

A blurred, high-angle photograph of a crowd of people walking in a hallway or office building. The image is heavily blurred, showing only the lower legs and feet of the individuals. The color palette is dominated by reds and oranges, with a white rectangular box containing the word 'Handbook' overlaid on the left side.

Handbook

Curbing Corruption in Public Procurement



Handbook for Curbing Corruption in Public Procurement

Handbook For Curbing Corruption In Public Procurement

ACKNOWLEDGMENTS

Contributing authors: (Part I) Michael Wiehen and Juanita Olaya; (Part II: TI Indonesia Chapter) Adhi Ardian Kustiadi and Soraya; (Part II: TI Malaysia Chapter) Josie Fernandez and Goh Ban Lee; (Part II: TI Pakistan Chapter) Syed Adil Gilani and Saad Rashid; Editorial and Research Assistants: (Part I) Julia Kercher, Josphine Leclercq and Conny Abel; and Neill Stansbury; (Part II: TI Indonesia Chapter) Anung Karyadi and Hani Yulianto; (Part II: TI Pakistan Chapter) Faisal bun Riaz (Part II: Malaysia Chapter) Brian Fong, Selvam John, Rash Behari, Justina Tan.

Publication Manager: **Lisa Prevenslik**

Editor: **Kenneth Kostyo**

Published by Transparency International
© Transparency International 2006

All rights reserved. All the written and visual material contain herein is the exclusive property of Transparency International and/or its national chapters. This material may be reproduced and otherwise utilised for non-commercial purposes related to anti-corruption if this publication is correctly and clearly identified as the source.

This publication has been produced with the financial assistance of the European Union and the UK Foreign and Commonwealth Office. The contents of this publication are the sole responsibility of Transparency International and can under no circumstances be regarded as reflecting the position of the European Union or the UK Foreign and Commonwealth Office. TI Malaysia received financial assistance from the Canadian High Commission for its work on the Handbook.

ISBN: 3-935711-23-9

..... 2



ABOUT TRANSPARENCY INTERNATIONAL

Transparency International (TI) is the civil society organisation leading the global fight against corruption. Through close to 100 chapters worldwide and an international secretariat in Berlin, Germany, TI raises awareness of the damaging effects of corruption, and works with partners in government, business, and civil society to develop and implement effective measures to tackle it.

For further information please contact:

Transparency International

Alt Moabit 96

10559 Berlin, Germany

Tel: +49-30-34 38 20-0

Fax: +49-30-34 70 39 12

E-mail: ti@transparency.org

Web: <http://www.transparency.org>

3



ABOUT TRANSPARENCY INTERNATIONAL INDONESIA

Transparency International Indonesia (TI Indonesia) was established in October 2000 as an NGO and not-for-profit organisation. Since then it has worked as part of the global efforts to eliminate corruption, and it has borne the mission to eliminate corruption by promoting greater transparency and accountability in government administration, business, and civil society in Indonesia.

Currently TI Indonesia serves not only in the Indonesian capital of Jakarta, but also in regional and field offices in 17 region. Our success has included the first ever district Integrity Pact in Solok District, Sumatra as well Aceh, Banten, part of East Java, part of South of Kalimantan, and part of South Celebes. TI Indonesia has published many books including guidebooks: Countering Bribery for Business Sectors and Corruption Perception Index in 21 cities of 2004, which periodically surveys Indonesia (due for release in 2006 Corruption Perception Index in 32 Indonesian cities), Political Party Finance, Campaign Expenditure Monitoring of 2004 Election, etc. and relevant studies: Tax Reform, Extracted Industry Initiative, National Integrity System has successfully on Political Finance Bill and General Election Bill advocacy.

TI Indonesia is governed by a Board of Directors, which is chaired by T Mulya Lubis, Ph.D and a Board of Supervisory Body, which is chaired by Arief T Soerowidjojo, Ph.D. The national secretariat is in Jakarta, Indonesia and is led by General Secretary Rizal Malik, M.A.

For further information please contact:

Transparency International Indonesia

Jl. Senayan Bawah No. 17

Kebayoran Baru

Jakarta 12180

Indonesia

Tel: 62-21-7208515

Fax: 62-21-7287815

E-mail: info@ti.or.id

Web: <http://www.ti.or.id>

..... 4



ABOUT TRANSPARENCY INTERNATIONAL MALAYSIA

Transparency International Malaysia (TI Malaysia) is an independent, non-governmental organisation committed to the fight against corruption. TI Malaysia is an accredited chapter of the Berlin based Transparency International.

The vision of TI Malaysia is committed to the achievement of a socially just society within a sustainable, plural democracy that is free of corruption. TI Malaysia engages with the public sector, private sector and civil society through various programmes for advocacy, education, information, and research to combat corruption.

The five year strategy plan of TI Malaysia from 2006 to 2010 focuses on organisational development, advocacy, education and training, surveys, media relations, publications, and regional networking. Policy advocacy is aimed at improving the institutional pillars of the National Integrity systems, reviewing anti-corruption policies and laws and promoting greater transparency and accountability in public contracting and procurement.

For further information please contact:

Transparency International Malaysia

Level 27, Wisma Tun Sambanthan

Jalan Sultan Sulaiman

50000 Kuala Lumpur

Malaysia

Tel: 603 2273 8581

Fax: 603 2711 8917

E-mail: admin@transparency.org.my

Web: <http://www.transparency.org.my/>

ABOUT TRANSPARENCY INTERNATIONAL PAKISTAN

Transparency International Pakistan (TI Pakistan) is the Pakistani chapter of Transparency International, established in 2002 with main aim is to strengthen the global value system by making transparency and accountability more relevant public norms. Transparency International Pakistan realises that presently public procurement in all departments of Pakistan is treated as a downstream, clerical, buying and selling function and, therefore does not attract professionalism and competent staff to deal with the meagre resources with integrity and transparency. One of the main reforms TI Pakistan has been working on since 2002 is to professionalised the organisations and individuals responsible for procurement through targeted capacity building activities. This is the core element of the initiative, addressing not only capacity building efforts at the level of agencies and individuals, but also to strengthen systems, transparency, and to tackle corruption.

Working in collaboration with other stakeholders, departments, TI Pakistan regularly published research papers, reforms, and reform manuals with aim to disseminate information for all stakeholders, and also conducts capacity building workshops in public procurements. These publications are available online on the website.

For further information please contact:

Transparency International Pakistan

5-C, 2nd Floor, Khyaban-e-Ittehad, Phase VII

Defence Housing Authority

Karachi, Pakistan

Tel: (0092-21) 5390408-9

Fax: (0092-21) 5390410

E-mail: ti.pakistan@gmail.com

Web: <http://www.transparency.org.pk>

..... 6



INTRODUCTION

This Handbook for Curbing Corruption in Public Procurement is meant to be a basic introduction for all stakeholders to the challenge of overcoming corruption in the field of public procurement. Our intention is to provide the readers with real world examples of successful actions that have been taken against corruption in a variety of Asian countries. The hope is that these experiences can be “translated” and “exported” to other situations and countries with similar success. This Handbook is the report resulting from the European Union – Asia Urbs Programme, which provided funds for cross-sectoral workshops on improving public procurement in the three Asian countries described in this Handbook.

In almost all countries, public procurement through government contracting represents a large if not the largest percentage of the economy. This translates into a vast amount of money, which provides seemingly endless opportunity and temptation for corruption. The situation regarding public procurement differs widely throughout the world, and in all countries involves a complicated set of regulations and practices. This makes the area more opaque and the challenge for anti-corruption advocates even greater.

This challenge demands very aggressive and very intelligent tools, and Transparency International has accepted the task of developing such tools. Several of these are described in the following pages. It is extremely important to note that the very diverse world of public procurement leads to diverse corruption and requires diverse responses. There is not a “one size fits all” response, and even the most effective mechanism will not necessarily work immediately or all the time. We encourage you to read the following historical and legal stories, and to think how they are similar or different to the story in your own country. Then read about how civil society and governments have worked together in Indonesia, Malaysia, and Pakistan to improve the public procurement agencies and processes. Perhaps similar techniques can be applied in your own situation, but very likely many details will need to be altered. In doing so you

7



INTRODUCTION

will become involved in the evolving dynamic that is the struggle for better and cleaner governments and businesses and in turn less corrupt societies.

This Handbook is broken down into Part I, which is meant to be a “global introduction” to procurement. Part II is further subdivided into three country chapters: Indonesia, Malaysia, and Pakistan. Each of these chapters includes descriptions of the legal and historical context of corruption in public contracting in their country as well as the various steps that have been taken to work against it.



TABLE OF CONTENTS

PART I	<u>HOW TO REDUCE CORRUPTION IN PUBLIC PROCUREMENT: THE FUNDAMENTALS</u>	
	INTRODUCTION -----	13
	SECTION 1 THE PROBLEM OF CORRUPTION IN PUBLIC PROCUREMENT	
	AN ANALYSIS-----	13
	1.1. THE TERM PROCUREMENT-----	13
	1.2. DEFINITION OF CORRUPTION -----	14
	1.3. FORMS OF CORRUPTION-----	15
	1.4. MANIFESTATIONS OF CORRUPTION IN PUBLIC PROCUREMENT-----	17
	1.4.1. CORRUPTION RISKS AND MANIFESTATIONS ACROSS THE PROCUREMENT CYCLE -----	17
	1.4.2. SPECIAL RISK FACTORS -----	20
	1.4.3. ROLE OF LENDERS, FUNDERS AND GUARANTORS-----	24
	1.4.4. ACTORS IN CORRUPT DEALS -----	26
	1.4.5. IMPACT OF AND DAMAGE FROM CORRUPTION IN PUBLIC PROCUREMENT--	28
	SECTION 2 WHAT CAN BE DONE ABOUT IT? ANTI-CORRUPTION STRATEGIES AND INITIATIVES IN PUBLIC PROCUREMENT -----	32
	2.1. CRITICAL STEPS FOR TRANSPARENCY ACROSS THE PROCUREMENT CYCLE -----	32
	2.2. ANTI-CORRUPTION STRATEGIES AND INITIATIVES OF PUBLIC AUTHORITIES -----	48
	2.2.1. GOOD PROCUREMENT PRINCIPLES -----	48
	2.2.2. GOOD PROCUREMENT LAW -----	52
	2.2.3. LAW ENFORCEMENT-----	56
	2.2.4. INTERNATIONAL ANTI-CORRUPTION CONVENTIONS -----	59
	2.2.5. PREVENTION-----	62
	2.2.6. CONTROLS AND CONTROL STRUCTURES (INTERNAL AND EXTERNAL) -----	64
	2.2.7. INFORMATION GATHERING - WHISTLEBLOWING -----	65
	2.2.8. E-PROCUREMENT -----	66
	2.3. ANTI-CORRUPTION INITIATIVES IN THE PRIVATE SECTOR -----	68
	2.3.1. OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES-----	68
	2.3.2. UN GLOBAL COMPACT -----	70
	2.3.3. FIDIC "POLICY STATEMENT ON BUSINESS INTEGRITY" OF CONSULTANTS -----	72
	2.3.4. CODES OF ETHICS IN BUSINESS -----	73
	2.3.5. AGENT'S CONTRACTS-----	76
	2.3.6. TI'S INITIATIVES WITH SPECIFIC SECTORS -----	76
	SECTION 3 COLLABORATIVE TOOLS (INVOLVING GOVERNMENTS, COMPANIES AND CIVIL SOCIETY) TO PREVENT OR REDUCE CORRUPTION-----	80
	3.1. THE TI INTEGRITY PACT -----	80
	3.2. THE INTEGRITY CLAUSE -----	89
	3.3. PUBLIC HEARINGS-----	90

2.5. PRIVATE SECTOR INITIATIVES TO CURB CORRUPTION-----	155
2.6. PUBLIC PROCUREMENT REGULATIONS-----	156
2.7. LOCAL GOVERNMENT: PROCUREMENT PRINCIPLES AND POLICIES-----	157
SECTION 3 ADVOCACY: MEANS TO PUSH FOR HEALTHY PUBLIC PROCUREMENT-----	178
3.1. THE NOTION OF ADVOCACY-----	179
3.2. LEVELS OF ADVOCACY IN THE AREA OF PUBLIC PROCUREMENT-----	182
3.3. SPACE FOR ADVOCACY-----	183
3.4. MANAGEMENT OF ADVOCACY -----	185
3.5. ASSESS AND ACCESS RESOURCES-----	191
3.6. MONITORING AND EVALUATION-----	192
3.7. PRINCIPLES OF EVALUATION-----	192
3.8. ASSESS, REFLECT AND REVISE!-----	192
3.9. CAPACITY BUILDING FOR ADVOCACY -----	193
SECTION 4 NATIONAL WORKSHOP REPORT-----	196

TI PAKISTAN CHAPTER

SECTION 1	
1.1 INTRODUCTION -----	201
1.2 PAKISTAN'S NATIONAL ANTI-CORRUPTION STRATEGY (NACS)-----	202
1.3 PAKISTAN'S NATIONAL AGENCY FOR PROCUREMENT-----	204
1.4 ANTI-CORRUPTION AGENCIES IN PAKISTAN-----	206
SECTION 2 TI PAKISTAN TOOLS AND EXPERIENCE IN PUBLIC CONTRACTING -	208
2.1. PROMOTION OF THE IP FOR THE K-III GREATER KARACHI WATER SUPPLY SCHEME-----	208
2.2. MEMORANDUM OF UNDERSTANDING (MOU) -----	212
2.3. MODEL CHECKLIST OF THE BIDDING PROCESS BY TI PAKISTAN FOR CONFIRMATION OF COMPLIANCE OF PUBLIC PROCUREMENT RULES 8 JUNE 2004 S.R.O. 432 (I)/2004 BY PAKISTANI GOVERNMENT FINANCE DIVISION-----	216
SECTION 3 THE EU ASIA URBS PROJECT & THE WAY FORWARD -----	217
3.1. THE EU ASIA URBS PROJECT -----	217
3.2. CURRENT EFFORT: PROMOTE APPLICATION OF PROCUREMENT RULES AT PROVINCIAL LEVEL-----	219
ANNEX 1 TI PAKISTAN'S MEMORANDUM OF UNDERSTANDING (MOU) ON INTEGRITY PACTS AND TRANSPARENCY IN PUBLIC PROCUREMENT-----	220
ANNEX 2 TI PAKISTAN CBT WORKSHOP: AGENDA -----	224
ANNEX 3 MODEL CHECKLIST OF THE BIDDING PROCESS -----	224
ANNEX 4 EXAMPLE CHECKLIST USED IN PAKISTAN -----	227
ANNEX 5 PUBLIC PROCUREMENT RULES 8 JUNE 2004 -----	231

