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Pakistan's Anti-Corruption Program: Observations and Recommendations

By Transparency International

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“One of the biggest curses from which India is suffering... is bribery and corruption. That really is a poison. We must put that down with an iron hand and I hope that you will take adequate measures as soon as it is possible for this Assembly to do so.” Address of Quaid-i-Azam Mohammad Ali Jinnah to the Constituent Assembly of Pakistan on his election as President (11th August 1947)

The Government of Pakistan (GOP) invited TI to visit Pakistan to assess the status of its anti-corruption activities and to make recommendations as to where additional efforts could be useful. In response to this invitation, TI sent a small mission comprising Margit van Ham, Executive Director at TI's Central Secretariat in Berlin, Mr. Shaukat Omari, Facilitator of TI Pakistan, Karachi, and Michael H. Wiehen, Member of the Board, TI and TI Germany, which visited Islamabad and Lahore from April 18 to 26, 2002. The mission met with many senior officials and Nazims, representatives of the business and legal communities, the media and several NGOs, including the Human Rights Commission of Pakistan and the Consumer Rights Commission of Pakistan, and members of the donor community.

The TI mission wishes to express its great appreciation for the full cooperation and support of the Government during this visit, and the World Bank's willingness to cover the out-of-pocket expenses of the mission members.

The TI mission appreciates the very complex problems faced by the Government as corruption seems to have become an accepted practice at all levels of society. It acknowledges that the present Government has sent clear signals that it is determined to fight corruption, and has indeed taken a number of significant steps toward that end, such as the empowerment of the National Accountability Bureau, the initiation of the process of devolution and decentralization of government, the announcement of the “access to justice” program, the police reforms 2002, the start of a civil service reform including the promulgation of the Removal from Civil Service Ordinance, the deregulation process including the abolishment of many price controls, and the separation of the accounting functions from the Office of the Auditor General. Finally the

Government has contracted the services of a consultant to develop a comprehensive National Anti-Corruption Strategy.

Summary

Pakistan's ranking in TI's Corruption Perception Index (CPI) has consistently been in the lowest group of countries:

| | Total number of countries | Pakistan's Rank | Pakistan's Score (out of 10) |
|----------|---------------------------|-----------------------|------------------------------|
| CPI 1995 | 41 | 39 | 2.25 |
| CPI 1996 | 54 | 53 | 1.0 |
| CPI 1997 | 52 | 48 | 2.53 |
| CPI 1998 | 85 | 71 | 2.7 |
| CPI 1999 | 99 | 88 | 2.2 |
| CPI 2000 | | Pakistan not included | |
| CPI 2001 | 91 | 79 | 2.3 |

The TI mission received nearly uniformly the message that corruption at the top levels of government has very significantly declined – but that at the middle and lower levels of the government apparatus corruption still thrives almost unabated. It is clear that the Government must continue and even strengthen its efforts to bring corrupt politicians and officials to justice. The TI mission however focussed on measures taken by the Government to strengthen the prevention and avoidance of corruption. A corruption survey conducted by TI-Pakistan over the last few months, in parallel with the TI National Chapters in India, Bangladesh, Nepal and Sri Lanka, should, by the summer of this year, bring out useful information about where in the country corruption is most prevalent and in addition allow some cross-country comparisons.

At a meeting of the Pakistan Development Forum in Paris, April 29-30, 2002, where the GOP met with its international development partners under the auspices of the World Bank, TI summarized its observations and recommendations as follows:

“Central to the efforts of the Government should be, in our view, a bold Freedom of Information law, accompanied by an equally bold pro-active information policy under which most government activities are made public at an early stage, so that the citizens can contribute to the development of policies – and exercise their control function. Ordinances and laws should be shared with the public at the formative stage, and major investment projects should be discussed with all the stakeholders at an early stage, perhaps through open hearings, when changes are still possible. TI's Corruption Perception Index shows a clear correlation between strong Freedom of Information legislation and very low corruption levels in a country.

“Secondly, a broad Civil Service reform should tackle issues like the “living wage”, a clear Code of Conduct for civil servants, clear rules on conflict of interest and nepotism, a significant reduction of discretionary powers, systematic monitoring and enforcement of the rules, promotions on merit, a serious “disclosure of assets” program, removal of corrupt officials, an easy complaints mechanism (for citizens and colleagues alike) and a whistleblower protection program. Part of this drive should be a further strengthening of the powers and capacity of oversight institutions such as the Auditor General, the ad hoc Public Accounts Committee and the Ombudsman's Office, and the assurance of an independent, impartial and well-trained judiciary.

“Thirdly, it appears that Pakistan's fight against corruption would benefit greatly from a more or less complete overhaul of the country's procurement system, institutions and rules. Through public procurement a very large share of the country's public resources is spent. Any

improvement of the transparency, predictability, accountability and quality of the procurement process can save the country vast sums of money. The World Bank's CPAR of June 2000 presents a clear message of the current problems."

The Pillars of the Country's Integrity System

The TI mission approached its task along the lines of its Source Book 2000 "Confronting Corruption: The Elements of a National Integrity System", which is accessible through the TI Website www.transparency.org.

An Elected Legislature:

While at present Pakistan has no elected national legislature, national elections are scheduled to take place in October 2002. Under the commendable bold Devolution Program of the GOP, elections for local councils took place in the first 8 months of 2001, and district, tehsil and union "Nazims" (mayors) were indirectly elected, with councillors acting as an electoral college. While many questions remain about the role of the Nazims, and about the funds they will have available, TI's National Chapter in Pakistan is working actively with the City Nazim of Karachi and the Nazims of several towns in Karachi toward the introduction of more transparency into the administrative activities, suggesting that at the grass roots level a political process with involvement of the citizens is possible. Two possibly very interesting instruments for citizen-administration interaction are the newly-to-be-established Citizen Community Boards and the Public Safety Commissions. Their role and functions should be carefully monitored.

An Independent and Impartial Judicial System:

An independent, impartial and well-informed judiciary holds a central place in the realization of just, honest, open and accountable government. A judiciary must be independent of the executive if it is to perform its constitutional role of reviewing actions taken by the government and public officials to determine whether or not they comply with the standards laid down in the Constitution and with the laws enacted by the legislature. And the selection and appointment of judges at all levels, but particularly at the High Court and Supreme Court levels, must be, and must be seen to be, totally professional, rule- and merit-based, and transparent.

At present, the judicial system in Pakistan is not held in high esteem. Some call it "the cause of all evil". Many regret that members of the judiciary are expressly exempted from the work of the National Accountability Bureau (NAB). It also seems that more attention should be given to the selection of judges from the Bar and the training of court staff. However, in December 2001 GOP announced an Access to Justice Policy aimed at strengthening good governance, the rule of law and ensuring access to justice. Its implementation will have to be carefully monitored.

There is an abundance of laws, ordinances and regulations that are in part outdated or contradicting each other, thus giving corrupt officials good opportunities for exercising discretionary powers without any risk.

Independent and Free Media:

Alongside an independent judiciary, the existence of free and independent media is one of the twin powers essential for good governance, and neither should be accountable to government or politicians. The Government should scrupulously refrain from any temptation to manipulate the media, either through direct influence over companies or individual journalists, or by using economic powers such as the placement of advertising.

Supreme Audit and other Oversight Bodies:

Until less than a year ago, the Auditor General of Pakistan was also Accountant General. The recent separation of functions was a significant step toward building a strong, independent supreme audit watchdog office. The Auditor General has recently published (and put on its Website) the first Annual Report and a Corporate Audit Plan, and intends in future Annual Reports to include a section on Unfinished Business, listing items where recommendations of the AG have not yet been acted upon by the Executive. This development is laudable. For the future it is important that the Auditor General be empowered to audit in addition to government accounts also the accounts of all public corporations (though not those which have been set up as commercial corporations, even if the government holds the majority of the shares).

The Auditor General's Office should be accountable to the Parliament only. The Auditor General of Pakistan appears to have some degree of independence, but its funding is determined by the Ministry of Finance, whose accounts it audits (even though the AG's Office is now apparently free to use its budget funds as it sees fit, without any control by the Finance Ministry). It is highly desirable that the AG's Office be given a fully independent status as soon as a Parliament has come back into existence.

Equally important as a strong Auditor General's Office is the existence of other strong, independent oversight bodies, such as the Public Accounts Committee and the Ombudsman. In the absence of a legislature, the present ad hoc Public Accounts Committee has limited powers. The TI mission heard that the ad hoc PAC has cut the knot of an extra-long backlog and is presently reviewing the audits of 2001, having put aside the older files. While it is clear that audit action, if it is to be effective, must occur in a timely manner, it is important that older cases of violations, including probably corruption, are not simply abandoned.

All the oversight bodies should be supplied with adequate human and financial resources. Every Rupee invested in oversight will bring high returns.

Independent Anti-Corruption Agency:

Fully independent anti-corruption agencies like the Independent Commission Against Corruption (ICAC) in HongKong have proven their worth, and it is to be hoped that at the end of the present consultancy GOP would decide to establish such an independent body, with judicial powers and the involvement of Civil Society, and with a clear mandate for prevention work.

Effective, well-trained Law Enforcement:

The National Accountability Bureau (NAB) has been empowered to deal with corruption crimes at the top political and official levels. NAB has been particularly successful in recovering for the country significant amounts of money. It has established a strong organization and is considered by many an efficient and effective organization. The TI mission heard, however, fairly widespread concern that both the military and the judiciary are excluded from the mandate of NAB. Clearly, an unconstrained mandate would have strengthened the legitimacy of NAB. The mission took also note of the fact that some "draconian" aspects of the NAB powers (detention rights) have been reviewed. An oversight of the NAB itself should be assured.

The police is considered by many in Pakistan to be particularly corrupt. The TI mission welcomes the fact that GOP has acknowledged the need to address this issue and is embarking on a police reform, including the establishment of Public Safety Commissions, Criminal Justice Coordination Committees and an independent complaints handling authority. The separation of investigation and prosecution functions should enhance the due process of law and is welcome. Also, the police must be insulated from politics. The experience with the newly-established motorway police appears to demonstrate that sufficient pay, a well-structured job, effective

monitoring and the creation of pride in the job can work wonders. This lesson should be remembered. All the arguments in the following section apply to the police as well.

A Strong Public Service to Serve the Public:

A well-trained, adequately-paid professional public service with pride in its job is a major factor in containing corruption in any country. Pakistan has started a civil service reform, focused on the federal level, addressing i.a. rewarding merit in recruitment and promotions, the pay and pension systems, and right-sizing and restructuring. The Federal Public Services Commission apparently has been given enhanced powers and some degree of autonomy. One can only hope that early attention will also be given by the Provinces to the provincial civil service system.

The TI mission believes that pay levels need to be given particular attention. If everybody believes that even after recent (fairly significant) pay adjustments the official income of civil servants, especially at the lower levels, is inadequate to cover basic family living requirements, then acceptance of this fact is a tacit invitation to supplement the official income through corruption, and that's the way it is apparently interpreted inside the civil service as well as by the clients in Pakistan and abroad (the dangerous "corruption of need" argument). Enquiries as to the size of the gap between the actual and a "living wage" are answered by some with the need for a "four- to fivefold increase". Obviously this would confront the GOP with a major problem. But some additional move, perhaps for selected, especially endangered and exposed civil servants, would appear to be necessary if the easy excuse for rampant corruption is to be removed and a drive for a professional, clean public service is to have a chance. The TI mission is painfully aware of the economic strictures, and yet would urge that this issue be given early attention.

Perhaps equally important is the reduction to a necessary minimum of discretionary powers of civil servants. Many government services can be structured so as to require minimum discretion in their execution. Discretion invites corruption. The GOP's drive to deregulate the economy through the near-abolition of price controls, the closing of the Supplies Office, changes in the Factories Act and the effort to establish and then tackle "irritants" in the investment requirements deserves strong support. The exercise of discretion is a powerful catalyst for corruption throughout any administration. Among many other measures, the new electronic technologies offer unlimited opportunities for transparency and clarity without civil servant discretion – and even for interaction between client and official without personal contact, minimizing the occasions for the transfer of bribes.

Other important features of a non-corrupt, professional civil service are the adoption, and acceptance by each civil servant, of a good Code of Conduct with clear rules i.a. on the acceptance of gifts and entertainment, conflict of interest and nepotism, systematic monitoring and enforcement of the rules, and a serious "disclosure of assets" program for senior officials (under which the disclosure forms are actually checked, verified, made publicly accessible, and action is taken, if suspicion of wrongdoing emerges). There needs to be an accessible and well-functioning complaints mechanism, by which clients/citizens can question the delivery of service to them, citizens or citizens' organizations can report on wrongdoing they have noticed and civil servants can complain about wrongdoing by their colleagues, without fear of mobbing or other adverse consequences. Lastly, Pakistan should have a good whistleblower protection program, giving assurance to people that reporting violations will not get themselves into trouble.

Any set of rules and conduct of course requires effective sanctions to be taken seriously, and in this context the TI mission welcomes the promulgation of the "Removal from Service (Special Powers) Ordinance, 2000" with its broad powers to hold persons in government or corporation service accountable.

One institution traditionally beset by most of the problems referred to above appears to be the Central Board of Revenue. The CBR is considered particularly corrupt by many observers, and the TI was pleased to learn that a reform program for CBR is already underway, with significant donor support. Pakistan suffers from a particularly small tax base (1.2 million taxpayers in a population of 140 million people is excessively low), and due to inefficient (and often corrupt) practices, the tax collection result is totally inadequate. Here a broad use of electronic means to catch potential tax payers in other activities, but also in order to reduce the personal interaction between tax inspector and tax payer could go a long way toward increasing the tax intake. A Code of Conduct, reduction of discretion of tax inspectors, effective complaints mechanisms, strict monitoring and effective sanctions for violators should be part of any reform program. The CBR might be one candidate for starting with higher salaries, coupled with strict monitoring and sanctions.

Procurement:

Pakistan's fight against corruption could benefit greatly from an almost total overhaul of the country's procurement systems, institutions and rules. Through public procurement a very major share of the country's public resources is being spent – and much of it presently wasted. The World Bank's Country Procurement Assessment Report of June 2000 paints a grim picture of the situation and presents many suggestions for improvement. The TI mission believes implementation of those recommendations would go some way toward cleaning up the procurement scene and improve transparency, predictability, accountability and quality of procurement. The semi-official, double role of the Pakistan Engineering Council is particularly difficult to accept, and we agree strongly that the PEC should be limited to its private sector responsibilities so as to remove the obvious conflict of interest that exists under the present arrangement. The TI mission would actually go beyond the recommendations of the World Bank report and stress in particular (i) the need for full transparency of the bid evaluation process, (ii) the need to apply particularly strict and transparent procedures to the selection of consultants, and (iii) the desirability of using the TI-developed concept of the Integrity Pact to a few selected major investment projects. The Integrity Pact concept has recently been applied to the selection of consultants for the Karachi Water and Sewerage Board K2 Project and has brought highly satisfactory results for KWSB, in terms of significantly lower consultant cost than had been predicted on the basis of past experience.

Incidentally, the Integrity Pact concept is equally applicable to privatizations and the issuance of licenses, concessions etc. Considering that the Government's program foresees the privatization of several very large public corporations (such as PTLC and KESC) and of all the banks, we recommend that the GOP consider using the Integrity Pact concept for at least one of those cases, to test its effectiveness and at the same time to send a clear signal that Government will make every effort to avoid the pitfalls of privatization as they can be observed in so many other countries.

Most external donors prescribe their own procurement rules which as a minimum increases the complexity and probably confusion of general procurement activities. One would hope that the donor community could be persuaded to agree and apply the "highest common denominator or standard" and thus help bring about uniform procurement rules.

By the same token, donors are not necessarily only part of the solution, but often also part of the problem. Padding a project with items dear to the respective minister or secretary (cars etc), topping-up the salaries of senior officials involved in executing a donor-supported project, or offering to government civil servants consultancies (often external), which supposedly are carried out during official vacations but in fact are done instead of official duties, are unfortunately well-established practices in many developing countries. GOP is urged to monitor

relations between donors and individual government departments carefully and to make sure that no such practices, which after all are a form of corruption, are tolerated.

In several discussions, the TI mission heard that delayed releases of budget funds often contribute to procurement problems: Down- or progress-payments fall due throughout the year, and funds should be available when due. If principals cannot pay when payment is due, the bidders will either pad their bids to make up for the delay in advance, or they will bribe the officials of the principal to see that they get paid over everybody else. A review of the release system may be desirable.

A final recommendation in the procurement area: Bribery of Pakistani officials by external companies (whether done from abroad or through subsidiaries in Pakistan) is now a criminal act in all 35 countries which have ratified the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. If GOP becomes aware of such bribery, or attempted bribery, in order to obtain or retain a contract with the Government of Pakistan, GOP should present the facts to the Embassy of the home country of the bribing company, with copy directly to the OECD Working Group on Corruption in Paris. Under the legality principle, the Embassy has to pass this information to its own prosecutorial authorities. Implementation of the OECD Convention requires deterrence by effective prosecution, and the judicial machinery in the home countries cannot act unless they obtain the relevant information. It would also be advisable that GOP inform the business community in Pakistan that it will fight corruption also by pursuing bribers, be they Pakistani or foreign.

The Role of the Private Business Sector:

The private business sector should be reminded of its very special responsibility in the country's renewal efforts. Active bribery and corruption are criminal acts, in Pakistan as elsewhere. Behaviour suggesting that the Government can be held to ransom should not be tolerated. The law offers sanctions, and those sanctions should be applied systematically, so as to achieve a maximum deterrent effect.

Freedom of Information:

Central to the efforts of the Government should be, in our view, a bold Freedom of Information (FOI) law which gives citizens the right of full, easy and largely free access to most information of government. A few sensitive areas like defense-related matters and personal data can be protected and excluded, but the bulk of all information should be accessible. The FOI movement started in Sweden in 1766, and today all industrial countries with very few exceptions have broad FOI legislation. Pakistan's Official Secrets Act stems from a time when administrators had mostly control functions; in today's world of "service to the public", the old approach should be abandoned and replaced by a modern law. FOI - and the transparency of government created by it - acts as a major hurdle to corruption, as global experience clearly indicates. TI's Corruption Perception Index shows a clear correlation between strong FOI legislation and very low corruption levels in a country. Pakistan has had a Freedom of Information Ordinance, 1997 and a draft Ordinance to Provide for Transparency and Freedom of Information, August 2000. Both previous texts are rather restrictive. Both the Human Rights Commission of Pakistan and the Consumer Rights Commission of Pakistan have prepared broader model FOI laws, and the TI mission would urge the GOP to be guided by the carefully developed two model laws.

In addition to promulgating a strong FOI law, the GOP should adopt an equally bold pro-active information policy under which most government activities are made public at an early stage, so that the citizens can contribute to the development of policies – and exercise their legitimate control function. Draft ordinances and laws should be shared with the public at the early formative stage (negative examples appear to be the NEPRA and PEMRA acts), even before the elections to a national legislature, and major investment projects should be discussed with

all the stakeholders at an early stage, perhaps through public hearings, when changes are still possible.

Attached is a paper entitled “Transparency and Corruption Prevention on Building Large Dams” which TI presented to the World Commission on Dams in December 1999 (Annex 1). Although this paper addresses primarily transparency and corruption-prevention issues to be considered in the context of planning and implementing large dam projects, the issues apply ceteris paribus to any large investment project such as motorways, power generation or water transfer facilities. This paper also provides information about the workings of TI’s Integrity Pact concept.

Role of Education:

In order to change the general acceptance of corrupt practices over time, a concerted long-term effort is required to educate the people – starting with schoolchildren, the formal education system and general media efforts.

Role of Civil Society:

Pakistan today has a large number of Civil Society organizations which are anxious to play their role of contributing to public activities, and at the same time to monitor public institutions and hold their officials to account. The TI mission felt that even among the most professional non-governmental organizations, there is much frustration about the suspicion with which they are looked upon by the Government. TI being an active part of Civil Society, taking in any country a non-confrontational approach and instead seeking to build coalitions between government, the international donor community, the business community and civil society, hopes that the GOP will seriously consider inviting the Civil Society of Pakistan to take on a larger role than heretofore – to the benefit both of the Government and all the people in the country.

The activities of TI’s National Chapter in Pakistan may illustrate the opportunities for such approach. TI Pakistan has begun several rather promising activities in Karachi, ranging from introducing TI’s Integrity Pact concept to the Karachi Water and Sewerage Board’s procurement for a major investment project, to working with the Nazims of Karachi and of one of the new town councils in Karachi towards bringing significantly increased transparency to all the town’s activities, and to working with several dozen primary schools toward putting the corruption topic on the agenda through school plays, contests etc. The wide range of activities of TI-Pakistan are described in TI-Pakistan’s Annual Report for 2001, attached as Annex 2,

Finally, TI (including TI-Pakistan) would be pleased to be given an opportunity, at any stage of the process, to review and comment on the recommendations of the consultants (KPMG) employed by GOP to develop a national anti-corruption strategy.

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