

The Experience of the Systematic Implementation of Integrity Pacts for Public Contracting in Colombia¹

Rosa Inés Ospina Robledo*

Summary: 1. Framework of the debate that made the launching of Integrity Pacts possible as a method to structurally prevent corruption in public contracting in Colombia; 2. Design and launching process for the methodology currently known as Integrity Pacts to prevent corruption in public contracting. Strengths, opportunities, weaknesses, and threats. 3. Role and importance of Transparencia por Colombia in the implementation of the Integrity Pacts; 4. Receptivity to the initiative on the part of public and private actors and key challenges of the process; 5. The most significant difficulties and challenges of the implementation process of the Public Integrity Pacts and how they were taken on; 6. Relevant results after seven years of implementation of the methodology “Integrity Pacts in Public Contracting”; 7. Additional impacts of the implementation of the Integrity Pacts; 8. The pending agenda: what has not been done and what needs to be done; 9. Discussion points.

“Integrity Pacts are voluntary agreements among all actors directly involved in a public contracting process to strengthen transparency, equity, and integrity.”

Corporation Transparencia por Colombia

1. Framework of the debate that made the launching of Integrity Pacts possible as a method to structurally prevent corruption in public contracting in Colombia

Since the late 1970s—when the presence of organized crime linked to drug trafficking became embedded in the economic, political, and cultural life of the country—Colombia has lived in a constant tension between the growing corruption and capture by drug cartels of its institutions and the search for effective measures to face and stop these phenomena.

In the 1980s and 1990s such tension was evident in two opposing realities in Colombia. On the one hand, there were abhorrent cases of corruption. For instance, according to estimates of the General Comptrollers Office, between 1989 and 1999 the state spent US\$1,200 million as a result of the corrupt liquidation of the Colombian Port Company

¹ Translated from *Transparencia y Probidad Pública: Estudios de Caso de América Latina*, Facultad de Derecho, Universidad de Chile, Enero 2008, pp. 145 – 160. All the written material herein is the property of the Human Rights Center at the University of Chile. Transparency International thanks the University of Chile for authorizing this translation from the original text in Spanish

* Founding member, Executive Director (1998–2006) and currently Board Member of Corporation Transparencia por Colombia. Vice President of the Board of Directors of Transparency International Worldwide (2003–2005). Currently individual member and Senior Advisor for Transparency International.

“Colpuertos”². This sum is equivalent to between 3 and 5 points of the GDP, depending on the measurement criteria used. The situation reached such a critical point that in 1998, Colombia was given its lowest score in the Corruption Perceptions Index (CPI) prepared by Transparency International (TI) with a score of 2.2 out of 10³. On the other hand, there have been anti-corruption proposals, programs, and policies, with pioneering legislation like the Anti-corruption Statute (Law 190 of 1995) and the creation of the Institutional Commission Against Corruption (1996), as well as punishments to prominent actors in the country’s political scene who have been processed and convicted of corruption: five general comptrollers, two general attorneys, over 30 members of Parliament (that lost their investiture), and several governors elected by popular vote were removed from office due to corrupt conduct.

The critical point in this political turbulence was the transition from the President Samper administration (1994–1998) to the President Pastrana administration (1998–2002). During Samper’s presidency the country was shaken by the scandal of his political campaign having accepted over US\$5 million in financing from drug cartels. Furthermore, he irregularly granted “auxilios parlamentarios”⁴ to members of Congress responsible for investigating charges against him in order to stay in power⁵. President Pastrana won the election on a platform based on a negotiated end to the armed conflict and a fight against corruption which was firmly placed on his political agenda and was made a direct responsibility of the vice president of the Republic.

This moment in time was a historical turning point in the national debate on corruption and triggered a significant social consensus on the need to fight this social problem which involved a great number of actors from the Colombian public arena (entrepreneurs, academics, civil servants, officials from different churches, labor leaders, trade unions, organizations of the civil society, certain political factions, and representatives of foreign governments). All these actors urgently demanded corruption to be tackled with effective actions.

In this context, the Integrity Pact emerged, which was the first tool of the newly established Transparencia por Colombia (TPC), an organization of the civil society devoted to fight corruption in public affairs, established under Colombian law and accepted as a national chapter of Transparency International in 1998. TPC was invited by the Vice President of the Republic to participate in the debate concerning the

² LOZANO F. “Plenaria: La cultura del Avivato y el caso Foncolpuertos” in *Memorias de las plenarias de la Cátedra Transparencia por Colombia 2002–2003*. August 2003.

³ Transparency International’s Corruption Perceptions Index, which has been published every year since 1995, measures the perceived levels of public-sector corruption in a given country and is a composite index, drawing on different expert and business surveys. Available at: http://www.transparency.org/policy_research/surveys_indices/cpi (Consulted in September 2006).

⁴ “Auxilios Parlamentarios” were discretionary funds granted to members of Congress. (Note of the translator).

⁵ Congress prosecuted President Samper amidst the scandal of the irregular budget allocations made by the president to several Congress members and concluded that there was not enough evidence to prove beyond doubt that: the “Samper President” campaign received money from drug cartels, that the president was cognizant of the fact and that he accepted it. In other words, Congress accepted the president’s defense that all this happened “behind his back”.

proposals and main lines of action contemplated in the “Presidential Program to Fight Corruption”, which proposed structural mechanisms to confront the problem.

2. Design process and public launching of the methodology currently known as Integrity Pacts to combat corruption in public procurement

TPC started its activities with a focus on improving transparency in public contracting through the adoption and launching of the tool called: “The Islands of Integrity” or Integrity Pacts. This tool was, initially designed by Transparency International, but still barely tested around the world⁶.

The first step in the design process was to form a high level advisory group made of five professionals with direct experience in public contracting. These professionals came from private companies, industry associations, public sector and from consulting firms advising contracting processes. The group, together with the Directorate of TPC, studied:

- i. the prevailing conditions in the public contracting context in Colombia;
- ii. the pertinence and viability to undertake systematic action to implement the Integrity Pacts in Colombia as a tool to fight corruption in public contracting;
- iii. the main adaptations required by the general instrument devised by Transparency International to make it fit the conditions detected in (i) above; and
- iv. the eventual funding sources for this social control exercise.

The design process identified those conditions that determined the main strengths and opportunities to launch Integrity Pacts in Colombia, as well as the weaknesses and threats that would have to be overcome during its implementation process. These factors acted as beacons and landmarks along the process. In summary, the design process identified the following:

Strengths:

- adequate legal framework to promote efficient, equitable, and transparent public contracting processes⁷;
- availability of state institutions with functions and responsibilities to fight corruption and control the management of public resources;

⁶ The tool is known indistinctly as Integrity Island or Pact. It was only after its extensive use in Colombia, and later in 25 countries, that a distinction was made between the two: Integrity Pacts refer to the agreements subscribed among participants in a specific contracting process, each process requiring a specific Pact; and “Islands of Integrity” refer to a methodology to make transparent a set of processes in an organization that may include contracting, for instance the Integrity Island in the allocation of environmental licenses in the corresponding ministry.

⁷ Among others: Law 80 of 1993 on Public Procurement; Anticorruption Statute, Law 190 of 1995; adoption by Colombia of the majority of the instruments included in the Inter-American Convention against Corruption of the Organization of American States (OAS).

- public oversight institutions (Auditor General's Office, Attorney General's Office & Public Prosecutor's Office) gaining in strength and legitimacy;
- ample formal space for citizen involvement in the control of the use of public resources included in the Colombian Constitution;
- recent history of abundant anti-corruption policies and programs,
- availability in the central government of qualified human resources capable of conducting transparent and equitable public contracting processes; and
- public contracting experiences considered trustworthy and successful that relied more on ethic commitments than on institutional arrangements.

Opportunities

- Increased awareness among broad sectors of society about the complexity, importance, and pervasiveness of corruption, and thus on the need to effectively include the topic on the national agenda;
- renewed efforts on the part of public and private actors to give priority to research and specific studies on corruption rather than persisting on general unspecific allegations of corruption;
- willingness on the part of the presidency to consider alternative methodologies and mechanisms to combat corruption;
- good presence of the anticorruption theme both in the private and public sectors, and in the international agenda, generating a positive influence on specific groups; and
- willingness on the part of the national government to include in the "National Development Plan" resources of the national budget for social control exercises like the Integrity Pacts.

Weakness

- Resistance to accept that the rule of Law which favors the pre-eminence of an alternative regulation based on cultural traits allowing reasoning like: "I am smarter", "if everyone does it, why shouldn't I?";
- high levels of impunity of corrupt actions;
- lack of social control on public affairs; in general, public officials are not held accountable.
- high use of patronage practices in the management of public resources based on campaign promises worsened by the absence of controls emerging from the lack of independence between the powers of the state;

- disparity between the strengths of the technical teams of private investors and those of the public entities making the decisions, which are made by the latter dependant on the information provided by the former; and
- general erroneous perspective that the contracting processes need to be confidential.

Threats

- Tension streaming from the urgency of the public administrations to show results in the short term and the needs of the technical staff for time to adequately prepare and structure projects;
- propensity to believe that the corruption problems can be solved through regulations or with more laws, thus there is little disposition to take on ethical or voluntary commitments as those required in the Integrity Pacts;
- co-existence of multiple public contracting rules, including contracting procedures imposed by multilateral and bilateral agencies;
- the perception that Transparencia por Colombia may lose independence if funded from the budget of the same institution implementing the contracting process; and
- intense internal conflict, which frequently leads to interference in the contracting process by armed actors linked to the drug cartels and physical security threats against those individuals fighting corruption.

As a result of the above analysis, the advisory group concluded that it was fitting and timely to propose Integrity Pacts as a tool to improve transparency in public contracting. At the same time, the group adapted the scope of the Integrity Pacts to suit local conditions and to allow for their effective implementation in Colombia. Integrity Pacts were understood to be “an invitation to a voluntary cultural change, calling on specific groups of individuals directly involved in contracting of public resources (public officials and state contractors) to accept common regulatory systems, linked to a system of incentives and sanctions. These incentives and sanctions are outside the legal framework, but add value to it from an ethical point of view”⁸.

In other words, the Integrity Pact must be voluntary and must clearly state within it:

- i. the types of behaviors that are considered unacceptable for all actors;
- ii. the mechanisms to prevent such behaviors;
- iii. the authority that will both evaluate and judge complaints; and

⁸ TRANSPARENCIA POR COLOMBIA, *Colección Cuadernos de Transparencia*. No. 3. Colombia. July 2000, p. 22.

- iv. the sanctions imposed on those guilty of violating the Integrity Pact.

Therefore, the signing of the Integrity Pact is not enough—an internationally accepted perception—but it is necessary to design a methodology to integrate into each phase of the contracting process the consideration of: the risks of corruption and the practical ways to confront them, as well as the real opportunities to create confidence among the participants and between them and the rest of society⁹. All these elements of the Integrity Pact will be discussed among signatories in each case to lead them to take on this voluntary ethical agreement.

It was agreed that the direct costs of the intervention by Transparencia por Colombia — which mainly include the fees of the experts (both from the organization and those invited from external organizations), their travel costs and other expenses—will be covered by the institution calling for bids, with their own resources or with support from international cooperation. To this end, contracts or agreements will be signed with each institution and for each individual contracting process clearly stating: the scope of the intervention, the commitment to make the whole process public, the freedom of TPC to publicly criticize the process or performance of the institution, and the right to withdraw from the process if TPC considers that it cannot approve, share, or understand the way in which the contracting process is managed.

In May 1999, with a clear and fully developed proposal for approval, TPC with the support of the Presidential Program to Fight Corruption “[...] called the highest authorities of the executive branch, from the public oversight institutions, multilateral financial and technical cooperation institutions, and organizations of the private sector and civil society to present its methodology and seek allies to test the tool within the country”¹⁰.

Initial receptiveness to the proposal was highly positive and shortly thereafter came the impact. The Minister of Communications showed interest for launching the implementation process for the Integrity Pacts with the contracts of the ministry’s Compartel program¹¹ and made a commitment to obtain the resources required to cover the direct costs of TPC to participate in the process. In August 1999, three months after launching the tool, the first Integrity Pact was signed for the contracting of the Social Rural Telephone Services of the Compartel Program.

Emerging from a proposal of the Presidential Program to Fight Corruption, the Organic Law of the National Development Plan “Change to Build Peace: 1998–2002” of the Pastrana administration, there was an invitation to the whole public administration to use the methodology “with the purpose of involving civil society in the fight against corruption. The government promoted joining the worldwide program of Transparency International—Islands of Integrity, so that participants in national or international bidding processes committed to anti-corruption agreements that contained personal and

⁹ For more details on the methodology, see *Ibidem* pp. 23–28.

¹⁰ *Ibidem* p.31.

¹¹ The Compartel Program seeks to attain “Universal Access” defined as the “easiness for the population to access telecommunications services at a reasonable and acceptable distance from their homes, specially in rural areas of Colombia”. To this end, abundant resources were made available to promote 10-year business plans to operators committed to install, operate, and maintain community telephone points in inaccessible areas.

pecuniary liabilities”.¹² This proposal gave complete freedom to the public institutions to invite TPC to participate in launching an Integrity Pact, as well as to the later to accept or reject the invitation. Although it was not mandatory, the proposal was a significant incentive to promote the systematic use of the tool.

3. Role and importance of Transparencia por Colombia in the implementation of the Integrity Pacts

Transparencia por Colombia led and conducted the initiative at all times. In each bidding process, its involvement—as civil society organization—was defined and undertaken as a third party not directly involved in the economic transaction of the corresponding contracting process. The organization wanted to protect the general good and contribute to establishing trust among those directly involved—including the public opinion—on the quality, appropriateness, and sufficiency of the information provided and on the efforts of the administration and the bidders to prevent corruption.

As a consequence; Transparencia por Colombia focused on the request and analysis of all useful information on possible corruption risks in order to comment on it, always being cautious during this exchange not to co-manage or replace those responsible for the contracting process under the Public Procurement Law. This was done by the organization with the support of reliable, credible and independent experts

Based on the model centered on the identification of the areas where corruption takes place, the interventions by TPC focused on:

- i. review and comments—with the help of experts—of the bidding documents to verify that they are clear, simple, do not favor a particular bidder, and protect the general interest;
- ii. monitoring the prompt and sufficient dissemination of the information on the government agency’s web site;
- iii. monitoring the publicity to the call for proposals for the project to guarantee equal access and free competition among firms;
- iv. providing support for the formulation and subscription of an ethical agreement among civil servants and advisors responsible for the contracting process that identifies the risks of corruption and the measures to control them;
- v. promoting the signing of an Integrity Pact among bidders, and between them and the administration, including the discussion and reaching of a consensus on all aspects of the Integrity Pact;
- vi. supervising the compliance with the agreed rules for submitting bids;
- vii. monitoring—as an external observer—the evaluation of the bids and the award of the contract; and

¹² Ley del Plan Nacional de Desarrollo, “Cambio para construir la Paz: 1998–2002”, indication in Article 4, Chapter 2. Republic of Colombia.

- viii. preparing the reports for the public on the progress attained in the process, as required¹³.

In order for TPC to fulfill its role it must guarantee that it can act with independence and autonomy during the contracting process so that it can criticize it and withdraw from it when not in agreement with the adopted course of action. This is probably the most powerful pressure element for the adoption of the Integrity Pacts: the certainty that TPC will withdraw if not satisfied with the process and the answers provided by authorities to the questions posed. In fact, TPC did this on several occasions, which prompted investigations from the pertinent authorities.

In all cases, it was clearly stated within the contracts that by accompanying the bidding process with the Integrity Pacts methodology, TPC had no intention of turning itself into a co-manager, nor did its presence guarantee the “absence of corruption”. Although in the application of the methodology there are mechanisms to detect and prevent corruption, the main use of the Integrity Pacts is to confront those cases in which there are pre-existing doubts about the integrity of the process. It must be remembered that the Integrity Pact is ultimately an instrument to denounce those that do not fulfill the moral commitments contained within it, rather than a way to enforce existing legislation.

4. Receptivity to the initiative on the part of public and private actors and key challenges of the process

Receptiveness to the initiative has been gradual. The majority of opinion, including private and public actors, recognizes the importance of introducing additional mechanisms to guarantee transparency and integrity in the use of public resources and to have clear rules to ensure loyal and just competition in state contracting. However, as actors have become directly involved in the process, resistance has emerged that has required specific solutions.

The first objections raised to the Integrity Pacts came from both public officials and private sector actors (a common occurrence in Colombia and abroad). The objections raised included the following:

- Why was it necessary to sign a public declaration of integrity and honesty if all participants already considered themselves to abide by these values?
- Was the commitment to “clean play” in contracting a way of publicly acknowledging that they failed to do so in the past?
- Why is there a need for an additional declaration if Colombian law establishes the prohibition of corrupt conducts and defines sanctions?
- Given that private sector actors are obliged to do what the law requires, are commitments beyond the law unconstitutional?

¹³ For more detail on the Integrity Pacts, please see www.transparenciacolombia.org.co, Sector Privado, Pactos de Integridad.

- It is practically and legally impossible to disclose the draft bidding documents, the different official documents of the process, and the bids submitted since this would be unconstitutional.
- Given the voluntary nature of the Pact, what happens if not all “bidders” or “participants” accept it?
- How are the voluntary agreements that emerge from this type of contract compatible with the binding nature of the contracting laws? Which prevail?

The open and collective debate of these concerns has given rise to conditions which are favourable to tackling the ethics aspects of participation in the public contracting process through the methodology of the Integrity Pacts. In a professional manner, and with clear willingness to listen, the different stakeholders sought consensus on how to respect individual interests while giving priority to the public interest through ethics agreements reached within the existing legal framework. These agreements should guarantee an honest contracting process that is trusted by all participants and the public opinion¹⁴.

The acceptance of the Integrity Pacts by the authorities in the public sector was easier. The political willingness of the central government, expressed by the highest authorities, gave decisive momentum to the success of the Integrity Pacts. This decisive reaction materialized in the law of the National Development Plan and the support given by the vice president. Additionally, the backing of the public sector substantiated the pressure civil society organizations were putting on government to adopt decisive and concrete measures to fight corruption. The Pastrana administration needed to be perceived as different from the Samper Administration. After supporting the Integrity Pact methodology, it would have looked bad for the Pastrana Administration not to use them in key contracts and could have generated a negative reaction, particularly from the press. This explains—as will be discussed later herein—the incorporation of many of the Integrity Pacts’ contributions into subsequent legislation and the generalization of the concept of Integrity Pacts, which is currently used in different entities.

After the initial public presentation of the tool, TPC has only worked in contracting processes at the request of institutions. This ensures the political will of the head of the institution, an indispensable condition for the successful use of this tool.

In order for Transparency International to retain total autonomy as to whether or not to participate in a particular process and to define the conditions of its involvement, TPC has never subscribed to a framework agreement with the administration in charge of the central government for the implementation of the Integrity Pacts. The institution participates on a case-by-case basis only or through individual agreements with each public entity. Also, TPC has declined taking part in many processes, mainly because:

- i. the costs versus benefits achieved did not justify its involvement;

¹⁴ This process was assisted by Professor Antanas Mockus through the development of a model workshop to build agreements on the “general interest” that lies where the moral, cultural, and legal regulatory systems coincide. The theoretical proposal can be found at: <http://www.iadb.org/etica/sp4321/DocHit.cfm?DocIndex=1536>.

- ii. TPC did not have enough trust in the corresponding administration, and
- iii. implementation of the processes was too advanced to allow for the rigorous use of the methodology (the most frequent case),

Furthermore, public officials directly responsible for contracting have had two types of attitude in relation to TPC intervention which sometimes co-exist in the same institution and is explained as follows:

- Those public officials committed to fighting corruption, either by their own initiative or as a result of presidential directives, supported the intervention as a methodology leading to significant improvements. These public officials viewed the Integrity Pacts and TPC's intervention as an opportunity to counter undue internal and external pressures, manage the historically corrupt relationships between the private sector and the administration, and gain credibility in terms of the different stakeholders and the public opinion in general.
- Those public officials concerned more with maintaining a good institutional and personal reputation mistakenly believed that with the intervention of TPC they could continue old practices and at the same time get an endorsement or a "certification" of a prestigious institution. In these cases, public officials were reluctant to provide all the information, arguing that the transparency requirements delayed the processes. The challenge for TPC was continuous and it had to double its efforts and technical capacity to demand clarity and transparency, with the warning that it would withdraw from the process if there was merit.

The increase in the number of Integrity Pacts in the public sector was gradual. The de facto autonomy of the public officials/technical staff in the civil service, the significant influence of lawyers, and the fear of the public oversight institutions led each official to have his or her own opinion in the matter. This made it difficult to create a new institutional practice in connection to the Integrity Pacts. Each time the process reached a different public official it was necessary to start anew with the process of convincing them of the merits of TPC's involvement.

The initial acceptance by the private sector was more difficult. With some exceptions, the competitive culture led firms to invest heavily in aggressive strategies with the support of lawyers to win bids, which often led to the adoption of unfair competition practices. This was done to the detriment of investment in technical skills that would improve the quality and competitiveness of the bids, an outcome more desirable for the common good. Although all private sector participants acknowledged the tool's capacity to promote fair and just competition, the competitive culture between participants created tension when the ethics issues were brought to the table for discussion, and the process demanded from them accepting simple, clear and commonly agreed rules. The ethics discussion added a novel element to the discussion of legal aspects, which they knew how to manage to their advantage. The adoption of these rules required—on top of the managerial decision to adopt them—an open commitment to respect them and accept the consequences of non compliance.

Notwithstanding these problems, the private sector gradually built a path to understand and accept the Integrity Pacts. As implementation progressed, meetings among

entrepreneurs (and their technical, legal, and managerial staff) to become familiar with the methodology became more frequent. These meetings facilitated in-depth discussions on the terms of the agreement and its ethics contents. At the same time, the discussions allowed for further improvements in the conditions and technical parameters of the agreements, particularly those associated to the sanctions for non-compliance and how to make these consistent with existing legislation. Also, as entrepreneurs' trust in the tool grew, they demanded that the signing of the Integrity Pacts become "mandatory" for all parties interested in a particular bidding process¹⁵. Several entrepreneurs decided to take the debate about the Integrity Pacts to their headquarters to ensure support from corporate management.

5. The most significant difficulties and challenges for the implementation of Integrity Pact in Public Procurement and how they were taken on

a. The unavoidable tension between transparency and efficiency. The public administration was torn between the legitimate goal of attaining results in the short term and the need to devote sufficient time to design and structure good projects, as well as to the monitoring of these projects by third parties. This is the central dilemma in the debate about how to introduce transparency and integrity to public procurement. The implementation of the Integrity Pacts has become a central component of this debate.

To confront this issue, TPC adopted a two-pronged strategy. The first part of this strategy included a demand by TPC to the government agency to allocate sufficient time "to do things right" (prepare good projects, allow sufficient time to publicly discuss the rules, achieve accountability, broadly disseminate the call for bids in the market, carefully analyze the bids submitted by interested firms, and devote time for the application of the methodology of the Integrity Pacts). TPC made clear to the government agency that if sufficient time was not allocated TPC would publicly withdraw from the process. The second part of this strategy involved TPC accepting that its own technical staff would have to cope with very demanding work schedules imposed on them in order to adequately meet the urgent needs of the government agency.

b. Systematic blocking on the part of the public officials on the timely delivery of information and in substantiating their decisions to third parties. The use of the Integrity Pacts is an exercise in "accountability" in which the public officials must take on the responsibility to listen to and then respond to the questions submitted by the firms interested in the bidding, the civil society, or the citizenry in general, and be prepared to confront the consequences of not doing so. The main challenge confronted by the implementation of the Integrity Pacts has been to get the civil servants to devote sufficient time to listen to the interested parties and provide well-substantiated responses. At the same time—as will be discussed later herein—overcoming this set of difficulties has provided a significant opportunity to introduce structural changes in public contracting in Colombia¹⁶.

¹⁵ Although the Pact promoted by Transparencia por Colombia is always "voluntary" in nature, the dynamic of the work with the private sector has tended to make it "mandatory". Nevertheless, in its original design by Transparency International the Pacts were considered mandatory.

¹⁶ See, Presidency of the Republic, Decree 2170 of 2002. This decree provides for regulations for the implementation of Law 80 (General Procurement Law).

c. *Pressures to involve Transparencia por Colombia in the co-management of the processes.* Given the “independent” nature of TPC, the different parts involved in the bidding process attempted to formally involve TPC in the decisions so that it could be made responsible for the final results. For the public institutions, it was convenient to dismiss its responsibility, asserting that the decisions were the result of TPC’s recommendations, rather than accepting the blame for a mistake or facing the need to rectify a decision. As a reaction, TPC decided not to provide affirmative opinions. Instead TPC asked key questions that allowed the institutions to understand the problems, and then adopt a solution and take responsibility for their decisions.

d. *Resources and their origin.* One of the major challenges was to secure resources to finance the implementation of Integrity Pacts, while maintaining at the same time the independence and credibility of Transparencia por Colombia. The work of TPC takes place in situations where many diverse legitimate economic interests are involved and it entails dealing with highly complex technical issues. At the same time, TPC is the subject of numerous pressures from different stakeholders and has the pressing need to secure resources to finance each of the interventions. This places TPC in the center of another important debate: Who should finance the social control over public affairs and how? ¹⁷

From its inception, TPC has made efforts to define and apply a clear policy on how to finance the Integrity Pacts. In TPC’s opinion, the institution that requests the Integrity Pact should assume the costs. Also, TPC should adopt policies such as:

- I. do not depend on resources provided by only one institution, which ensures a diversity of funding sources;
- II. deliver high quality services that maintain the debate on technical terms and focus on the public good, but at the same time respect the legitimate interests of the private sector;
- III. establish individual written agreements for each process, which include the rules to be followed, in particular the clauses guaranteeing its independence to freely provide its opinion and to withdraw from the process when necessary;
- IV. disclose any potential conflict of interest, and
- V. inform the public debate with clarity and sufficient information.

In general, each institution covers the direct costs of the intervention by TPC with its own resources or with external co-operation. However, this is always a source of risk for TPC and has prompted significant debate and deliberation¹⁸.

¹⁷ For more information on this debate see: *Cuadernos de Transparencia*, No. 8, “El Control Social a la Administración Pública en Colombia”. Bogotá. May 2004, Web site: www.transparenciacolombia.org.co

¹⁸ This is a debate that not only takes place in the Integrity Pacts, but it is also present in any social control process that attempts to be systematic, of good quality, and followed through to its last consequences.

In the only evaluation made on the use of Integrity Pact, directed by Miguel Schloss in 2002, when there were very few worldwide cases, the author expressed concern in the risk of TPC losing independence or legitimacy by accepting public resources (a practice in the majority of countries where the methodology had been implemented¹⁹). Confronted with this warning, TPC assessed the perception of the stakeholders and the public on this issue. TPC provided clear and public proof showing that its independence and its activities were not undermined by its funding sources and therefore continued with its financing strategy. The author considers that the credibility of TPC was not affected. In several high-profile cases, despite TPC's monitoring activities being funded by specific government agencies, TPC actually criticized their public contracting methods. TPC had publicly disclosed its funding sources which allowed for the necessary transparency on the issue.

There were also instances in which TPC abstained from intervening in a public contracting process due to potential difficulties involved in managing the surrounding public debate, as the public does not always have complete and reliable information. TPC also abstained from participating when there were reasons to suspect that its intervention would not have sufficient impact, which it publicly argued and disclosed. For example, this was the case in the first years of its activity, with the contracting processes of the armed forces or the national Congress.

e. Perspective on Ethics. A fundamental criterion for TPC was to maintain the discussion around Integrity Pacts for public contracting within the ethics realm. In Colombia, the responsibility for contracting public resources is usually confined to the management of lawyers, both in the private and the public sector, who usually compete to show who can best interpret the law in terms of form and technicalities, with little regard for actual content. A systematic challenge has been to focus on the discussion of legal and juridical implications of the Integrity Pacts, while taking it a step further, emphasizing the ethics factors.

To attain this objective, from the design stage of the Integrity Pacts, TPC secured the services of two lawyers—members of reputed firms—that analyzed the Integrity Pact tool, identified its advantages, and developed its juridical and ethical bases. Later, in the discussion regarding the acceptance and application of the Integrity Pacts with other lawyers—from both the government and the private sector—the TPC lawyers managed to get the legal and ethics framework accepted.

f. Private sector reluctance to use Integrity Pacts before the Arbitration Tribunal. To this date, bidders have not been well disposed to denounce breaches of the Integrity Pacts to the Arbitration Tribunal, notwithstanding their complaints about the irregularities that have occurred. This negatively impacts the effectiveness of the tool in dissuading acts of corruption, which contributes to maintaining the level of distrust in public acquisitions.

¹⁹ Transparencia Mexicana, the other chapter of Transparency International with significant experience in the implementation of Integrity Pacts, solved the financing of the services of experts (called social witnesses) through similar means involving—depending on the case—three funding sources: (i) a fund created with public resources, freely administered by Transparencia Mexicana; (ii) compulsory contributions by private sector firms participating in the contracting process; and/or (iii) funds provided by the procuring institution.

Although during negotiations of the Integrity Pacts the obligation to denounce any breaches of the commitments undertaken is emphasized, only in a few instances did the stakeholders appeal to the Tribunal.²⁰ Possible explanations for this reluctance include:

- I. the tendency to assume successful bids as corrupt because “if he won, it must be due to corruption, since my bid was better”, even without sufficient evidence. Confronted with the requirements and cost to defend the complaint, they refrain from making it, whether out of fear of being accused of unsubstantiated complaints or simply for lack of evidence;
- II. fear of retaliation in future bids from the affected contracting institution; and
- III. even though the Arbitration Tribunal is a trusted institution, people traditionally do not denounce corruption due to the high impunity and the inefficiency within the Colombian Judiciary.

g. *The impossibility of Transparencia por Colombia to take part in other phases of the contracting process.* TPC received requests to intervene in the planning (political decision-making) and implementation phases of the contracting processes where it used Integrity Pacts. Although the Integrity Pact entails commitments undertaken by the winning bidder there does exist the option for losing bidders (or other interested agents) to make a claim for a breach of the Integrity Pact during the implementation phase of the contract. TPC did not engage in monitoring the planning and implementation phases for different reasons, including the following:

- I. The Integrity Pacts tool is specifically designed for the contractor selection phase and cannot mechanically be transferred to other phases of the project cycle. The supervision of the execution of the contract is a critical phase from the “corruption risk” point of view but requires a different methodology, more recourses, and more time²¹.
- II. Intervention in the phase in which political decisions take place, unlike the bidding phase, requires TPC to be able to debate and exercise influence well beyond its capacity (often the debate goes beyond the discussion of corruption risk, entering the ideological realm and the conceptualization of the development model).

6. Relevant results after seven years of implementation of the methodology “Integrity Pacts for Public Contracting”

²⁰ The Arbitration Tribunal is widely accepted—nationally and internationally—as the most competent institution to denounce breaches to the Pacts. In Colombia, the Chamber of Commerce has a well-established and reputed program that has developed novel forms of arbitration. The Chamber is willing to work in developing other mechanisms especially for the Integrity Pacts for Public Contracting. See TRANSPARENCIA POR COLOMBIA, *Apuntes en torno a algunos aspectos legales de los Pactos de Integridad, Colombia*, 2003.

²¹ The prevention of corruption in the execution phase of contracts in Colombia is the responsibility of the citizen oversight board (or social audit), in which the country, in general, and TPC, in particular, has ample experience. For more information see *Cuadernos de Transparencia*, No. 8. “El Control Social a la Administración Pública en Colombia”. Bogotá. May 2004, Web site: www.transparenciacolombia.org.co.

In quantitative terms, the following results are noteworthy²²:

- 62 Integrity Pacts implemented for contracting in sectors such as: communications, public works, transportation, informatics, finance and energy, as well as in areas related to goods and services, food, beverages, and supervision of major contracts. These pacts were agreed and subscribed by 301 national and 52 international corporations.
- The Pacts generated, on average, a savings of 18 percent of the budget for the corresponding contracting processes.
- The total amount of public resources involved in these contracts was US\$3,300 million.
- 700 public officials and advisors of 35 public national and sub-national institutions worked on mapping corruption risks and subscribed ethic declarations.

In qualitative terms, the following results are worth mentioning:

- Enactment of Presidential Decree 2170 of 2002 that provides for regulations for the implementation of Law 80 (General Procurement Law). This Decree included the mandatory implementation of the majority of proposals of the methodology under analysis, including:
 - I. restrictions to the amount of confidential information by establishing as a mandatory procedure the public discussion of drafts of and final versions of bidding documents,
 - II. the obligation for public officials to provide substantiated responses to questions,
 - III. ample and plural dissemination of all contracting opportunities, including those for small amounts,
 - IV. requirement to provide for oversight from civil society.
- TPC positioned itself as the leading civil society organization in supervising complex public contracting in Colombia.
- Public and private stakeholders accepted and incorporated ethics arguments when discussing integrity and transparency in contracting.
- There were significant improvements in the structuring and quality of projects and bidding processes.

7. Additional impacts of the implementation of Integrity Pacts

²² TRANSPARENCIA POR COLOMBIA. *Consolidado estadístico de la implementación de Pactos de Integridad en la contratación pública en Colombia (1999–2005)*.

There is no full evaluation of the significance for Colombia of the implementation of this tool. However, the following impacts are recognizable:

- It contributed to establishing a culture of good management of public resources and defense of the public interest.
- The transfer of the Integrity Pacts tool to the *Veeduría Distrital de Bogotá* (Bogotá Ombudsman's office). This agency adapted the tool to its needs and renamed it "Integrity Processes", and used it in 49 of the main contracting processes in 16 city entities during the administration of Mayor Mockus, which involved a total of US\$1,560 million.
- The adoption Colombia of the concept of a "Pact" as a voluntary commitment to ethical behavior among participants in processes of public interest, not only associated with public contracting. Three examples illustrate this impact:
 - I. Probity Pacts: the commitment to behavioral integrity between contractors and the public municipal administration to support a comprehensive contracting process²³.
 - II. Transparency Pacts: agreements between city majors, private sector leaders and social organizations to establish accountability rules for the administration and to promote social control on the part of the civil society²⁴.
 - III. Sector Anti-bribery Agreements: subscribed to by entrepreneurs of a sub-sector or industry, with the representatives of their industry association, which seek more integrity in business relationships among themselves and between them and the government.
- Partial adoption of the tool by important state institutions and companies such as the National Defense Ministry, the Colombian Petroleum Company or the Agricultural Bank of Colombia. In some instances, these institutions only sign an ethical commitment document.
- The development by TPC of a new tool called "Islands of Integrity"²⁵ geared to protect the whole of an organizational process, not necessarily for contracting. For instance, the assignment of transit licenses in the corresponding secretariat or ministry.
- A significant contribution to the international development and establishment of Integrity Pacts in public contracting through the involvement of TPC in forums

²³ See *Programa Probidad de Confecámaras*. Available at: www.probidad.org.co.

²⁴ See "La Estrategia de los Pactos de Transparencia en Colombia" in *Revista Controversia* del CINEP. Available at:

http://www.cinep.org.co/revistas/controversia/controversia186/politica_laestrategia.pdf.

²⁵ See www.transparenciacolombia.org.co.

and workshops and by supporting other national chapters of Transparency International²⁶.

- It is worth noting that, although not fully attributable to this tool, or the works of TPC, Colombia has progressed to a score of 4.0 out of 10 in the annual Corruption Perception Index of 2005, which was an achievement partly attributable to these efforts.

8. The pending agenda: what has not been done and what remains to be done

The most important pending issues are:

- Obtain more financial resources so as to implement the tool more in depth or take on all the topics that the implementation of the methodology requires and prioritizes: above all, to participate in the more socially sensitive and critical processes.
- Demand with greater resolve the preparation and/or validation of the studies that justify the decision to proceed with a contract and its characteristics.
- Demand as a “sine qua non” condition from private firms interested in submitting bids, the declaration and visibility of all pre- and post payments made to consultants and advisors, as many bribes are materialized at this point.
- Formally commit the CEOs at the headquarters of the international firms interested in bidding for contracts when subscribing to the Integrity Pacts. This will avoid the dilution of responsibilities at other corporate management levels.
- Systematically evaluate the contracting processes with the involvement of all participants—especially the losers—to better understand how the methodology operated as a whole and how it operated within each Integrity Pact in particular.
- Supervise the fulfillment of the commitments taken on by the winning bidder during the execution of the contract, and evaluate the usefulness of such commitments for the losers.
- Organize and develop citizen oversight processes at the execution of the contracts accompanied by Integrity Pacts to effectively protect public resources until the process ends. In this respect, a critical aspect is to verify whether “what was included in the conditions of the contract was fulfilled or not”. This is clearly one of the main risks of corruption.
- Formally and systematically involve other social organizations in the design and development of the tool, so that public debates are more affirmative and the general adoption of the methodology is more effective.

²⁶ See TRANSPARENCIA POR COLOMBIA “Compartiendo la experiencia de Pactos de Integridad con otros países” in: *Informe Anual 2002*. Programa de contrataciones públicas transparentes. Bogotá, 2003.

- Identify and/or build clear and specific success and failure indicators for the methodology. This will make it possible to learn how to manage failure factors, how to adopt better decisions when choosing the cases to get involved with, and how to better respond to questions from third parties, considering the role of TPC as a pioneer in the use of this tool; and
- Systematically document good practices emerging from the completed processes to build standards for: the preparation of bidding documents; evaluation mechanisms; bid specifications with regard to previous experience and professional qualifications; and requirements for participation, including the identification of those that if missing would carry disqualification, and which could be completed/clarified after submission. Such systemization should identify the main risks of corruption, the desirable behaviors on behalf of the participants, and the institutional policies that promote transparency and public accountability.

There are three main issues for the future working agenda of the Integrity Pacts:

- a) Obtain the necessary resources to undertake an exhaustive evaluation to measure TPC's real impact in reducing corruption risks and in generating trust among participants and between them and the general public. Also, evaluating the degree of ownership of the methodology in the public management culture in Colombia.
- b) Continue systematizing the experience, to which the present exercise has made a significant contribution.
- c) Widely transfer the methodology to other organizations and sub-national governments so as to expand its use and impact in Colombian public contracting.

9. Discussion points

- a) Do you consider the Integrity Pacts an effective instrument to confront systematic corruption? Which political, economic, and institutional conditions must be fulfilled for the Integrity Pacts to make sense?
- b) How do you feel about an NGO, devoted to the promotion of transparency, becoming directly involved in the control of government projects?
- c) Which other tools could be used to strengthen the ethical framework for public contracting?
- d) In your judgment, it is feasible to replicate this experience in your country? Which conditions must be met to make this possible?