

# Learning Review: Transparency International's Integrity Pacts for Public Procurement

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# Abbreviations

CVC	Central Vigilance Commission
CVO	Chief Vigilance Officer
CSO	Civil Society Organisation
CFE	Comisión Federal de Electricidad
CoST	Construction Sector Transparency Initiative
CPI	Corruption Perceptions Index
EU	European Union
FCPA	Foreign Corrupt Practices Act
FUNDE	Fundación Nacional para el Desarrollo
GDP	Gross Domestic Product
HLRM	High Level Reporting Mechanism
IEM	Independent External Monitor
ICT	Information and Communication Technology
IP	Integrity Pact
IACC	International Anti-Corruption Conference
MoU	Memorandum of Understanding
MO	Monitoring Organisation
MSG	Multi-Stakeholder Group
NLL	National Library of Latvia
ONGC	Oil and Natural Gas Corporation

OECD	Organisation for Economic Co-operation and Development
PA	Procurement Authority
PSU	Public Sector Undertaking
PPP	Purchasing Power Parity
SMG	Seoul Metropolitan Government
TI	Transparency International
TI-S	Transparency International Secretariat
UNCAC	United Nations Convention Against Corruption
USD	United States Dollar
WGI	Worldwide Governance Indicators

# 1 Executive Summary

Integrity Pacts were pioneered by Transparency International in the 1990s and are agreements between a government or government agencies and a company, or group of companies, participating in public procurement processes. Under the agreement, parties commit to refrain from bribing in any form, and from colluding with competitors. Integrity Pacts generally include an external monitor to oversee the procurement process with the aim of increasing transparency, levelling the playing field, and delivering efficiencies.

The Basel Institute on Governance, in partnership with Blomeyer & Sanz, was commissioned by the Secretariat of Transparency International (TI) to conduct this Learning Review of Integrity Pacts in public procurement and in which TI Chapters (Chapters) have been involved in countries outside of the European Union. This Learning Review aims to identify some of the principal elements of Integrity Pacts, particularly those that distinguish them from other integrity promoting tools in public procurement; the performance of these elements; weaknesses of Integrity Pacts; and how to structure an Integrity Pact (IP) such that they can be more effective in future.

## Principal Findings

- The Learning Review provisionally finds that the IP brings value as a preventive mechanism against corruption. As such it raises awareness of concepts and practices of integrity, anti-corruption and good governance for procurement participants and the public.
- The IP does not contribute to significant delays or costs to procurement.
- The importance of a proactive, engaged and knowledgeable Monitor is a key component to an IP's success. Regular contact with stakeholders, particularly regular reporting to the contracting authorities, is essential to promote an environment of trust and thus effectiveness of the Integrity Pact. An individual monitor however may be limited in the level of engagement that they can exercise.
- The impact of the monitor depends on various factors: degree of resources available to the monitor; level of access to the procurement process; willingness of the bidder and procurement authority to collaborate; tools at the disposal of the monitor to follow-up and sanctions irregularities. Without one or more of these factors in place, the monitor is limited in the level of engagement and therefore the degree of oversight they can exercise.
- Several weak points in terms of how IPs have been applied were identified in this Review: The lack of regular monitoring and evaluation, data collection, baseline assessment and establishment of key performance indicators (KPIs) has limited the strength of the argument for using an IP. Similarly, the organizational set-up and approach to IPs and coordination with the TI Secretariat has impeded knowledge transfer, sharing of best practices and

capacity building among Chapters that have implemented IPs or are interested in beginning an IP.

- The IP as a one-time initiative cannot guarantee sustainability of positive outcomes, either through the adoption of policies within a procurement agency or the insertion/improvement of internal anti-corruption policies among bidding companies. Most improvements in this direction have resulted from regular application of more than one IP over a longer period of time. Having said this, making IPs mandatory by law however can endanger its effectiveness and run the risk of window dressing. Finding a balance is essential.
- The business case for an IP rests primarily in its capacity to promote a level playing field and in its monitoring capacity to ensure that procurement rules are followed. Further incentives and evidence for business participation are necessary; this is partly a result of the lack of data-driven evidence and the need for better engagement with the private sector.
- The IP is one of many procurement integrity promoting tools and now competes with digital communication channels that have revolutionized the way information is shared, as well as operating in an environment where anti-corruption and compliance have advanced considerably. The IP however remains limited by the brevity of the intervention, creating a lack of longer-term focus, and lack of an overview of the entirety of the procurement process. Through application of the IP in concert with several tools as discussed in this Learning Review, the IP remains relevant in a wider context through the complementary attributes of the IP with these newer approaches.

#### Main Recommendations

- Monitoring - The capacity and resources of the monitor must be commensurate with its role as specifically described in the IP, thus:
  - As recommended by TI, the monitor should be involved at least from the start of the procurement process, and preferably during the design phase of the tender, and continue through each phase, including contract execution.
  - The monitor should be professionalized and wherever possible consist of more than one person, with the ability to field appropriate experts when necessary.
  - To promote ownership of results and independence of the monitor, all bidders and the contracting authority should contribute to the remuneration of the monitor's activities (or the contracting authority should include the costs in the fees levied on bidders).
  - The Monitor(s) should establish regular channels of communication with the parties to the IP in order to fulfil the terms of their mandate.
  - A clear process for identification, reporting and escalation of potential issues that arise in the procurement must be laid out at the outset of each IP and preferably included in the agreement.
  - The circumstances under which sanctions can be applied and responsibility for implementing them must be explicitly described and in sufficient detail including when information and evidence will be passed on to the appropriate authorities.

- o Monitoring should involve greater use of social control mechanisms, open governance tools, working with sectoral initiatives and other committed stakeholders.
- IP Management
  - o Implementers of IPs should engage in rigorous monitoring and evaluation of results in procurement conducted with an IP. Data collection, KPIs and baseline assessment should be applied for each IP. Regular evaluation in order to ensure that the IP remains fit for purpose and can be adjusted when necessary
  - o There must be clear options set out in advance for disassociation from the process when concerned that its integrity has been compromised too greatly.
  - o TI Secretariat should take an active role in coordination and dissemination of IP standards and best practice among Chapters. Online knowledge-sharing platforms, annual practitioner's forums or other forms of information sharing should be implemented.
  - o Chapters or other entity using the IP should ensure that procurement processes which feature IPs have been subject to a needs assessment, thorough analysis of the corruption risk profile as well as the legal, political and economic conditions surrounding the proposed IP. This can serve as a baseline to further measure impact of IPs.
  - o Chapters or other entity using the IP should promote training and capacity building for monitors and IP implementers.
  - o Chapters or other entity using the IP should establish a clear communication and media strategy for IP progress and results, commit greater efforts towards engagement of the public, if necessary with support of other civil society partners.
  - o Promotion of the IP should focus less on corruption but expand its approach to a whole system, procurement efficiency and value maintenance proposition, to better reflect the evidenced strengths of the IP in these areas.
  - o Identify champions and allies in government and the private sector to promote an IP within the context of a systems approach and potential legislative change, where necessary.



## 2 Introduction

Transparency International (TI) commissioned the Basel Institute on Governance and Blomeyer & Sanz to conduct this Learning Review of Integrity Pacts (IP) between September and October 2015.

### 2.1 Purpose and Scope

Building on the findings of an earlier study conducted by Blomeyer & Sanz in spring 2015 on IP experiences in European countries, this Learning Review aims to assess the strengths and weaknesses of the IP as a tool to prevent and detect bribery, compares the IP to other forms of procurement integrity measures, sets out the lessons learned and how the IP could be improved in future.

### 2.2 Integrity Pacts – Background

For the purposes of this Review, IPs are agreements between a government or government agencies and a company, or group of companies, participating in public procurement processes. Under these agreements parties commit to refrain from paying, offering, soliciting or accepting bribes, and from colluding with competitors during the procurement process, while also agreeing for an external party to monitor the procurement process.

Transparency International has actively promoted the use of IPs since the 1990s as a tool to promote integrity and transparency within public procurement. Since their development, IPs have been used in a number of countries and involving several TI National Chapters (Chapters) and other civil society actors. A number of variants of the IP have been put into practice or are currently ongoing, indicating the flexibility of this tool.<sup>1</sup> Other countries and organisations are putting into place what are nominally called 'Integrity Pacts' yet without direct involvement of a TI Chapter.<sup>2</sup>

The lack of centralized information about IPs makes the data collection task more difficult and hampers understanding the strengths, weaknesses, and determinants of the enabling environment for the success of an IP and its contribution to the wider procurement and public sector integrity environment. Furthermore, as new public procurement integrity tools have emerged in recent years, evaluation of the IP against these other tools is lacking. Developing a clearer picture of the IP in

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<sup>1</sup> At present, TI Chapters that have indicated conducting some form of Integrity Pact or introducing it in part, with varying degrees of commonality and comparability, include Argentina, Austria, Benin (no longer a Chapter), Bulgaria, China, Colombia, Ecuador, Germany, Hungary, India, Indonesia, Italy, Latvia, Mexico, Nepal, Pakistan, Panama, Paraguay, Peru, Rwanda, South Korea, Uganda and Zambia.

<sup>2</sup> For example the government of Thailand is introducing Integrity Pacts in several pilot projects. The High Level Reporting Mechanism in Colombia also requires bidding companies to sign an IP, see further below in section 6.4.

relation to these points is essential in order to identify how IPs can be made more effective. This Learning Review seeks to contribute to this process.

As IPs have been applied in a number of national contexts and industries, a high degree of flexibility has been necessary in the implementation and content of the IP. TI has identified four main elements it deems crucial for implementation<sup>3</sup>:

- Political will of the contracting authority to use the IP to its full extent to reduce corruption;
- Maximum transparency at every step;
- External independent monitoring to verify that IP obligations are fulfilled;
- Multi-stakeholder involvement.

By applying a collaborative approach to anti-corruption standards, the IP aims to establish a level playing field in a contracting process. The role and level of involvement of the various stakeholders varies in that civil society organisations (CSO) or monitoring organisations (MOs), often in the form of a TI Chapter, and contracting authorities play an important role in the design and implementation of the IP. In more concrete terms, CSOs and contracting authorities formally agree on a process for independent monitoring of a procurement project. In principle, the independent monitoring is done by the CSO and focuses on the interaction between the procurement authority and bidders, though it is not always the case. External monitoring can also be conducted by an independent expert(s) who is selected and/or approved by the Chapter, contracting authority or government agency. IP bidders have primarily been subject to monitoring activities and not contributing to the design of the IP.

An understanding of what constitutes success in the context of an IP varies among the TI Secretariat, Chapters and outside stakeholders. The flexible nature of IPs may preclude a set of pre-established success indicators, with the final decision varying depending on circumstances of the procurement, the IP and other stakeholders involved. Guiding this Review have primarily been the elements that in TI's opinion constitute success, which include:

- Transparent, accountable contracting that was free of corruption;
- No delays to the process as a result of confusion or lack of transparency;
- Trust in government and government officials has improved and reputations of all participants have improved;
- Corruption has been detected, and where occurring eliminated.

Applying each of these elements either cumulatively or discretely to define success for every IP might be desirable but it is premature. The baseline would need to be agreed before any

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<sup>3</sup> See Transparency International, 2013.

improvements could be identified; the implementation, circumstances, content, measurement and evaluation of the IP in question may prevent the empirical observation of success based on these categories. Nonetheless, these success markers remain relevant throughout this Review, as well as the concept of sustainability: essentially, do the outcomes of the IP extend beyond a single procurement? Though this has not been the initial focus of many IPs as implemented in the past, it is an important element to consider in light of developments in the conversation on public procurement integrity since the IP's inception in the 1990s.

### **2.3 Report structure**

This Review is set out as follows: the methodology used to obtain the data for the Learning Review is described in Chapter 3. Next, Chapter 4 looks at the structure of the IP and its application across various countries and conditions. Chapter 5 presents the main findings of the Learning Review, followed by a comparison of the IP with several other integrity promotion tools in public procurement processes. Conclusions are presented in Chapter 7 and recommendations in Chapter 8. References can be found in Annex 1. Annex II contains a summary of the European Learning Review, and Annex III includes a selected list of TI Chapter experiences with IPs from around the world.

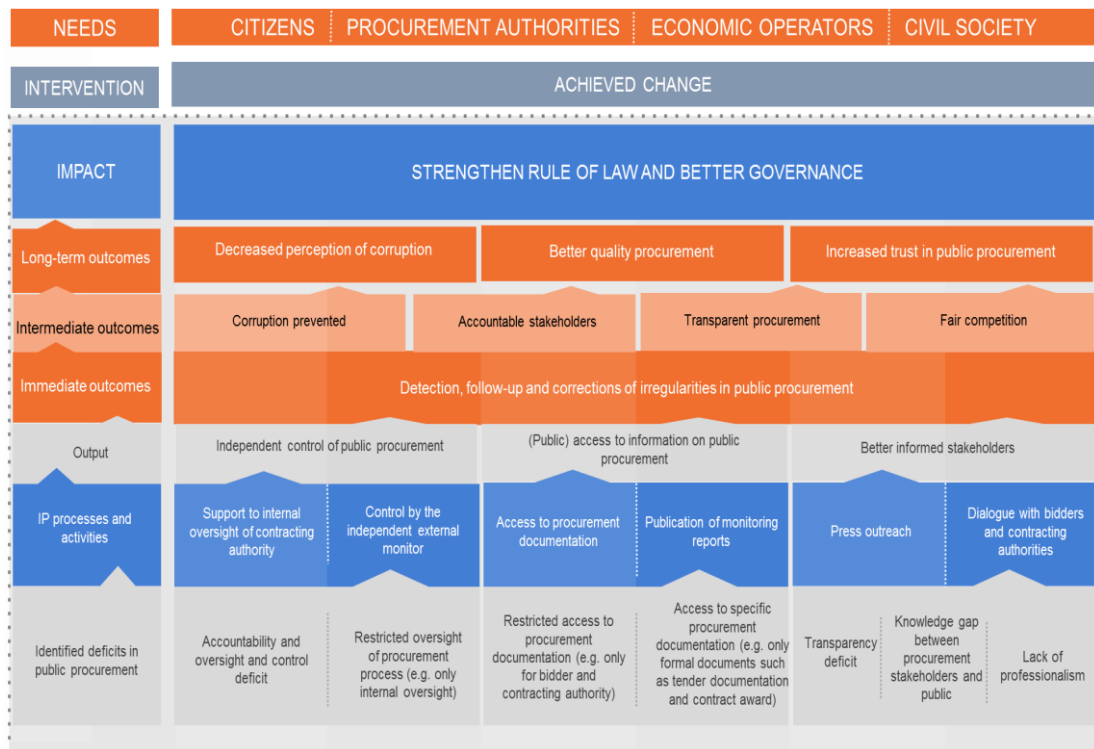
## 3 Methodology

This section outlines the theory of change guiding this assessment of IPs, followed by the methodology used for the Learning Review.

### 3.1 Theory of Change

The figure below presents our views on the theory of change engendered by the implementation of an IP. The IP by design bolsters objectives (such as ensuring a level playing field in order to increase quality procurement and trust in public expenditure) that address the needs of relevant beneficiaries (citizens, governments and business). These objectives are to be achieved through specific interventions requiring resource mobilization (financial resources, expertise) to operate an IP (denoted in the image as 'INPUTS'). Once these resources are available, they can be used to accomplish planned ACTIVITIES. Generally, for an IP this translates to monitoring and communication activities. Accomplishment of these planned activities should thus deliver the intended services in public procurement, providing a level of independent control, a system for public access to information and better-informed stakeholders (OUTPUTS). Once these outputs have been achieved, this can result in benefits to the beneficiaries. For example, effective outreach can support empowered citizens, who through increased attention on and information to the procurement process, may submit legitimate concerns, generating a response from the public authorities. Such a response can result in mitigation measures or concrete sanctions in case of corruption (OUTCOMES). In the medium term, the outputs could prevent corruption, hold stakeholders accountable and make procurement more transparent (INTERMEDIATE OUTCOMES). In the long term such outcomes could generate expected change, such as increased public trust and less perception of corruption (LONG-TERM OUTCOMES), or even institutionalization of lessons learned from IPs and overall improvement in the public procurement system.

**Figure 1: Theory of Change**



Source: own elaboration

### 3.2 Learning Review framework

The methodology applied in this Learning Review builds upon an earlier study conducted by Blomeyer & Sanz, which focused on IPs in EU countries. This Review has been adapted according to the specific requirements set out by the Terms of Reference and timeframe, while following the review framework guidelines based on the TI publication *Integrity Pacts in Public Procurement Implementation Guide*<sup>4</sup>, as well as TI's *Curbing Corruption in Public Procurement: A Practical Guide*<sup>5</sup>. Feedback was also received from experts at TI Secretariat in Berlin. Three review criteria were established in the undertaking of this Review, in addition to a fourth 'cross-cutting' criterion. These four criteria were then subdivided into nine review questions that guided the development of indicators to measure the performance of IPs against the overall review criteria. Certain indicators are useful across questions/areas, differing only in the manner of the assessment, and thus have been applied for several review questions.

<sup>4</sup> See: [http://www.transparency.org/whatwedo/publication/integrity\\_pacts\\_in\\_public\\_procurement\\_an\\_implementation\\_guide](http://www.transparency.org/whatwedo/publication/integrity_pacts_in_public_procurement_an_implementation_guide).

<sup>5</sup> See: [http://www.transparency.org/whatwedo/publication/curbing\\_corruption\\_in\\_public\\_procurement\\_a\\_practical\\_guide](http://www.transparency.org/whatwedo/publication/curbing_corruption_in_public_procurement_a_practical_guide).

## Review Criteria 1: Efficiency, effectiveness and impact

Review questions:

- Have IPs been **effective** in preventing and detecting corruption? What were the main contributory factors to the result?
- What changes/benefits (including economic and social) and **impact** have IPs contributed to? And why did these changes happen?
- Did IPs make procurement more **efficient**? And if yes, are there differences in efficiency gains between the parties to an IP? Have there been cost or time savings associated with their application? Has there been evidence of increased competitiveness in the procurement process and/or competitive advantages/disadvantages for specific groups?

Indicators

The indicators have been selected to determine the effectiveness<sup>6</sup> of the IP in preventing and detecting corruption. Detected irregularities in the process as manifested through allegations of misconduct, and the handling of conflicts and complaints in relation to the contracting process are important here, particularly when looking at how a procurement process with an IP fares in comparison to procurement without an IP.

To determine the impact of the IP, we referred to effects produced by the IP, directly or indirectly, intended or unintended, and the conditions under which these took place. For example, did IPs contribute to greater visibility in public procurement projects? Did they allow for credible and legitimate procurement activities by contracting authorities? Factors that indicated such changes included media coverage, public perception, greater public participation in the procurement process, or an absence of scandals. As an example of long-term impact, any reforms or changes in the contracting process on an organizational and institutional level would indicate a lasting impact beyond the IP-applied procurement.

Changes to efficiency in public procurement as a result of the IP were assessed by indicators of cost or price changes in procurement, any changes in the duration of the procurement process, and whether or not the IP affected competitiveness in the tender process.

## Review Criteria 2: Sustainability

Review questions

- Did the benefits of IPs continue, or otherwise lead to follow-up activities after the project ended?

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<sup>6</sup> This relates to the extent to which IP objectives were achieved, or are expected to be achieved, taking into account their relative importance.

- What were the major factors that influenced the achievement or non-achievement of sustainability of IP results?

#### Indicators

Sustainability seeks to determine to what extent the (positive) outcomes arising from the use of an IP have been upheld following the conclusion of a procurement process, both short and long term. Assessing if corruption perceptions have changed since the enactment of IPs, whether or not IPs have become more widespread as a result of initial successes, or the institutionalization of IP elements and lessons learned, provides some indication as to whether or not IP outcomes have proven sustainable once the procurement has ended. Similarly, we apply indicators to uncover what governance, economic, IP content and implementation conditions were in place that may affect the sustainability of IP outcomes, focusing primarily on the four elements TI has identified as crucial in overall IP implementation success<sup>7</sup>. Caution is required however when determining sustainability of IPs as a criterion in their review, as this frequently was not considered in their original design.

### **Review Criteria 3: Flexibility**

#### Review questions

- Do certain systemic contexts have an effect on implementation and outcomes of the Integrity Pact?
- Are there certain elements of the Integrity Pact and/or specific tender that are necessary or sufficient in order to increase chances of success?

#### Indicators

The diversity of IP examples across the globe speaks to its flexibility, yet also raises the question as to whether or not there are specific implementing conditions or elements of an IP that promote greater chances for success. We attempt to answer this question of IP flexibility by assessing implementation and performance in light of the characteristics and context under which an IP was carried out.

### **Review Criteria 4: Cross-cutting**

#### Review questions

- Did IPs have any negative effects? Major weaknesses and critiques? How can this be addressed?
- What is the business case for the IP?

#### Indicators

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<sup>7</sup> See section 2.2 in the Introduction.

The widespread promotion of the IP by various Chapters has not been without setbacks, as well as scepticism and rejection from some stakeholders, hence the inclusion of these questions in this cross-cutting category. This will have ramifications to ensure that future design, monitoring and evaluation of the IP are maximised, to ensure best chances of success according to the other criteria mentioned above, as well as allaying concerns of stakeholders.

### **3.3 Data collection**

The Learning Review applied a mixed methodology of desk research, interviews, surveys and field visits. This approach was chosen in light of the sparse and fragmented nature of available information on Integrity Pacts, short time frame accorded to the development of this report, and wide geographical spread of countries that have enacted IPs. Desk research primarily consisted of secondary sources, information collected from the TI Secretariat in Berlin, and results from the earlier Europe-focused Learning Review by Blomeyer & Sanz. This was used to establish a starting premise on the state of IPs worldwide. These resources were supplemented by interviews and field visits to develop further insights into IPs in the context of the Learning Review questions, as well as a survey for selected Chapters.

#### **Desk Research**

Primary documentation on IPs was collected from TI Secretariat and the National Chapters. Additional documentation was collected from academia and civil society organisations other than TI that deal specifically with IPs or similar initiatives on monitoring of public procurement. Also relevant documentation from the European learning review was consulted. This desk research established a preliminary factual basis for answering the review questions, further substantiated with information derived from the interviews, surveys and case studies. A full list of consulted documents has been included in Annex I.

#### **Interviews**

In total, roughly 40 stakeholders from Chapters, contracting authorities, civil society and private sector participants were interviewed either face-to-face during on-site meetings or via telephone/Skype. This includes in part individuals that participated in the group interview discussions during the field visits (see below). These discussions were used to gather further information on actual practices and behaviours in IPs and public procurement. In addition, interviews allowed for in-depth discussions on current expectations of the tool within the TI movement as well as its role for the future. A variety of stakeholders were contacted in this process in order to establish a balanced range of perspectives and in an attempt to mitigate bias.

#### **Survey**

This Review included one survey that was sent to representatives from 12 Chapters, with the aim of gathering basic data on their experiences with IPs. Six Chapters completed the survey, with another



Chapter starting but not finishing it. The results have been used to complement the desk research and interviews, together with information obtained from surveys undertaken in the previous European Learning Review and surveys conducted by TI in 2010<sup>8</sup>.

### **Field visits**

Two on-site country missions, in India and Mexico, were carried out for further in-depth study of specific IP projects and experiences. These were selected in coordination with TI and reflective of willingness by the Chapters to host.<sup>9</sup> The purpose of the country missions was to learn from the experiences of Chapters and further strengthen evidence-based recommendations, through discussions with various stakeholders on the ground. Discussions were held in a combination of focus group meetings as well as individual interviews. The India on-site mission coincided with an international conference held by the then local Chapter, bringing together practitioners and experts from around the globe to discuss Indian experiences with IPs. The mission to Mexico focused on government initiatives that allow for independent monitors, so-called Social Witnesses, to participate in public procurement processes. The local Chapter facilitated meetings with government representatives, independent monitors, and politicians involved in the implementation of these initiatives.

### **3.4 Methodological limitations**

As is frequently the case in corruption research, many methodological challenges can hinder attempts to measure a counterfactual - the absence of corruption - and subsequently precludes the establishment of strong evidence-based findings and recommendations. Thus, the findings from the report should be read and understood in this context. To state that the IP has reduced corruption, instilled confidence among bidders in the procurement process and kept disruptions to a minimum remains largely anecdotal, despite at times effusive assertion of these outcomes from several stakeholders. At the same time, many interviewees, including monitors and contracting authorities, acknowledged that they lack genuine evidence of direct IP contributions to reducing corruption, in the immediate context of the project or in public procurement in the long term. An increase in reported corruption cases following introduction of an IP or similar mechanism could imply that there is more corruption since its enactment, or conversely that the reporting and detection mechanisms are effective. Any conclusions derived from the observed phenomena will require careful interpretation of both quantitative and qualitative data while keeping these caveats firmly in mind. This methodological challenge from a *content* perspective is further amplified in the *implementation* – namely, many Chapters and contracting authorities have not kept records of complaints, budgetary figures, and records of monitoring activities, thus preventing an adequate

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<sup>8</sup> Chapters surveyed in this unpublished review include Argentina, China, Colombia, Ecuador, Germany, India, Indonesia, Italy, Latvia, Mexico, Pakistan, and South Korea.

<sup>9</sup> Germany was initially selected as a third country for an on-site mission however this proved unachievable due to time constraints and lack of access to relevant stakeholders, and was thus restricted to off-site assessment.

baseline for comparison. This has in part been due to resource constraints of some Chapters, which in turn can affect the outcomes of an IP.

Thus, isolating whether positive changes as reflected by the indicators mentioned above can be attributed largely or in part to the presence of an IP presents a significant challenge, as reflected in the literature. The choice of indicators, while linked to theory and practice, cannot claim to be the definitive list of all potential indicators in this regard. The robustness and applicability of any findings for designing or applying IPs in future will be heavily dependent upon the availability of data and diligent tracking of the IP's activities and results. Therefore, in conjunction with this Learning Review we have prepared a monitoring and evaluation framework that will support IP implementers in future to ensure that their engagement and outputs are measurable from the outset. It is our hope that the framework will assist IP users, including the TI movement, to collect data and counter the attribution challenge faced when measuring the effect and impact of IP anti-corruption activities.

The quality and efficiency of a country's public procurement laws and regulations are not part of this Review, therefore the effects of context on the IP are not directly discussed in every case, though in certain examples it is touched upon, such as in the German airport IP. The question whether there is an ideal scenario (for example - weak public procurement laws but where the rule of law still basically functions), in which an IP is more likely to be effective requires further research.

Finally, the organizational set-up and relationships between TI and its Chapters can present challenges to the adequate retention and sharing of information on IP experiences and lessons learned, both among the movement and with external stakeholders. Furthermore, Chapter participation in this Learning Review was voluntary and not immediately forthcoming. Due to the particular set up of the TI Movement, any participation required coordination through channels at the Secretariat, extending to the selection of permissible interviewees, questionnaire participants and questions asked. This created delays at times in the process and affected the quality and diversity of stakeholder participation. On stakeholder diversity, the private sector participants in IPs displayed considerable reluctance to speak about their involvement in an IP. While this presented a significant challenge, the muted response itself is open to interpretation and has implications for the findings and recommendations made at the end of this Review.

## 4 An overview of IPs globally

Figure 2: Countries with IP experience



Source: own elaboration<sup>10</sup>

Hundreds of IPs have been signed since its development in the 1990s, promoted by Chapters across the globe. As stated earlier, to this day the exact number of chapters, content and implementation procedures of IPs have not been systematically documented since 2010. At present it is estimated that IPs have been conducted in some form in over 20 countries, including: Argentina, Austria, Benin, Bulgaria, China, Colombia, Ecuador, Germany, Hungary, India, Indonesia, Italy, Latvia, Mexico, Nepal, Pakistan, Panama, Paraguay, Peru, Rwanda, South Korea, Uganda and Zambia.<sup>11</sup> Furthermore, in a 2011 TI internal review of the state of IPs, interest in the process was expressed by Chapters in countries as diverse as Kenya, Kyrgyzstan, Mongolia and Romania, among others,

<sup>10</sup> Template map: [www.presentationmagazine.com](http://www.presentationmagazine.com).

<sup>11</sup> For the purposes of this Review we have not focused on all of the Chapters with IPs. Reasons for this include the limited experience of current stakeholders within the Chapter, incomplete application of several IP obligations, or unavailability of representatives from the specific Chapter in question to provide further feedback.

though without resulting in concrete IP projects<sup>12</sup>. The sectors, formats and legal systems in which IPs have operated however display considerable variation, a testament to the tool’s flexibility.

This section examines some of the defining characteristics, commonalities and differences in the approaches undertaken by various Chapters in application of the IP, looking broadly at some of the abovementioned cases and more in-depth at a selected few.

#### 4.1 Economic and governance characteristics of countries that have introduced IPs

Although countries where IPs have been introduced exhibit wide geographic diversity, a few similarities emerge when looking at governance measurements. The table below provides a snapshot of various governance indicators for countries at their respective year of IP implementation. The figures are from the Worldwide Governance Indicators (WGI), with scores ranging from -2.5 (indicative of weak governance) to 2.5 (good governance).<sup>13</sup> The table also includes GDP per capita figures - at purchasing power parity (PPP) values and using 2007 as a base year (current dollars) - to offer a cross-country comparison of relative wealth levels of countries using IPs. Together these indicators form the basis for this section’s findings.

Figure 3: Selected List of Countries with Implementation Dates of IPs, Governance Indicators and GDP per capita<sup>14</sup>

Country	Year of IP Implementation	Government Effectiveness	Regulatory Quality	Rule of Law Estimate	Control of Corruption	GDP per capita 2007 (PPP, current USD)
Colombia	1999	-0.17	0.05	-0.79	-0.43	9,710.9
Italy	1999	0.77	0.81	0.80	0.72	33,731.2
South Korea	1999	0.33	0.314	0.73	0.34	27,872.1
Argentina	2000	0.06	0.29	-0.20	-0.34	*
Indonesia	2000	-0.27	-0.18	-0.75	-0.89	7,040.7
Ecuador	2000	-0.80	-0.527	-0.69	-1.01	8,366.1
Mexico	2001	0.23	0.291	-0.45	-0.24	13,717.5
Pakistan	2001	-0.58	-0.73	-0.95	-0.82	4,054.6
China	2004	0.00	-0.28	-0.43	-0.56	6,807.1
Germany	2005	1.54	1.50	1.66	1.86	36,735.8

<sup>12</sup> This Learning Review has not systematically taken stock of reasons why Chapters did or did not run IPs for all countries. However, examples have been identified during the review and have been incorporated in the study, mainly when referring to challenges in the design of IPs. Main reasons identified for not running an IP are lack of financial or human resources, lack of interest from contracting authorities and/or bidders, and lack of knowledge on procurement.

<sup>13</sup> The Worldwide Governance Indicators (WGI) combine the views of a large number of enterprise, citizen and expert survey respondents in industrial and developing countries, compiled from more than 30 individual data sources produced by a variety of survey institutes, think tanks, NGOs, international organizations, and private sector firms. [www.govindicators.org](http://www.govindicators.org)

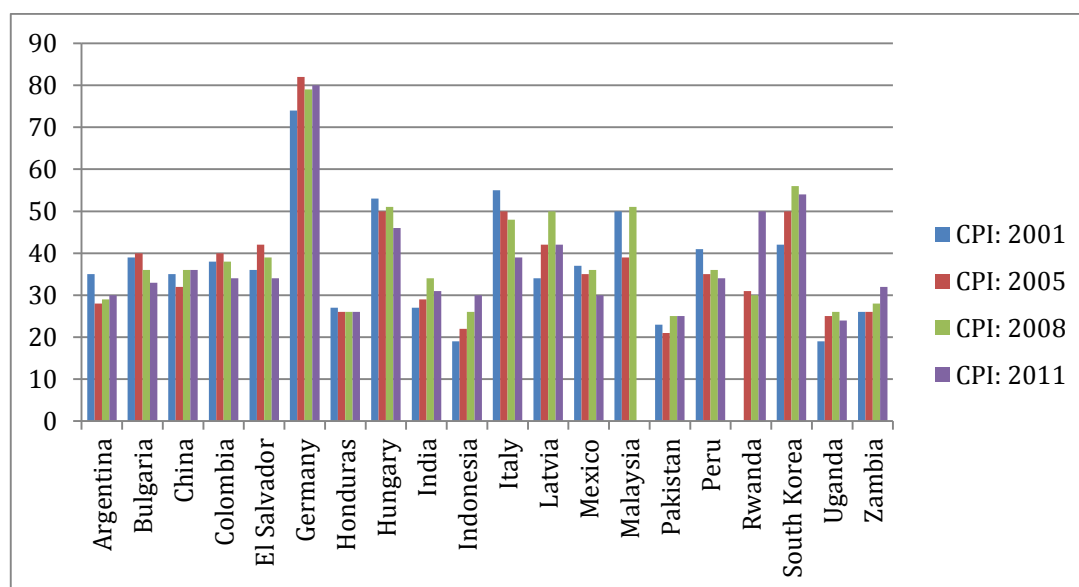
<sup>14</sup> The dates used here stem from an earlier attempted internal evaluation of IPs conducted by TI in 2010, using survey data from Chapters at the time, coupled with the author’s own desk research.

India	2006	-0.05	-0.24	0.19	-0.30	3,523.0
Latvia	2006	0.69	1.00	0.64	0.29	19,083.7
Uganda <sup>15</sup>	2009	-0.62	-0.15	-0.42	-0.89	1,319.3
Hungary	2011	0.68	1.03	0.74	0.32	19,269.6
Bulgaria	2012	0.14	0.54	-0.64	-0.24	12,984.9
El Salvador	2012	-0.14	0.32	-0.75	-0.39	7,122.3
Rwanda	2012	-0.06	-0.10	-0.26	0.65	1,072.1
Honduras	2014	-0.78	-0.384	-0.97	-0.79	4,074.3
Romania	2014	0.00	0.60	0.15	-0.14	13,172.0
Spain	2015	1.15	0.78	0.94	0.53	32,806.7

Source: [www.govindicators.org](http://www.govindicators.org), World Bank, own elaboration

The data confirms that most IPs have been introduced in countries with significant levels of corruption, as measured by the WGI Control of Corruption<sup>16</sup> scores, averaging -0.11. Removing Germany (score: 1.86) sees this figure double to -0.22. The high corruption level of IP-introducing countries is further reinforced by TI's own Corruption Perceptions Index (CPI).<sup>17</sup> According to the CPI, countries scoring at or below fifty on a scale of zero to one hundred are considered to be suffering 'endemic' corruption, on a scale ranging from zero (highly corrupt) to one hundred (highly clean). Figure 4 shows a sample of country CPI scores between 2001 and 2011, with most falling between 30 and 50.

Figure 4: Corruption Perceptions Index scores of countries linked to IPs, various years 2001-2011



<sup>15</sup> Despite the fact that the country did not manage to formalise the initiation of the Integrity Pact, this list includes Uganda because the Chapter expressed interest in better understanding what factors might have contributed to this.

<sup>16</sup> Control of Corruption looks at perceptions of the level whereby public power is exercised for private gain. This includes both petty and grand corruption, as well as "capture" of the state by elites and private interests.

<sup>17</sup> The Corruption Perceptions Index has been published annually since 1995 by Transparency International, measuring and ranking countries their perceived levels of corruption, as determined by expert assessments and opinion surveys. More information can be found at <http://www.transparency.org/research/cpi/>

Source: TI Corruption Perceptions Index

The heightened prevalence of perceived corruption in IP countries is unsurprising for a policy intervention promoting detection and reduction of corruption, thus its most frequent application being in such environments. The corruption figures from the two indicators suggest however that while high corruption perception levels are widespread, the IP has not been implemented in countries that are among the worst performers in terms of perceived corruption. This would imply some level of public sector integrity as a pre-requisite before introducing an IP, and thus an important element for consideration when promoting the tool in other country contexts. States that are very weak in terms of the rule of law and governance are likely to have such inadequate procurement systems and regulation that the chances of an IP being effective are reduced, in part because stakeholders such as the private sector would not be interested in supporting an IP that lacks a reasonable chance of enforcement.

Similar patterns emerge when looking at other indicators of governance. The WGI Government Effectiveness indicator examines perceptions of the quality of public services, civil service, and the degree of its independence from political pressures, among other elements, all potentially relevant to the procurement process and the application of an IP. The results in the corresponding column in Figure 3 demonstrate a heterogeneous yet fairly even distribution of scores between -0.5 and 0.5. This again suggests that IPs have been an intervention for countries that, while not high performing by governance standards, are also not among the worst performers.<sup>18</sup>

Finally, GDP per capita figures confirm that most countries (apart from Germany, Italy, South Korea and Spain) that have used IPs can be classified as middle-income. 2007 per-capita GDP figures (PPP) from countries that had or would in future introduce IPs had an average GDP per-capita of roughly US\$8,700.

Governance and economic indicators can provide insight as to the operating environment in which an IP operates. The more difficult question is whether or not certain governance and economic prerequisites influence IP success. Despite the similar range in which countries with IP experience find themselves on most indicators, there remain at times significant differences in how countries score comparatively. Per-capita GDP figures for example extend from Rwanda (USD\$1000) to Ecuador (USD\$8200) to Hungary (USD\$19200), to say nothing of the few high-income OECD countries that have used IPs. Higher per-capita incomes are positively correlated with stronger governance and thus together may foster an environment in which IPs are more likely to prove

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<sup>18</sup> In 2015 the World Bank began a project entitled *Benchmarking Public Procurement* which looked at cross-country figures for 10 economies, analysing them in relation to their performance along the public procurement life cycle, and their complaint and reporting mechanisms. The 2016 version covers 77 economies, including some that have implemented IPs. As this project expands, the available information should prove invaluable to stakeholders seeking to understand the public procurement environment in countries before designing an IP. See further: <http://bpp.worldbank.org/>

effective, narrowing the number of countries for which IPs are most suitable.<sup>19</sup> Yet in looking at IP results, even countries such as Germany have encountered difficulties in IP implementation and success, suggesting caution in applying a direct causality between economic and governance indicators, and IP outcomes. One case should however be treated with caution.

Attributing improvements in governance or other perception indicators over time at least in part to the IP would significantly boost the deployment of IPs, but this is likely very difficult to verify. Even if governance indicators can be seen as indirect reflections of what the IP is asserted to contribute to, which, as noted on page 27 of the 2013 TI guide to IPs, includes “creat(ing) confidence and trust in public decision-making, beyond the individual impact on the contracting process in question, and foster(ing) a more hospitable investment climate,”<sup>20</sup> this proves exceedingly difficult to evidence, as most IPs represent but handfuls of public procurements processes among hundreds of thousands that a government can conduct over a year and lack a direct causal link. We will address this further at the conclusion of this chapter and in Chapter 5.

#### **4.2 Application of the IP – Content and Implementation**

Over the years TI has advocated a number of elements for consideration towards application of the IP, with three guiding principles for their design: transparency, stakeholder involvement, and accountability.<sup>21</sup> From this, a number of variations have emerged regarding IP content and implementation. This section examines how individual TI Chapters have interpreted the concept, raising the question as to whether or not this has had an effect on outcomes. The figure below offers a snapshot of what TI considers the ‘road map’ towards implementation of an IP:

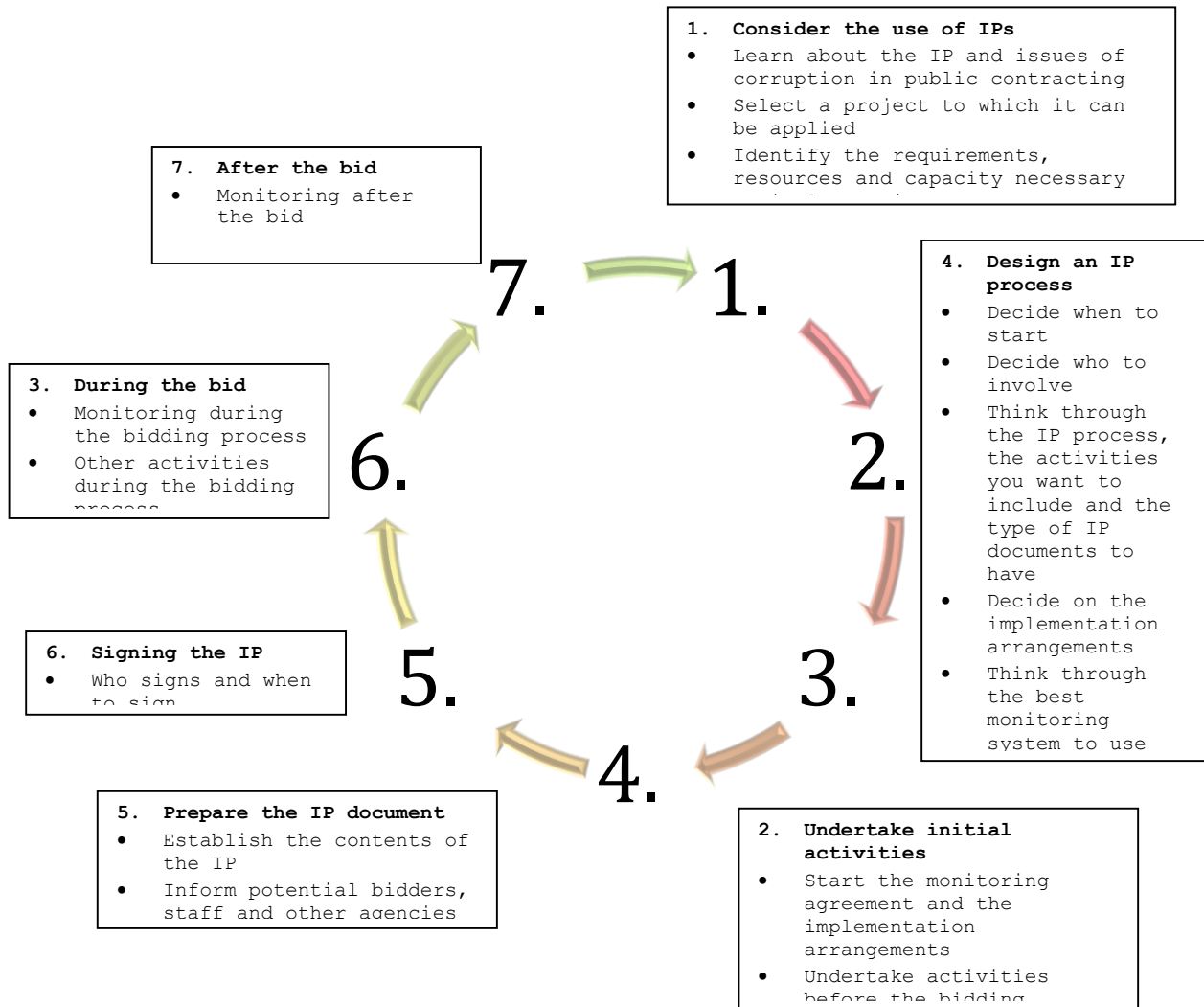
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<sup>19</sup> Data for two WGs namely government effectiveness and voice and accountability, vis-à-vis a country’s per capita GDP show that the governance score is positively correlated with per capita GDP. Analysis of other governance indicators—regulatory quality, control of corruption, political stability, and rule of law and their correlation with per capita GDP, also confirms this positive relationship. The relationship between governance and economic development varies across the various dimensions of governance. Government effectiveness is more closely correlated with per capita GDP than voice and accountability. In fact, government effectiveness has the highest correlation with per capita GDP among the six WGs, and voice and accountability has the lowest. See further: <http://www.imf.org/external/pubs/ft/fandd/2014/06/jha.htm>

<sup>20</sup> Transparency International, 2013, p. 27.

<sup>21</sup> Transparency International, 2013.

Figure 5: Road Map to Integrity Pact Implementation



Source: Authors' rendition based on Transparency International, 2013, p.15

#### 4.2.1 Starting Point - IP Initiation

Initiation here means putting forward the proposal for multi-stakeholders to join forces in an IP. Whilst the support of the government, and in particular the contracting authority is important - if not essential - if the IP is to have a chance of getting off the ground, it is not the sole preserve of government to initiate an IP. There are examples of cases where the TI Chapter was the driver behind IP initiation such as in Colombia, Italy and Indonesia whereas in Argentina and Mexico the



government and other organisations initiated the IP. A combination of actors was seen in Germany, India and Pakistan.<sup>22</sup>

A contributing factor often preceding IP initiation has been the emergence of an acute concern for transparency and anti-corruption, either due to historical evidence that indicated weaknesses in a procurement process (such as postponement or abandonment of a tender process through legal proceedings alleging improper behaviour); a change in government priorities to combat corruption or improve governance (either through recent scandals, new government leadership or both); or a similar event or situation that brought IPs to the fore as a potential solution. These dynamics have been identified in various country contexts:

*El Salvador:* Following a 2009 election campaign where transparency and anti-corruption issues were major concerns for both political parties, the incoming government sought to implement its anti-corruption promises. The Ministry of Public Works had long been subject to allegations of irregularities and corrupt practices. Thus, together with civil society (represented by the local Chapter) and the private sector, the Ministry explored and introduced the use of IPs in a number of construction projects.<sup>23</sup>

*Germany:* When plans were made for the construction of a new Berlin airport in 1995, TI-Germany approached the airport authorities with the suggestion of using the IP. The offer was initially rejected by the authorities, with the argument that this would be an admission of corruption in the project. Shortly thereafter several corruption allegations reached the media, culminating in stopping of construction in 2001. As further allegations arose three years later, the airport authority returned to TI-Germany and its recommendation of the IP, which was then signed in January 2005. TI-Germany ultimately ended its relationship with the contracting authorities in March 2015, following a series of corruption incidents since early 2013.<sup>24</sup>

*South Korea:* The first IP in Korea in 2000 emerged when the Seoul Metropolitan Government recognized the damage that corrupt practices in the public sector were having. Businesses complained of being unable to put anti-bribery principles into practice in an environment of widespread bribery and fierce competition. The IP was introduced in 2000 and applied to initially 62 contracts worth US\$105 million.<sup>25</sup>

#### **4.2.2 IP Signature and content: Mandatory or voluntary?**

One of the first questions that arise is whether signature to the IP by bidders should be mandatory or voluntary. From TI's experience a mandatory signature requirement for participation in the bid is preferable, with signature occurring at the start of the bidding process. In order to retain a degree of

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<sup>22</sup> Ibid.

<sup>23</sup> Gainer, 2015.

<sup>24</sup> <https://www.transparency.de/2015-03-24-Integritaetspakt-BE.2603.o.html?&contUId=6031>

<sup>25</sup> Transparency International, 2002.

flexibility, TI also advises that signing of the IP be “essential but amendable,”<sup>26</sup> whereby should a bidder forget to sign, the tender remains valid. Most Chapters that have experience in IPs have required a mandatory signature:

Figure 6: Examples from TI National Chapters of mandatory versus voluntary signature

Mandatory signature	Voluntary signature
Argentina China Ecuador Germany India Indonesia Italy Latvia Mexico Pakistan South Korea	Colombia El Salvador Paraguay Peru

The majority of interviewed participants from TI Chapters and contracting authorities were also heavily in favour of mandatory signatures. The main reason provided was that this is the most effective method to ensure that all actors acknowledge and express their intention to play by the same rules - in effect, ensuring the level playing field and also ownership of the IP, which is also important. A counterexample exposing the challenges posed by voluntary signatures comes from Peru. Attempts there to introduce an IP in a water supply project broke down in part due to an inability to acquire commitment from enough bidders to sign the IP.<sup>27</sup>

Advocates of voluntary signature however argue in support of this approach by asserting that it keeps the IP from becoming simply another requirement for participation in a tender. Early reports from Colombia’s experience with IPs referenced this point.<sup>28</sup> Similar concerns were expressed during discussions with a minority of contracting authorities and external monitors in India for this Review, where nearly 100 Public Sector Undertakings (PSUs - a form of state owned enterprise) require the signing of an IP for all tenders above a certain threshold. Another argument for a voluntary signature preference comes from experiences of stakeholders in El Salvador. There, signature to the IP was kept voluntary due to the implementers’ desires to avoid a confrontational approach and potentially get greater buy-in from bidding companies.<sup>29</sup>

<sup>26</sup> Ibid.

<sup>27</sup> Transparency International, 2013.

<sup>28</sup> Transparency International, 2002.

<sup>29</sup> Gainer, 2015.

Another question arises as to whether or not the *content* of the IP should be mandatory, namely, the content is predetermined and not subject to negotiation with the bidders. Here as well, a mandatory requirement is preferred. This is to avoid protracted negotiations, as well as the risk of a 'race to the bottom' such that the agreement is watered down or tailored to a particular bidder(s). In some cases the large number of parties potentially involved in the process would make such negotiations impractical. Ensuring the level playing field is another argument for a mandatory content requirement, due to varying negotiating capacities between bidders. A drawback however to mandatory content in an IP may be the effect on bidder participation and acceptance of the IP. In India, for example, discussions between the Chapter and the private sector in a 2012 study suggested that some companies see IP agreements as one-sided, to the detriment of bidders.<sup>30</sup> Private sector stakeholders at times echoed similar sentiments during the field visit to India conducted during this Review.

Bidders rarely participate in the design of IP content. Some stakeholders however consider that including them within the process can increase buy-in and encourage them to sign the IP. For example, Oil and Natural Gas Corporation Limited (ONGC) of India was the first PSU in the country to begin using IPs in its procurement activities (2005), and does seek bidder input before finalizing the IP.<sup>31</sup>

### **Signatories**

A key requirement for the IP is the signatory parties: the government office (authority) inviting the calls for tender, and the bidders. Without this mutual recognition of shared obligations for the procurement proceedings under an IP, the process becomes essentially a unilateral pledge, stripping the IP of one of its unique aspects that distinguish it from other forms of procurement integrity promotion tools, namely its multi-stakeholder approach that treats the signatories on an *inter pares* basis.

#### **4.2.3 The Role of the TI Chapter**

As a representative of civil society and given the pioneering role of TI in the development of the IP, the TI Chapter can play an important part not only in guaranteeing the IP's multi-stakeholder credentials and connections to the public but also in a leading and active role. Historically Chapters have served a number of roles in the process, including:

- Initiators – This has arisen as a result of the Chapter conducting its own research and risk analysis and using its network to raise awareness for the IP and then gathering relevant stakeholders. It can also refer to the government contracting authority inviting the Chapter to act as initiator in order to conduct the necessary research and risk analysis to support the

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<sup>30</sup> Siddiqui, 2015.

<sup>31</sup> India conference presentation, 17-18 September 2015.

buy-in by stakeholders in the early phase of the IP. This will also frequently involve advocacy work;

- Facilitators - In this capacity the Chapter takes on the role of mediator between the various parties that have signed the IP, this can involve serving as a go-between, or entail a more pro-active role particularly as part of the oversight responsibilities regarding adherence to the procurement regulations. As facilitator the Chapter could also be required to be the neutral spokesperson acting on behalf of the various stakeholders, either for the signatories themselves, or towards the public, the monitor, donors or other stakeholders. Communication of the outcome of the IP, as well as advisory and training to stakeholders could also be among the tasks of the Chapter in a facilitator role;
- Lead implementers - Implementation of the agreement that constitutes the IP is generally a combined undertaking with the contracting authority, however, when the Chapter takes the role of lead implementer, this will entail a majority of responsibilities falling under its remit. This can entail preparing the IP plan of implementation, logistical preparations for meetings between stakeholders, drafting and/or signing the monitor agreement, implementing the signature of the IP document itself, and project management tasks;
- Monitors – This primarily involves ensuring IP implementation and that there is no violation of the IP and that bidders and contracting authority have fulfilled all obligations; concretely this can include examination of all documents during the bidding process, providing commentary on tender documents prior to their issuance, providing feedback to bidders' questions, facilitating public hearings or meetings of bidders, site visits, clarifying IP-related complaints, regular communication with the authority, suggestions for improvements to the process;
- Investigative role - This will be undertaken in the context of a Chapter's role as monitor. However, a TI Chapter will go beyond monitoring activities and also investigate to ensure sanctioning of corruption. It is important to establish the process, steps and escalation measures, as well as grounds for passing information to legal authorities;
- Selectors of the monitor;
- A combination of several of the above.

When TI Italy initiated an IP in 2000 this involved an analysis of the IP model and its compatibility with the Italian legal system, coupled with training and education activities of the signatories to the IP. A model agreement was drafted and brought to several municipalities to explore interest, following a positive response several regions and communes now require potential bidders to sign the IP as a standard requirement for public procurement.<sup>32</sup>

Several examples of Chapters that have served as monitor for an IP can be found in Bulgaria, Hungary and Latvia. The local Chapter in El Salvador, in addition to facilitation and early

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<sup>32</sup> TI Internal Review, 2010.

implementation duties, also began monitoring IPs in 2012, with a local CSO responsible for monitoring other IPs in the country.

In other countries, the Chapter has played more of an advisory and advocacy role in the IP process. For example in India, should a PSU commit to the IP, it then has the option of entering into a MoU with the local Chapter. This MoU does not entail monitoring of the procurement process by the Chapter itself. Instead, TI India assists the PSU (which in this case would be analogous to a contracting authority) by providing a draft structure of an IP, conducting training of stakeholders (Independent External Monitors, PSU Staff) on implementation and red flags, and explaining the process overall. The actual monitoring is undertaken by Independent External Monitors selected by the contracting PSU, vetted by the Central Vigilance Commission and unaffiliated with TI India.

When entering the IP process, it is important that the Chapter ensures that it has the capacity to perform its designated or chosen role adequately. For example, the Indian experience is very country-specific on account of the level to which it has been institutionalised and made mandatory for many tenders. This has resulted in nearly 100 PSUs adopting IPs for 90 to 95 percent of an individual PSU's procurement. The sheer number of IPs in a particular country may affect the ability of the Chapter to engage in the IP monitoring or monitor selection process, thus an advisory and facilitation role is more realistic, though even here resources may be stretched because these roles may also be demanding in practice. In Latvia, where IPs have been conducted for single-procurement projects, the Chapter did engage in monitoring. Yet, it was found that challenges were faced in ensuring that monitoring always received the requisite time and expertise necessary from in-house staff, thus a few years into the IP, the Chapter engaged external experts for IP monitoring as well, in order to provide a stronger technical component to the process. The Chapter provided backstopping for the external monitor, and concentrated instead on communication of the IP to the public.

Determining the role of the Chapter, as well as other stakeholders in an IP implementation process, is generally arranged through a MoU. This establishes information such as responsibilities of the CSO and the contracting authority, monitor selection procedure, information disclosure clauses, necessary steps to be undertaken in case of corruption being detected, level of collaboration, and any involved fees.<sup>33</sup>

#### **4.2.4 IP Costs**

According to TI, Chapter experience shows that an IP can cost from US\$50,000 to US\$200,000. Determining an average cost is hampered by a number of mitigating factors (country, magnitude of procurement, complexity); as a broad estimate, IP implementation in an infrastructure project over

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<sup>33</sup> Transparency International, 2013.

the course of one year, covering all monitoring and management elements, could be as much as US\$100,000.<sup>34</sup>

These figures may pose challenges for Chapters. In an earlier internal review of IP experiences conducted by TI and consulted for this Review, a number of Chapters raised the issue of a lack of financial resources as a challenge to IP implementation.<sup>35</sup> On the contrary, in El Salvador (which was not included in the earlier report) the IP was preferred as a public procurement integrity mechanism due to the consideration that, despite the costs, the IP was considered simpler and cheaper than other mechanisms, such as broader public monitoring mechanisms.<sup>36</sup> Nonetheless, insufficient funding was deemed as a threat to sustainability, with one of the monitoring organisations suggesting that future projects include funding lines for monitoring costs.<sup>37</sup>

Concerns over costs of IP implementation were not explicitly raised in discussions with stakeholders in India. The topic did arise indirectly however during a focus group discussion with Independent External Monitors (IEMs). As monitoring in India is a volunteer activity, carried out by former civil servants who are expected to be subject matter experts in the areas that they monitor, their engagement adds minimal cost to the IP as a whole. Opinions were divided as to whether or not unpaid monitoring is on the whole beneficial to the IP in achieving its objectives. Some argued that volunteering provided a way for ex-civil servants to give back to society and that monetary remuneration should play no part in the decision to engage or in the effectiveness of the monitor. Other IEMs however warned that an unpaid monitor arrangement could reduce the incentive for IEMs to take a proactive approach.

#### 4.2.5 Clauses

In its 2013 publication on Integrity Pact Implementation, TI proposes the following elements in the design of an IP.

##### **Main Obligations of Signatories to the Integrity Pact**

- o Undertaking by the authority that officials won't demand or accept bribes, kickbacks, gifts, facilitation payments, etc., with appropriate administrative, disciplinary, civil or criminal sanctions in case of violation
- o Undertaking by each bidder that it has not paid and will not offer or pay any bribes, kickbacks, facilitation payments, gifts, etc., in order to obtain or retain a contract; along with the appropriate contractual, administrative civil or criminal sanctions in case of violation

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<sup>34</sup> Ibid.

<sup>35</sup> TI Internal Review, 2010.

<sup>36</sup> Gainer, 2015.

<sup>37</sup> Ibid.

- An undertaking by each bidder that it has not colluded and will not collude with other bidders in order to rig or influence the tender process in any way
- An undertaking by each bidder to disclose to the authority and the monitor all payments made, or promised, in connection with contract in question to anybody (including agents and other middlemen). This refers to payments made directly as well as indirectly through family members, etc.
- The explicit acceptance by each bidder that the no-bribery commitment and the disclosure obligation as well as the corresponding sanctions, remain in force for the winning bidder until the contract has been fully executed.
- The explicit acceptance by each bidder that it will have to provide the same IP undertakings from all its subcontractors and joint-venture partners.

Source: Integrity Pacts in Public Procurement: An Implementation Guide (Transparency International, 2013)

In addition to these primary obligations, a number of optional obligations have been suggested by TI.<sup>38</sup> For the bidders this can include:

- Requirements or requests to have a code of conduct and a compliance programme, including a whistle-blowing mechanism;
- Commitment that documents provided are truthful and the acceptance of strict liability for misrepresentation, fraudulent representation or false declarations;
- Statement of lack of involvement in conduct forbidden by the IP or any other corruption-related behaviour in a period prior to the bid;
- Cap on payments to agents;
- Extension of the bidders' undertakings to other obligations, i.e. taxes and social security payments connected to the bidding.

Similarly, other optional obligations for the public authorities can include:

- An ethical commitment similar to the IP for all officials directly or indirectly involved with the contracting process;
- A requirement for the authority to make public any contracting information of relevance;
- Regular disclosure by authorities involved in the process of their personal assets and family assets.

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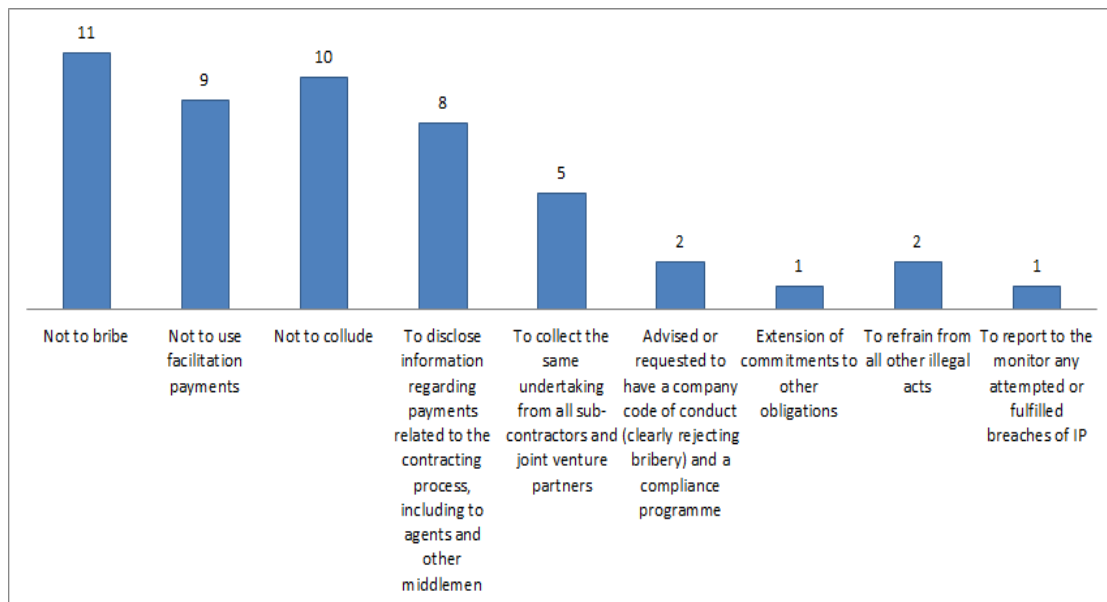
<sup>38</sup> Transparency International, 2013, p. 40-41

Finally, obligations for both bidders and authorities that have been included in IPs are:

- Extension of undertakings to include that they 'refrain from all other illegal acts';
- Requirement to report to the monitor all attempts or failed breaches of the IP.

These elements have been broadly utilized in various arrangements, though not all to the same degree among Chapters. In a 2010 survey provided to 11 TI Chapters<sup>39</sup> with experience in IPs, one question asked respondents to indicate all of the clauses they include in a typical IP setup, providing a selection for respondents to choose from. Out of the nine options, a core set of four clauses were used by nearly all respondents, as seen in Figure 10:

Figure 7: Integrity Pact Clauses for Bidders - 2010 Survey



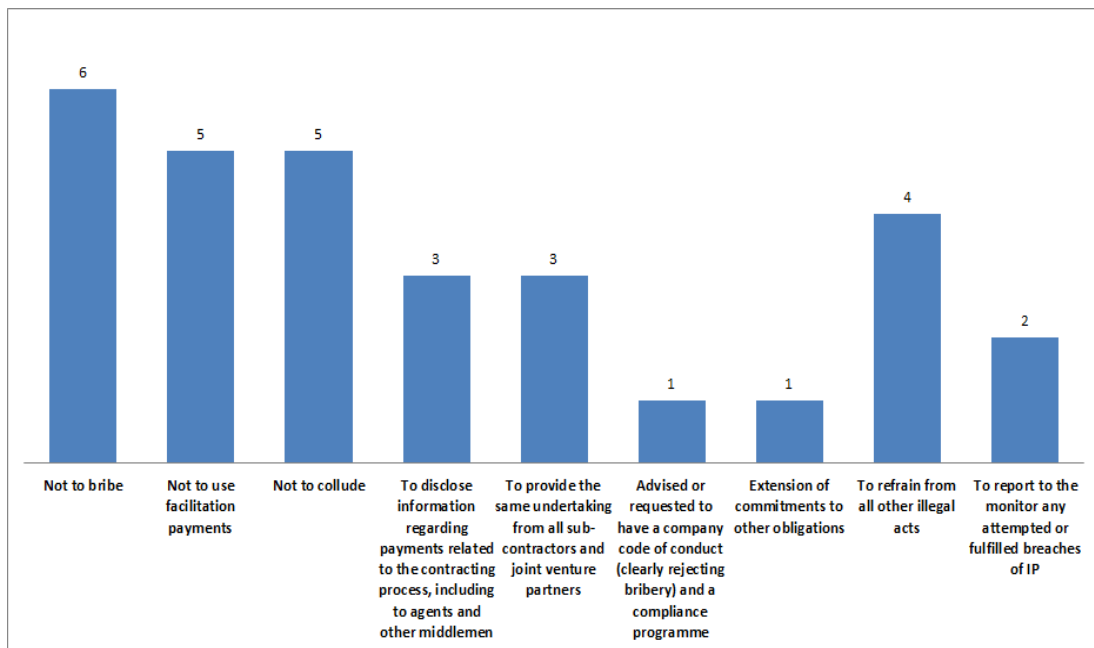
In the expanded survey that was provided to additional Chapters as part of this Learning Review,<sup>40</sup> Chapters were again asked if IPs in their country included one or more of the following clauses. Selections from the six Chapters that responded again displayed a similar core set of requirements used by the majority of chapters:

Figure 8: Integrity Pact Clauses for Bidders - 2015 Survey

<sup>39</sup> See footnote 8 above.

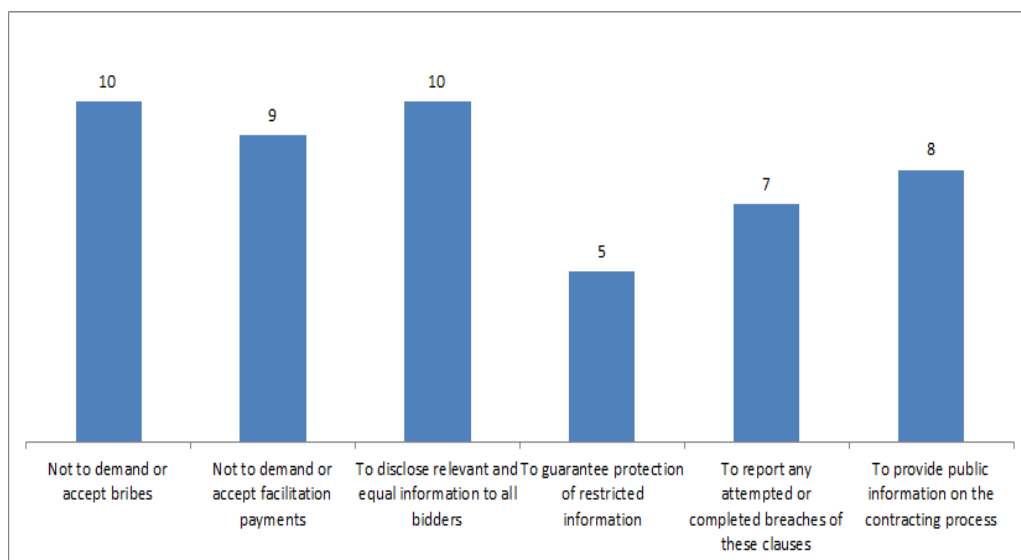
<sup>40</sup> Three of the participating countries – India, Indonesia and Pakistan – also featured in the 2010 survey, joined this time by Chapters from Honduras, Rwanda and Zambia.





The results would indicate that the main requirements for bidders across all Chapters has been the commitment not to offer or accept bribes, not to use facilitation payments, not to collude, and (in the 2010 survey) the requirement to disclose information regarding payments relating to the contracting process. A similar pattern of core clauses emerges when looking at requirements of the contracting authorities, which include: not to demand or accept bribes and facilitation payments, and a requirement to disclose relevant and equal information to all bidders.

Figure 9: Integrity Pact Clauses - Contracting Authorities



A further clause that has elicited much discussion in the Indian context concerns the extension of obligations to a bidding company’s subcontractors. This may be an area for future implementers of IPs to take into consideration. Many company compliance programs are becoming increasingly

mature and responsive to the corruption risks faced by their businesses. Further down the value chain however subcontractors can present a challenge due to less awareness of anti-corruption compliance and lack of control from the hiring company. In India, it was recognized that non-compliance with the IP by subcontractors leaves many gaps and potential for impropriety, thus it was recommended that bidders in an IP apply the same undertakings to their sub-contractors. This recommendation is included in the Standard Operating Procedures of the Central Vigilance Commission (CVC), the government anti-corruption oversight body that publishes recommendations for IP implementation. In discussions with stakeholders it emerged that there was inconsistent application of the clause that binds subcontractors to the same standards, and that PSUs and bidders have not always implemented this recommendation. Bidders to the contracting PSUs expressed difficulties in applying this clause in cases where they have a large number of contractors, as well as the challenge in identifying them before the tender yet demanding a commitment to the IP. As the use of agents and intermediaries decreases in several industries, corruption risks in the context of subcontractors are increasingly gaining attention. Contracting authorities, Chapters and bidders may want to consider working together to find collaborative and practical solutions that would permit inclusion and implementation of this clause within an IP.

Answering the question as to whether or not there is a specific clause or combination of clauses for bidders and contracting authorities that ensures the greatest chance for success of an IP in meeting its specified objectives poses several challenges. Again, the lack of rigorous monitoring and evaluation in the application of IPs over the years, coupled with inconsistent identification of what defines a successful outcome, hinders clear assignment of causality to a specific clause(s). On the one hand, TI has suggesting the following as examples of IP success:

- everything (in the procurement process) having run as planned;
- visibility, accountability and transparency, with information shared and communicated with the public as well as active involvement of stakeholders;
- lack of scandals or conflicts and complaints were minimised and effectively managed, when arising;
- observed reduction in costs or prices compared to the original procurement budget;
- process improvements and reforms benefiting future projects at organisational and institutional (legal) levels;
- successful detection and handling of any forms of corruption, with direct savings and prevention of damages.<sup>41</sup>

Attributing these positive outcomes to the IP however, let alone specific clauses, is rarely possible, which TI also acknowledges. Discussions with stakeholders in Germany and India often pointed out that the inclusion or omission of a specific clause was not the deciding factor in the successful

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<sup>41</sup> Transparency International, 2013, p.85.

application of an IP, as long as all parties were signatories to it, and it included the principle requirements forbidding bribery and collusion. As seen in results from the surveys, most countries have indeed included these two clauses at a minimum. What did emerge in discussions with stakeholders as a critical element to the success of an IP was the inclusion and activity of the monitor.

#### **4.2.6 The monitor**

The monitoring system has been consistently championed by TI as an essential element to the IP. A good monitor must be independent from the project that is under procurement and the companies bidding as well as not having any conflicts of interest with the contracting authority; the monitor should also be knowledgeable about the procurement process both legally and technically, and where necessary be able to call on technical advice in relation to the subject matter of the procurement, be of good reputation, be accountable for its role, have the capacity to fulfil its role properly and in a timely manner and have the commitment to act in what can be a challenging environment. The monitor should add credibility to the entire process by ensuring that all parties fulfil their obligations. In addition, the monitoring function can directly bring civil society into the procurement process, enhancing the IP's multi-stakeholder credentials and reinforces the public accountability elements of the IP. The main task of the monitor is to see that there is no violation of the IP by ensuring bidders and the authority uphold their obligations.

Selection and financing of the monitor has varied across Chapters, and largely dependent on the context of the IP. As mentioned previously, in some instances the role of monitor is played by the TI Chapter itself. Elsewhere, the monitoring of procurement is conducted by an independent expert(s), selected and/or approved by the Chapter, another CSO, the contracting authority, government procuring agencies (e.g. Pakistan) or a joint effort. In most cases of external monitoring, financing has been the responsibility of the Public Authority, as evidenced in Hungary. For Chapter-monitored IPs in Latvia and Bulgaria, some form of donor financing has been secured. In the Indian case, monitors are expected to perform their duties without monetary recompense, with approval from the CVC.

Discussions with stakeholders from Chapters and contracting authorities across the globe were nearly unanimous in praise for the role that a good monitor can have in the successful functioning of an IP, and particularly a monitor that takes an empowered approach to their engagement. From the European Learning Review, experiences in both Bulgaria and Germany note a proactive approach in monitoring the IPs that expanded beyond the formal requirements focusing on anti-corruption as positive drivers towards successful IPs. Similar assertions were made by representatives from some of the state-owned enterprise (PSUs) interviewed in India, particularly as many monitors only operate upon receiving complaints, further distinguishing those who take a more proactive approach.

In Mexico, the essence of the Social Witness program is the assigning of an independent monitor to the procurement process. A selection committee assigns, from a pool of experts, a monitor to a

specific procurement process. The monitor partakes in meetings and has access to a list of documents predefined by law. Its principal role is to ensure that the process is conducted according to the law and to flag those practices that are or can be problematic.

The nature of the monitoring agreement can also play an important role in the successful functioning of the monitor. This agreement establishes explicitly the rights, duties, terms of engagement and (where relevant) fees of the monitor(s). It can be applied in several different methods, depending on how the monitoring, accountability channels and division of labour is constructed.<sup>42</sup> For example, when civil society (either the Chapter or an NGO) takes lead implementation roles, a monitoring contract or Memorandum of Understanding is signed between the monitor and the civil society organisation. Should the contracting authority be the principle implementer of the IP, this agreement will be signed between the authority and the monitor.

From experiences in Germany and Latvia with IPs, critical in this agreement is the process for potential withdrawal from the IP, of either the monitor (including the Chapter, when playing this role) or of the Chapter in general. Withdrawal from the IP by the monitor and/or Chapter makes a strong statement to the public and other stakeholders as to the overall integrity of the procurement process. Clearly outlining the circumstances under which this process takes place and the escalation procedures can help to avoid any limitation as to civil society's capability to make use of this tactic. This was the case in Latvia, where governance concerns surrounding the rewarding of a tender elicited discussion in the Chapter as to potentially withdrawing from the IP. This course of action however was not undertaken due to lack of this clause as reasoning for withdrawal from an IP. TI-Germany's experience before carrying out withdrawal from the Berlin Airport IP exposed similar challenges. The Chapter did not have contract with the contracting authority that outlined rights and obligations, with the monitor reporting directly to the authority. Following several corruption allegations and dissatisfaction in the manner in which these allegations were handled by the contracting authority, the Chapter withdrew from the IP, learning from the experience that clearly defined information rights, obligations, and grounds for withdrawal are necessary elements for future IP implementation.<sup>43</sup>

### **IP without monitors**

Despite the primacy of the monitor's role in the experience and recommendations of many Chapters, independent monitoring does not always feature in IPs practiced to date. In Italy there is no independent monitoring, as it was anticipated that costs would prove too high for its inclusion. TI Italy would occasionally serve in an independent consulting role (at the request of a contracting authority), providing the Chapter an opportunity to analyse compliance with rules and laws of the IP and informing the contracting authority in cases of irregularity. It cannot however put a halt to the

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<sup>42</sup> Transparency International, 2013

<sup>43</sup> Draft report from TI-S (2015), "Practitioners' Advice on Implementing Integrity Pacts."

bidding process.<sup>44</sup> Following a Protocol signed in 2009,<sup>45</sup> the Court of Auditors is seen as acting as a monitor to the IP process by being assigned the duty of checking all expenditures made and the bidding process linked to the IP. With no extra costs being incurred for this work, the model was seen as a more feasible form of monitoring in the Italian IP experience.

The Court of Auditors plays an important, but entirely different role to that of a monitor. The review is usually retroactive and based on criteria that may not necessarily be the same as the functions exercised by a monitor; its reports may also be confidential and not accessible to the public. Where a monitor is able to engage proactively in the IP implementation and is otherwise empowered to investigate and take remedial action as may be necessary, it can have a decisive effect on the success of the IP.

IPs in Pakistan have also been conducted since 2004 without the use of a monitor, following the requirement that IPs become a prerequisite for public procurement contracts over 10 million rupees. The fact that IPs are conducted without a monitor is a shift away from earlier IP experiences in the country. In 2001 the local Chapter served as the monitor in the completion of the Greater Karachi Water Supply Project (K-III) and had a robust role. In addition to observing compliance with IP obligations, the monitor prepared evaluation criteria for the short-listed selection of consultants, was involved in the project's design and supervision, assisted in developing evaluation criteria, and provided advice on the selection procedure. Following institutionalisation of the IP the monitor function was not included. The institutionalisation of IPs and learnings from it has been praised by some stakeholders and within the context of this Review as a reflection of IP sustainability and a testament to longer-term institutional and professional change that an IP can encourage. This however must be contingent upon outcomes and implementation mechanisms that have a positive impact. In discussions with representatives from TI-Pakistan, concerns were raised that the lack of a monitor in the current institutionalised version of the IP has limited the extent of the IP's effectiveness in uncovering instances of corruption or impropriety.

### **"Open" versus "closed" monitoring of public procurement**

Most stakeholders from Chapters highlight the importance of independent monitors that hold a specific skill set (e.g. constructive, independent, respectful) and have sufficient professional experience (e.g. in procurement and/or technical issues). The monitoring can either be conducted by one person or a team of monitors. Some Chapters however identified challenges when deploying monitors, due especially to limited resources. There is only so much one or multiple monitors can do over the course of a procurement process. In addition, procurement can be very specialized, further limiting the pool of experts from which to choose.

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<sup>44</sup> A comparative analysis of the Integrity Pact: Case Study Italy (draft), 2010.

<sup>45</sup> Ibid.

As a consequence, various Chapters highlighted different tools that can be deployed in order to more extensively monitor public procurement. A driving factor behind this has been legislative developments in countries concerning transparency and access to information, but also technological developments have opened up new avenues for monitoring procurement, i.e. through the use of open data. Chapters with IP experience have changed the IP model (Indonesia, Rwanda) from a “closed” monitoring exercise, meaning only using designated monitors, to an “open” exercise, meaning allowing the wider public to perform monitoring activities. It is argued that the latter allows for wider stakeholder participation. Other Chapters consider this (Mexico) or have always opted for the open monitoring function (Slovakia). The Chapters aim to have an open participation of any citizen to the procurement process. Transparency legislation in countries ensures a degree of openness of procurement. In combination with open data, anyone could function as a monitor to scrutinise processes. It is clear that there are differences between the degree of access to procurement processes between an “open-monitoring approach” and the “closed-monitoring approach” as adopted by IPs (such as access to meetings). It is argued that the essence of both approaches is to hold parties accountable. The premise is that this is best facilitated by allowing a wide range of participants, and not only a handful of monitors, to ask questions.

#### **4.2.7 Sanctions**

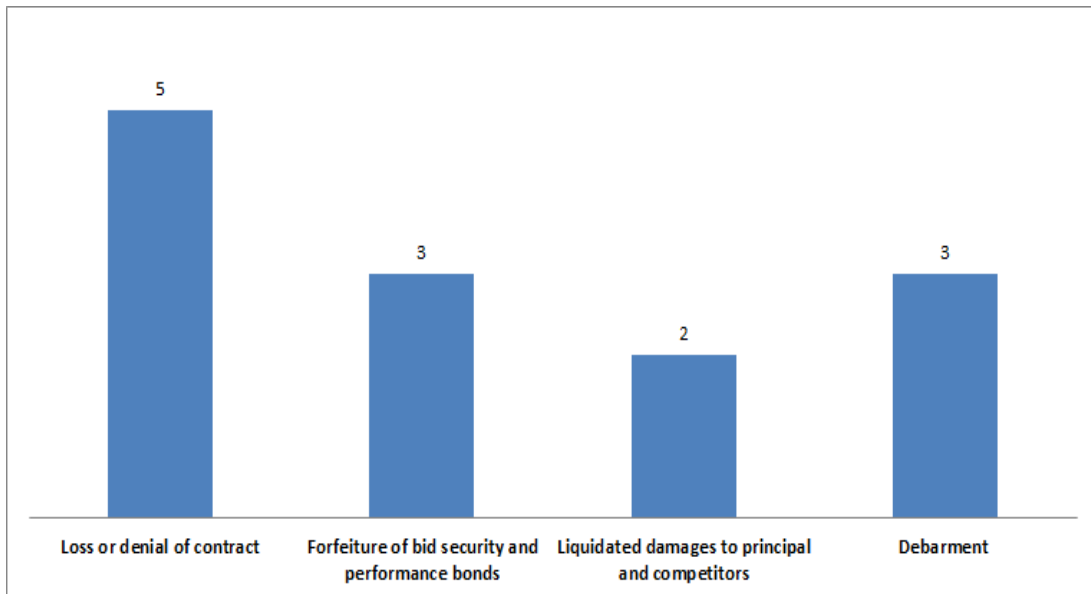
TI promotes the inclusion of sanctions within an IP as a mechanism to be applied against signatory parties for violation of IP clauses. IP sanctions are complementary and do not supersede those criminal, civil, disciplinary or administrative sanctions already established by law. When included within an IP, sanctions should be proportionate to the actual breach itself, and should provide a swift mechanism for the monitor to ensure that the appropriate authorities are informed in cases of misconduct. Suspicion alone is not recommended for the imposition of sanctions; however suspicion of impropriety is sufficient to start an investigation or request for clarifications from a monitor or the authorities.

Examples of sanctions include:

- Denial or loss of contract
- Forfeiture of security and performance bonds
- Liability for damages to competing bidders
- Debarment

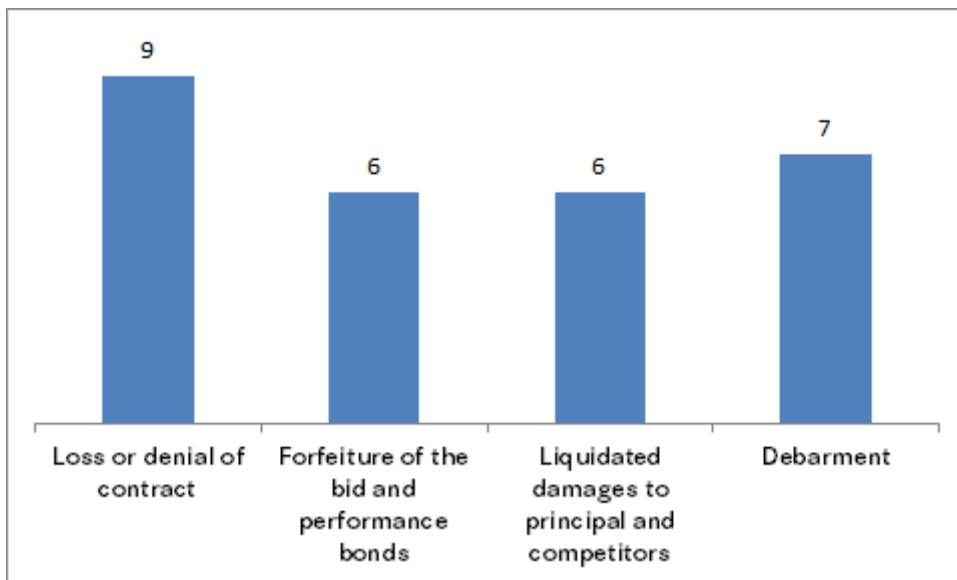
In the survey provided as part of this Review, five Chapters responded to the question concerning the type of sanctions that were included within their IPs. The one sanction common to all was “Denial or Loss of Contract”, as seen in the chart below:

Figure 10: Sanctions (2015 Survey)



Similarly, for the 2010 survey, “Loss or Denial of Contract” is the principle sanction shared among responding Chapters:

Figure 11: Sanctions (2010 Survey)



The question thus emerges, what is the contribution of sanctions in ensuring that an IP runs efficiently and effectively? Does their mere inclusion, the specific sanctions proposed, the environment or manner in which they are implemented have any bearing on IP outcomes?

First, despite widespread inclusion of sanctions in many IPs, the actual use of them has been limited. In addition, in the survey conducted as part of this Learning Review, the majority of responding Chapters admitted to lacking a specific process for the activation of sanctions. In the Berlin Airport

Project, the IP did not include additional mechanisms for conflict resolution or for sanctions, due to existing mechanisms already established under German law and applicable to the contracting authority, however it did include sanctions that the authority itself could apply. The process went as follows: upon suspicion of a breach of the IP, the monitor - who does not impose sanctions - would notify management of the contracting authority, who is then responsible for addressing the issue. Should the response from the authority however not arrive nor in a sufficient time frame, then the monitor must pass the issue on to the prosecuting authorities.<sup>46</sup> One could argue that the lack of applied sanctions is indicative of the preventative power of the IP. Under this hypothesis, due to the threat of sanctions in case of a breach, the IP has fostered compliance with the clauses and ensured a procurement process free of corruption. This argument however is unpersuasive without further feedback from stakeholders and actual perceptions of sanctions specifically in the context of IPs. The opposite could in fact be the case, whereby a poorly applied IP never has instances of sanctions due to the IP being co-opted and no longer fit for purpose.

In discussions with stakeholders, representatives from the contracting authority of an IP in Hannover, Germany, noted that in the scope of the IP and its application, sanctions remained firmly in the background, with little influence on the process or its success. This falls in line with findings from the European IP review. The review highlights that most TI Chapters focus on the detection and follow-up of 'red flags' indicating poor governance. Sanctioning is a last resort, whereas instead, a constructive approach is commonly adopted to find solutions to problems. This was seen during IPs in Latvia, Hungary, and Bulgaria. In Bulgaria, the TI Chapter even opted for a "white list" as a positive incentive rather than a more punitive blacklisting for bidders.

The main reason why TI Chapters opt for a constructive approach is that parties to the IP prioritise long-term goals such as a successful procurement project. Second, in the case of many identified 'red flags' that could lead to the application of sanctions it is difficult to prove illegalities. Oftentimes the Chapter lacks the means to investigate effectively. Hence, cases are flagged to the IP stakeholders or in serious cases referred to the relevant authorities. A third reason identified during this review is that Chapters struggle with judging the seriousness of the situation. Implementing an IP involves significant collaboration with authorities and bidders which could cloud judgements as to the right approach in a grey zone situation. This was the case of Germany and the decision of the local Chapter to withdraw from the Berlin Airport IP only after years of corruption allegations. The late decision of the Chapter prompted many questions from journalists. Finally, the sanctions mentioned above are very definite. Debarment or loss of contract is a final decision that cannot be taken lightly. It is unclear from this review which criteria are used by stakeholders to come to such a decision. There are differences between IPs on how stakeholders define a serious breach and at the same time implementation of sanctions can vary. As a consequence various risks are identified. For example, when in one IP actors apply different criteria for sanctioning than in another IP, it might

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<sup>46</sup> Transparency International, 2013.



create an uneven playing field. Also, inconsistent application of sanctioning might fail to address problems arising from repeat offenders.

An exception to the lack of applied sanctions in recent years is currently being seen in India's defence sector. Since 2006 the Ministry of Defence has required that all contracts over a certain value must include an IP to be signed by the bidders and the contracting authorities. Consequences for a breach of the IP were seen in 2014, when the Government of India cancelled a helicopter deal worth \$753 million previously awarded to the company AgustaWestland (parent company: Finmeccanica) in the wake of corruption allegations.<sup>47</sup> The Ministry of Defence has also employed sanctions including blacklisting, following allegations of bribery involving six companies.<sup>48</sup> The consequences for firms in these instances can be far-reaching, as seen in the Finmeccanica case. Though several senior managers have been acquitted of major wrongdoing since the accusations first emerged, the financial and reputational damage have been such that some commentators point to the impending name change of Finmeccanica as due in part to the results of recent scandals such as in India.<sup>49</sup>

Whether the examples from the defence sector in India will strengthen the case for wider application of sanctions in other IP contexts remains to be seen. Arguably sanctions should be effective, proportionate and dissuasive. Implementation of IPs however should have clear red flag lists, dialogue and escalation procedures for the criteria under which investigations are triggered and subsequently the use of sanctions, in order to give increased credibility and effectiveness if and when they must be applied.

#### **4.2.8 Dispute Resolution Mechanisms and Sanctions**

Differences between signatory parties surrounding interpretation or implementation of an IP can be addressed through the use of a dispute resolution mechanism. Ecuador, Colombia, Indonesia and Pakistan have undertaken IPs with this feature, with national arbitration being the primary mechanism.<sup>50</sup> The role of the mechanism should be to resolve IP execution disputes, and/or impose the sanctions as laid out in the IP.

TI notes that dispute resolution mechanisms and sanctions have rarely been activated by Chapters globally, on the grounds that the IP, having already created conditions for greater integrity in the procurement process, has effectively limited breaches of the IP. This statement is exceedingly difficult to prove empirically. For example, two of the six respondents to the survey distributed in the context of this Review highlighted "fear of sanctions" as the principle reason behind the absence of corruption in public procurements conducted with an IP. Experiences with IPs in Latvia show that lack of sanctioning is not because there are no breaches against the IP. In fact, the Chapter identified

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<sup>47</sup> See: <http://www.bbc.com/news/world-asia-india-25568464>.

<sup>48</sup> See: <http://pib.nic.in/newsite/erelease.aspx?relid=80699>.

<sup>49</sup> See: <http://www.defensenews.com/story/defense/policy-budget/industry/2015/10/31/what-finmeccanica-stands-gain-and-lose-new-name/74813152/>.

<sup>50</sup> Transparency International, 2013.

breaches but decided after internal deliberation to continue working on the project. In Bulgaria, the Chapter adopted a totally different approach and favoured positive reinforcement, rewarding good behaviour. Sanctioning can thus also be seen as counterproductive by Chapters.

#### **4.2.9 Stakeholder Participation**

The multi-stakeholder characteristics of the IP are one of the main points raised in arguments for its adoption and a unique element of the IP at its inception. This stakeholder participation manifests itself not only through the manner in which signatory parties come together to sign shared commitments of integrity on a project, but also through sharing of information with the beneficiaries of the projects in question (the public) and their contributions as well. Methods recommended by TI to achieve this include targeted public hearings or town hall meetings, facilitating discussion with the community on project impacts, a proactive media presence, and active civil society involvement, by either channelling information to or serving as a representative of the public.<sup>51</sup>

Stakeholder participation is an important element in the theory of change that the IP seeks to support. Theoretically, through effective participation of and outreach towards the public, the IP can support empowered citizens, who through increased attention on and information about the procurement process, may submit legitimate concerns, generating a response from the public authorities towards improvement of the process. Countries often differ greatly however in the degree to which civil society and citizens in general enjoy freedom of expression and active participation of the media in policy discourse. If this feedback loop is limited due to a minimal role or tradition of civil society activity within a country, this may influence the design, success and impact of the IP.

From the survey of TI Chapters conducted for this review, only one of six answered in the affirmative that it implements some form of town hall/targeted public hearings as part of its IP. The use of internet and other electronic disclosure mechanisms for IP results were slightly higher, with three of six employing these strategies. These results mirror findings from the European Learning Review, whereby IP activities focused mainly on publicity or public education, but less focus on the exchange of information between the authorities, bidders and citizenry.<sup>52</sup> The 2010 survey of IPs revealed that slightly more than half of the Chapters made use of public hearings, including Argentina, Colombia, Ecuador, Indonesia, Pakistan and South Korea. In South Korea, public hearings were used at three 'critical' stages of the process (project planning, contractor selection procedure, and inspection of results of contract execution) and were applied for construction projects at a threshold of US\$4.2 million, plan and supervision services of US\$833,000, and procurement of US\$167,000.<sup>53</sup> An example

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<sup>51</sup> Ibid.

<sup>52</sup> Beke et al., 2015.

<sup>53</sup> Transparency International, 2002.

of Argentina's use of public hearings is seen in a Buenos Aires subway project, scheduled by the City Government and with monitoring performed by the local Chapter.<sup>54</sup>

A frequent lament among Chapters has been a lack of media interest in an IP. Coupling this with infrequent public hearings, meetings or other stakeholder engagement activities, Chapters may need to redouble their efforts communication of IP results, activities as well as the benefits in public procurement transparency and accountability that an IP can support. The establishment of an effective digital media strategy for example could be one area worth greater focus for Chapters, in light of new technologies and means of communication that were not available at the IP's inception.

#### **4.2.10 The IP and Law**

Perhaps the most distinctive feature concerning how, when and why an IP is implemented is its status within the country's laws and regulations: namely, is the IP a legal requirement and/or receiving direct promotion and recommendation from the government through directives or similar means? For most countries, the IP has been applied in isolated instances for select public procurement processes. This has been the case for example in Argentina, Colombia, and Germany, among others. Elsewhere however, the IP has become a legal requirement in public procurement processes under certain pre-defined conditions at various levels of government, as seen in Mexico, India, Italy, Pakistan and South Korea.

This distinction in approach is an important dividing line in how the IP has been applied, as it is significant with regard to the number of IPs implemented in a country. For example, India began promoting the IP in 2001, and it was first adopted in 2006 by one company, the Oil and Natural Gas Corporation (ONGC). Following recommendation for its further use by the Report on Ethics in Governance of the Second Administrative Reforms Commission, India's Central Vigilance Commission (CVC) in 2007 recommended the IP for all major procurements undertaken by central PSUs, providing subsequent circulars in 2008 and 2009 on the topic.<sup>55</sup> As a consequence, nearly 100 PSUs have now adopted IPs as a requirement for their procurement processes, institutionalizing the IP and seeing it repeated on a large scale. Similar evidence of its spread and institutionalization is seen in 2008, when IPs became a requirement in defence procurement in India.

In Mexico, the federal government introduced the Social Witness Program (*Testigo Social*) in 2004 after piloting various civil society public procurement monitoring projects in collaboration with the TI Chapter. Since that time, the Chapter has monitored over 200 public procurement processes. The legally adopted formula for monitoring stems from the IP model designed by TI but differs in various ways from examples identified across the spectrum. For example, natural and legal persons can register and be accredited in order to be eligible for monitoring federal procurement processes. A government selection committee appoints a monitor from a pool of accredited experts to a specific

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<sup>54</sup> Ibid.

<sup>55</sup> See: <http://cvc.gov.in/008crd013210509.pdf>

procurement project. *De facto*, the monitor cannot choose the process it wishes to monitor. The contracting authority will include the monitor in the process, provide access to documentation and meetings, and remunerate the work based on time sheets. The monitor has an observatory role, but can comment on procedures and promote good practices. In case the monitor identifies irregularities, it can take the decision to escalate these to competent authorities. Primarily its role is to ensure that the procurement process is done according to the law. In the end, the monitor drafts a monitoring report that will be made public.

Contrary to the Indian and Mexican cases, in other countries, such as in most EU countries, IPs are case-based. The German Chapter of TI has been promoting IPs since 1995, but it has in fact only conducted four. The Latvian Chapter started an IP in 2006 and only concluded this in 2015.

Either approach of promoting the IP as a requirement or promoting it in isolated procurement tenders can presents both positives and negatives. The inclusion of the IP as a requirement will ensure that more IPs are undertaken, which, if well-implemented and successful in achieving their stated objectives, will have a better chance for sustainability of positive outcomes beyond a single tender. More stakeholders will be exposed to the IP, reducing the learning curve for participants. More case examples within a specific national context will also provide greater opportunities to fine-tune and improve the approach, developing a repository of knowledge, lessons learned and best practices. TI India for example has produced a number of knowledge products, analysis, as well as conducted trainings and events in this regard and is regularly in touch with many IP-implementing organizations.<sup>56</sup>

More IPs for the sake of more IPs however cannot be the deciding factor in making it mandatory. Without strong oversight, monitoring and evaluation, the IP as a requirement can risk becoming a check-box exercise and potentially worse, a form of window dressing. This would have potentially long-term negative consequences for the credibility of the Chapter and IPs more generally. Even with a government that exudes demonstrable political will through public statements supporting the IP, inclusion of the tool within a broader reform programme, or commitment of resources in support of the IP, an IP that becomes a requirement for all public procurement can still become seen by signees as another formality in the procurement process, without actual intention of implementing the commitments. Half-hearted or poor implementation from the contracting authority, monitor and/or Chapter would only encourage this view.

An IP applied to a small number of tenders can be more selective in the choice of projects, committing resources and attention to those that could potentially experience the greatest benefits from increased transparency and accountability that an IP can provide. Furthermore, a well-run and successful application of the IP may encourage the use of the IP more widely. The abuse of the IP as

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<sup>56</sup> See: <http://integritypact.in/>

window-dressing for a particular showpiece tender remains apparent, however. The single-project IP also may have fewer opportunities for knowledge transfer and impact beyond the conclusion of the tender.

#### **4.2.11 Procurement process cycle**

IPs can cover the entire or parts of the procurement process cycle. Research points to different risk areas in each phase of the procurement cycle, from the needs assessment to the bidding phase, up until the selection of the contractor and execution of the contract. The European Learning Review mapped procurement corruption risks and reflected on whether IPs, as an anti-corruption tool, could provide added value by addressing these risks. The assessment pointed to hotspots in all phases of procurement but highlighted specific weaknesses in the pre-bidding phase (e.g. lack of needs assessment and interference of high-level officials in the decision to procure) as well as the post-bidding phase (e.g. failure to effectively monitor the performance of the contractor). The European Learning Review noted the added value of the IP as a tool that potentially covers an entire process, from start to finish. This, in combination with the multi-stakeholder approach, provides for a strong basis to prevent corruption at all levels. This was also confirmed by stakeholders consulted for this Review. It also noted however that Chapters implement IPs at different stages of the procurement cycle. First of all, most interviewees confirmed that ideally an IP stretches from the pre-bidding to the post-bidding phase. But this does not accord with reality. Chapters do not always have the opportunity to start an IP in the pre-bidding phase and only start after the decision to procure has been taken, often at the start of the bidding-phase. In addition, Chapters do not always include IP activities for the post-bidding phase. The need for increased financial and technical capacity in order to monitor contract execution can pose challenges for Chapters before reaching post-bidding activities. As a consequence, most IPs focus specifically on the bidding-phase. Many stakeholders from PSUs in India also raised concerns as to the current inadequacy of monitoring conducted during the contract execution phase.

Being party to the pre-bidding phase is clearly potentially advantageous for the Chapter: defining the roles and responsibilities in the IP agreement can contribute to its successful implementation. Although participation at an early stage does not currently correspond to reality for many Chapters, it might be worth TI considering how to change this so as to ensure early consultation in the IP process.

The Social Witness Program in Mexico specifically focuses on the bidding process. This however does not mean that the monitors do not ask questions about the activities relating to the pre-bidding or post-bidding. Feedback from the interviews conducted with stakeholders in Mexico shows that monitors, apart from looking at compliance with legal procurement rules, strongly focus on asking authorities and bidders to justify decisions they take. An interesting angle provided by authorities during an interview was that the questions raised by monitors could break information asymmetries, both within the institution, but also between bidders and authorities. For example, the contracting

authority had always relied on the uncontested expertise of their senior engineers when taking decisions. Not until the Social Witness asked the senior engineers to justify their input did the authorities realise that perhaps they had more options. The Chapter highlighted that despite the fact that they were not monitoring contract execution, their involvement in the bidding phase could prevent problems afterwards. To date however there has been no concrete follow-up by the Chapter to check whether this preventive mechanism has truly had effect.

### 4.3 Models of IP

From this discussion of clauses, implementation roles, independent monitors and the relationship of the Chapter, we can see a few common threads that bring together the following general models of IP. Examples are provided in the table that follows.

#### The Classic

This form of IP includes most of the common clauses, sanctions and requirements of the IP as envisioned by TI, applied to selected procurements on a one-off basis. Chapters with experience in this type of IP include Argentina, Bulgaria, Colombia, El Salvador, Germany, Hungary and Latvia, among others.

#### The Institutionalised

In these countries, the IP has either become a requirement for certain procurement processes, thus 'institutionalised', and/or has received significant support and recommendation from governments - at national, municipal or local levels - through legislation, circulars or other policy recommendations. Examples of this type of IP can be found in India, Italy, Mexico, Pakistan and South Korea.

#### Open-monitor approach

The open monitoring concept, taking in a wider number of stakeholders to participate in procurement monitoring, is a newer approach which takes advantage of technological developments such as the use of open data. Chapters including Indonesia, Rwanda, Mexico and Slovakia have either used or considered this methodology, opening a new frontier in accountability and inclusion. The approach as mentioned here is referenced in the context of an IP, and requisite commitments for the bidders and contracting authority.

#### No Monitor

As the name implies, these IPs do not use any form of monitoring, either from the Chapter or an independent expert. Examples in this category include China, Italy and Pakistan.

Figure 12: Synopsis of selected IP Structures

Country	Monitor?	Open-Monitoring	Mandatory Signature	Legal Basis
Bulgaria	X		X	
Colombia	X			
El Salvador	X			
Germany	X		X	
Hungary	X		X	
India	X		X	X
Indonesia	X	X	X	
Italy			X	X
Latvia	X		X	
Mexico	X	X	X	X
Pakistan			X	X
South Korea	X		X	X

#### 4.4 Context, content, implementation – is there a formula for success?

The diversity of contexts, content and implementation arrangements that the IP has shown over the years brings us back to the question that has accompanied us throughout this Chapter: are there certain conditions that are more essential and enabling for the successful implementation of an Integrity Pact? First, a recap of what success as defined by TI can mean<sup>57</sup>:

- Transparent, accountable contracting, free of corruption;
- No delays to the process as a result of confusion, lack of transparency;
- Social, economic and development goals have been achieved or not impaired by corruption;
- Trust in government and government officials has improved and reputations of all participants have improved;
- Corruption has been detected, and where occurring, and eliminated.

<sup>57</sup> Transparency International, 2013.

These issues will be examined further in the next chapter in the context of the Learning Review questions. We conclude this section with a diagram providing an overview of implementation steps and considerations for a TI Chapter thinking of starting an IP, in light of the experiences highlighted in section 4.2.

Figure 13: IP Initiation and Implementation Steps





## 5 Learning Review Questions and Main Findings

This chapter presents the main findings from the review criteria. Each section is subdivided according to the review criteria and review questions.

### 5.1 Efficiency, effectiveness and impact

This section will present the main findings concerning efficiency, effectiveness and impact.

- Learning Review Question: Have IPs been effective in preventing and detecting corruption? And if so, which forms of corruption? What were the main contributory factors to the result?

On the basis of criteria used over the years to determine individual IPs' success in preventing and detecting corruption, it has been accepted that an absence of irregularities and/or the swift identification and resolution of irregularities in the procurement process serves as a testament to IP success. Based on such criteria, this Review cannot confirm or deny with certainty that overall, the IP has been effective in the prevention and detection of corruption. Many of the cases of IP implementation over the years have neither included a thorough monitoring and analysis of IP activities and outputs, nor established a baseline for comparison. Nonetheless, this Review can observe that the IP can have merit and success on account of its preventive attributes, under the right circumstances.

#### **Attributing irregularities to corruption**

Accurate measurement of the prevention and detection of corruption has not always been the main focus of Chapters that have implemented IPs. Discussions with stakeholders in India suggested that many contracting authorities have relied on more subjective approaches, intermittent feedback from vendors, and generally relying on the idea that if no major transgressions had emerged, then the IP had been successful in its preventive goals. While some stakeholders held firm that this proves a corruption-free procurement process, the lack of irregularities and scandals cannot confirm that corruption did not occur. Monitors who spoke on having monitored successful, corruption free procurement processes in both India and Germany also admitted that they could never confirm that something did not occur outside of their oversight. This also falls in line with interviews conducted for this Review with stakeholders in other countries, as well as with findings from the European Learning Review.

Because of the difficulty encountered in actual identification and attribution of irregularities to corruption, IPs in some instances serve primarily as tools for the improvement of procurement governance. In several European IPs, this translates into:

- (1) IPs ensuring that procurement is conducted according to the law; and
- (2) IPs promoting best practices for procurement.

The focus of an IP is on finding a solution to the identified irregularity, mitigation and ensuring that this does not recur in future. This was also observed in IPs outside Europe. An important factor here is that some IPs are institutionalised, such as in India and Mexico, and so have embodied the function of ensuring better governance of procurement. This Review finds that IPs can thus have an educational component for the stakeholders, with emphasis on corruption prevention and operating a smooth procurement process.

Non-European Chapters engaged in single-project IPs also recognised this in their experience. In El Salvador, monitoring focused on tangible elements of the project, with the monitor's assessments addressing problems as opposed to potential causes. Not every delay in procurement could be attributed to corruption, so the monitors assessed elements such as the amount and quality of information available, number of complaints filed, and ultimately served as an "early warning system" for the Ministry of Public Works, capable of highlighting problems in advance or underlining observations of the Ministry itself. This contributed to preventing serious issues from manifesting themselves.<sup>58</sup> The high quality experience of five years using IPs was said to have contributed to creating a new "culture of transparency" in public construction.<sup>59</sup>

One potential stumbling block towards greater oversight and thus potential uncovering of any irregularities can be found in the implementation set-up. In the case of El Salvador, 31 IPs were signed over a five-year period with the Ministry of Public Works, with two organizations conducting the monitoring: the local Chapter and another NGO. There was a concerted effort by the Chapter to select projects on grounds of public interest, construction costs, or number of affected stakeholders. Other times the monitored projects were chosen based on Ministry requests. The IP was thus not a requirement for public contracting but applied in a targeted manner. By comparison, in India the threshold level at which IPs must be applied among IP-compliant PSUs covers 90 to 95% of a PSU's procurement. With just two monitors assigned to cover what can be hundreds of procurement processes over the course of a year, the time that can be allocated to observation can vary considerably. The small number of complaints raised per se does not exclude success of the IPs in preventing irregularities; however, the limited resources of the monitor and large volume of tenders may suggest that certain tenders are given less attention than others. A risk-based prioritization could be a potential consideration in concert with increased capacities provided to the monitor. Several IEMs in India acknowledged taking risk into account in their monitoring duties.

While institutionalisation produces the high number of tenders in the Indian model, monitors in single-tender IPs can face similar challenges. Being responsible for a large number of contracts and signatories in a single large tender can stretch the capacities of a single monitor. In this regard, the

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<sup>58</sup> Gainer, 2015.

<sup>59</sup> Ibid., p.16.

monitor of a German IP also used a risk-based approach in selecting contracts for further scrutiny during an IP.

### **Preventing irregularities**

Where IPs have shown their greatest effectiveness is in the prevention of irregularities before they may have the chance to surface, such as at the pre-bidding phase and through dismissal of firms that do not sign the IP. For example, the National Mineral Development Corporation, a PSU in India, provides an example where two bidders referred a case to the IEM, noting that due to the third bidder's failure to submit the IP in full, the third bidder's bid should be declared invalid. The monitor recommended this to the contracting authority and the recommendation was adopted.<sup>60</sup> Discussions with a private sector representative in Italy also pointed to examples of firms being excluded from tenders due to a refusal to sign the IP. Quantitative tracking and reporting on the numbers of firms that have been denied participation in procurement due to a refusal to sign or a violation of the IP could provide further evidence for IP success in increasing competitiveness in the bidding process, by either removing non-compliant firms from the market and/or pressuring them to reform. Isolated efforts have been made by some contracting authorities in this regard. For example, between 2012 and 2013 the Commune of Milan excluded 453 bidders, primarily for violations of the IP.<sup>61</sup>

### **Absence of irregularities**

Chapters consider that absence of conflicts and complaints related to the contracting process can also define success of an IP. In addition, some Chapters adopt the role of mediator in order to avoid formal appeal procedures in case of conflict between authorities and bidders. This was seen in the IPs conducted in Latvia and in Bulgaria. In both cases, the mediation aimed to avoid delays in the procurement process. Such delays were feared to have a negative impact on the public perception of the procurement project and hence the IP.

- Learning Review Question: What changes/benefits (including economic and social) and impact have IPs contributed to? And why did these changes happen?

IPs have impact on the way procurement is conducted. As a consequence, the outcome of procurement projects better suits social and economic needs.

### **Efficient procurement**

The Chapter in Mexico monitored numerous procurement projects in which the monitors focused on asking contracting authorities to justify bidding documents and bidders to justify bids. Stakeholders

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<sup>60</sup> Mishra and Gupta, 2015.

<sup>61</sup> Szloboda, 2015.

confirm that by asking these questions they managed to improve procurement quality which had an impact on the final public goods, works and services.

The Chapter asks contracting authorities, for example, why they decided to procure certain products with certain specifications. This motivates the contracting authority to trace back decisions taken and assess whether these suited the needs of the public or economic means at their disposal. A contracting authority interviewed for this Review confirmed that this way they decided to overturn decisions taken by their in-house experts. The case did not relate specifically to corruption but involved engineers that took a decision based on outdated technical knowledge. The questions of the monitor broke the information cycle within the contracting authority and opened up avenues for modernization.

In addition, the Chapter asks bidders why they would propose to use one construction method over another. According to a high-profile civil engineer that participated as monitor, the answers received from bidders allowed the contracting authority to take a more informed decision on the contract award. It helped the contracting authority to compare answers and compensate for their own lack of technical knowledge.

Chapters argue that IPs contribute to better procurement and subsequently have economic and social impact. However, we have not been able to benchmark economic and social impact of public procurement with an IP against public procurement without an IP. Data from the interviews as well as the survey remain inconclusive. The main reason is that in most countries, IPs are sporadically used which does not provide for sufficient data for comparison. In countries where there is potentially data available, for example in those countries that have IPs institutionalised, there has been limited focus on evaluating the impact of the IP, let alone comparing this to procurement without an IP.

### **Visible and participatory procurement**

The European Learning Review found that an important driver behind change as a result of the IP was the visibility of the IP through media outreach. Limited evidence was found of direct citizen participation. This Review turns this around and identifies more direct citizen participation. The role of the media as a driver for change remains important but arguably is of less relevance. The increased citizens' involvement primarily can be attributed to the different shapes of the IPs on the global scene compared to those in Europe. IPs in various countries assessed on the global scene are considered part of a wider integrity framework (i.e. Indonesia, Rwanda, Honduras). In Mexico, the Chapter argues that the IP as a tool is expected to become part of a wider interactive body of tools that aim to reduce corruption. The role of modern technology, i.e. through open data and e-procurement, in combination with access to information and transparency laws creates new opportunities for citizens to play an active role in monitoring public procurement. Arguably, the more "traditional IP models" (as seen in Latvia, Hungary, Germany, and Bulgaria), use independent monitors and the media to drive change. The more "evolved" IP models (as seen in other parts of the world), add to this the direct involvement of citizens through the use of online tools and social audits.

- Learning Review Question: Did IPs make procurement more efficient? And if yes, are there differences in efficiency gains between the parties to an IP? Have there been cost or time savings associated with their application? Has there been evidence of increased competitiveness in the procurement process and/or competitive advantages/disadvantages for specific groups?

Efficiency gains as represented through savings in time or absence of delays in procurement, cost savings, or increased competitiveness in procurement remain evidenced only anecdotally. Systematic measurement or comparisons to baseline figures in these areas are not widespread among Chapters or among contracting authorities.

### **Cost efficiency**

Isolated global examples are present in the literature. For example, in Italy, IP implementation through Milan City Council estimates that IPs have led to savings of up to 30 percent in government contract expenses.<sup>62</sup> Furthermore, TI Italy found significant cost reductions in several major highway construction projects, including the Milan Subway Project (\$227 million to \$97 million per kilometre), the Rail Link Project (\$54 million to \$26 million per kilometre), and a new airport terminal that saw construction costs fall from \$3.2 billion to \$1.3 billion.<sup>63</sup> In another procurement context, the Greater Karachi Water Supply in Pakistan was accredited with savings of roughly 15 percent of total costs.

In India, some PSUs have attempted to quantify gains accrued from the IP. Gas Authority of India Limited (GAIL), Central Coal Fields Limited (CCL), South Eastern Coalfields Limited (SECL), National Mineral Development Corporation (NMDC) Bharat Petroleum Corporation Limited (BPCL) have all made efforts in this area recently.<sup>64</sup> In the case of GAIL, for example, the IEM advised management to re-float the tender in a case involving the procurement of piping, following reductions in steel prices (60-70% of the costs of pipes) between the floating of the tender and the opening of bids. GAIL found that following the introduction of fresh bids there was a significant reduction in the final offer compared to the initial offer.<sup>65</sup> While the IP cannot be accredited for changes in global steel prices, the advisory capacity of the IEM in this instance did play a role in securing a lower price in procurement. ONGC, the pioneering company regarding IP adoption in the country, has carried out analysis of some of its major contracts involving IPs to determine stakeholder satisfaction and monetary benefits as a result of engagement. What emerged from the analysis was that many of the accrued savings were a result of the IP offering a vehicle whereby bidders could raise concerns, heading off complaints and litigation costs, before continuing the tender process and ultimately decreasing costs.<sup>66</sup> It should also be underscored that the complaints highlighted by bidders were

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<sup>62</sup> TI Italy report, 2010.

<sup>63</sup> Ibid.

<sup>64</sup> Mishra and Gupta, 2012.

<sup>65</sup> Ibid.

<sup>66</sup> Siddiqui (ed), 2015.

not specifically bribery and corruption related, but more focused on clarification of criteria, technical matters and similar concerns. This point echoes findings from other public procurement integrity mechanisms discussed further in the report (the Construction Sector Transparency Initiative, or CoST, as well as feedback from stakeholders involved in the High Level Reporting Mechanism, or HLRM).

The Mexican state-owned company CFE found that recommendations made by social witnesses led to efficiency and effectiveness improvements, including a 50 percent increase in the number of contractors submitting a bid and financial savings, in one instance up to USD 26 million in a specific procurement.<sup>67</sup>

### **Time efficiency**

This Review finds that implementing an IP does not pose a significant time burden to the procurement process. This is a common objection raised in the literature as reason for stakeholders not to sign an IP. From research and discussions with stakeholders, this does not prove to be the case. Stakeholders in Germany engaged in the construction of a hospital in Hannover noted that, apart from an initial adjustment period getting accustomed to the process, in the end there were no delays caused by the implementation of an IP. As an example, the contracting authority was concurrently involved in a smaller construction project with no IP (at EUR 50 million compared to the Hannover clinic's EUR 180 million price), and noticed no difference in the relative speed with which the projects were completed.

When procurement projects involving IPs experience delays, two important points emerge, namely: while the IP cannot be assigned fault for the existence of delays, at the same time, the inclusion of an IP is no panacea to ensure on-time completion of a procurement project. Experiences in El Salvador illustrate these points. The two largest projects that included IPs in El Salvador featured contrasting results, one running on time and free of problems after it had been abandoned by the previous government, and another facing significant problems and only 45 percent completed by the initially scheduled completion date.<sup>68</sup> The delay in construction of the latter however could not be attributed to the IP. Furthermore, the monitors during this project were able to identify issues that were able to increase media scrutiny on the project, leading the Ministry of Public Works to terminate the contract and hire a new firm to complete the project.<sup>69</sup>

### **Competitiveness**

Increasing competitiveness in the tender process is an important outcome sought by transparency and integrity interventions. While some stakeholders proclaimed that the inclusion of an IP opened the procurement to new bidders, as mentioned in discussions with a PSU in India, this was not always

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<sup>67</sup> See: <http://monitoring.transparency-usa.org/flipbook/guide/>.

<sup>68</sup> Gainer, 2015.

<sup>69</sup> Ibid.

evidenced, and there were considerable differences depending upon the sector. For example, as noted from discussions with stakeholders in Germany and Italy certain tenders were of such a specialized nature that the same handful of companies would take part in the process, with or without an IP.

## 5.2 Sustainability

Questions of sustainability in IPs must be assessed with caution, as sustainability of the process and outcomes has not always been a factor in their design criteria. Nonetheless, for IPs moving forward, sustainability of IP results should be a factor in the design and implementation in order to contribute more substantially to the entirety of the procurement environment, looking beyond the timeframe of a single tender.

- Learning Review Question: To what extent did the benefits of IPs continue or lead to other follow-up activities after the project ended?

This Review question on sustainability relates to long-term impact of the IP as evidenced by perception changes, institutionalization of IPs and/or elements of them, changes arising within the policies and procedures of stakeholders attributable to the IP, or the uptake of IPs by neighbouring municipalities, regions or countries. The review shows that, under the right conditions and circumstances, the IP's benefits can extend beyond a sole procurement process.

### Perception of corruption in public procurement

Previous reviews have noted some examples of IP outcomes producing improvements in perception indices. The IP was adopted by the Seoul Metropolitan Government in 2000 and implemented by the Public Procurement Service of Korea. As an example of good practice in assessing long-term impact and sustainability through stakeholder perception changes, TI Korea conducted a survey in 2004 that indicated that post-adoption of IPs, 91.4 percent of private sector respondents indicated positive change in public sector officials' attitudes towards corruption, and conversely, 72.2 percent of public sector officials seeing a positive attitude change in those of their private sector counterparts.<sup>70</sup>

A significantly more difficult claim to evidence is any effect of IP outcomes on governance perceptions and functioning in the years following its introduction. The majority of stakeholders with whom we spoke from India and Germany, as well as other Chapters, shared the view that this is impossible to attribute to the IP, for positive or negative results. In part this is due to most IPs having been isolated public procurement activities conducted by a contracting authority. Second, the long time frame needed in order to evidence impact of policy interventions on changes in results is not appropriate for most IPs, as few Chapters have repeated and long experience in their

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<sup>70</sup> See: <http://www.oecd.org/development/effectiveness/38588964.pdf>

application. Both countries visited for this study – India and Mexico – have been engaging in IPs at significant levels and for many years, with a clear legal requirement/promotion, thus they do meet minimum requirements for assessing wider changes to corruption and governance perceptions. Nonetheless, in both cases the evidence is inconclusive and the time frame may still not be enough to evidence change that can be attributed to the IP. Establishing the causal mechanism between the IP and macro level governance changes thus remains unresolved.

### **Adopting IP elements**

The adoption of IPs beyond an isolated procurement process and by learning from the experience of other bodies that have conducted IPs and adopting it within new contexts, the IP and its outcomes can achieve a certain level of sustainability, moving beyond the single tender for which it originally may have been designed. The Learning Review shows that IP sustainability through this method has been evidenced in many regions and countries. The aforementioned example of India displays this phenomenon, but so do several other examples (e.g. Italy). In Mexico, the Ministry of Public Affairs responded to a study, conducted by the World Bank and the Inter-American Development Bank on the weaknesses in the Mexican federal procurement system, by seeking initiatives to strengthen control. The Chapter already worked with IPs and as a result the Ministry approached them to help in designing the Social Witness Program. Colombia, which has applied IPs on an individual basis, also saw elements of the IP methodology brought in law when the Colombian national government enacted Presidential Decree 2170/2002. Elements of the IP that were incorporated into the law included the following: (a) the amount of undisclosed information was minimized through public discussion of pre-bidding and bidding documents; (b) all contracting opportunities disseminated openly (c) compulsory civil society inspection teams; and (d) making it compulsory for officials to receive and respond to questions on informed grounds.<sup>71</sup>

### **Institutionalisation of the IP**

Another marker of IP sustainability in outcomes lies in the extent to which the process is institutionalized and enshrined into law / regulation. The development of the IP in India offers clear examples of this phenomenon. In light of the rise in PSUs adopting IPs following the CVCs endorsement of them in 2007, in 2015 the CVC issued a further order, recommending that public sector banks, insurance and financial institutions adopt the IP and begin appointing independent monitors, due to increasing procurement activities.<sup>72</sup> Meanwhile, current discussions on the new Public Procurement Bill are considering as to what level to include the IP within the bill.<sup>73</sup>

In South Korea, the State Contract Act was amended in 2012 to include provisions for the IP.<sup>74</sup> TI Pakistan's experiences with IPs in the early 2000s and subsequent work with the government led to

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<sup>71</sup> TI Internal Case Study, Colombia, 2010.

<sup>72</sup> Siddiqui et al, 2015.

<sup>73</sup> Siddiqui 2015.

<sup>74</sup> See: <http://pcrm.acrc.go.kr:9129/sys/DNAttach.php?id=5621.ef9a4e5a>



Public Procurement Rules in June 2004 that have taken in elements of the IP, with the IP also being made mandatory for all bidders. In Mexico, the official state bulletin introduced officially in 2004 to involvement of social witnesses in procurement on the level of the federal public administration. Similarly, though the IP is not enshrined within the law, the contracting authority of one German IP applied in the construction of a hospital stated that they had received requests for information on the IP process from other hospitals in Germany and neighbouring Switzerland.<sup>75</sup> This is a clear reflection of interest in the achievements made by the IP that could potentially lead to its wider adoption and thus adding value to further procurement processes.

The institutionalisation of IPs as a marker of sustainable outcomes is not without caveats, however. The threat of an IP process being co-opted as a form of window-dressing and rubber-stamp process may be greater in cases where IPs are an institutional requirement for a bid. This will be discussed further in the section below on the weaknesses of the IP.

- Learning Review Question: What were the major factors that influenced the achievement or non-achievement of sustainability of IP results?

For IPs to achieve sustainability in their operations and outcomes, a few common elements emerge from the literature research and discussions with stakeholders.

#### Political will

The presence (or lack) of political will, on the part of the contracting authorities as well as governments was reconfirmed as an important element in determining outcomes of IP interventions. This also holds true for the sustainability of these outcomes.

The experience from El Salvador provides an example of how political will can influence the decision to enter into an IP and its outcomes. An incomplete highway project had become a symbol of corruption in the country, with the Ministry of Public Works in particular bearing the brunt of this opinion. By 2010, an investigation had discovered irregular advances payments of US\$7.6 million to the partnership awarded the construction contract, as well as other acts of impropriety. When the new government elected in 2009 sought to begin advancement of its anti-corruption policies, the IP became a critical element of its strategy, with much of the success attributed to the commitment of the new leader of the Ministry of Public Works.<sup>76</sup> The highway in question, one of the largest projects to use an IP following their introduction, was completed on time and in budget following the delivery of new contracts for its construction.<sup>77</sup>

The attendance and speaking engagement of the head of the CVC at the IP conference in India in September 2015 also underscored the presence of political will. Vigorous open debate, acceptance

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<sup>75</sup> Stakeholder discussions, September 2015.

<sup>76</sup> Gainer, 2015.

<sup>77</sup> Ibid.

of critiques to the approach from stakeholders present as well as an avowed openness to suggestions for improvement demonstrated commitment on behalf of the government to continuous progress.<sup>78</sup>

### **Conduct of the monitor**

A proactive monitor and a strong relationship/high degree of interaction with the contracting authority can play a pivotal role in seeing IP outcomes beyond their initial duration. In India, some PSUs have made targeted improvements to certain procurement policies and procedures following recommendations of the monitor. This has occurred in part due to the structural set-up, whereby monthly meetings between the monitor and management take place, ensuring regular communication and opportunities to make positive change where appropriate. The contracting authority must also be open and contribute to this mutual trust in order for this environment to take place. At the other end of the spectrum, a lack of meetings and reporting between monitors and the contracting authority can prohibit a sustainability of outcomes from an IP.

### **5.3 Flexibility**

The flexibility of the IP is part of its attractiveness as a tool. It has been applied across a number of sectors, legal and political contexts, and for procurements of various sizes. These Learning Review questions address the implications of this flexibility in previous outcomes and for future content and implementation arrangements of IPs.

- Learning Review Question: Do certain systemic contexts have an effect on implementation and/or outcomes of the Integrity Pact?

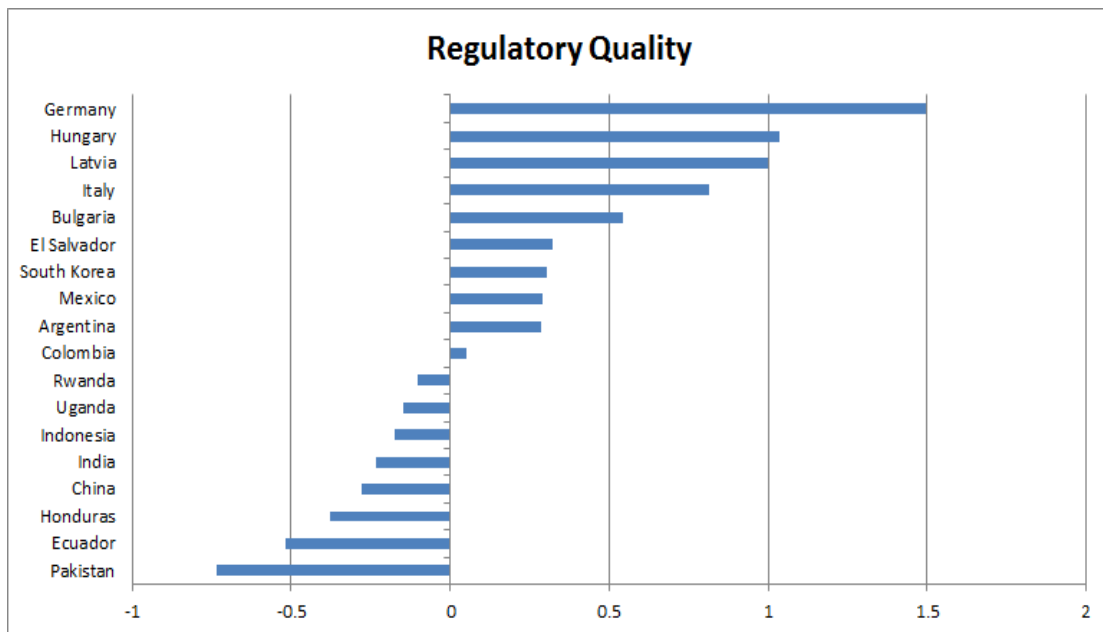
The IP was never intended to be a one-size-fits-all approach, as seen from the diversity of countries in which it has been introduced. This being the case, it has shown its resilience and flexibility by achieving effective outcomes in a number of different contexts - contexts that differ from economic, legal and governance perspectives. This is evidenced by an examination of common successes and challenges that have crossed these divides.

For example, the goals of a successful IP - to ensure the smooth running of a procurement process, free of corruption - would imply that its introduction should be aimed at countries where government effectiveness and regulatory quality are poor, and corruption is high. By this reasoning, if the government is perceived as efficient in these areas, then there would be less reason for a policy intervention such as the IP. From the corruption indices examined earlier, there was (with some exceptions) general similarity in the initial levels of corruption perception. On the contrary, greater levels of heterogeneity are evidenced in perceptions of regulatory quality, as seen in the WGI score below (again with -2.5 being the poorest performance, and 2.5 the best).

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<sup>78</sup> TI-India Conference in New Delhi, September 2015.

Figure 14: Regulatory Quality at Year of IP Introduction



Source: [www.govindicators.org](http://www.govindicators.org)

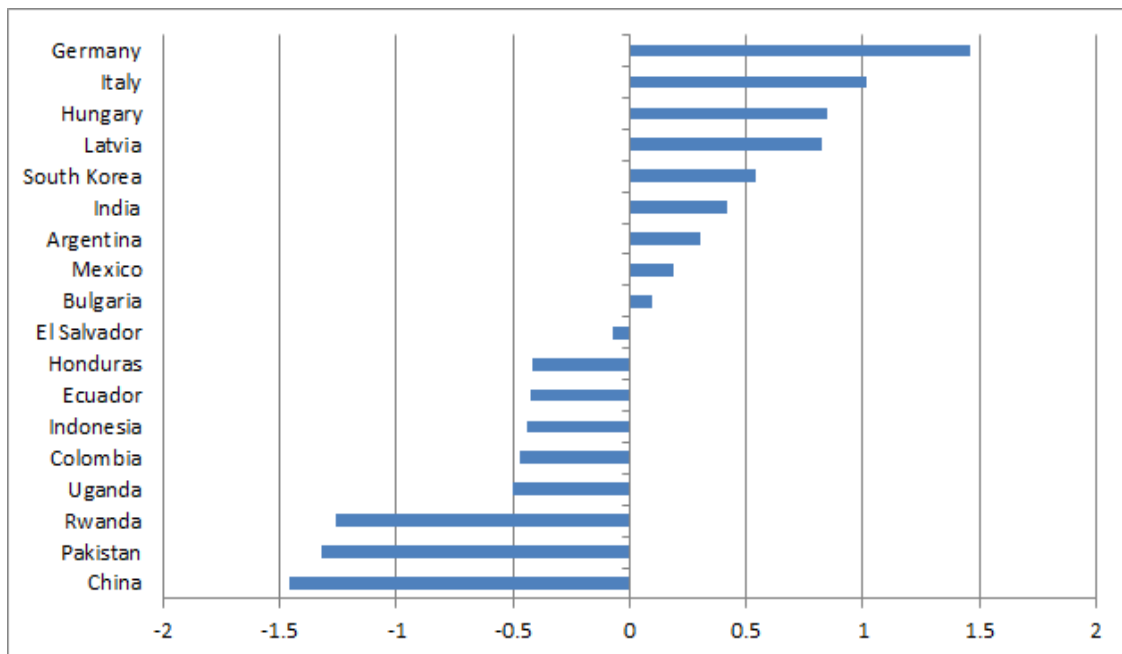
Regulatory quality, per the WGI, “reflects perceptions of the ability of the government to formulate and implement sound policies and regulations that permit and promote private sector development.”<sup>79</sup> As seen by the figure above, European countries have scored the best on this index at the moment of IP inception, with most scoring above or near one, and most other countries below zero or slightly above. This aligns to a certain degree with expectations - most of the European countries have undertaken IPs as one-off occurrences, without insertion of the IP or any elements of it into their own regulatory structure, the exception being Italy, where the IP was made a requirement at some municipal levels.

In addition, an important element of the theory of change that is ascribed to the IP is predicated upon involvement of the public and an informed citizenry. As we have seen and perhaps consistent with their initial conditions, three of four the lowest performers on WGI Voice and Accountability index either conducted IPs without monitors (China and Pakistan) or did not conduct an IP (Uganda), where, despite the TI Chapter’s efforts in informing stakeholders and gathering support, the IP in fact never came to pass, due in part to discomfort of the authorities with the idea of an independent monitor in the procurement process.<sup>80</sup> In Rwanda however, also near the bottom of this list, while a monitor was included in IPs, implementation of the IP was found to be challenging due to the costs of independent monitoring.

<sup>79</sup> [www.govindicators.org](http://www.govindicators.org)

<sup>80</sup> Stakeholder interview.

**Figure 15: Voice and Accountability at IP introduction**



Source: [www.govindicators.org](http://www.govindicators.org)

The flexibility of the IP in adapting to various initial governance and economic conditions for implementation and outcomes remains a selling point of the tool. Stakeholders are advised however to be cognizant of local conditions and adapt the model accordingly, and if necessary, refrain from advocating for an IP altogether unless in the context of a wider body of reforms or other measures are promoted to improve governance and regulatory mechanisms.

- Learning Review Question: Are there certain elements of the Integrity Pact and/or specific tender that are necessary or sufficient in order to increase chances of success?

The element of the IP that has been repeatedly mentioned by stakeholders as being most critical to its success is the inclusion and methodology of the monitor(s). The fact that all stakeholders have signed on to the document, thus providing the level playing field aspect, has also been stressed as positive. Specific clauses, the use of sanctions, and dispute resolution mechanisms have been less decisive in contributing to successful implementation and outcomes.

When underscoring the monitor’s role however, it is not enough to simply point to their presence as a sufficient condition for IP success. The implementation arrangements, background and expertise, and level of proactivity across many domains of the IP process are important factors that can increase the monitor’s chances to contribute to a successful IP and public procurement.

In India, monitors that were recognized as providing the greatest value to IP implementation and outcomes were those that took a proactive approach, as opposed to a reactive approach when observing irregularities or areas of concern. Close, regular contacts with the management within a

PSU as well as regular communication to the bidders were also characteristics of more effective monitoring.

From the European Learning Review, the constructive and practical nature of monitors was mentioned in Germany, Hungary, Latvia and Bulgaria. The role of the monitor in effect was meant to build bridges between stakeholders, especially in cases of conflict. The fact that the monitors went beyond anti-corruption and transparency to ensuring the procurement complied with good governance was also lauded by contracting authorities and other stakeholders. In Germany, monitors for the Hannover and Bremen IPs were perceived to have gone beyond their task to monitor corruption and provided broader management advice. This was attributed to commitment to the project, but also good personal relations between the monitor and the stakeholders involved.<sup>81</sup>

### **Limits to IP flexibility**

The flexibility of the IP is not without its limits. When it comes to the complexity of the procurement process, as evidenced by the number of contracts, number of companies involved, sectoral specifications or monetary size of the procurement, these factors can play a role in effective functioning of the IP. Experiences from TI-Germany highlight this, with different results, in both Hannover and Berlin. The IP governing the building of a hospital in Hannover in 2010 was at a cost of roughly EUR 180 million. Discussions with stakeholders in this experience agreed that a project at this size was manageable under the implementation arrangements and resources provided. On the contrary, the original budget for the Berlin Airport project was 2.4 billion Euros, more than ten times the procurement costs of the Hannover project. Several stakeholders involved in IPs in Germany and interviewed in the context of this Learning Review expressed concern in hindsight that this may have been beyond the monitoring and controlling capacities required in order to perform these duties sufficiently, with consequences that in the end TI-Germany withdrew from the IP.<sup>82</sup> Though the size of the procurement was not directly named in public statements as the cause of the Chapter's decision to step back, the complexity of the project may have played a role in making it more difficult to identify irregularities. That being said, discussions with stakeholders familiar with the process noted that the IP was running successfully and free of major problems, up until changes in personnel following the postponement of the opening in 2012. Following the entry of new management, many changes were announced unilaterally and lacking transparency.<sup>83</sup> Adjusting monitoring arrangements to the size of the project, along with a clear escalation procedure and consequential application in cases where sanctions are appropriate, must be considered when designing an IP.

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<sup>81</sup> Beke et al, 2015.

<sup>82</sup> [https://www.transparency.de/index.php?id=1434&tx\\_ttnews\[tt\\_news\]=23173&cHash=a197dcdo885f585bd6cd71ad9d9f99fb%22%20](https://www.transparency.de/index.php?id=1434&tx_ttnews[tt_news]=23173&cHash=a197dcdo885f585bd6cd71ad9d9f99fb%22%20)  
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<sup>83</sup> Stakeholder discussions.

#### 5.4 Cross-cutting

The final two review questions incorporate issues that are of relevance to all of the Learning Review questions, with particularly important implications for carrying the IP forward and building upon the achievements realised thus far.

- Learning Review Question: Did IPs have any negative effects (i.e. on specific stakeholders)? Major weaknesses and critiques? How can this be addressed?

The IP is neither the perfect nor the only tool for ensuring integrity, transparency and accountability in public procurement processes. It has been subject to criticism over its 20-year history and, as highlighted through this report, must address several weaknesses in order to improve its potential for adding value to procurement processes in the next 20 years and beyond.

#### Window dressing

An often raised concern regarding IPs is the danger that the process can be subject to abuse as window-dressing. When the IP is just another piece of paper to sign in the procurement process, with little attention paid to actual implementation, it runs the risk of becoming irrelevant. Evidence for this emerges in Indonesia, where TI programme managers noted that some public authorities were only employing IPs in order to cover up previous corrupt behaviour.<sup>84</sup> This was repeated at the 2010 International Anti-Corruption Conference (IACC)<sup>85</sup> by the then-head of the Chapter, stating that, despite a decree from the Government requiring the use of what was nominally called an IP in public procurement, most of the signing was merely ceremonial in nature, with little in the way of actual monitoring and enforcement.<sup>86</sup>

This and the following examples bring us closer to understanding some of the mechanics surrounding how and why an IP may be subject to alleged window-dressing, and hopefully develop solutions in order to avoid this phenomenon. Namely, the threat can arise due to tension between the potential *benefits* of IP institutionalization - through ensuring a greater number of required tenders and thus beneficiaries, adding to sustainability of outcomes - and the potential for *abuse*, whereby the IP becomes another required document to sign, bereft of true implementation. In a 2012 assessment of the IP in PSUs in India, the concern of window-dressing echoed throughout the responses of several PSUs. The Chief Vigilance Officer of Coal India Limited, for example, writes that the IP is "treated as just another formality by stakeholders....no change of heart or attitude towards bringing more transparency."<sup>87</sup> TI India's commentary in the report also questioned the seriousness and intent of certain PSUs, stating that the IP "should not be used as a fig-leaf."<sup>88</sup> These thoughts

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<sup>84</sup> See: <http://www.thejakartapost.com/news/2009/01/27/tio395-integrity-pact-faces-both-acceptance-and-resistance.html>.

<sup>85</sup> See [http://iacconference.org/documents/ws47AleksandrShkolnikov\\_LR.pdf](http://iacconference.org/documents/ws47AleksandrShkolnikov_LR.pdf)

<sup>86</sup> Ibid.

<sup>87</sup> Mishra and Gupta, 2012, p.55.

<sup>88</sup> Ibid, p. 61.

were again taken up by stakeholders during the site visit to India as part of this Review, both openly during the conference and in side conversations.

India is not alone in this regard among countries that have made steps towards institutionalization of IPs. Discussions with a stakeholder in Italy raised concern of the IP being just another document among the many that are required in several Italian municipal level public procurement processes. Similar issues were brought up in talks with the Chapter in Pakistan as part of this Review, noting that since the Government's incorporation of the IP as a requirement for certain tenders, it has been instituted without a monitor and very little oversight in the implementation.

In Mexico, the Social Witness Program is challenged by the risk of window-dressing. The government has a pool of monitors to their disposal that are selected per procurement project by a selection committee. The Chapter and other non-TI monitors interviewed for this Review voiced that the quality of monitors differs and that the selection process for monitors is not too transparent. The Chapter confirmed that this generates risks of window-dressing. In fact, the Chapter can only guarantee their own quality standards as a monitor but has little control over other actors working as social witnesses to procurement.

A few shared characteristics of these IP experiences can be identified: the weak role of the monitor, or total lack thereof in some instances. In the 2012 assessment of Indian IPs, the stakeholder associated with the coal PSU asserted that the monitor performed his or her duties "superficially" and that the IEM "must have a background of working in the mining industry," suggesting that this has not been the case.<sup>89</sup> Tellingly, IEM feedback included a request for secretarial assistance, implying a lack of resources to fulfil the role of monitor. Finally, a lack of will on the part of management and even the Ministry of Mines is observed by the CVO, alluding to the need for political will and leadership in order to assure proper implementation. When the role of the monitor is performed poorly, the situation is tantamount to one where there is no monitor, mirroring the situation for the majority of IPs implemented in Italy and Pakistan.

IPs that have been incorporated into law and requirements for public procurement are not the only types that are subject to allegations of window-dressing, however the routine nature of incorporating the IP into such settings heightens the risk. Nonetheless, for all types of IPs, careful attention to implementation arrangements, in order to ensure a prominent monitoring role and the inclusion of civil society, as well as establishing the requisite political will, can go far towards protecting IP from being abused as window-dressing.

### **Red Tape**

Concerns from stakeholders that the IP adds too much red tape and additional costs to procurement proved to be unfounded from the evidence. Another common concern from some bidders is that the

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<sup>89</sup> Mishra and Gupta, 2012.

IP is superfluous, with its clauses that are already covered either by the company's internal policies or the law. This is particularly the case among those with significant international exposure or with, in their views, an adequate anti-bribery compliance programme. One such comment was received during the India field visit, where a stakeholder from the private sector noted that the US Foreign Corrupt Practices Act (FCPA) has been accomplishing the goals of the IP since 1977.<sup>90</sup> This argument is unconvincing however, and almost has the opposite effect, as the growth in FCPA enforcement action in the past decade shows few signs of slowing down.<sup>91</sup> The final Review question will address in further detail, how the business case for activities promoting integrity and transparency in public procurement processes has grown stronger than ever.

- Learning Review Question: What is the business case for the IP?

The private sector has increasingly been recognized as an integral partner in the fight against corruption. As we have seen, the IP, even with highly proactive monitoring and applied in the context of a highly developed legal and regulatory environment, can never exclude the possibility of corrupt practices. Active participation and adherence to anti-corruption principles from the private sector is therefore essential for effectively combating corruption.

### **Private sector concerns**

In the course of this Review, private sector participation either through interviews or focus group discussions remained limited. From conversations with other stakeholders, some companies that had previously took part in IPs sought to avoid any discussions or related activities in the context of this Review, out of fear of linking their company to corruption. In the few discussions with bidders, one comment raised in opposition to their signing of an Integrity Pact centred on the fact that the local law and the company's own internal anti-corruption compliance programmes and codes of conduct already address many of the issues raised by the IP. In the Indian case, concerns about government red tape and bureaucracy have also been floated as obstacles to greater private sector acceptance of the IP.<sup>92</sup> In Mexico, the private sector acknowledges the added-value of IP to level the playing field but only if adopted by all competitors. It would appear that the private sector still do not comprehend how the IP differs from an internal compliance management system and that it can support the creation of a level playing field, thus enhancing an internal programme and giving it wider effect in the market place.

One of the clearest concerns of the private sector prior to engagement is value for money, which proponents of the IP, through the lack of monitoring and evaluation that has been a topic throughout this Review, have failed to adequately quantify and present fully. As evaluation gains traction among Chapters and contracting authorities however, these quantifiable gains of the IP should be presented

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<sup>90</sup> Presentation at TI India Conference, September 2015.

<sup>91</sup> See: <http://www.fcpablog.com/blog/2014/12/23/with-alstom-three-french-companies-are-now-in-the-fcpa-top-t.html>.

<sup>92</sup> Siddiqui (ed), 2015.



in a fashion that is clear, understandable, and speaks the language of business. This is only possible once IP implementers put a greater primacy on the collection and retention of data, analysis of results and presentation in a way that shows to a company the quantifiable gains from participation in an IP. Collecting data on input prices of goods, for example, budgets and other elements within the process could then be quantifiably established and compared on a regular basis to tenders conducted without IPs, controlling for the requisite factors that can influence prices in the tender, in order to isolate the added value from an IP.

Another example of where to begin such activities is the World Bank Group's *Benchmarking Public Procurement* project. It assesses public procurement systems in 77 economies, with a focus on the private sector. Only in its second year of activity, it may help provide additional data which, together with the collection of data from procurements with and without an IP, can quantify claims that the IP saves money and time due to reduced litigation, to name one example. Currently data is available for the following countries that are all either previously, currently or contemplating IP implementation: Argentina, Colombia, Ecuador, Honduras, Hungary, Italy, Mexico, Peru and South Korea. Until data collection, monitoring and evaluation becomes a constant item on the agenda, IP implementers will struggle to convince some companies of the merits of the business case.

Despite these concerns, this Review argues that there is a business case for the IP. As a variant of anti-corruption mechanisms and a form of anti-corruption Collective Action in particular, there is a strong case for companies to engage in activities beyond focusing solely on their own internal compliance programs, and instead to leverage the "strength in numbers" effect that a multi-stakeholder approach can provide. The UK Ministry of Justice's Guidance on the 2010 UK Bribery Act makes explicit reference to this in Principle 2, entitled 'Top-level commitment'. Section 2.3: "Internal and external communication of the commitment to zero tolerance to bribery" states that demonstrations of this commitment can include reference to an organisation's engagement in Collective Action against bribery.<sup>93</sup> A sole firm's strong internal controls may have less effectiveness in an environment where competitors may behave with less scrupulousness.

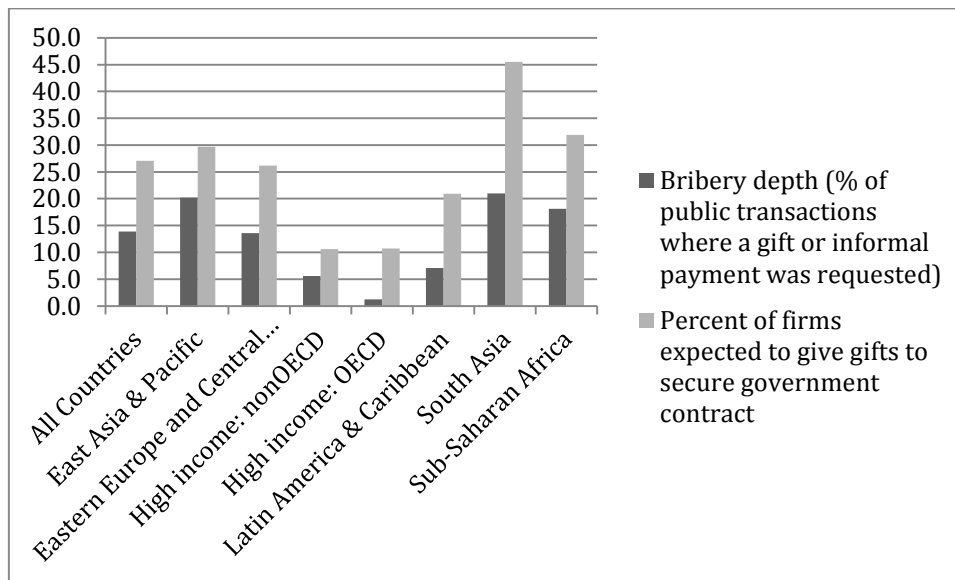
### **Level playing field**

As seen in this Review, the majority of countries where IPs have been implemented are those with significant corruption risks. The figure below highlights this risk and the importance of a level playing field, by way of data from the World Bank Enterprise Survey, which queries businesses on their experiences in different countries across several topics, including corruption. Even with a highly sophisticated and advanced level of internal controls, a firm remains at a great disadvantage in a region where nearly 50 percent of firms expect to give gifts in order to receive a government contract, as in South Asia - how many of one's competitors will give in to the request?

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<sup>93</sup> See: <https://www.justice.gov.uk/downloads/legislation/bribery-act-2010-guidance.pdf>

Figure 16: Bribery prevalence by region



Source: World Bank Enterprise Surveys

This is where an IP, by providing assurances of integrity, effective monitoring and consequences for impropriety, can contribute to bringing in one’s competitors to adhere to higher standards of compliance and integrity.

The adequacy and maturity of a corporate compliance and integrity culture is not a concern limited to developing countries. Firms operating in higher-income countries can also have less sophisticated compliance programmes, particularly among SMEs, thus exposing a firm with a strong anti-bribery programme to the risk that it will lose out on bids to competitors willing to pay or accept bribes. By including the competitors within an IP, this can assist in the process of sensitization of competitors to these issues and reduce risk. These thoughts were not echoed in part by the monitor of an IP in Germany, who noted that of the many companies involved in the construction of a hospital, apart from one large bidder, the vast majority were without compliance programmes nor having significant familiarity with the IP. By signing up to the IP, it provided these firms with exposure to concepts of integrity and corporate compliance that may have had less emphasis in other tenders. This sensitization aspect of the IP and positive impact was re-emphasised as well by representative from the contracting authority.

While the degree to which one’s competitors incorporate these concepts would remain unknown, it can at least provide some assurances to the bidder with an adequate program of their competitors’ receiving the message of integrity and compliance.

Many of the arguments in support of the IP as presented thus far - minimizing delay in the procurement process through its preventative aspects, promoting competitiveness in the tender process - also apply in support of establishing the business case for the IP. Yet another overlooked

element that is also significant for the business case of the IP is the reputational considerations related to IP activities.

### **Better reputation**

Maintaining a reputation as a good corporate citizen has emerged as an increasingly important concern for many firms, particularly multinationals, in the intervening years since the IP concept was developed. This is in part a reflection of changing demands from consumers and the broader public as well. IP could provide benefits to the reputation of a company as a way to show its commitment to conducting business with integrity. As mentioned elsewhere in this report, this concept was carried out in the IP conducted in Bulgaria, where the Chapter emphasized positive incentives through the creation of a “white list” as opposed to inclusion of blacklists for companies breaching the IP. In India, some PSUs attested to a better reputation and perception from stakeholders on account of their use of IPs, however there was no regular collection and assessment of these stakeholder perceptions.

On the other hand, engagement in tenders where corruption risk is minimized due to increased sensitization of peer companies can provide greater assurance to the company as well. The reputational factors inherent to the business case cannot be stressed enough in the current climate of anti-bribery and compliance. As we will discuss in the next chapter, the anti-corruption environment has changed fundamentally since the initial creation of the IP. From its appearance at a time in the 1990s when bribery was still tax-deductible expense in many Northern jurisdictions, the change in thought patterns and behaviour regarding bribery and corruption, development of expansive national and international architecture to combat it, and the subsequent fines and prison sentences handed out for transgressions has changed the environment to such a degree that minimizing reputation risks is now an essential consideration for a business’s activities.

## 6 The Integrity Pact among Procurement Tools

The Integrity Pact is but one method to address the prevention of corruption in public procurement. Its emergence in the 1990s coincided with a time when the anti-corruption movement was in its infancy. Since its arrival however, the legal, regulatory and normative framework surrounding corruption has changed. Developments at international level have seen the creation of the OECD Anti-Bribery Convention (in force in 1999), which requires that States Parties criminalise bribery of foreign public officials; and the United Nations Convention against Corruption (UNCAC) (in force in 2005), which contains a number of provisions affecting public procurement. Article 9 of the UNCAC addresses procurement specifically by requiring that State Parties “take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, *inter alia*, in preventing corruption.”<sup>94</sup>

As a consequence, the IP is now joined by a number of competing and complementary tools for the promotion of anti-corruption in procurement. Some focus on efforts from the bidding parties themselves, notably the private sector; efforts from the procuring governments; or, as in the case of the IP, they can involve collaborative efforts incorporating a number of stakeholders.

This chapter will explore how the IP compares to some of these newer methods to prevent corruption in public procurement, and their alignment with good practices in public procurement integrity, by way of a preliminary benchmarking of the standard IP format against recognized principles of public procurement integrity as promoted by the OECD.

### 6.1 Public procurement guidelines and good practice

The OECD *Principles for Integrity in Public Procurement* offer a good benchmark against which various tools, including the IP, can be compared and which are best suited to addressing risks in the procurement process. Primarily aimed at governments at the national level, though also applicable at sub-national level, the Principles provide a policy instrument for enhancing integrity in the public procurement cycle, addressing various risks to integrity, from needs assessment, through the award stage, contract management and up to final payment. The benchmark will assist in assessing IP strengths and weaknesses in comparison to other tools, and provide insights for potential complementary application of the IP in order to develop a holistic and systems-oriented approach to public procurement integrity.

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<sup>94</sup> See: [https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026\\_E.pdf](https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf)

The four key pillars and ten OECD Principles for enhancing integrity in public procurement are as follows:

**OECD Principles for enhancing integrity in public procurement**

- A. Transparency
  - 1. Provide an adequate degree of transparency in the entire procurement cycle in order to promote fair and equitable treatment for potential suppliers
  - 2. Maximise transparency in competitive tendering and take precautionary measures to enhance integrity, in particular for exceptions to competitive tendering
- B. Good Management
  - 3. Ensure that public funds are used in procurement according to the purposes intended
  - 4. Ensure that procurement officials meet high professional standards of knowledge, skills and integrity
- C. Prevention of misconduct, compliance and monitoring
  - 5. Put mechanisms in place to prevent risks to integrity in public procurement
  - 6. Encourage close cooperation between government and the private sector to maintain high standards of integrity, particularly in contract management
  - 7. Provide specific mechanisms to monitor public procurement as well as detect misconduct and apply sanctions accordingly
- D. Accountability and control
  - 8. Establish a clear chain of responsibility together with effective control mechanisms
  - 9. Handle complaints from potential suppliers in a fair and timely manner
  - 10. Empower civil society organisations, media and the wider public to scrutinise public procurement

Source: OECD Principles for Integrity in Public Procurement

<http://www.oecd.org/gov/ethics/48994520.pdf>  
<http://www.oecd.org/gov/ethics/48994520.pdf>

Each tool will be assessed on how well it fulfils elements of the four main principle headings and given a score of 1 (fair) to 3 (excellent), discussed in further detail in the context of the individual elements making up the four principles, drawing comparisons with the IP. This initial assessment seeks to begin the conversation and promote areas for further research in establishing holistic approaches towards public procurement integrity.

## 6.2 Electronic procurement

E-procurement has transformed the public procurement process over the past decade. Defined in the context of this report as “the use of any internet-based inter-organizational information system that automates and integrates any parts of procurement process in order to improve efficiency, transparency and accountability in the wider public sector,”<sup>95</sup> e-procurement has been introduced by countries around the world, developing and developed countries alike. It can take a number of forms, such as e-tendering, e-auctions, e-sourcing, e-contract management, and many more.<sup>96</sup>

Governments have sought to implement e-procurement systems for a variety of reasons such as on cost savings and efficiency grounds. Transparency and accountability factors have had the greatest relevance from an anti-corruption perspective, achieving this through the following methods: providing automated and real-time access to procurement information; reducing human interaction and thus opportunities for bribery and corruption; increasing competition by allowing more bidders and suppliers; creating a standardized and consistent procurement process; allowing for monitoring and tracking of bids; efficient and secure document transmission; greater managerial control; transparency and accountability; and speeding and simplifying the procurement process.<sup>97</sup>

The impacts and effects of e-procurement systems have been widespread. In a study of fifty country case examples examining public e-procurement performance against corruption in government work and services, transparency and accountability resulting from the introduction of e-procurement are found to be the greatest corruption deterrent effects. By creating greater openness, availability and accessibility of information regarding procurement, such systems increase public trust and satisfaction and improve the level of accountability.<sup>98</sup>

Country examples of positive change resulting from the introduction of e-procurement can be found in South Korea, which introduced its KONEPS system in 2002.<sup>99</sup> Often praised as an example of best practice in e-procurement, the system received the UN Public Service Award in 2003 and since its inception has spread to a number of countries, including Costa Rica, Pakistan, Sri Lanka and Vietnam.<sup>100</sup> Features of the system include the publication of all bidding notices for public institutions; financial management features that include a real-time money transfer mechanism; registration of users (purchasers and suppliers), with a database that is constantly evolving so as to ensure that disqualified bidders cannot participate; and a corrupt activity analysis system, which includes a reward system for informants of corrupt practices and investigation of suspicious cases by the Fair Trading Committee.<sup>101</sup>

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<sup>95</sup> Luijken and Martini, 2014, from Vaidya, K. 2007. “Electronic Procurement in the Australian Public Sector: The Organisational Assimilation Process and its Impact on Public Procurement Performance.” University of New England.

<sup>96</sup> Neupane et al, 2013.

<sup>97</sup> Ibid.

<sup>98</sup> Ibid.

<sup>99</sup> Luijken and Martini, 2014.

<sup>100</sup> Neupane et al, 2013.

<sup>101</sup> Luijken and Martini, 2014.

In several ways, there are significant parallels with the IP through its strengths as a preventive mechanism and as a deterrence system. As highlighted in the Theory of Change presented for the IP in Chapter 3, boosting public trust in procurement through information sharing and supporting demands for accountability are also key shared elements of the two anti-corruption tools.

Where e-procurement can have even greater impact than the IP is the number of tenders to which it can be applied. Even taking into account IPs that have been institutionalised in several countries such as in India, resulting in hundreds of IPs being performed, the number of tenders as a whole that undergo an IP represent a minute fraction of the public procurement volume within a country. Furthermore, in most countries IPs have been instituted as one-tender endeavours. The impact of an effective and comprehensive e-procurement system can affect a significantly larger number of stakeholders. Returning to Korea, in 2012, the KONEPS system was in use by 44,000 public entities and 228,000 suppliers.<sup>102</sup>

Notwithstanding the many merits of e-procurement, on its own it cannot and is not intended to be the sole element in a comprehensive programme to promote transparency and integrity in public procurement processes. Stakeholders interviewed in the context of this Review also shared this opinion, noting that e-procurement in and of itself would not make a significant impact on reducing corruption in public procurement, in the absence of other elements such as a strong legal framework and other complementary tools to promote integrity. An enabling environment in order to maximize its success is important, such as through giving officials the right incentives, and minimising barriers for its actual use.<sup>103</sup>

With regard to the first pillar of the OECD Principles (Transparency), both e-procurement and the IP focus on this aspect as key components of their respective mechanisms to combat corruption effectively. Both espouse and meet the requirements of this Pillar of procurement integrity. Differences can emerge however in implementation. For example, one Principle under the Transparency heading calls for transparency in the entirety of the procurement cycle. This would entail pre-bid, tender, and contract management phases of the procurement. One phase that many, but by no means all, IPs have given less attention to is the procurement contract implementation phase. Discussions with stakeholders from IPs in India and Italy confirmed that this can be a weakness.

The second pillar of the Principles focuses on good management, through emphasising that public funds are used according the purposes intended and that procurement officials meet high professional standards of knowledge, skills and integrity. The data management capabilities that are permitted by a well-designed e-procurement system can assist in this regard, to ensure financial plans, budgets and reporting are on track and have access to reliable data. Integrity of public officials

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<sup>102</sup> Luikjen and Martini, 2014.

<sup>103</sup> OECD, 2007.

involved in public procurement as part of good management is more thoroughly covered by the IP, through its emphasis on integrity standards and anti-corruption. In addition, several Chapters engage in training of monitors and provide workshops to stakeholders in order to familiarize them with their roles in the IP process.

The third pillar of the Principles for enhancing integrity in public procurement is well addressed by the IP. As this Review has concluded, the IP’s greatest strengths lie in its role as a preventive mechanism. The strong multi-stakeholder component of the IP makes it well suited to meet the requirements of the sixth Principle, which calls for closer cooperation between governments and the private sector in the maintenance of high integrity standards. The inclusion of the monitor, particularly when his or her duties are performed in a proactive and empowered manner, enables the IP to address the seventh Principle which focuses on mechanisms for monitoring public procurement.

Among the principles of accountability and control, both the IP and e-procurement display a mix of complementary and shared strengths. At first, the IP’s multi-stakeholder component would appear to put it ahead of e-procurement vis-a-vis Principle 10, “Empower civil society organisations, media and the wider public to scrutinise public procurement”, through its direct involvement of civil society in the IP; either in its role as a facilitator of information to the wider public, as lead implementer, or as a monitor. Yet in concert with the information disclosure mechanisms of e-procurement, civil society’s role is enhanced, providing the tools with which to discern issues of corruption or mismanagement that may arise in procurement. Similarly, both tools can be effective in addressing supplier complaints in a fair and timely manner, as required by Principle 9. The work of the monitor in an IP is responsible for this, with the ability to escalate issues when necessary to the proper authorities, whereas an e-procurement system can facilitate the complaints management process by accepting them electronically. Also by providing award information in a timely manner, the e-procurement system can ensure challenges to decisions can be made in a reasonable time period.<sup>104</sup> Again, the combination of both tools allows for the greatest possible benefit.

Figure 17: E-Procurement v Integrity Pacts

	Transparency	Good management	Prevention of misconduct, compliance and monitoring	Accountability and control
E-procurement	XXX	XX	XX	XX
IP	XX	XX	XXX	XX

<sup>104</sup> OECD, 2007.



As noted throughout this Review, the IP cannot unequivocally rule out corruption, and neither can e-procurement. In addition, the establishment of a state-of-the-art e-procurement system can take significant time and financial resources before it can achieve its fullest potential. Nevertheless, the IP and e-procurement present a good example of policies that when applied together can help to achieve results beyond the sum of their parts, and reinforce the establishment of a level playing field for bidders. Many of the countries that have introduced IPs already use some form of e-procurement, including South Korea, as have the majority of PSUs in India that use the IP. Applying both tools, with their respective best-practice considerations taken into account, will ensure that governments and citizens get greater value for money in public procurement.

### **6.3 Civil Society Procurement Monitoring**

TI USA's Civil Society Procurement Monitoring tool was developed to support CSOs in monitoring public procurement and above all, to overcome some of the challenges identified in doing so.<sup>105</sup> As a web-based tool it allows any CSO or individual to monitor public procurement for red flags for corruption. The tool has six components:

- a procurement monitoring guide that explains how to monitor using the red flag approach;
- if available, country-specific procurement monitoring guides which can be seen as a tailor-made version of the overall guide;
- the monitoring assistant, which is an interactive checklist that guides users through the steps required once a red flag is identified;
- additional resources for users on procurement monitoring;
- a forum where users can share experiences;
- an online training module.

If the tool is coupled with the OECD Principles, arguably both the IP and the Civil Society Procurement Monitoring tool provide an adequate degree of transparency in the procurement cycle, enhance good management, help to prevent misconduct and strengthen accountability. When taking a closer look, the IP fits into the overall framework of the Civil Society Procurement Monitoring tool and can be considered complementary to it. In fact, some of the identified weaknesses of the IP can be addressed by this tool. First and foremost, the IP is to a degree a tool limited to the "monitoring elite", essentially the CSO and specialised procurement and/or technical experts. The guidance provided by the Civil Society Procurement Monitoring tool allows anyone to become a monitor.

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<sup>105</sup> See: <http://monitoring.transparency-usa.org/>

Secondly, as we argued elsewhere in this Review, the IP can provide a strong educational element on how procurement is conducted. The involvement of the monitor can be a driver for change in the way procurement is conducted. Findings from the European Learning Review flagged the risk of knowledge getting lost due to sporadic use of IPs; staff-turnover at Chapters and insufficient monitoring and documenting of the use of IPs. By using the IP within the Civil Society Procurement Monitoring tool, information can be easily documented and stored. In addition, monitors can exchange experiences through the forum and this way ensures that their activities drive change over the short, medium and long term.

Thirdly, this Review highlighted the fact that the IP in practice is a tool focusing on identifying irregularities - essentially adopting a red flag approach. The Civil Society Procurement Monitoring tool includes this approach in its core and presents a systematic way for monitors to implement an IP through the use of the checklist.

Fourthly, the Civil Society Procurement Monitoring tool allows for the integration of new technologies. Apart from the forum and the documentation of national procurement monitoring guides, it can also be made accessible to new technologies, such as open data, that help monitoring whole procurement systems.

Nonetheless, the IP arguably scores better than the Civil Society Procurement Monitoring tool when addressing good management. Both tools can ensure that public funds are used according to the purposes intended. IPs however include a component that requires close collaboration of the independent monitor with the contracting authorities. Consequently, the IP could play an important role in ensuring that professional standards are met.

In the pillar on prevention of misconduct, compliance and monitoring, the IP can play a more important role than the Civil Society Procurement Monitoring tool. The legal document between the monitor and the contracting authorities and bidders allows for the IP to put in place prevention mechanisms, but also to detect and sanction when appropriate.

When looking at accountability and control, the Civil Society Procurement Monitoring tool strongly empowers the wider public as well as civil society. The IP however, establishes a clearer chain of responsibility and offers a channel for bidders to handle complaints.

Figure 18: Civil Society Procurement Monitoring tool v Integrity Pacts

	Transparency	Good management	Prevention of misconduct, compliance and monitoring	Accountability and control
Civil Society Procurement	XXX	XX	X	X

nt Monitoring tool				
IP	XX	XXX	XXX	XX

#### 6.4 Sector-specific Collective Action

As emphasized earlier, the private sector has an integral role to ensure that corruption within the procurement process is avoided. Resulting from this recognition has been the emergence of anti-corruption Collective Action. Various defined as a ‘catch-all term for industry standards, multi-stakeholder initiatives and public-private partnerships’ or as ‘a collaborative and sustained process of cooperation amongst stakeholders (that) increases the impact and credibility of individual action, brings vulnerable individual players into an alliance of like-minded organisations and levels the playing field between competitors’,<sup>106</sup> Collective Action initiatives provide an opportunity for business-driven integrity to make a contributory impact to reduce corruption in the procurement process.

Collective Action initiatives may be broader than the procurement focus in that they can include peer companies in issuing joint statements and declarations not to engage in bribery and corruption, exchange best practice and/or training in ethical procurement, or feature peer monitoring mechanisms to ensure compliance with standards stated by the group. Awareness raising, training and sharing of best practices by business associations is another form of private-sector led business integrity.

As an example of Collective Action we have chosen to compare the IP with the Construction Sector Transparency Initiative (CoST). Further examples of Collective Action Initiatives can also be found at the B20 Collective Action Hub, which is managed by the Basel Institute on Governance ([www.collective-action.com](http://www.collective-action.com)).

#### Construction Sector Transparency Initiative (CoST)<sup>107</sup>

CoST seeks to enhance transparency and accountability in public sector infrastructure projects through promoting full disclosure of basic information, in an effort to improve value for money. In a truly multi-stakeholder approach, CoST involves government procuring entities and oversight agencies, private sector consultants and contractors, and civil society groups working together to improve transparency.

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<sup>106</sup> Pieth, 2013.

<sup>107</sup> See: <http://www.constructiontransparency.org/home>.

The CoST Results Chain provides a clear overview of how the initiative aims to achieve good quality delivery of infrastructure projects, summarizing its theory of change.<sup>108</sup> Through its interventions, CoST provides support to governments to put systems in place that allow for public access to project information, as well as support to multi-stakeholder groups (MSGs) representative of government, private sector and civil society, which validate and interpret this information. Activities are also undertaken to build their capacity and understand the accountability engendered by this information. From these activities, outputs include systems in place from the governments that allow the public to access project information, while producing better-informed stakeholders regarding construction projects. Intermediate results from these outputs are that stakeholders can now question project outcomes and raise concerns when necessary on poor governance, mismanagement or corruption, similar to the theory of change as described for the IP earlier in this Review. As a consequence of this feedback, governments can investigate and sanction as appropriate, responding through building capacity of the civil service or from these intermediate outcomes, longer-term outcomes include greater accountability, corruption prevention, more efficient spending, increased competition and improved governance. The wider impact could be cost savings that can be allocated or invested to better reflect citizens' priorities, and increase public trust.

The programme has been in operation since 2012, following a pilot conducted in eight countries from 2008 to 2011. The countries included Ethiopia, Guatemala, Malawi, Philippines, Tanzania, Vietnam, the United Kingdom and Zambia, a varied mix in terms of their levels of economic development and civil society engagement. The pilot programme was successful in eliciting information that was previously unavailable in construction projects from a variety of sectors, through the commitment of key players and the endorsement of governments in the pilot countries. Another key element of the pilot was the collection of data, allowing the creation of a baseline for analysis and benchmarking of critical areas such as time and cost overruns and the level of competition in the procurement process. Since its official launch in 2012, in addition to the original eight countries, CoST is now active in Afghanistan, El Salvador, Honduras, Thailand, Uganda and Ukraine.

The initiative shares similar goals with the IP, particularly in terms of benefits for stakeholders. Based on a comparison of projects across the globe, CoST identified the following for governments<sup>109</sup>: greater efficiency of public spending; improved quality of public services; improved business environment; building public confidence; enhanced political reputation; reduction in risks to public safety resulting from poor building practices; increased prospects for investment. For the private sector stakeholders, benefits include: greater confidence that a 'level playing field' exists; the potential to invest in new markets based on fair competition; a more predictable business environment and improved levels of trust; reducing reputational risks and improved access to

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<sup>108</sup> See: <http://www.constructiontransparency.org/the-initiative/objectives?forumboardid=3&forumtopicid=3>.

<sup>109</sup> See: <http://www.constructiontransparency.org/the-initiative/benefits?forumboardid=4&forumtopicid=4>.

financial markets. Finally, civil society benefits includes greater opportunities for public involvement; identify if value for money is being achieved; demand improved service delivery; provides assurances that corruption is being mitigated.

From these similarities in terms of goals, CoST and the IP approach them quite differently. CoST works according to the following method. First, it aims to promote transparency through the disclosure of data on infrastructure projects. Through the establishment of a disclosure framework, procuring agencies share information and basic data with the public at various points in the project cycle, within a framework that is sustainable and fitting to conditions of the CoST country in question. Secondly, CoST includes an assurance process, whereby the data that is provided is validated and interpreted in a way to assist stakeholders, through the use of an independent team that monitors compliance by the procurement body, highlights any issues of concern, and undertakes reviews when necessary. Finally, all CoST countries feature a Multi-Stakeholder Group (MSG), featuring representation from government, private sector and civil society. Ultimate responsibility for CoST outcomes and management of the programme rests with the CoST Board, which is supported by an international CoST Secretariat and a Delegate Assembly. The three stakeholders groups are represented to varying degrees in all three bodies.

The primacy of data, a clear focus on systemic change and the organizational structure of the programme are some of the distinguishing elements of the CoST methodology from the IP. By using benchmark data from procuring agencies on what are normal costs in a tender, CoST stakeholders can take informed positions on actions for improvement. The broader scope of CoST in comparison to that of the IP is another defining characteristic separating the two approaches. There is a clear acknowledgement of the difficulties of proving corruption, thus CoST takes a broader approach, looking at value for money in its efforts to promote transparency, and the long-term approach, rather than on isolated procurements, helps draw in more of the private sector, according to proponents of the initiative.

Transparency is at the heart of the CoST Initiative's ethos and activities, aligning it with the OECD Principles. An example of this can be found in Principle 1's reference to providing transparency across the entirety of the procurement cycle and the work of CoST Philippines. In the implementation of the pilot, the ten projects selected during this process had information published that went beyond just the tender and included the entire project cycle.<sup>110</sup>

As the Results Chain of CoST evidences, ensuring that public procurement funds are used for intended purposes and that procurement officials meet certain standards of integrity are also essential elements of CoST. Examples of positive engagement with government officials have emerged in several pilot project countries. In Malawi, the baseline study conducted as part of the pilot project exposed a large number of cost and time overruns, highlighting capacity gaps in the

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<sup>110</sup> See: <http://www.constructiontransparency.org/philippines>.

Ministry of Transport and Public Infrastructure. A reform package was subsequently introduced by the country’s parliament, which in part aimed to improve management capacity and ensure more efficient service delivery.<sup>111</sup> Ensuring adequate training, another element of OECD Principle 4, is addressed by CoST as well, as evidenced in 2014 when CoST Guatemala provided training to officials from a number of procuring entities on disclosure requirements as part of new government regulations.<sup>112</sup>

Furthermore, the multi-stakeholder governance structure of CoST highlights its strong adherence to Principle 6, encouraging close cooperation between stakeholders to maintain integrity standards. TI has supported CoST from the beginning, with several opportunities for organizational synergies between Chapters and CoST emerging over the years. Chapter representatives are active in three country multi-stakeholder groups, either as Chairpersons (Philippines and Zambia) or as representatives of civil society in general (Ethiopia). El Salvador, which has been implementing Integrity Pacts since 2011 through the TI chapter Fundación Nacional para el Desarrollo (FUNDE), is also a CoST country since 2013. FUNDE and other government, private sector and civil society groups took part in workshops for the development and design of CoST El Salvador in the period preceding the launch of the programme.<sup>113</sup>

Accountability is the second main goal, after transparency, of the CoST initiative, underscoring the initiative’s incorporation of the fourth and final OECD pillar, Accountability and Control. Principle Ten in particular and its emphasis on the role of civil society, the media and the wider public’s empowerment to scrutinise public procurement embodies the theory of change that CoST espouses.

Figure 19: CoST v Integrity Pacts

	Transparency	Good management	Prevention of misconduct, compliance and monitoring	Accountability and control
CoST	XXX	XXX	XXX	XXX
IP	XXX	XX	XXX	XX

Taking in to account these complementary and contrasting elements, and the demonstrated strengths of CoST in fulfilling criteria established by OECD Principles, it becomes clear that CoST aligns more with new thinking in terms of using a systems approach, its use of information and a wider group of stakeholders, incorporating more elements of good practice in public procurement.

<sup>111</sup> See CoST Briefing Note 12: <http://www.constructiontransparency.org/documentdownload.axd?documentresourceid=66>

<sup>112</sup> See: <http://www.constructiontransparency.org/guatemalatrainsover300procuringentities?forumboardid=58&forumtopicid=58>

<sup>113</sup> See: <http://www.constructiontransparency.org/elsalvador?forumboardid=10&forumtopicid=10>

Nevertheless, and as already been evidenced, the IP can fit within the framework of a CoST approach as a complementary measure among a government or contracting authority's toolbox to promote public procurement integrity.

## 6.5 High Level Reporting Mechanism<sup>114</sup>

The concept of the High Level Reporting Mechanism (HLRM) was developed in 2012 by the Basel Institute on Governance, OECD and Transparency International, together with a group of international companies seeking solutions to bribe solicitation. Though not a legal mechanism, the HLRM functions in complement to law enforcement institutions. It aims to provide a constructive approach for companies and governments through the development of an in-country process for receiving, assessing, and quickly resolving complaints from companies affected by bribe requests in their dealings with officials at the level of administrative processes or specific public projects. Its primary purpose is thus to provide an early point of recourse to companies to address their concerns and prescribe a 'quick fix' before they lead to preventable harm.

The HLRM represents an effort to address the 'demand' side of corruption, essentially solicitation and extortion of companies from public officials. Public procurement in particular can be significantly affected and thus lends itself to an HLRM approach. In achieving its objectives - reducing solicitation, and ensuring that the procurement process runs smoothly when issues arise - the HLRM, similar to the IP, takes a multi-stakeholder approach to develop an institutional framework for the efficient resolution of complaints raised by bidders. From these activities, the HLRM seeks to build confidence in procurement from the business community, as well as the public and other stakeholders, who will observe that procurement is being conducted efficiently and free of bribery. To ensure that these efficiency and transparency gains are recognized as well, the HLRM should include regular reporting to stakeholders on outcomes. In addition, the HLRM can serve as a vehicle for long-term change by identifying systematic regulatory risks.

At present, the HLRM is under development in several countries and is operational in two countries. Befitting the flexible nature of the concept, it has been implemented and adapted according to each country's particular requirements. The initial pilot was conducted in Colombia, formally launched in April 2013, specifically in the context of a road improvement scheme that required a series of tenders for the execution of the project. The variant of the HLRM in Ukraine takes on a much broader mandate, and is focused on addressing issues relating to the unfair treatment of business and is carried out through a Business Ombudsman function. The Ombudsman commenced work in 2014.

Transparency, the first pillar of the OECD Principles, is an important element of the HLRM. The Basel Institute and OECD advise that for countries that wish to consider implementing an HLRM, a website

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<sup>114</sup> See Heimann, F. 2012. "High-level reporting: overcoming extortion", in *Collective Action: Innovative Strategies to Prevent Corruption*, Mark Pieth (ed.), Basel Institute on Governance, 2012.

that displays its activities, coupled with a tool for online receipt of complaints, is an essential element of this process. Although not limited to procurement processes, the Ukrainian Business Ombudsman presents a good example of this, with regular reports, case studies, news items and FAQ made available on its website (<https://boi.org.ua/en/>). The site also provides regular complaints statistics. While the HLRM does commit itself to transparency, the increased focus on the 'demand' side of bribery differentiates it significantly from the IP's more balanced set of undertakings and requirements for bidders and the contracting agency. In Colombia, for example, participation in the pilot was limited to pre-selected companies; at the same time, an integrity pledge (akin to an IP), was included as a requirement for the companies, stating that they would not engage in dishonest dealings with any public officials, and would make use of the HLRM.

The second pillar, good management, is only tangentially related to the main aims of the HLRM. The first principle under this rubric, relating to public financial management, may in the long run be supported through reduction in bribery and extortion attempts, thus ensuring that procurement funds are used for their intended purposes. Similarly, by providing a quick response to any irregularities or concerns raised by the bidder, the HLRM can avoid protracted legal proceedings that delay the procurement process and over time produce genuine cost savings. The HLRM does not however *a priori* provide mechanisms for supporting or improving procurement managers' capabilities in financial management. The second Principle under this Pillar, relating to professional standards and integrity of procurement officials, falls slightly more under the aegis of the HLRM.

Like the IP, prevention of misconduct (OECD Pillar 3) is also one of the strong points of the HLRM. At the same time, the anecdotal evidence base for the prevention of corruption also is a concern when evaluating the HLRM. In the Colombian pilot, there were only two complaints received from among the 15 pre-selected companies, neither of which was related to issues of bribery and extortion, but instead more of a general technical nature. Whether this prevention measure can be attributed to the HLRM, unfamiliarity with the process creating unwillingness to report, or concerns with the implementing government cannot be fully discerned from the pilot phase. Confidence in the HLRM process however has seen it develop further in Colombia, and anecdotal evidence through discussions with businesses involved in the bidding process suggest that the HLRM has boosted trust and confidence.<sup>115</sup>

The HLRM well addresses the fourth rubric of the OECD Principles, Accountability and Control. The *raison d'être* of the HLRM is the establishment of a detailed and effective complaints management process, which encompasses Principle 9 of the OECD Principles. Again the Colombia model highlights this process. Bidders can raise concerns on suspicions of bribery as well as technical concerns within the tender process. It begins with an initial assessment from the Office of the Secretary of the Transparency, to determine if it should then move to the multi-stakeholder ad hoc committee. This stage involves face-to-face meetings with the complainant company in situations

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<sup>115</sup> Wehrle, 2015.



where the complaint has been filed with the company identifying itself. After having passed this first screening, the vetted report is then forwarded to the ad hoc committee for the purpose of analysing the complaint further and for the committee to send a set of observations about the tender process to the Secretary for Transparency. At this stage, on the basis of the analysis undertaken by the committee, the Secretary for Transparency may schedule a hearing for clarification with all involved parties, including the project’s beneficiaries, the other bidders, the contractor and the project structuring agent or broker.

Similarly, as its name would suggest, the HLRM by its nature is meant to be within a high and prominent place within the hierarchy of public authorities. In Colombia the HLRM is established within the presidential administration. Conversely, this may not be appropriate for all scenarios where political will is considered lacking and impartiality is compromised in the views of the primary stakeholders, the bidding companies. Finally, the regular publication of reports and statistics as undertaken by the Ukraine Business Ombudsman contributes to the empowerment of CSOs, the media and the public to scrutinise cases that may be problematic at the interface of government and business. While the mandate of the Ukrainian HLRM model is not limited to procurement issues, these also fall within the range of activities concerning which the Business Ombudsman can receive complaints, comment and suggest remedies.

Figure 20: High Level Reporting Mechanism v Integrity Pacts

	Transparency	Good management	Prevention of misconduct, compliance and monitoring	Accountability and control
HLRM	XX	X	XXX	XXX
IP	XXX	XX	XXX	XX

In several ways, the HLRM and the IP present a very complementary relationship. The IP goes significantly further than the HLRM in its requirements for the bidders, as well as its transparency requirements. Meanwhile, the detailed reporting mechanism and structures in place in the HLRM may provide greater incentives for the participation of business and reinforce the prevention elements of the IP. One of the success criteria of this Learning Review for the IP involved the degree to which the IP has been adopted by neighbouring countries. The HLRM is currently experiencing a similar testament to its applicability and success, as Panama and Peru currently explore possibilities for HLRMs within their respective governance structures. The IP may be a potential complementary mechanism in this regard.

## **6.6 Conclusions: The IP in a System of Public Procurement Integrity Approaches**

The world of anti-corruption and public procurement integrity has made huge strides since the inception of the IP in the 1990s. In this respect, the IP has remained relevant and flexible as an approach for governments and other stakeholders seeking to increase transparency and accountability in procurement processes. Nonetheless, the new mechanisms developed as highlighted in this chapter offer many complimentary tools which, when looked at holistically and from a systems approach, can offer mutually enhancing opportunities towards fostering public procurement integrity.

## 7 Conclusions

The IP is a pioneering anti-corruption instrument and remains relevant today in promoting public procurement integrity. Since its inception in the 1990s however the anti-corruption and integrity environment has changed dramatically. An improved legal and regulatory framework, a rise in zero tolerance for corrupt practices among businesses and societies, and the development of new tools and thinking on compliance and anti-corruption issues have advanced considerably beyond the initial “islands of integrity” concept. As a dynamic and flexible tool, the IP, its supporters and potential beneficiaries must determine if it remains fit for purpose in achieving its stated objectives - and if it is not, either adapt or abandon. This Learning Review has sought to take stock of IP experiences, identifying some of the principal elements of the IP and its performance, as well as its strengths, weaknesses and comparisons with new tools and best practice in public procurement integrity.

### 7.1 IP Experiences Globally

In a first step, the report examined the range of IPs and implementation methodologies employed in recent years. Building on the findings of the 2015 study on European IPs by Blomeyer & Sanz, this Review identified many common traits and points of divergence in global IP experience. Most IPs have been conducted in a country context where, despite significant corruption challenges, a certain level of economic resources, legal framework, governance and political will has been pre-requisite before introducing an IP to address corruption in public procurement. Chapters have taken a number of roles in the process, from initiator, implementers, monitor, facilitator and more. Careful consideration of necessary requirements - financial, technical and human resources - are critical to ensure that the Chapter can perform its designated role in the process.

Chapters have largely been supportive of a mandatory signature of the IP for all bidders as a requirement for participation in the IP. This is preferred in order to best promote the level playing field among competitors. A number of clauses to the IP have been recommended and used to varying degrees, however a core set of four have seen consistent use for bidders: prohibitions of bribery, facilitation payments and collusion, and a fourth requirement to disclose information regarding payments relating to the contracting process. Similar clauses formed the core set required of contracting authorities, replacing the fourth bidder requirement with the equal sharing of information from the contracting authorities. Attributing the success of an IP to the inclusion or exclusion of a certain clause however remains challenging to prove empirically. In conversations with stakeholders this has been rejected as a primary driver of a successful IP and IP outcomes in the course of the procurement process, as long as the principal clauses are included and signed-off by all participants.

The majority of IPs conducted have involved the presence of an independent monitor to oversee the implementation of the IP and ensure that the clauses are upheld by signatory parties. Contracting authorities and Chapter representatives spoken with in the context of this Review affirmed the importance of the monitor to successful IP outcomes. This is especially the case when the monitor takes a proactive, constructive approach, maintaining regular communication with the signatories and providing recommendations for long-term improvements. Another finding of this report concerning monitoring is the emergence of what we term 'open-monitoring', whereby responsibility for monitoring public procurement is taken up by a wider range of stakeholders. This trend has been most evidenced in more recent IPs in Latin America.

The use of sanctions and dispute resolution mechanisms has played a minor role in the application of IPs. While some Chapters have mentioned the mere inclusion of sanctions as a deterrent to impropriety, others noted that they have played little role in their experiences with the IP. It was recognized that many Chapters have prioritized a constructive approach, that is open and dialogue driven when issues arise that may require the attention of the monitor or contracting authorities. Nonetheless, the frequent lack of clearly prescribed processes and procedures for dealing with suspected breaches, or incapacity on the part of the Chapter, monitor or both, may play a factor in infrequent usage of sanctions and dispute resolution mechanisms. To ensure that the IP's teeth are not misinterpreted for those of a paper tiger, increasing its capacities for analysis and observation so that misconduct is appropriately sanctioned may be worth consideration by implementers of the IP.

Finally, a significant dividing line in the use of IPs was exhibited by their relationship to the law. For most Chapters and country experiences, IPs have been implemented for isolated procurement projects. Elsewhere, including in India, Italy, Mexico, Pakistan and South Korea, IPs have been incorporated as mandatory items either in regional public procurement processes or within organizations' procurement structures. A legal requirement, policy recommendation or promotion from regional or national governments provides a support structure for IPs conducted in this manner. This Review has identified advantages and disadvantages to both approaches, which Chapters should take heed of in future. The repeated application of IPs as a result of a mandatory requirement offers greater learning opportunities and exposure of stakeholders to public procurement integrity matters, thus better addressing sustainability of outcomes and long-term behavioural change. At the same time, careful attention is necessary to ensure that it does not succumb to the case of being a 'tick the box' condition of public procurement participation.

## **7.2 IP Review Question Categories**

The review questions developed in the context of this reports focused on three main themes relative to IP performance: efficiency, effectiveness and impact; sustainability; and flexibility. A fourth cross-cutting set of questions sought to tackle weaknesses of the IP and the business case for its application.

### **7.2.1 Efficiency, Effectiveness and Impact**

The IP has shown its greatest potential and success as a preventative tool. Concrete examples of corruption cases identified by the IP have been limited, with the majority of Chapters pointing to this as evidence of the IP's success in deterring misconduct. On these criteria alone, this Review cannot confirm unequivocally the success of the IP in preventing corruption. Rigorous monitoring and evaluation and the establishment of baseline comparisons with procurement processes not involving IPs has not been standard practice for many Chapters. Where the IP's effectiveness and impact has been greater has been in its contribution to ensuring procurement is conducted according to the law, and promoting best practice for procurement, essentially serving as a learning tool for procurement governance and promoting transparency.

The application of an IP in public procurement process has not been found to have created costs, or loss of efficiency. At the same time, efficiency gains as a by-product of the IP have remained evidenced only anecdotally. Some isolated examples of cost savings due to introduction of an IP - either through reduced litigation costs, on lower prices on procurement goods and services - have also been highlighted from the Learning Review. Again, many Chapters have not prioritized collection of this information or establishment of a baseline assessment for thorough analysis, limiting the evidence base.

### **7.2.2 Sustainability**

The sustainability of IP outcomes has not always been a factor in their design criteria, thus the analysis must be interpreted with caution. Nonetheless, it is an important consideration for future IPs in light of current more holistic discussion on integrity interventions, thus its inclusion as a category in this Review.

Documented sustainability of IP outcomes as evidenced through measurements of increased stakeholder satisfaction has demonstrated IP success in isolated incidents. Greater attention to feedback from stakeholders and public beneficiaries in the immediate aftermath of the IP however would assist in determining outcome sustainability. This again requires comparison with baseline perception measurements of similar procurement processes without the IP.

Another method by which IPs have proven their contribution to sustainability of positive outcomes in public procurement is through their increased adoption by neighbouring jurisdictions, and the incorporation of IP elements into legislation. Several examples were evidenced during this Learning Review.

The elevation of the IP from an isolated procurement exercise to a required element in a public tender further demonstrates the IP's achievement in attaining sustainability of outcomes. This has been apparent in the work of several Chapters. This indicator of however must be observed and interpreted with caution. The institutionalisation of an IP that is flawed or incapable of producing effectiveness in the procurement process should not be held as an example of sustainability.

Key factors contributing to the sustainability of IP outcomes include political will on the part of the contracting authorities and governments that promote the IP, as well as a high degree of professionalization of the monitor.

### **7.2.3 Flexibility**

The IP has been applied in a wide range of national, legal, sectoral and procurement contexts since its inception. This Review finds that the flexibility of the IP has allowed it to adapt to these diverse applications and remain a net positive contributor to procurement outcomes. Careful preparation remains essential for the Chapter and other stakeholders seeking to initiate and implement the IP, including 1) the need to understand the legal, political and economic conditions at hand; 2) study of the other stakeholders involved in the IP, as well as the corruption risks involved in the procurement; 3) careful planning of activities based on desired objectives; 4) adaptation of the communication and monitoring activities planned for the IP to align with available capacity. As part of the theory of change of the IP is dependent upon participation of an active civil society and public engagement process, this last element is of particular importance for consideration.

Concerning flexibility of the IP from a content perspective, the inclusion and empowered role of the monitor was found to be the most important IP element in promoting positive outcomes in the procurement process. This is especially the case when monitors take a proactive and empowered approach, establishes good relations and regular consultation with the contracting authorities, and promotes a level of trust with the bidders.

Limits to IP flexibility emerge when the complexity of procurement - either from a financial perspective or number of tenders for monitoring - are beyond the capacities for diligent monitoring. While increasing resources may mitigate some of these concerns, Chapters and implementers should apply rigorous assessment to ensure capacity is available to provide effective implementation of the IP.

### **7.2.4 Cross-Cutting**

The potential weaknesses of the IP must be addressed in order not to jeopardize the tool's future effectiveness. The risk of the IP being misused and only serving as window dressing, without credible application and acceptance from stakeholders, remains a danger to the IP's credibility. This is particularly a concern in IPs that become a requirement for certain tenders, whereby it can be reduced to a 'tick the box' exercise. Chapters should consider public denunciation and/or removing themselves from involvement in an IP that has been compromised and is no longer deemed fit for purpose.

The other cross-cutting issue addressed in this review has focused on the business case for the IP and at times hesitation of private sector firms to engage in or adopt the IP. Establishment of the level playing field and maintaining a reputation as a good corporate citizen are elements of this business

case for the IP. This is further underscored by the fact that public procurement represents one of the governmental activities most vulnerable to corruption, on account of the large amount of money spent each year, and close interaction between public and private actors. Yet Chapters have often struggled to increase engagement from the private sector or to make companies champions of the IP. TI and implementing Chapters have hampered these efforts by a lack of rigorous monitoring and evaluation to further quantify and demonstrate the financial benefits of the IP as well. By further emphasis on these areas in IP evaluation, Chapters may improve their ability to speak the language of business. Coupling these concrete examples with further emphasis of the level playing field, and inviting the private sector to contribute suggestions as to IP implementation may increase success in encouraging private sector participation.

### **7.3 IP and Public Procurement Integrity Approaches**

Finally, as the establishment of the business case for the IP has confirmed, it is in the economic and social interest of all firms to be aware of the current anti-corruption environment and integrity demands from law enforcement, the public and other stakeholders. The development of anti-corruption compliance programs affirms their recognition of this fact. Governments have also been required to improve their legislative frameworks and exhibit their commitment to the fight against corruption. Yet multi-stakeholder approaches, combined with transformative technological tools, can complement and elevate the potential benefits of the individual firm or government actions, with the added support of civil society to increase accountability and information sharing with the public. While the IP was one of the first to recognize this, this Review has found that many recent tools go further in their efforts to promote transparency and accountability in public procurement, by taking a whole systems approach, maximizing the use of technology and involving greater participation from stakeholders and the public at large. The IP nonetheless remains relevant in this context and together with these new approaches can offer mutually enhancing opportunities towards fostering public procurement integrity.

Together with the monitoring and evaluation framework developed in tandem with this report, we hope that these findings and the recommendations that follow will be of use to current and future implementers of the IP, ultimately integrating the IP within a comprehensive approach towards transparency, accountability and integrity within public procurement. In this manner the IP will assist in establishing a more level playing field and sound value for money in public procurement.

## 8 Recommendations

This section presents recommendations based on the findings of this review, with each recommendation preceded by the issue that it is intended to address. The recommendations primarily target TI Chapters but whenever relevant to other stakeholders, this is noted below. Comprehensive adoption of the recommendations might not always align with the means (i.e. financial personnel, expertise) at the disposal of stakeholders. We encourage stakeholders to reflect on the identified issue, consider possible solutions/approaches, and assess the means needed to implement workable solutions.

ISSUE	<i>The multi-stakeholder engagement element of the IP is one of its defining characteristics, and when implemented properly an important element of IP success.</i>
RECOMMENDATION	<p>TI Chapters: Involve all stakeholders actively from the start of the IP, including bidders, and including in the design phase.</p> <p>TI Chapters: Get involved with other multi-stakeholder initiatives, anti-corruption Collective Action initiatives, to further promote mutual learning, advocacy and effectiveness</p> <p>TI Chapters: Adopt an internal decision-making mechanism adjusted to the needs of IP. This could be done by establishing an advisory committee with a degree of decision-making power, consisting of national board members, IP project director, external IP or procurement experts, etc.</p> <p>TI Chapters: Ensure that procurement processes which feature IPs have been subject to a needs assessment, thorough analysis of the corruption risk profile as well as the legal, political and economic conditions surrounding the proposed IP. This can serve as a baseline to further measure impact of IPs.</p>
ISSUE	<i>Integrity Pacts place a great deal of focus on observation of the process as a decisive factor in the achievement of IP objectives, centred around the role of the monitor, yet practices and methods vary considerably, influencing results.</i>
RECOMMENDATION	Contracting authorities / TI Chapters: Involve the monitor from the earliest possible stage of the procurement process, preferably during the design stage of the tender, the monitor should field appropriate experts at this stage to ensure credibility and to have a strong position



	<p>from the start of the process.</p> <p>Contracting authorities / TI Chapters: Professionalize the monitor: Only use persons who have subject matter knowledge of the industry involved in the procurement, as well as expertise in the procurement process itself.</p> <p>Contracting authorities / TI Chapters: Use more than one individual and ensure that he or she has the capacity to assemble a team if necessary, drawing on expertise when necessary (in for example a form of consortium)</p> <p>Contracting authorities / TI Chapters: Provide rigorous training to the monitor on implementation issues, procurement red flags.</p> <p>Contracting authorities / TI Chapters: Incorporate greater social control mechanisms whenever possible – monitor cannot do it alone; and work with sectoral initiatives, other committed stakeholders.</p>
ISSUE	<p><i>IPs have difficulty explicitly demonstrating their added value to the promotion of transparency and accountability in the public procurement process.</i></p>
RECOMMENDATION	<p>TI Chapters: Establish rigorous methodology and evaluation framework in order to capture baseline assumptions and the change - positive or negative - that the intervention created.</p> <p>There should be less focus on “corruption” per se when promoting and implementing the IP, in light of difficulties in evidencing corruption and corruption prevention, and instead stress the prevention and management of irregularities, ensuring that the procurement process has minimal disruptions, and mediation capabilities that are quick and effective.</p>
ISSUE	<p><i>Despite the great deal of flexibility that an IP can exhibit, the operating environment can play a role in successful outcomes, be it due to legal elements, economic situations, the use of certain anti-corruption tools in complement with the IP, or other broader systemic issues</i></p>
RECOMMENDATION	<p>TI Chapters: Understand the legal, political and economic conditions at hand before and during the Integrity Pact, and adjust accordingly.</p> <p>TI Chapters: Study the other stakeholders involved in the project, as well as the corruption risks involved in the procurement. A risk-based approach is essential.</p> <p>TI Chapters: Plan activities based on the desired objectives for the Integrity Pact.</p>

	TI Chapters: Adapt the communication and monitoring activities planned for the Integrity Pact to the available capacity.
ISSUE	<i>IPs have frequently covered only certain phases of the procurement process, due to specificities to the implementation and/or national context in which it has been introduced.</i>
RECOMMENDATION	Contracting authorities / TI Chapters: The IP should cover the entirety of the project, or at the very least part of the bidding and contract implementation phases.
ISSUE	<i>Many IPs have not been designed with a long-term view on sustainability of outcomes and their potential role within the wider procurement environment</i>
RECOMMENDATION	TI Chapters: If feasible and after taking potential limitations into account, promote IPs in the context of legislative change or recommendations from ministries within the government.  TI Chapters: Seek a champion within the contracting authority/government, and identify government policy priorities that align with transparency and integrity measures.
ISSUE	<i>IP activities and results have received little traction in the media, the public and at times from stakeholders involved in the process.</i>
RECOMMENDATION	Contracting authorities / TI Chapters: Establish a clear communication strategy using media adapted to the local context that will have the best outreach capabilities, particularly digital communications strategies, regularly updating on IP activities, progress; provide fora for feedback.
ISSUE	<i>In some circumstances the IP can run the risk of being used for window-dressing purposes, which can also damage the reputation of the TI Chapter and other stakeholders involved</i>
RECOMMENDATION	TI Chapters: For IPs that are suspected of not being fit to purpose and where there is direct involvement of the Chapter, the Chapter should have and make use of the option to exit the IP. Establish a clear escalation protocol for these eventualities and make public the reporting on these decisions.
ISSUE	<i>Some private sector and other economic actors express reluctance to engage in IPs</i>
RECOMMENDATION	Contracting authorities / TI Chapters: Consider the use of incentives to encourage participation, such as White Lists or other forms of recognition for firms that champion and take part in IPs

ISSUE	<i>There is a lack of centralised knowledge, communication and sharing of best practices on IPs among TI Chapters and other stakeholders</i>
RECOMMENDATION	<p>TI Chapters: Introduce electronic tools such as those developed by TI-USA for greater communication, knowledge and experience sharing among TI Chapters, establishing a learning community with resource documents, forums.</p> <p>TI Secretariat: TI Secretariat can take a more centralized role in knowledge sharing and repository activities, semi-annual practitioner forums or other methods to provide guidance to Chapters seeking to implement IPs or to improve upon their present application.</p>
ISSUE	<i>Funding concerns have raised issues on sustainability, when monitoring of the IP is conducted by the Chapters, or issues of independence, when funding is undertaken by the contracting authority/government</i>
RECOMMENDATION	Contracting authorities / TI Chapters: Impose a 'pay-to-play' methodology whereby all stakeholders contribute to the remuneration of the monitor and in part to the overall architecture of the IP so as to promote greater ownership from all stakeholders.
ISSUE	<i>The application of sanctions and use of dispute resolution mechanisms has been limited</i>
RECOMMENDATION	Contracting authorities / TI Chapters: Establish a clear set of procedures for the imposition of sanctions. This should include a process for screening the complaints (and delineation of who can submit them), assessment criteria for the complaint, a resolution approach, escalation criteria and procedures in cases where the involvement of legal authorities is required, and recourse procedures in cases of disputes. The procedures should be transparent and disseminated to all stakeholders.

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IP Internal Review, 2010

Final report Latvia Ip 2011.doc

Italy\_Integrity\_Pact 2000.pdf, p. 47

Practitioners' Advice on Implementing Integrity Pacts (draft), 2015.

## Annex II: European Learning Review - Integrity Pacts for Public Procurement

The Learning Review conducted by Blomeyer & Sanz in the spring of 2015 assesses the design and implementation of Integrity Pacts according to their effectiveness, impact, sustainability, flexibility and replicability. The review prioritizes Integrity Pacts in the EU Member States and aims to identify how the model can be carried out efficiently and best adapted to various contexts and needs.

The methodology employed to deliver the review combines desk research, survey work, stakeholder interviews, and case studies.

- Stakeholders included representatives from civil society, independent monitors, procurement authorities, economic operators, and external experts.
- Surveys of TI Chapters and external experts on anti-corruption in the European Union (EU) resulted in feedback from fourteen EU Member States.<sup>116</sup>
- Field visits were conducted to Bulgaria, Hungary, and Latvia. Case studies included Integrity Pact projects from six EU Member states.<sup>117</sup>

### Main Findings and Lessons Learned

#### Effectiveness and Impact

1. Integrity Pacts can effectively detect and follow-up on irregularities in public procurement processes. However, the tool is predominantly a mechanism to prevent corruption.

In practice an Integrity Pact addresses good governance of public procurement processes, part of which is detection and follow-up of corruption. The main focus of civil society monitoring organizations is the detection and follow-up of 'red flags' indicating bad governance. In practice, when such red flags arise, rather than taking a punitive approach to irregularities detected, the monitor takes a more constructive. Ideally a solution is found to the problem in collaboration with the other stakeholders in the Integrity Pact.

The wider governance lens of the Integrity Pact makes the tool predominantly a corruption prevention mechanism. The civil society monitoring organisations prioritize enhancing transparency in order to achieve effectiveness of the Integrity Pact. This is done through access to information as well as public outreach. As with activities relating to detection, all Integrity Pact participants have a role to play here. The IP requires a proactive approach from public authorities as well as from the private sector. Civil society monitoring organisations need to continuously engage these actors in order to ensure effective execution of the Integrity Pact.

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<sup>116</sup> Austria, Spain, Estonia, Poland, Slovakia, Bulgaria, Czech Republic, Hungary, Croatia, Lithuania, Latvia, Portugal, Romania, Slovenia.

<sup>117</sup> Latvia, Hungary, Bulgaria, Germany, Italy, Romania.

2. Integrity Pacts have contributed to changes to civil society monitoring organizations, procurement authorities, and economic operators.

Civil society monitoring organizations increased their knowledge and capacity due to Integrity Pacts. The main challenge they face is not being in a position to capitalize on these gains due to lack of funding for follow-up activities. Furthermore, Integrity Pacts have a positive impact on procurement authorities, especially by engaging them in outreach to the public. The tool drives authorities to engage either in proactive outreach or forces authorities to react to public debate instigated by the findings from the monitoring. For economic operators the Integrity Pact provides them with the opportunity to show dedication to fair competition.

3. Civil society monitoring organisations systematically feel responsible to avoid problems relating to additional costs, delays and reputation damage, regardless of whether these can be attributed to Integrity Pacts.

The main concern for civil society monitoring organisations is reputational damage given that Integrity Pacts cannot fully exclude corruption. The organisations are also vigilant about the possibility that procurement authorities and economic operators can use the Integrity Pact for window-dressing. A shared concern between all stakeholders is delay in procurement. Regardless of whether delays are attributed to the Integrity Pact, civil society monitoring organizations systematically feel the responsibility to avoid this. This feeling of responsibility is not always shared equally among the stakeholders.

### **Sustainability**

4. Sustainability of changes relating to the Integrity Pact is not always guaranteed.

An important driver behind achieving change during the Integrity Pact implementation is the visibility of the procurement project. This driver remains important after project activities end. Also at this point, civil society monitoring organisations need to maintain a certain degree of pressure on the procurement authorities and economic operators. For civil society, the most important factor for sustainability through follow-up activities is funding. Important factors that contribute to achieving sustainable change are technical expertise, presence during decision-making moments and good relations with stakeholders.

### **Flexibility**

5. In order to effectively and efficiently implement an Integrity Pact, stakeholders should carefully plan the project and adapt activities of the project to the capacity available.

Integrity Pacts by default have a required degree of in-built flexibility which allows them to be designed according to the relevant context so as to be effective, to be manageable, and to be sustainable. There is no one-size-fits-all approach for the tool. It is important to provide the

stakeholders involved with the adequate criteria for implementation and subsequently tools to design and implement an Integrity Pact project. Careful preparation allows for its adaptation to different procurement projects, different sectors, types of procurement, and legal, cultural and economic contexts. Regardless of the situation, designing Integrity Pacts is each time over again a learning process. Civil society monitoring organisations should use the preparation in order to allow for setting high standards for implementation.

6. Financial and human resources need to be strategically allocated to counter risks related to the argument that Integrity Pacts cannot fully rule out corruption.

Before deciding whether to enter into an Integrity Pact, civil society monitoring organizations should take into account the available resources to implement the project. In case limited resources are available, activities need to be adjusted. The independent monitoring function of the Integrity Pact is its strongest attribute. Organizations frequently hire external technical experts and struggle primarily with defining the workload for monitors as well as securing sufficient funding. It exposes the organization to the risk of under-budgeting with the consequence of not being able to effectively conduct activities up until the project closure.



### Annex III: Transparency International experience with Integrity Pacts

Figure 21: Countries with IP experience (as of 2015)



Source: own elaboration<sup>118</sup>

The Integrity Pact has truly been a global phenomenon. In Latin America, five TI Chapters have had relevant experience with IPs, namely Colombia, Mexico, Argentina, Ecuador, and El Salvador. Honduras is currently in the process of designing IPs for the healthcare sector. In Asia, five Chapters have had relevant experience with IP, these being in South Korea, Pakistan, Indonesia, China and India. In Africa, Chapters in Benin, Rwanda, Uganda and Zambia have had experience with IPs.

In Europe, six Chapters have had relevant experience with IPs, namely Germany, Latvia, Austria, Hungary, Bulgaria, and Italy. Two EU Member States are currently beginning work with IPs, namely Spain<sup>119</sup> and Romania. Eleven EU Member States have no experience with IPs (Lithuania, Cyprus, Luxembourg, Poland, Czech Republic, Slovenia, Croatia, Belgium, the Netherlands, France and Portugal). The UK and Poland explored IPs relating to the defence sector. In Poland, these efforts

<sup>118</sup> Template map: [www.presentationmagazine.com](http://www.presentationmagazine.com)

<sup>119</sup> TI Spain is currently in the very first phases of preparing IPs as part of the Siemens Integrity Initiative.

did not materialise in a concrete project. Greece acquired knowledge on the IP by having supported relevant efforts in 2011.<sup>120</sup>

The following sections introduce in more detail some of IPs that have been reviewed for this report as well as the European Learning Review.

## EUROPE

This section presents IP experience in various European countries. The information largely stems from the European Learning Review.

### Latvia

The Latvian Chapter of Transparency International, Delna, has been involved in two civil monitoring of public procurement projects. One involved tracking the privatisation of the Latvian Shipping Company, and the second concerned the construction of the National Library of Latvia (NLL). This overview focuses on the latter.

In 2004, the Minister of Culture invited Delna to monitor the construction of the new National Library in Riga. The construction was launched with political and public support. The decision to procure was made in 2002, but it was not until 2004 that a new government declared the construction a national priority. A special state agency was created under the responsibility of the Ministry of Culture, and was called the Three Brothers (*Jaunie Trīs Brāļi*). This agency had to manage the construction of the library and two other projects - a concert hall, and a museum for contemporary arts. The total cost of the library was estimated at roughly EUR 270 million (USD \$300 million). The economic implications of the project can be considered relevant, in light of Latvia's small size (approximately 2 million inhabitants) and, compared to the EU average, low per capita GDP per capita.<sup>121</sup> Since the start of the project in 2004, economic and political support declined as new governments took office, and economic uncertainty increased in light of the global economic and financial crisis. Construction took place against a backdrop of perceived corruption in the construction sector. All of these factors challenged Delna from the start of the IP in September 2005 until the NLL was commissioned in August 2014.

The agreement aimed to stop corruption, unethical behaviour and inefficient procedures during the construction and to promote transparency. The IP established terms of participatory monitoring of the NLL construction in order to ensure good governance. Delna was assigned the role of monitor of decisions and activities of the ministry and the agency. In order to do so, Delna was given permission to:<sup>122</sup> monitor decisions of MoC staff at all levels; participate in internal meetings and with third

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<sup>120</sup> The tool was not applied but advocacy to authorities resulted in expected forthcoming legislative changes.

<sup>121</sup> In 2004 this was 52% below the EU average. This increased over time to 36% below EU average. See: <http://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&language=en&pcode=teco0114&plugin=1>

<sup>122</sup> Desk research, final report Latvia Ip 2011.doc

parties; ask for clarifications in written and orally; explore third party complaints; analyse documentation prepared by project parties from a good governance and anti-corruption perspective; attract external construction, legal and other experts when needed.

Specific objectives set for the IP were that: anti-corruption declarations were to be included by the MoC for every procurement contract, including for subcontractors; all suppliers that violated or refused to sign the declaration were to be excluded from further participation in tenders, and existing contracts with them were to be terminated; suspicions of corruption were to be communicated to the prosecutor general.

Long-term objectives of Delna included that the IP would lead to improvements in the legislation governing public procurement and contracting.

## Hungary

Since 2011, nine IPs have been implemented in Hungary, two of which at the national level and seven at the local level. Procurement types varied from public relations and financial management services, to technical controller, planning, construction, taxi services, and computer hardware acquisition.

The 2010 Global Corruption Barometer shows that citizens perceive political parties as the most corrupt institutions. The negative perception of political parties is worsened by apparent links between business and politics. TI Hungary in 2012 warned that an estimated 65-75% of procurement is affected by corruption. An estimated 25% of large-scale procurement works are affected.<sup>123</sup> The EU Anti-Corruption Report (EU ACR) also references concern over the link between business and politics. TI's National Integrity System (NIS) assessment report states that corruption risks arise from the interdependent relationship between the political and business elite, concerns regarding the independence of control institutions, and the lack of transparency in the legislative process. Together these risks raise concerns on state capture.<sup>124</sup> An example is the case of Közgép Incorporated, which has won over EUR 710 million in public procurement. The owner of the company was considered a close friend of the Prime Minister, former finance director of the ruling party, and former head of the national tax authority. The company's success in public procurement also has been noted through EU's Operational Programmes.<sup>125</sup>

Against this background, the Government adopted in 2012 a two-year anti-corruption programme. This included important steps in the fight against corruption, such as reviewing laws on public procurement and distribution of funds. Unfortunately, the measures generally failed to address vulnerable sectors such as the business sector, local governments and the legislature. For the development of the anti-corruption strategy, civil society participated in initial consultations

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<sup>123</sup> See: <http://magyarnarancs.hu/belpol/a-beletorodes-a-legrosszabb-80853/?orderdir=novekvo>

<sup>124</sup> Burai P. and Hack P. (2012) *Corruption Risks in Hungary 2011*. Budapest: Transparency International Hungary, p. 232

<sup>125</sup> See: <http://magyarnarancs.hu/belpol/kozgep-tul-a-200-milliardon-78425>

through hearings. The impact of the anti-corruption strategy on the state public administration can be considered effective from the perspective that this level is not widely regarded as a corruption risk environment. Nonetheless, concerns are voiced that politicization of the administration can spill over to lower levels of governance. The 2011 and 2012 Integrity Reports by the State Audit Office identified several irregularities in the public institutions.<sup>126</sup>

IPs were introduced in Hungary for all procurement procedures relating to the project Development of Ózd town's drinking water supply infrastructure and distribution systems and its sustainable control. In the IPs, the municipality signed as contracting authority, together with the bidders, independent monitors, TI Hungary and managing authorities and development agency. The Swiss Contribution Office covered costs for the IP. TI Hungary developed a visualization tool for the project allowing visitors to track easily the process of procurement and the project's current phase. Bidders could voluntarily sign the IP in the agreement pertaining to the construction investment. Adherence to the IP was possible by signing the declaration, which was part of the tender documentation. All bidders signed the declaration.

The municipality of the XIII-District of Budapest signed an IP with TI Hungary as monitor for the public procurement and the implementation of a nursery refurbishment. Bidders joint the IP during the procedure. The municipality contracted an independent company in charge of the procurement procedure. Prior to monitoring the public procurement, TI reviewed the procurement regulations of the municipality and called for changes. Costs for the TI monitor were covered by the municipality.

The Hungarian Public Procurement Act (PPA) does not foresee exclusion of bidders. In Hungary experience shows that breaching the contract can result in disclosure to the public, which has a preventive effect. In case the monitor identifies or suspects a violation of the provision of Act LVVII of 1996 or that of the Treaty of the EU, he/she will notify the contracting authority. On the basis of the PPA, the contracting authority will notify the competition authority. The monitor can also turn to the procurement authority, the police or the public prosecutor.

TI Hungary has prepared e-learning material to inform and brief every single employee/colleague in the institutions signing IPs. If an IP is not correctly implemented it could become an appearance-measure and an additional administrative burden.

## **Bulgaria**

The European Union's Cooperation and Verification Mechanism (CVM) monitors Bulgaria's progress made since the accession to the EU in 2007. The most recent CVM report from January 2015 highlights the effect of political uncertainty on public opinion concerning corruption.<sup>127</sup> The Special Eurobarometer showed that citizens are concerned about the fight against corruption, judicial

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<sup>126</sup> See: [http://integritas.asz.hu/uploads/files/2012-es%20eredmenyek\\_osszefoglaló.pdf](http://integritas.asz.hu/uploads/files/2012-es%20eredmenyek_osszefoglaló.pdf)

<sup>127</sup> See: [http://ec.europa.eu/cvm/docs/com\\_2015\\_36\\_en.pdf](http://ec.europa.eu/cvm/docs/com_2015_36_en.pdf)

reform and tackling organised crime.<sup>128</sup> The CVM reports clearly show progress in the country's efforts to strengthen rule of law however the EC finds anti-corruption deficiencies. Two key issues repeatedly addressed are the need to develop and implement a sound evidence-based policy-making strategy, and strengthening the institutional independence and the capacity of anti-corruption units to develop and monitor the execution of anti-corruption policies.

Various key corruption risk areas are identified in Bulgaria, such as impunity of political corruption, influence peddling between members of political parties and members of organised crime, and public procurement. Key vulnerable sectors identified are the health care and energy sectors. The former experienced decentralisation from the State to the regional level which has not objectively been assessed. The latter requires transparency in market regulation and execution of large public procurement tenders.

Transparency International Bulgaria (TI BG) implemented three IPs in light of their involvement in the Siemens Integrity Initiative. Three different kinds of procurement projects were selected covering three different public bodies<sup>129</sup> managing national and EU funds. From February 2012 to December 2013, TI BG implemented the IPs, which in total covered five public procurement contracts (two public works and three for the provision of goods and services).

## **Germany**

The German local Chapter (TI-DE) has implemented four IPs.<sup>130</sup> In Bremen and Hannover, the Chapter implemented IPs for the procurement of two health care projects. In Berlin, the Chapter implemented IPs for a housing project and for the construction of the Berlin-Brandenburg International Airport.

The Bremen hospital procurement ran at a cost of roughly EUR 230 million. TI-DE monitored both the planning and construction of the works. The IP (signed June 2009) was seen as a pioneer project warranting transparency and anti-corruption. A monitor was assigned to the IP with a legal and construction background. The contracting authority acknowledged the importance of having an independent monitor on their side portraying both such qualifications.<sup>131</sup>

The construction costs of the hospital in Hannover came to EUR 180 million.<sup>132</sup> A construction expert was publically appointed as monitor for the duration of the IP (signed June 2010). The contracting authority highlighted in its press release the importance of the IP as a tool to signal fair competition, corruption prevention and no collusion.

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<sup>128</sup> See: [http://ec.europa.eu/public\\_opinion/archives/ebs/ebs\\_397\\_en.pdf](http://ec.europa.eu/public_opinion/archives/ebs/ebs_397_en.pdf)

<sup>129</sup> Ministry of Regional Development and Public Works, Ministry of Health, and Ministry of Labour and Social Policy.

<sup>130</sup> See: <http://www.transparency.de/integritaetspakt.80.o.html>

<sup>131</sup> See: [http://www.transparency.de/fileadmin/pdfs/Themen/Verwaltung/PM\\_Integritaetspakt\\_Bremen\\_09-09-24.pdf](http://www.transparency.de/fileadmin/pdfs/Themen/Verwaltung/PM_Integritaetspakt_Bremen_09-09-24.pdf)

<sup>132</sup> See: [http://www.krh.eu/unternehmen/presse/pm2010/Seiten/schutz\\_vor\\_korruption.aspx](http://www.krh.eu/unternehmen/presse/pm2010/Seiten/schutz_vor_korruption.aspx)

The IP for the Berlin housing project (signed July 2010) included a team of two monitors with technical, economic and legal backgrounds. The monitors were required to scrutinise the entire planning and construction phase for the modernization and repair of 2,300 apartments in Berlin. The rehabilitation of the apartments started in the 1990s and in total cost roughly EUR 1.2 billion.

The first and largest IP in Germany was signed in 2005 to monitor the construction of the Berlin-Brandenburg International Airport. Being one of the largest construction projects in Europe, the total cost of the procurement project was initially estimated at EUR 2.4 billion. Due to numerous project changes, delays and technical problems, the final cost will be significantly higher. At this stage the date of opening of the airport is still uncertain. In 2005, TI-DE and the company Flughafen Berlin-Schönefeld GmbH (FBS) issued a public call for a monitor team lead, resulting in the appointment of an independent external monitor with a strong professional record in public procurement. For ten years the TI Chapter engaged in IP activities. In March 2015, the Chapter chose to end cooperation due to reported corruption incidents. The experience in this IP has led the Chapter to question the tool's effectiveness.

## **Romania**

TI Romania has provided technical assistance for large procurement processes, engaging in collaboration with a utilities company called Electrica which led to development of an IP. TI Romania has provided technical assistance for large procurement processes, engaging in collaboration with a utilities company called Electrica which led to development of an IP.

The IP includes a conflict of interest provision, disclosure of anti-corruption policy, monitoring obligations, budget, and quality review. The IP legal contract was part of the tender documents. All parties that participated in the bidding were required to sign the IP. At the time of this review, the Romanian IP has not started monitoring activities.

In case of breach, the IP foresees a complicated scheme of financial corrections. Further, provisions for a dispute resolution mechanism stated that complaints first must be mediated. If not successful, the contractor, bidder and Independent Monitor (IM) have the right to appeal to an arbitration panel of experts. If no solution is foreseen, the CA can impose sanctions and initiate formal legal proceedings.

Romania plans to organise a platform of civil society to discuss the monitoring report before launching this IP. The aim of such a platform is to ensure full civil society coverage and, this way, improve the report. At this stage, concrete results from the IP have been the successful advocacy to government stakeholders of the IP process for Electrica. The EBRD is also a shareholder together with the government, investment funds and other small shareholders.

## **Italy**

In 2000, TI Italy analysed the IP model and its applicability to the Italian system based on IP experiences from other countries as well as findings from a workshop in Bogota at the time. The TI Chapter undertook training and education activities and attempted to implement IPs.

The research team dealing with the IP first carefully analysed the tool and systematically assessed which elements are optional or required for the Italian system.<sup>133</sup> Subsequently, the organisation drafted a model agreement and started approaching municipalities to explore interest. Despite expressions of interest, the IPs did not materialize quickly. They were confronted by a 'climate of suspicion and inertia/apathy' perceived as a general characteristic of public environments.<sup>134</sup> In 2000, six municipalities were contacted (Bergamo, Como, Genoa, Milan, Palermo, and Varese). The municipalities of Milan and Genoa tentatively committed.

Feedback received by the organisation in 2008 provides insight into the workings of IPs in Italy. In the sequence of activities associated to the implementation of an IP, the organisation first collects information about the entities that have problems with integrity of procurement processes. Key is to identify champions within the public administration to allow for support of the IP concept. After this, they establish contact and offer support, i.e. through the use of an IP. Once an agreement has been made at the management level, training is foreseen on IPs for procurement staff. Support is given when preparing general purchase conditions in order to introduce the clauses of the IP. After this, bidders are informed about the need for integrity and transparency. Contracting authorities are asked to establish clear mechanisms for contract awarding. Bribes are to be excluded and real competition to win a bid should be based on technical-commercial advantages. The TI Chapter recommends offering the authority continued support throughout the project implementation.

In Milan, an IP materialized.<sup>135</sup> The IP included an undertaking of the public authority and the bidders. For the latter, the IP includes provisions not to bribe, not to use facilitation payments, not to collude and disclose information regarding payments related to the contracting process. Sub-contractors were excluded. The TI Chapter highlighted that collusion was the most difficult hurdle. In addition, it was noted that facilitation payments were a common practice and the organisation expressed concerns that could also affect a certain range of projects abroad. In order to dispel misunderstandings, bidders were urged to signal grey areas. Provisions concerning the authorities included: not to demand or accept bribes; not to demand or accept facilitation payments; to disclose relevant and equal information to all bidders; to guarantee protection of restricted information; to report any attempted or completed breaches; and to provide public information on the contracting process. Disciplinary sanctions were included such as: loss or denial of contract, forfeiture of bid and performance bonds; liquidated damages to principal and competitors; and debarment for a period of five years. Breaches would be dealt with through national arbitration.

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<sup>133</sup> Desk research, Italy\_Integrity\_Pact 2000.pdf, p. 47

<sup>134</sup> Desk research, Italy\_Integrity\_Pact 2000.pdf, p. 47

<sup>135</sup> Desk research, see IP Italy\_final versión 2008.doc

## **LATIN AMERICA**

This section presents IP experience in various Latin American countries. Data has been collected from survey work, desk research, telephone interviews and a field mission to Mexico.

### **Honduras**

The TI Chapter in Honduras is currently establishing an integrity framework in collaboration with the Ministry of Health. The aim of the agreement is to include IPs as a tool to monitor procurement of medicines. The frequent use of emergency procurement procedures was a particular weakness identified in procurement by the local Chapter.

No concrete working mechanism has been set up as at this stage but the Chapter has included various integrity clauses in the framework and already signed some integrity agreements. The Chapter also drafted a concept and strategy paper and has approached the industry in order to ensure support for the activities across the board.

The Chapter expects that the monitoring activities will counter some of the weak control mechanisms of the Ministry and strengthen internal controls. One of the by-products of the IP is that the Chapter can call for more structural reform, especially on bidding procedures but also on more sector-specific issues such as dispensing of medicine. The aim is to launch the first IP towards the end of 2015.

The IP will feature commitments on behalf of the bidders as well as the contracting authorities. For bidders, this will include commitments not to bribe, collude or commit any other illegal acts, and will be held liable for fraudulent representation. Contracting authorities will be requested to disclose procurement information to the bidders and public. In addition, they will be asked to ethically commit to the rules of interaction with bidders during the procurement process. For the Chapter, IPs are meant to be interactive and allowing citizens to comment on bidding documents. In this context, all stakeholders (monitor, TI Chapter, bidders, contracting authorities and citizens) are entitled to make allegations of IP violations.

### **Colombia**

TI Colombia initiated the use of IPs in 1999 and covered sectors as diverse as health, infrastructure, education, finance, energy, housing, communications and transport. IPs in Colombia covered procurement on the national, regional and local level. According to the Chapter, IPs have managed to promote dialogue on ethics and public procurement, improved procurement processes and public contracts, supported in the identification of risks, raised public awareness and strengthened accountability.

Through its experience the Chapter noted that implementation of IPs can be difficult. For example, the Chapter identified a challenge between legal corruption and ethical or moral corruption. While



some behaviour by contracting authorities can be within the boundaries of the law, from a moral stance it can be perceived as unethical. Chapters need to find ways to deal with this, especially when communicating the IP to the public. Another challenge the Chapter faced over the years is the problem of window-dressing and ensuring real political will to drive for change. Finally, the Chapter identified a lack of willingness of participants in a procurement process to blow the whistle on identified irregularities as a problem.

## **Mexico**

In Mexico, the federal government introduced the Social Witness Program (*Testigo Social*) in 2004 after piloting various civil society public procurement monitoring projects in collaboration with the TI Chapter. Since that time, the Chapter has monitored over 200 public procurement processes.

The legally adopted formula for monitoring stems from the IP model designed by TI but differs in various ways from examples identified across the spectrum. For example, natural and legal persons can register and be accredited in order to be eligible for monitoring federal procurement processes. A government selection committee appoints a monitor from a pool of accredited experts to a specific procurement project. *De facto*, the monitor cannot choose the process it wishes to monitor. The contracting authority will include the monitor in the process, provide access to documentation and meetings, and remunerate the work based on time sheets. The monitor has an observatory role, but can comment on procedures and promote good practices. In case the monitor identifies irregularities, it can take the decision to escalate these to competent authorities. Primarily its role is to ensure that the procurement process is done according to the law. In the end, the monitor drafts a monitoring report that will be made public.

The Social Witness Program in Mexico specifically focuses on the bidding process. This however does not mean that the monitors do not ask questions about the activities relating to the pre-bidding or post-bidding stages. Apart from looking at compliance with legal procurement rules, independent monitors from TI Mexico strongly focus on asking authorities and bidders to justify decisions they take. The idea is that this can break information asymmetries within the contracting authority and also between bidders and authorities.

TI Mexico has conducted IP projects for numerous federal contracting agencies. A frequent authority is the state-owned electricity company CFE (*Comisión Federal de Electricidad*). Currently CFE is being privatized and once operating on the private market it will not be required to use Social Witness for its procurement. Nonetheless, the company opted for continuing this and is currently developing its own version of the tool. The TI Chapter provides the company with advice on how to set this up. This includes involving other private sector players in discussing with CFE how to best design this.

TI Mexico and contracting authorities subject to their Social Witness programme identified improvements in procurement quality, which had impact on the final public goods, works and services. The method adopted by the independent monitors includes motivating the contracting

authority to trace back decisions taken and assess whether these suit the needs of the public or economic means at their disposal. With this, the TI Chapter hopes to break the information cycle and move the contracting authority to overturn decisions that might impact public procurement in a negative way.

In Mexico, the Chapter argues that in the future the IP as a tool is expected to become part of an interactive ecosystem of tools that aim to reduce corruption. The role of modern technology, i.e. through open data, in combination with access to information and transparency laws creates new opportunities for citizens to play an active role in monitoring public procurement.

### **El Salvador<sup>136</sup>**

Support for IPs in El Salvador emerged in 2009 following elections which centred on issues of transparency and open government as predominant themes. In the wake of the elections, and in efforts to overcome a reputation for irregularities and corrupt practices at the Ministry of Public Works, efforts were made to introduce some form of external monitoring to public works projects. In discussions involving the ministry along with the aspiring TI El Salvador Chapter Fundación Nacional para el Desarrollo, or FUNDE, and the construction industry, via the industry association CASALCO, the IP was selected as one that would be relatively simple to institute and acceptable to stakeholders. From 2010 to 2014, the ministry, civil society and the construction industry worked together to conduct IPs in major public works projects in El Salvador, and by August 2015, El Salvador had introduced 31 Integrity Pacts with projects worth a total of US\$62 billion.

The system as designed by all three representative stakeholders in 2010 incorporated many of the principal elements of the IP as prescribed by TI, including: commitments from the contracting authority and the bidder not to offer or accept any payment, gift or favour in exchange for advantages, and agreements to disclose relevant information to the monitor. The IP also includes personal asset declaration requirements of all of all officials involved in the project, the publishing of information on project progress on the web, and an undertaking from all parties to report any inappropriate acts.

Monitoring under this IP begins only after a contract has been awarded, and signing of the IP is optional. The reason for the late entry of the monitor in the process is owing to a procurement law which keeps some of the information in the bidding and awarding of contracts confidential. In effect this means that only the winning bidder during the execution phase of the project is subject to the monitoring, which has been undertaken both by the TI Chapter FUNDE and another NGO, Iniciativa Social para la Democracia, or ISD. The selection of projects for the IP came down to a question of

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<sup>136</sup> The information for this section is from Gainer, M. 2015. "A Blueprint for Transparency: Integrity Pacts for Public Works, El Salvador, 2009 – 2014"

resources and priorities, at times being the most complex projects as directed by the ministry, or from FUNDE, which has looked at issues such as costs and public interest considerations.

Tangible elements of the project and its implementation have been the primary focus of monitoring, owing to the difficulty of actually evidencing cases of corruption. This included emphasis on the problem or delay, in the case of FUNDE. For ISD, transparency and accountability indicators have included the quality and amount of information provided by the ministry website and the number of complaints filed against signatory parties to the IP. Reports from both civil society organisations were put on their respective websites and shared with the ministry. Although the IP does not provide a mechanism for response to the monitor's claims, monitors have the option of taking a claim to the public prosecutor or directly to the head of the Ministry of Public Works himself, if of the view that the ministry was not providing sufficient attention to the monitor's concerns. As of August 2015, neither monitoring organization had seen any evidence of corruption.

Stakeholders praised the IP as a deterrent to corruption in early projects, though there was also acknowledgement of the limited scope that they could have due to the singularity of each procurement process. NGO monitoring faced challenges common to many Chapters, including funding and technical capacity. In recognition of this, the Ministry of Public Works joined the Construction Sector Transparency Initiative in 2013, in efforts to build upon the IP experience. Since summer 2015 no more IPs have been run due in part to lack of funding for the work of both NGOs, however the IP has been praised for helping to introduce the culture of transparency in El Salvador.

## **AFRICA**

This section presents IP experience in various African countries. Data has been collected from telephone interviews and survey work.

### **Rwanda**

In 2000, the Government of Rwanda adopted a decentralisation policy and a strategy for its implementation. New corruption risks were identified in line with changes to procurement due to the new policies. As a consequence, the TI Chapter started assessing the relevance of anti-corruption tools concerning public procurement in the Rwandan context. With the guidance of TI-S and TI Switzerland, the Chapter decided that an IP could be the right tool to monitor procurement on the local level. Immediately, the Chapter started mobilizing stakeholders and organised information meetings.

The Chapter's efforts materialised only in 2011 when interest was expressed for IPs for large-scale infrastructure procurement. The Chapter organised meetings with stakeholders explaining and promoting IPs. At the time, the Chapter expected that the IP would help exposing corruption practices and at the same time help reduce such practices. Financial resources were needed. The initial idea was to start on the national level with the Ministry of Local Government and this way

approach local authorities that due to the decentralisation were newly exposed to large-scale procurement.

Once an agreement was made, the Chapter started working through the details of the IP. Meetings were arranged with officials, access was requested to documentation and the Chapter prepared initial reports. Meetings were also arranged with business representatives and additional support received from TI. In 2013, the decision was taken to start monitoring two different projects.

Both the bidders and contracting authorities had commitments to adhere to in the IPs. For bidders, provisions included not to bribe, not to collude, to refrain from all other illegal acts, and to accept liability. They were also to disclose information regarding payments to agents and other intermediaries, provide the same undertakings from subcontractors and report any attempted or fulfilled breaches of the IP. Contracting authorities were requested not to demand or accept bribes and to refrain from all other illegal acts. They were to disclose relevant and equal information to all bidders, guarantee data protection disclose public information on the contracting process and ethically commit to establishing rules of interaction with bidders during and after tender processes. Also, contracting authorities were to report any attempted or completed breach of the clauses.

Concerning sanctioning, the IPs in Rwanda provided additional sanctions to the ones foreseen by law. For example, bidders could lose a contract or be denied one upon breaching the IP. In addition, violations could lead to debarment from contracting with the authority.

The Rwandan IP spans the entirety of the procurement process and contract execution phase. It includes whistle-blower protection and foresees independent monitoring. The IPs do not have a predetermined procedure in place to pursue breach claims because this is already foreseen by law.

In Rwanda, the monitor held procurement expertise in combination with civil engineering knowledge. The monitor was selected through an independent selection committee coming from TI Rwanda's Board, staff, the private sector, and government. The independent monitor is required to identify and prevent irregularities. A key tool of the monitor is the entitlement to allege IP violations. Any anomaly identified by the monitor was to be reported to the Chapter and the contracting authority. The Chapter subsequently posed discretion as to whether or not to inform the public on this. The role of the monitor focused on ensuring that laws were followed, and to scrutinise bidding documents and proposals.

Increased confidence and trust by the bidders is considered a positive outcome from the IPs. However, the Chapter noted that no definite feedback could be given on impact on corruption compared to non-IP public procurement projects, cost savings or increased public support for the government. Concerning its preventive impact, the Chapter points out that, the mere fact that stakeholders are aware of the presence of an independent monitor affects behaviour. In more concrete terms, the IPs resulted in the Rwandan Private Sector Federation to develop a code of conduct that requires signatories to refrain from bribery.

According to TI Rwanda, the most important elements for a successful IP are government support, sufficient budget for monitoring and the close involvement of CSOs. However, the Chapter confirms that aiming for sustainability is obstructed by the high costs for independent monitoring. This makes the IP a one-time anti-corruption tool. Consequently, TI-Rwanda opted for using the Civil Society Procurement Monitoring Tool developed by TI-USA. This allows the Chapter to now monitor three procurement processes in real time, using permanent staff members. Special audit activities are combined with online monitoring, creating a form of social audit. Thus, all procurement processes are put online and as a consequence citizens can also become monitors. Currently TI-Rwanda is promoting the tool in four different districts in Rwanda. The fact that TI is involved already increases trust in the districts. At the same time, their advocacy is creating awareness among policy-makers. With the support of policy-makers and backing of civil society, the Chapter now aims to institutionalise the tool through legislative reform. The Chapter foresees the Ombudsman to play a role as independent watchdog.

## **Uganda**

The TI Chapter started developing the IP concept in 2008 and 2009. They initially organised trainings and meetings on IPs in order to inform stakeholders and gather support. A model was developed in collaboration with a Swiss organisation. The idea was to target road and water works funded by international donors such as the World Bank and the European Union. The reasoning behind this was that these donors could advocate for the incorporation of an IP.

The IP eventually did not materialise. The TI Chapter was confronted with reluctance on behalf of the contracting authorities. First, the authorities were uncomfortable with the concept of an independent monitor participating in a procurement process. Secondly, they considered the legal framework sufficient to allow for a corruption free procurement environment. Finally, the Chapter struggled with a lack of funds to complete the IP. The private sector had expressed interest in the IP but this was dependent on the willingness of the contracting authority to promote it.

According to the Chapter, the local context in Uganda is suited for a tool such as the IP. There are problems with collusion, bribery and kick-backs, even though the procurement process overall is considered open, by way of public websites, transparent bidding and public awarding of contracts. Despite this openness, according to the Chapter, more sophisticated forms of corruption, such as collusion, are not necessarily prevented. In addition, the system does not cover contract implementation, which is considered problematic. The Chapter expects that here the IP could add value.

## **ASIA**

This section presents IP experience in various Asian countries. Data has been collected from telephone interviews, survey work and a field mission to India.

## Indonesia

In 2013 the Chapter initiated the PITA project that supports businesses based on four different pillars: participation, integrity, transparency, and accountability.<sup>137</sup> The project as a whole covers a wide array of activities to help private sector players and in particular state-owned companies to harness anti-corruption standards. Part of this includes active engagement of civil society in the monitoring of procurement. According to the Chapter, a major risk for state-owned companies is undue influence by political parties, in particular the ruling party. In addition, the companies face corruption on the ground when interacting with citizens. The combination of these two requires a holistic approach and therefore it is considered that a project such as PITA can help shield these companies against this. A major project by the Chapter focused on the country's second biggest electricity provider, whose director at the time asked the Chapter for assistance.

In 2013 and 2014, the Chapter introduced the project in 47 business units and 10 subsidiaries. The main driver behind the successful implementation is the leadership of the company. This project is considered a flagship given it is the first time such intensive collaboration materialised between civil society and the private sector.

The IP function of the PITA project builds on the assumption that procurement is vulnerable to corruption and can only be addressed through systematic monitoring and multi-stakeholder involvement. This includes collaboration between the country's anti-corruption commission, the company itself and the Chapter. Together they evaluate existing regulations on procurement, identify weaknesses and loopholes and provide policy recommendations. The project includes provisions for bidders and for the contracting authorities. For bidders this includes the provision not to bribe, collude or engage in other illegal activities. The contracting authorities are in addition asked to disclose information on procurement to the public and to bidders. Also, they have to report any attempted or completed breaches of the clauses, ethically commit to rules of engagement between bidders and authorities and disclose financial interests.

The PITA project does not include specific sanctions apart from those foreseen in the law. The Chapter highlights that monitoring activities are seen as a way to enhance learning of stakeholders. In case irregularities are identified the stakeholders first try to solve these through collective agreement. If this fails, the decision can be taken to follow judicial procedures.

The Chapter has not defined clear criteria for success, however notes that the PITA project is a learning exercise. This is considered temporary and the Chapter aims to finish the project once they consider the company can be self-sustainable in its anti-corruption efforts. Currently, the Chapter is looking into new PITA projects dealing with state-owned companies in the mining sector.

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<sup>137</sup>See: <http://www.ti.or.id/index.php/priority/2013/10/07/pita-empat-pilar-program-pln-bersih>

## Malaysia

The Chapter in Malaysia introduced IPs as tools to address business integrity, with feedback from the Chapter referring to two specific instances. The first instance concerned the mining company KSSB (Kumpulan Smesta Sdn Bhd). This included an agreement in which clear codes of behaviour were established including ways to sanction misconduct. The second case concerned an IP for the company Mass Rail Transit. The MRT case concerned the building of a rail network around Kuala Lumpur. The Chapter further made reference for this LR to an initiative from within the Government to introduce an IP with its suppliers. This was considered of limited impact as the IP activities were in practice limited to only a public statement by the authorities.

Apart from the mining and public works sectors, TI Malaysia also advocates for the use of the tool in other sectors. For example, in 2010 the Chapter called for the inclusion of an IP in relation to a rehabilitation project of a major river which included works for RM50 billion.<sup>138</sup> Spill over effects identified from the IPs have included plans from the public authorities to extend the IP to local councils.<sup>139</sup>

Malaysia's anti-corruption agency refers on its website to the use of the IP in 2010.<sup>140</sup> According to the agency, the main objectives of the IP are to strengthen efforts towards improving integrity and transparency in government procurement while at the same time reduce waste and curb the abuse of power. The IP covers government employees involved in public procurement and members of procurement-related committees, such as bidders and appointed consultants. Sanctions in case of violations include termination of contracts and liability of damages resulted from this termination. Further, sanctions include forfeiture of bids or performance bonds, blacklisting and criminal or disciplinary action against employees.

## Pakistan

The IP was applied in Pakistan in 2001 in the context of the K-III Greater Karachi Water Supply Scheme (K-III Project). The project featured two phases, with TI Pakistan having an extensive role that included implementation of the IP, selection of consultants for design and supervision, and selection of contractors. All bidders were required to sign the IP, with clauses that included not to offer or accept bribes, collude with other bidders, disclosure of all payments and to report violation of the IP. Project sanctions also featured in the IP and included liability for damages as well as blacklisting. The IP itself was part of a 13-Point Programme for Economic Revival of Karachi, with the city government applying similar processes and principles of transparency in other contracts at the time.<sup>141</sup>

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<sup>138</sup>See: <http://transparency.org.my/media-and-publications/ti-malaysia-calls-for-integrity-pacts-ips-in-klang-river-rehabilitation-project/>

<sup>139</sup> See: <http://www.thesundaily.my/node/140459>

<sup>140</sup>See: <http://www.sprm.gov.my/index.php/en/korporat/2015-10-29-01-30-59/142-knowledge/774-integrity-pact-malaysia>

<sup>141</sup> Siddiqui et al, 2015.

TI-Pakistan states that over Rs. (Pakistani Rupees) 1,000 million were saved due to the implementation of the IP, with major savings seen in both phases. In the award of the consultancy contract for design of the project, it was initially estimated by the contracting authority to cost Rs. 249 million, and instead was awarded at Rs. 62 million, roughly a third of the projected costs. While less dramatic in percentage terms, in absolute figures, the cost difference between estimated and awarded construction contracts were even greater. The initial estimates of Rs. 5285 million were instead Rs. 4448 million, a difference of Rs. 837 million. The commitment of the managing directors of the Karachi Water and Sewerage Board (KWSB) was also praised as highly influential in the positive results that followed from the IP, highlighting once more the importance of political will from government authorities. TI-Pakistan has produced a detailed report on this experience

The success of this early experience with the IP led to its being built into Pakistan's Public Procurement Rules enacted in 2004, whereby IPs are applied to public procurement tenders valued at or above Rs. 10 million. Discussions with the Chapter raised concern however at the lack of independent monitoring in the model as applied by the government. With monitoring being the task of the contracting agency instead of TI-Pakistan, as in the case of the K-III project, or another civil society organisation, the IP has less civil society participation than as previously enacted in the country. The Chapter does however perform a complaint mechanism service. Bidders in government procurement may send concerns to TI Pakistan, which, if assessed to be valid, can then be forwarded by the Chapter to the procuring agency and regulatory bodies involved.

Despite concerns over the implementation arrangements, the Chapter has observed a change in the investment climate since the IP's institutionalisation within the procurement rules, as evidenced by more international bidders taking part in public procurement tenders in Pakistan. Nonetheless, in discussions with the Chapter there emerged a desire from their side for the inclusion of independent monitoring and application of sanctions; lack of political will from the government however has hampered the IP from moving in this direction.

## **India**

The purpose of the IP in India is to increase transparency through ethical conduct in public contracting and procurement, provide a mechanism for the detection of risks and red flags, and promote corrective measures. From an implementation standpoint, India has adopted the IP in a fairly unique fashion compared to other Chapters' experiences. The first IP in India was applied by the Oil and Natural Gas Corporation Limited (ONGC) in 2006, a Public Sector Undertaking (PSU), or state-owned enterprise, though TI India has been advocating for the IP for several years at this point. This was followed by the first recommendation of the IP from a government source via the Second Administrative Reforms Commission (ARC), where in its IV Report on Ethics in Governance the IP was recommended as a tool to promote transparency in contracting. The IP in India was further legitimized and advocated for by the government following the issuance of the first circular of the Central Vigilance Commission (CVC) in 2007, which officially recommended the adoption of IPs by



all PSUs. Further circulars issued by the CVC in May and August 2008, as well as May 2009 also recommend adoption of the IP. The 2009 circular outlines what is known as the Standard Operating Procedure (SOP) which outlines essential elements of the IP should it be taken up by PSUs. The official recommendations from the SOP in terms of IP clauses include:

- Promise on the part of the principal not to seek or accept any benefit, which is not legally available;
- Principal to treat all bidders with equity and reason;
- Promise on the part of bidders not to offer any benefit to the employees of the Principal not available legally;
  - Bidders not to enter into any undisclosed agreement or understanding with other bidders with respect to prices, specifications, certifications, subsidiary contracts, etc.;
  - Bidders not to pass any information provided by Principal as part of business relationship to others and not to commit any offence under PC/ IPC Act;
  - Foreign bidders to disclose the name and address of agents and representatives in India and Indian Bidders to disclose their foreign principals or associates;
  - Bidders to disclose the payments to be made by them to agents / brokers or any other intermediary;
  - Bidders to disclose any transgressions with any other company that may impinge on the anti-corruption principle.<sup>142</sup>

The SOP states that the IP should be in effect from the pre-bid stage until completion of the contract, and provides guidelines regarding implementation, role/function and appointment procedures of independent external monitors, and a periodic review system. The actual IP that a PSU decides to use is prepared by the PSU in question, but approved by the CVC and TI India. Roughly half of the PSUs that have adopted IPs have signed a MoU with TI India however this is not mandatory.

This role of the CVC in the process differentiates the IP in India from many in other countries. Though PSUs/contracting authorities are responsible for the bulk of the implementation activities, the approval of the monitor, which the SOP notes should be a person of 'high integrity and reputation' is done by the CVC.

IPs have been a feature of Indian defence procurement since 2006, through the adoption of a provision called the pre-contract Integrity Pact. The goal of the intervention was to eliminate corruption from defence deals through the form of a binding agreement between buyers and sellers which prohibits misconduct. The act which introduced IPs in the defence sector, known as the Defence Procurement Procedures (DPP), also requires an independent monitor, responsible for addressing any violations that the bidders point out. The requirement was continued in the DPP

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<sup>142</sup> See: <http://integritypact.in/download/CVC%20Standard%20Operating%20Procedure%2018%20May%202009.pdf>

2008, with an Amendment 2009 providing further information on the exact remit of the monitor, who is tasked with the duty of examining violations that are raised by the bidders.

TI India undertook a review of IPs in the country in 2012, finding that it has been effective in contributing transparency to the procurement process, upheld a level playing field, boosted vendor confidence and brand image. Several issues that arose included the concern that compliance with the IP, due to its mandatory nature, risked becoming a formality, and that there was a need to address changes in the ethical culture as a whole in addition to the legal and enforcement elements. In addition, enhanced oversight capabilities of the monitor in order to actively uncover potential irregularities were a refrain heard from several stakeholders during the field visit conducted in India as part of this Learning Review.

One potential stumbling block towards greater oversight and thus potential uncovering of irregularities in the Indian context may be found in the implementation set-up. The threshold level at which IPs must be applied often covers 90 to 95% of a PSU's procurement. With just two monitors assigned to cover what can be hundreds of procurement processes over the course of a year, the time that can be allocated to observation can vary considerably. For example, a PSU in India that has been using Integrity Pacts since 2008 for all contracts over 1 crore (ten million Rupees, or roughly US\$153,000) and has under contract two monitors (in India, monitors are paid by the PSU), notes that despite attestations of success in preventing bribery and corruption during this implementation, during this entire period the IP has only handled eight complaints.<sup>143</sup> For another PSU in the oil and gas sector, also using Integrity Pacts since 2008, in over 1500 tenders, 46 complaints were received.<sup>144</sup> Similar figures were reported in discussions with IEMs and other stakeholders from PSUs. The small number of complaints raised per se does not exclude success of the IPs in preventing irregularities; however the limited resources of the monitor and large volume of tenders may suggest that certain tenders are given less attention than others.

A greater role for civil society in monitoring and social auditing has also been raised as concerns. In late 2015 TI India began undertaking a new IP evaluation study of experiences in the country, with the aim of improving the tool and increasing its reach further in the country.

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<sup>143</sup> Presentation at TI India conference, 17 September 2015.

<sup>144</sup> Ibid.

**Annex IV: Interviewees, Field Missions and Focus Group Participants**

Number	Role
<b>Field Mission India: 17-23 September 2015</b>	
1	Civil Society
2	Civil Society
3	Civil Society
4	External Monitor
5	Private Sector
6	External Monitor
7	External Monitor
8	Contracting Authority
9	Contracting Authority
10	Contracting Authority
11	Contracting Authority
12	Contracting Authority
13	Civil Society
<b>Field Mission Mexico: 21-25 September 2015</b>	
14	Civil Society
15	External Monitor
16	Public Sector / Civil Society
17	External Monitor / Civil Society
18	Contracting Authority
19	Civil Society
20	Civil Society
<b>"Field" Mission Germany: 28 September - 1 October 2015</b>	

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21	External Monitor
22	Contracting Authority
23	Civil Society
24	Civil Society
<b>Others: September - November 2015</b>	
25	Civil Society
26	Civil Society
27	Civil Society
28	Civil Society
29	Civil Society
30	Civil Society
31	Civil Society
32	Civil Society
33	Civil Society
34	Civil Society
35	Private Sector
36	Civil Society
37	Civil Society