without). The following table presents this information in slightly greater detail:

TICOL: Number of Public-Resource Contracting Processes Accompanied by Integrity Pacts

(by current status of the process and by process modality)

Current status of the process		
In execution, without problems	28	54%
Process concluded, with a signed integrity pact	12	23%
In execution, but no longer with TICOL's accompaniment	11	21%
Process concluded, without a signed pact	1	2%
	52	100%
<hr/>		
Procurement of goods and services	40	77%
Concessions	10	19%
Privatizations	2	4%
	52	100%

Before presenting some reflections on the major lessons learned thus far by TICOL, let us examine the following three tables in order to get a clearer idea of the overall dimensions of the Colombian effort. The tables provide more-detailed information about the 52 contract processes in which TICOL has sought to implement the integrity pact mechanism during the course of the past year, up through June 30, 2000, as organized by specific contract modality – namely, (1) procurement of goods and services; (2) concessions; and (3) privatizations.



3.1 Procurement of Goods and Services

SECTOR (Number of processes)	ENTITIES AND ALLIES	NAME OF THE PROJECT OR PROCESS	COST (US\$ millions)	PRESENT STATUS OF THE PROCESS
Communication s (1)	Ministry of Communications/ National Development Projects Fund (FONADE) / INVERLINK	COMPARTEL I program: Selection of operators responsible for endowing and operating 6.500 posts of social rural telephony	\$70.0	Contract awarded. Integrity pact signed following all the stages foreseen. Successful process.
Communication s (1)	Ministry of Communications/ National Development Projects Fund (FONADE)	Selection of the firm responsible fro the supervision of the COMPARTEL I program.	\$1.7	Contract awarded. Integrity pact signed. Successful process.
Communication s (1)	Ministry of Communications/ National Development Projects Fund (FONADE) / INVERLINK	COMPARTEL II program: Selection of operators for the TPBC (Basic Switched Public telephony) service at 302 locations.	\$72.8	Tender documents reviewed on public discussion via Internet. Workshop for officials conducted Integrity Pact under discussion with bidders.
Communication s (1)	Ministry of Communications/ National Development Projects Fund, FONADE	COMPARTEL- SOCIAL INTERNET Program: selection of an operator to provide services of communal access to Internet through 97 pilot centers and commuted local access to Internet in 26 towns where such service is not currently available.	\$14.5	Tender documents draft posted on the Internet for public discussion. Workshop for officials conducted.
Public works (8)	Department of Risaralda / German GTZ	Inter-city road infrastructure projects (4) with resources from the National Oil Royalties Fund (four civil works and four supervision bidding)	\$2.5	Contracts awarded. Eight Integrity Pacts signed Successful processes.

Basic housing (1)	Departament of Atlántico/Barranquilla Chamber of Commerce	Program of Urban Standardization in five townships of the department of Atlántico	\$13.5	<p>Documents revised and public discussion on the Internet and with TICOL experts.</p> <p>Declaration signed by public-sector officials.</p> <p>TICOL withdrew from the process with a public communiqué citing the lack of clarity and the absence of guarantees in the program's financial and juridical structuring.</p>
Transportation (1)	Urban Development Institute of Alcaldía Mayor de Bogotá, DC	Selection of the company to structure the ALO (western north-to-south avenue) project	\$1.5	TICOL accompanied the public discussion of the tender documents. As a result, certain doubts were cleared up and participants' confidence in the process was increased, but there was neither sufficient time nor a favorable climate to work on an integrity pact.
Transportation (1)	Transmilenio's management/ Alcaldía Mayor de Bogotá, DC	Acquisition of equipment for the central control of system operation	\$9.5	Tender documents studied by TICOL experts. TICOL withdrew from the process because of the lack of institutional commitment to comply with the minimal conditions for implementation of the integrity pact.
Water supply (15)	Cartagena Water Supply Enterprise / World Bank	Fifteen civil works and supply contracts for expanding the coverage of water supply and sewerage services	\$23.0	Public discussion of tender documents underway, gradually posted on the Internet. Workshop for officials conducted.
Education (1)	Ministry of Education / Executive Secretariat of the Andrés Bello Agreement	Provision of computer and cable infrastructure with Internet connection for 650 new-technology classrooms	\$27.0	<p>Tender documents posted on the Internet.</p> <p>Tender documents evaluated by TICOL experts.</p> <p>Ethical declaration signed by public officials.</p> <p>Bidders signed an anti-corruption agreement which differs from the Integrity Pact insofar as the exclusion of penalties, arbitration mechanisms and duty to denounce.</p>

Education (1)	Ministry of Education / Executive Secretariat of the Andrés Bello Agreement	Selection of supervision for the new-technology provision contract	\$1.8	Tender documents under preparation.
Infrastructure (1)	National Oil Royalties Commission / UNDP	Contracting of administrative and financial auditing services that will be developed throughout large areas of the country, for hundreds of projects financed with resources from oil-drilling royalties	\$ 6.0	Tender documents now on the Internet for public discussion Tender documents evaluated by TICOL experts. Ethical Commitment signed by officials. Integrity Pact signed
Communications (1)	National Radio and Television Institute	Contracting of production, Co-production, execution, and acquisition of broadcasting rights for spaces on the "Señal Colombia" channel	\$18.5	TICOL accompanied the process only during the tender documents review. It did not continue with the process, because of incompatibility of TICOL's board of directors, some of whose members have interests in the radio and television sector.
Communications (1)	National Radio and Television Institute	Acquisition and assembly of information system for administrative, financial, and commercial management and for office automation	\$0.8	Once TICOL experts' study of the tender documents was completed, they suggested that this tender had serious budget problems. The Institute agreed and canceled the process.
Treasury (1)	DIAN (National Customs and Tax Agency)	Scanning of income tax statements prepared by taxpayers themselves	\$26.0	Tender documents posted on the Internet for public discussion Tender documents reviewed by TICOL experts Declaration by officials under discussion Discussion of Integrity Pact with bidders initiated.
Defense (1)	Ministry of Defense	Selection of Insurance Company	\$40.0	TICOL evaluated the institutional dynamics and considered difficult to find sufficient guarantees in order to develop an Integrity Pact, therefore has abstained from participating.
Health (1)	Ministry of Health	Selection of fiduciary firm to entrust with administration of	\$600.0	Tender documents now on the Internet for public discussion.



		FOSYGA (Security and Guarantee Fund of the Health Sector) resources		Workshop for officials conducted and declaration signed. Integrity Pact signed. Tender declared without winners due to the impossibility of an objective selection. Government notice opening new bid.
Land preparation (1)	National Institute of Land Preparation (INAT) / IDB, through the initiative of TICOL's local ally in the department of Atlántico, ProTransparencia Atlántico	Construction of the Santo Tomás – El Uvito irrigation district in the department of Atlántico	\$20.0	Tender documents reviewed by TICOL experts. TICOL and Pro Transparencia Atlántico withdrew from the process due to lack of institutional commitment to fulfill the minimal conditions for the implementation of an Integrity Pact.

3.2 Concessions

SECTOR (Number of processes)	ENTITIES AND ALLIES	NAME OF THE PROJECT OR PROCESS	COST (US\$ millions)	PRESENT STATUS OF THE PROCESS
Communications (1)	Ministry of Communications/ National Development Projects Fund (FONADE)	Awarding of contract for access to the electromagnetic spectrum for the operation of personal communications system	\$200.0	Accompaniment by TICOL provided for in the law regulating the process. Program in preparation.
Water supply (5)	Ministry of Development / World Bank / UNDP / Capital Corporation	Water company modernization of 5 of the country's municipal water supply systems	N/A	TICOL participation suspended due to lack of clarity on the institutional commitment.
Public works (1)	Ministry of Transportation / National Highway Institute	Program: Financing, design, construction, maintenance and operation of La Línea tunnel.	\$200.0	After a year of discussing TICOL's participation in various projects of this entity, it is being agreed its advice on the La Línea tunnel project.
Public works (1)	Urban Development Institute of Bogotá, DC	Western north-to-south avenue	\$ 250.0	The final decision on TICOL's participation was made when the organization lacked the institutional capacity to tackle it.
Welfare (1)	Colombian Family Welfare Institute	Operation and maintenance of	\$ 150.0	Tender documents on Internet for public



	(ICBF) / Capital Corporation	Bienestarina factories		discussion. Tender documents studied by TICOL experts. Officials' declaration under discussion Discussion of integrity pact with bidders initiated.
Transportation (1)	Transmilenio's management / Alcaldía Mayor de Bogotá, DC	Operation of medium-capacity trunkline transportation routes	\$9,6 per annum (value per year, at year 2000 constant prices)	Tender documents studied by TICOL experts. TICOL withdrew from process because of participants' lack of institutional commitment to complying with the minimal conditions for integrity pact implementation.
Transportation (1)	Transmilenio's management / Alcaldía Mayor de Bogotá, DC	Toll system	\$47,9 per annum (value per year, at year 2000 constant prices)	Tender documents studied by TICOL experts. TICOL withdrew from process because of participants' lack of institutional commitment to complying with the minimal conditions for integrity pact implementation.

3.3 Privatizations

SECTOR (Number of processes)	ENTITIES AND ALLIES	NAME OF THE PROJECT OR PROCESS	COST (US\$ millions)	PRESENT STATUS OF THE PROCESS
Energy (1)	Ministry of Mining and Energy / ISAGEN/ INVERLINK	Divestment of 72.9 percent of the the stock of the energy distribution company ISAGEN	\$ 500.0	TICOL accompanied the entire process: reviewed the tender documents with its experts, worked with officials on their ethical declaration and designed the mechanism for stimulating potential bidders' interest in an integrity pact (while protecting the confidentiality necessary for this sort of

				business).
				Nevertheless, TICOL decided to withdraw from the process because of the direct interference by armed parties who could affect process transparency.
Energy (1)	Ministry of Mining and Energy	Privatization of 14 regional energy distributors	\$ 1,400.0	Because of public-order difficulties and the investment banking sector's reluctance to participate in the integrity pact process, TICOL decided not to accompany the bidding process

CHAPTER 4 MAIN LESSONS LEARNED BY TICOL

Since most of the contract processes in which Transparency Colombia has been involved thus far through the implantation of integrity pact methodology will not actually conclude until the end of the present fiscal year (December 2000), it is still too early for us to speak in terms of evaluations or long-term results. For the moment, TICOL has signed an agreement with the Business Administration school at Bogota's Andes University so that this school, through graduation projects, will undertake the designing of what might serve as a methodology for integrity pact follow-up and impact evaluation. The work would begin by addressing the lack of available data.

What would be interesting and pertinent would be to focus on the collection and organization of data on the elements in integrity pact implementation that turn up repeatedly and might therefore provide increased clarity about both the public contracting environment in Colombia and the actual dynamics of the integrity pacts themselves.

In this regard, the first important finding has been that since the integrity pact is simply a specific and time-sensitive tool that is applied only in certain given moments during the contracting process, its success depends upon the effective possibility of applying an additional set of mechanisms and instruments also conducive to the creation of transparency—and finally, of confidence—during the whole public resources investment process, from the making of the political decision, through the bidding and execution processes, to the maintenance of the results of the investment. Otherwise, those involved in the bidding and contract process will spend their time discussing the lack of transparency and will not be inclined to undertake the formal personal ethical commitment that the integrity pact entails.

The following sections present the principal lessons learned by TICOL during this first year, organized into two different levels—namely, (1) lessons related to the map of corruption risks during the main stages of the public contracting and (2) lessons related directly to the implementation of the integrity pacts themselves.

4.1 Map of Corruption Risks by Stage of Public Contracting

- **In the Making of the Political Decision**

The circumstances that surround the making of political decisions on public resource investment are of fundamental importance in terms of being able to generate confidence about the manner in which the subsequent contracting process itself will be conducted. The



processes in which the most difficulties have arisen are those in which the decision to carry out the project is associated either with preexisting campaign-related commitments to other politicians or to particular economic groups or with pressure from groups that have great lobbying clout or other power that they can bring to bear to try to make the political decision favor them directly and in priority fashion.

Therefore it is important to work more systematically on mechanisms that allow for, on the one hand, the independence of the governing officials and their teams at the moment of political decision making on public-resource investment while permitting, on the other hand, direct participation by the citizenry, in the broad sense, in overseeing those political decisions. By way of illustration, we might propose the following steps: (1) institutionalize participatory planning; (2) develop broad-based, pluralistic citizen fora for a discussion of the major decisions that, because of their impact or size, should be presented to and accepted by the governed before implementation; and (3) promote the signing of ethics-related agreements (pacts) among candidates in order to free the handling of certain crucial issues from the effects of preexisting promises stemming from the conduct of political campaigns or from the exercise of a public office.

The foregoing notwithstanding, we must strongly emphasize that during the stage of political decision making the very greatest risk of corruption is the risk associated with the political decision to award certain contracts under the rubric of “direct contracting” (provided for in Colombia’s law on contracting, but only for use with what therein are termed contracts of relatively small size). “Direct contracting” allows the contract administrator to sidestep the utilization of the open, plural, equitable, and transparent bidding and contracting procedures that would otherwise apply and oftentimes encourages contract fractioning. The most recent national direct-contracting scandal in Colombia was about the irregular-contracting instance of which the House of Representatives was accused during the first quarter of the present year.

- **During the Structuring of the Project**

Tender documents discussions have turned out to be the most difficult in processes characterized by a very weak institutional capacity of the originator to formulate such projects and an absence of project input by non-institutional agents. Adequate definition of the project’s technical, financial, social, and juridical aspects helps to ensure adequate definition of the rules of the game in a public-sector contract bidding process. To pursue greater transparency in this structuring stage, it is a good idea for officials to seek out the help of independent consultants or firms qualified to contribute the greatest possible technical rigor to the preparation of the project and whose independence and fitness for the job can be bolstered by such mechanisms as the signing of an integrity pact during the course of their public selection process.

- **In the Definition of the Rules of the Game**

In TICOL’s experience, the element that most strongly contributes to creating transparency in public investment and to generating peacefulness among the various participants is the careful and equitable formulation of the rules of the game and the wide publicizing of these rules before the opening of the public bidding or contracting process. Consensus exists among bidders and public officials alike that it is during this stage where elements are more frequently included to bias the bidding process in favor of one particular bidder or another.

To protect against the occurrence of such acts, project authorities must expend every effort to ensure the greatest possible circulation of the terms of reference or tender documents and of the first draft of the contract so that these documents, in preliminary form, may be viewed, commented upon, and critiqued by experts, beneficiaries, and those interested in presenting a bid. The observations by all these parties constitute the strongest possible safeguard for the fairness, efficiency, and transparency of the proposed process, in the sense that the debates and tensions that will necessarily arise among the various interested parties actually



represent the only real route to increased trust in the project, through arrival at a satisfactory point of balance among all of them.

During this stage, different instruments can be employed, such as qualified public hearings, fora, or the Internet. The latter is the means that has proven to be the most useful for Colombia, even though it is regularly objected to by lawyers, who erroneously consider such Internet use as violating the supposed confidentiality of the process. This particular communications medium allows project authorities to provide information in a very public way and to receive and respond to people's observations and comments using the same medium, thereby keeping all interested parties updated about the issues being discussed. One of the advantages of having sufficient time before the bidding and contracting process to analyze and define the rules of the game is that a full and exhaustive discussion can take place, so that bidders can then turn more effectively to the preparation of their bid and to the discussion of the integrity pact because they already trust the general rules of the game. Otherwise, they would spend all their time together clarifying those rules.

TICOL's most often repeated suggestions during this stage refer to the following points:

- Ensuring adequate evaluation and separation of the technical aspect and the economic aspect of the bids, so that once the technical, financial and juridical suitability of certain bids has been established, then the process moves ahead so that these bids that have satisfied the basic level of technical requirements can proceed to the economic phase of the competition, preferably through public hearings. This prevents, moreover, situations where with a very detailed and supposedly objective grading system, the bid ends up being awarded by a point or a fraction of a point, generating greater unconformity and doubt about the fairness of the final decision;
- Clearly defining which requirements for participation are set in stone and absolutely must be satisfied in order for the bidder not to be disqualified and which requirements entail some degree of flexibility or leeway for bidders to work around them;
- Expressly avoiding the use of discretionality by a certain few public officials in their handling of information regarding the contracting process;
- Avoiding inclusion of unnecessary form requisites that contribute with no valuable and relevant information for the evaluation, since by including them they become determinant for the participation or qualification of the proposals.
- Avoiding the inclusion of subjective criteria in the evaluation (for instance, the grading of a bidder's proposed methodology), when they are not linked to clear qualification parameters enabling bidders to establish how their proposals will be differentiated. Furthermore, when avoiding the use of subjective criteria is absolutely impossible, it is essential ensuring a plural number of graders/evaluators on these matters, so that the grading is not left up to the criteria of only one or two individuals;
- Previously reviewing the features of potential suppliers of a specific good or service to prevent the inclusion of requirements or criteria that could only be met by one given bidder.
- Eliminating to the maximum extent the existence of privileged information and also plugging up all possible information leaks;

- Publicly discussing beforehand the first draft of the contract, in order to avoid any undue post-award negotiation of contract terms to arrange for additional elements benefiting the chosen supplier.

In general terms, TICOL always recommends to participating public officials that they simplify as much as possible the tender documents regulating the requisites and criteria for bidder participation and selection, so that the overall spirit of Colombia's contracting law (Law 80 of 1993) can more easily be honored. Public-sector officials tend to complicate the tender documents unnecessarily by pursuing maximal objectivity through use of a sophisticated numerical grading system of decimal-level detail, which frequently prevents from a real differentiation in bids quality.

- **During Proposal Evaluation and Contract Awarding**

It has been traditionally thought that corruption occurs largely during the process of proposal evaluation and bidder qualification, but experience with integrity pacts has shown that actually, in Colombia and based upon the provisions of Law 80 of 1993, although this proposal evaluation and bidder evaluation stage is the one in which any undue favoring of one particular bidder may indeed begin to become evident, it is also true that this anomaly would not have surfaced here at all unless its seeds had been planted during the bid specification stage. In the proposal evaluation and contract award stage, the greatest corruption risk really is participation by one or several bid evaluators who use their discretionality to interpret subjective criteria in a slanted way, to allow issues of form to take precedence over the spirit of the law, or to manipulate bidders' right to work around certain nonessential requirements. Again, the most effective tool for avoiding such abuses is to ensure adequate publication of procedures and results, first among public-sector officials, and then among bidders themselves.

- **During the Execution of the Contract**

In discussions with bidders and public officials the concern arises about the eventual corruption once the contract has been awarded or the company responsible for the given concession or the service provision has been selected. The map of corruption risks would focus primarily on the possible emergence of undue modifications to the agreed-upon rules of the game and the arrangement of additional public resources to be given ex post facto to the selected contractor—a negative situation that can occur actually with the support of the auditing division. On the other hand, cases of privatization and concession entail the risk of abuse of power by the firm that was awarded the contract, particularly so in view of the fact that public-sector officials entrusted with a contract's follow-through usually have very little real power or control vis-à-vis the economic might of the contracted company and its executives, leading the latter to conduct their relationship with the State through lobbying efforts designed to elicit favorable treatment at the hands of the highest-level State officials. Such situations are made all the more serious by the absence of mechanisms of contract performance supervision by the public. For this reason, the bidders which have signed Integrity Pacts have pointed out that one of the greater virtues of the same is that, as a consequence of the responsibilities therein assumed by the selected bidder, the losing bidders rely on a concrete and fast mechanism for monitoring, as a group, that the described situations will not occur.

In any case, as protection against these risks, in the case of concessions and privatizations it is important to be able to turn to regulatory bodies with genuine autonomy in the face of political pressures and with a technical staff of the highest possible caliber. And in all cases, it is essential to have available the services of independent and strengthened auditing and control agencies.



In cases in which the services of an outside auditor are required, it is important that the same level of effort and technical rigor apply to the selection of that auditor as applied to the selection of the contractor or operator, even though the temptation often is to give relatively less care to the selection of auditors because the investment level is not as high as in the case of the hiring of the contractors themselves. In addition, it is very useful and effective to involve integrity pacts in the process of auditor selection.

In terms of the participation of the community in general and of the beneficiaries specifically, it is helpful to establish accountability mechanisms by contractors and operators and by the public-sector officials entrusted with the project. It is also a good idea to organize qualified overseers that can be of support for the work of the supervisors and auditors and can exercise an additional level of public-sector oversight of that work.

4.2. Main Lessons Learned about the Implementation of the Pacts Themselves

- **Maintain the Voluntary Nature of Integrity Pacts.** In order for this exercise to have successful results in terms of its invocation to participants to abstain from seeking/accepting and offering/paying bribes, it is essential that the integrity pact remain voluntary in nature and that in its creation it require all of the competing signatory parties to reflect together upon the conditions under which the contracting process will be carried out, as well as upon the vulnerabilities that these conditions create. Were the exercise not to be carried out in this way and were the signing of the document to become no longer voluntary but obligatory, then the integrity pact would turn into just one additional formal requirement that must be signed on to along with all the other forms needing to be signed for a firm's eligibility to participate in the bidding or competition. Of course, it goes without saying that the voluntary nature of the integrity pact implies more work for all participants and requires increased flexibility of response in their addressing of the objective differences among sectors, among institutional dynamics, and among groups of bidders.
- **Separate the Political Discussions from the Discussions about Transparency.** Especially in cases in which the public-resource investment occurs through the modalities of concession or privatization, the process of selection of the winning contractor is often interrupted by public debates that are actually political in nature about the political decision's pertinence and its future social effects on employment, on income distribution, on national sovereignty, and so forth. These political issues are brought up by one participating group or another as arguments that the contracting process is not transparent. In such an environment it is essential that organizers make it very clear to participants that the scope of the integrity pact extends only to protecting the bidding process itself from corruption attempts, whether or not all participants happen to agree with the underlying political decision that engendered that bidding process.
- **Build Public Confidence in the Process.** One of the major challenges continues to be the search for an effective way to foster public trust that probity can be made possible in public-sector contracting processes through the use of the integrity pact mechanism. The country's mass media seem to consider it news only when something bad happens, some scandal—which of course, concerns to those involved in that scandal—and the media therefore give no regular coverage to matters in the country that are going well. Yet the alternative—which would be for the participating contractors to use their own resources to publicize their signing of the anticorruption agreement—could turn out to be very expensive and could also lend itself to improper use by the respective firm. Thus, the big question remains that of how to convey the message without diminishing its impact and without allowing the participating contractors to use that message simply as a way to bolster their own corporate image.
- **Ensure Independence of Third Parties that Promote the Pacts.** Thus far it has been clear that one success factor for the integrity pacts has been that participants perceive



Transparency International in general and TICOL, within Colombia, as being truly independent politically and therefore able to listen without preconceived ideas the concerns of all of the participating entities, as being able to read from current signals the public's perception of the contract process, as well as a high level of technical capacity to respond—in a timely manner, from a basis of serious and well-structured concepts—in cases of the emergence of elements during the bidding process that require clarification.

- ***Transcend the Discussion on Legality Issues and Focus on the Ethical Ones.*** It is important for organizers to stress quite strongly to participants the ethical nature of the integrity pact and of the commitments the pact comprises, in order to help them understand that contract processes in countries like Colombia have in general a logic that goes beyond the simple elements of the formal judiciary regulatory system. One must be prepared to face the difficulty of debating with lawyers, who usually do not venture beyond the narrow limits of the legal and judicial elements involved in the processes and who often do not give due consideration to discussion of the purely ethical aspects, which are, in fact, what gives legitimacy to the legal and juridical elements in the first place. There even exist differences of approach to the integrity pact by, on the one hand, those who participate in it from a basis of Anglo-Saxon law text and, on the other hand, by those who participate in it from the basis of a Rome-based legal framework. For the first group it is easier to understand and accept the spirit of the pact and its true scope, while for the second group the debate hardly ever goes beyond the formal level of the pertinent laws, since for them, these laws supposedly already “contain everything” necessary in order for corruption not to exist.
- ***Limit Intervention to Those Aspects Strictly Related to Transparency, Thereby Avoiding Co-administration.*** Care should be exercised every day by the integrity pact team not to fall into project co-administration. In regard to this issue, the participating bidding firms or public-sector entities seem to be concentrated at either one end or the other of the TICOL participation spectrum. A few of them clearly try to keep TICOL from playing any role at all in the process, and usually those are the ones with which serious difficulties have arisen. At the other end of the spectrum, many others try to have TICOL present in absolutely every discussion, decision, and action, and those are the ones that have had the most successful experiences. Even so, we must remember that although it certainly is a matter of TICOL's trying to provide an opinion on a regular basis regarding the transparency and fairness of the overall process, it is important for TICOL to take care not to fall into project co-administration.
- ***Insist upon the Inclusion of the Duty to Report Any Instances of Noncompliance.*** Because of the integrity pact's ethical and voluntary nature, the key to following through on it is to stipulate in the text of the pact all signatories' obligation to report any irregular process-related act of which they become aware. To the degree that signatories comply with this obligation, the intervention mechanism provided for in the pact can come into play, which it does the moment of the occurrence of any accusation of non-observance of pact commitments—that is, the moment of the reporting of any grounded suspicion of acts of corruption. As noted earlier, one of the expected results of the integrity pact is that it generate relatively speedy mechanisms for processing accusations and other concerns, thereby allowing bidders to receive faster results than what would otherwise be obtained from applying the standard juridical procedures. In this respect, it has been very interesting to discover the corruption tolerance of the multinational firms that supply computer equipment (some of them U.S. companies), whose averred approach is to refrain from giving any bribes but on the other hand, also to honor the tacit agreement among themselves not to report it if their competition does give bribes.
- ***Insist on commitments and sanctions both by officials as by bidders.*** What makes the integrity pact fair and complete is the existence of commitments made to protect the process against corruption both by officials and bidders. Thus, the work conducted on the ethical declaration by officials – that makes integral part of the integrity pact - has resulted to be important in the Colombian experience, and supports the Minister, Director or Manager when assuming commitments with the bidders.



- **Value Integrity Pacts as one of the few real accountability exercises in existence.** The procedures for increasing transparency in public bidding, which have been introduced with the promotion of Integrity Pacts, clearly constitute a real accountability exercise since public officials assume in a concrete manner, responsibilities of listening and responding beyond common limits, facing all sorts of requirements from citizens, organized or not, with an interest in the bidding process.
- **Recognize that the Integrity Pact opportunities become vested rights for bidders.** Likewise, mechanisms adopted within the Integrity Pacts methodology to provide a greater degree of participation and information to bidders and other interested parties, are having such a level of acceptance that are being demanded by them in other processes as vested rights. This has clearly occurred in Colombia with the posting and discussion of tender documents on the Internet.
- **Work with Multilateral Agencies Inviting Them to Override Their Accustomed Bureaucratic Stance.** In general, public opinion perceives a lesser tendency toward corruption in public-resource-contracting processes involving participation by international bodies (perhaps because of the presence of higher levels of review), but the fact is that in TICOL's experience thus far, these particular processes have not really demonstrated any effective efforts to avoid and combat corruption. The reverse is actually true. Corruption in these cases usually presents itself in ways that are more subtle and more elaborate and in ways that involve the highest levels of the public administration, all the while carefully observing the "legal" requirements of the processes--for which purpose the international entities make much use of the unconvincing term "non-objection" and the misunderstood confidentiality principle applied by them. Consequently, it is essential that the international bodies work on creating innovative mechanisms and procedures that cover participants' ethical behaviors in a manner that is much more open and transparent than at present and that these same international bodies not be satisfied with mere bureaucratic compliance with the pertinent established legal standards and procedures.

Lastly, experience continues showing us that the responsibility of all the international bodies in regard to the fight against corruption is more than a matter of formal legal compliance, meaning that they should assume anticorruption stances that are much more rigorous and forceful, in the interest of the proper utilization and destination of public resources. No one could be unaware of the enormous cost, in terms of economic development, that the scourge of corruption inflicts upon our nations. To ignore that reality or to be complacent about it is to contribute to underdevelopment, to the concentration of power, to the perpetuation of poverty, and most of all, to the delegitimation of the State.

Annex 1.2. Pacto De Integridad Programa Compartel 1 (In Spanish. Integrity Pact for the Compartel 1 Program)

PACTO DE INTEGRIDAD PARA GARANTIZAR TRANSPARENCIA EN LA LICITACION PUBLICA No 001 DE 1999, PROGRAMA COMPARTEL DE TELEFONIA SOCIAL 1999 - 2000, Y EN LA EJECUCIÓN DE LOS CONTRATOS QUE DE ELLA SE DERIVEN

Ante la opinión pública nacional e internacional y ante los usuarios de la telefonía social, los directivos de las empresas proponentes en la licitación pública No 001 de 1999 Programa COMPARTEL de Telefonía Social 1999 - 2000 y el Gobierno Nacional de Colombia, en cabeza de la Ministra de Comunicaciones, el Representante Legal del Fondo de Comunicaciones y el Director del FONADE, en nombre propio y en representación de todos los funcionarios que directa, indirecta, formal o accidentalmente participan en este proceso



licitatorio, hemos acordado suscribir el presente PACTO DE INTEGRIDAD, por medio del cual se adquieren los siguientes compromisos, en todo conforme con las leyes:

1. Cumplir estrictamente, en su letra y en su espíritu, las leyes colombianas sobre contratación pública.
2. No solicitar ni ofrecer sobornos, recompensas o gratificaciones con el fin de incidir en las decisiones que involucra la licitación.
3. Denunciar de manera inmediata, ante el Programa Presidencial de Lucha contra la Corrupción, cualquier ofrecimiento o solicitud de pagos, favores, dádivas, prerrogativas, recompensas o gratificaciones hecho desde o hacia funcionarios públicos o empresas proponentes durante el proceso licitatorio o de ejecución del programa, que puedan ser interpretadas como efectuadas con la intención de inducir alguna decisión.
4. Por parte de los proponentes, prestar especial atención a la estructuración de la propuesta, para cubrir costos reales, de tal manera que se garantice que la empresa adjudicataria no solicitará adiciones presupuestales durante la ejecución del contrato, diferentes a las establecidas en el Contrato de Aporte para los Puntos Opcionales, ni solicitará que le autoricen ajustes en tarifas por encima de lo establecido en el pliego.
5. Solicitar u ofrecer cualquier información requerida, salvo fuerza mayor, en las oficinas del Ministerio de Comunicaciones o en el Fonade, en horas hábiles y con una presencia plural de funcionarios.
6. Establecer un control sobre el contenido de los documentos que se entregan como propuesta técnica para evitar que alguna parte de los mismos pueda ser modificado durante el proceso de evaluación. Para el efecto, el día de cierre de la licitación, además de la rúbrica que estampe en cada una de las hojas de las propuestas el Comité Evaluador - integrado por las entidades licitantes Fondo de Comunicaciones y Fonade - se incluirán las firmas de un representante de otro proponente, determinado por sorteo y de un representante de TRANSPARENCIA COLOMBIA. En el ejercicio se tendrá precaución para que se limiten a firmar las hojas sin posibilidad de estudiar el contenido de las mismas.
7. Establecer un control adicional a los sobres de la propuesta económica que quedan depositados en la Urna No. 2 hasta la fecha de apertura de los mismos. En este caso, el sobre con la propuesta económica de cada proponente será rubricado por un representante de cada uno de los demás proponentes, de tal manera que se garantice la imposibilidad de alterar el contenido hasta la fecha de su apertura en audiencia pública. De presentarse algún proponente a depositar su oferta en los días previos al establecido para el cierre de la licitación, el sobre con la propuesta económica, será rubricado por Transparencia Internacional. Una vez depositados todos los sobres en la Urna No. 2, esta será sellada y un representante de cada proponente estampará su rúbrica sobre el sello. Con el fin de garantizar la operatividad de esta medida, los proponentes nos comprometemos a presentarnos en las oficinas de COMPARTEL el día 18 de agosto de 1999, una hora antes de la establecida como límite para el cierre de la licitación.
8. Garantizar, por parte del Fondo de Comunicaciones, un seguimiento detallado a la ejecución de los Contratos de Aporte, mediante la estructuración rigurosa del concurso para la selección de la interventoría externa del programa Compartel.
9. Por parte de la empresa o empresas que adjudicatarias de la licitación:
 - a. Suscribir con sus colaboradores, proveedores y subcontratistas un compromiso ético de conducta que garantice la probidad en las actuaciones de todos los involucrados en la ejecución del Contrato de Aporte.



- b. No aplicar subsidios cruzados, de acuerdo con lo que al respecto establece la ley colombiana y llevar una contabilidad separada y pública que permita la verificación de este compromiso durante la ejecución del Contrato de Aporte.
 - c. Dar a conocer a Transparencia Internacional, a través de su capítulo en Colombia y en el marco de un acuerdo de confidencialidad, suscrito para tal fin, la totalidad de pagos hechos a terceros, durante dos años a partir de la fecha de suscripción del presente Pacto de Integridad.
 - d. No ofrecer trabajo en la casa matriz, filiales o subordinadas, de las empresas adjudicatarias, a ningún funcionario público involucrado con el proceso licitatorio, durante un período de 6 meses a partir de legalización de los Contratos de Aporte.
10. La empresa a la cual se le compruebe que ha incurrido en un acto de corrupción, mediante sentencia definitiva no sujeta a ningún recurso, se compromete a abstenerse de participar en cualquier licitación pública en territorio colombiano durante cinco años a partir de la fecha de proferida la providencia en cuestión.
11. A su vez, el funcionario a quién se le compruebe que ha incurrido en un acto de corrupción, mediante sentencia definitiva no sujeta a ningún recurso, se compromete a inhabilitarse para trabajar en cualquier entidad pública o en alguna entidad privada del sector de telecomunicaciones por un período de cinco años a partir de proferida la providencia en cuestión.
12. Para finalizar, hemos acordado que Transparencia Colombia - capítulo nacional de TI - se encargue del seguimiento a los compromisos del presente Pacto de Integridad, sirviendo de instancia de resolución de las diferencias que se puedan presentar en la ejecución del mismo, y como vocera ante la opinión pública nacional e internacional de los resultados del mismo en cualquier sentido.

Hace parte del presente **Pacto de Integridad** la "Proclama de los Ciudadanos Colombianos Responsables del Proceso de Diseño y Adjudicación del Programa COMPARTEL".

Para constancia se firma en Santa Fe de Bogotá D.C., en las oficinas del Programa COMPARTEL, a las cinco de la tarde del día 18 de agosto de 1999.

Por el Gobierno Nacional:

CLAUDIA DE FRANCISCO ZAMBRANO
Ministra de Comunicaciones

CIRO ALFONSO MENDOZA RINCON
Representante Legal Fondo de Comunicaciones

JUANA LAVERDE
Subdirectora de Negocios FONADE

Por los Proponentes,

MARTIN ELADIO JARAMILLO RENDON
Gerente General EDATEL S.A. ESP

GIORA ORON
Apoderado Unión Temporal Global Village Telecom NV
y Gilat Sattelite Networks Ltd.

CARLOS URRUTIA
Representante Legal en Colombia - Hughes Network Systems



ALFONSO CARDENAS
Gerente General Henderson Park Industries

GUILLERMO SCHAFFER
Gerente General Empresa de Telecomunicaciones de Cundinamarca

MIGUEL MARCIAL
Gerente general Servitelecomunicaciones

CARLOS CAMPILLO
Gerente EMCALI

TIBERIO GOMEZ BOHORQUEZ
Gerente General Empresas Públicas de Bucaramanga S.A. ESP ???

EDUARDO PIZANO
Presidente TELECOM

Empresa de Telecomunicaciones de Pereira S.A. ESP

Harris Singer Products

Unitel S.A. ESP

E.R.T. ESP
Celcaribe
IEC Comunicaciones

Como Testigos,

GUSTAVO BELL LEMUS
Vicepresidente de la República de Colombia

ROSA INES OSPINA ROBLEDO
Directora Ejecutiva de Transparencia Colombia

Annex 1.3. (In Spanish and English) Declaration by Colombian Citizens Accountable for the Compartel Program Design and Awarding Process

COLOMBIA

DECLARATION BY COLOMBIAN CITIZENS ACCOUNTABLE FOR THE COMPARTEL PROGRAM DESIGN AND AWARDING PROCESS

- Addressees
- Before the future beneficiaries of social rural telephony, communities living at scattered rural centers still lacking telephone service,
 - Before the citizens of our country,
 - Before the bidders who aspire to be the operators of this service and their suppliers,
 - Before the remaining public servants of the sector and the country,
 - Before our very dear families,



- Before all the agencies that have come together to fight for honesty,
- Before the citizenry of all countries as strict in honesty-related matters regarding the acts of their companies in their country and in ours.

We

We, Colombians, filled with faith in our country, proud of our past accomplishments based on our personal effort and capacity, and aware of equally honest processes that have been conducted in the country for the benefit of general interest.

Commitments

We reiterate that each of us have committed to strictly abide by the spirit and the letter of Colombia's public contracting law, whose main content is summarized in the following personal behaviour code:

1. I shall secure that the general, public and social interests prevail over particular ones
2. I shall safeguard the resources and rights of the agency from the contractors and third parties.
3. I shall guarantee the compliance with contracting principles.
4. I shall select contractors pursuant to the processes established for this end.
5. I shall structure contracting in such a way that it solves the problems that have been detected.
6. I shall conduct a follow-up of the contracting process so that the goals established are fulfilled.
7. I shall continue to act as I have done up to now, in a transparent, public and motivated manner
8. I shall create scenarios to provide room for discussion.
9. I shall provide all with equal opportunities, with clear rules that promote competition
10. I shall conduct all proceedings being austere with time, means and expenses.
11. I shall respond promptly any questions arising within the process.

Therefore

1. I shall be accountable for all my actions and omissions.
2. I shall report any irregularity I detect in the process
3. I shall accept no gifts, rewards or prerogatives.

In order to complete the ethical pact that we are declaring and adopting as a group, we have made the decision to set the following rules as part of the code of honor that shall govern our personal behaviour:

And, therefore:

1. I shall adopt mechanisms, processes and rules that are expedite, clear and simple and I shall disseminate them to favor transparency and competition.
2. I shall provide the information relevant to enhance social control.
3. I shall set an example with my behaviour.
4. I shall not join the main offices, affiliates or subsidiaries of awardees, in a six-month period starting on the date the Contribution Contract is signed.
5. I shall neither accept nor offer favors, for me or for third parties.
6. I shall cooperate with independent, expedite and reliable denouncing agencies.
7. I shall meet with the bidders only at the office and, preferably, in groups, except in the event of force majeure.
8. I shall provide no information that may give indication of my economic needs.
9. I shall provide the Vice-President of the Republic's Office the information associated with my property and income, to be managed in a special data bank and to be used only in the event it is necessary.
10. I shall accept the penalties stipulated in item 11 of the Integrity Pact, should



there be evidence that I have incurred in an act of corruption, through final decision subject to no appeal.

(Personal signatures follow. Agencies such as Vice-presidency of Colombia, Transparency Colombia and National University are mentioned as facilitators)

**PROCLAMA
DE LOS CIUDADANOS COLOMBIANOS RESPONSABLES DEL PROCESO DE DISEÑO Y
ADJUDICACIÓN DEL PROGRAMA COMPARTEL**

- Destinatarios Ante los futuros beneficiarios de la telefonía social rural, las comunidades que viven en centros rurales dispersos aún sin servicio telefónico,
- ante los proponentes que aspiran a ser los operadores de este servicio y sus proveedores,
 - ante las ciudadanas y ciudadanos contribuyentes cuyos impuestos permiten esta inversión,
 - ante nuestras muy queridas familias,
 - ante los demás funcionarios públicos del sector y del país,
 - ante todos los organismos aliados en la lucha por la probidad,
 - ante la ciudadanía de todos los países que son igual de estrictos en materia de probidad con las actuaciones de sus empresas en su país y en el nuestro y
 - ante los actores del conflicto armado,
- Nosotros Nosotras, colombianas y colombianos, amantes de nuestras familias y orgullosos de nuestras realizaciones pasadas basadas en nuestro esfuerzo y capacidad personal, nosotros, que ya hemos demostrado nuestra capacidad para sacar adelante con probidad procesos y proyectos como el diseño del *Programa Compartel de telefonía social rural*, el *otorgamiento de permisos para el uso del espectro radioeléctrico* y la *apertura de la telefonía pública básica conmutada*,
- Nos comprometemos Proclamamos que NOS HEMOS COMPROMETIDO a:
- Primero:* Cumplir estrictamente, en su letra y en sus objetivos, las leyes colombianas sobre contratación pública, cuyo principal contenido resumimos en el siguiente código de conducta personal:
1. Responderé por todas mis acciones y omisiones
 2. Garantizaré que el interés general, público y social prevalezca sobre los intereses particulares
 3. No pediré ni aceptaré sobornos, dádivas, recompensas, prerrogativas o gratificaciones
 4. Velaré por la protección de los recursos y derechos de la entidad, de los contratistas y de terceros.
 5. Todos mis actos serán transparentes, públicos y motivados.
 6. Denunciaré cualquier irregularidad que detecte en el proceso
 7. Adelantaré todo trámite con austeridad de tiempo, medios y gastos
 8. Garantizaré el cumplimiento de los principios de contratación.
 9. Daré a todos iguales oportunidades, con reglas claras que promuevan la competencia
 10. Generaré escenarios para que haya lugar a la discusión



11. Atenderé con celeridad cualquier inquietud que surja dentro de todo proceso.
12. Definiré los motivos y propiedades de la contratación que esté de acuerdo con los problemas identificados
13. Haré seguimiento al proceso de contratación para que dé cumplimiento a las metas trazadas
14. Seleccionaré contratistas de acuerdo con los procesos establecidos.

Para completar el pacto ético que como grupo estamos adoptando y proclamando, hemos decidido fijarnos además las siguientes reglas como parte del código de honor que gobernará nuestra conducta personal:

11. Adoptaré mecanismos, procesos y reglas ágiles claras y sencillas y los divulgaré de manera que favorezca la transparencia y la competencia.
12. Denunciaré cualquier irregularidad.
13. No aceptaré ni invitaciones ni regalos (la entidad financiará las invitaciones necesarias).
14. Suministraré la información pertinente para aumentar el control social.
15. Daré ejemplo con mi comportamiento.
16. Me inhabilitaré para vincularme a la empresa adjudicataria.
17. No aceptaré ni propondré favores, ni para mí, ni para terceros.
18. Buscaré en la interpretación de las normas que prime el fondo sobre la forma.
19. Colaboraré con instancias independientes, ágiles y confiables, de denuncia.
20. Atenderé a los interesados, salvo fuerza mayor, en la oficina y preferiblemente en grupo.
21. No daré información que pueda revelar mis necesidades económicas.
22. Informaré a *Transparencia Internacional* mis bienes y rentas.

(Siguen las firmas personales)

II. Annex 2. ITALY. Municipality Integrity Pact

ITALY

MUNICIPALITY OF XXXXX

INTEGRITY PACT

between the **MUNICIPALITY OF XXXXX** and the **PARTICIPANTS** to the

TENDER No:

for **supply** of:

or for **works** of:

or for **services** of:



This document, already undersigned by the Mayor of Xxxxx, must be compulsorily undersigned and submitted together with the offer by each participant to the tender in subject. The non-delivery of this document duly undersigned by the chief executive or the legal representative of the tendering company will cause its exclusion from the tender.

This document will constitute an integral part of any contract awarded by the Municipality of Xxxxx on the basis of this tender.

This Integrity Pact establishes the reciprocal formal commitment of the Municipality of Xxxxx and of the participants to the tender in subject to conform their own behaviours to the principles of loyalty, transparency and fairness as well as the explicit anti-corruption undertaking not to offer, accept or require any sum of money nor any other remuneration, advantage or benefit, both directly and indirectly by means of intermediaries in order to obtain the contract award and/or to distort its correct execution.

The personnel, the collaborators and the consultants of the Municipality of Xxxxx, employed at any level in the implementation of this tender and in checking the execution of the subsequent contract awarded, are aware of this Integrity Pact, the spirit of which they share completely, as well as of the sanctions foreseen against them in case of non-fulfilment of the same Pact.

The Municipality of Xxxxx undertakes to make public the most significant data concerning the tender: the list of participants and the relevant prices quoted, the list of the bids rejected with the reasons of rejection and the specific reasons for assigning the contract to the winner, with the relevant certification of the respect of the evaluation criteria set out in the tender documents.

The undersigned company undertakes to report to the Municipality of Xxxxx any attempt of disturbance, irregularity or distortion, during the phases of the tender and/or during the contract execution, by anyone who has an interest or who is in charge in the tender or by anyone who may influence the decisions concerning the tender in subject.

Moreover, the undersigned company declares that it has not taken nor it will not take any arrangement with other participants in order to limit the competition by illegal means.

MUNICIPALITY OF XXXXX
INTEGRITY PACT

The undersigned company undertakes to inform, on request of the Municipality of Xxxxx, about all payments carried out in relation to the contract awarded on the basis of the tender under subject, including those carried out in favour of intermediaries or consultants. The remuneration for the latter shall not exceed the “the fair amount due for legitimate services”.

The undersigned company takes note and accepts that, in case of non-fulfilment of the anti-corruption commitments undertaken by this Integrity Pact, the following sanctions can be applied:

- Denial or cancellation of the contract;
- Confiscation of the bid bond;
- Confiscation of the contract performance bond;
- Liability for damages to the Municipality in the amount of 8% of the contract value, unless proven evidence of an higher or lower damage;
- Liability for damages to any of the competing bidders in the amount of 1% of the contract



- value, unless the parties can demonstrate an higher or lower damage;
- Exclusion of the bidders from the tenders issued by the Municipality of Xxxxx for an adequate number of years.

This Integrity Pact and the relevant applicable sanctions shall be effective until the complete execution of the contract awarded on the basis of this tender and until the expiration date of the guarantee period of the supplies.

*Any disputes relevant to the interpretation, execution or non-execution of this Integrity Pact between the Municipality of Xxxxx and the participants to the tender shall be settled according to the Arbitration rules of the Chamber of Commerce of Xxxxx.

In the Mayor's Cabinet a special office has been created with the function of examining any discovered case of corruption and/or extortion and of supplying necessary information concerning this Integrity Pact. This Office can be contacted at the tel. no. - fax – e-mail

Date

FOR THE MUNICIPALITY OF XXXXX THE MAYOR
COMPANY'S STAMP AND SIGNATURE OF THE LEGAL REPRESENTATIVE

***For specific approval of the arbitration clause**

TI-it

Text to be inserted into the GENERAL TERMS AND CONDITIONS of the Tender Dossier

"The Municipality of Xxxxx is engaged in the fight against corruption in all its manifestations.

In particular, in order to avoid the opportunities of illegal activities and distortions in tenders for supplies, works and services, the Municipality of Xxxxx has introduced the obligation for all participants to these tenders to undersign and present the annexed Integrity Pact together with their offers. Failure to do so will constitute automatic exclusion from this tender.

The insertion of this Integrity Pact aims at assuring a fair competition and equal opportunities to all participants as well as a fair and transparent execution of the awarded contract.

The Municipality of Xxxxx will verify with the utmost responsiveness the use of the Integrity Pact both by participants and by its own staff, collaborators and consultants.

For the purpose of a correct implementation of the Integrity Pact, at the Mayor's Cabinet a special office has been created, to which each interested person can apply both for reporting non-fulfilment cases, if any, and to obtain information or explanations."

III. Annex 3. KOREA. Integrity Pact of Seoul. July 2000

KOREA

Integrity Pact of Seoul

July 2000



Seoul Metropolitan Government

I. Background of the Enforcement of the "Integrity Pact" of the Seoul Metropolitan Government

There is an international movement to enforce sanctions against corrupt practices, be it by individual businesses or nations, as is evidenced by the OECD's ratification of the Convention on Combating Bribery of Foreign Public Officials. The United States of America, for example, has been enforcing the Foreign Corrupt Practices Act since 1977. Germany and many other European countries have adopted anti-corruption measures to ensure transparency in the business sector.

To meet the challenge of this international trend, it is necessary for the Seoul Metropolitan Government (SMG) to reinforce its anti-corruption strategies. Corrupt practices in various parts of the public sector lead directly to faulty construction and waste of the national budget. While many businesses in Korea realize the fact that the chronic bribery-induced, high-cost business structure should be purged, they find it difficult to put such ideals into practice against the backdrop of a generalized bribery culture and fierce competition for business.

Therefore, it is urgent to create an environment in which contractual transparency and reduction of corrupt practices may be assured along with the imposing of severe sanctions for corrupt practices. In order to accomplish this, the SMG has decided to adopt the Integrity Pact of the Transparency International (TI). Since last year, Mr. Geo-sung Kim, Secretary-General of TI-Korea, has urged governments to adopt Integrity Pact.

The Integrity Pact (IP) of the Seoul Metropolitan Government is being implemented



through a public-private partnership system between the SMG and NGOs. While Mayor Kun Goh of Seoul was considering introducing the IP, the People's Solidarity for Participatory Democracy (PSPD) proposed that SMG, the organ of the Korean government displaying the strongest will to fight corruption, and the PSPD, one of the largest and active civil organizations in Korea, enter into a joint civil-government cooperative arrangement to implement the Integrity Pact. After several meetings between the Director of Audit & Inspection Division of SMG and Won-soon Park, Secretary-General of PSPD, for consultations regarding the Integrity Pact of the Transparency International, a feasible plan in the Korean legislation system was drafted. It was then put through thorough evaluation in strategic meetings of senior executives of the SMG until its finalization on June 14, 2000. On July 10, 2000, the plan was launched in a joint press conference held by Mayor Kun Goh and PSPD Secretary-General Won-soon Park.

2. Principal Components of the Integrity Pact

The IP of the SMG is an agreement between the administrative offices of the SMG ("Principal) and companies submitting bids ("Bidders") that bribes will neither be offered nor accepted in relation to bids for any public contracts such as for construction, technical services, procurement, or in the process of concluding or executing a contract, in order to prevent corrupt practices in contracts of the public sector. The draft of the IP of the SMG is the adaptation of the TI model and SMG-innovated "IP Ombudsman System".

In the Bidding Stage

- Upon the announcement of a bid offer, the IP is explained to Bidders in a "Letter of Special Note for Biding."
- Registration of bid submission:
 - Only Bidders that submit the "Bidders' Oath to Fulfill the IP", which contains no-bribery commitment, are qualified to register their bid submission.
 - A related government official submits the "Principal's Oath to fulfill the IP."
 - Bidders are encouraged to institute a "Company Code of Conduct", and incentive on qualification evaluation is provided.
- Information on the bidding is publicized.

In the Contract Concluding and Execution Stage

- When signing a contract, both parties also sign the IP as a "special condition for contract," containing the same contents as the pre-signed Oath,"
- Key Contents of the IP □
 - Bidders shall not offer bribe, gifts or entertainment to any related government official to influence a bid.
 - The Principal and the concerned official shall not take bribes.
 - In case of violation of the IP, Bidders shall be subject to disqualification from submitting bids, or termination of the contract.
 - No punitive actions shall be taken against anyone who reports inside corruption.
 - Bidders are encouraged to institute a "Company Code of Conduct" and a Compliance Program for the implementation of the Code of Conduct.
 - Bidders cooperate with the IP Ombudsmen in monitoring activities.
- Operation of five IP Ombudsmen System
- Public hearings in three stages
- Protection and rewarding of anyone reporting inside corruption



- Organization of the IP Operational Committee

3. The Operation of the IP and its Intended Targets

Targets of IP

- o Stage 1 : at the Head Office and Project Offices (July 10 – Dec. 31, 2000)
 - The IP is applied to the projects scheduled by the Head Office of SMG, three Project Offices (Office of Waterworks, Office of Infrastructure Management, and Office of Subway Construction), Office of Park management in the latter half of 2000.
- o Stage 2 : Based on the reviews of implementation of the Stage 1, adjustments will be made to fine tune the IP, and it will be applied to all contracts executed by the SMG and the 25 autonomous District (Ward) Offices in Seoul from January 2000.

Procedures of the IP Implementation

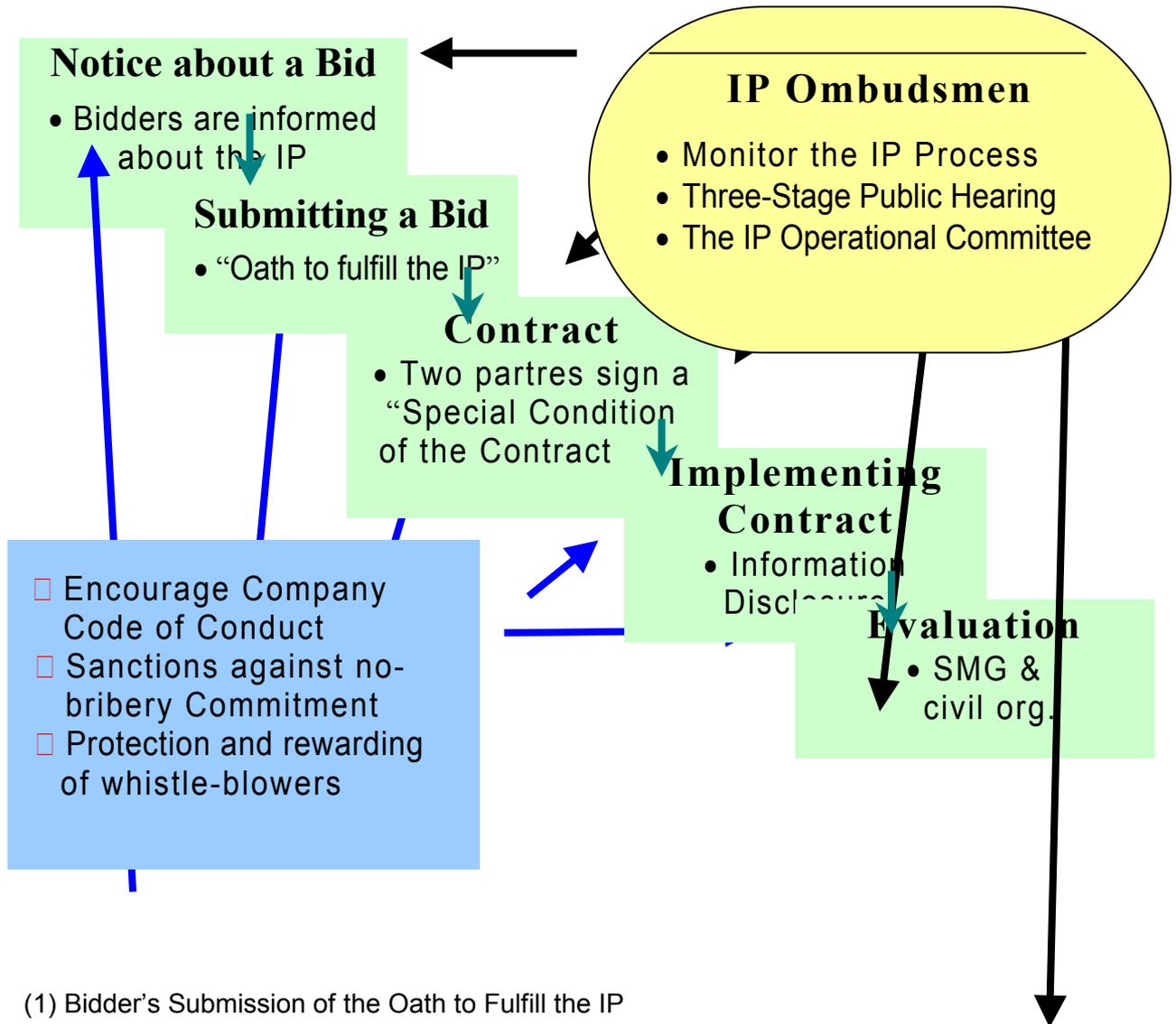
The SMG and NGOs shall jointly implement the IP and the IP Ombudsmen will monitor the process.

Since trust between the companies and the government is important for the successful implementation of the IP, we begin the Integrity Pact Movement while trying to develop it into legislation.

Important issues regarding the IP are decided by the IP Operational Committee.

- Constituents of IP Operational Committee : Vice Mayor for Administrative Affairs (Presider), Ombudsmen, Mr. Geo-sung Kim (Secretary-General of TI-Korea), Director-General of Audit and Inspection Bureau, Director of Audit and Inspection.
 - When necessary, Director-Generals of concerned Bureaus, and civilian experts shall participate.
- Major Tasks of the IP Operational Committee
 - Choice of projects for monitoring the IP;
 - Reporting, hearing, and inspection of the IP projects;
 - Education and public relations on the IP; and
 - Other tasks necessary for the implementation of IP.

Major Contents of the Integrity Pact



(1) Bidder's Submission of the Oath to Fulfill the IP

- o When there are official notice about a bid for construction, technical services, or procurement, Bidders are informed about the IP.
- o When submitting a bid, the representatives of the Bidders sign the “Oath to Fulfill the IP”(Standard Form is attached at the end of this paper), as a condition for qualifying to bid.
- o At the time of the contract signing, the winning bidder and Principal sign the IP containing the same terms in the aforesaid Oath as a “Special Condition of the Contract.”



□ Major contents of the Oath to Fulfill the IP (Company) □

- Executives and employees of Bidders (including sub-contractors and consortium partners)
 - shall not engage in bid rigging, illegal price-fixing or any other fraudulent behaviors by bestowing favors on any particular persons;
 - shall not offer any bribe, gifts or entertainment in the processes of bidding, concluding and executing the contract to a concerned government official;
 - shall, in the case of any findings of violation of the IP, accept the restrictions to the qualification for bidding, termination of contract or other punitive measures.
 - shall cooperate with the IP Ombudsman in monitoring activities

- shall prohibit any forms of bribery and bid rigging, and endeavor to institute a Company Code of Conduct that mandates the termination of any violator of the IP and a company regulation that anyone reporting inside corruption shall not be subject to any retaliatory acts.

(2) Encouragement of Company Code of Conduct and Provision of Incentive on Qualification Evaluation

When submitting a bid, Bidders are encouraged to institute the Company Code of Conduct and a company regulation to protect anyone reporting inside corruption. Among the Bidders that submit the Company Code of Conduct, the company with outstanding Compliance Programs for the Code of Conduct will be given positive points to be considered in the evaluation of its qualifications.

□ Major Contents to be Included in the Company Code of Conduct □

- The company shall adopt a Code of Conduct as a company-wide regulation on banning bribery and implementing compliance Programs to put the Code into practice. The Code of Conduct should include, inter alia, the following:
 - Clear definitions and prohibition of all forms of bribery and bid rigging;
 - Rules on offering of gifts, entertainment, travel fees, and money contributions;
 - Education on the Code of Conduct throughout the company;
 - Internal and external audits and inspections, and sanctions against violators (including dismissal);
 - Provisions against any retaliatory acts upon anyone reporting inside corruption
- To provide an incentive for Bidders to submit the Company Code of Conduct, it is suggested that the Ministry of Finance and Economy adopt an amendment to the standards for qualification evaluation.

(3) Principal's Oath to Fulfill the IP

When a Bidder submits the Oath to Fulfill the IP, the chief of Principal reciprocates by tendering to the Bidder the "Oath to Fulfill the IP" (Standard Form is attached at the end of this paper) signed by both him- or herself and a concerned government official.

□ Major Contents of the Principal's Oath to Fulfill the IP □

- The official in charge of the concerned bidding, concluding or execution of contract and his/her senior shall not demand or accept bribe, gifts, entertainment or other amenities from Bidders;



- shall cooperate with the IP Ombudsmen in monitoring activities;
- shall not engage in any retaliatory acts upon anyone reporting inside corruption; and,
- in case any violation of the IP is disclosed, shall accept punitive sanctions.

(4) Limitation to the qualification to Bid for violations of the IP

- o The contract contains a “Special Condition of Contract” that requires those Bidders that have rigged a bid, or bribed a concerned government official in the process of bidding, concluding or executing a contract, to be deprived of their qualification to submit bids placed by the SMG for up to 2 years.
- o General standards on the limitation of qualification to bid are as follows, and the department in charge of the limitation (Accounting Division) will set specific standards.
 - Disqualification from bidding for 1 year up to 2 years
 - Bidders that have been favored in a bid, won a bid, or had faulty construction approved by bribery.
 - Disqualification from bidding for six months up to one year
 - Bidders that have offered bribes for the purpose of winning favor in the bidding, or of faulty execution of the contract.
 - Disqualification from bidding from one month up to 6 months
 - Bidders that have offered money to public officials in relation to a bid, or concluding or execution of a contract, even though there are no evidence of winning favor in the bidding or faulty execution of the contract.

(5) Termination of Contract for Violation of the IP

- o If it has been established that Bidders have bribed a government official in relation to a bid, or concluding or execution of a contract, part or all of the contract shall be cancelled or terminated,
- o with the provision that, if construction is under way at the time of disclosure, the Principal shall make the decision in due consideration of the scope, period, and progress of the concerned construction.

(6) Three-stage Public Hearing

- o A three-stage public hearing is held on the contract process.
 - The First Stage, the project plan,
 - The Second Stage, procedures of selecting a contractor,
 - The Third Stage, inspection results on the execution of the contract.
- o Projects subject to the public hearing requirement are construction of US\$4.2(50 billion Won) or more, plan and supervision services of US\$833,000 (1 billion Won) or more, and procurement of more than US\$167,000 (200 million Won). The public hearings are organized by the IP Ombudsmen.
 - Considering the 1999 record, approximately 30 cases would have been subject to the public hearing. (13 construction cases, 9 service contracts, and 8 procurement contracts).
- o The IP Ombudsmen draft specific plans for, and manage, the public hearing.
- o Principal and Bidders should willingly cooperate in explaining the procedures and publicizing information regarding the public hearing.

(7) Publicizing Information on the Bidding Procedure

Detailed information on bidding procedures is publicized in real time in the OPEN



(Online Procedures Enhancement for civil applications) System on the Internet. To make searches for major projects easier, measures will be taken to group the projects in categories by the size of construction: US\$4.2(50 billion Won) or more, US\$4.2 to US\$833,000 (5 billion to one million Won), and less than US\$833,000 (less than 1 billion Won).

(8) Operation of IP Ombudsmen

A most distinguishing feature of the SMG's IP is the IP Ombudsmen System to monitor the process of the IP implementation.

Tasks and Authority

- o For construction projects of US\$4.2(50 billion Won) or more, plan and supervision services of US\$833,000 (1 billion Won) or more , procurement of US\$167,000 (200 million Won) or more, Ombudsmen review, inspect and monitor all documents related with the project proposal, bidding, contract, construction inspection and through the completion of construction;
- o Organize public hearings by stages on the plan, bid, and execution of contracts for major projects;
- o Demand corrective measures or audits on issues affected by unjust practices;
- o Participate in the IP Operational Committee.

Composition and Qualification

- o Composition: a team of five persons, with one appointed as Chief Ombudsman
- o Qualification: persons with respectability, integrity and expertise, who are recommended by NGOs.
 - Those who hold or have held the position of, or above, an assistant professor at a 4-year university in major of civil engineering, architecture or other construction-related field, or accounting, law, public administration .
 - Those who hold licenses as a lawyer, accountant, or technician that have experience in the field for 3 years or more.
 - Those who have worked for the government, local autonomous organs, or NGOs that have a proven record for integrity
 - Those who have a social reputation for integrity and are recognized as suitable to serve as an IP Ombudsman by an NGO and the Mayor of Seoul

Position and Term of Office

- o Position: serving in the capacity of a private citizen, not a public officer employed by the SMG, appointed by the Mayor of Seoul to act independently in the job of IP Ombudsmen
- o Term : one year for the first year of IP, and two years afterwards.

Restrictions on Holding Concurrent Jobs

The IP Ombudsman should not hold a concurrent job at the National Assembly, a local assembly, a political party, an any organization engaged in political activities as a major job, or any company that may participate in a bid for public projects.

Public Announcement

IP Ombudsmen may make public announcements under consultation with IP Operational Committee on their activities, but should not publicize or disclose on their own accord, any information or documents obtained during their work as IP



Ombudsmen for personal purpose or gain.

Support for Work

- o Assistance by government officials: three officials (one 5-grade administrator, one 6-grade administrator, and one 6-grade civil engineer).
Three officials in the SMG shall assist the IP Ombudsmen under the title of "IP Ombudsmen Team."
- o Regulations for IP Ombudsmen Operation shall be adopted to assert the authority of Ombudsmen and the obligation of all government officials to cooperate with them.
- o Provision of an office : in the Seoul City Hall.

On July 10, 2000 Mayor Kun Goh appointed five IP Ombudsmen in accordance with the recommendation of civil organization.

The five Ombudsmen's careers are diverse such as the professor of public administration, architecture, business administration(also a CPA), an engineer, and an ex-Deputy Secretary-General of the supreme Audit Agency.

(9) Protection and rewarding of those reporting Inside Corruption

To uproot and prevent the occurrence of corrupt practices, it is important to encourage disclosing such practices. Any government officials who make such disclosures should be protected from retaliatory acts such as harassment or disadvantage in promotion considerations. To encourage citizens to report such practices, the current "SMG Regulation on Rewards for the Reporting of Corrupt Practices " that awards 1,000,000 Won shall be amended to 10% of the amount retrieved by the report.

5. Schedules of IP Implementation

- o June 14, 2000 : Strategic meeting on IP system presided by the Mayor of Seoul
- o End of June 2000 : Publication of promotional materials on the IP, education of concerned officials
- o July 10, 2000 : Press release on IP Implementation
Appointment of IP Ombudsmen
- o July 2000 : Enactment of operational rules on the IP Ombudsmen System
- o August 2000 : Workshop on IP
- o October 2000 : Report on Mid-term Evaluation
- o December 2000 : Final evaluation on IP implementation
- o Jan. 1, 2001 : Application of IP to all SMG, District Office contracts

<Bidder's Oath>

Oath to Fulfill the Integrity Pact

With deep realization that transparent business management and fair public administration are the key to social development and national competitiveness,

In step with the global trend to purge corruption and apply sanctions to corrupt businesses and nations, as evidenced by the recent ratification of OECD Convention on Combating Bribery of Foreign Public Officials, and

In full support of the worthy goals of the IP, concerning the present bid for



_____ construction (services, or procurement), all personnel of _____ and its sub-contractors and agents hereby agree that:

1. We shall not conduct any deceptive practices, such as bid-rigging for the sake of a particular bidder to win the bid, or price-fixing,
 - if proven as a fact that we have engaged bid-rigging for the sake of a particular bidder to win the bid, we shall accept the prohibition from submitting bids placed by the SMG for a period of two (2) years,
 - if proven that we have discussed with other bidders in a public bid to fix a price, or rigged a bid for a particular bidder to win the bid, we shall accept the prohibition from submitting bids placed by the SMG for a period of one (1) year,
 - and, in case any of the above fraudulent practices is proven and we are fined by the Fair Trade Commission at the charge of the Principal in compliance with the Monopoly Regulation and Fair Trade Act, we shall not appeal such actions.
2. In the process of bidding, or concluding or execution of a contract, we shall not offer any bribe, gifts, entertainment or any other undue benefits directly or indirectly to related officials, and

in case it is proved that we have violated any terms of this IP in relation with a bid, or concluding or execution of a contract, or offered bribes for favors in a contract, to win a contract, to pass inspection for faulty construction with favor, we shall accept the prohibition from submitting a bid placed by the SMG for a period of two(2) years,

if proven as a fact that we have offered bribes to related government officials for favors regarding a bid or contract to a bidder or a winning bidder, or for the purpose of faulty execution of the objectives of a contract, we shall accept the prohibition from submitting bids placed by the SMG for a period of one (1) year,

if proven that we have offered bribes to related government officials in relation to bidding, or concluding or execution of a contract, we shall accept the prohibition from submitting bids placed by the SMG for a period of six (6) months,

3. In case it is proven that we have offered bribes to a related government official regarding a bid, or concluding or execution of a contract, we shall accept the cancellation of the contract if construction has not commenced, or termination of all or part of the contract if construction has commenced, and shall not file any civil, administrative or criminal appeals.
4. We shall make our best effort to institute a Company Code of Conduct that bans bribery, bid rigging or any other corrupt practices in business relations with government officials, and a company regulation that prohibits any retaliatory acts toward anyone reporting inside corruption.
5. We shall cooperate with the SMG's IP Ombudsmen in monitoring activities.

We shall fulfill this IP as a solemn oath made on the basis of mutual trust, and, if and when we win a bid, we shall sign and fulfil the above as a "Special Condition of Contract," and not file any civil, administrative or criminal appeals regarding any of the above terms.

July _____, 2000

Signed by:
CEO of



<Principal's Oath>

Oath to Fulfill SMG's IP

With deep realization that transparent public administration free of corruption is the key to social development and national competitiveness, the Seoul Metropolitan Government shall implement this Integrity Pact system for _____ construction project (services, procurement) to achieve a spotless administration that is totally transparent.

All officials of the SMG involved in the bid for the above project (services, procurement)

- shall effect fair and transparent administration in accordance with the provisions of related legislation, publicize the process in real time, and actively cooperate with the IP Ombudsmen in monitoring activities,
- shall not take any retaliatory action against anyone reporting inside corruption.

All concerned officials shall not, for any reason, demand or accept bribe, gifts, entertainment, or undue benefits in the process of bidding, or concluding or execution of a contract, and in case of violation, shall submit to the due punishment in accordance to related regulations.

Signed by _____, July _____, 2000
Director of _____
Official in Charge of Contract and Management _____

IV. Annex 4. NEPAL.

Annex 4.1 Integrity Pact - Bhaktapur Framework

NEPAL

Integrity Pact - Bhaktapur Framework submitted by Transparency International Nepal

Contents

S.N Contents

1. Integrity System: Concept

2. Allied/Related Documents

- Contract agreement between the parties concerned for the implementation of Integrity System
- Commitment of the officials of agency concerned



- for the implementation of Integrity System
- Commitment of the employees of the agency concerned while implementing Integrity System
- Public Notice to be published by the agency concerned while implementing Integrity System
- Procurement procedures for goods and materials
- Public commitment from the agency concerned, while publishing tender notices on non-payment of any kind of money or financial benefit, except tax or fees legally provided for
- Commitment of person/firm/company, while submitting tender documents, on non-payment of any kind of money or financial benefit, except tax or fees legally provided for
- Clauses for non-payment of any kind of money or financial benefit, except legally provided for, to be included in the agreement
- Public Bill Board to be placed at the construction site: (Sample)

- 3. Monitoring format**
- 4. Perception survey**

INTEGRITY SYSTEM: CONCEPT

What is Integrity System?

Integrity System is a system which insures that all activities and decisions of public offices are transparent and that the projects/works are implemented, services are provided or taken, and goods/materials are supplied without giving or taking any kind of benefit, financial or otherwise. Justification of the decisions taken is provided without much ado to the parties concerned or to any interested individual or institution/organization.

For the implementation of this system, the agency concerned should arrange for the following provisions:

- 1. Decision-making process be made simple and transparent:**
 - 1.1 Procedures for providing services/facilities, procurement of goods, services or materials for construction works as well as the decision-making process be made simple and transparent.
 - 1.2 Agency concerned should prepare the work process and work-flow-chart for display in the concerned office premises in such a way that it is visible to all.
 - 1.3 Name plate of the responsible officials should be displayed in such a way that it can be easily visible to all.
 - 1.4 To inform the general public about important construction works, a bill board be placed at the project site. An inscription should be placed after the completion of the project. Details of important projects should be made public after the project is completed.
 - 1.5 All important decisions be made public.
 - 1.6 Information on all important activities including auditor's report should be made easily accessible to all.
 - 1.7 Agency concerned should periodically make public their sources of income and revenues.
- 2. Construction budget be made realistic:**



Construction budget be made realistic, based on the nature of project (labor or capital intensive) and prevalent market price in order to make the construction works cost-effective.

3. Non acceptance of any form of payment, financial or otherwise, except those legally provided for, while offering or taking services or procuring goods, services or materials.

- 3.1 Agency concerned should publicly commit that, except tax, fees or discount legally provided for, it will not take any kind of commission, money, fee, tips or such other benefit – in cash or otherwise – directly or indirectly.
- 3.2 Officials and employees of the agency concerned should also make commitment provided for in clause No. 3.1.
- 3.3 Individual, firm or company, while supplying goods or providing services, should in the Application/Tender Documents commit that no financial give-and-take, except tax, deposit/mortgage, fees legally provided for, in the form of commission, cash, fee, tips or any kind of financial benefit – in cash or otherwise – will be made directly or indirectly, personally or through agent, family member or any other person.
- 3.4 Public commitment be made that no compromise be made in the quality of services being provided by the agency concerned nor in the delivery schedule.
- 3.5 The date of payment, for the services or goods be mentioned in the agreement and the payment be made accordingly after the completion of the work.
- 3.6 While purchasing goods/materials, the agency concerned should publish the details of goods/materials thus procured.

4. Provision for suggestions and complaints:

- 4.1 A suggestions box should be placed in the office premises to encourage suggestions from the concerned or other interested parties.
Arrangements for the analysis of and implementation of feasible suggestions be made.
- 4.2 An official should be designated to respond to the suggestions and complaints thus received.
Complaints be studied and redressed as soon as possible. All these processes be made public.

Note:

- 1. *This document includes provisions that are theoretically applicable to all types of agencies, although admittedly some of them may not be relevant to a certain agency because of the nature of work.*
- 2. *Suggestions relating to the improvement and efficiency of the institution concerned be implemented.*
- 3. *Matters having direct bearing on the functioning of the agency concerned and/or behavior of its officials, and which can potentially raise questions regarding accountability, responsibility and transparency, be immediately dealt with.*

Annex 4.2. Contract Agreement between the Parties Concerned for the Implementation of the Integrity System

CONTRACT AGREEMENT BETWEEN THE PARTIES CONCERNED FOR THE IMPLEMENTATION OF INTEGRITY SYSTEM



An agreement between Transparency International Nepal and has been reached on (date)..... to implement the Integrity System. To implement the system as per the attached concept paper, an understanding has been reached between and Transparency International Nepal.

1.will implement the Integrity System. For this purpose, Transparency International Nepal will provide experts' services to..... as required.
2. While adopting the Integrity System as mentioned in the point No. 1,will provide information demanded by Transparency International Nepal and its experts as required.
3. Both the parties agree to jointly monitor the implementation of the Integrity System.

A monitoring team comprising an expert on integrity system and (number) representatives and experts each from Transparency International Nepal and will be formed for the purpose.

4. The has the responsibility to inform the local public and all interested individuals/institutions/organizations about the activities carried out under this system.
5. In accordance with the proposed system, Transparency International Nepal will provide experts' services for months beginning
6. will continue the Integrity System even after the completion of this project and will provide information and details when Transparency International Nepal wants these for the purpose of the study.

On behalf of
.....

On behalf of
Transparency International Nepal

Signature:

Signature:

Name:

Name:

Designation:

Designation:

Annex 4.3. Commitment of the Officials of the Agency Concerned for the Implementation of Integrity System

COMMITMENT OF THE OFFICIALS OF THE AGENCY CONCERNED FOR THE IMPLEMENTATION OF INTEGRITY SYSTEM

I on (date)..... hereby pledge that, in accordance with the Integrity System, will do the following:

While performing any work under my jurisdiction, I (myself or through my family members) will not seek or accept any financial benefit – in cash or otherwise (in the form of commission, cash, reward, fee, tips) for providing or receiving services or while procuring goods, services or materials. I hereby guarantee that a clause of the date of payment for the services or goods to be supplied be included in the agreement thereof, and the payment be made by the date mentioned in the contract/agreement or after the completion of the work.

I hereby commit that transparency will be maintained in all the activities undertaken under my jurisdiction. While performing duty under my jurisdiction during the implementation and even after the completion of the project of the Integrity System, I will not allow any situation adversely affecting the functioning of the Integrity System.

I will promptly provide the details as demanded by any interested individuals or institutions or organizations regarding the issues and activities under my jurisdiction.



Name:
Designation:
Signature:

Annex 4.4. Commitment of the Employees of the Agency Concerned while Implementing Integrity System

COMMITMENT OF THE EMPLOYEES OF THE AGENCY CONCERNED WHILE IMPLEMENTING INTEGRITY SYSTEM

I on (date)..... hereby pledge that, in accordance with the Integrity System, will do the following:

While performing any work under my jurisdiction, I myself or through my family members, will not accept any financial benefit – in cash or otherwise (in the form of commission, cash, reward, fee, tips) for providing or receiving services or while procuring goods/materials.

I hereby guarantee that a clause of the date of payment for the services or goods to be supplied be included in the agreement thereof, and the payment be made by the date mentioned in the contract/agreement or after the completion of the work.

I hereby commit that transparency will be maintained in all the activities undertaken under my jurisdiction.

While performing duty under my jurisdiction during the implementation and even after the completion of the project of Integrity System, I will not allow any situation adversely affecting the functioning of the Integrity System.

I will promptly provide the details as demanded by any interested individuals or institutions or organizations regarding the issues and activities under my jurisdiction.

Name:
Designation:
Signature:

Annex 4.5. Public Notice to be published by The Agency Concerned while Implementing Integrity System

PUBLIC NOTICE TO BE PUBLISHED BY THE AGENCY CONCERNED WHILE IMPLEMENTING INTEGRITY SYSTEM

It is well known that has been providing services in the field of public welfare. It is notified to all concerned that a system to make the activities of the institutions transparent is being introduced, whereby, all concerned individuals or institutions or organizations would have easy access to the information and details of our activities. Thus, this institution requests all concerned to provide comments/suggestions related to our activities. In addition, can be consulted for the detailed information about the activities carried out by this institution.

Quality of service would not be compromised

In addition, services and facilities such as will be provided free of cost or No payment or..... should be made for these services. It is also informed that no compromise shall be made in the quality as well as the regularity of the services.

No payment be made except tax and fee provided for by the law



No payment is required to be made, except legally provided for, to this by concerned individual, firm or company, while supplying goods or providing services, in the form of commission, cash, fee, tips or any kind of financial benefit – in cash or otherwise – directly or indirectly, to the officials or any employees of this institution.

Complaints are invited in case of delay and/or illegal activities

Complaints/information on any deed committed by any official or employee of thisagainst this notice are welcome. It is requested that such complaints/information be sent to Informant will be awarded with NRs if the information thus supplied turns out to be correct. Name and address of the informant will be kept confidential.

Cooperation of all concerned is expected

Cooperation from all concerned is expected in effectively implementing the Integrity System by making all its activities transparent and providing services/facilities smoothly.

Thanks

(Note: This notice could be adopted according to the need and circumstances.)

Annex 4.6. Procurement Procedures for Goods and Materials

PROCUREMENT PROCEDURES FOR GOODS AND MATERIALS

The general norm is that all office supplies are procured through the procedure of tender or quotation. If an arrangement to compile market price of goods/materials required by the concerned agency is made periodically any untoward financial dealings could be checked. Thus, the agency concerned should make an arrangement to find out the market price every three months, in order to compare it with the price it has maintained. Following procedures are suggested for compiling the market price:

- Market price should be sought through officials/employees or through public notice.
- Price list could be obtained from Federation of Nepalese Chambers of Commerce and Industries (FNCCI).

The agency concerned, while purchasing any goods/materials, should arrange for the publication of public notice in the print or electronic media mentioning latest range of market price of the goods/materials required. Following points should be mentioned in such a notice:

- Unit and quantity of the goods/materials to be supplied.
- Time and place of delivery of the goods/materials.
- Available price list be given indicating the maximum price for the said goods and materials.
- The notice should mention that no payment be made, except tax, fee or commission legally provided for by the supplier of goods/materials to the agency concerned or its employees in any form of commission, cash, fee, tips or any kind of financial benefit – in cash or otherwise – directly or indirectly.
- The notice should mention that a written commitment from the supplier, while submitting and signing the contract agreement for the supply of goods/materials, would be required, declaring that the supplier will not make any payment, except tax, fee or commission or



service legally provided for, in any form of commission, cash, fee, tips, services or any kind of financial benefit – in cash or otherwise – directly or indirectly to the concerned agency or its employees.

Annex 4.7. Public Commitment from the Agency Concerned

PUBLIC COMMITMENT FROM THE AGENCY CONCERNED, WHILE PUBLISHING TENDER NOTICE ON NON-PAYMENT OF ANY KIND OF MONEY OR FINANCIAL BENEFIT, EXCEPT TAX OR FEES LEGALLY PROVIDED FOR

Points to be included in the Tender Notice:

While supplying goods/materials, conducting construction works, during the submission of tender form or after the completion of the designated work or at the time of the receipt of payment for the services provided in accordance with the agreement, individual, firm or company does not have to make any kind of payment, except tax, fee, commission legally provided for, in any form of commission, cash, fee, tips, services or any kind of financial benefit – in cash or otherwise – directly or indirectly to the agency concerned or its employees.

If it is found through reliable source(s) and legally proved that an individual, firm or company has paid to, other than tax, fees or commission legally provided for, any payment in the form of commission, cash, fee, tips, services or any kind of financial benefit in cash or otherwise – directly or indirectly, while submitting the tender or quotation, the mortgage or deposit of such an individual, firm or company will be seized. Also, such individual, firm or company would be black-listed for a certain or indefinite period of time and the agencies concerned may be made aware of such a questionable act.

Annex 4.8. Commitment of Person/Firm/Company

COMMITMENT OF PERSON/FIRM/COMPANY, WHILE SUBMITTING TENDER DOCUMENTS, ON NON-PAYMENT OF ANY KIND OF MONEY OR FINANCIAL BENEFIT , EXCEPT TAX OR FEES LEGALLY PROVIDED FOR

I/We in the capacity of the proprietor/managing director of, registered at district/zone/region as firm/company hereby pledge that I/We will not make any kind of payment, except tax, fee, mortgage/deposit, commission legally provided for, in any form of commission, cash, fee, tips, services or any kind of financial benefit – in cash or otherwise – directly or indirectly, to the agency concerned or its employees, if my/our firm/company wins the tender and gets the job to supply goods, services, materials or the transportation or construction work etc. I/We hereby agree that the contract be cancelled in case it is found, in the process of deciding the tender or during or after the assigned work, that any kind of payment, except tax, fee, mortgage/deposit, etc. legally provided for, in any form of commission, cash, fee, tips, services or any kind of financial benefit – in cash or otherwise – directly or indirectly was made by me/us or agent of our firm/company to the agency concerned or its employees. In such a case, I/We will not claim any compensation and hereby agree that my/our mortgage/deposit be seized by the agency concerned. In addition, I/We agree to any legal prosecution arising from the circumstances mentioned above.

Commitment made by, for and on behalf of

Signature:



Name:
Witness:
Name:
Date:

Annex 4.9. Clauses to be Included in the Agreement

NEPAL

CLAUSES FOR THE NON-PAYMENT OF ANY KIND OF MONEY OR FINANCIAL BENEFIT, EXCEPT LEGALLY PROVIDED FOR, TO BE INCLUDED IN THE AGREEMENT

Related to the officials and employees of concerned agency:

No official or employee of this agency will receive any kind of payment or benefit, in any form of deposit/mortgage, commission, cash, fee, tips, services or any kind of financial benefit – in cash or otherwise – directly or indirectly, except tax, fees, commission legally provided for, through any individual or relatives of firm or company in connection with the work/contract agreement. Such official or employee will be legally prosecuted, if found guilty.

Related to the party providing services:

I/We will not make any payment, to any official or employee of this agency, in any form of deposit/mortgage, commission, cash, fee, tips, services or any kind of financial benefit – in cash or otherwise – directly or indirectly, except tax, fees, commission legally provided for, through any individual or relatives of my/our firm or company in connection with the work/contract agreement. I/We hereby agree the following if any kind of illegal transaction is found to have been made:

- a. Cancellation of the agreement;
- b. Forfeiture of deposit/mortgage made under the agreement. I/we also agree that I/we be prosecuted in accordance with the law.

Annex 4.9. Public Bill Board to be placed at the Construction Site: (Sample)

NEPAL

PUBLIC BILL BOARD TO BE PLACED AT THE CONSTRUCTION SITE: (SAMPLE)

Construction work:
Construction procedure (Tender/Forced Account):
Contractor's Name:
Estimated cost:
Sources of expenditure:
Amount agreed for the work:
Date of commencement of the work:
Date of completion of the work:
Construction site: Ward No..... Area.....



Name of the supervisor (technical employee):
Project chief:

The construction work is being carried out by through the mobilization of various sources. The public is hereby informed that any complaint regarding the quality or any other aspects of this construction work be filed at
Indicate the public contribution in the form of cash or voluntary labor, if any.

V. Annex 5. ECUADOR.

Annex 5.1. Building Islands of Integrity: The Ecuador Model after One Year.

ECUADOR

Building Islands of Integrity: The Ecuador Model After One Year by Valeria Merino Dirani, 1996

Background:

In March 1994, the Vice President of Ecuador, announced at the occasion of the first TI Annual Meeting in Quito, that in the future all enterprises wishing to do business with the public sector in Ecuador will have to enter into a mutual and solemn pledge not to engage in corrupt practices to get public contracts. This would apply to all firms, local and international, and to all types of government contracts – although initially it was intended to focus on large public development projects.

The idea of focusing on relatively distinct markets is part of TI's approach for escaping the "prisoner's dilemma" in trying to avoid corruption. By identifying concrete markets or projects and all competitors in those markets or projects, a system can be introduced that actively commits everybody in those markets to desist, in a coordinated way and simultaneously, from offering any bribes or other illicit inducements which unfortunately have become the norm in so many situations. Bidders can not stop bribing, unless they no longer fear that their competitors will continue doing so and therefore winning business illegally. This is the 'Islands of Integrity' approach.

If this idea works, it can serve as a model for other countries and other situations. In fact, it may even serve as an integral part of implementing the OECD recommendations on ending international bribery. This may also depend on a gradual, confidence building approach for global implementation. After one year, it is useful to evaluate the progress in Ecuador with the concept of "Islands of Integrity".

What has happened?

In 1993, Peter Eigen and Michael Hershman of TI undertook, along with other members of the TI Board, the first of a series of missions in the region. The Inter American Development Bank (IDB) financed their visit to Ecuador, which took place in June 1993. In a second visit during the month of October, the initial findings and recommendations were confirmed and follow-up action initiated to implement the first ABP ever.



At the end of their visit, after consultations with the TI team, the Government announced a number of measures to launch a coherent and focused national strategy to strengthen transparency, including:

- the appointment in the Vice President's Office of a permanent Coordinator;
- the declaration – in the form of an Anti-Bribery Pact – that in all future major public contracts the bidding companies would have to commit themselves in writing and at the beginning on a voluntary basis, to avoid any form of active corruption and to notify the government of all commissions paid in connection with these contracts. A meeting was convened with all the major companies doing business in Ecuador, to explain the national strategy and to request their cooperation;
- a workshop of the various government agencies concerned with transparency and accountability was convened to define a coherent national strategy against corruption, to build support around it, and to design an action plan for its implementation. In preparation for this workshop, succinct strategy notes for the different blocks of the strategy were prepared, some of them with external support, in order to deal with the relevant aspects of increasing transparency; and
- Government would work closely with citizens' groups, including the Ecuador Chapter of TI in formation, then *Transparencia Ecuador*, to receive their input and ensure sustainability of the process.

Introduction of the Anti-Bribery Pact (ABP)

Ecuador has started to implementing the above mentioned steps. The national strategy toward improved transparency and accountability includes several instruments. They will have to be well coordinated – none of them can succeed in isolation.

This paper intends mainly to give a snapshot of the status of the ABP application in Ecuador. It had a rocky start, but there is good reason to be pleased with what has been achieved so far, and to be optimistic about the future.

The Government conformed with its side of the pledge by providing a letter, signed by the Vice President in June 1993. It instructed the procurement officials "to require all bidders in projects involving international procurement of systems, equipment or services to submit a signed statement that they will not offer or give a bribe to any public official in connection with such bids".

The firms were asked to sign their acceptance of this pact in the form of a corporate commitment, a letter with the pledge that the firm:

- (a) would not offer or give bribes or any other form of inducement to any public official in connection with their bid;
- (b) would not permit anyone (whether its employee or an independent commission agent) to do so on its behalf;
- (c) would allow a full disclosure in its payments and the names of the beneficiaries of such payments related to the bid (both already made and those proposed to be made in the event of the bid being successful) to any person other than an employee of the corporation, and also any bonus payments to be made to employees (such disclosures would respect terms of commercial confidentiality, if the corporation so required); and
- (d) would formally issue instructions to all its employees and agents or other representatives in Ecuador, directing them to comply at all times with the laws of



Ecuador and in particular not to pay or offer bribes or other corrupt inducements to officials (whether directly or indirectly).

Both the Chief Executive Officer of the main office and the Executive Officer of the Ecuador subsidiary or their legal representative, if any, were expected to sign the pledge. The intention was to break through the corrupt culture which had permeated the business methods of many companies over time, using a strong personal and psychological commitment. Therefore successful application of the ABP was not going to rely merely on legal commitments – the legal prohibitions against bribery already existed in Ecuador as in many other countries – but it aimed to cause a positive and proactive attitude of transparency, a sense of mutual trust and confidence between the public and the private sectors and among the competitors themselves.

The intention of the Government was to make the signature of the ABP a general legal requirement for all bidders competing for public contracts. The IDB and the World Bank insisted that for projects financed by them, the requirement of the ABP had to be compatible with their respective Procurement Guidelines and therefore could not be imposed on an *ad-hoc* basis, but had to be a general legal requirement for everybody in all public contracting processes.

As a result, the first attempt to prepare a draft of a Presidential Decree raised a number of legal questions, even some constitutional issues. Therefore, to make ABP application compulsory was not accepted and has been voluntary since.

The ABP was applied to a large Refinery Rehabilitation Project, which estimated cost was around US\$ 160 million. The four bidders signed voluntarily: Kellogg-Bufete, Industrias Técnicas Reunidas–Eurocontrol, Raytheon-Tenenge, and Sumitomo-Chiyoda. Their statements conformed to the text of the corporate commitment distributed by the Vice President in June 1993 – including the optional clause stipulating support to Transparencia Ecuador, then the Chapter in Formation of TI. The procurement process was successful. Some technical complaints about the evaluation process were raised, but they were definitively settled. There were no public complaints of corruption.

In addition to its *de facto* impact, it was also considered to apply significant legal sanctions for the violations of the ABP, such as invalidating the contract, granting damages in favor of the State and other competitors, and the cashing of the bid guarantees, etc. which were a substantial percentage of the total contract. It was expected that the imposition of such penalties would give credibility to this instrument, and acts as a deterrent for the competitors to refuse to offer bribes.

The Government and Petroecuador on February 1995 were about to decide that the ABP be included among the required bidding documents for an Oil Pipeline Project (about US\$ 600 million). The pipeline project was unfortunately cancelled.

VI. Annex 6. PANAMA.

Annex 6.1. Monitoring Panama's Telephone Company (Intel, S.A.) Privatization Process



PANAMA

MONITORING PANAMA'S TELEPHONE COMPANY (INTEL, S.A.) PRIVATIZATION PROCESS

Technical data: Monitoring privatization of Panamanian telephone company Intel, S.A. 49% shares, performed by the TI's Panamanian chapter, from September 1996 thru May 1997.

Price estimates by the government was US\$500 million. Company was sold to British Cable & Wireless for US\$652 million.

Background:

Since TI's Panamanian chapter was founded in January 1996, a wide campaign for promoting TI's Transparent Contract Program was started, emphasizing in the necessity of using instruments such as public hearings and integrity pacts in all public enterprises privatization processes taking place in Panama.

At this time, the President of the Republic, following advise from the General Comptroller of the Republic, who was also part of TI's Panamanian chapter Advisory Board, formally requested TI Panama to participate as an observer in the privatization process of Intel, S.A. 49% shares, the moment a new bid was going to be called for after one of the two interested enterprises quit.

The offer made to TI Panama did not allow it to participate in the important specification design and establishment process, which had already concluded as part of the first round of bidding, and which, according to TI's Transparent Contract Program, should be openly made in public hearings.

Despite this limitation, and after consulting TI's Berlin Secretariat, TI Panama decided to accept.

Procedure:

1. Conditions for participating

TI Panama's participation had the enormous advantage of being endorsed by the highest decision-making level, since it was requested by the President of the Republic with support from the General Comptroller.

Under those circumstances, TI Panama communicated the following conditions to the President of the Republic, as indispensable requirements for its participation:

- A clear identification of the government agency to lead the process.
- Complete access to all documentation and information required by TI.
- Participation in all Intel, S.A. Board meetings, whether the topic of privatization was addressed or not.
- Permanent information related to any new happenings.
- Acceptance by the government on the necessity of making public any situation which TI considered vital to keep transparency.

All conditions were supremely important for TI Panama, especially the possibility of informing the community about the development of the process, since this way we could maintain -- regarding the disadvantages we already pointed out-- the concept of public hearings.

Conditions were accepted by the President of the Republic, so TI Panama began the observation process in September 1996.

2. Characteristics of Participation



Under said parameters, we made public the characteristics of our participation, and we made a compromise to inform Panamanian citizens on a weekly basis, through bulletins on the status of the process published in Panama's La Prensa newspaper.

The characteristics of our participation were the following:

- We would not be advisors, nor decision makers.
- Our participation was as observers or monitors of the process, informing the community through the media.
- Our observation would not follow any formalist patterns. Regarding this, we previously made it clear that in case we observed any strange situation, we would let the community know so, even if it was not illegal. We clearly established that the ethics of the process were just as important as complying with the Law.

3. Technical Advisory

Due to the lack of technical personnel in our chapter, we requested the advise of TI's Berlin Secretariat, which made an expert in privatization of telephone companies available.

Through permanent phone conferences, as well as by sending documents from Panama to Germany for review purposes, we were able to have a technical analysis of the main documents (the Law which allows the public company to become an anonymous society and the sale of 49% its shares through a public process, contract with Salomon Brothers as investment bank and advisors, service contracts ceded by Intel since its privatization was announced, advertisements published nationally and internationally calling for bids, prequalification conditions, etc.)

4. Process follow-up

Once our participation was accepted by the national government, we started working with the government agency in charge of leading this privatization (Ministry of Treasury) in order to establish communication channels and making the first request for documents we wanted to examine.

At the same time, we began to follow-up the strict compliance of the privatization calendar, informing the community once every stage was completed.

This way the following stages were completed before final award was made:

- Acquisition of Prequalification Conditions document
- Presentation of documents for prequalification
- Assessment and notification of prequalification
- Data Room (compiling data required by prequalified companies)
- Individual due diligence
- Collective due diligence
- Negotiation and homologation of documents (general telecommunications regulations, concession, specifications document, sale contract, administration contract, social pact and bylaws)
- Bidding announcement
- Public bidding
- Award by Cabinet

5. Communication with participant enterprises

As a part of the observation process, TI Panama held individual meetings with representatives from each of the two participant enterprises, with the intention of knowing their impressions on the process.



It was evident to us that, if any irregularities arised, participants were to be the first to detect them. Our meetings with these companies produced no complains on the way the privatization process was being developed.

6. No-bribery clause

Even though it was impossible to apply the so-called Integrity Pact proposed by TI, which implicates a series of posterior compromises for the companies as well as penalties, we accomplished that the national government included in the final contract what we have called "no-bribery clause", which was accepted by both participant companies.

Such clause says the following:

"We hereby declare the proposing enterprise has a policy against bribery or codes of conduct, and a compliance program, which includes the obligation of not paying bribes for our directors and employees, as well as third parties working for this enterprise, including agents, consultants and sub-contractors, among others."

Despite this formula was very limited, it caused a great commotion among participants in the public act where final offers were read, because of the novelty of the concept.

Even though this formula is evidently insufficient, especially from the perspective of non-compliance and penalties, it has been a first step towards Integrity Pacts.

7. Envelope opening final act

As the last step of our observation labor, we attended the envelope opening final act May 20, 1997, where final offers made by both companies were known.

Before starting with the ceremony, we had an interview with representatives from participant companies for the purpose of recording their final opinion about the process. Both companies declared their satisfaction.

Once the envelopes were opened, and 49% of shares were awarded to British enterprise Cable & Wireless for 652 million dollars (152 more million than official figures), we once again interviewed both representatives, who reiterated their satisfaction, even the losers.

To us, this consultation and its publication closed the door on any posterior illegitimate claims, so usual in these cases.

8. Aspects posterior to privatization

An important problem we had after the award was the evident conflict of interest produced as a consequence of the US\$300 thousand payment to Intel, S.A. Manager as labor compensation, since he had also participated in the whole collective negotiation process on behalf of the State.

As a result of this situation, and given the vital role played by TI's Panamanian chapter, we issued a communique criticizing this situation from an ethics perspective.

The reaction of this official was to present criminal charges against TI Panama for calumny and offense, which were finally turned down by both the General Attorney and the Judicial Branch.

This succesful initial experience of TI's Panamanian chapter in the field of Transparent Contracts has not been continued in other privatization processes because of the national government's unwillingness to accept our proposal on a complete application of such model.



Annex 6.2. (In Spanish) Monitoreo del Proceso de Privatización de la Compañía Telefónica De Panama (INTEL, S.A.)

PANAMA MONITOREO DEL PROCESO DE PRIVATIZACION DE LA COMPAÑÍA TELEFONICA DE PANAMA (INTEL, S.A.):

Datos técnicos: Monitoreo del proceso de privatización del 49% de las acciones de la empresa panameña de teléfonos, Intel, S.A., realizado por el Capítulo panameño de TI desde septiembre de 1996 hasta mayo de 1997.

El precio estimado por el gobierno era de US\$500 millones, y fue vendida a la empresa inglesa Cable & Wireless por US\$652 millones.

Antecedentes:

Desde la constitución del capítulo panameño de TI en enero de 1996, se inició una amplia campaña de divulgación del Programa de Contrataciones Transparentes de TI, y de la necesidad de utilizar los instrumentos de audiencias públicas y pactos de integridad en los procesos de privatización de las empresas públicas que se estaban llevando a cabo en Panamá.

Así las cosas, a instancia del entonces Contralor General de la República, quien formaba parte además del Consejo Asesor del capítulo panameño de TI, el Presidente de la República le solicita formalmente a TI Panamá que participe como observadores en el proceso de privatización del 49% de las acciones de Intel, S.A. en un momento en que se debía producir una nueva convocatoria por abandono de una de las dos empresas participantes.

La oferta hecha a TI Panamá, no permitía participar en el importante proceso de diseño y establecimiento de las especificaciones, el cual ya se había completado en la primera ronda de la licitación y que, según la propuesta del Programa de Contrataciones Transparentes de TI, debe hacerse en forma abierta en las audiencias públicas.

A pesar de este limitante, y después de consulta con la Secretaría de TI en Berlín, TI Panamá decidió aceptar.

Procedimiento:

1-Condiciónes de participación:

La participación de TI Panamá, tenía la enorme ventaja de contar con el aval del más alto nivel en la jefatura del gobierno, pues la invitación había partido del Presidente de la República, con el apoyo del Contralor General.

Bajo esas circunstancias, TI Panamá planteó al Presidente de la República las siguientes condiciones como requisitos indispensables para su participación:

- Clara identificación de la institución que dirigiría el proceso.
- Completo acceso a toda la documentación e información requerida por T.I.
- Participación en todas las Juntas Directivas de Intel, S.A., independientemente de que en ellas se tratase o no el tema de la privatización.
- Información permanente en relación a cualquier novedad que se produjera.
- Aceptación por parte del gobierno de la necesidad de hacer pública cualquier situación que consideráramos vital para mantener la transparencia.

Todas las condiciones eran sumamente importantes para TI Panamá, especialmente la posibilidad de informar a la comunidad del desarrollo del proceso, ya que de esa forma



podíamos mantener – aún con las desventajas ya señaladas – el concepto de audiencias públicas.

Las condiciones fueron aceptadas por el Presidente de la República, de manera que TI Panamá inicia el proceso de observación en Septiembre de 1996.

2- Características de participación:

Bajo los parámetros ya señalados, hicimos público las características de nuestra participación, y nos comprometimos a informar semanalmente a la ciudadanía mediante boletines publicados en el Diario La Prensa de Panamá, el estado del proceso.

Las características de nuestra participación fueron las siguientes:

- No seríamos asesores, ni participaríamos en la toma de decisión alguna.
- Nuestra participación fue en calidad de observadores o monitores del proceso, informando a la comunidad a través de los medios de comunicación social.
- Nuestra observación sería alejada de los patrones formalistas. En ese sentido aclaramos con anticipación que en caso de observar cualquier situación extraña, la informaríamos a la comunidad aunque no se tratase de una ilegalidad. Se dejó claramente establecido que la ética del proceso era tan importante como el cumplimiento de la Ley.

3- Asesoría Técnica:

Debido a la falta de personal técnico en nuestro capítulo, se le solicitó asesoría a la Secretaría de TI en Berlín, quien puso a nuestra disposición la ayuda de un experto en privatizaciones de empresas telefónicas.

A través de conversaciones telefónicas permanentes y de envío y revisión de documentos desde Panamá a Alemania, se pudo tener un análisis técnico de los principales documentos (Ley que permite la conversión de la empresa estatal en sociedad anónima y la venta del 49% de sus acciones a través de un proceso público, Contrato con la empresa Salomon Brothers como Banca de inversiones y asesores, contratos de servicios cedidos por Intel desde el anuncio de su privatización, avisos de convocatorias nacionales e internacionales, Condiciones de Precalificación, etc.)

4- Seguimiento del proceso:

Una vez aceptada nuestra participación por parte del gobierno nacional, iniciamos el trabajo con la entidad gubernamental encargada de dirigir la privatización (Ministerio de Hacienda y Tesoro), para establecer los canales de comunicación y hacer la primera petición de documentos que deseábamos examinar.

Igualmente, iniciamos un seguimiento estricto del cumplimiento del calendario de privatización, informando a la comunidad cuando cada etapa era superada.

De esta forma se fueron superando las siguientes etapas antes de la adjudicación final:

- Adquisición del Documento Condiciones de Precalificación.
- Presentación de Documentos de Precalificación.
- Evaluación y notificación de la precalificación.
- Data Room (recopilación de información requerida por las empresas precalificadas).
- Due diligence individual.
- Due diligence común.
- Negociación y homologación de los documentos (reglamento general de telecomunicaciones, concesión, pliegos de cargos, contrato de compra venta, contrato de administración, pacto social y estatutos).



- Anuncio de licitación.
- Licitación pública.
- Adjudicación por Consejo de Gabinete.

5- Comunicación con las empresas participantes:

Como parte del proceso de observación, TI Panamá llevó a cabo reuniones individuales con representantes de cada una de las dos empresas participantes, con la intención de saber sus impresiones del proceso.

Para nosotros era evidente que si alguna irregularidad se producía, las primeras en detectarlas debían ser los participantes. En ese sentido, nuestras reuniones con las empresas no produjeron ninguna queja sobre la forma como el proceso de privatización se venía desarrollando.

6- Cláusula de no soborno:

Si bien el llamado Pacto de Integridad que propone TI, y que implica un serie de compromisos posteriores de las empresas, así como penalizaciones no pudo ser aplicado en este caso, se logró que el gobierno nacional introdujese en los contratos finales lo que hemos llamado "Cláusula de no soborno", siendo aceptada por las dos empresas participantes.

La cláusula en cuestión dice lo siguiente:

"Declaramos que la empresa proponente tiene una política contra sobornos o códigos de conducta y un programa de cumplimiento, el cual incluye la obligación de no pagar sobornos por parte de nuestros directores y empleados, así como de terceras partes que trabajen con esta empresa; incluyendo agentes, consultores y subcontratistas, entre otras."

A pesar de lo limitado de la fórmula, la misma causó un gran revuelo entre los participantes al acto público de lectura de las ofertas finales, por lo novedoso del concepto.

Si bien esta fórmula resulta evidentemente insuficiente, sobre todo desde la perspectiva de los incumplimientos y penalizaciones, ha sido un primer paso en el camino de la utilización de los Pactos de Integridad.

7- Acto final de apertura de sobres:

Como último paso de nuestra labor de observación, estuvimos presentes el 20 de mayo de 1997, en el acto final de apertura de sobres con las ofertas económicas hechas por ambas empresas.

Antes de iniciarse la ceremonia, nos entrevistamos con los representantes de las compañías participantes con el objetivo de registrar su opinión final en torno al proceso. Ambas empresas expresaron su satisfacción.

Una vez abierto los sobres, y habiéndose adjudicado el 49% de las acciones a la empresa inglesa Cable & Wireless por la cifra de 652 millones de dólares (152 millones más que la cifra oficial), volvimos a entrevistar a ambos representantes, reiterándose la satisfacción aún por parte de los perdedores.

Para nosotros esta consulta y su publicación, cerraba las puertas de posteriores reclamos ilegítimos, tan usuales en estos casos.

Aspectos posteriores a la privatización:

Un problema de importancia que vivimos con posterioridad a la adjudicación, fue el evidente conflicto de intereses que se produjo como consecuencia del pago de US\$300 mil al Gerente del Intel, S.A. en concepto de compensación en su calidad de funcionario, habiendo participado también en todo el proceso de negociación colectiva como representante del Estado.



Como consecuencia de esta situación, y dado el vital papel que había jugado el capítulo panameño de TI, se realizó un público pronunciamiento criticando la situación desde una perspectiva ética.

La reacción del funcionario fue presentar una querrela criminal contra TI Panamá, por calumnia e injuria, la cual finalmente fue desestimada tanto por el Ministerio Público como por el Organo Judicial.

Esta exitosa experiencia inicial del Capítulo panameño de TI en el campo de las Contrataciones Transparentes, no ha podido ser continuada en otros procesos de privatización, ya que el gobierno nacional no ha aceptado nuestra propuesta de aplicación completa del modelo.



vii. Annex 7. ARGENTINA.

Annex 7.1. Integrity Pact – Linea H in Buenos Aires. Including Public Hearings in the preparatory phase

ARGENTINA

Integrity Pact – Linea H in Buenos Aires Including Public Hearings in the preparatory phase

Between the City Government of Buenos Aires and Poder Ciudadano, TI's National Chapter in Argentina, an agreement was designed to promote a more transparent flow of information between the government and civil society in a public tender concerning the design and the construction of the underground project "Linea H."

The complete route of "Linea H" will run horizontally through Buenos Aires, connecting all of the city's existing subway lines. The total cost is projected to be US\$ 1.200 million. Petitioning construction companies have to submit a bidding document with a full resume of previous work done which testifies to their judicial, financial, and technical capacities to realise the project.

The City Government scheduled three public hearings that provide a forum of citizens to express their opinions or dissent, as well as the possibility to offer expert advice to the government. Poder Ciudadano co-organised the public meetings and monitored the process.

With the aim of thoroughly introducing volunteers to their role in the screening process, Poder Ciudadano hosted its first volunteer workshop on the concept and role of the Public Hearings in the tender process on October 1st 1998. The meeting was attended by approximately 35 Participants. Composed of students, professors, business people as well as retired persons, the group assembled was diverse in its professional background. Volunteer participation in the workshop was very lively and encouraging. The group appeared to have understood its role within the project as well as Poder Ciudadano's function as monitor and promoter of a more transparent decision-making process. Formal task-groups for the first Public Hearing were established. The next general volunteer workshop was held on October 8th 1998. The week following this meeting, Christian Gruenberg from Poder Ciudadano met with businesspeople participating in the bidding process for subway "linea H" in a series of meetings. The objective of these gatherings was to learn how the companies felt about the bidding process and to explain the TI-IP concept to them. In general the meetings were very productive in that all participants seemed satisfied with the initiative of Transparency International and agreed to sign an Integrity Pact. The group of businesspeople agreed to meet again to discuss the process following the first Public Hearing.

First Public Hearing: 23 October 1998

The first of the three Public Hearings was held on the 23rd of October and was devoted to the specific aspects of the bidding documents and the routing of "Linea H. The meeting was convened by the Mayor of the City of Buenos Aires, Fernando De la Rúa. With an audience of nearly 450 people and more than 70 individuals testifying, public participation was very encouraging.

During this Hearing, Poder Ciudadano presented the concept of the TI Integrity Pact.

Second Public Hearing: 11 December 1999



Before the third public hearing, Poder Ciudadano and Michael Wiehen met with the Buenos Aires Attorney General and the Minister of Public Works and Services (5.4.99). They (govt) argued that an integrity pact could not be introduced without previous legislation, and they proposed drafting a law that would require all future tenders to include an Integrity Pact. Poder Ciudadano welcomed this proposal, but insisted that it would also be highly desirable to introduce an Integrity Pact during the Bidding Process of "Linea H".

The meeting was resumed the next day (6.4.99), and Poder Ciudadano argued that the case of "Linea H" could be used as a pilot programme for the Integrity Pact, in addition to drafting the law. This proposal was finally accepted. A draft of the Integrity Pact was immediately written, adapted from the TI model to the specific legal context of Buenos Aires (this was approved by Michael Wiehen). One of the principal concerns of the government was that the bidding process/ tender was already in an advanced stage, and that introducing an Integrity Pact at this point would be like changing the "rules of the game". Poder Ciudadano agreed, but explained that this implied that the government would have to simply invite the companies to sign the Integrity Pact, leaving the ultimate decision in the hands of the Private Sector. Fernando de la Rúa was informed of the results of this discussion and agreed to this arrangement.

Third Public Hearing: 7 April 1999

The Mayor of Buenos Aires, Fernando de la Rúa opened the Hearing by inviting the companies already involved in the bidding process to sign an integrity pact, and announcing that he will send a draft law to the legislature so that all future public tenders include an Integrity Pact. The co-ordinator of the Public Hearing later read a draft of the integrity pact that was adapted from the TI model to the specific legal context of Buenos Aires.

The Integrity Pact

The next step was to meet with all 9 of the companies involved in the bidding process in order to get them to agree to signing the IP.

Problems and future recommendations

Transparencia appears to have concentrated its attention on establishing a presence in the implementation process of Linea H and obtaining Integrity Pacts. The Public Hearings are a way to achieve this.

This procedure may be dealing with form rather than substance. The first Public Hearing was to address the evaluation of the pre-qualification and the routing of the subway line. However, the pre-qualification document had been completed and the submissions by interested contractors were under review. It no longer seemed appropriate to address the pre-qualification document itself as it had been issued and acted upon. The document had, unfortunately, biases the selection of eligible bidders in such a way as to potentially increase project cost by its restrictive eligibility requirements.

The pre-qualification document contained the requirement that foreign firms could not have more than 40 percent of the contract. Moreover, the foreign partner would be responsible for the critical tunnelling portion of the work.

This restriction is an example of the kind of important decision that may be taken early in project planning and one that receives no attention because it is not widely publicised and its impact may not be appreciated by uninitiated viewers of the document. However, it is a decision that can have an impact on the cost and effectiveness of the implementation that may be equal to or greater than conventional corruption.

The decision to introduce this restriction may have been made for reasons that were honestly perceived to be beneficial and without any ill intent. It was motivated by the desire to ensure that Argentine firms had the major role in the contract, even at the cost of less optimum implementation. Nevertheless, the restriction impeded the likelihood of obtaining the best results for the citizens of Argentina. It would decrease competition, which would in turn decrease the likelihood of obtaining the best contract offer.



Whether or not there should be free international access to the works, or whether local construction firms should receive some preference is an issue that should have been debated, not decided unilaterally. It is the kind of action that a transparent process could have raised for more public consideration.

This example presents TI with the issue of whether it should only consider conventional measures of corruption or whether it would also raise questions of matters that should be resolved by wider review than they may receive in the normal course of project preparation.

The comments concerning the pre-qualification process and the discussions concerning Linea H do not address the still larger question. That is the one that asks how Linea H fits within the total transport needs of Greater Buenos Aires. Does the estimated \$640 million provide the most improvement in the transportation of the people?

Annex 7.2. Public Hearings in Buenos Aires

ARGENTINA

Public Hearings in Buenos Aires

IS IT POSSIBLE TO AVOID CORRUPTION IN PUBLIC BIDDINGS?

By Christian Gruenberg

The answer is yes. Poder Ciudadano, Argentine chapter of TI, designed and carried out the “Program for Transparent Contracting” (PTC), a preventative, simple, and economic system to avoid corruption in the bidding process.

Public biddings in most of the countries combine the following characteristics:

- a high level of discretion among public officials who make key decisions about the design of bidding documents and the spending of public funds.
- A context of low transparency that does not favor free access to public information.

In order to modify these conditions of high discretion and low transparency, the “Program for Transparent Contracting” (PCT) combines two components: holding public hearings where the responsible authority convenes citizens, businesses, experts, and representatives of the opposition to express their objections and suggestions about the planned terms of the contracting; and the signing of an Integrity Pact wherein the government and all businesses competing for the project share a contract of reciprocal control to prevent the payment of bribes between the bidders and the State.

Public hearings (PH)

The principle objective of the PH is to prevent conflict by allowing citizens, businessmen, ombudsmen, and legislators to voice their objections and suggestions about aspects of the project before suffering any consequences.

The PHs must be convened by the government. Once convened by the government there can arise two distinct situations: that a standard exists for public hearings, in which case the role of the national chapter will be to monitor the formal requirements of the process, i.e.: to publicize the meeting with reasonable notice of 15 to 30 days in advance, to open files containing relevant information about the bidding in question, to guarantee and allow free access to the files, etc. This was the experience of Poder Ciudadano with the City government of Buenos Aires to monitor the public tender for the design and construction of the underground project “H Line” with a total cost of U\$S 1.2 billion. But the situation can also arise in which a regulatory framework does not exist regarding PH. In this case, the national chapter will assume the role of training the government in the methodology of the PH in order to later monitor the preparation and execution of PHs. This was the experience of Poder Ciudadano with the Municipality of Avellaneda, where Poder Ciudadano was enlisted to



monitor a public hearing to discuss the feasibility of the construction of a bridge financed by the World Bank. In this specific case, the municipality of Avellaneda did not have a standard for PHs. Thus in less than a month, Poder Ciudadano trained the municipality and then supervised the preparation and execution of the public hearing.

The principal objectives of a PH are:

- To achieve that the persons in charge of the decision rely on the greatest amount of information possible.
- To address the decision into the process of informing about the alternatives, opinions, concerns, and points of view related to the subject.
- To generate a channel of compromise between the authorities and the interested parties, where the latter ones participate on a basis of equality.
- To generate transparency and publicity about the issues which are debated.
- To involve addresses of the decision through their own participation.
- To obtain a decision of the greatest legitimacy for all addresses and interested parties.

Committee of experts:

For the PH the PCT will select and convene national and international experts to contribute a qualified and impartial opinion about specific aspects of the project to be bided upon, with the intention of providing observations and suggestions that optimize the design and execution of the project. With regard to the experts' participation, the personal opinions to which they subscribe will not include an institutional position of the TI chapter.

Integrity Pacts (IP)

The IP consist of a specific agreement between government calling a public contract and the companies participating in the bid. The government, assures transparency in designing the list of conditions and in the process of awarding the contract. It also guarantees that none of its public officials will demand and improper advantage. The participating companies commit not to offer bribes and to denounce the employees who attempt to extort the or their competitors in case a bribe is offered.

Through these mechanisms, the IP provides a clear normative system, determined by a contract the regulates the rights and obligations of the participants and modifies the incentives to act corruptly. Each competitor will be aware that there are clear rules to the game based on clean competition and will be controlled by the other players. This model helps break the complex scheme of political and economic interests found in societies where corruption is a structural phenomenon. It also allows for the creation of a new scheme of interests, in this case, in favor of integrity and transparency.

The benefits of the model

The combination of PHs and IPs benefits all groups involved in the bidding process: citizens benefit because they can count on a space that allows them to access an aspect of public contracting that earlier did not concern them. In this context, citizens can make observations that, although they are not binding, oblige the State to answer questions and to justify its decisions. Businesses benefit because a transparent market is generated with new game rules that simultaneously apply to the State and to all the bidders who participate in a public bidding. The State benefits because it receives ideas from all involved groups about how to improve the efficiency of spending and to guarantee transparency in contracting before public opinion.

The five great advantages of the model

- Its concept is broader; it focuses not only on corruption but also on the opportunity and suitability of spending.
- It saves money by preventing and avoiding the misuse of funds.
- It is not necessary to create a bureaucracy nor to modify laws.



- It clearly defines general rules of the game between society, the government and enterprises.
- It generates a transparent market for the enterprises.

The challenge

We believe that beginning with this concrete experience of Poder Ciudadano, the national chapters of TI should propose to their respective governments to adopt this model of control so that in the context of the large commercial agreements (MERCOSUR, ALCA, etc.) the governments consider the possibility of citizens participating in the supervision of public biddings.

If TI could replicate this experience through its national chapters, it is very likely that in the short term those governments that do not consider the participation of citizens in the large public contractings will find it very difficult to justify and legitimize their decisions before public opinion.

Annex 7.3. Moron's Integrity Pact

ARGENTINA

MORON'S INTEGRITY PACT*

by Poder Ciudadano

* Moron's IP model was based on the last TICOL IP model for the procurement of the financial and administrative supervision of the supervision of the projects financed through resources of the "Fondo Nacional de Regalias" and including the main conclusions from the 1st International Workshop on Integrity Pacts, Bogota, Colombia, June 22-24, 2000.

Main Features of the bidding process:

- * Type procurement process: Procurement of services
- * Type of service: Garbage collection
- * Amount of the bid: U\$S 32.000.000
- * Service term: 4 years with option to extend
- * Type of bid: International
- * Number of bidders: 4, three local firms and one International
- * No participation of Multilateral Financial Organizations
- * Type of government: Local government (municipality)
- * Population: 370.000 habts
- * Current state of the process: Evaluation of the technical and economic/financial proposals

Main Features of the monitoring process:

The "Program for Transparent Contracting" (PCT) combined two components: holding public hearings where the responsible authority convenes citizens, businesses, experts, and representatives of the opposition to express their objections and suggestions about the planned terms of the contracting; and the signing of an Integrity Pact wherein the government and all businesses competing for the project share a contract of reciprocal control to prevent the payment of bribes between the bidders and the State.



Public Hearing:

The Public Hearing was held on the 15th of June and was devoted to the specific aspects of the draft bidding document. The meeting was convened by the Governor of the City of Moron, Martin Sabatella. With an audience of nearly 500 people and more than 60 individuals testifying, public participation was very encouraging.

Through the participation of Poder Ciudadano's national and international experts, the bidders, the legislature, the users/citizens and the unions, the bidding documents were subjected to a high level of modifications.

Ten days after the public hearing, Moron Municipality published by Internet the final bidding document with the explanation about "what" and "why" they had accepted or denied regarding the observations and suggestions from all the participants.

Outputs of the Public Hearing:

- * The persons in charge of the decision making had access to the greatest amount of information possible.
- * Establishing a channel of agreement between the authorities and the interested parties, where the latter ones participate on a basis of equality.
- * Establishing transparency and publicity about the issues which were debated.
- * A decision of the greatest legitimacy for all interested parties.
- * The hearing led to an improvement of the original bidding document.

Main Features of the IP:

The Moron IP (MIP) has the following main features:

- * a formal and voluntary no-bribery commitment by the bidders, in a separate formal document:
 - * Not to bribe
 - * Not to collude with other bidders
 - * To disclose all payments
 - * To report the violation of the IP by other bidders during the bidding process and during the execution of the service
- * a corresponding commitment by the Governor of Moron (on behalf of all the officials of that office) not to demand or accept any bribes, and to prevent extortion and the acceptance of bribes by other officials
- * threat of sanctions by the government office against any officials violating their no-bribery commitment
- * threat of sanctions by government against any bidders who violate their no-bribery commitment
- * involvement of Civil Society in monitoring the bid evaluation, the award decision process and the implementation of the contract
- * public disclosure of the award decision, including the major elements of the evaluation and the reasons for the selection of the successful bidder.

Sanctions.

Bidders who violate their no-bribery commitment during the contract tender and award process, or the successful contractor or supplier who violates the no-bribery commitment during the contract execution phase, or consultants who violate their commitment, will be subject to significant sanctions.

- * Sanctions normally will include:
 - * Denial/cancellation of the contract
 - * Liability for damages in the amount of 10 (ten) percent of the contract value
 - * Forfeiture of the bid
 - * Blacklist: debarment of the offender from all business with government for five (5) years.



* Claims related to the contract, including claims for damages, would be resolved by national arbitration.

Submitted by Christian Gruenberg, Poder Ciudadano, 19.September 2000



VIII. Annex 8. BENIN. (In French) Decret N° Portant Introduction D'un Code D'éthique et de Moralisation des Marchés Publics

BENIN

RÉPUBLIQUE DU BÉNIN
PRÉSIDENTE DE LA RÉPUBLIQUE

DECRET N° PORTANT INTRODUCTION D'UN CODE D'ÉTHIQUE ET DE MORALISATION DES MARCHÉS PUBLICS

LE PRÉSIDENT DE LA REPUBLIQUE
CHEF DE L'ÉTAT,
CHEF DU GOUVERNEMENT

VU La Loi N° 90-032 du 11 Décembre 1990 portant Constitution de la République du Bénin;

VU La Proclamation du 1er Avril 1996 par la Cour Constitutionnelle des résultats définitifs des élections présidentielles du 18 Mars 1996;

VU l'ordonnance N° 96-04 du 31 Janvier 1996 portant Code des Marchés Publics applicable en République du Bénin, notamment ses articles 52, 65 et 70;

VU le Décret N° 98-280 du 12 juillet 1998 portant composition du Gouvernement;

VU le Décret N° 96-402 du 18 Septembre 1996 fixant les structures de la Présidence de la République et des Ministères;

VU le Décret N° 93-43 du 11 Mars 1993 portant attributions, organisation et fonctionnement du Ministère des Finances

SUR proposition du Ministre des Finances

Le conseil des Ministres entendu en sa séance du.....
Décrète

CHAPITRE I DISPOSITIONS GENERALES

Article 1 :

Les dispositions du présent décret instituent un code d'éthique et de moralisation des marchés Publics en partenariat avec la Société Civile Béninoise.

CHAPITRE II DISPOSITIONS RELATIVES A LA LUTTE CONTRE LACORRUPTION

Article 2:

Sans déroger à la réglementation en vigueur en matière de répression de la corruption, le présent décret vise à obtenir des parties impliquées dans les marchés publics des travaux et de fournitures des biens et services en partenariat avec la



société civile, une renonciation active à toutes les pratiques liées à la corruption sous peine de sanction administrative et contractuelle appropriée.

Article 3:

Toute renonciation aux pratiques liées à la corruption se présentera la forme d'un engagement pris par l'Etat d'une part et d'autre part par tout candidat à un marché public conformément aux modèles figurant en annexe A et B du Cahier des Charges Administratives Générales (CCAG).

Article 4 :

L'engagement de l'Etat conforme au modèle figurant dans l'annexe A du Cahier des Charges garantira l'intégrité des fonctionnaires ainsi que l'application de sanctions sévères à l'endroit de tout fonctionnaire indelicat convaincu de pratiques liées à la corruption en matière de marchés publics.

Article 5 :

L'engagement de tout candidat à un marché public conforme au modèle figurant dans l'annexe B du Cahier des Charges de s'abstenir de toutes pratiques de corruption en relation avec l'attribution et l'exécution d'un marché sera pris par le Directeur de l'entité en son nom propre, au nom de l'Entité et de ses préposés. Tout manquement sera sanctionné par la perte de la clause de sécurité entourant son contrat et par son exclusion de toute future participation aux marchés publics, le tout, sans préjudice des peines et réparations de droit commun prévues par les lois en vigueur.

Article 6 :

Le candidat à un marché public devra rapporter la preuve d'une réglementation mise en place dans son entreprise et interdisant à ses employés toutes implications dans des pratiques de corruption dans la conclusion des marchés publics, copie de cette réglementation rendue publique dans l'entreprise sera partie intégrante de son offre.

Le candidat à un marché public prendra dans le même engagement de l'annexe B, l'engagement de rendre public tout paiement effectué au profit de toutes personnes impliquées dans la procédure d'attribution du marché en rémunération ou en remerciement pour toute prestation effectuée au profit du bénéficiaire du marché.

Article 7 :

Le recours à la procédure de renonciation aux pratiques liées à la corruption sera obligatoire dans les marchés où il est fait appel à la concurrence. Il reste facultatif pour la Commission Nationale des Marchés Publics d'exclure de cette procédure les marchés de gré à gré ou d'études.

**CHAPITRE III CONTRIBUTION DE LA SOCIÉTÉ CIVILE À LA TRANSPARENCE
DANS LES MARCHÉS PUBLICS**

Article 8 :

Des membres des Associations de la Société Civile qui en ont les capacités techniques pourront être recrutées en qualité de consultant ou d'expert pour contribuer à plus de transparence dans les procédures de passation des marchés publics. La Commission Nationale des Marchés Publics devra intégrer ces consultants à ses activités conformément aux prérogatives qui découlent de l'article 54 du Code des Marchés.



Article 9 :

Les consultants des Associations de la société civile qualifiés pourront être intégrés au comité technique du Maître de l'ouvrage ou de la Commission Nationale des Marchés Publics et à ce titre, contribuer non seulement à l'évaluation du projet par une évaluation indépendante, mais aussi assister aux travaux de la Commission Nationale des Marchés Publics à travers une évaluation indépendante des soumissions et procéder au suivi-évaluation informel de l'exécution du Marché à travers des rapports périodiques.

Tous les rapports et autres évaluations de la Société Civile experte devront être versés sans délai aux dossiers de la Commission Nationale des Marchés Publics pour être pris en compte dans ses décisions.

Article 10 :

Le recrutement en qualité de consultant de la Société Civile qualifié s'effectuera par appel à la concurrence sur la base d'une liste restreinte. Il sera soumis aux mêmes contraintes de transparence régies par le présent décret. Le coût de cette expertise sera imputé au projet concerné.

CHAPITRE IV : SÉCURITÉ ET RÉGULARITÉ DES MARCHÉS

Article 11 :

Le contentieux des marchés publics sera renforcé et accéléré. A cet égard, toutes les décisions et sanctions administratives relatives à un marché public doivent être prises par la Commission Nationale des Marchés Publics sous réserve des voies de recours devant la Cour Suprême ou devant toute autre juridiction compétente statuant selon la procédure d'urgence.

Article 12 :

A ce titre, toutes les décisions de la Commission Nationale des Marchés Publics relatives au contentieux des marchés publics et aux mécanismes de transparence ou de corruption pourront être déferées devant la Cour Suprême ou toute autre juridiction compétente statuant selon la procédure d'urgence.

Article 13 :

Pourront saisir la juridiction compétente, toutes les parties concernées par le marché y compris les Associations qualifiées de la Société Civile.

Article 14 :

Les manquements aux engagements des articles 2,3,4,5, et 6 seront sanctionnés par la Commission Nationale des Marchés Publics sous réserve des voies de recours devant la juridiction compétente.

Les manquements aux engagement de transparence du Gouvernement par ses agents de l'État seront sanctionnés par l'interdiction à jamais de participer à une procédure de passation des marchés publics en quelque qualité que ce soit, même après leur départ de la fonction publique, sans préjudice des autres sanctions de droit commun.

Les manquements des candidats ou des bénéficiaires de l'appel d'offre (y compris les Associations de la Société Civile) sans préjudice des autres sanctions de droit commun, seront sanctionnés par l'interdiction faite aux dirigeants de ces entreprises et aux entreprises candidates ou bénéficiaires elle-mêmes de prendre part à vie ou à temps (10 ans au moins) à toute procédure de passation des marchés publics.

Toute tentative de prête-nom sera soumise aux mêmes sanctions.

Article 15 :

L'attribution de compétence des articles 12 et 13 ne fait pas obstacle aux attributions de compétence du droit commun en matière de responsabilité des procédures arbitrales de règlement du conflit et autres clauses compromissaires.

CHAPITRE IV : DISPOSITIONS DIVERSES

Article 16 :

Le présent décret prend effet à compter de sa date de signature et sera publié partout où besoin sera.

Fait à Cotonou, le.....

(Signatures)

FORMULAIRE A

Étant préalablement entendu que dans le cadre de la procédure d'appel d'offre relatif aux Marchés Publics,.....

Représenté par le Maître de l'ouvrage.....

et le candidat au Marché.....(Société ou Entreprise).....

représentée par.....

ont estimé nécessaire de mettre en oeuvre les dispositions du décret No..... du..... portant institution d'un code d'éthique et de moralisation des marchés publics en prenant sonnellement et respectueusement les engagements contenus dans les annexes « A » et « B », lesquels deviendront partie intégrante du marché à passer entre les deux parties.

Article 1. Le Maître de l'ouvrage et son Représentant..... s'engagent en leurs noms propres ainsi qu'au nom de leurs proposés et représentants ou autre mandataires, à s'abstenir de toute pratique liée à la corruption dans le cadre du présent marché.

Article 2. Le Maître de l'ouvrage s'engage et engage ses préposés et autres représentants à déclarer dans les huit (8) jours à la Commission Nationale des Marchés Publics à partir de la date de sa saisine, toute récompense ou rémunération qu'ils auront obtenue en raison ou en liaison avec le marché.

Article 3. En cas de manquement à ces engagements, le Maître de l'ouvrage s'engage à ce que, outre les sanctions administratives et judiciaires déjà en vigueur, ses préposés et autres représentants convaincus de pratiques de corruption, n'aient plus accès aux procédures de passation des marchés publics à quelque titre que ce soit y compris après la cessation de leurs activités dans l'administration publique.
Cette interdiction pourra être limitée dans le temps (et égale au moins à dix ans) compte tenu de la gravité du manquement laissée à l'appréciation de la Cour Suprême ou de toute autre juridiction compétente statuant selon la procédure d'urgence.

Article 4. La présente Annexe sera considérée comme une partie intégrante du Marché de..... et aura la même valeur contractuelle que ledit marché.



Fait a Cotonou.....
Pour le Maitre de l'ouvrage

Formulaire B

Étant préalablement entendu que dans le cadre de la procédure d'appel d'offre relatif aux Marchés Publics,.....

Représenté par le Maitre de l'ouvrage.....
et le candidat au Marché.....(Société ou Entreprise).....
représentée par.....

ont estimé nécessaire de mettre en oeuvre les dispositions du décret No..... du.....
portant institution d'un code d'éthique et de moralisation des marchés publics en prenant
sonnellement et respectueusement les engagements contenus dans les annexes « A » et
« B », lesquels deviendront partie intégrante du marché à passer entre les deux parties.

Article 1. Le candidat au marché et son Représentant M./Mme.....
s'engage en leurs nom propres ainsi qu'au nom de leurs préposés, représentants ou autres
mandataires ou succursales à s'abstenir de toute pratique liée a la corruption dans le cadre
du présent marché.

Article 2. Le candidat au marché s'engage personnellement et engage ses représentants ,
préposés et autres mandataires et succursales à révéler à la Commission Nationale des
Marchés Publics toute récompense ou rémunération offerte 'a des tiers dans le cadre du
présent marché et non inclus dans les couts des biens et services du marché et ce, dans les
huit (8) jours qui suivent cette récompense ou rémunération.

Article 3. Le Candidat au marché devra avoir mis en place dans son entreprise une politique
contre la corruption pour la mise en oeuvre du Code d'Éthique et de Moralisation des
Marchés Publics de cette réglementation sera annexée au present formulaire.

Article 4. L'ensemble des engagements du Candidat au marché public dans le cadre du
présent formulaire « B » doit recevoir l'approbation de ses dirigeants, de ses principaux
actionnaires ou de son conseil d'administration. Ses obligations seront par ailleurs étendues a
tout les sous-traitants du candidat.

Article 5. En cas de manquement à ces engagements, le Candidat au marché, outre les
sanctions de droit commun s'expose à son exclusion de tout marché public à venir et en tout
état de cause, pendant une période qui ne peut être inférieure à dix (10) ans , sous réserves
des voies de recours devant la Cour Supreme ou de toute autre juridiction statuant suivant la
procédure d'urgence.

Les représentants du Candidat au marché signataire du présent formulaire, en cas de
manquement aux obligations souscrites, s'epose aux memes sanctions d'admission,
lesquelles sont aussi applicable aux succursales et aux préte-noms auxquels le candidat
pourrait etre tente de recourir.

Article 6. La présente Annexe sera considérée comme une partie intégrante du Marché de.....
et aura la meme valeur contractuelle que ledit marché.

Fait a Cotonou.....

Pour le Candidat au marché public
Société.....
Représentée par.....



IX. Annex 9. PAPUA NEW GUINEA. The Integrity Pact and the National Capital District of Papua New Guinea

PAPUA NEW GUINEA

The Integrity Pact and the National Capital District of Papua New Guinea

The suggestion by TI PNG that the Integrity Pact be applied to the process of awarding public works contracts by the National Capital District Commission (NCDC) was met initially with much enthusiasm. Perhaps, in hindsight, it was embraced too quickly.

The previous municipal administration had been suspended following allegations of widespread corruption and an interim administration had been appointed by the national Government to 'clean up city hall.' Services had declined in Port Moresby and its suburbs, the largest city in Papua New Guinea with a population of approximately 700,000. The roads were full of potholes; housing had deteriorated; and schools were in disrepair. When services were provided, they were at an excessive cost to the taxpayers because of the backroom deals, fraudulent contracts, and the under-the-table payments being made.

The new interim administrator, Jamie Maxtone-Graham, was determined to put a stop to the bribery, mismanagement and nepotism that had become all too common. As part of his anti-corruption campaign, Mr. Maxtone-Graham made a public commitment to include TI's Integrity Pact as part of the tendering process for both the city's K100 million school upgrading program and its K150 million road construction and maintenance programme.

In a statement published widely in the press, he said that he regarded the adoption of the Pact as an important development for the NCDC, and promised that its use would be extended to all major contract work between the business community and the city.

All companies bidding for these public works contracts were required to sign the Integrity Pact, pledging not to pay bribes or other inducements to anyone in order to win a tender and not to collude with any other company bidding for the same contracts to unduly or unfairly limit competition and competitive pricing in any NCDC tender. The pledge also committed the contractors agents, consultants, and subcontractors.

Directors of TI PNG met with city officials and explained the general concept of the Integrity Pact and an office at city hall was made available for TI's use. One of TI's directors heading this project was also invited to attend the regular meetings of the tenders board, which he did quite frequently.

In February, TI PNG, in conjunction with Institute of National Affairs, a private-sector research institute, hosted a forum on the Government's policy to privatise a number of public institutions and statutory bodies such as the telephone service, national airline and several business in which the Government held a majority interest.

TI PNG argued that regardless of the pros and cons of privatisation, its success ultimately depended upon it being implemented honestly, openly and for the benefit of the public. For this reason, TI PNG invited Michael Weißen of TI Berlin and Rosa Inness Ospina Robledo of TI Columbia to address the forum to explain the concept of the Pact and relate the experience of other countries which had implemented the Integrity Pact.



While in Papua New Guinea, Mr. Weißen and Ms Robledo also had the opportunity to meet with the city administrator, as well as the Minister for Provincial and Local Level Government, who also offered his support for the application of the Integrity Pact.

However, some reservations were expressed about a number of elements of the Pact, specifically the requirement that all officials declare their assets. There was some reluctance to do this and concern about to which government body these assets would be declared. The Minister, in particular, was skeptical about declaring assets to the Ombudsman which at the time was investigating his behaviour under the country's Leadership Code.

TI PNG staff also had the opportunity to discuss the Integrity Pact at length with Mr. Weißen and Ms Robledo. As a result of this consultation, TI PNG came to understand the enormous amount of time and the wide range of expertise that was required to implement the Integrity Pact, resources, which were not available to TI PNG. An application for funding to Ausaid to finance the implementation of the Integrity Pact had been approved in principle, but we soon realized that the amount applied for was vastly insufficient. Up until this point, all work involved, including attendance at meetings of the tenders board, had been done by volunteers. It was obvious that a full time co-ordinator would be required.

Furthermore, at the same time that discussions with the NCDC were being held, the city was busy awarding contracts and proceeding with its public works programme. Thus, there was no time to implement other vital aspects of the Integrity Pact, such as the establishment of a monitoring committee made up of representatives from civic society to ensure all contracts were being carried out according to the contract. Moreover, municipal officials involved in awarding contracts were never required to take the Integrity Pledge as the contractors had. Because many of the projects were already underway just shortly after the time TI PNG had introduced the IP, no individual contracts were selected for application of the IP. TI PNG was particularly concerned that the winning contracts were never publicly disclosed, as required under the Pact.

The establishment of the interim city administration was a controversial move, especially for those officials and politicians who had been suspended. Thus the interim administration was constantly criticised and accused of the same corrupt practices which it had been installed to end. At one point, these political attacks came to a head and Mr. Maxtone-Graham was eventually replaced to mitigate accusations that his was a political appointment.

As this heated battle ensued in the press, TI PNG became somewhat concerned that its good name and reputation would be used to assure the public that all contracts had been awarded honestly and fairly. TI PNG had good reason for this concern. In a letter to the editor published in the country's newspapers, Mr. Maxtone-Graham cited the participation of a TI director on the tenders board to support his assertion that the composition of the tenders board ensured "transparency, accountability and professionalism in the awarding of contracts. TI PNG's directors did not feel absolutely certain it could support this claim made by the city and if ever questioned, was not confident it could offer the same guarantees.

Because of the instability of, not only the municipal government, but that of the national Government, and the lack of resources both in funding and expertise, it was decided that TI PNG would have to withdraw its involvement with the city.

Initially, a letter was sent to the city administrator advising him that unless all elements of the Integrity Pact were applied, TI PNG could no longer participate in the project. Those missing elements were outlined and an offer was made to assist the city in applying the IP.

When no response was received, TI PNG wrote again, notifying the city that it was withdrawing from the IP. However, as we still believe that the Integrity Pact can go a long way in curtailing corruption, increasing accountability and ensuring that public money is not mismanaged, we offered to become partners with city once again, should it, sometime in the future, be in a position to provide the resources to apply the Integrity Pact in its entirety, even if to just one contract.



This offer still stands.

Meanwhile, we continue to argue for the application of the IP to the privatisation process which we feel, with what we have learned from the experience working with the city, we are in a much better position to implement.

prepared by TI-PNG for the Ottawa AGM in September 2000



X. Annex 10. NIGERIA. Report Of The Public Sector Procurement Workshop. 13-15 SEPTEMBER 1999, ABUJA, NIGERIA

NIGERIA

**Report of the
PUBLIC SECTOR PROCUREMENT WORKSHOP
13-15 SEPTEMBER 1999, ABUJA, NIGERIA**

1. Preamble

The Workshop on Public Sector Procurement addressed the question of how procurement practice in Nigeria can be strengthened and corruption reduced. Participants with detailed knowledge of procurement experience in Nigeria and familiar with best international practice openly and frankly exchanged views for three days. All aspects of procurement were discussed, from the steps leading to the selection of winners, through contract execution.⁵

A broad consensus was reached on several fundamental points. The basic problem is not the procurement rules - although undoubtedly there is some room for updating - but rather the way they are applied. There is a great need for better communication of the rules to all concerned parties. Officials involved in procurement decisions need training and clear working instructions about procedures and ethics of decision making. The rules call for sound and fair practices, and everyone must understand that compromises will not be tolerated. At the same time, conditions that tend to motivate corruption need to be addressed and incentives created for good performance. Rules must be adopted to protect and insulate civil servants from political pressure to violate specific rules or to act unethically.

Within this framework, a number of basic principles were identified and specific recommendations were made by the Workshop. Most of these can be implemented without the need for changes in the basic law, or re-organisation of procurement. Mainly they require the re-establishment of ethical principles and professionalism among the officials charged with procurement responsibilities. Their effectiveness will depend critically on holding officials strictly and promptly accountable for any non-compliance as well as recognising the benefits to Nigeria of good procurement performance.

The participants were aware that work is currently in progress to review the FGN Procurement Guidelines and that a World Bank Mission is due to visit Nigeria to conduct a Country Procurement Assessment Review in October 1999. Our work was conducted in this context.

2. Administrative Principles

It is the recommendation of the Workshop that in all procurement activities certain principles and practices shall always apply and will guide the actions of officials and

⁵ The participants of the Workshop included more than 20 senior officials from the FGN and its agencies, and six international resource persons organised by Transparency International.



executives involved in the procurement process at all levels. The objective is that the principles of integrity, transparency, accountability and value for money shall be achieved in all expenditures on behalf of the Federal Government of Nigeria, and its agencies.

Our specific recommendations in this area are : -

- officials (or their family members) may not accept anything of value from an entity in contractual dealings with the ministry or agency for which that official works
- for important decisions, the “4-eyes principle” should apply (i.e. at least two persons must approve all decisions affecting government expenditure in excess of Naira 0.5 million)
- officials in posts involved with procurement and other contracting activities should be rotated regularly⁶
- officials in posts involved with procurement and other contracting activities should be asked to sign a promise that they will not demand or accept anything of value that in fact or perception could influence the exercise of governmental discretion
- officials found to have violated any laws, official rules or regulations or the no-bribe promise must be held strictly accountable and penalised (according to disciplinary as well as criminal rules)
- responsibilities for project planning, tendering and contracting, supervision and final accounting should be distributed to create independent checks and balances
- internal and external auditors should review procurement decisions routinely, and there shall be a contractual right to audit the books of contractors and their sub-contractors
- where such audits disclose intentional overcharging by a contractor, the contractor shall be required to reimburse the overcharge and cost of audit
- the FGN should establish an Anti-Corruption Commission (reporting directly to the President) that has investigative and prosecution capacity
- a procurement appeals process should be established specifically as regards complaints about mis-procurement, whether corruption is involved or not, which must be able to react quickly to redress any errors in the procurement or evaluation process⁷

“whistleblowers” must be protected against official or private retaliation or retribution of any kind. There must be a stated duty of disclosure of suspected wrongdoing on all public officials, and officials should be protected in carrying out that duty. There should also be a provisions to discourage capricious or frivolous whistleblowing.

3. Selection of Suppliers, Contractors and Consultants

The Workshop considered it important to establish the principle that the same processes and safeguards should apply across all contracting authorities to all and any procedures by which the FGN purchases goods and services. It is important to re-establish that open competitive bidding shall be required in all contracts in excess of Naira 0.5 million, except in narrowly, specifically defined circumstances (e.g. natural emergencies). All exceptions must be recorded in writing to a standard form and available for public examination. All competitions should be open, transparent and accountable.

The workshop recommends the following : -

- designs and specifications must be broad enough and non-discriminatory so as to ensure true competition

⁶ Rotation must be balanced with the benefits to be gained from continuity and experience in post. e.g. we do not recommend annual rotation

⁷ The Workshop consider it appropriate to differentiate between a Procurement Review Procedure and Anti-Corruption Measures



- prior to solicitation of tenders, the contracting authority shall prepare or obtain an estimate of project cost, which estimate shall be held strictly confidential
- preparation of a set of standard bidding and contracting documents, including standard specifications
- decision making criteria must be objective, they must be stated in the bidding document and discretion must be reduced to the minimum
- there should be true competition (open competitive bidding including advertisement in at least two print media of wide circulation for all contracts subject to Federal Tenders Board)
- all requests from potential bidders for clarifications must be requested and replied to in writing and provided to all bidders
- for contracts subject to competitive tendering, registration of suppliers, contractors or consultants as competent to contract with the FGN should be dependent on the firm's establishing (by filling a questionnaire) it meets minimum standards⁸ of : -
 - professional competence
 - sufficient relevant experience
 - financial capacity to an appropriate level
 - integrity⁹
- as regards integrity, it is desirable to publish minimum standards to which companies will in the future (i.e. starting in 2001) be required to certify compliance (i.e. no bribes, bid-rigging, fraud within the previous 12 months, by the company or any predecessor company with essential the same principals or senior executives)
- a separate pre-qualification exercise may be carried out for specific large value contracts, subject to open competition for that pre-qualification
- TI-Integrity Pact (TI-IP) should be introduced on a pilot basis to selected major investment projects, say :
 - 1 World Bank and 1 African Development Bank funded
 - 2 FGN funded (including 1 FCT)
 - 2 sample state-funded contracts
 - 1 licensing contract
 - 1 privatisation process
- a clause should be immediately included in all standard contracts requiring contractual compliance with ethical standards to establish the principle that contracts can be rescinded (terminated) for breach of ethical guidelines (e.g. payment of bribes)
- all bids should include a full disclosure statement of all commissions etc. paid now or to be paid in the future in connection with the contract
- bid opening must be open to the public
- the award decision must be documented as being in accord with the criteria published in the tender, in a standard form that lists, at a minimum, all bids received, major elements of the evaluation process and the specific reasons for selecting the winner
- the award decision should not be made by an individual, but by a body of government
- evaluations should be conducted collectively with independence and free from interference from officials or the private sector
- evaluations of tenders should take into account the project cost estimate prepared prior to tender solicitation
- consider a monitoring role for Civil Society in the bid evaluation and award process
- FGN should establish an independent appeals body within Government for aggrieved bidders, but including a penalty within the procedure for capricious or frivolous appeals

⁸ We recognise that the required minimum standards as to competence, experience and financial capacity (but not integrity) most of necessity vary depending on the size or type of contract, or to accommodate legitimate government objectives of promoting participation by new, small or disadvantaged business enterprises

⁹ The integrity standards will apply to all levels of contracting



- the selection of consultants requires a different evaluation process, but it should be clearly stated that it is covered by the FGN procedures for tendering and award of contracts, recognising that selection of consultants is a procurement activity
- in the selection of consultants it is important that : -
 - Consultants of all types must be independent which should be established by the application of Conflict of Interest Provisions within the tendering process.
 - Consultant Engineers should have adopted the Code of Ethics on Corruption issued by FIDIC in 1996 (or something similar)
 - Consultants should be selected on the basis of competition (quality of staff, quality of proposal, eventually price)

4. Contract Implementation

The opportunity for corruption does not end with the award of contract. Particularly in the case where a contractor has bid low to win the contract, they will employ many tactics to raise the value of the contract in execution to increase their profit. This may include bribing of inspectors or other officials to accept low quality work or components, improper substitution of materials, inclusion of incorrect variations to contract, contract extension, price variation and many other unethical practices. To overcome these practices strict monitoring and auditing of contract performance is essential. Our recommendations in this area are : -

- compliance with contract by the selected supplier or contractor must be scrupulously in line with specifications which were the subject of the competition
- there needs to be thorough, competent, continuous supervision of performance
- if supervision is carried out by a Consultant, rules as above for the selection of consultants must apply
- for major civil works projects, especially those spread over a large area, there should be checks on quality control by independent bodies.
- contractual provisions should preclude the transfer of contracts, or substitution of contractors and change of domiciliation of payment. Such activities can only be approved by the original contract award body
- contract conditions should include provisions for prior approval by the client of sub-contracting to avoid the potential for non-approved contractors and introducing corruption to the contract. The selling of contracts should not be allowed
- where a contractor, supplier or consultant (vendor) engages in materially unethical or illegal conduct, and compelling justification exists for nevertheless awarding a contract to that vendor or not terminating an existing contract with that vendor, the FGN can require the vendor to retain at its own expense an independent monitor (appointed by the government) to monitor the contract performance
- the following four tests must apply to any change order or contract variation : -
 1. Is it a valid contract variation? (i.e. the scope of work in the contract variation is not within the base contract)
 2. Is the contract variation properly priced ?
 3. Was the work actually performed ?
 4. Is the contract variation appropriately allocated ? (i.e. extra cost due to design defects should be the responsibility of architect or engineer; approved material substitutions should result in "credit" change orders to the government's benefit)
- contract variations must be carefully monitored, individually and in the aggregate
- when a contract variation individually or together with all previous contract variations in the aggregate is in excess of 10% of the original contract value or involves a substantial change to the specifications on which the tender was awarded, approval must be obtained from the same authority that awarded the original contract. Where the revised contract value exceeds the authority of the awarding entity (e.g. MTB), then approval must be obtained from the appropriate higher authority (e.g. FTB).

5. Accountability of Consultants, Contractors and Suppliers



It is essential that the sanctions available to the FGN when its contracting partners breach ethical and performance standards are implemented without fear or favour. We recommend :

- anybody found to have bribed, committed price-fixing, or provided sub-standard goods or services in collusion with any official should be debarred from future contracts with the FGN, indefinitely or for a defined period, and may also be subject to the following contract sanctions ;
 - loss or denial of contract
 - forfeiture of bid or performance security
 - liability for damages
- International Financial Institutions and other donors/aid givers should be requested to apply sanctions (including debarment) against firms violating the anti-corruption rules

6. Transparency International - Integrity Pact (TI-IP)

The TI-IP that we recommend be introduced as indicated above would have the following major principles : -

- Principal and all bidders/ competitors commit themselves not to accept/demand or offer/pay any bribe or other advantage
- commitment by bidders "in the name and on behalf of the Chief Executive Officer
- bidders disclose all commissions or other payments to anyone made in connections with the contract
- bidders submit to sanctions in case of violations, other than facilitation payments, including : -
 - denial or loss of contract
 - forfeiture of the bid security
 - liability for damages to principal and competitors
 - debarment for an appropriate period of time
- bidders submit to legal recourse through arbitration under the rules of the Court of Arbitration of the International Chamber of Commerce
- Civil Society will participate in monitoring the implementation of the TI-IP

7. Other Important Measures

To reinforce the recommendations in the previous sections we also recommend the following measures/actions :-

1. Renew knowledge of procurement procedures
2. Prepare and issue a Handbook for Procurement for all FGN officials which sets out all procurement laws, guidelines, FGN circulars and regulations, and standard documents.
3. Salary and performance rewards must be realistic to reduce temptation
4. Review levels of authority to be allied to professional ability in procurement and the discipline concerned.
5. Financing of contracts needs to be reformed and prioritised to address : mobilisation fees, lack of budget availability, delays in release of funds, and delays in payment. All of these factors raise the risk of corruption, increased costs and failure to perform.

Abuja, 15. September 1999



XI. **Annex 11. First International Workshop on Integrity Pacts. Bogotá, June 22 to 24, 2000.**

Annex 11.1. Report on the Proceedings

First International Workshop on Integrity Pacts Bogotá, June 22 to 24, 2000 Report on the Proceedings

Startup

The Workshop took place in the Chile Inn in Bogotá. It proceeded by and large in accordance with the agenda set forth in Attachment 1.

After a welcome address by Juan Lozano, president of Transparencia Colombia (TICOL), Michael Wiehen, in the name of Transparency International (TI), presented the detailed agenda aiming at progress in the following main areas:

- Further determination of the elements of an Integrity Pact (IP) and their priorities,
- Acknowledgment of the fact that there are options for defining and implementing Ips,
- Possible rewriting of the IP-model,
- The provision of improved advice to TI's national chapters (NCs), and
- Setting up an efficient process of collecting and disseminating NC's experience with IPs in the field.

Actual Experience in Specific Countries:

As a start of the proceedings proper, the participants presented a summary of the experience with IPs in their respective countries. The following write-up also includes positions taken by the representatives of the respective NCs in connection with later discussions.

In **Argentina** the emphasis until now is on the phase of procurement preceding the IP proper and in coalition building. In particular, *Poder Ciudadano* has encouraged and participated in the organization and the monitoring of public hearings on the project basics, the decision making process, and the procurement process in Mendoza Province, where a limited IP was signed, and for the Linea H of the Buenos Aires Subway (for the specific issues see Status Report Annexes D, E and E1, and document 1. in Attachment 2). *Poder Ciudadano* relies on its substantial own expertise as well as on independent outside experts. In the bidding process, it tries to stay on the sideline looking in, collecting information, from all sides and reporting on the status of the project. It has not monitored the implementation of a contract, yet, but intends to build upon an experience in Bangalore, India, where a team of independent volunteer engineers meet monthly to visit and investigate the progress of a public construction project. Twice politicians approached *Poder Ciudadano* to get help against accusations of corruption. (*TI-Russia* interjects that working with politicians in Russia is a high risk venture; *Poder Ciudadano* agrees that this is also the case in Argentina). In dealing with municipalities, where like *TI-Italy* (see below) it sees better chances for the IP process than at regional and national level, it approaches the mayors for a genuine commitment to the process and makes clear that it will not hesitate to criticize them, if the process does not proceed as it should. Answering a question by *TI-Paraguay*, *Poder Ciudadano* states that, to verify information collected, they often rely on independent investigative experts, who will be cautious "like a judge" when publicizing the investigated claims or complaints.

In **Italy**, there are commitments to implement IPs in the municipalities of Bergamo, Milan, and Genoa. To a similar end, *TI Italy* has contacted three further municipalities as well as two provincial governments (one IP involving a provincial government is likely to materialize soon). Experience shows that, in Italy, it is easier to get actual steps towards IPs done at the municipal than at the regional and national level. A particular feature of the Italian IP is that



whereas the administrations commit themselves unilaterally and publicly, there is no formal role for civil society, as the procedure relies entirely on compliance with the law. This reflects inter alia the reluctance of public employees - in contrast to elected officials such as the mayors - to cooperate with civil society.

In **Greece**, no IP exists yet, but *TI Greece* is working with the municipality of Piraeus on starting a process preliminary to an IP involving: (i) the preparation and implementation of codes of conduct for elected representatives and officials of municipalities; (ii) the disclosure of assets by the mayor and decision-making officials; (iii) the creation within the municipality of a complaints office independent of the party in government; and (iv) the definition of work rules within the municipality. *TI Greece* expects that the process will lead to an IP within the next year.

In **Paraguay**, no IP has been formalized yet. However, *TI Paraguay* is monitoring the procurement of medical supplies for the Public Health Institute (Instituto de Previsión Social) and is presently closely following up on the privatization of the telecommunications and the public water supply sectors. *TI Paraguay* sees the main difficulties in the fact that (i) sanctions are foreseen but not applied, (ii) there is no set role for *TI Paraguay* and civil society; (iii) there is no promising concept yet for disseminating the IP idea.

In **Korea**, the Dongjak District Office of the Seoul Metropolitan Government (SMG) has adopted the IP approach for public contracting. SMG as a whole is expecting to follow suit within the year. The Anti-Corruption Network in Korea (ACNK), a civil society organization including by now over 900 individual citizens' groups, will be the counterpart of the national *TI* chapter, soon to be founded. ACNK is planning to disseminate the IP concept throughout Korea. It is already implementing an array of measures that are basic for the preparation and implementation of full fledged IPs (see documents 3. and 4. of Attachment 3).

In **Ecuador**, after the successful start of an early type of IP (Anti-Bribery Pact, see Status Report, Annex B), there was a setback as the political commitment to the attitude to be expressed in IPs all but vanished. However, there is a prospect of reviving the IP concept under the new national Government. *TI-Ecuador* proposes to introduce the IP as an option into the law framing the public procurement process. (see document 5. of Attachment 3).

In **Panamá**, there is no formal IP yet. However, through the Controller General of the country, who had ties to *TI-Panamá*, this NC was invited to monitor the privatization of Intel, the Panamanian national telecommunications utility (see Status Report, Annex C), which involved the sale of assets of some US\$ 500 million. As the tender documents were already issued, there could not be a full IP. Assisted by a specialist contacted through *TI-S* and with whom it communicated over the phone, *TI-Panamá* issued weekly reports on the status of the privatization. At the end of the procedure, the awardee of the contract signed a declaration that there had been no bribing. Winner and loser further declared that the process had been good and fair. *TI-Panamá* was also involved in the monitoring of the process of allocating radio and television concessions and of selecting the company to manage the Public Savings and Pension Capitalization Plan. This is expected to pave the way for the IP to become a regular procedure (see Document 6. of Attachment 3). The International Finance Corporation (IFC) did not wish to consider an IP for the privatization of the national electricity utility. For the time being *TI-Panamá* is mainly keeping channels open between civil society and government.

In **Russia**, the IP concept still has a long way to go. However, the "Declaration of Integrity in Business Conduct in Saint Petersburg" is a promising early step towards wider acceptance of the concept (see Document 7. of Attachment 3).

In **Germany**, the IP concept was suggested by *TI* to the state governments of Berlin and Brandenburg for adoption in the context of building the new international airport Schönefeld. Private companies accepted, but the governments refused to go ahead. Presently the project is on hold because of major cases of corruption(!).

In **Colombia**, in the past two years, the IP concept sponsored by *TICOL* has done a quantum leap. About 50 IPs are in preparation or at the implementation stage. They apply to contracts in many sectors (health, telecommunications, energy, roads, etc). They involve different levels of Government (national, regional, municipal). They involve competitive bidding, direct



contracting, concessions and privatizations. They were possible thanks to alliances with key actors (World Bank, Inter-American Development Bank, chambers of commerce, etc). The basis and trigger for this development was (i) the growing awareness of the seriousness of corruption in the country resulting from the intensive study and extensive disclosure of cases of corruption, (ii) the private sector's call for a clean environment to operate in, (iii) the introduction (after a long and far ranging investigative process involving inter alia several NGOs) of the corruption issue into Government's political agenda, in particular the explicit mention of the IP concept and of TI in the National Development Plan. At this point, *TICOL* discussed with high-ranking and experienced professionals the legal and practical challenges to the introduction of the IP concept in Colombia,. At a meeting with several ministers and other high ranking public officials, *TICOL* explained the IP concept. At a subsequent meeting, the heads of public institutions, inter alia the ministers of Energy and of Public Works, manifested interest in working together with *TICOL* on developing the concept in the Colombian context. Though none of the three ventures envisaged at the time materialized, it was clear (and still is) that there was high demand for IPs, which, in turn required from *TICOL* much care in the selection of the projects on which it would follow up and in the monitoring of the use of *TICOL*'s name.

The Colombian IPs

In *TICOL*'s view the main characteristics of the Colombian IPs are:

- The political will is the main basis.
- The IP is voluntary, because of the Colombian tradition to sign anything. Therefore it seems preferable to discuss the concept with all the parties involved to the point that they are able and willing to make a clear-eyed decision.
- The IP involves all actors, especially bidders, consultants and government officials.
- Since compliance with legal norms does not play a dominant role in Colombian society, the ethical commitment is more important than the legal one (although, of course, the willingness to comply with the law also implies an ethical component).

The steps taken include:

- Identification of technical and financial resources required for the IP process.
- Concrete manifestation of the political will.
- Drafting of a declaration by the public officials and consultants involved, manifesting their ethical commitment.
- Public discussion of bidding documents (in the Internet, and/or through providing communities with documents, and/or through public hearings). Importance: Getting access to all interested stakeholders. Public officials should take the time to answer all questions and observations.
- Drafting of the integrity pledge with the bidders.
- Achieving acceptance of arbitration through "Tenders Transparency Defender".
- Signing of the Integrity Pact.
- Monitoring of the evaluation of the offers. Officials have to receive comments by participants. Assuring that observations and comments are all taken into account, given the adequate treatment and not manipulated.
- Issuing periodical public statements on the status of the IP.

The sanctions for bidders or contractors breaking their pledge:

- Monetary compensation (damages) to Government,
- Commitment not to participate in public procurement processes. Such a commitment is necessary, because, according to Colombian law, public officials cannot forbid companies to participate,
- Contract cancellation.

The sanctions for public officials breaking their pledge:

- Immediate resignation or termination of the existing contract,
- Public prosecution for violation of commitments,
- Commitment not to work in public offices for a number of years.



Difficulties appear in connection with disclosure of payments to bidders' agents etc. as well as when procurement rules of multilateral financing agencies are applied (see the World Bank's confidentiality rule). Further, in Latin America, there is distrust against arbitration by the International Chamber of Commerce in Paris, which is seen to favour European companies.

The monitoring of the IPs is the responsibility of those who sign the Pact. The IP allows the participants to exercise a social control during the entire process, even after they have lost the bidding.

According to *TICOL* some of the main lessons learnt were:

- The potential and likely risks on public bidding exceed the scope of the IP,
- Signing the IP should remain voluntary. However, during IP preparation an environment in favour of signing should develop, e.g. through the adoption of clear procedures and documents etc. Experience shows that, if this is the case, the participants will sign,
- The ideological-political discussion (on privatisation e.g.) should remain separate from the ethical one,
- Insist upon building up confidence in public opinion,
- Preserve *TICOL*'s independence,
- Ethical legitimacy has priority over legalistic discussion,
- *TICOL* should avoid a joint administration of processes to keep the necessary distance from official decision making,
- Denouncing non-compliance in the context of an IP is the duty of the participants, not of *TICOL*, as *TICOL* does not sign but only witnesses the IP. The National Anti-Corruption Program foresees a special unit to receive such denouncements and expressions of doubts,
- Multilateral institutions should be encouraged to endorse the IP procedure.

Past Record on types of IPs

Until now IPs have been considered for three types of contracts: (i) procurement of goods and services (including consultants' services), (ii) privatizations (sales of Government assets), and (iii) award of concessions. Experience shows that there is no fundamental difference in the approach to the IP in the various types of contracts. However, the selection of consultants for privatizations and concessions is delicate, as the consultants have to have particularly close contacts with the bidders. Therefore, the commitments of these consultants ("investment banks") to avoid collusion and insider deals should be especially tight. A problematic aspect appears especially in privatisations, when the consultants' commission is tied to the number of bidders ultimately participating in the bidding.

TI and its NCs in Relation to Government

In *TICOL*'s experience the intervention of the NC in the IP process can be outlined as follows:

- *Political decision*: NCs should not get involved in the political decision as such, (except to encourage that it is taken in a transparent way on the basis of appropriate studies and with a fair opportunity for all parties involved, especially civil society). After the political decision, the possibility of IPs for the project can be envisaged. Social, environmental, and consumers rights issues belong into the decision making, not in the IP phase.
- *Structuring of the project*: If the project is considered for an IP, the NC should follow up on this stage, as a well-structured project is a basic condition for an IP.
- *Drafting of tender documents*: NC observes and comments on the process to assure a reasonable basis for the transparency of the bidding process. In particular, it (i) observes all phases of the process, (ii) reviews the documents, (iii) comments on them, (iv) collects observations from third parties, (v) makes sure that the observations are properly taken into account, in particular questions reasonably answered, (vi) identifies the public officials who will get involved in the process, and brings these officials together to discuss with them the consequences of corruption, the way to avoid corruption in the process, and what sanctions they would be willing



to accept for breaches of the ethical commitment they would have to enter into, (vii) help prepare the IP, and (viii) witness the signing of the IP.

- *Bidding process*: NC observes and may monitor, but best relies on outside specialists.
- *Implementation*: NC preferably observes, delegating the monitoring to specialists.

Responding to a question of *TI Greece*, *TICOL* states that, if tender documents are drafted by outside persons, it usually is possible to foresee an IP. However, if government prepares the documents, *TICOL* tries to get a “Declaration of Ethical Commitment” from the officials involved. In terms of funding, the clear preference would be that the NC is not funded by the government/authority. However, if such an arrangement is unavoidable (due to the lack of other resources), the rules of the relationship between the donor and the NC must be clear, funding arrangements public, open to media and civic scrutiny, and the parties must stay at arms’ length. In the case of *TICOL*, government pays the cost of accompanying the process under very strict conditions that maintain *TICOL*’s independence. *Poder Ciudadano and TI-Russia* are concerned about this arrangement, which in their countries would be a heavy liability for the NC.

Involvement of International Financing Institutions (IFIs)

Various NCs have experienced that IFIs, especially the World Bank, are reluctant to accept NCs’ involvement and the prospects of IPs, as they consider themselves the guarantors of a clean process. Their confidentiality rules are one obstacle to the transparency the NCs aim at. Recently, the attitude is starting to change, as e.g. the World Bank is ready to respond to requests by losing bidders for explanation of their loss. See also Recommendation 1. in Attachment 2.

Sustaining Government Interest in, and Support of, the IP Concept

Experience (especially *TICOL*’s) suggests that to this effect, the NCs should:

- use the leverage provided by the Governments’ concern about TI’s CPI and BPI;
- provide periodically substantiated information about the high cost of corruption and the benefits of transparency in general and of the IP in particular;
- sell the IP concept as enhancing the country’s image and encouraging foreign investment;
- use personal relations, official connections, informal meetings, etc. to sell the idea;
- make sure that the concept is promoted with, and supported by as many branches of government as possible and at all higher levels, at the top and down the hierarchy;
- continuously check the political will to support IPs.

These issues acquire particular importance during and after changes in government, as a new government tends to be suspicious of what the predecessor did. It is crucial not to lose the momentum at such a juncture.

TI-Italy and TI-Greece relate frustrations with public employees, who are often obstacles on the way to IPs even when the elected principals (mayors, governors, etc.) are supportive. They tend to ask: “I’m honest, why do I need this further process?”, or :” Why an IP for this project and not for the other one?” etc.. *TI-Italy* was asked to hold seminars for these people, but could not for lack of resources. They now try to get universities and similar institutions interested in holding such seminars. On monitoring IPs, *TI-Italy* mentions that they do little monitoring on the IPs in their country, as they rely on the existing legal checks and on the competitors monitoring each other. *TI-Greece* confirms that Greek companies are reluctant to accept monitoring of the IP, which according to them will only slow down the process. *TICOL*, in turn, experiences, that ministries and consultants (in particular “investment banks”) as well as representatives of the private sector, increasingly pressure *TICOL* to get involved.



Sustaining Private Interest in, and Support of, the IP Concept

Experience shows that to this effect, the TI and its NCs should publicly and privately, locally and internationally, explain and disseminate the advantages of the IP, in particular, that:

- the IP is to the advantage of the private sector, as it helps assure a clean environment promoting fair competition,
- it helps avoid the cost and the economic distortions generated by corruption;
- it increasingly gains international support, in particular, as it is in line with the recently approved OECD convention.

It could also be desirable to get the private sector involved in funding the NC. If NCs receive private support, the sources of funding should be diverse.

TI and NCs in Relation to the Private Sector

The rules for the relationship between the donors and the individual NC which -- as mentioned earlier, should be one at arm's length in the first place -- should be clearly set, in particular with respect to the donor's voice in NC matters. (see also issue 6. in Attachment 2)

TI can (and does) promote the IP concept with multinational companies and entire industries at headquarter level, disseminate experience in various countries, provide technical assistance and transfer of knowledge on IP issues.

Regulatory and Legal Hurdles

The discussion on these issues was very lively, providing inter alia the following results:

- *TI Italy* found the IP concept to be consistent with EU, Italian and local regulations. Since the EU requires that contracts be awarded on price and quality, it is crucial that the IP aims at these factors (*TICOL* agrees). At municipal level, it is important to have the support of the mayors as well as the main public employees in order to minimize the presentation by these of trumped up formalistic regulatory issues (*Poder Ciudadano* and *TI Paraguay* agree). To require an IP on top of complying with the EU regulations could make the process too inflexible. Therefore, the solution might be to make (as is done in Colombia) the IP a private agreement among parties. The IP does not contradict the law, it complements and supports it and, therefore should not present a problem within the existing legal framework. (There is a contradiction here as, on the one hand, the minutes say, that Italy suggests to follow *TICOL* and make the IP a private agreement; on the other hand they say three paragraphs later, that in Italy it is a private agreement).
- *TI Greece* has a different view of the EU regulations in this area, which leads to Issue 7. of Attachment 2. It also notes that, as Greece doesn't have a national arbitration system, sanctions present a problem insofar as they exceed those imposed by law. *TI Greece* enquires about arbitrarily low prices, especially those proposed by cartels (see Question 8 in Attachment 2). *TICOL* faced a related issue especially with contractors expecting to be able to adjust prices after contract signature. Therefore, *TICOL* now asks for the contract to include a clause requiring bidders to submit realistic bids and forcing them, in the case (that should be extraordinary) that they need a price adjustment, to justify it thoroughly and to demonstrate that they could not have known earlier that their original price was too low. In any event *TICOL* pushes for all bidders, even those that lost, to have access to a maximum of information on the closed bidding and the resulting contract, so that losers can be sure that the winners adhere to the original conditions. (see further Issue 9. in Attachment 2.)
- *TICOL* argued that the IP is an agreement among bidders and a public entity; it includes sanctions and an arbitration clause; whether it is private or public in nature should not be relevant. The IP is separate from the main contract. But a breach of the IP, can also mean the denial of the contract to the winning bidder or a cancellation of a contract signed on the basis of the procurement law, the anti-corruption law, and the criminal code. In *TICOL*'s interpretation, the IP goes beyond these existing laws,

an interpretation that was opposed by bidders, who only in time were ready to sign the additional agreements the IP implies. The objections were of a cultural nature (“Are you suggesting that we are corrupt, that you want us to sign IPs?”) But the reference to the IP in the National Development Program helped overcome such resistance. (M. Wiehen adds to this, that, where there is an area of law allowing for different interpretation, we should push our interpretation and see whether it gets acceptance). TICOL only proceeds with the IP when all the bidders are ready to sign. A further argument that helped is that the IP gives the losing bidders a measure of assurance that once the contract is awarded, the formulation of the contract and its execution proceeds in accordance with the rules set before bidding, in particular that there are no changes in the conditions. TICOL emphasizes that, if the whole government is corrupt, the IP will not work either. The IP only gives a better chance to achieve equitable results, because the IP helps build trust (M. Wiehen adds that apparently the IP process itself with its two steps -- (i) building the IP and getting people involved and (ii) using the document -- even more than the resulting IP helps build trust) When a company is asked for a bribe it has legal ways to respond. But the IP is a faster and, by those who know it, a better trusted way to this end than the slow mills of the law (TI Italy emphatically agrees).

- *Poder Ciudadano* mentions that lawyers proved reluctant to agree to sign clauses that were already in the law. However, it is important to convey that the IP introduces incentives for a clean business environment by adding public pressure for a higher standard than just living up to the law. (M. Wiehen agrees and adds: “The law is there in all countries and so is corruption. The IP obviously is doing something that the law is not accomplishing”). The IP is not a magic bullet and sometimes, it does not matter, whether there is an IP or not.

Arbitration

Arbitration is better than relying on local courts because it is faster, better trusted, and does not face as many legal problems. The TI model for the IP proposes international arbitration. However, national arbitration is less time consuming and less costly than international arbitration. Nevertheless, it is conceivable that some bidders will be reluctant to accept national arbitration. In *Colombia*, arbitration is increasingly used by private parties and is normally done through the well respected Bogotá Chamber of Commerce Arbitration Committee, which relies on a number of highly qualified arbitrators. TICOL’s experience with national arbitration is encouraging.

Sanctions

What to do with damages (see Issue 11. in Attachment 2) is not yet well clarified. In the context of an IP, the sanctions will be those foreseen in the IP and not those in the criminal code. Blacklisting has its problems because (i) in many countries the regular process is too long, (ii) legal competition requirements may not permit denying access to the bidding, and (iii) sanctioned bidders may just present themselves under a different guise. Further, it is difficult to blacklist the interests behind the actual bidder (e.g. a multinational that does not appear as a bidder). In Germany, it is permissible to bar a firm from bidding on the basis of “unreliability”, corrupt practices belonging under this heading. In Colombia, termination of a contract on the basis of corrupt practices is possible without going to court (i) by “mutual agreement”, (ii) on the basis of a forfeiture clause, and (iii) by unilateral government power on the basis of “illicit cause”. The available instruments to implement the sanctions are the bid and performance bonds, **which however have to include the clause allowing the forfeiture for corrupt practices**. *TI-Italy* mentions that (i) 10% of the total contract can be claimed for damages in connection with corruption and (ii) that there was the case of a sewerage contract cancelled on the basis of improper practices; but that contractors are contesting the termination. In *Germany*, a contract that is against public policy is null and void. Even the export risk insurance Hermes is arguing that contracts obtained through corruptive practices are not valid. At this point, though somewhat out of context, the participants discussed the requirement for disclosure of payments and were informed that TICOL considers to require the disclosure only by bidders under suspicion of corrupt practices in the context of the bidding.

Maintaining Public Interest and Transparency

Poder Ciudadano explained its success with public hearings, explained in more detail in Paper 1. of Attachment 3. *TICOL* supports the approach and emphasizes that hearings, in particular about the rules of the bidding, are critical to generating public confidence in the process and maintaining its transparency. To this effect, *TICOL* avails itself of the Internet. *TI Panamá* was also successful with public hearings in connection with the monitoring of the US\$ 1 billion budget for medical supplies for the Social Security Institute and a US\$ 5 million contract for a computer system. In all cases, the objective is to involve bidders in the formulation of the rules of the game, since they are the best qualified parties for judging whether a tender is robust and fair. The discussion also focussed on the question whether a tender can be disclosed before the decision of award is made. In Argentina, Colombia and Panamá, this approach, combined with public hearings, was successful. European chapters were sceptical about its chances in their countries.

Obtaining and Sustaining Interest and Support from the Media

The media are automatically present when a scandal is uncovered. The issue is therefore how to mobilize and sustain interest when things are working out as they should. The following emerged as the main points:

- developing systematic contacts with the media through providing well systematized, thoughtful information on basic issues related to current developments;
- feeding the media further information on a regular basis with the objective of building up the sensitivity for, and the knowledge of, the IP issues, discuss inter alia what happens if the IP concept is not used and the high risks of corruption; try to get prominent people to voice positions of TI.

Resource People and Support Structures

Resource people must be absolutely independent, which implies that some must come from outside the country. NCs need resource people and other support when their capacities and capabilities do not allow to meet the demand. They might have to come in e.g. for problems with the regulatory framework, defining terms of reference for the work of NCs, reviewing project designs and bidding documents, and technical issues. They might also be needed for seminars. Resource people are found in civil society, academia, the business community, professional associations, from TI-S, people visiting the website etc.. If they need to get involved then, they should be designated at the earliest stage possible. To generate confidence they should be highly professional, have substantial experience, an excellent reputation, and be willing to sign appropriate confidentiality agreements. (see also Issue 12. in Attachment 2.). At least in the beginning, resource persons should be willing to work on a voluntary basis. At a later stage, some remuneration might be provided by involved governments, the private sector, friends of TI, TI- S, etc.

The New Model for the Integrity Pact

The participants thoroughly discussed the model for the IP. The main issues that were tackled and the NCs that brought them into the discussion are listed in Issue 13. of Attachment 2, as many of the questions were only partly answered. The following sets forth the central points of an IP as they were envisaged at the workshop and as they will be reflected in the new model:

- The *pact between the public authority and the bidders* (or the Contractor in case the contract is already awarded) is a *core element* of the IP. The *signing* may be *voluntary or mandatory*.
- The *undertaking by the principal (and its officials)* is a *core element* of the IP. It should state:

“The Government hereby confirms (i) that none of its officials will demand or accept any bribe, gift, favor, or other advantage for himself or any other person, organization or third party, directly or through a friend, relative, or other third party, in connection with this contract, (ii) that it will make



publicly available all appropriate technical, judicial and administrative information relating to the contract, (iii) that none of its officials will disclose otherwise confidential information to any outsider who may use this information for an undue advantage in the procurement process for this project, (iv) that none of its officials will commit any other acts of Conflict of Interest, and (v) that its officials will be reminded that they have an obligation to report to the appropriate government office any attempted or completed bribes or other violations enumerated in this paragraph.”

- *The undertaking of the bidders (a) not to bribe, (b) not to collude, and (c) to disclose payments made in connection with the bidding or the contract is a core element of the IP. The undertaking (c) may apply optionally at the time of the bidding for all bidders or at the time of award for the winning bidder, or at the time a suspicion of corrupt practices appears. It is highly desirable that the undertaking be signed by the CEO of the bidder. But if this is impossible, at least the CEO of the national subsidiary of the bidder should sign.*
- *The sanctions applicable in the case of a breach of the IP by an officer of the principal are a core element of the IP.*
- *The sanctions applicable to bidders (or the Contractor) are core elements of the IP. They may include, the following highly desirable elements: (a) loss or denial of contract, (b) forfeiture of bid or performance bond, as the case may be, (c) liquidated damages, and (d) blacklisting.*
- *Arbitration (national or international) is a core element of the IP.*
- *The requirement that bidders have a Company Code of Conduct is an optional element.*
- *The demonstration that payments by the bidders of commissions to agents and other intermediaries do not exceed fair remuneration for above board services rendered is a highly desirable element.*
- *The requirement that the principal's officers disclose their and their families' assets is an optional element of the IP.*
- *Increased transparency of the process to be achieved through (a) the use of the Internet and (b) public hearings is a highly desirable element of the IP.*
- *The involvement of the TI NCs or other appropriate NGOs is a core element of the IP.*
- *Monitoring of the process is a highly desirable element of the IP. This may take place through (a) an IPSIG, (b) a suitable government office, (c) a TI NC, (d) other NGOs.*

Expansion of the IP concept to other areas

The participants concluded that this is desirable. The recommendation emphasizes the need for creating in Berlin a task force (at least one person full time) operating as a resource for the NCs and as a clearing house. It would (i) support and coordinate the further development of the IP concept (ii) collect and administer the information on planned and current IPs, (iii) draw conclusions from such information, (iv) disseminate the relevant information and conclusions, and (v) act as a resource for the NCs to provide experts on IPs.

The further discussion led to the topics listed under Issue 15. of Attachment 2. These points focus on dissemination of the IP concept rather than on expanding it and were not dealt with in depth.

Annex 11.2. The Agenda for the TI Workshop on INTEGRITY PACTS

The Agenda for Transparency International Workshop on INTEGRITY PACTS

Bogota, June 22 - 24 , 2000

Introduction

1. Opening remarks and rules of the game:
 - Meeting co-chairs: Michael Wiehen (TI-Deutschland) and Rosa Ines Ospina (TI-Colombia).
 - Discussion of agenda (10 minutes).

Mapping out current experience

2. Where are we now?
 - Status report by country from each of the participants (10 minutes max per participant)
3. TI's General Approach to Procurement, Background for the IP.
 - Lead Discussant: Michael Wiehen
4. What has the IP looked like until now?
(questions: What have IPs to date looked like? What has worked? How enforceable have the basic pledges of integrity been? How have they been monitored? What sanctions have been considered with the pledge? Has the basic pledge been adequate?)
 - Lead discussants: _____
 - A. Sanctions in General
 - B. Liability for damages
 - C. Blacklisting
5. What's the record on IPs for privatization?
(questions: How do you get the confidence of the parties? How do you maintain the interest and knowledge of the public? How do you maintain the support of the government?)
 - Lead discussants: TI-Papua New Guinea and TI-Colombia
6. What is the experience with using the IP to select consultants? Where else can the IP be implemented?
 - Lead discussants: _____

Comparing experience

7. Sustaining government interest and support
(questions: How do you maintain necessary government support for Pacts? How much of such support is critical? How do you maintain interest during and after governmental transitions?)
 - Lead discussants: TI-Benin and TI-Ecuador
 - a. Regulatory and legal hurdles for implementing Integrity Pacts
(questions: how real are regulatory hurdles to implementation? How can Parties be assured that the IP can function without affecting legal and regulatory framework?.....)
 - Lead discussants: TI-Italy and Rene Ribi



8. Maintaining public interest and transparency

(questions: What methods (use of press, web sites) are best to maintain and inform public interest? What are the results from efforts to use the Internet to maintain increased transparency?....)

- Lead discussants: _____

a. Public hearings

(questions: what has been the result? How have publics reacted? How have governments reacted?)

- Lead discussants: TI-Panama and TI-Argentina

9. Resource people and Support Structures

(questions: When and where do you need them? Where do you find them? How do you get the confidence of involved parties (e.g. investment bankers)? How do you pay resource people? What is the role for civil society versus hired professional firms?)

- Lead discussants: TI-Colombia and Juergen Krombach

10. A view from the donors

(questions: Why are donors not jumping on this idea? What problems do donors see with the idea? Why not try it out? How willing are they to foster a leading role for civil society?)

Where to now.....?

11. The Full Integrity Pact

(questions: What parts of the current model are absolutely necessary? Is the current model's flexibility an advantage? Do we need to insist on a list of basic requirements? When yes, what should those be?)

- Lead discussant: Michael Wiehen (TI-Germany)

12. What should the new model look like?

- Lead discussants: Michael Wiehen (TI-Germany) and Rosa Ines Ospina (TI-Colombia).

Annex 11.3. List of Remaining Issues and Questions

List of Remaining Issues and Questions

1. TI should continue to discuss with IFIs the introduction of appropriately structured IPs into IFI projects.
2. Who has the power to move or to block the IP process?
3. What legal power has an IP? What happens if a participant neither complies with the IP, nor accepts the sanctions?
4. Can there be an agreement without Government as one party?
5. Differentiation between IP and unilateral agreement.
6. How can we further improve the transparency and reliability of NC actions? Can NCs get involved in an IP in which one of its corporate member has a major interest? (it seems that in Argentina, this would be impossible).
7. The relation between the IP concept and the EU regulations in this general area needs to be clarified by the European chapters.
8. How would one deal with artificially high prices, if all the bidders belong to a cartel and there is no hard and fast evidence, only strong indications of a cartel?



9. How can the contrast between the public's call for equity be accommodated with the bidders' call for arbitration based on law?
10. TICOL relates the case of several high-tech firms, which have an agreement about not providing information on each other for fear that this could harm their access to the market. How should this case be dealt with?
11. TI-Greece needs from TICOL a translation of the "Declaration of Ethical Commitment".
12. Issues discussed in the context of the new model for the IP, but which, were not definitely answered, were:
 - Should the IP be a document independent of the tender documents? (*TI-Greece*).
 - Should government officials commit themselves to provide information in a fair way? (*TICOL*)
 - Should a clause against baseless accusations be included in the IP? (*TICOL*)
 - What are the obstacles to sanctions on public officials? (*TI-Italy, TI- Paraguay, and Poder Ciudadano*)
 - What is expected from monitoring after the contract award is decided?
13. The topics related to extension and dissemination of the IP concept and suggested at the end of the workshop were the following
 - Through professional groups, associations, NGOs, CSOs and Chambers of Commerce.
 - By training other CSOs and National Chapters
 - By using demand from the private sector
 - By persuading others of the benefits of the tool
 - Through better selling and processing of the results
 - Through seminars and international workshops
 - With more pilot projects
 - By organizing local events with experienced National Chapters
 - By investing time, money, and experience in training
 - By sending good information for the Status Report
 - By circulating the status report and tool kit
 - Through better communication in the network
 - With a bulletin board on the TI website
 - With a network for sharing information
 - By using the CPI and BPI to get word out about the IP
 - Putting the website in different languages
 - Doing detailed documents and analysis
 - Setting up a how-to-guide
 - Showing concrete examples in systematic manner
 - Keeping a think tank close to M. Wiehen
 - Training workshops for Programs officers
 - Establishing a group of Program officers to travel around and work on IP
 - Getting a higher person in TI-S to manage and handle IP
 - Establishing a centralized IP task force
 - Stronger central team with experience from NCs
 - Seeking support in the media
 - Expanding concept to new sectors
 - Getting World Bank and IFI support
 - Protecting trademark
14. The transfer of the methodology needs to be clarified by TI-S, because the use of the term IP and of its content outlined in the model needs, if at all possible, to be limited to ventures that either are in one way or the other associated with TI activities or should at least clearly reflect the spirit in which TI conceived the concept.

Annex 11.4. Detailed Meeting Minutes

1st International Workshop on Integrity Pacts Bogota, 22 – 24 June 2000 Detailed Meeting Minutes

Thursday, June 22

(I) Introduction

- Welcome by Juan Lozano, President of Transparencia Colombia

- Introduction by Michael Wiehen:

Objectives of the workshop:

- Determine the core values and elements of IP
- Acknowledge a range of options on where to implement the IP
- Rewrite the model?
- Give better advice to NCs who want to work with IP
- Try to be up to date with the experiences of NCs in the field

- Presentation of Participants

- Rules of the Game

(II) *TI's General Approach to Procurement, Background for the IP (Michael Wiehen)*

IP = tool with broad application. Massive funds are involved: procurement involves 20-30% of GDP => enormous damages caused by corruption.

Procurement as technical process; TI does not count with too many technical experts, but rather generalists => big challenge to our organisation

One has to be on the look out much beyond the procurement process e.g.:

One field of danger is feasibility studies.

Many times, bidders can offer lower prices because they have made arrangements with representatives of the principal agency in order to make additional changes to the contract at a later state.

IP related experiences within TI: Colombia, Argentina, Italy, Greece, Nepal, Papua Newguinea

What are the core elements of the IP?

- Sanctions
- Monitoring
- Role of Civil Society

TI has to increase its capacity of living up to the high commitments, both in human and in technical terms. There is a high risk of failure.

(III) *Experiences of countries (see also Status Report and hands out)*

1. Argentina, Poder Ciudadano (see hand-out)

Two components of programme:

Public hearings

Integrity Pact

Three processes have been monitored:



Mendoza Province

2x Buenos Aires municipality

No IP has been signed until now. Why not? Public Hearings are easier to carry out than IP. PC is currently engaged in a 30 million US\$ project in Morón, City within BsAs-Province: waste collection, public bidding process for service procurement, alliance with University in Chile

2. Italy, TI-Italy & ASERI (see hand-out)

Three Pacts have been signed on a municipal level. IP are easier to implement at the municipal level because of easier and faster contacts and direct accountability. Municipality agreed to put tender on the Internet. **A particular feature of the Italian IP is that the city administrations commit themselves to introducing the IP into all procurement processes of the city – however, no participation of civil society and /or the NC is foreseen due to the trust in compliance with the law.**

3. Greece, TI-Greece

No IP has been signed yet. They worked closely with municipality of Piraeus.

TI-Greece has started a process consisting for the time being of

- Codes of Conduct for elected representatives and officials of the municipalities. TI-Greece wrote the Code.
- Disclosure of Assets of Mayor and all decision-making representatives
- Office for complaints is being established which is not linked to the party which governs the municipality
- Establishing work rules for municipality

200.000 USD procurement process for next year: should not be a problem to engage into an IP as not much money is involved.

No monitoring agreement basically. Code of Conduct is a statement of willingness. Sanctions should be agreed upon for the case if Code is not respected.

4. Paraguay, TI-Paraguay

Two mayor processes

Monitoring Public Contracting of medical supply of the Public Health Institute (Instituto de Previsión Social), and monitoring of privatization of two mayor state companies within the broader context of public sector reform.

T-Paraguay is just in the starting phase of getting some processes going – no IP has been signed yet.

Problem/Challenges:

Sanctions are written but are not applied

No rules of the game have been fixed for the role of T-P

How to sell the idea?

5. Korea, ACNK (see handouts)

- First adoption of IP in Dongjak municipal district office in February 2000.
- Seoul metropolitan city government. will adopt IP this year. City of Seoul: Integrity Programme: exposing all mayor administrations activities on the web (see publication: “Clean and Transparent”)
- SEACSI 2000
Seoul Exhibition on Anti-Corruption for Systematic Integrity.
- ACNK (1999)
Will introduce and provide IP concept (see Activity Plan for 2000).

6. Ecuador, TI-Ecuador (CLD) (see hand-out)



Concrete IP experience in Ecuador: 1994 political will to include IP for privatisation of big refinery. **But finally it could not be carried out due to different problems in the process.**

Former President Mahuad (1998 – 2000) had launched national anti-corruption plan, including a civil committee of control (Comisión de Control Civil contra la Corrupción) in which the Carter Centre, TI-Ecuador were involved. IP failed because of political instability, changes of government.

They want to revive this project in co-operation with the new administration.

7. Panamá (see also status report and handout)

Three experiences

- 1996: privatisation programme of telecommunication company INTEL.
Content: NO IP, but introduction of no-bribery clause in the bidding documents

Conditions:

Access to information

Participation in all board meetings

Access to the public

- 1999: monitoring of process of allocating radio and television frequency concessions.
- 1999: Public Integrity Pledge in the process of selecting company managing government employee investment funds in SIACAP (Public Worker Savings and Pension Capitalization System.)

8. Russia, Anna Ossipova (Sovereign Ventures, Inc.??) (see handout),

Aim to form a community of businesses that share values and common rules;

Development of a document: Declaration of Integrity: Idea of self-enforcement

9. Germany

Use of IP was offered 5 years ago to governments of Berlin and Brandenburg for the construction of airport. Private companies accepted role of TI-Germany, governments objected.

Project is now on hold because of major problems of corruption.

10. Colombia

TI-Col is currently involved in 51 processes either under execution with no problems, completed with IP signed, under execution and withdrawal of TI-Col, or completed without IP

Process has two complementary moments

1. Signing of the agreement
2. Accompaniment of the entire process

In order to participate as external observers in the procurement process an IP is not necessarily needed, although it is being suggested at the many different stages of the whole process.

Sectors: Health, education, energy etc.

Projects of diverse complexity and magnitude

Worked through alliances with key actors (World Bank, chambers of Commerce)

Different levels of government (national, local etc.)

Worked in all fields of procurement: direct bidding, concession and privatisation

Political and social circumstances:

Civil awareness about seriousness of corruption

Great efforts for revealing and studying corruption

Private sector need for a clean environment to operate in (private sector expresses demand)

Placement of issue on governments agenda. Intention of Gov. to work with TI on IP has been explicitly included in the National Anti-Corruption Plan



Characteristics:

- Voluntary, **because there is a terrible tradition in Colombia** to sign anything, aim to discuss the concept with people so that they are able to take a voluntary decision
- Includes all involved actors: bidders, public officials and consultants
- Its agreed on ethical grounds: ethical commitment is more important than legal commitment (given the cultural feature that doesn't include compliance with legal norms)
- Requires political will

Steps to Follow:

- Resource Identification (technical, financial resources)
- Concretion of Political will
- Construction of an ethical commitment declaration by the public officials/ consultants
- Public discussion of Bidding Forms (through Internet, through providing communities with documents, or through public hearings). Importance: Getting access to all interesting stakeholders. Public officials should take the time to answer all questions and observations.
- Construction of the integrity pledge with bidders
- Acceptance of arbitration through "Tenders Transparency Defender"
- Subscription of the Integrity Pact
- Monitoring of the evaluation of the offers. Officials have to receive comments by participants. Attention has to be paid to whether observations and comments are not manipulated but are all taken into account, replied etc.
- Periodical public statements

Sanctions

- Monetary compensation
 - Commitment not to participate on public procurement processes (commitment, because according to Colombian law, public officials can't avoid companies from participation)
- Contract cancellation

By the public officials:

- Immediate resignation or termination of the existing contract
- Subject to a public accusation for violation of commitments
- Commitment not to work on public offices for a number of years

How applicable is the basic pledge

- Difficulties with the payments disclosure aspects
- Prevention facing the Paris Chamber of Commerce arbitration; LAC and US companies have a feeling that the CoC have a tendency to favour European companies
- Difficulties regarding procedures when the bidding process is applied using procurement rules established by multilateral financing agencies

Monitoring of Commitments

- Monitoring is a responsibility of those who sign the Pact. IP allows participants to exercise a social control position during the whole process even if they lose

Lessons learnt

- The risk map on public bidding exceeds Scope of IP
- Preserve the voluntary feature of IPs
- Separate the ideological-political discussion (on privatisation eg.) from the ethical one
- Insist upon building confidence in public opinion
- Warrant TI-Col independence
- Grant importance to the ethical legitimacy before the legal discussion
- Avoid a joint administration of processes (keep distance from official decision)
- Everybody has to assume of duty of denouncing non-compliance of the IP



- Invite multilateral org. to adopt procedures

Questions:

-What does voluntary mean?

TI-COL: Bidders are free to sign or not to sign. One has to ensure environment favourable to the signing of the IP. Documents have to be clear etc. Experience shows that if this is given, people will sign. It is necessary to produce a social pressure in favour of signing (the majority saying yes). Signing of the pact has to take place at one day, hour, place for everybody.

- No naming of names. Does this principles contradict principle of denouncing?

TI-COL: Transparency doesn't denounce and doesn't judge. Participants should assume a commitment to denounce. TI-Col only signs as witness. National Corruption Programme has a specific unit to receive denouncements and doubts. There should be independent arbitrators independent of the NC.

(IV.1) Record on IPs for different types of public investment

Types of public decision making:

1. Procurement
2. Privatisation
3. Concession
4. Selection of Consultants

What is the record and experience of the countries for different types of public investment?

TI-COL - there is not a big difference between different types.

Ad 2. Privatisation: discussion of bidding documents by all bidders does not take place.

Discussion should include the terms of the process, terms of contract and terms of the IP.

Company hired by Government to manage the process (Investment Bank). It is through this company, that the contract is discussed.

Ad 4. Selection of Consultants, Investment Banks. (Intermediaries mostly for cases of concession and privatisation). Selection process basically contains the same steps as in the other types. Consultant's role is to get in touch with possible clients. Big discussion on how they should approach the clients. They have to commit themselves not to have particular relationship with particular clients => risk of lack of credibility of consultants. (Promise of no inside deals). Commission tight to the number of participants that Consultants receive (relates only to processes of concession and privatisation).

Discussion of TI's role with respect to the political decision-making process:

- Political decision is not the matter of the NC
- Consumer's rights, social and environmental effects are part of political decision
- IP should not be used as instrument to solve these kind of decision.
- Why is the price an integrity issue but not the quality of the service?

- Is it possible not to position oneself in front of the political decision? Risk of getting involved in non-sense projects?

TI could insist on feasibility studies done in a transparent way. Public discussion of bidding documents will prove whether project makes sense.

TI-COL - Different steps of process:

- (1) Political decision (including feasibility study) =>
- (2) structuring of the project =>
- (3) Construction of the tender documents =>
- (4) Bidding process =>
- (5) Implementation of Project

Anytime there is a selection of participants in the process involved, an Integrity Pact can be applied (in 2, 3, 4, 5). A well structured process is the fundamental condition for an engagement of the NC. Timing of getting involved in IP? Preferably from the beginning. Has to do with political willingness.



(IV.2) How does the situation change when procedures are those of multilateral financing agencies?

TI-COL - Multilaterals are reluctant because:

- they want to get involved into the country's business
- process takes too long
- "we are a grant for transparency"
- they refer to their own transparent procurement guideline

On the other hand society doesn't trust in process just because a IFI is involved.

T-Paraguay – On the basis of a survey on corruption in Paraguay, the Worldbank called Ministries and NC to follow up specific areas of the survey one of them being procurement.

T-Ecuador - Similar problems with WB, IDB, CAF. Ecuadorian legislation is considered subsidiary legislation in relation to the guidelines of the IFIs. => Documents have confidential character.

Wiehen - Worldbank: new rules: companies that don't get contract can go to the bank and ask for the reasons why. On request of African Presidents, Wolfensohn agreed upon establishing IPs in situations where a legal system is in place that almost complies with the IP.

Conclusion: At the project level, efforts should be made to get World Bank staff to co-operate.

(V.1) Sustaining government interest and support

How do you gain and maintain necessary government support for Pacts?

1. political cost of corruption is high, we have to stress out this point in order that Governments prevent corruption
2. President and gov. officials are very much concerned about TI's CPI and BPI. TI's recommendation makes power in Kenia now
3. showing good results
4. explaining its benefits
5. "sell" the IP as something beneficial to government
6. positive international image
7. positive image before public opinion
8. using the returns in image
9. by explaining the advantages of a clean image, transparent process
10. emphasising that these types of pacts can increase and promote foreign investment
11. making use of social/personal relations
12. introduce the issue on informal meetings
13. organising launching with ministers and responsible officials for important public spending
14. select one supportive official and work through him. Convince of quality
15. sending letters to officials to interest them
16. tell them the story (from beginning to the end)
17. crucial mass of participant
18. sell the idea: being the 1st, being part of the movement
19. making IPs a pressure from a civil society movement

How much of such support is critical?

1. 100%
2. we need support down to dept. managers (working level)
3. at least political will is vital
4. support is crucial
5. impossible to achieve results without gov. support
(Discussion see below)
6. commitment of head of gov. agency critical
7. it's already a lot if government doesn't object



8. people's participation can be the strongest support against criticism

Points of Discussion:

- Who has the power to block or to move the process?
 - What legal power has an IP? What happens if a participant doesn't follow neither the agreement nor the sanctions?
 - Can there also be an agreement between companies which doesn't include government?
- Greek example: can be considered as an IP without having government support.
Differentiation between Integrity Pact and Unilateral Agreement

How do you maintain interest during and after governmental transition?

1. with the help of Private Sector
2. promote IPs as state policies not as governmental policies
3. look for access at high levels with new authorities immediately
4. getting support from Civil Society and Private Sector
5. making effort not to be identified only with a governmental policy
6. keep information flowing
7. by strengthening the processes with the bidders, get them used to the IPs
8. long term view
9. short term results
10. periodic info about its development
11. IP is introduced as a legal requirement with support of Civil Society
12. involvement of the media
13. corruption is a government issue and not a President's issue
14. promote involving those who first signed the Pact

TI-COL - problem with governmental transitions, because every government has to self-promote itself through new policies, it will therefore distant itself from previous policies.

How to ensure independence from the government when receiving support from governmental agencies?

1. if possible TI should avoid these funding sources, otherwise the rules must be clear
2. clear rules in relationship and possibility of withdrawing
3. by making public all the financial arrangements
4. independent arbitration
5. media and civic control
6. maintain full transparency, use media
7. CLD (Ecuador) has not worked yet with public funds on IPs
8. solidarity between civil organizations and international organizations can ensure independence
9. time flies, time will do the rest

Discussion:

- How to keep a politically independent image? It's not only a question of receiving funds, but also of co-operating in government programmes. Depends on the government. Concerning the funding: it must not go above a certain limit. One should consider in each in every case if funding from government would be dangerous.
- Very good access to media is necessary. Put emphasis on evaluation and sistematisation of experiences in order to show results (preferably outside evaluation). Problem: corruption in TI will be a bigger news than the news delivered by TI. Gruenberg: "they need you but they also need the news"

(V.2) Sustaining private sector interest and support:

How do you gain and maintain necessary support from private enterprises for Pacts?



1. showing how IP grants clean environment to participate
2. show that it is in their interest
3. showing
4. explaining loyalty between enterprises
5. by making understand that fair competition
6. to explain IP is for a win-win-game
7. explaining costs of corruption and benefits of corruption
8. involving the private sector into design of programmes
9. getting in contact with the good ones
10. explaining benefits: less costs, less risk, gain respect
11. explain OECD Convention (not only inside, but also outside the countries)

How to ensure independence from the private enterprises when receiving support from them?

1. get support from several companies (differentiation of private funding sources)
2. Agreement on the rules of the game
3. make clear rules from the beginning
4. independence is depending on the person, not on the situation
5. diversifying funding
6. having rules on incompatibility to pronounce on chapter's affairs when they have interests
7. maintain arms-length relationship + transparency

Discussion

- what kind of support are we talking about? Not a support for IP programme, but in general, problem of having corporate members? TI-Germany designed a pledge of integrity that all members had to sign. Question: can we participate in a IP process where one of our corporate members is participating? Argentina: media criteria: this case would be impossible in Argentina, different contexts require different handling; in any case: the rules of the game, ethic codes etc have to be made clear

What are the strategies to commit local, international, and multinational enterprises with Ips?

1. educate about risks and opportunities (OECD convention)
2. everybody wants fair competition
3. publicise and enlist IPs companies

What role can TI play?

1. convince Multinational ad headquarter level
2. transfer of experience
3. technical assistance
4. disseminate the statement: Integrity is not a luxury but a business necessity
5. approach + inform
6. promote discussion of the instrument with multinational companies headquarters by industries

Friday June 23,

(VI) Regulatory and Legal hurdles

TI-Italy – Have found that the IP is consistent with EU, Italian and local regulations. Since EU requires that bids be awarded based only on price and quality, it is critical to sell the IP as aiming at guaranteeing price and quality (TI-COL agreed). At municipal level, it is important to have the support of the Mayors as well as the leadership of public employees.

TI-Italy (Max cont.) – Have encountered two new regulatory questions. 1) Is it possible to require the IP on top of other EU regulatory requirements? On deals of less than 5m Euros, there is not sufficient flexibility. Maybe the answer, given this lack of flexibility, is to follow Colombia's lead and make all agreements private agreements among parties. 2) How real are the hurdles that are encountered? Are public employees using regulatory excuses to cover up institutional opposition to the process? (Poder Ciudadano agreed with this concern.



We need to differentiate between real and imaginary hurdles. The IP doesn't contradict the law, complements the law and enforces the law, so it cannot be a problem with existing legal and regulatory framework).

TI-Greece – Had a different impression of the EU regulations. Thought they were only the minimum requirements and that additional requirements could indeed be added on top. **This disagreement among European participants led to European Chapters present agreeing to explore this question more and include findings in report on this meeting.**

TI-Greece (cont) – Raised the question: what is the legal nature of the IP in Italy? (Italy answered: in Italy if it is a private voluntary agreement, it is immediately executable in any court of law.) Greece also asked whether municipalities can make signing the IP obligatory. Greece also noted that since Greece does not have a national arbitrary system, they encounter problems insofar as the sanctions within the IP exceed those imposed by the law.

TI-Italy – Have also found that several public companies have sought to avoid EU regs by setting up companies that are fully capitalized with public money but are legally private companies. TI-Italy's complaint to the European Commission led to a decision from the EC that Italy had to change the rules that allowed the creation of these publicly financed private companies.

TI-COL – Finds that they face the same legal issues that other civil law countries face. Fundamentally, what is the legal status of the IP? Answer that TI-Col proposes is that "an agreement among bidders and a public entity opening the bid is a binding agreement with an arbitration clause and the nature of whether it is public or private is not important." Arbitration in the cases is undertaken by the Chamber of Commerce of Bogota's arbitration committee.

TI-COL -- Bottom line: the IP is a binding document, is separate from the principal contract between principal and winning bidder, but a breach of IP can mean the breach of the winning contract. In Colombia, any contract signed by the public entity, pursuant to the procurement law, becomes a binding "state contract" which is then also subject to civil law (procurement law, anti-corruption law, and criminal code). The IP goes over and above the existing law (which many bidders initially opposed) and the latest I.P.s have real teeth for sanctions: covenant barring entering in the bidding process for the next five years, termination of winning contract, arbitration agreement.

Wiehen – The conclusion to draw here is that where there is an area of law that allows for different interpretations, we should push our interpretation of the law and see if it gets accepted. This is what TI-COL has done so successfully.

TI-COL – Arbitration is better than relying on local courts because it is faster, more trusted and not faced with jurisdictional problems. TI-COL then responded to several questions: Can local courts impose a requirement to sign the IP? TI-COL's policy is to only go forward if everyone agrees voluntarily to sign the IP. What has been the reaction of the bidders' lawyers to the TI-COL I.P.s? They were reluctant to sign for extra agreements over and above what existed in law. When you write it into the tender document, you are imposing certain conduct.

Poder Ciudadano – In Argentina they have also found that the lawyers have been reluctant to agree to things that are already in the law. As such, they do not need to be included in another agreement. But it is important to see the incentives of the IP: The IP changes the environment for all of the players in the bid and brings in the additional pressure of public opinion, which requires an additional standard than just living up to the law.

Wiehen – The law is there in all countries and so is corruption. It is important to use the IP as something that is doing something that the law is obviously not doing. Need to sell this to the bidders as something that is in their interest to do.



TI-COL – Agreed. When they started there were cultural obstacles to the agreements. Early I.P.s were toothless documents, but now there are very real legal teeth to the documents. Has also been a real progression of attitude from the public employees who want TI and the IP to accompany them in these processes to whitewash their reputation and all TI has to be careful about that too. TI-COL was also helped by the fact that the idea of an IP was included in the National Development Plan of Colombia.

TI-COL – Lawyers were originally skeptical. But generally one or two of them involved in the process really buy into it and find that the IP goes further than existing framework. Have found the additional benefit that the IP gives the losing bidders a new control over how the execution of the bid is carried out and a check that the winning bidder does not change his bid after winning. IP gives them continual access to critical information. **Wiehen asked that TI-COL write up a statement outlining the continuing rights of losing bidders as assured by the IP.**

TI-Panama – Agreed with Argentina that a main problem in regulatory and legal questions is the unreal obstacles put forward by public employees.

Wiehen – Broaden discussion to include what to do in cases of breaches and what to do with damages. The TI IP model proposed arbitration through the International Chamber of Commerce in order to avoid national systems, in which international bidders had no confidence. TI-COL experience with national arbitration system is very positive and national arbitration should be agreed to as long as all bidders agree. Especially since national arbitration is faster. It is still conceivable that some companies will be reluctant to submit to national arbitration.

TI-COL – Colombia arbitration system is similar to other Latin American countries. Arbitration is used more and more in Colombia by private parties and they are going to national arbitration because international arbitration is too expensive. Chamber of Commerce of Bogota is well respected with solid arbitrators with good qualifications. Question gets raised that arbitration in Colombia is not available for criminal actions and most things outlined under the IP are criminal matters. So the role of the arbitrator is to decide whether the IP has been violated and if yes what is the result. The Bogota Chamber has even proposed assigning a lawyer who would be assigned to assure transparency of the agreement. The IP doesn't replace criminal court but is a commitment of other participants and the government. You will be sanctioned pursuant to that agreement and not pursuant to the criminal procedures. Outstanding question is also that TI-COL advocates for equity and bidders want arbitration based on law: ethical/equity issues vs. legal standards.

TI-Greece – What can be done regarding artificially low prices particularly in cases of cartels, that is when there is not additional pressure from other bidders to investigate competing bids? Response from TI-COL: Have confronted problem of firms making unusually low bids with the expectation that they can change the contract after they win it. Now TI-COL includes a clause that all bidders are required to make serious bids and that any increase in payment that they seek later must be fairly and duly supported. They must prove that they could not have known before that they would have needed more money. On technical issues TI-COL pushes for all bidders having access to all information so that losers can continue to ensure that the winners stays committed to the original bid. TI-Col also related story of several bidding high tech firms who admitted having an agreement among themselves to not inform on each other for fear of what it would do to their access to the market.

Poder Ciudadano – The IP empowers people who want to do the right thing. It is not a magic bullet, and in some cases it would not matter if there was an IP or not.

TI-COL – If the whole government is corrupt, then an IP will not work. But the IP does give a better chance. When a company is called and asked for a bribe then they have an existing way to get something done about it. IP is faster and people trust it more than the law. TI-Italy agrees and says that the IP gives a more realistic chance of redress than the existing laws which are too slow. TI-COL has found that the important thing of the IP is that it builds an



environment of confidence among the parties and the IP gives other possibilities to turn to. It includes two steps: one, building up the IP and getting people involved; and two, using the document, even when not signed, to create an environment of trust. Wiehen – From TI-COL it is becoming clear that the process, even more than the IP itself, builds confidence and trust.

(VII) Sanctions

(this discussion related to the latest IP in Colombia, where UNDP was involved and which in several respects is not typical of TI-COL's approach) Shouldn't government have the right to claim damages? In case with UNDP, the bidders didn't want to award damages to UNDP and UNDP agreed. Have had different damages agreements, including that damages would go to specific educational initiatives.

Blacklisting presents a couple of problems: one, waiting for the regular process of blacklisting would take too long (20 years); two, competition requirements do not allow for denying participation in bidding process so it is important to see for self commitment to not participate in bidding for five years if a company is found to have breached IP; three, how do you ensure that bribers do not just change the name of the ir company and begin bidding under new company name? How do you blacklist real power behind off shore companies? Flexibility and country specific solutions to blacklisting problems are critical. In Germany, it is permissible to bar bidders who are "unreliable" and corruption os grounds fro unreliability.

TI-COL – Has found that arbitrators decision should be enough to terminate a contract. Possible in three ways: one, mutual agreement; two, a forfeiture clause; and three, unilateral power of government to terminate contract on grounds of "illicit cause". TI-Italy has a case of a water sewage contract being terminated based on corruption, but bidders are now contesting the termination. In Germany, a contract that is against public policy is null and void. Hermes export credit agency is now saying that contracts gotten through corruption are null. **TI-COL asked that Wiehen highlight in status report examples of cases in Germany where contracts have been nullified based on corruption.**

Wiehen – IP model requires disclosure of all payments for all bidders, but TI-COL adaptation **that only bidders under suspicion be required to disclose all payments makes good sense and ought to be included in the new model. Payments to agents should also be reasonable and defensible.**

Wiehen – Does IP have to be signed in name of CEO? TI-COL has found this to be a problem when dealing with multinationals. Have usually had the Latin American head sign, or had it signed in that person's name. Conclusion: **new model should contain broader language that says when the CEO is not available then it should be signed in the name of the highest possible officer.**

Hussman – What are possible forfeiture guarantees? Two kinds available in Colombia: bid bonds and performance bonds. In Italy, 10% of the total contract can be required for damages. TI-COL has found that blacklisting and not being able to bid are the real strong sanctions. Companies have said that the monetary damages are less daunting.

(VIII) Maintaining public interest and transparency

Public Hearings: Gruenberg gave detailed outline of how to plan and undertake hearings. Findings available in paper entitled "Decreasing Corruption in Public Biddings." Basic conditions for a successful public hearing include; providing enough information long enough in advance that participants are well informed; have information following from principal to interested parties and interested parties to principal; having accountability and sustained responses from officials to questions and comments from interested parties; and active oversight and analysis of information undertaken both by the national chapters and by independent experts who are identified and brought into the process by national chapters. TI-COL agreed with Gruenberg. Public hearings on a blueprint of the rules of the game for a



tender document are critical to generate confidence in the process and maintaining transparency during the course of the IP.

TI-COL uses the INTERNET to insure that the blueprint is affected by the public and interested parties, but the idea is the same as in Argentina. Key is that interested parties discuss and have views heard on tenders and invitations to bid. Those making the bids are most likely the ones who will be able to see if a particular format of a tender unfairly favors one bidder over others. The objective is to involve bidders in the formulation of the rules of the game, since they are the best able to see when a tender is a solid and fair one. TI-Panama had success with public hearings, including in relation to the oversight of the budget of the Social Security Institute and its \$1 billion annual budget to procure medical supplies. In cooperation with Poder Ciudadano, TI-Panama held a workshop for staff of the Social Security Institute and identified an expert to monitor information provided regarding a \$5 million procurement of a computer system.

Much of the discussion during this section was focused on the question of whether a tender document can be opened and discussed before it is made final. Argentina, Colombia and Panama had tremendous success doing so and using public hearings as a tool to maintain interest in the process. European Chapters were less enthusiastic about their ability to use this process in their countries.

(IX) Obtaining and sustaining support and interest from the Media

TI-COL – of course the media is present when you are uncovering a scandal, but the question is how you maintain sustained media interest when things are working the way they should work.

Several methods were discussed, but everyone agreed that they could be boiled down to these steps:

1. Develop contacts in the media
2. Feed the contacts information on a regular basis
3. Build up knowledge and interest
4. Develop systematic relations with the media

Other strategies that were recommended explaining the IP process, show what happens when the IP is not used, warn of the high risks of corruption, publish results on a regular basis, put TI statements in the mouths of prominent people and present information to the media in a usable fashion.

(X) Resource people and support structure

When and where do you need resource people?

1. EARLY!
2. when your capability is exhausted
3. when you need in depth support
4. when the work is too much to do yourself
5. on the regulatory framework
6. when defining the terms of reference for the national chapters
7. in reviewing bids and tenders
8. on technical issues
9. for seminars and specific projects
10. to design projects

Where do you find resource people? (Rosa Ines Ospina emphasized that resource people must be absolutely independent so that their work cannot be questioned so it is often helpful to find them from outside your home country).

1. in civil society
2. in academia



3. in the business community
4. from people visiting your website
5. from your network, including those with whom you have worked on IPs in the past
6. from TI-S
7. from Chambers and associations
8. from foreign governments
9. from TI resource people book
10. from other TI National Chapters

How do you get the confidence of the involved parties? **(Since this is such a fundamental issue in all the national chapters do it will be placed somewhere else in the final report.)**

1. professionalism
2. strong personal and professionalism relationship
3. organize meetings to discuss the idea
4. TI-Panama maintains an excellent reputation
5. signing confidentiality agreements
6. show CV
7. give weight to experience
8. show results of prior experience

How do you pay resource people? (Rosa Ines Ospina made clear that at the beginning you have to be ready to work on a volunteer basis and prove the success the idea).

1. pay with prestige and public recognition of their work.
2. volunteer, no fee, or expenses paid work
3. governments should pay
4. friends of TI (Swiss, Danes, Dutch)
5. social matching funds: have local experts donate their time
6. TI-S
7. private sector

Saturday, June 24,

(XI) How have National Chapters started the process of the Integrity Pact and followed it through the various steps on the process?

Various steps of the process include the following:

- Structuring the project
- The political decision
- Preparation of the tender document
- The bidding process
- The implementation of the project
- Supervision of the contract

TI-Italy – Approached several mayors and found that several were receptive. Often encountered a split between supportive mayors and unsupportive public employees. Many public employees are reluctant to work with civil society. To try to get cooperation of the public employees they met with the Secretary General. To this point they have contacted 6 municipalities and 2 provincial governments and are likely to finalize an IP with provincial government this month. Have already negotiated three I.P.s with municipalities.

Poder Ciudadano -- Are working out what the role of National Chapter will be and see a strength in coalition building. Do not, for example, see a comparative advantage in monitoring and generally will rely on professional auditors to do that. They see their role in the following ways: to bring all the parties together to discuss the blueprint for the tender. Secondly, to monitor and provide information – though they rely on independent expert



organizations to do lots of the investigatory work (they have an expertise in such things). So, they monitor closely the preparatory phase.

In the bidding process, Poder Ciudadano tries to remain outside the process for fear of getting too close to the process. They watch the process, collect information and report on the status of the process. They remain in contact with the companies who are the actors with the most exact information of what is happening in the process, but they remain outside the process and collect information from both sides in the hopes of staying independent. They have not monitored the implementation of a contract yet, but want to build on an example from Bangalore, India where a team of volunteer engineers met monthly to visit and investigate the construction site of a public work.

They got involved in the process in the following ways. In two cases, they were approached by politicians who needed help in protecting themselves against accusations of corruption. (Russia interjected that working with politicians in Russia is a big risk and one they approach very cautiously. Argentina agreed). In a third case, a mayor from a city responded to a general letter that Poder Ciudadano sent out to forty separate municipalities (Argentina has found, like other chapters, that starting the IP at the municipal level is the most promising). They ask the mayors they approach for a genuine commitment to the process and make clear to them that they will criticize them if the process doesn't go forward the way it ought to.

Paraguay asked several questions, including, which information that you collect will you decide to make public? How do you verify information? Argentina answered by saying that they rely heavily on independent experts to make investigations. If a company makes a claim, they are cautious ("like a judge") to publicize it. TI-COL interjected that they try to make sure that any claims they hear from bidders get a fair hearing and responsive answer from the public entity.

TI-COL: Their process was started based on their relations with the new government. In a far ranging process of sounding out several NGOs for recommendations on how to go forward on an anti-corruption plan, the VP of Colombia became interested in the IP process from TI and both the IP and TICOL were included in the new government's National Development Plan. TI-COL assembled several high ranking and experienced professionals to discuss going forward with the IP in Colombia, discussing the legal and practical challenges to such an undertaking. They then held a meeting with several ministers and public officials and lawyers to explain the IP. At the meeting, three separate public entities (including the Energy Minister and the Public Works Minister) said they wanted to work with TICOL on IP processes. Though the three didn't work out in the end, it was clear then and is still clear that there is more demand in Colombia for the IP than they are always able to fulfill. Given this high demand, they are very careful about which projects they will take on and are careful about who is trying to sue TICOL's name.

TI-COL's specific involvement in the process is as follows: on payments, the GOC pays the costs of the accompanying process. TICOL wants it to be private independent money in the first instance but when that is not possible they accept payment from the GOC, but only under very strict conditions that maintain TICOL's independence. (Poder Ciudadano and Russia voiced concern about getting paid by the government and said such an arrangement would be a liability in their countries).

The role of the NC in Colombia includes the following: reviewing all the documentation, especially the tender documents, and get those documents on line, collect observations about the documents, and make sure there are responsive answers to the observations submitted by interested parties. The answers to these questions are also placed on-line at the website. They also identify all public officials who will have a role in the decision making process and bring them together for a conference on the effects of corruption, how they can protect the process from corruption and what sanctions they would accept in relation to an ethical commitment to avoid corruption. These commitments are put together into a document that is then used to begin discussions of the IP with the bidders. TICOL also brings in national experts to review the tender documents, monitors the relations among the bidders and the



government, and on the day of the submitting their bids, TICOL and the bidders and the government sign the IP. If things are not clear at any point in the evaluation of the bids, TICOL encourages the government to call in an independent outside expert to comment on the situation. TICOL also favors the use of IP to select an outside supervisor to supervise the implementation of the contract. The IP for the supervisor will include clauses on price changes and unjustified price increases.

Greece asked whether they can be an IP at the point of drafting the tender document. TICOL answered that when the tender is written by an outside expert, they certainly yes. When the tender is written by experts within the government agency, then TICOL pushes for a Declaration of Ethical Commitment from the public officials who are drafting the tender. **Greece asked that TICOL provide them with an English translation of such a declaration.**

Poder Ciudadano asked a question about direct contracting and IP. TI-COL said that this particular wording was a result of a faulty translation and that it would be changed. In fact, the document referred to was talking about procurement generally.

TI-Italy and Greece related frustrations with the fact that public employees are often obstacles to the use of an IP, even when the mayor of a particular municipality is supportive of the IP process. TI-Italy has been invited to give seminars to public employees about this subject, but cannot take it on at this point and is looking for a university or something that could hold the conference. TI-COL interjected that they have found that investment banks and consultants who have seen the IP in the past are now pressing the ministers in certain cases to call TICOL to get them involved in the process. Private sector pressure is good in getting the IP into the process, but many ministers and public officials are still reluctant – they ask several questions like: I am honest, why do I need this? Why should I give the air of impropriety by agreeing to have the IP in these processes? Why have the IP on some deals and not on others?

Hussmann asked TI-Italy how they monitor compliance in all the cases they have undertaken. TI Italy responded that they do relatively little monitoring but rely instead on the existing checks in the law and rely on the competing bidders to monitor the conduct of their competitors. Greece agreed saying that Greek companies are reluctant to agree to more monitoring which will just slow things down. Instead they also rely on the existing control systems in the law.

TI Panama reported on how they got involved in the INTEL monitoring process. The Controller of the Government of Panama was associated with TI Panama's advisory board and he invited TI Panama to monitor the privatization of the Telephone Company (INTEL) whose value was estimated at \$500 million. Since the tender documents were already agreed to, this was not a full IP but a monitoring process whereby TI Panama published weekly updates on the status of the privatization. They found a specialist on telephones through TI-S and got commentary from the specialist over the phone and through e-mail. At the end of the process, both firms, including the losing firm, stated their belief that the process was good and fair. The winner signed a declaration that they had not bribed when they signed the privatization contract. Additional proposals for I.P.s in Panama haven't worked. The IFC said that they didn't need it in the privatization of the electricity company and the water company has not yet been privatized. TI Panama sees itself as playing the role of interlocutor between civil society and the government.

TICOL and Poder Ciudadano, with all others in agreement, underscored the importance of identifying and reporting on the results and impact of the IP and the need to review the process to date. TICOL has already started this undertaking with La Universidad de Los Andes. **All participants were also in agreement that we need to do a much better job of disseminating information, including the status report and the procurement tool kit.**

(XII) Discussion of the New Model of the Integrity Pact



A long discussion led to the agreement of a new model for the IP. That model is included below. The issues discussed included the following:

- Whether the IP should be a document independent of the tender document (Greece)
- Whether officials ought to commit to provide information in fair manner (TICOL)
- Whether denouncing a bribe should also be required (Poder Ciudadano)
- Whether gross abuses of power by exporting governments should be sanctioned (Poder Ciudadano)
- Whether a clause against baseless accusations should be included (TICOL)
- What are the obstacles to sanctions on public officials (Italy, Paraguay, Argentina)
- What is the appropriate expectations for monitoring after the bid is won (all)

The New Model for the TI Integrity Pact

Pact between the Public Authority and bidders (*core element of the IP*)

- Signing voluntary (*optional element*)
- Signing mandatory (*optional element*)

Undertaking by the principal (and officials) (*core element of the IP*)

The Government hereby confirms (i) that none of its officials will demand or accept any bribe, gift, favor, or other advantage for himself or any other person, organization or third party, directly or through a friend, relative, or other third party, in connection with this contract, (ii) that it will make publicly available all appropriate technical, judicial and administrative information relating to the contract, (iii) that none of its officials will disclose otherwise confidential information to any outsider who may use this information for an undue advantage in the procurement process for this project, (iv) that none of its officials will commit any other acts of Conflict of Interest, and (v) that its officials will be reminded that they have an obligation to report to the appropriate government office any attempted or completed bribes or other violations enumerated in this paragraph.

Undertaking of bidders (*core element of the IP*)

- a) not to bribe (*core element of the IP*)
- b) not to collude (*core element of the IP*)
- c) to disclose all payments (*core element of the IP*)
 - at time of bid (*optional element*)
 - at time of breach suspicion (*optional element*)
- d) commitment in the name and on behalf of the CEO (*highly desirable, but with at least the signature on behalf of the CEO of the national subsidiary of the company*)

Sanctions applicable to the government official (*core element of the IP*)

In case of violation, by any official, of any of the undertakings submitted under paragraph _____ above, appropriate sanctions will be pursued against the official.

Sanctions applicable to bidders (*core element of the IP*)

- a) loss or denial of contract (*highly desirable element*)
- b) forfeiture of bid and performance bond (*highly desirable element*)
- c) liquidated damages (*highly desirable element*)
- d) blacklisting (*highly desirable element*)

Arbitration (international or national) (*core element of the IP*)



Agents' commissions not to exceed fair pay (*highly desirable element*)

Officials' disclosure of assets (*highly desirable element*)

Bidders have a Company Code of Conduct (*optional element of the IP*)

Increased transparency of procurement process

- a) internet (*highly desirable element*)
- b) public hearings (*highly desirable element*)

Involvement of TI National Chapter (or other NGO) (*core element of the IP*)

Monitoring (*highly desirable element*)

- by IPSIG
- by suitable government office
- by TI National Chapter
- by other NGO

Should we make an effort to expand the IP effort?

The answer was of course yes. The question was how. The discussion led to several concrete recommendations (found below) but focused on putting pressure on Berlin to hire someone full time to follow the IP and operate as a resource and as a clearing house. Hussmann and Pfeiffer recommended that all Program Officers in Berlin be trained in the IP so that they can advocate for it in their regions. TICOL and Poder Ciudadano agreed with the need for someone handling the idea in Berlin and also being available as part of a task force to travel into the field and see the implementation of the IP on the ground.

Other suggestions to spread the IP idea included the following:

Through professional groups, associations, NGOs, CSOs and Chamber of Commerce.

By training other CSOs and National Chapters

By using demand from the private sector

By persuading others of the benefits of the tool

Through better selling and processing of the results

Through seminars and international workshops

With more pilot projects

By organizing local events with experienced National Chapters

By investing time, money, and experience in training

By sending good information for the Status Report

By circulating the status report and tool kit

Through better communication in the network

With a bulletin board on the TI website

With a network for sharing information

By using the CPI and BPI to get word out about the IP

Putting the website in different languages

Doing detailed documents and analysis

Setting up a how-to-guide

Showing concrete examples in systematic manner

Keeping a think tank close to Wiehen

Training workshops for Programs officers

Establishing a group of 5 Program officers to travel around and work on IP

Getting a higher person in TI-S to handle IP

Establishing a centralized IP task force

Stronger central team with experience from NCs

Seeking support in the media

Expanding concept to new sectors

Getting World Bank and IFI support



Protecting trademark

Transferring methodology will depend on assurances of quality (Wiehen) and on whether people are just trying to use the name to whitewash their actions (TICOL).

End of Minutes



XII. Annex 12. PAKISTAN

Annex 12.1. Integrity Pact for Transparency in the Public Procurement Procedures of the Karachi Water & Sewerage Board

PAKISTAN

Integrity Pact For Transparency in Public Procurement Procedures With the Karachi Water & Sewerage Board

The Integrity Pact

Introduction.

Transparency International (TI) is an international not-for-profit, non-governmental organization (NGO) devoted to curbing corruption world-wide. TI was founded in 1993 and has since achieved global recognition as the leading civil society organization dedicated to the fight against corruption. TI takes credit in having helped place corruption on the world agenda and sees maintaining this vital issue uppermost in global consciousness as a major element of its continuing mission.

TI attempts to tackle corruption both at the national and international levels through a non-investigative approach. Rather than focusing on “naming names” and denouncing corrupt individuals, governments or companies, TI is committed to creating and working with broad coalitions of individuals and organizations in preventing corruption and reforming systems. TI is also politically non-partisan.

Internationally, the TI movement’s main aim is to strengthen the global value system by making transparency and accountability more relevant public norms. Corruption can have many manifestations, and countries, typically develop a complex set of institutions, laws, rules and regulations (the “integrity system”) in order to combat corruption.

Bribery and extortion in public sector procurement of goods and services are key manifestations of corruption. “Public sector” in this context includes national or provincial governments, administrations of cities or local communities as well as parastatals and other organizations carrying out public functions.

Corruption is no longer business as usual. The OECD Convention to combat bribery went into effect on 15 February 1999. The Convention makes it a crime to offer, promise or give a bribe to a foreign public official in order to obtain or retain international business deals. A related text effectively puts an end to the practice according tax deductibility for bribe payments made to foreign officials. The Convention is going to have a major impact on the global fight against corruption. The Convention commits 34 signatory countries, including all the world’s biggest economies, to adopt common rules to punish companies and individuals who engage in bribery transactions. So far, twenty-one countries have been subjected to close monitoring to determine the adequacy of their implementing legislation, including Austria, Australia, Belgium, Bulgaria, Canada, the Czech Republic, Finland, Germany, Greece, Hungary, Iceland, Japan, Korea, Mexico, Norway, the Slovak Republic, Spain, Sweden, Switzerland, the UK and the US. For each country reviewed, the Working Group on Bribery has adopted a report, including an evaluation, which has been made available to the public. Also, all signatory states will abolish the tax deductibility of bribe payments. Thus companies



doing international business will face a totally new legal situation with regard to their business practices.

Many governments and business leaders have recognized the high risk and cost of bribery and extortion and seek ways to curb and eventually eliminate corruption in such transactions. Many business leaders have expressed their desire to stop paying bribes but are held back by the fear of losing orders if their competitors continue to pay bribes.

“ Integrity Pact” in KWSB.

As the Government of Pakistan has embarked on a program to curb corruption, KWSB has agreed to use the Integrity Pact (IP) concept for Greater Karachi Water Supply Scheme Phase-V, Stage-II, 2nd 100 MGD Project as an important tool developed and practiced in many countries through TI National Chapters.

Purpose of the Integrity Pact (IP).

Apart from imbibing and disseminating values, principles and policies against corruption, Transparency International, as the only Organization with the sole objective of mobilizing civil society and building coalition for combating corruption, has also developed certain helpful instruments for application in government and individual organizations and entities. The concept of an Integrity Pact designed to make public procurement practices transparent is one of them.

TI has developed and adjusted the model for the “ Integrity Pact” on the basis of extensive discussions with governments and international agencies such as the World Bank, the Inter-American Development Bank, the Asian Development Bank, the International Finance Corporation, UNDP, the Court of Arbitration of the International Chamber of Commerce and FIDIC. The Project Director has also stated that IP is at present already in practice on various procurement projects in Argentina, Colombia, Italy, Korea, Nepal, Ecuador and Panama.

“Integrity Pact” is a system which insures that all activities and decisions of public offices are transparent and that the projects/works are implemented, services are provided or taken, and goods/materials are supplied without giving or taking any kind of benefit, financial or otherwise. Justification of the decisions taken is provided without much ado to the parties concerned or to any interested individual or institution/organization.

The Integrity Pact (IP) is intended to accomplish two objectives:

- i) to enable companies to obtain from bribing by providing assurances to them that
- ii) their competitors will also refrain from bribing and
- iii) government procurement agencies will undertake to prevent corruption, including extortion, by their officials and to follow transparent procedures; and
- iv) to enable governments to reduce the high cost and the distortionary impact of corruption on public procurement.

The IP concept could also be applied in similar situation, e.g. when a government as part of its privatization program, invites bidders to tender for the acquisition of government assets, or for the granting of telecommunications, transport, mining logging or other such licenses.

Considering the critical role normally played by consulting engineers (or other consultants) in preparing the procurement documents, evaluating the bids and supervising the contract execution, their selection should be subject to the IP concept as well.

In practically all countries, all forms of domestic corruption are illegal, and one should assume that the government will continue to prosecute all offenders.



The IP however focuses on bribery in order to obtain or retain a contract or other improper advantage

This includes any payments or other favors offered or granted in order to

- i) win a contract award
- ii) get a contract change order (adjusting the price, the specifications, the time frame for implementation or any other important contract components) approved by the government,
- iii) get sub-standard or sub-specification performance approved by a public official or the supervising consultant and their staff,
- iv) circumvent tax, duty, license or other legal obligations, or
- v) induce an official to breach his/her official duties in any other way.

Main Features of the IP.

The IP is an agreement among the government/government agency and the bidders/companies, who participate in the bidding process for the supply of goods or services for a selected contract/project, that bribes will not be offered, granted or sought, both during the bidding process and during implementation of the contract by the successful bidder. The IP has the following main features:

- A formal no-bribery commitment by the bidder, as part of the signed tender document, [supported by a company Code of Conduct and a Compliance Program];
- A corresponding commitment of the government to prevent extortion and the acceptance of bribes by its officials;
- Disclosure of all payments to agents and other third parties;
- Sanctions against bidders who violate their no-bribery commitment; and
- An involvement of Civil Society in monitoring the bid evaluation, the award decision process and the implementation of the contract. Alternatively to the involvement of Civil Society, or preferably in addition to it:
- Public disclosure of the award decision, including the major elements of the evaluation and the reasons for the selection of the successful bidder.

The IP would function as follows:

The government/government agency, when inviting contractors or suppliers of goods or services to tender for a specific contract, informs the potential bidders that their tender offer must contain a formal commitment, on behalf and in the name of the bidder's CEO, not to offer or grant any payments or favors in order to obtain or retain this contract or other improper advantage, and not to collude with other actual or potential bidders with the aim of restricting competition. The bidder's commitment will have to cover all managers and employees of the company as well as agents consultants, subcontractors and consortium partners of the bidder. The government on its part will commit itself to prevent extortion and the acceptance of bribes by its officials, and to follow transparent procurement rules. In substance, these commitments are nothing other than an agreement to respect and apply the existing laws of the country.

Because a bidding company acts through many employees and agents, the company's and CEO's commitment should (not least for the CEO's own protection) be supported by a company-wide no-bribery policy (a "Code of Ethics" or "Code of Conduct") and implemented through a compliance program which assures that all employees and agents will be familiar with, and observe, the no-bribery policy and commitment. Where the company already has a written no-bribery policy in effect, it can furnish a copy of that policy together with the compliance program implementing that policy. Where a company does not have such a policy, or does not have a written compliance program, it can prepare a compliance program for the particular contract.

A Code of Conduct and compliance program would normally address the following issues:

- An unequivocal statement of the company's policy prohibiting all forms of bribery and collusion;



- The company's policy regarding gifts and entertainment, travel and lodging expenses, political contributions etc;
- Distribution of the policy (in appropriate languages) to all managers and employee;
- An acknowledgement of receipt and acceptance by the employees, to be renewed annually;
- Training controls, external audit and record keeping; and
- Application of appropriate sanctions (including possibly termination of employment) in case of violation.

The government would not need to evaluate the no-bribery policy /code of conduct and the compliance program adopted by every bidder at the time of bid submission. Only if and when there is cause to suspect malpractice by one of the bidders, that bidder's policy and compliance program will be evaluated. Any shortcomings identified then would be relevant to the sanctions, including the length of any period of debarment to be imposed for breach.

While it is highly desirable that all companies develop and apply a no-bribery policy and a compliance program, its existence is not mandatory under the IP. Disclosure of Payments to Agents and other Third PARTIES.

One key lies in transparency relating to payments to agents and other third parties in connection with the contract. There are, of course, good and valid reasons why agents may be engaged to perform legitimate services, and be paid an appropriate amount for such services. However, agents' commissions are a traditional avenue for the concealing of bribes. The IP concept therefore requires that all past and intended future payments to agents and other third parties be disclosed at the bidding stage, and that they be formally recorded and reported during the execution stage by the successful bidder, with certification by an appropriate senior manager. This certification is necessary so that senior managers and the CEO will not be able to disclaim knowledge of malpractice as presently often is the case. This requirement is bolstered by the compliance program which the successful bidder should have in place.

Sanctions.

Bidders who violate their no-bribery commitment during the contract award process, or the successful contractor or supplier who violates the no-bribery commitment during the contract execution phase, will be subject to significant sanctions.

Sanctions normally will include denial/cancellation of the contract, liability for damages (to the government as well as to the competing bidders), forfeiture of the bid security and debarment of the offender from all business with that government for an appropriate period of time.

In case where the government debar an offender from government business because of a violation of the no-bribery commitment under an IFI/external donor financed contract, the IFI/external donor should also seriously consider debarring that offender from eligibility for contracts financed by it globally.

Damage claims by the government could be open-ended or they could be in the form of liquidated damages where a certain percentage of the contract value (say, five or ten percent) is pre-agreed as "the damage" unless either party can demonstrate and prove that the actual damage is larger or smaller. Damage claims by competitors could also be pre-set as a percentage of the contract value (say, one-half of one percent or one percent), unless higher or lesser damage can be proven. The legal route for enforcing the damage claims, to be announced in advance by the government, may be any suitable national court system, or it may be arbitration e.g. under the auspices of the International Chamber of Commerce. By empowering unsuccessful bidders to enforce sanctions themselves (through the courts or by international arbitration) their confidence in the integrity of the process as a whole will be increased.

Role of Civil Society.



It is essential that a process be employed which involves consultation among key parties and which leads to the adoption of a methodology which enjoys the confidence of the private sector. Where an effective civil society structure exists, possibly also a National Chapter of TI, it will be highly desirable to enlist its support by providing access for an effective monitoring role – directly or through expert consultants – and thereby create transparency and credibility to the process. It is therefore important that a government does not seek unilaterally to impose such system but it is recommended that the government arrange for prior consultation, possibly in the form of a hearing or hearings with the key actors.

A government may also, either in addition to the involvement of Civil Society, or possibly in its place, adopt a policy of total transparency of the bidding, bid evaluation, award selection and contracting process, through outright publication of all the critical documents or by giving easy access to relevant documents and information to any interested party.

Provision for suggestions and complaints:

- i) A suggestions box should be placed in the office premises to encourage suggestions from the concerned or other interested parties.
- ii) Arrangements for the analysis of and implementation of feasible suggestions be made.
- iii) An official should be designated to respond to the suggestions and complaints thus received. Complaints be studied and redressed as soon as possible. All these processes be made public.

Concluding Remarks.

The IP concept should be presented to the respective bidders as early in the process as possible, so as to assure that the new rules are established before interested parties have had the opportunity to enter into different (traditional) arrangements. This means inter-alia that for any contract with pre-qualification procedures (e.g. major civil works contracts) the bidders are requested to present their commitment as part of their submission for pre-qualification, or at least that the companies invited to apply for pre-qualification are informed of the use of the IP concept in the bidding process.

The government may begin by testing this IP concept on major contracts for one or several selected projects, or for all projects in a particular sector. Broader application could then follow at a later date when sufficient experience has been gained, and any desirable modifications may have been introduced.

The attachments to this memorandum contain:

- i) A model communication Attachment I from the KWSB to the bidders for the selected contract, which would normally be incorporated into the government's Invitation to Tender; and
- ii) A model of " Integrity Pact" Attachment-II by the KWSB.
- iii) A model of " Memorandum of Understanding" between KWSB and TI-Pakistan, for inclusion " Integrity Pact' in implementation of Greater Karachi Water Supply Scheme Phase-V, Stage-II , 2nd 100 MGD Project.
- iv) These "Models"" would be attached to the government's invitation to bidders. These model documents would be adjusted to the specific requirements of the selected contract.

Applying the Integrity Pact concept would be one step for the government towards bringing more transparency and integrity into its procurement process. The broader government program to combat corruption should be implemented concurrently as rapidly as possible.



Annex 12.2. Communications by the KW&SB to all Firms for Shortlisting

Communications by the KW&SB to all Firms for Shortlisting/pre-qualification for Greater Karachi Water Supply Scheme Phase-V, Stage-II , 2nd 100 MGD Project.

1. The Government of Pakistan (GOP) is committed to fight corruption in public contracting. As part of this program, Karachi Water & Sewerage Board (KW&SB) has reviewed its arrangements for the letting and implementation of contracts against criteria of transparency and accountability.
2. In an effort to limit the scope for abuse, KW&SB is introducing new procedures, which KW&SB is sure your company will wish to support. The objective is to ensure that there is fair competition for government business, and that competition takes place openly and in a manner that provides fair and equal opportunity for all competitors. The new procedures will also apply to the execution of contracts by the successful bidder/supplier. The new Procurement Procedures will be set out in the Letter of Invitation/Tender Documents.
3. As part of our confidence building strategy, KW&SB will treat the oversight and monitoring of the implementation of these new procedures with the highest priority. KW&SB will pay particularly close attention to the need to prevent any case of extortion, or acceptance of bribes, by KW&SB officials. We are asking all those bidding for KW&SB business to assist the government by reporting any instances of this occurring.
4. A special office for the investigation and handling of any reports of extortion or bribery in public procurement has been set up in the Managing Director's Office.
5. KW&SB hopes to obtain your company's endorsement of these procedures as fair and reasonable, and as having your full support.

Annex 12.3. The Integrity pact

The Integrity Pact

1. Karachi Water & Sewerage Board Procedures for Bidding for Public Sector Contracts:
2. The following procedures will apply to the letting of contracts for Shortlisting of "Consultancy Services for the Greater Karachi Water Supply Scheme Phase-V, Stage-II , 2nd 100 MGD Project".

Or

(The following procedures will apply to the letting of contracts for Prequalification of Contractors for "Procurements Contracts for the Greater Karachi Water Supply Scheme Phase-V, Stage-II , 2nd 100 MGD Project".)

3. These procedures are in addition to the standard legal and administrative requirements.
4. They will form part of the terms and conditions of each contract and will be actionable, in the event of breach, by the KW&SB and any of the competing bidders.



- 5 Each bidder must submit a statement, as integral part of the Tender documents, with the following text:
- a) This Company places importance on competitive tendering taking place on a basis that is free, fair, competitive and not subject to abuse. This Company is pleased to confirm that (i) it has not offered or granted, and will not offer or grant, either directly or indirectly through agents or other third parties, any improper inducement or reward to any public official, their relations or business associates, in order to obtain or retain this contract or other improper advantage, and (ii) it has not colluded, and will not collude, with others in order to limit competition for this contract.
 - b) This Company has a No-Bribery Policy/Code of Conduct and a Compliance Program which includes all reasonable steps necessary to assure that the no-bribery commitment given in this statement will be complied with by its managers and employees, as well as by all third parties working with this company on the Karachi Water Supply Scheme Phase-V, Stage-II , 2nd 100 MGD Project, , including agents, consultants, consortium partners, subcontractors and suppliers. Copies of our No-Bribery Policy/Code of Conduct and Compliance Program are attached.

Or

In cases where companies participate in the bidding which do not yet have a general no bribery policy/Code of Conduct:“

- c. This Company has developed, for the purposes of this tender, a Compliance Program – copy attached – which includes all reasonable steps necessary to assure that the no-bribery commitment given in this statement will be complied with by its managers and employees, as well as by all third parties working with this Company on the Greater Karachi Water Supply Scheme Phase-V, Stage-II , 2nd 100 MGD Project, including agents, consultants, consortium partners, subcontractors and suppliers.”
 - d. This commitment is in the name and on behalf of this Company’s Chief Executive Officer
 - e. This Company agrees for the resolution of any damage claims arising from this contract under Law of Pakistan.”
- 6 Where a bidding company is a foreign company and has a subsidiary in Pakistan, the commitment must extend to that subsidiary and its managers and employees as well. If the tender is submitted by the subsidiary in Pakistan, the no-bribery commitment needs to extend also to the parent company and its managers and employees.
- 7 Bidders will also be required to submit similar no-bribery commitments from their subcontractors and consortium partners. The bidder may however cover the subcontractors and consortium partners in its own statement, provided the bidder assumes full responsibility.

All payments shall be limited to appropriate compensation for legitimate services.

8. Each bidder will make full disclosure in the bid documentation of the beneficiaries and amounts of all payments made, or intended to be made, relating to the bid and, if successful, the implementation of the contract.
9. The successful bidder will also make full disclosure semi-annually of all payments to agents and other third parties during the execution of the contract.
10. Within one year of the completion of the performance of the contract, the successful bidder will formally certify that no bribes or other illicit commissions have been paid in order to obtain or retain this contract. The final accounting shall include brief details of



the goods and services provided that are sufficient to establish the legitimacy of the payments made.

11. Statements required according to subparagraphs (b) and (d) of paragraph 5 will have to be certified by an appropriate senior corporate officer.
12. In Pakistan, all forms of corruption are illegal, and the Government will continue to prosecute offenders.
13. This IP however focuses on bribery in order to obtain or retain the contract or other improper advantage, including collusion with others in order to limit competition for this contract. This includes any payments or other favours offered or granted in order to
 - i) win a contract award,
 - ii) get a contract change order (adjusting the price, the specifications, the time frame for implementation or any other important contract components) approved by KW&SB,
 - iii) get sub-standard or sub-specification performance approved by a public official the supervising engineer or his staff,
 - iv) circumvent tax, duty, license or any other legal obligations that should be met, or
 - v) Induce an official to breach his/her official duties in any other way.

If a bidder fails to comply with its no-bribery commitment, the following sanctions will apply:

- i) denial or cancellation of the contract;
 - ii) liability for damages to KW&SB, in the amount of five percent of the contract value, unless KW&SB can demonstrate a higher damage, or the bidder can demonstrate a lesser damage;
 - iii) forfeiture of the bid security; and
 - iv) debarment by KW&SB from bidding for further public contracts for such period as the KW&SB may deem appropriate.
- 14 KW&SB has made special arrangements for adequate oversight and monitoring of the procurement process and the execution of the contract. In this regard, KW&SB has provided for public hearings on the procurement process, and for access by Civil Society including representatives of the local TI-Pakistan, to the minutes of the meetings of the Tender Board and to all documents relating to the evaluation of the competitive tenders, the award decision process and the execution of the project.
 - 15 KW&SB has also set up a special office in the Office of the Managing Director for the investigation and handling of any reports of extortion or bribery in public procurement.
 - 16 The KW&SB will publicly disclose the award decision including the evaluation report and the reasons for the selection of the successful bidder.
 - 17 Bids which do not conform to the requirements of these procedures will not be considered.

Annex 12.4. Memorandum of Understanding.

Memorandum of Understanding.

This Memorandum of Understanding is executed on the---- day of May 2001, between Karachi Water & Sewerage Board and Transparency International Pakistan, Karachi for the purpose of implementing Transparency in Public Procurement Procedures within KW&SB and



the “Integrity Pact” in the Greater Karachi Water Supply Scheme Phase-V, Stage-II , 2nd 100 MGD Project.

Whereas KWSB and TI-Pakistan, Karachi have initiated the process by finalizing the “Integrity Pact” and a “ Transparent Evaluation Criteria” for shortlisting/prequalification of Firms, and that the KWSB has included the two as an integral part of the procurement process. It is also agreed that KW&SB along with TI-Pakistan will work jointly in the implementation of the Board’s decision for providing Systemic improvements within the KW&SB. It will include Transparency in all its dealings and incorporate the necessary Checks and Balances in KW&SB’s effort to reduce corruption. The process will comprise the formation of the following three basic Committees:

Coordinating Committee.

This committee has been set up by the KW&SB Board comprising the Officials of KW&SB and the Representative of TI-Pakistan. This coordinating Committee will:

Identify and list all transparency issues and evaluation of tenders criteria in the procurement bidding documents, discretionary conditions of contract, and revision of such clauses.

Prepare ways and means to be included in Contract Documents to eliminate/reduce delays to a bare minimum and in approvals by providing mandatory time limits for submittals by consultants/contractors and approvals by client/consultants.

Introduce systems to complete the Project at a most economical cost and within the scheduled time.

Steering Committee.

This will comprise of Managing Director of the Water Board as Chairman along with representative of the Monitoring cell, TI-Pakistan, Pakistan Engineering Council, the Institute of Chartered Accountants.

This committee will receive the Evaluation reports from the Evaluation Committees (to be set up by the KW&SB) to examine the compliance of the procurement Procedures, Evaluation Criteria and Transparency in award of Contract.

The committee will also oversee and monitor the implementation of the Board’s decision for providing Systemic improvements within the KW&SB, compliance to “ Integrity Pact” and timely completion of K-III Project.

Evaluation Committees

These committees by the Managing Director KW&SB and will comprise of officials from the Engineering, Finance and Legal departments of the KW&SB.

These evaluation committees will carry out detailed evaluation of tenders/bids in accordance with predetermined evaluation criteria issued with tender documents to all firms.

The evaluation report will comprise of detailed analysis and reason of recommendations to award the contract to the most responsive evaluated bidder / tenderer.

This MOU will be effective from the date of signing and will expire on the Completion of K-III Project.

Brig. Mohammed Behram Khan,
Managing Director,
Karachi Water & Sewerage Board,
Shara-e-Faisal, Karachi.

Syed Adil Gilani,
Project Director, “ Integrity Pact”
Transparency International,
Pakistan, Karachi - Chapter.



Annex 12.5. Public Notice to be published by The Agency Concerned while implementing Integrity Pact

PUBLIC NOTICE TO BE PUBLISHED BY THE AGENCY CONCERNED WHILE IMPLEMENTING INTEGRITY PACT

It is well known that Karachi Water & Sewerage Board has been providing services in the field of public welfare. It is notified to all concerned that a Pact to make the activities of the institutions transparent is being introduced, whereby, all concerned individuals or institutions or organizations would have easy access to the information and details of our activities. Thus, this institution requests all concerned to provide comments/suggestions related to our activities. In addition, the Managing Director KWSB can be consulted for the detailed information about the activities carried out by this institution.

Quality of service would not be compromised. It is also informed that no compromise shall be made in the quality as well as the regularity of the services.

No payment be made except tax and fee provided for by the law

No payment is required to be made, except legally provided for, to this Project by concerned individual, firm or company, while supplying goods or providing services, in the form of commission, cash, fee, tips or any kind of financial benefit – in cash or otherwise – directly or indirectly, to the officials or any employees of this institution.

Complaints are invited in case of delay and/or illegal activities

Complaints/information on any deed committed by any official or employee of KWSB against this notice are welcome. It is requested that such complaints/information be sent to the Managing Director KWSB . Informant will be awarded with Rs. 100,000 if the information thus supplied turns out to be correct. Name and address of the informant will be kept confidential.

Cooperation of all concerned is expected

Cooperation from all concerned is expected in effectively implementing the Integrity Pact by making all its activities transparent and providing services/facilities smoothly.

Thanks

Brig. Mohammed Behram Khan,
Managing Director,
Karachi Water & Sewerage Board,
Shara-e-Faisal, Karachi.

(Note: This notice could be adopted according to the need and circumstances.)



Annex 12.6. Public Bill Board to be placed at the Construction Site (Sample)

PUBLIC BILL BOARD TO BE PLACED AT THE CONSTRUCTION SITE (SAMPLE)

Construction work:

Construction procedure (Tender/Negotiation):

Contractor's Name:

Estimated cost:

Sources of expenditure:

Amount agreed for the work:

Date of commencement of the work:

Date of completion of the work:

Construction site: Ward No..... Area.....

Name of the supervisor (technical employee):

Project chief:

The construction work is being carried out by KWSB through the mobilisation of government resources. The public is hereby informed that any complaint regarding the quality or any other aspects of this construction work be filed at Office of Managing Director, KWSB, 9th Mile, Sharae Faisal, Karachi.

Annex 12.7. Commitment of the Officers/Employees of KWSB Concerned while Implementing Integrity Pact

COMMITMENT OF THE OFFICERS/EMPLOYEES OF KWSB CONCERNED WHILE IMPLEMENTING INTEGRITY PACT

I on (date)..... hereby pledge that, in accordance with the Integrity Pact, will do the following:

1. While performing any work under my jurisdiction, I myself or through my family members, will not accept any financial benefit – in cash or otherwise (in the form of commission, cash, reward, fee, tips) for providing or receiving services or while procuring goods/materials.
2. I hereby guarantee that a clause of the date of payment for the services or goods to be supplied be included in the agreement thereof, and the payment be made by the date mentioned in the contract/agreement or after the completion of the work.
3. I hereby commit that transparency will be maintained in all the activities undertaken under my jurisdiction.
4. While performing duty under my jurisdiction during the implementation and even after the completion of the project of Integrity Pact, I will not allow any situation adversely affecting the functioning of the Integrity Pact.
5. I will promptly provide the details as demanded by any interested individuals or institutions or organizations regarding the issues and activities under my jurisdiction.

Name:

Designation:

Signature:



Annex 12.8. Pakistan Engineering Council's CODE OF CONDUCT

Pakistan Engineering Council

"CODE OF CONDUCT" (SRO 1463(1) / 78)

Article 1

1. This Code Conduct may be called the Pakistan Engineering Council Code of Conduct
2. This shall come into force at once
3. This shall apply to all members of the Pakistan Engineering Council.

Article 2

1. To maintain, uphold and advance the honour and dignity of the engineering profession in accordance with this Code, a member shall-
 - (a) uphold the ideology of Pakistan;
 - (b) be honest, impartial and serve the country, his employer, client and the public at large with devotion;
 - (c) Strive to increase the competence and prestige of the engineering profession;
 - (d) Use his knowledge and skill for the advancement and welfare of mankind;
 - (e) Promote and ensure the maximum utilization of human and material resources of Pakistan for achieving self-reliance; and
 - (f) Not sacrifice the national interest for any personal gain.

Article 3

1. A member shall be guided in all professional matters by the highest standards of integrity and act as a faithful agent or a trustee for each of his client and employer.
2. A member shall-
 - (a) be realistic and honest in all estimates, reports statements and testimony and shall carry out his professional duties without fear or favour;
 - (b) admit and accept his own errors when proved and shall refrain from distorting or altering the facts justifying his decision action;
 - (c) advise his client or employer honestly about the viability of the project entrusted to him;
 - (d) not accept any other employment to the detriment of his regular work or interest without the consent of this employer;
 - (e) not attempt to attract an engineer from another employer by false or misleading pretenses;



- (f) not restrain an employee from obtaining a better position with another employer; and
- (g) not endeavour to promote his personal interest at the expense of the dignity and integrity of the profession.

Article 4

1. A member shall have utmost regard for the safety, health and welfare of the public in the performance of his professional duties and for the purpose he shall-
 - (a) regard his duty to the public welfare as paramount;
 - (b) Seek opportunities to be of service in civic affairs and work for the advancement of the safety, health and well being of the community.
 - (c) not undertake, prepare, sign approve or authenticate any plan, design or specifications which are not safe for the safety, health, welfare of a person or persons, or are not in conformity with the accepted engineering standards and if any client or an employer insists on such unprofessional conduct, he shall notify the authorities concerned and withdraw from further service on the project; and
 - (d) Point out the consequences to his client or the employer if his engineering judgement is over-ruled by any non-technical person.

Article 5

1. A member shall avoid all acts or practices likely to discredit the dignity or honour of the profession and for that purpose he shall not advertise his professional services in a manner derogatory to the dignity of the profession. He may, however, utilize the following means of identification.
 - a) Professional cards and listing in recognized and dignified publications and classified section of the telephone directories,
 - b) sign boards at the site of his office or projects for which he renders services; and
 - c) Brochures, business cards, letter-heads and other factual representations of experience, facilities, personnel and capacity to render services.
2. A member may write articles for recognized publications but such articles should be dignified, free from ostentatious or laudatory implications, based on factual conclusions and should not imply other than his direct participation in the work described unless credit is given to others for their share of the work
3. A member shall not allow himself to be listed for employment using exaggerated statements of his qualifications.

Article 6

1. A member shall endeavour to extend public knowledge and appreciation of engineering profession, propagate the achievements of the profession and protect it from misrepresentation and misunderstanding.

Article 7

1. A member shall express an opinion of an engineering subject only when founded on adequate knowledge, experience and honest conviction.



Article 8

1. A member shall undertake engineering assignments only when he possesses adequate qualifications, training and experience. He shall engage or advise for engaging of the experts and specialists whenever the client's or employer's interest are best served such service.
2. A member shall not discourage the necessity of other appropriate engineering services, designs, plans or specifications or limit-free competition by specifying materials of particular make or model.

Article 9

1. A member shall not disclose confidential information concerning the business affairs or technical processes of any present or former client or employer without his consent.

Article 10

1. A member shall uphold the principles of appropriate and adequate compensation for those engaged in engineering work and for that purpose he shall not-
 - a) undertake or agree to perform any engineering service free except for civic, charitable, religious, or non-profit organizations or institutions;
 - b) Undertake professional engineering work at a remuneration below the accepted standards of the profession in the discipline; and
 - c) Accept remuneration from either an employee or employment agency for giving employment.
2. A member shall offer remuneration commensurate with the qualifications and experience of an engineer employed by him.
3. A member working in any sales section of department shall not offer or give engineering consultation, or designs, or advice other than specifically applying to the equipment being sold in that section or department.

Article 11

1. A member shall not accept compensation, financial or otherwise, from more than one party for the same service, or for services pertaining to the same work unless all interested parties give their consent to such compensation.
2. A member shall not accept-
 - a) Financial or other consideration, including free engineering design, form material or equipment suppliers for specifying their products; and
 - b) commissions or allowances; directly or indirectly, from contractors or other parties dealing with his clients or employer in connection with work for which he is professionally responsible.

Article 12



1. A member shall not compete unfairly with another member or engineer by attempting to obtain employment, professional engagements or personal gains by taking advantage of his superior position or by criticizing other engineers or by any other improper means or methods.
2. An engineer shall not attempt to supplant another engineer in a particular employment after becoming aware that definite steps have been taken towards other's employment.
3. A member shall not accept part-time engineering work at a fee or remuneration less than that of the recognized standard for a similar work and without the consent of his employer if he is already in another employment.
4. A member shall not utilize equipment, supplies, laboratory or office facilities of his employer or client for the purpose of private practice without his consent.

Article 13

1. A member shall not attempt to injure, maliciously or falsely, directly or indirectly, the professional reputation, prospects, practices or employment of another engineer or member.
2. A member engaged in private practice shall not review the work of another engineer for the same client, except with knowledge of such engineer or, unless the connection of such engineer with work has been terminated;
3. Provided that a member shall be entitled to review and evaluate the work of other engineers when so required by his employment duties.
4. A member employed in any sales or industrial concern shall be entitled to make engineering comparisons of his products with products of other suppliers.

Article 14

1. A member shall not associate with, or allow the use of his name by an enterprise of questionable character not will be he become professionally associated with engineers who do not conform to ethical practices or with persons not legally qualified to tender the professional services for which the association is intended.
2. A member shall strictly comply with the bye-laws, order and instructions issued by the Pakistan Engineering Council from time to time in professional practice and shall not use the association with non-engineering corporation, or partnership as a cloak for any unethical act or acts.

Article 15

1. A member shall give credit for engineering work to those to whom credit is due, recognize the proprietary interest of others and disclose the name of a



person or persons who may be responsible for his design, inventions, specification, writings, or other accomplishments.

2. When a member uses designs, plans specifications, data and notes supplied to his by a client or an employer or are prepared by his in reference to such client or the employer's work such designs, plans, specification, data and notes shall remain the property of the client and shall not be duplicated by a member for any use without the express permission of the client.
3. Before undertaking any work on behalf of a person or persons for making improvements, plans designs, inventions or specifications which may justify copyright or patent, a member shall get ownership of such improvements, plans, designs, inventions or specifications determined for the propose of registration under the relevant copyright and patent laws.

Article 16

1. A member shall disseminated professional knowledge by interchanging information and experience with other members or engineers and students to provide them opportunity for the professional development and advancement of engineers under his supervision.
2. A member shall encourage his engineering employees to improve their knowledge, attend and present papers at professional meetings and provide a prospective engineering employee with complete information on working conditions and his proposed status of employment and after employment keep his informed of any change in such conditions.

Article 17

1. A member employed abroad shall order his conduct according to this code, so far as this is applicable, and the laws and regulations of the country of his employment.

Article 18

1. A member shall report unethical professional practices of an engineer or a member with substantiating data to the Pakistan Engineering Council and appear as a witness, if required.

**(Authority: THE GAZETTE OF PAKISTAN EXTRAORDINARY)
DECEMBER 20, 1978**



XIII. 13. SWITZERLAND.

Annex 13.1. Letter to executives in public service, private enterprises, and other organizations

SWITZERLAND

TRANSPARENCY SWITZERLAND
ETHICS & BUSINESS
Swiss Chapter of Transparency International
Ethik & Wirtschaft, Zurich

Letter to executives in public service, private enterprise, and other organizations

Contractual Integrity Clause (Anti-Corruption Clause)

Efficient prevention of corruption in practice in the procurement of public and competitive private goods and services, and appointments to high level positions

*Taking **measures against corruption**, above all of a preventive nature, is considered today part of good governance, company leadership, and any business activity. Above all, in procurement through public tenders the focus is increasingly on using explicit contractual **anti-corruption agreements**. These are based in particular on the model and experiences of Transparency International, the worldwide largest organization with the sole aim of fighting corruption, with "Integrity Pacts". In turn, in industrialized countries an **integrity clause directly included in all tenders, submission of bids, and contracts** can be shaped to be simple and efficient. Appended to these will then always have to be, as a matter of routine, more explicit standardized "**General Provisions**" with indispensable further detail and explanations.*

*Where doubts remain regarding the **necessity** of such complementary measures for the prevention of corruption, or where now only generally worded anti-corruption clauses without more specific detail are used, the following **international experiences** must urgently be remembered.*

Evidence from many corruption cases points most often to a lack of important preventive measures - laws and regulations alone will not be enough of a deterrent.

On the other hand, anti-corruption clauses alone do not enforce the commitment strongly enough, no matter how well conceived - they mostly remain empty words.

The most penetrating effects of anti-corruption measures are achieved when, at the point of announcing an intended procurement of goods and services or high level appointment, submission of offers, or signing of contracts, such measures are already included as a precondition, right from the outset.

In any specific procurement situation, flexibility is to be exercised and the wording of the integrity clause and General Provisions adapted to each specific work environment - for those issuing the tenders and contracts, as well as for participating enterprises and other organizations, it must be



ensured that potentially large costs of corruption are saved, yet no unreasonable burden is imposed with such measures.
This explicit contractual commitment to fight corruption is an ethical requirement of the highest order.

*The **enclosures** to this letter **exemplify** as a starting point for further review and adaptation, a broadly worded **integrity clause** (anti-corruption clause) for all public and competitive private tenders, submission of bids and contracts, as well as the standard **General Provisions** to be appended to them which after first applications remain in most cases unchanged. They serve in practice as a **model**, a blueprint for an optimal selection and wording so that no important elements will be missed. **In an equitable and responsible manner, corrupt business practices and resulting severe distortions of competitive markets will with these measures for all participants be eliminated.***

Dr. Peter F. Mueller.

Annex 13.2 Integrity Clause

[PUBLIC OFFICE, ENTERPRISE OR OTHER ORGANIZATION ISSUING TENDERS]

CONTRACTUAL INTEGRITY AGREEMENT:
INTEGRITY CLAUSE
(ANTI-CORRUPTION CLAUSE)

A clause for the prevention of corruption is to be included in all public and competitive private tenders, submissions and contracts for the procurement of goods and services, and as appropriate, for appointments to high level positions. The following wording has been found to be particularly effective.

<p>(Article / # ...)</p> <p>Integrity Agreement: Prevention of Corruption</p> <p><i>This tender (This bid, This contract) is explicitly based on the joint commitment of all parties involved to implement for the procurement of goods and services, and as appropriate for high level appointments, all acceptable measures to prevent corruption, as follows and in accordance with the General Provisions as attached.</i></p> <p><i>The participants ensure above all -</i></p> <ul style="list-style-type: none"><input type="checkbox"/> <i>that with the tender, bid submission, or contract only deliveries of agreed goods and services are appropriately paid for, and no improper payments or other advantages for personal benefit or in favor of third parties are demanded or offered, accorded or accepted, solicited, supported or concealed, particularly not with the aim of concluding or retaining a procurement or high level employment contract;</i><input type="checkbox"/> <i>that such procurement of goods and services is established and executed in an equal and transparent manner for all potential competitors, especially regarding the disclosure of any payments, mutual agreements, or potential conflicts of interest in the specific case at hand;</i><input type="checkbox"/> <i>that conditions for offers, criteria for the evaluation of submitted bids, and contract awards are adequately publicized, especially on the Internet, and that more detailed or competitively sensitive information is accessible confidentially to an agreed independent control organ;</i>
--



□ and that, in case of contract violations, besides the sanctions foreseen by law, also the **contractual sanctions** stated in the General Provisions are applied fully and without delay.

Complementing this integrity clause included in such tenders, submissions and contracts, the General Provisions must be routinely appended to them, as they are set forth here in the attachment, and further adapted to the specific work environment.

Annex 13.3 Integrity Clause: General provisions and Explanation of Terms

[PUBLIC OFFICE, ENTERPRISE OR OTHER ORGANIZATION
ISSUING TENDERS]

**Enclosure to tenders, submissions and contracts
in public and private competitive procurement of goods and services
and for appointments to high level positions**

CONTRACTUAL INTEGRITY AGREEMENT: **INTEGRITY CLAUSE** (ANTI-CORRUPTION CLAUSE)

GENERAL PROVISIONS

1. Integrity agreement

Aiming for efficient prevention of corruption, all parties involved in a procurement process agree to include an **integrity clause** (anti-corruption clause) in all tenders, submission of bids, and contracts for the procurement of goods and services, and as appropriate for high level appointments. Its purpose is to, first, **explain** the purpose and extent of the integrity agreement; second, **refer** to these General Provisions; and third, explicitly **commit** all involved, also with reference to contractual sanctions in case of contract violations. This integrity clause is, therefore, formulated as broadly as possible. It is adapted, however, to the particular work environment, and provisions considered here unnecessary or disproportionately costly should accordingly be eliminated.

In the particular case, **changes or additional arrangements** to these General Provisions deemed necessary may be recorded directly in the procurement offer or contract after the statement of the integrity clause.

Alternatively, the integrity clause and its amendments may be set forth as a **separately signed brief contract**, which again refers to these General Provisions as attached. Or else, as a third possibility, especially in developing countries with currently still a less elaborate legal framework and less effective law enforcement, a **free-standing, comprehensive integrity contract** may be worked out which incorporates the integrity clause and these General Provisions, at the discretion of the contractual parties. For such a model of a separate contract, refer to the "Integrity Pact" as successfully developed and applied by Transparency International on which also these considerations are based.

The **wording** of the integrity clause and the General Provisions is in the specific case to be agreed on by the independent control organ (see below, 3c), particularly with regard to completeness and justification of changes initiated. Shorter versions of the integrity clause or these General Provisions will inevitably tend to be incomplete for a full understanding of the integrity agreement and its implications.

2. Commitment of the participants



**in the procurement process for goods and services,
and as appropriate for appointments to high level positions**

The contractual agreement is agreed upon, on the one hand, between government agencies, enterprises, other organizations or individuals, who intend to procure these goods or services, here called **principals**, and on the other hand, those submitting offers for the competitive supply of these goods and services, called **bidders**. They both aim at concluding a **procurement contract** for all or part of the requested supplies, or as applicable to conclude a high level employment contract. All encompassing, therefore, these are the **participants** in the integrity commitment: government offices at the international, national, regional or local level; public or private undertakings; enterprises and other organizations, as well as their subordinate or higher group offices or organs; or individuals involved. Included on the part of principals as well as bidders are also **external consultants**, experts, and planning offices. The commitment **remains in force** until the completion report for the particular contract has been agreed by all parties involved.

a) **Principals** seeking to procure goods or services, or where applicable, to make appointments to high level positions, commit themselves -

- to inform in **open procedures** all potential bidders, **as early as possible**, about **impending tenders**, in particular with regard to project undertakings which are (1) either preceded by a separate **qualification process** determining a limited number of eligible bidders; or are (2) based on **invitation procedures**, i.e., based on the legally permitted **selection** of best suppliers to compete for projects of a lesser magnitude (below the given minimal value of projects to be competitively tendered); and which (3) are clearly **distinguished** from the direct determination of desired suppliers for projects of a low value up to general legal limits.
- to **inform** potential bidders of planned large (e.g., above the given minimal value) or complex competitive tenders, for their **comment** within a given time period through adequate publication, especially on the Internet, or in a public hearing, and to subsequently publish the tenders in their **final form**;
- to establish and execute such procurement of goods and services for all potential competitors in an **equal and transparent** manner, especially, (1) excluding any mutual agreements, or potential conflicts of interest in the specific case at hand; (2) specifying the evaluation criteria down to the level of relevant detail; and (3) listing and quantifying any legally established preferences, e.g., for local contractors who maintain local employment and pay local taxes;
- not to influence the **submission of bids**, and **open the bids** at the announced final submission date with the participation of the control organ (in case of competitively sensitive aspects, at least in its presence);
- to rapidly **publish** at least on the Internet, (1) a complete **list of all bidders**; (2) to later enhance this list in summary form with indications of the main qualitative differences of all bids and their prices (for confidential aspects, with the consent of the independent control organ); and (3) to complete this information at again a later date with **more specific data concerning the successful bids**, especially based on which **criteria** which bidders have been selected for the conclusion of a contract (for confidential aspects, data as agreed with the independent control organ).

b) **Bidders and contractors**, such as public or private traders, producers, suppliers, agents, or managers, commit themselves to -

- **provide authorization** for specific business executives or other delegates (such as agents) to sign bids for the supply of requested goods and services, explicitly **in the name and with full responsibility of their chief executive or board of directors**; this includes also their subordinate or higher group offices or organs (e.g., their parent company), and covers later changes as they might occur during contract implementation;
- agree to **publication in summary form** of their offer, particularly on the Internet;
- in case of contract awards, (1) deposit **agreed performance as well as payment guarantees and bonds**; (2) agree to publication of **relevant information** on



- contracts awarded; (3) submit their **code of ethics** and rules of conduct as available; and
- agree on their **commitment for transparency and accountability**, also through their compliance program, as well as the contractual sanctions in case of contract violations (see sections 3 and 4 below).
- c) **Both principal and bidders commit themselves jointly -**
- **in line with the integrity clause, not to demand or offer, accord or accept, solicit, support or conceal any improper payments or other advantages for personal benefit or in favor of third parties**, which are not explicitly covered in the tender or contract or deemed appropriate for legitimate delivery of goods and services or high level appointments;
 - to include in this commitment all **managers, employees, subcontractors, agents, consultants or consortium partners**, especially those entrusted with the development of any contract specifications: for public projects, this encompasses all public offices and organs at the national, regional or local level, especially the administrations of cities or local communities, as well as enterprises with public participation;
 - to establish as the **control organ** in each case an experienced independent expert in the role of a neutral observer in every process of tendering and awarding contracts: he or she is (1) for this mandate **reporting** to another department of the organization which is not issuing the tenders, and which is preferably also otherwise charged with duties of control; serves additionally (2) in the capacity of an **ombudsperson** handling or forwarding any concerns of those involved or of the general public; and acts (3) in cooperation with an appointed independent **auditor**, and with an organisation of **civil society** specializing in fighting corruption, such as Transparency International through their chapter at national level worldwide;
 - to **report** to the control organ, confidentially and as early as possible, any relevant **deviations** from general or specifically agreed provisions, which could lead to major doubts regarding the integrity of the contract or its execution;
 - to **cease personal and business relations** which, for a given project, could potentially lead to relevant **conflicts of interest**, in particular regarding the determination of contract specifications through persons maintaining relations also with potential bidders; and, where specifically requested for appointments to high level positions (as may be appropriate mostly in the case of developing countries), to publicly disclose his or her **personal and family fortunes**;
 - in case of any **disputes** over these commitments, to be subject to and accept the judgment of an agreed **court of arbitration** (or otherwise, the court of arbitration of the International Chamber of Commerce).

3. Contract Compliance Program of the selected suppliers in the procurement of goods and services

To ensure proper contract implementation with regard to preventing corruption, an explicit contract compliance program will be submitted to the principal by bidders awarded a procurement contract, especially in the case of public sector projects. The compliance program will include:

1. A statement as to **who is responsible for the project**, and what **arrangements** have been made to implement in practice the integrity agreement as well as later changes;
2. Information how the integrity commitment with these General Provisions is being **communicated** and wherever possible **discussed** with all persons likely to be a participant in the particular project, at all levels of the organization and those involved externally;
3. Where deemed appropriate, the requirement for those directly involved with a particular procurement contract to submit to their public office or business management a signed statement **at the end of each year** that they have not been part, and are not aware, of any irregularities;
4. Indication of the offices and persons having been charged internally with **oversight, control and monitoring duties** during the contract execution process.



5. The plan for **periodic progress and completion reports** in line with the requirements and milestones of the procurement contract.

4. Sanctions in case of contract violations

In case of a violation of the integrity commitment - and thus, based on the integrity clause of the procurement contract itself - particular **contractual sanctions** will be applied, independent of possible penal law procedures or broader legal rules of liability. These sanctions include **any or a combination of the following measures**, which will be imposed by the public office or the enterprise issuing the tenders, or by the agreed court of arbitration. They will be applied without delay where, in case of a contract violation, substantiated doubts regarding the integrity of the procurement process have been credibly established:

1. **Loss of the particular opportunity to obtain a contract**, i.e., either of the current bid, contract award, or continuance with the contract execution, including the loss of deposited guarantee payments or performance bonds;
2. **Loss of confidentiality of information** contained in the bid or contract;
3. **Liability for damages caused by the contractor**, in particular, a general liability for 5% of the contract value to the **principal** unless he credibly establishes higher damages, and 1% to each of the **other competitive bidders** unless the accused party establishes credibly that they incurred lower damages.
4. **Blacklisting** of the bidder by the principal, i.e., **exclusion** from future bids for five years unless specified differently in the procurement contract;
5. Appropriate **publication** of contract violations, particularly on the Internet, at the point of announcing bid awards or providing periodic progress or completion reports; and in case of development programs, direct notification of major lending institutions concerned.

EXPLANATION OF TERMS

1. Aims in fighting corruption

The contractual commitment through an integrity clause (anti-corruption clause) or a separate integrity contract (integrity pact) serves the following objectives in the fight against corruption.

- Ensuring **transparency**, as a precondition of **good and credible governance and business leadership**: (1) in all **public procurement** where it has to be based on competitive tenders, thus also providing an incentive and model for further local, regional or national legislation; (2), as far as possible and applicable, also for **private procurement contracts**, reflecting increasingly industry, national or international business standards for self-regulation; and (3), as appropriate, for appointments to high level positions.
- **Competitive orientation** of the procurement process, by enabling all competitors on the basis of such transparency to forego corrupt payments or other improper advantages, in line with the contractual integrity commitment, so that every participant can **trust** none of the other competitors either will be able to profit from preferences which might otherwise have been obtained due to corrupt actions.
- **Reminding** principals and bidders as well as international organizations involved (such as lending institutions in development aid programs), (1) to adhere to **existing laws and regulations** against corruption; (2) to insist that in their business practice with the integrity clause and these General Provisions they live up to their **integrity commitment**; and (3) to apply explicitly also their **own codes of ethics, rules of conduct, and compliance program**. They are thus committed to help curtail improper conduct in government or business activities, unnecessary costs, as well as severe distortions of open markets due to corrupt practices.
- Establishing **controls** that all reasonable measures for efficient prevention of corruption are actually implemented in practice and monitored.
- **Overall**, therefore, helping maintain and increase the **credibility** of the public and private decision-making process and rules of procedure, a **climate favorable for**



investment, and the **cooperation** between public office and private enterprise in the fight against corruption.

2. Defining corruption

The integrity commitment requires that all parties involved in the procurement process **help prevent and fight any form of corruption**, especially if applied in order to retain, execute, or complete a procurement contract fully and on time, in accordance with the contract conditions.

Corruption in the broadest sense is any demanding or offering, according or accepting, soliciting, supporting or concealing of improper payments, other advantages for personal benefit, or favors to third parties, with the abuse of publicly or privately entrusted decision or executive power by at least one of those involved.

*This encompasses, therefore, above all any form of bribery as well as any other crime under penal law, and especially corruption in the narrow sense, abuse of public office for private benefit, in far-reaching cases called “grand corruption”. However, the most urgent fight particularly against grand corruption - where particularly Transparency International concentrates its efforts - should not be confused with the indispensable **fostering of consistent ethical behavior by all concerned**, on which the term of **integrity** in the broadest sense is based. Only with this broader focus will it be possible to achieve a **culture of ethically sound thinking and action** for every individual, leading personality, and thus every public office or business management, which ultimately leads to the roots also of grand corruption. The **main prerequisite and principal task** of any efficient prevention of corruption are clear-cut rules, as well as sensitization and education of all involved.*

The following are to be considered corruption:

any improper payments, other advantages or favors to third parties for the purpose or by way of

- ❑ **Extortion** in general: obtaining benefits by applying physical force, threats, or blackmail, or by endangering others.
- ❑ **Bribery**: inducing, accepting or tolerating a particular decision or action based on a *violation* of a persons’s publicly or privately entrusted decision or executive power.
- ❑ **Greasing**: obtaining a decision, its implementation, acceleration of action or change, but *without violating* a person’s publicly or privately entrusted decision or executive power.
- ❑ **Fraudulent practices**: inducing a person charged publicly or privately with decision or executive power through a *misrepresentation of facts* to influence a procurement process, the execution of a contract or high level appointment; or engaging in *collusive actions* among bidders (prior to or after bid submission), e.g., to establish bid prices at artificial non-competitive levels.
- ❑ **Infeeding**: seeking to promote a generally favorable attitude of a person in a public or private position with entrusted decision or executive power through frequent presents or courtesies, but at this point *without obtaining specific advantages* in return.
- ❑ **Secret commissions**: reaping or providing *benefits in excess of stipulated contractual compensation* for goods and services or a high level appointment, while bypassing contractual obligations of accountability and transparency.
- ❑ **Hidden favors**: in return *for secret services or advantages accorded or received*, extending or obtaining favors or other advantages from a person with publicly or privately entrusted decision or executive power, to the benefit of a public office, of an enterprise, for any other particular public or private purposes; or for other beneficiaries, such as another company, a charitable institution, or a political party.
- ❑ **Inherent abuse of entrusted decision or executive power** of a person in a public or private leadership position *yielding often only small but varied benefits*, such as informal discussions about prices and conditions of a project of mutual interest, or other cartel-type action; providing or obtaining unjustified advantages to or from someone submitting a legitimate request for permits, licensing agreements,

information about privatizations, or improper passing on of secret information, e.g. in case of limited general sales, auctions, stock purchases, etc.; awarding procurement contracts below the value that could have been obtained in open competition; or other awards to or from interest groups or publicity or lobbying organizations which are involved with a particular project.

Important exceptions are in general, in a strictly limited sense:

- ❑ Customarily tolerated “**facilitating payments**” for a faster, more convenient or otherwise favorable administrative process, where such payment (i.e., greasing at the lowest level) is evidently common, considered appropriate, and should be regulated through fixed tariffs, e.g., priority services as part of customs formalities.
- ❑ Offering or receiving acceptable **gifts**, i.e., payments, donations or other advantages of (1) a relatively small value, which (2) do not represent a danger of influencing pending decisions by the principal, or distorting competition among bidders; for which (3) in the public offices, companies or other organizations concerned no explicit applicable rules are in force. If in other cultures concerned more lavish presents are in evidence, customary and a matter of courtesy, they must be passed on to the benefit of the company as a whole where appropriate, or else of social organizations as supported by the company.

3. Explaining the terms of the contractual commitment

The following **principal terms** describe more closely the extent of the commitment based on the acceptance of the integrity clause

- ❑ “**Prevention of corruption**” signifies in the first instance the implementation of measures which, for the **avoidance of corruption**, aim at excluding opportunities or incentives for corrupt business conduct wherever possible, or at curtailing it through appropriate sanctions. Second, it entails also, as a deterrent against its future re-occurrence, the **fight against corruption actually experienced**, particularly in cases where improper payments or providing of other advantages could have been expected.
- ❑ “**Transparency**” implies the necessity that a procurement process and its results have to be equally clear, evident and understandable to all parties involved. To this end, all requirements, major performance criteria in the evaluation of bids submitted, and particularly all project-related financial transactions are to be laid open, in case of business secrets or further detail based on the decision of the independent control organ.
- ❑ “**Procurement**” encompasses any activity associated with the supply of goods or services, e.g., also services related to the privatization of a public enterprise; award of licenses and permits pertaining to the exploration of natural resources; providing public services such as telecommunications, electricity, or water; or in particular, contracts with experts, consultants and planning offices. It includes, as applicable, at the higher levels of public office or company management, contracts for appointments to high level positions, or for other forms of third party assistance.
- ❑ “**Improper**” are all forms of payment, other advantages, or favors to third parties (1) which are not provided as a commensurate advance or compensation for the agreed contractual supply of goods and services; (2) which are not foreseen in applicable laws, regulations, or the particular contract; and (3) which are in excess of any admissible value of gifts and thus potentially distort open competition.
- ❑ “**Publicly or privately entrusted decision or executive power**” encompasses legitimate authority, e.g., in public office, public or private company management; high level positions in professional or trade associations, political parties or other organizations; or in personal matters such as handling family finances.

Abuses in the above mentioned broader sense often fall into the **gray zone** of situations which often cannot be ascertained objectively, such as grants to interest groups, without intention of influencing a project these are involved with; discussions touching on viable project costs at the occasion of personal or social contacts; joint action together with others seemingly without aiming at the particular project but having the effect of excluding



competitors, etc. Decisive is here again less the nature of the action involved, but the consistent ethical stance of those involved and manifested in their **code of ethics and rules of ethical conduct**. Commensurate behavior leads to a culture of ethically sound action and a “culture of compliance”. There is no room for improper help among friends and mere “cavalier crimes”, and “**double standards**” in individual behavior must be excluded. Taking into account the delicate preference, for example, of favoring local competitors who continue to locally provide work and pay taxes has to be stated and quantified at least in public tenders. In curtailing open competition, however, any such preference carries always with it the risk as well that, on the back of the public, more expensive and possibly less qualified offers might be favoured.

