

Submission to the Independent Review of Aid Effectiveness

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With respect to the terms of reference for the review this submission focuses on:

1. The sectoral focus on the aid program – anti-corruption;
2. The role of business and civil society organisations.

Recommendations

Building on:

- The 2007 AusAID policy statement “Tackling Corruption for Growth and Development”, particularly Objective 1 to “Build constituencies for anti-corruption reform”,

And recognising:

- The partnership of AusAID with TI-Asia Pacific through the *TI Asia Pacific Institutional and Network Strengthening Program 2009–2013*;
- The wide range of practical anti-corruption tools that TI has available in Australia and through the international TI network (refer list of TI anti-corruption tools at Appendix 1);
- The work of TI Australia to inform and assist business and Civil Society Organisations in Australia of the legal obligations and tools available to prevent and counter corruption;

That AusAID review and revise the 2007 policy statement “Tackling Corruption for Growth and Development” to identify and implement opportunities:

1. That AusAID should lead by example by a commitment to improve the transparency of aid flows by publishing comprehensive, comparable, timely, understandable and forward-looking information. AusAID might reflect this by endorsement of, and commitment to, the International Aid Transparency Initiative (IATI), the standard that meets these requirements.
2. AusAID should make every effort to ensure aid allocations benefit countries that have shown a clear and continued commitment to transparency and anti-corruption measures and should make a percentage of funding available for

transparency, civil society participation, supervisory and audit programs. We acknowledge the long term and significant support for the work of TI in the Asia Pacific region as well as support for the EITI, support for promoting UNCAC and other direct support of anti-corruption initiatives.

3. AusAID should be guided by Australia's obligations under UNCAC, and in particular to Article 9 on procurement and budget transparency and endorse aid programmes that provide funding to increase budget transparency and the disclosure of natural resource revenues, and continue to support partner countries which have not yet done to sign, ratify and implement UNCAC.
4. To strengthen and mainstream anti-corruption objectives into the aid program, particularly in the area of public contracting and the use of Integrity Pacts (refer Appendix 2 for further detail on *Integrity Pacts* and Appendix 3 *The Anti-Corruption Catalyst: Realising the MDGs* for mainstreaming anti-corruption initiatives into the aid program);
5. To strengthen engagement on anti-corruption initiatives with the business sector in Australia including to make relevant and accessible the anti-corruption tools available for Australian companies operating internationally, with a particular focus on the Asia Pacific region;
6. To strengthen engagement on anti-corruption initiatives with a broad range of civil society organisations in Australia that operate internationally, and particularly in the Asia-Pacific region, to make relevant and accessible the anti-corruption tools available that assists these organisations in the day to day operations, and which help achieve the AusAID objective of building a broad constituency for anti-corruption reform.

Background to the Recommendations

1. Integrating anti-corruption in aid programs to improve progress toward the MDGs

Progress toward the Millennium Development Goals (MDGs) has been hampered by breakdowns in governance and the impacts of corruption. MDG strategies have not effectively addressed these problems as part of the solution to improve progress.

There is ample evidence of the value of designing MDG action plans that adequately integrate governance and anti-corruption mechanisms. Analysis by Transparency International demonstrates a strong and positive correlation between increased transparency, accountability and integrity and better MDG outcomes on education, health and water in more than 48 countries. In practice, country-level work shows how anti-corruption approaches have an MDG payoff: examples are drawn from Bangladesh,

Colombia, Georgia, Ghana, Liberia and Mexico. (Refer Appendix 3 “The Anti-Corruption Catalyst – Realising the MDGs by 2015”, Transparency International, 2010)

If the MDGs are to be achieved by 2015, world leaders and national policy-makers must link development and governance policies as part of the same plan. Marrying the two supports not only the success of the MDGs, but also the fulfilment of past global commitments. These include government pledges made to fight corruption, achieve aid effectiveness and improve development financing, as part of the UN Convention against Corruption (2003), Paris Declaration on Aid Effectiveness (2005), Accra Agenda for Action (2008) and the Doha Declaration on Financing for Development (2008).

The promotion and use of Integrity Pacts, as a tool and strategy within AusAID country and regional programs, would be a good place to begin. (Refer Appendix 2)

2. Opportunities to build support for anti-corruption with the business sector

Many companies in Australia and around the world are implementing compliance programs aimed at preventing bribery and corruption in business transactions. These compliance programs have increased due to the introduction of new anti-corruption laws, growing enforcement and an increased understanding by business of corporate responsibility and the risks to corporate reputation.

However, many companies report that they continue to face demands for bribes in the conduct of their business. The 2005 UN Convention Against Corruption (UNCAC) contains provisions that prohibit “passive” corruption, extortion or solicitation in either the public or the private sector. Recent OECD guidance recommends that companies implement measures to address major risk areas and emphasises the need to provide companies, especially small and medium enterprises (SMEs) with guidance and support on resisting extortion and solicitation.

A number of TI tools and resources are available to assist this, including a new *RESIST* Tool (*Resisting Extortion and Solicitation in International Transactions*) developed explicitly for employee training and developed jointly by TI, International Chamber of Commerce, UN Global Compact and World Economic Forum.

TI-Australia believes there are many opportunities to make better use of these tools with Australian companies operating internationally, with a particular focus on the Asia Pacific region, so as to reinforce strategies and initiatives supported through the aid program for anti-corruption reform.

3. Strengthening engagement with Australian civil society organisations to build the constituency for reform.

Transparency International is a global and broad based global civil society organisation that seeks to bring people and groups together as a powerful world wide coalition to fight corruption. In support of this mission capacity building work in the Asia Pacific region is co-

financed by AusAID through a *TI Asia Pacific Institutional and Network Strengthening Program 2009-2013*. The objectives of this program are to build capacity in the TI network, strengthen and expand the linkages in the TI network, and support new local and innovative approaches to tackling corruption.

In 2007, TI Australia conducted a review of community based anti-corruption activities to assess “what works and why” as one to inform the operations and the opportunities available to Australian aid and development Civil Society Organisations.

Building on this work, TI-Australia believes there are opportunities for AusAID, in partnership with TI Australia, to strengthen engagement on anti-corruption initiatives with a broad range of civil society organisations in Australia that operate internationally, and particularly in the Asia- Pacific region, to make relevant and accessible the anti-corruption tools available that assists these organisations in the day to day operations. This would also help achieve the AusAID objective of building a broad constituency for anti-corruption reform and be one component of a strengthened approach to integrating anti-corruption strategies into country programs as outlined in Recommendation 1.

Appendix 1: List of Anti-Corruption Tools and Resources

TI Australia Resources

Available at www.transparency.org.au

Australian Laws Prohibiting Foreign Bribery: An overview and practical guide to compliance
Gayle Hill, AMPLA Yearbook 2000

Tone at the Top – Enforcing Integrity

Alan Cameron of Cameron Ralph Board Performance, well known lawyer, consultant and previous corporate regulator.

What works and why in community-based anti-corruption programs

An AusAID funded research report documenting 15 community-based anti-corruption initiatives through the international TI network, examining what has worked in anti-corruption programs and investigating why these particular programs have been successful.

TI Resources from the international network

Available at www.transparency.org

Integrity Pacts

The Integrity Pact (IP) is a tool aimed at preventing corruption in public contracting.

Business Principles for Countering Bribery

The Business Principles aim to provide a practical tool to which companies can look for a comprehensive reference to good practice to counter bribery.

Corruption Fighters Toolkit

The Corruption Fighters' Tool Kit is a compendium of practical civil society anti-corruption experiences described in concrete and accessible language.

Assessing Transparency in Political Finance

The Crinis project has been implemented in 8 Latin American countries to document the level of transparency in laws and practices in political party and campaign finance.

Preventing Corruption on Construction Projects

An international initiative aimed at preventing corruption on construction projects.

Measuring and Monitoring Levels of Corruption

A range of reliable quantitative diagnostic tools to measure and monitor levels of transparency and corruption, both at global and local levels.

The TI Global Corruption Report also offers an annual, systematic *analysis* of the *economic* costs of corruption in infrastructure and their environmental risks.

TI Resource jointly developed with other organisations

Available at www.transparency.org

Resisting Extortion and Solicitation in International Transactions (RESIST)

A company tool for employee training developed jointly by TI, International Chamber of Commerce, UN Global Compact, World Economic Forum.

Appendix 2: Integrity Pacts

Developed by Transparency International (TI) during the 1990s, the integrity pact is a tool aimed at preventing corruption in public contracting. The pact is essentially an agreement between a government or government department (at the national, sub-national or local level) and all bidders for a public contract. It stipulates rights and obligations to the effect that neither side will: pay, offer, demand or accept bribes; collude with competitors to obtain the contract; or engage in such abuses while executing the contract.

Integrity Pacts tried and tested over ten years in hundreds of contracts in over 15 countries. What makes it a unique tool is the introduction of an independent monitoring system under the leadership of civil society, which ensures increased accountability of public resources.

Bidders are required to disclose all commissions and similar expenses paid by them to anyone in connection with the contract. If the written agreement is violated then the pact describes the sanctions that shall apply. These may include:

- Loss or denial of contract;
- Forfeiture of the bid or performance bond and liability for damages;
- Exclusion from bidding on future contracts (debarment); and
- Criminal or disciplinary action against employees of the government.

In most cases, monitors are members of civil society or experts appointed by (and reporting to) the TI Chapter and its civil society partners. The independent monitoring system aims to ensure that the pact is implemented and the obligations of the parties are fulfilled. The monitor performs functions such as:

- Overseeing corruption risks in the contracting process and the execution of work;
- Offering guidance on possible preventive measures;
- Responding to the concerns and/or complaints of bidders or interested external stakeholders;
- Informing the public about the contracting process's transparency and integrity (or lack thereof).

Why use an integrity pact?

Companies can abstain from bribing safe in the knowledge that

- their competitors have provided assurances to do the same, and
- government procurement, privatisation or licensing agencies will follow transparent procedures and undertake to prevent corruption, including extortion, by their officials

Governments can reduce the high cost and distorting impact of corruption on public procurement, privatisation or licensing in their programmes, which will have a more hospitable investment climate and public support.

Citizens can more easily monitor public decision-making and their government's activities.

When can an integrity pact be used?

Integrity pacts are adaptable to many settings. They are flexible tools that can be applied to:

- Construction contracts;

- Goods and services supply contracts;
- State asset privatisation programmes (the buyer/recipient of state property);
- Consultants (engineering, financial, architectural, for example);
- State licences or concessions and extraction rights (oil or gas exploration and production, mining, fishing, logging, for example);
- Government-regulated services such as telecommunications, water supply and waste collection services.

An integrity pact should cover the entire project from start to finish; needs assessment and justification, bidder pre-selection, bidding, awarding the contract and implementation.

How do integrity pacts work?

1. The starting point is an *agreement* for the implementation of the pact between the government procuring agency and the civil society organisation leading the monitoring. This agreement confirms the political will to implement the pact, defines the contracting processes and describe the activities, roles and responsibilities of each of the parties involved.
2. Maximum *transparency* at every phase of the contracting process leading to the award of the contract and the project's implementation. Public hearings and the internet help provide public access to all the relevant information including: needs assessment, design, bidding documents, pre-qualification of contractors, bidding procedures, bid evaluation reports, contract terms and conditions, contract implementation and supervision reports.
3. The *content of the integrity pact* should be agreed upon by the civil society organisations and the government. As a contract between the government office inviting the public tender and the bidders, it should be one of the bidding documents.
4. The main elements of the pact are:
 - An *undertaking by the government* that its officials will not demand or accept any bribes, gifts etc., with appropriate disciplinary or criminal sanctions in the case of any violation;
 - A *statement* by each bidder that it has not paid, and will not pay, any bribes in order to obtain or retain the contract;
 - An *undertaking by each bidder* to disclose all payments made to anyone in connection with the contract in question (including agents and other middlemen as well as 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;
 - Bidders are advised to have a company *Code of Conduct* (clearly rejecting the use of bribes and other unethical behaviour) and a compliance programme for the implementation of a Code of Conduct throughout the company;
 - The use of *arbitration* as a conflict resolution mechanism, and acceptance that the arbitration panel can decide and impose sanctions;
 - A pre-agreed set of *sanctions* for any violation by a bidder of any part of its commitments or undertakings within the pact, including (some or all):
 - Denial or loss of contract,
 - Forfeiture of the bid security and/or performance bond,
 - Liability for damages to the principal and the competing bidders, and

- Debarment of the violator by the principal for an appropriate period of time.
5. The civil society organisations must select the *independent monitor(s)*: The monitor should be highly respected people of unquestionable integrity, who possess professional expertise in the area of the contract. The monitor should not have any links to the procuring agency or bidding companies. The monitor preferably reports directly to the civil society organisations.
 6. Monitors should have *free access* to all relevant government documents, meetings and officials, and to all documents submitted by the bidders. They should review the tender documents, the evaluation reports, the award selection decision and the implementation supervision reports (technical as well as financial).
 7. Monitors regularly inform the leadership of the government office of any *corruption risks or possible irregularities detected*. The monitors should suggest preventive/corrective measures to all parties.
 8. Where any corruption risks or possible irregularities are reported by the monitor to the government office and no steps have been taken (or such steps are inadequate) within a reasonable period of time, then the Monitor is entitled to inform the public and/or the public prosecutor's office about this situation. In addition, the civil society organisations must be entitled to *withdraw* from the pact process and explain in a public statement the reasons for the withdrawal.

Appendix 3:

TI Report – The Anti-Corruption Catalyst: Realising the MDGs

(23 page report attached)