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Integrity Pacts: A Contractual Approach to Facilitate Civic Monitoring of Public Procurement

Posted on [September 7, 2018](#) by [Helen Jiang](#)

Public procurement is one of the [highest risk areas for corruption](#). A public project contaminated with corruption is a recipe for disaster: ordinary citizens suffer from substandard facilities and services; competitive companies lose out when the bidding is rigged; and government money vanishes without making a difference. To rein in procurement corruption in, improving transparency and civic monitoring is vital. That's why an "[integrity pact](#)" (IP)—a legally-binding contractual provision that commits all parties to comply with anticorruption best practices from the time the tender is designed to the completion of the project—[can be such a useful tool](#).

An IP is more than a demonstration of commitment to avoid corruption practices on the part of its signatories. [An IP contains](#) obligations for bidders and government authorities, among other things, to refrain from offering or accepting bribes and to disclose all contract expenses and commissions; the IP also sets out sanctions for non-compliance, such as termination of the contract, liability for damages, or debarment from future public contracts. Perhaps most importantly, an IP creates a [monitoring process](#) where an Independent External Monitor—which can be an individual, a civil society organization, or a group with combined expertise and technical support—independently scrutinizes the deal for any anomaly or violation of the IP, and ensures proper implementation of the contract and the satisfaction of all stakeholders' obligations. To execute these functions, [the monitor is entrusted to](#) examine government tender documents, bidders' proposals, and evaluator' assessment

reports of the bids, to visit construction sites and contractor offices, and to facilitate exchange with the local communities and public hearings.

IPs have previously been used in public procurement projects in many countries, including Romania, Bulgaria, the Czech Republic, Slovenia, Portugal, Hungary, Latvia, Poland, Greece, Italy, India, and many others. It's notable that many of the states that have embraced IPs are countries where governments have a long track record of corruption and abuse of power. IPs have at least three roles to play to help facilitate transparency and civic monitoring so as to safeguard the competitiveness and fairness of the procurement process:

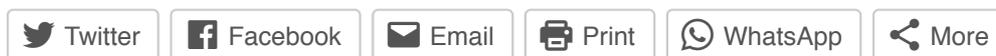
- *First*, the independent external monitor can help detect practices designed to favor a particular company. In an ordinary procurement process, insiders can collude to ensure that a favored company (perhaps the one that has paid the largest bribe) gets the contract. During the bid preparation phase, bidding documents can be drafted in a way to favor particular bidder, often using subjective selection criteria and convoluted, unnecessarily complex terms to disguise this favoritism. Also, contractors may try to make the tender appear so complex and integrated that the government decides to use a single contract, rather than several smaller contracts, resulting in over-dependence on a single firm. Moreover, during contract implementation, the contractor's site engineers often request "change orders"—that is, modifications to the contract—using various pretexts (such as changes of circumstances, cost, or the scope of work), with the result that the project becomes something much different from, and more expensive than, than the original job. These corrupt practices are made easier by the ability of the government officials and the company to withhold and block public access to key information. Independent scrutiny by IP monitors can redress this problem, especially if the monitor is equipped with the relevant technical expertise. The monitor can use its authority under the IP to require each bidder to disclose all payments made in relation to the contract, to demand authorities to explain the rationale for selection standards, and to determine whether the justifications proffered for change orders make sense. As soon as the monitor detects suspicious "red flags," it can immediately notify the authorities.
- *Second*, IP monitors are in a better position to detect conflicts of interests, due to their familiarity with local business relationships and politics. Conflicts of interests in procurement can emerge if officials who award the contracts have previously worked for the winning contractor, or vice versa—especially if the regulatory framework does not impose meaningful restrictions on this "revolving door." Government officials may also have indirect relationships with certain businesses; for example, a business may be owned by an official's friend or family member. Citizen and NGO monitors from the area know the local context well, and may be able to identify potential conflicts of interests that more removed government watchdogs or international monitors might miss. The IP monitors can use this knowledge to seek

disqualification of questionable contractors before the bidding process is over. Additionally, given their familiarity with local nuances, local civil society groups may have superior knowledge as to whether government's preference scheme—such as a local content component of the project—has fairly selected the entities worthy of this preference.

- *Third*, IPs educate citizen monitors and the general public about public procurement. An IP is more than a legal contract; it is also a **process**. Given the highly technical and specialized nature of public procurement, meaningful deliberation and effective monitoring will not take place if citizens cannot understand how contracts are procured and implemented. In cases where civil society organizations undertake to be the independent external monitors, an **extended line of accountability** is created between the general public and the government, with the civil society groups acting as channels for the public to make inquiries and learn about the procurement process. Even though many participating individuals in the monitoring process are professionals (engineers, lawyers, or accountants), they may not initially be well-versed regarding the procurement process; being a party to an IP builds a platform for them to learn the structure and features of a tender “**in a rigorous but accessible way**.” This will encourage their repeated and continuous participation in IPs (though of course one must be careful to ensure that the monitoring responsibility **doesn't become too burdensome** to the civil society monitors, who also have day jobs).

The high corruption risks in public procurement demand an independent and forceful monitoring mechanism. IPs, with their independent citizen-monitors, provide this oversight. So long as these civic monitors have a clear mandate, rights, and obligations, and the necessary expertise, they can ensure greater transparency and accountability in the procurement process.

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11 THOUGHTS ON “INTEGRITY PACTS: A CONTRACTUAL APPROACH TO FACILITATE CIVIC MONITORING OF PUBLIC PROCUREMENT”



Donald Bowser

on **September 7, 2018 at 12:19 pm** said:

Helena – great stuff and have always enjoyed the periodic re-appearance of IPs since they were developed back in the late 90s at TI. However, it would be great to see if the readers can produce some real-world examples of when an IP has been used to sanction a firm or lead to a conviction.



Ruta Mrazauskaite

on **September 23, 2018 at 1:26 am** said:

Donald – I don't have concrete examples of IPs used for sanctioning companies or leading to convictions (although I think I vaguely recall such cases), but I would like to suggest a slightly broader approach towards how the effectiveness of IPs are / should be measured. I believe that IPs can be a preventive tool reducing the possibility of corruption in the public projects. Following such an approach, the effectiveness of an IP might be not that it can be used to prosecute someone, but that it creates a framework which prevents/deters the individuals from acting illegally by applying increased transparency and scrutiny standards to the project. Furthermore, if an IP is implemented in a full cooperation with the purchasing organization, it has the potential to reduce the risks of corruption by, among other things, having indepen-

dent parties review the draft procurement and technical documents of the project upfront. In such cases, it can be that there will be no convictions exactly because of the fact that the potential loopholes in the draft documents have been addressed timely. (Full disclosure – I have worked on an IP project myself for some time, representing an external monitoring organization)



Abraham Saucedo Cepeda
on **September 7, 2018 at 2:26 pm** said:

Hi Helen, great post. Very insightful information about an instrument that may potentially curtail corruption in Procurement. I'd like to ask what is your opinion on the corruptibility of external monitors?



Helen Jiang
on **September 10, 2018 at 10:14 am** said:

Thanks, Abraham.

As regards your question, I think an internal accountability mechanism is crucial not only for governments and companies but also for civil society groups who are parties to the IP. Where corruption is especially acute, perhaps whether a self-regulatory/ compliance mechanism is in place in a civil society group should also be factored into the selection criteria.



Ruta Mrazauskaite
on **September 23, 2018 at 1:36 am** said:

Yes! I would just add that I have always been a big fan of total transparency in such cases. I would say that the civil society organization responsible for monitoring should publish all of its work and work results online, explaining in a very simple language what exactly they are doing, what are their insights and interventions, at what stage the monitored project is and – where possible – even publishing all of the project documents and costs, providing their independent evaluations of such costs (for example, publishing market comparisons), etc. This way, the monitoring organization can to some extent be held accountable by anyone visiting their website and evaluating whether their work is reasonable and does not seem subjective.



Garth Meintjes

on **September 9, 2018 at 12:34 pm** said:

Thanks for writing about a potentially useful legal tool that can be used to secure better outcomes in procurement processes. Do you have thoughts about how ordinary citizens, civil society, or communities facing potential impacts from corrupt procurement deals can have the access and influence needed to push for the inclusion of IP in public contracts?



Helen Jiang

on **September 10, 2018 at 10:07 am** said:

Thanks, Garth for the very thoughtful question.

I don't have a clear answer to it, but I gather it would be in the ballpark of contributing to the incremental process of vocal advocacy, awareness raising, and culture building. One point I would like to flag, though, is that establishing and strengthening a civil society and government partnership is crucial for getting the IP in a public contract. That said, civil society groups and individuals should, as an entry point, present a case of why and how they are a necessary component to complement the oversight function of government (instead of presenting themselves as overarching supervisors), such that they could mainstream themselves into formulating public policies and supervising the implementation.



Hilary Hurd

on **September 16, 2018 at 7:50 pm** said:

Super interesting post. I heard a lot about “integrity packs” when I worked for TI (especially in the India context) – though I never fully focused on their development. I had a similar question to Donald: where does it seem like integrity packs have had the greatest impact on reducing corruption and, by what metric? This question is a big one – perhaps worthy of PhD – but I’m curious if you have any instincts on the matter. Of the countries you mention that have experimented with integrity packs, I’m also curious to what extent civil society was meaningfully involved in those activities? While IP seem like a great way to build the capacity of CSOs, I’m curious how many CSOs have actually take that task on – as compared with professional outfits of lawyers/accountants.



Ruta Mrazauskaite

on **September 23, 2018 at 1:44 am** said:

Hilary – many examples of CSOs engaging with integrity pacts are listed here – https://www.transparency.org/whatwedo/tools/integrity_pacts/5. You will see they are mostly TI chapters across the globe!



Claire Martin

on **September 19, 2018 at 10:18 am** said:

Thanks to Helen Jiang for kicking off the conversation on Integrity Pacts. There is clearly a lot of appetite to learn more about how they can help address corruption in the high risk area of public procurement. At Transparency International we are currently piloting 17 Integrity Pacts together with civil society across the European Union. This is based on a revised and updated Theory of Change developed which takes on board the many changes that have taken place since the IP first arrived on the scene. Currently we are conducting a learning review of the first 2.5 years of implementation – this will be available in November. I would be happy to post an update here or write a stand-alone blog at that time. Just one thing up front: the IP has always been intended as a collective action approach – focused not just on civil society going in to catch the bad guys but to bring progressive actors together to achieve change. As such, success should not only be seen in terms of detection of corruption or sanctioning of companies. More to come in November!



ASHUTOSH KUMAR MISHRA

on **September 19, 2018 at 10:59 am** said:

Thanks for this post, I worked on IPs in India and the biggest challenge that comes with IP is the monitoring, many organizations have adopted IP without understanding its essence, for them it's like another ISO certification, there is need to restrict to high-value transactions and report IEM has to be disclosed publicly, there are some good examples where IP has been used for sanctions in few public undertakings.

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