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Countering Procurement Corruption with Integrity Pacts: The Indian Experience

Posted on **March 4, 2016** by **Nayana RenuKumar**

Corruption in government procurement is a massive problem worldwide, especially in developing countries. In an ideal world, measures to combat procurement corruption would include structural changes that would open up monopolies, break cartels, and enact rational, uniform, and effective procurement laws. Sadly, the potential effectiveness of these measures is matched only by the near impossibility of their implementation any time soon. We should continue to push for comprehensive structural solutions to the procurement mess, of course. But in the meantime, are there other measures that can be implemented in countries struggling with widespread procurement corruption, which can at least help alleviate the problem?

One possible solution, heavily promoted by Transparency International (TI), is the use of so-called "Integrity Pacts" (IPs). An integrity pact is a voluntary agreement between a government agency and the bidders entering into a procurement contract, where both sides agree to refrain from corrupt practices. Bidders violating the pact could be blacklisted, placed under investigation, or have their contracts cancelled. Civil society actors monitor and arbitrate disputes in enforcement of IPs. The first IP was implemented in Ecuador for a refinery project in 1994; since then, TI has collaborated with government agencies to implement IPs in public contracts of more than 30 countries including Germany, Hungary, South Korea, Malaysia, Mexico, Argentina, Pakistan, China and India.

No one expects IPs to be a panacea—deeper structural reforms are still essential. But do IPs at least help? Or are they a distraction from more meaningful reforms? While a general answer may not be

possible, we can learn from the past three decades of experience with IPs in different countries. One useful test case for the effectiveness of IPs is India. And the evidence is, on the whole, encouraging.

With estimated annual public procurement expenditures of $500 billion (30% of GDP) and a 20-30% leakage rate, India has a serious problem with procurement corruption. India's archaic legal system, opaque procurement mechanisms, powerful cartels, and conniving public officials have stymied most procurement reforms. Despite this inhospitable environment, IPs have scored major successes in India. In 2005, Transparency International India (TI-I) convinced India's giant state-owned oil company, the Oil and Natural Gas Corporation, to use IPs to help clean up its supply chain. Since then, after fierce advocacy by TI-I, India's Central Vigilance Commission recommended the adoption of IP by all Public Sector Undertakings (PSUs).

The most dramatic and headline-grabbing impact of these IPs has been in the defense sector. In 2012, India's Ministry of Defense used the breach of a pre-contract IP as grounds for canceling its procurement contracts with an Israeli defense firm. In 2014, the Defense Ministry cancelled contracts with Augusta Westland, a British-Italian firm, and London-based Rolls Royce on similar grounds. The track record for the Indian IPs in other areas (including 49 of 225 Federal PSUs, several Federal ministries, and number of states) is less spectacular, but most of them report higher satisfaction with their procurement after implementation of IPs.

The Indian experience highlights three potential benefits of IPs in combating procurement corruption:

- *First*, IPs help compensate for a confused, inefficient, and incomplete set of formal procurement regulations, by giving well-intentioned government agents a basis to terminate corrupt contracts and seek contractual sanctions against the perpetrators. In short, in India the IP supplies a specific and explicit provision barring corruption, as well as supplying mutually-agreed penalties for violation.This might seem like it should be unnecessary, but in fact India's confusing and highly decentralized procurement system suffers from a glaring lack of explicit provisions penalizing corrupt behavior, leading to bizarre situations where government agencies feel helpless in the face of wrongdoing. For example, the allegations leading to the cancellation of Rolls Royce Deal with Hindustan Aeronautics Limited (HAL) surfaced when the company replied to a query from HAL under its Integrity Pact initiative, admitting that it had hired agents and paid them commissions, which led to an investigation by the Chief Vigilance Officer of HAL. *Thus, prosecution of IP violations can provide a strong ground for charging corrupt players in the absence of proof of explicit wrongdoing as stipulated by the fragmented anticorruption rules.*
- *Second*, a key pillar of an IP is the Independent External Monitor, a civil society actor of high

standing who monitors IP implementation and arbitrates all related disputes. Bidders aggrieved about the procurement process can approach the monitor, who then investigates the complaint and settles the dispute. According to TI-I, many agencies that have adopted IPs report that the informal arbitration and grievance redress functions performed by the monitors have helped reduce the number of cases ending up in court. This is a significant advantage, given that India's judicial system is famously slow, with parties often dying before their cases are resolved. *The monitoring system embedded in IP thus offers a credible accountability and reconciliation tool.*

- *Third*, beyond their positive effect on the particular contracts they govern, *reports on the success of IPs in discovering and penalizing corruption have helped create a stronger awareness of procurement corruption and possible remedie*s. The strong actions taken against corrupt vendors by a powerful agency like the Ministry of Defense have helped dispel the cynical view that IPs are a sham. Further, most government agencies introduce their IPs at well-publicized events, attended by the media and civil society actors, with details shared through the agency website (see, for example, here and here). This demonstrates the willingness of government agencies to acknowledge corruption as a reality and to challenge it, and also sends a message to the prospective vendors. More generally, these IPs and the publicity surrounding them have opened up the opaque procurement process to greater scrutiny by the media, civil society, and the general public.

The implementation of IPs in India has therefore achieved more success than initially expected. That said, there are some concerns that the recent dramatic actions by the Defense Ministry might create a misleadingly rosy impression of how much of a difference IPs are likely to make in India more generally. The Ministry of Defense might be an outlier, characterized by good leadership and unusually intense media scrutiny. Skeptics might also note that so far, all defense firms penalized for IP violations are foreign players, with less political heft and stronger disclosure requirements (as compared with domestic firms). This observation raises questions about how effective IPs will be in exposing and penalizing violations by politically strong local actors operating under shoddy disclosure practices.

A more significant concern, perhaps, is the fear that—notwithstanding their positive impact—IPs will be used as a band-aid and might distract attention from the need to adopt more ambitious reforms to address festering procurement corruption. This is a concern worth taking seriously. IPs can help, but they are no substitute for structural procurement reforms such as India's protracted deliberation on a national Procurement Bill. Instead, if the hype around IPs is allowed to mask the need for more comprehensive reforms, IPs could end up doing more harm than good. The right approach—one that India and other countries should follow—is to use IPs as a constructive tool to start the discussion on procurement corruption while preparing the ground for more painful reforms.

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About Nayana RenuKumar

I am a second year student of Masters in Public Administration at the Harvard Kennedy School passionate about creating a just, efficient and transparent government. I spent six years working with various governments and international organizations of India on anti-corruption, performance management, accountability and capacity building and look forward to returning at the end of my program to continue my work in these areas.

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6 THOUGHTS ON “COUNTERING PROCUREMENT CORRUPTION WITH INTEGRITY PACTS: THE INDIAN EXPERIENCE”

Nathan Sandals
on **March 6, 2016 at 4:33 pm** said:

Great post! It will be interesting to see if the some of the concerns you raise in your final two paragraphs come to fruition. In particular, it seems fair to wonder if IP violations by domestic firms will be dealt with the same was as violations by foreign firms are. As to your final point, I

wonder if you could frame IPs as a “foot in the door” of procurement reform, rather than a potential distraction. That is, could IPs be the first of a series of small steps that, taken as a whole, amount to a more ambitious reform? If so, what other small steps might India pursue in reforming procurement practices? Are there any other countries that have had success reforming procurement practices that could serve as a guide? Sorry to throw so many questions out there, but this is a fascinating topic. Thank you for writing on it.

Nayana RenuKumar
on **March 7, 2016 at 12:16 am** said:

Dear Nathan, you are right that treatment of domestic an foreign firm on equal terms would be crucial to ensure legitimacy of IP enforcement. You are spot on in suggesting that IP should be framed as a door opener than the whole package. Currently, the issue comes from treating IP as the beginning and end of procurement reform.As long as departments treat it as the starting point or intermediate step in procurement reform, I too believe that it can have better credibility and potency.

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Rathna Ramamurthi
on **March 7, 2016 at 11:39 am** said:

Thanks for a great post! This idea of doing anticorruption work through contract where statutory or regulatory approaches fail is a really interesting one. I wonder if there is

additional evidence available about how inclusion of IPs impact contract negotiations. Are these terms considered mutually beneficial, or do they come at a price cost for the government?

Courtney Millian
on **March 8, 2016 at 4:34 pm** said:

Thanks for the excellent post. I'm very intrigued by the concept of blacklisting after an IPs termination option is exercised. How do countries usually define the the scope of what they are blacklisting? Is it companies, particular individuals within companies, or a combination of the two? It would be shame if blacklisted companies could just disband under one name and reassemble under another, but tying them to particular people could present a whole host of problems.

In a related point, I know the Obama administration has recently required contractors to disclose prior violations of certain labors laws a part of their competitive bidding process. Could the same thing be done for contractors under an IP? Would you want it to? I'd think doing so could discourage some corrupt companies from applying for contracts and, if the government choose to contract with a company with past violations, could help the government and civil society to better target monitoring resources.

Sarah Gitlin
on **March 10, 2016 at 4:12 pm** said:

This is really interesting! I shared an initial skepticism of IPs

and am happy to learn that they have made a positive impact! wonder if your point 3 is propped up by a bunch of behavioral insights. For example, does it increase the salience of anti-corruption campaigns? (Alternatively, the need to announce it in a flashy ceremony could logically have led corrupt actors to the opposite conclusion — corruption is so endemic that they feel the need to say this and therefore I can be corrupt too.) Is it that people feel more shame reneging on a recently made public commitment than they do in being corrupt in the first place? (But if so, why do so many campaign promises come to naught?). Lots more to keep me pondering!