



A BLUEPRINT FOR TRANSPARENCY: INTEGRITY PACTS FOR PUBLIC WORKS, EL SALVADOR, 2009 – 2014

SYNOPSIS

When Gerson Martínez became head of El Salvador’s Ministry of Public Works in 2009, the organization was notorious for corruption that contributed to poor-quality construction, unfinished projects, and frequent lawsuits. Working with a prominent nongovernmental organization (NGO) and industry representatives, Martínez introduced integrity pacts as monitoring mechanisms intended to prevent corruption. The agreements publicly committed officials and companies to reject bribery, collusion, and other corrupt practices and enabled NGOs to monitor bidding and construction. Although limited capacity and resistance from some midlevel ministry staff hindered the monitors’ work, integrity pacts focused the attention of both the government and the public on problems in major public works projects; and participants said the pacts helped deter corruption in those they covered. In 2012, integrity pacts became part of El Salvador’s Open Government Partnership action plan, in implicit recognition of the tool’s contribution to reform. As of August 2015, the ministry had signed 31 integrity pacts involving five projects worth a combined US\$62 million. Although sustaining the initiative proved a challenge, integrity pacts served as a foundation for increased collaboration between government, civil society, and the private sector—and as a first step toward a new institutional culture at the Ministry of Public Works.

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INTRODUCTION

On November 25, 2012, President Mauricio Funes’s red convertible sped down El Salvador’s Boulevard Monseñor Romero, inaugurating the new six-lane highway that linked San Salvador, the capital, with the nearby municipality of Santa Tecla. The long-delayed opening of the road was a relief for tens of thousands of commuters—and for the minister of public works, Gerson Martínez.

The incomplete highway, known as Boulevard Diego de Holguín during the seven years it was under construction, had become a symbol of corruption in the Ministry of Public Works. Started in 2005 under the previous president, the project was five and a half years behind schedule by the time it opened; and it cost almost four times the original budget of US\$25.6 million.¹ (El Salvador adopted the US dollar as its official currency in 2001.) The ministry’s internal

investigation of the project in 2010 found that ministry officials had made irregular advance payments of US\$7.6 million to the two-company partnership awarded the construction contract and had modified the contract to allow arbitration that resulted in US\$7 million in legal penalties against the ministry.² Finishing the boulevard—with new contractors and oversight by civil society—was a step toward exorcising the ministry’s history of failed projects, said Liz Aguirre, head of the ministry’s Office of Information and Response.

The long-delayed completion of the highway was emblematic of a broader problem. In the late 2000s, growing frustration with corruption led Salvadoran civil society groups to press for new transparency measures—most notably, a freedom-of-information law that would let citizens monitor officials’ actions by obtaining government documents. Although the enactment of such a law was still years away, transparency had emerged as a prominent issue, recalled Laura Rivera Marinero, a governance officer at the United Nations Development Programme, who at the time was with a research organization that promoted passage of the law. But “the difficult part was to get the political will,” she said, and the governing Nationalist Republican Alliance (Alianza Republicana Nacionalista, or ARENA) had taken few concrete steps toward reform.

The 2009 presidential election offered an opportunity for change. The opposition Farabundo Martí National Liberation Front (Frente Farabundo Martí para la Liberación Nacional, or FMLN) made open government a central part of its platform, which the future minister of public works Martínez drafted. With encouragement from Transparency International, both major parties—the FMLN and ARENA—made public commitments to enact their own set of transparency measures if elected.³

Funes, the FMLN candidate, won the presidential election, setting up the first handover of power between political parties since the end

of El Salvador’s 1980–92 civil war, which killed an estimated 75,000 Salvadorans. Although El Salvador had held regular elections since the 1992 peace agreement, conservative ARENA—which first won the presidency in 1989 and had governed during the war’s final years—won every time. In a country still deeply polarized between left and right, the new government brought expectations of a radically different policy agenda and governing style. For the first time, the FMLN—an umbrella organization for guerilla groups that had remade itself as a left-leaning political party after the 1992 peace accords—had the chance to show how it would govern.

Surprising many, Funes appointed Martínez to the Ministry of Public Works even though Martínez had no background in construction or infrastructure. “I’m an accident here at the ministry,” Martínez joked during a 2015 interview. He had begun his political career in eighth grade, mobilizing middle- and high-school students to oppose the military government. Later he became a cofounder of the FMLN and held leadership positions in the organization before and after the peace accords.⁴ During his time in the Legislative Assembly and in party leadership, Martínez became one of El Salvador’s leading proponents of transparency—a background that led Funes to select him to clean up the notoriously corrupt ministry. “When President Funes offered me the position, I didn’t accept originally,” Martínez said. He had been reluctant to take over a ministry that was responsible for a kind of work he had no experience in. But Funes stressed that the ministry needed a corruption fighter and an effective administrator more than a construction expert, Martínez recalled. Four days later, he accepted the challenge.

THE CHALLENGE

Tackling irregularities and outright wrongdoing at the Ministry of Public Works would require skill and creativity. Corrupt practices were deeply entrenched in the ministry’s

operations and it would be difficult to get both officials and companies to adopt new ways of doing business. However, the weakness of anti-corruption institutions in El Salvador meant traditional enforcement strategies such as audits or prosecutions were unlikely to work.

Public works projects offered ample opportunities for corruption, many of them difficult to detect. During the bidding process, officials sometimes worked with companies to design requirements that only one company could meet or to share privileged information that would favor a specific company. The practice of taking bribes to accept a certain company's bid was so common that it was known by nicknames: *diezmo*, or tithing, for 10% of the project's budget, or *quinceañera*, after the traditional fifteenth birthday celebration, for 15%. Groups of companies also could collude to ensure one member won a contract by agreeing that the others would make offers they knew would be rejected.

Even if a contract had been designed and awarded fairly, the construction stage offered plentiful opportunities for corruption. Companies could use lower-quality materials than the contract specified and pocket the difference in price or could sharply increase the costs after securing the contract with an artificially low bid. Such practices typically required the cooperation of corrupt officials within the ministry, who signed off on shoddy work or dubious price increases in exchange for a share of the profits. Officials also could delay approvals or payments until they received bribes from companies.

Ministry officials also colluded with companies to create avenues for lawsuits and arbitration that would require government payouts. Officials could word contracts ambiguously and interpret or change the terms in ways that favored contractors when a dispute occurred. For instance, in the case of Boulevard Diego de Holguín, the ministry changed the contract to allow arbitration, which had been

prohibited in the original version. Four days later, the ministry and the contractor entered into arbitration that awarded the contractor more than US\$7 million.⁵

As a result of those practices, Martínez recalled, the ministry was “a jungle of lawsuits” when he took office. Marco Iraheta, the ministry's head of legal affairs, said that in 2009, the ministry owed US\$40 million because of lost lawsuits and arbitration, many of which “had been set up so the companies had a very easy way to win.”

The many places where a project could go wrong and the size of the ministry meant that although oversight was essential, changing the behavior of those involved would be just as important. The Ministry of Public Works was one of the largest in El Salvador, with approximately 1,000 staff, a budget of US\$138.3 million, and 185 projects under way in 2009.⁶

To complement oversight, reforms had to target the behavior of those involved in the contracting process, especially within the Ministry of Public Works. Corruption “had become part of the culture, and it was a very normal behavior for all the employees,” said Cristóbal Cuéllar, Martínez's chief of staff, who had previously served as the ministry's head of legal affairs. For ministry staff, many of whom had served during the previous administration, the emphasis on transparency and anti-corruption “was a really radical change, and there was a lot of resistance because of that change.”

The reshaping of the organizational culture was especially important because El Salvador lacked strong anti-corruption mechanisms. The Court of Accounts, the country's public audit institution, was subject to political manipulation. The ruling party was able to appoint allies to the court, and it often audited the party's political enemies while ignoring reports of wrongdoing by its own people in the government. The probity section of the Supreme Court, which was responsible for punishing those who profited

illegally from government work, was also weak. Since 1959, Marinero said, “no public servant has been sanctioned under the Law on Illicit Enrichment—how?”

Successful change required participation by the private sector as well as the government. Because of the business community’s skepticism of the left-leaning FMLN government, “there was this perception that it was going to be very difficult to work with our ministry,” Martínez said.

After 20 years of ARENA governments, business leaders “didn’t have any experience with these government officials; we didn’t know any of them,” said Mario Rivera, then president of Salvadoran construction industry association CASALCO.

In addition, “just getting internal support from the private sector was challenging, because—well, let’s just say that not everyone would benefit from being a transparent company,” said Ismael Nolasco, executive director of CASALCO at the time. Some companies would gain from a fairer competition—and save money by not having to pay bribes—but those that relied on unseemly relationships with officials stood to lose business and profits. As with the ministry, persuading companies to change their practices would be difficult, and CASALCO had no formal control over its members.

Martínez wanted to introduce some form of external monitoring, but nongovernmental organizations (NGOs) had limited resources and capacity. Monitoring bidding and execution processes required technical knowledge of the construction industry and the laws regulating public works, as well as substantial staff time. The scale of the ministry’s work and the constraints on monitoring meant that Martínez and his team had to prioritize carefully which projects to subject to additional scrutiny.

FRAMING A RESPONSE

When he became minister of public works in June 2009, Martínez made transparency and anti-corruption his top priorities. “Corruption is like a fungus that hides in the dark, and if you expose this fungus to the sun, it will die,” he said. To begin shining a light on the ministry’s operations, Martínez reached out to Transparency International.

“I called Transparency International in Berlin and told them: ‘Look, we have a moral emergency here. This is a moral SOS,’” Martínez said. After discussing possible steps with the secretariat in Berlin, Martínez contacted the National Foundation for Development (Fundación Nacional para el Desarrollo, or FUNDE)—an NGO that was in the process of becoming the Salvadoran chapter of Transparency International—and asked for help in observing the ministry’s work. Executive Director Roberto Rubio recalled that, given Martínez’s past work on transparency in the Legislative Assembly, FUNDE’s leaders were confident that Martínez was a partner they could work with, and they agreed that their organization would act as a monitor.

At the same time, the board of CASALCO was meeting with leaders of the new FMLN government and heard about Martínez’s plans. Although he had not known what to expect, Rivera recalled that when he met Martínez for the first time, “we realized we had certain beliefs in common. . . . I think that at the personal level, we wanted to work for a more transparent country, and we realized that as institutions, we could work together to achieve those goals.”

The association already had an interest in transparency. Several years earlier, out of concern for the construction industry’s public image, CASALCO’s leaders had started developing an ethics code, including a section on transparency and anti-corruption. In addition to the improving

sector’s image, more transparent processes would lead to contracts’ being awarded based on merit rather than their going to the company that could offer the largest kickbacks. However, “at that time, it was just a book; it was there for show,” Nolasco said. The new emphasis on transparency at the Ministry of Public Works would help push companies to implement ethical standards that Nolasco and Rivera believed necessary for fair competition and the reputation of the construction industry.

In August 2009, the ministry, CASALCO, and FUNDE agreed to form a Citizen Observatory, which would enable the NGO to monitor public works projects, but they had to decide how the observatory would work. To learn about monitoring tools, they sought international advice and support.

Martínez contacted the US Agency for International Development (USAID), which had a significant presence in El Salvador and had been involved in transparency issues for several years. When the FMLN took office in 2009, USAID was beginning a new, US\$7.9-million project focused on transparency. Carlos Antonio Guerrero, director of the USAID Transparency and Governance project implemented by US-based contractor Casals & Associates, recalled that although he had not previously worked with El Salvador’s Ministry of Public Works, the ministry was a logical choice for a partnership. Martínez “was a believer on these issues of ethics, transparency, and anti-corruption,” Guerrero said, and transparency was especially important for a ministry that had historically been “the treasurer of corruption.” Working with Casals & Associates, staff at the ministry, CASALCO, and FUNDE began to research monitoring strategies.

One tool that captured the team’s interest was the integrity pact. Developed by Transparency International in the 1990s, integrity pacts were joint public commitments by governments and companies to refrain from corrupt contracting practices and make bidding

and execution processes transparent. The standard Transparency International model called for the agency offering a contract to pledge that all of the officials involved, as well as their families and associates, would not solicit or accept payments, gifts, or favors in exchange for giving any company an advantage during the bidding or execution of a project. Companies similarly agreed not to offer bribes to officials and pledged not to collude with other companies in efforts to influence the bidding process.

Integrity pacts typically required all bidders on a contract to sign on for their offers to be considered, and the commitments remained in force for the winning company until completion of the project. Pacts also included penalties—such as disqualification—for violations by bidders, and monitors referred government officials’ violations to prosecutors or anti-corruption agencies. A third party, such as a Transparency International chapter or other NGO, monitored compliance with the agreements, which compelled the signatories to disclose to the monitor certain information about the project.

Guerrero had heard about integrity pacts from his contacts at the Transparency International secretariat in Berlin, and Martínez was interested in applying them in El Salvador. Nolasco recalled that USAID brought in experts from around the region, including from Argentina and Puerto Rico, to discuss their experiences. Of all the available options, “the one we thought would be most readily accepted by our stakeholders was the integrity pact,” Rivera said.

The relative simplicity of the system was an important element. Rivera said that although integrity pacts might require substantial time and money to implement, other mechanisms would be even more costly. For instance, he said, replicating a program in Guatemala that relied on widespread public monitoring would require extensive training and participation. Using integrity pacts would enable the reformers to

move forward quickly, because FUNDE was already prepared to serve as the monitor using funding from the Open Society Foundations, the network established by philanthropist George Soros.

Although Martínez placed special emphasis on the issue, El Salvador's new leaders were moving to fight corruption and increase public disclosure across the government. "At that time, transparency had momentum," Rubio said. The prominence of transparency in the FMLN's platform, the candidates' public commitments, increased international attention to the issue, and the party's desire to set a different tone from past governments "combined to make a favorable environment for the topic," he said. Funes created the Subsecretariat for Transparency and Anti-Corruption within the Office of the Presidency to develop and coordinate anti-corruption measures across government agencies. In addition, in September 2011, El Salvador became one of the first countries to join the Open Government Partnership, a multicountry initiative to promote transparency and facilitate engagement between government and civil society (see text box on page 7).

GETTING DOWN TO WORK

From 2010 to 2014, the ministry collaborated with civil society and the construction industry to apply integrity pacts to some of El Salvador's most prominent public works projects. Officials from the ministry, representatives from the construction industry association, and staff from two NGOs (FUNDE and the Social Initiative for Democracy, a Salvadoran nonprofit formed in 1992 to promote democratic processes) worked diligently to persuade construction companies and ministry staff to embrace the new transparency initiative and developed strategies to monitor projects. Beginning with the long-delayed Boulevard Diego de Holguín project, the monitors applied their

methods and focused government and public attention on the challenges of implementation.

Building support

Team members from the ministry, the private sector, and civil society understood that the success of integrity pacts would rely on active cooperation by all of the groups and individuals involved in the contracting process. "It's one thing for the minister to have his own level of personal will to work on this, and another thing to actually give access to the information," Rubio said. "It's one thing for companies and the government to say they're open to participate in an integrity pact on a bid, and another thing to actually do it."

Persuading companies to cooperate was a critical step. "For the private sector, you have to convince them that whatever you're doing is profitable," Guerrero stressed. The leaders of CASALCO assured member companies that integrity pacts would enable the companies to compete on an even footing, to avoid the high costs of paying bribes, and to demonstrate to potential business partners and the public that they could be trusted. In addition, companies that did most of their business with the public sector had strong incentives to maintain good relationships with the Ministry of Public Works, and Martínez made clear that transparency was his top priority. Rivera added that CASALCO's past development of its own ethics code had established transparency as an important issue for the group's member companies.

Presentation played an important role in persuading company officials. Rubio said FUNDE tried to portray integrity pacts as genuine assets to the companies rather than potential liabilities. "I think that a lot of it has to do with your attitude when you're going into these types of projects. You don't want to approach it with this air that you're there to audit them but instead to collaborate," he said.

INCREASING OPPORTUNITIES FOR PARTICIPATION AND SUPPORT

In September 2011, El Salvador's government moved to join the Open Government Partnership (OGP), becoming one of the first countries to join the multilateral initiative. As an OGP member, the government was required to work with civil society to develop a set of policies that would promote transparency, enable more-effective use of public resources, and foster public integrity. Those commitments formed an action plan various government agencies would implement in 2012–14, coordinated by the Subsecretariat for Transparency and Anti-corruption.

The subsecretariat formulated the initial commitments based on earlier consultations about the national transparency and anti-corruption policy. It did not consult civil society groups about OGP as it developed its 2012–14 plan.¹

The plan included a commitment to implement integrity pacts—a strategy recently adopted at the Ministry of Public Works. The commitment's inclusion in the OGP action plan “didn't really change the work that we do,” said Liz Aguirre, who led the ministry's Office of Information and Response. However, she said, the inclusion of the initiative in the OGP “contributes to the monitoring of the tools we use to promote transparency and their results.”

FUNDE transparency coordinator Giovanni Fuentes said that because the Law on Public Access to Information provided a strong legal framework, the monitors had the clout they needed. The inclusion of integrity pacts as an OGP commitment provided little additional help.

OGP became more important as the ministry's initiatives expanded, however. When the ministry went beyond the initial integrity pact model and embarked on the Construction Sector Transparency Initiative (CoST), it viewed the OGP as a way to sustain political will. CoST, which was part of the 2013–14 OGP plan, required the involvement of more institutions than integrity pacts and therefore “needed to be backed up at a higher level,” Aguirre said. She said was helpful to have the OGP commitment as a means of maintaining support from those additional agencies.

Better communication within the government remained a priority. Not all of the ministry staff involved in integrity pacts knew their work was part of El Salvador's OGP plan, for example.

Several people stressed the importance of strengthening public and civil society engagement. Fuentes said the process “should promote more public and independent participation, especially in monitoring the action plans . . . it shouldn't be the government leading or coordinating it.”

Luis Cruz, who managed the OGP at the secretariat, said he continued to struggle with that challenge. He found it was difficult to build public interest in the OGP and to sustain interest on the part of civil society. He said it was important to show concrete benefits. “People don't realize that a lot of the impacts they see on their lives are the results of the OGP process, so when you're trying to talk to people about the OGP, a lot of them don't pay attention,” he said. “They want to feel the impact on their lives.”

The subsecretariat tried to improve participation in its second OGP action plan. In 2013, it worked with civil society to revise the country's commitments. Nongovernmental organizations joined workshops organized by the subsecretariat, and they voted on which final programs to include.

For El Salvador's next action plan, covering 2014–16, five civil society organizations led the process of choosing commitments and proposed a draft action plan to the renamed Secretariat for Public Participation, Transparency and Anti-corruption, which accepted the proposals with few changes.

¹ Ramón Villalta, “Mecanismo de Revisión Independiente (MRI): El Salvador Informe de Avance 2012–2013,” Open Government Partnership, accessed May 29, 2015; <http://www.opengovpartnership.org/country/el-salvador/progress-report/evaluación>.

“Honestly, the concept of transparency makes people very uncomfortable, but if you frame it like a service you’re providing, it’s more easily accepted.”

Eventually, companies involved in the projects agreed. “To our knowledge, there haven’t been any companies that have said, ‘No, we’re not signing this,’” said Claudia Marchesini, the researcher responsible for FUNDE’s public works monitoring. However, the limited number of integrity pacts meant that in practice, relatively few companies were involved.

Ángel Díaz, president of a construction company that participated in one of the first integrity pacts, said he came to see the pact as a valuable tool for his business. “If we have nothing to hide, we also have an interest in protecting our reputations,” he said. Publicly committing to transparency and allowing oversight by a reputable NGO signaled that a company was a good one to do business with. Díaz added that “it is a bit uncomfortable to give the full information,” but because citizens often were not well-informed about public works projects, “if a third party explains what’s going on, it’s more credible—in terms of what we’re doing and why we’re doing it.”

Securing cooperation within the ministry was also a challenge. Although Martínez’s strong backing gave integrity pacts top-level support, many midlevel officials—who had to respond to monitors’ requests for information or site visits—required convincing. Cuéllar, Martínez’s chief of staff, said the minister and his team organized “an advocacy campaign of sorts about what we were doing—to try to explain this new mentality and to say to people within the ministry that yes, you can make that change.” Clear support at the top set the tone, and Iraheta, the ministry’s head of legal affairs, said, “It was very important, very decisive, that the minister took that position on transparency.”

The ministry backed up its commitment by instituting a zero-tolerance policy on corruption,

which obligated officials to report suspicious actions; creating disclosure guidelines; and firing a small group of staff that the ministry’s internal investigations had implicated in corruption. However, the emphasis remained on changing attitudes. “We believe that you can’t always do things with force,” Cuéllar said.

The USAID project funded a series of training sessions and workshops for Ministry of Public Works staff and for construction companies, which helped explain concepts and build support. Guerrero recalled that Martínez gathered almost all of the ministry’s staff and “asked us to provide a talk on ethics, from top management down to the last employee.” Trainers elaborated on ethics and transparency in later sessions. CASALCO worked with USAID to organize similar lectures and training sessions for its members, sometimes held jointly with ministry staff, Rivera said.

A crucial component of the training involved a clear explanation of what was expected of the individuals and institutions involved in the process. In 2012, when the Social Initiative for Democracy (Iniciativa Social para la Democracia, or ISD) began monitoring projects through integrity pacts, the NGO’s team met with midlevel and low-level ministry staff to “make a thorough presentation on what exactly the people’s roles are because of the integrity pacts and what would be the consequences if they did not comply,” said Óscar Campos, transparency coordinator at ISD.

Although it was the Ministry of Public Works that managed the integrity pacts, Martínez sought support from other parts of government. The Subsecretariat for Transparency and Anti-Corruption, which coordinated the government’s overall anti-corruption strategy, signed integrity pacts as an honorary witness, which served as a signal of broader institutional backing. The subsecretariat also demonstrated its support by including the initiative in the country’s first Open Government Partnership action plan.

Designing a system

In 2010, after deciding on the integrity pact as a tool for fighting corruption, the ministry worked with FUNDE and CASALCO to determine the kinds of commitments to include in the agreements. Their final version had the same core features as the model originally developed by Transparency International: the ministry and the contractor committed to not offer or accept any payment, gift, or favor in exchange for an advantage and agreed to quickly disclose relevant information to the third-party monitor. The integrity pacts also included commitments to report any inappropriate acts and required the ministry to provide the monitors with personal-asset declarations by all officials involved in the project and to publish information about the project's progress on its website.

El Salvador's version differed from Transparency International's model in two important ways. First, the country's Law on Public Acquisitions and Contracts, first passed in 2000 and amended in 2011, made some information confidential during the bidding and awarding of a contract—a measure intended to prevent companies from gaining privileged information about their competition, said Aguirre, the ministry's public information officer. The legal restrictions led to an emphasis on project implementation rather than the standard Transparency International model's focus on civil society review of offers and deliberations as they took place.⁷

Starting the monitoring process after a contract had been awarded narrowed the scope of El Salvador's integrity pacts. Although monitors conducted retrospective reviews of the bidding process to ensure compliance with legal standards and point out irregularities, they could not identify warning signs of corruption in real time or call for a bidder to be disqualified. Giovanni

Fuentes, transparency coordinator at FUNDE, said that because of the procurement law, "in this experience, we got involved once the company had been chosen, and we carried out the observation until the end of the project; but it would have been ideal to start the observation during the bidding and contracting stage." However, Cuéllar said the execution stage was a top priority at the ministry, given El Salvador's history of unfinished projects and cost increases.

The second key distinction between El Salvador's pacts and Transparency International's model was the point at which companies had to commit to the agreements. Transparency International stressed that all companies bidding on a project should sign integrity pacts as part of the bidding process and that signing should be a requirement before a company's offer could be considered.⁸ But the team in El Salvador decided to avoid taking a confrontational position by making integrity pacts an optional part of public works contracting. "We thought that by making it voluntary at first, it would become more accepted by companies," Nolasco said. Still, Campos of ISD said the ministry's strong endorsement of the agreements made the pacts an "unofficial requirement" of the contracting process.

The selection of projects to be covered by integrity pacts was important because of the large number of projects and the monitors' limited time and resources. In some cases, the ministry specifically requested that the NGOs monitor "the most complex or expensive projects," Aguirre said. In other cases, FUNDE reviewed the ministry's numerous planned projects for the year and selected about four to monitor. At FUNDE, staff made decisions based on construction costs, the number of people affected by the work, and the degree of public interest in the projects, Marchesini said, adding that FUNDE's Citizen Observatory also tried to monitor different types of projects and varying

regions of the country. ISD, the other NGO that participated in integrity pacts, monitored one set of projects at the request of the ministry.

Transparency International's model served as a starting point, Rubio said, "but we were really more attracted to the concept, because the agreements we developed were much simpler." Although the signing parties had to declare they had not engaged in any improper actions during the bidding process, in-depth monitoring covered only the execution stage, and the winning bidder was the only company to participate.

Rubio said that designing monitoring procedures "was a handcrafted process." As in the standard Transparency International model, FUNDE planned that its monitoring team would visit construction sites and talk with project staff and members of nearby communities in an effort to uncover irregularities during construction. However, because little guidance was available about exactly what they would look for, FUNDE's monitors decided on a case-by-case basis.

In 2012, ISD also began work as a monitor at Martínez's request, using funding from USAID. The ISD team decided to try to quantify compliance, and in addition to reviews of planned and actual progress, the team developed a set of 34 indicators, including number of information requests that were denied and number of formal complaints of corruption.⁹ Although it was difficult to assign numbers to such concepts as transparency and corruption, Campos said it was important to "offer opinions that are backed with data," which made findings harder to dispute.

Monitoring projects

In September 2010, beginning with bidding for completion of Boulevard Diego de Holguín, FUNDE and, later, ISD applied their monitoring systems to selected public works projects. The monitors began by looking back at the bidding process. Although the procurement law kept offers and deliberations confidential until a

contract had been signed, the monitors could check the contract's original terms for any indication of favoritism toward a specific company. After the contract had been awarded, the monitors could review the evaluation process to ensure that the winner had been chosen fairly.

One of the risks at that stage was that bidders could collude to ensure a certain company won, but monitors who had knowledge of the sector could recognize signs of such collusion. For instance, Marchesini said, "After you've seen so many documents and reviewed the situations of these different companies, you notice perhaps that on one project, a company said it didn't have the financial means to make a bid, but on a different project it did have the means."

Another key component of the retrospective review of the bidding process was to ensure that the winning company was qualified to deliver on its obligations. Therefore, to ensure that the winning company met the requirements, monitors from FUNDE and ISD scrutinized the evaluations of each bidder and the justification for the winner's selection. Marchesini said she paid close attention to the *fianzas*, or guarantees, which were documents provided by third parties such as banks or insurance companies that attested that the company had the capacity to use the advance payment appropriately, complete the project, and deliver quality work.

Detecting bribery was especially difficult because a paper trail rarely existed. However, despite the practical challenges, Cuéllar said, because "officials realize that they will be subjected to public scrutiny when these documents are made public," the monitoring process helped deter corrupt behavior.

During the execution phase, the monitors began by reviewing project documents such as the contract, the work schedule, and the budget to determine how far along the project should be at any specific time. They then went over the supervisory company's progress reports and

visited the construction site to see how the construction compared with the contractual obligations and the company's expenditures.

On-site inspections were critical parts of the monitoring process. Monitors visited projects several times to verify progress reports, look for delays or flaws in the construction, and question staff from the ministry, the contractor, and the supervisory company about issues that arose during review of the documents. Marchesini said the visits also allowed on-site staff from the contractor and the supervisory company to point out problems they may have experienced during construction, such as a poorly designed component of the project. Monitors from both FUNDE and ISD also spoke with members of communities near the project to learn how the construction affected them and to hear suggestions for improvements, such as better sidewalks on a road that was dangerous for pedestrians.¹⁰

This strategy made it easy to detect delays in construction, but the monitors also looked for problems with quality or design of the project. Monitors could identify some problems, such as cracks in building or road surfaces, simply by visiting the site. Marchesini recalled that on one visit, she noticed "a huge gap between the bridge and the sidewalk," although most flaws were less obvious.

Reports by the supervisory company, which the ministry hired to handle day-to-day technical oversight of the construction company's work, were valuable resources. For instance, Campos said, the supervisors ran tests on the quality of the concrete being used, which the NGOs did not have the funds or technical capacity to assess, although the organizations hired their own experts to independently review the supervisory company's data when they had funds available. Campos noted that it was critical to sign integrity pacts with the supervisory companies as well, so that "they have to give out this information that is much more detailed and specific."

Because of the difficulty of proving that corruption had occurred, the monitoring process focused more on tangible aspects of the project. Although corruption was one possible reason for problems such as poor quality, delays, and cost increases, not every flaw or delay was a sign of wrongdoing. As a result, FUNDE's reports emphasized the problems themselves rather than suspected causes. ISD's assessments of transparency and adherence to the terms of the integrity pact relied mainly on easily verifiable indicators such as amount and quality of information available on the ministry's website or the number of complaints filed against employees of the ministry or the company.¹¹

For both NGOs, the quality and progress of each project constituted the primary focus. "The main thing is to guarantee meritocracy: that every company contracted [complies] with the legal standards and the terms of the contract," Campos said.

The ministry received the same progress reports and also made site visits, "so usually, we already know what types of critiques they'll be making," Iraheta said. However, he added, the civil society monitors brought a different perspective to supervision of the project, and they could serve as an "early warning system" to highlight emerging problems or reinforce the importance of issues the ministry had observed.

Despite the guarantees laid out in integrity pacts, civil society monitors encountered certain difficulties in gaining access to government information. Some officials were not accustomed to sharing information or were nervous about how data could be interpreted. If ministry staff were uncooperative, the monitors went to Martínez. "Sometimes, if they weren't giving specific information, we would have to call the minister and ask him for the information, and then he would call them and tell them to give the information," Rubio said.

In May 2012, the long-awaited freedom-of-information law came into effect, giving new

force to monitors' requests and offering a legal tool to ensure compliance. The Law on Public Access to Information required government agencies to publish large amounts of information, including contracts, and to make most other information available on request. The legislation aided in the implementation of integrity pacts, which already obligated signatories to provide monitors with any information not explicitly prohibited by law.

As required by the new law, the Ministry of Public Works established an Office of Information and Response, which provided another avenue for monitors to get information. The office handled public information requests and collected documents from the ministry's other departments, although monitors could still get information directly. The law also stipulated penalties for officials who did not comply with information requests.

Responding to observations

After the monitors completed their draft reports, they shared them with the ministry for feedback before finalizing and publishing them. The reports typically included a description of each project's progress, any problems the monitor had observed, and broad recommendations, such as improving access to information or more-active supervision by the ministry's contract administrator.¹² "We don't usually make technical recommendations, because we don't have the capacity," Marchesini said. Instead, the reports sought to highlight technical and management problems for the ministry to solve. Ministry staff had to decide whether to respond and if so, how.

Martínez or his team reviewed the reports and assigned various ministry departments to respond. For technical issues, such as design flaws, members of the project's technical team reviewed the monitors' findings to see if they agreed. When discrepancies arose between the monitors' observations and the technical team's view, Cuéllar said, "we have a different

investigation team that does technical audits, and they need to go investigate the case to confirm or deny the [monitors'] claims and decide whether we will have to correct it." After that decision was made, the ministry's contract administrator decided how to address the problem. The ministry's legal and social management departments went through similar processes to evaluate recommendations and decide how to respond.

For example, Aguirre said, during the monitoring of a new public transit system, ISD had raised the issue of informal vendors who sold their wares on buses and who would lose their livelihoods when a new bus-ticket system went into effect. The issue went to the social management unit, she said, and "what we proposed was to put a space for them in the bus terminal so they can have a more formal point of sales within the bus system."

Díaz, the construction company president, said the monitors' observations sometimes helped resolve tensions between the ministry, the construction company, and the supervisory company. "Engineering isn't perfect," he said. "There's always a margin of error, [and] everyone always tries to protect themselves." The reports were valuable because "if you have an outside party involved who's not directly connected to the project, it's much easier for them to point out whose fault it was," he added.

In some cases, ministry staff said they had already addressed the problem or that there was an explanation the civil society monitors had not considered. "Sometimes what happens is that the [monitor] is not up to speed with what's going on in the project in real time," Iraheta said. In those cases, Martínez or other ministry staff would arrange a meeting or send written comments either to offer an explanation or to detail actions that had already been taken. Then, Rubio said, "we would review his comments to see if they made sense, and if they made sense, we accepted the observations."

FUNDE and ISD published their completed reports on their respective websites. If the findings were particularly noteworthy, they enlisted the media’s help in publicizing the situation. Fuentes said FUNDE tried to call additional attention to their reports “if it’s a poorly designed project, if it’s poorly implemented, or if access to public information hasn’t been easy.” Although integrity pacts provided no procedure to guarantee responses to monitors’ observations, Campos said that “by using media pressure, we’re able to put some pressure on the companies involved and the ministry.”

The risk of negative media attention was an effective source of motivation. Monitors “can ‘fine’ the ministry by providing these very strong public criticisms,” Iraheta said, which encouraged the ministry to respond to the problems the monitors highlighted. If the monitors suspected corruption, they had additional tools available. They could file a formal complaint, or *denuncia*, with the public prosecutors regarding irregularities, Iraheta said. Marchesini added that the monitors also had the option of making a public report directly to Martínez if they felt Martínez and his team would handle the allegations of corruption effectively and would make a *denuncia* with the public prosecutors if they believed the problem involved the top ranks. However, as of 2015, neither FUNDE nor ISD had found evidence of corruption during their monitoring.

OVERCOMING OBSTACLES

Those involved in the first few projects generally said the integrity pacts and monitoring system worked well to deter corruption and serve as an early warning system for problems. The largest of the projects was the completion of Boulevard Diego de Holguín, but FUNDE’s Citizen Observatory also monitored smaller

projects such as bridges and rural road upgrades with and without integrity pacts. However, the next major project—the San Salvador Metropolitan Area Integrated Transit System (Sistema Integrado de Transporte del Área Metropolitana de San Salvador, known by its acronym, SITRAMSS)—posed challenges that demonstrated integrity pacts’ limitations.

In 2012, Martínez asked both FUNDE and ISD to monitor the bidding on and the construction of the first phase of the capital city transit system, which involved a bus terminal and a separate lane for buses along one of San Salvador’s major roads. FUNDE and ISD signed integrity pacts with the construction companies and the supervisory company in December 2012 and began monitoring when the project started in January 2013.

Several problems emerged during construction of the terminal: the work fell significantly behind schedule, and there were several design changes in order to comply with accessibility standards and other requirements.¹³ As a result, both FUNDE and ISD recommended an overhaul of the project’s management, and ISD’s September 2013 report included the supervisory company’s recommendation that the ministry terminate the contract.¹⁴ By the time of the contract’s original November 2013 completion date, the terminal was less than half finished. The ministry granted the company four extensions before scrapping the contract in August 2014 and hiring a new contractor several months later.¹⁵

Getting information about the transit project proved difficult for both civil society organizations. ISD executive director Ramón Villalta said ISD’s contact point at the ministry “blocked us several times. . . . Either they would turn in information that was incomplete or say they can’t find the information.” ISD’s reports on the project noted that the ministry had not fully

complied with its public disclosure obligations.¹⁶ Rubio said, “We frequently weren’t able to get access to the information we had requested.”

In one instance, FUNDE decided to use the organization’s last resort by seeking a formal order to comply with the Law on Public Access to Information. In July 2014, FUNDE sought payment records and documentation of negotiations between the ministry and the company building the terminal, but the Vice Ministry of Transport, which managed the project, had not provided the information. Members of the FUNDE team said they had no choice but to use the law after encountering substantial resistance from ministry staff. Rubio said, “They kept insisting the process hadn’t been finished when we knew it had been finished” and that even after seeking help from Martínez, “nothing changed.”

Staff at the Ministry of Public Works disputed FUNDE’s account. Iraheta said the information “didn’t even exist” when FUNDE requested it, and “when we did have the information, we gave it to them first.”

In September 2014, FUNDE brought the issue to the Institute for Public Access to Information, the body that enforced compliance with the public information law that had taken effect in 2012. Although members of the FUNDE team understood that doing so would damage their relationship with the ministry, they believed they had no other option. Fuentes said that although it was “a very difficult situation” to seek the formal order and publicly criticize both the lack of information and the slow progress, the move was necessary in order to pressure the ministry to resolve the project’s problems. Rubio added that the denial of information meant that “the integrity pacts were very weak at that point, so our last resort was to go to the institute.”

After a hearing at the institute, the ministry agreed to provide the documents, and FUNDE received them in October 2014. However, the conflict pointed out the fragility of a system that

depended on cooperation and working relationships. From the beginning, Rubio said, it was more difficult to obtain information from the Vice Ministry of Transport, and because the vice ministry had considerable administrative autonomy, Martínez had less direct control over the transit project than he had had with other projects, in which his personal interventions had been important in resolving issues. Fuentes added that public controversy over the transit project “put the Ministry of Public Works in a political place it hadn’t been in before,” which may have caused ministry staff more concern about the monitors’ publicly criticizing them.

Although the Law on Public Access to Information provided an avenue for monitors to get what they wanted, relying on it had a negative aspect. Even though the institute’s ruling solved a short-term problem involving access to information, FUNDE staff believed it contributed to a long-term deterioration of the organization’s relationship with the ministry.

ASSESSING RESULTS

As of August 2015, the Ministry of Public Works had signed 31 integrity pacts with FUNDE and ISD. The pacts covered the supervision and construction of five major public works projects: Boulevard Diego de Holguín (later renamed Boulevard Monseñor Romero), the SITRAMSS terminal, the SITRAMSS public transit lane, and two bridges. The projects were valued at a combined total of about US\$62 million.¹⁷ FUNDE’s Citizen Observatory used similar monitoring procedures for seven other projects not covered by integrity pacts.

Observers from FUNDE and ISD uncovered no evidence of corruption in the public works projects they monitored. Rubio and Cuéllar said integrity pacts effectively deterred rule violations because officials and companies recognized that their projects were under scrutiny. “I think integrity pacts helped avoid those potential conflicts [bribes and lawsuits]—not just

with Boulevard Diego de Holguín but also with other public works projects,” Rubio said. However, both NGOs acknowledged that corruption was inherently difficult to detect, which contributed to emphasis on construction’s tangible aspects.

The largest projects that used integrity pacts—Boulevard Diego de Holguín and the San Salvador transit system—produced starkly different results. Boulevard Diego de Holguín had been partially built and then abandoned under the previous administration, and in 2010, the Ministry of Public Works started a new bidding process to complete the highway after years of delays and cost overruns. The two new companies hired to finish the job were the first to sign integrity pacts, and on one hand, the November 2012 completion of Boulevard Diego de Holguín—as scheduled and budgeted in the new contracts—was viewed as a major achievement.¹⁸ “We had a public works project that was dead, and now it’s finished because everyone agreed to do things the right way,” Rivera said.

But on the other hand, the transit system project ran into significant problems: by the scheduled completion date, the terminal was only 45% completed.¹⁹ The ministry eventually terminated the contract and in April 2015, hired a new company to finish the work.

The monitoring process identified issues with project implementation. In some cases, the ministry responded directly to recommendations, for instance by improving information available on its website or by conducting internal audits.²⁰ In other cases, especially the San Salvador transit project, the monitors’ reports facilitated media scrutiny. By collecting information from the ministry and sharing the reports with the media, “we’ve been able to draw the attention of the public to what’s going on in these projects,” Marchesini said.

Martínez noted in July 2015 that the ministry had not been involved in any lawsuits or paid any legal penalties since he took office in 2009, which

he and his team considered an important indicator of corruption prevention based on the prior practice of creating contracts that in any potential lawsuits or arbitration, favored companies. However, integrity pacts represented only one element in the ministry’s efforts to avoid litigation; the ministry’s legal team also worked with contractors to resolve potential problems as contracts were designed and implemented, Iraheta said.

Ministry staff said integrity pacts helped bolster public credibility and the effectiveness of the ministry’s quality control efforts. “Opening up these processes to social monitoring and social control is a much bigger issue,” Cuéllar said. “It sends a very positive message that public funds are being used properly and that civil society and the public have control over the ministry’s work.” In polls conducted by Central American University in 2013 and 2014, the Ministry of Public Works received the second-highest rating of any ministry, behind only the Ministry of Education.²¹

Integrity pacts had limited scope, however, and corruption could simply shift to other projects. “Those types of things would happen in the projects that didn’t have integrity pacts, with the understanding that if a project did have an integrity pact, that would not happen,” said the construction industry association’s Nolasco.

It was also entirely up to ministry staff to decide whether, how, and when to respond to recommendations. At times, the ministry eventually took actions recommended by the monitors, such as changing the management of the capital city transit work and ending the contract—but long after the NGOs had issued their reports.

Limitations on NGO funding, staff time, and technical capacity meant that the system was neither as broad nor as deep as participants would have liked. Many of those involved stressed that ideally, monitors would be involved from the beginning of the design stage and would cover far

more projects. However, Marchesini said, “with the time and the resources we have available, we don’t have the ability to do as much as we could.” Reliance on donor funds also limited the scale of the initiative and threatened its sustainability. As of August 2015, neither FUNDE nor ISD had funds for further monitoring of integrity pacts.

In May 2013, the Ministry of Public Works sought to develop a more institutionalized monitoring system by joining the Construction Sector Transparency Initiative (CoST), an international program that aimed to increase the availability of data on public works projects and facilitate citizen monitoring. The initiative committed El Salvador to disclose an internationally agreed set of data on all public works projects; participating NGOs and universities would monitor the data; and the

initiative also required the government to present a user-friendly form of the data to the general public.

By joining CoST, the ministry, ISD, and CASALCO hoped to build on the experience of integrity pacts in order to create a permanent monitoring structure with more participants. However, the initiative was slow to start up, which Villalta of ISD said was caused by lack of funding. As of summer 2015, the CoST group had not monitored any projects in El Salvador.²²

REFLECTIONS

In the five years that El Salvador used integrity pacts for public works projects, many of those involved said the process helped foster a new culture of transparency in the construction sector. “You need to transform administrative

SECURING COOPERATION WITH INTEGRITY PACTS IN PERU

Although the structure of integrity pacts varied across countries that used them, ensuring private sector cooperation was a common challenge. The choice to make participation voluntary helped build support in El Salvador but created problems in Peru, where the local Transparency International chapter, Proética, attempted to introduce integrity pacts for a 2005 water supply project in the city of Huancavelica. After workshops and discussions facilitated by Proética, many companies were willing to participate, but several refused to sign on. Because the integrity pact had been designed to cover all of the bidders, the decision of a few companies not to cooperate prevented the integrity pact from being implemented.¹

Peru revisited the idea of integrity pacts in 2012, although the approach shifted from targeting the bidders for a single procurement to a broader pact to not engage in bribery, which was closer to a code of conduct than a standard integrity pact. Former prime minister Juan Jiménez recalled that in that situation, to punish companies that did not cooperate, the government and the chamber of commerce denied the companies membership in the chamber. “We had signed an agreement with the chamber of commerce. . . . If any of the members of the chamber of commerce committed any corrupt actions, they were going to be thrown out,” he said. When it emerged that a pharmaceutical company had bribed officials, “I personally denounced that pharmaceutical company, and the chamber of commerce kicked that company out.”

The new measures in Peru contrasted with El Salvador’s system, which had no mechanisms for disqualifying companies from bidding or otherwise penalizing them for violating the terms of an integrity pact. In El Salvador, noncompliance brought negative media attention when the monitors publicized their reports, but it did not guarantee concrete sanctions.

¹ Transparency International, “Integrity Pacts in Public Procurement: An Implementation Guide,” 2013, accessed June 1, 2015, 62; www.transparency.org/whatwedo/publication/integrity_pacts_in_public_procurement_an_implementation_guide.

systems, you need to transform organizations, you need to transform procedures . . . but there also needs to be a change in administrative culture,” Minister of Public Works Gerson Martínez said. He viewed integrity pacts as a step toward a new culture of “everything in the sun.”

Integrity pacts also laid a foundation for public-private cooperation. Working side by side with construction industry association CASALCO and paying close attention to companies’ concerns helped El Salvador’s Ministry of Public Works and nongovernmental organizations build support and relationships in the construction industry. “You create this kind of political capital that proves the public and private sectors can really work together in a country where that doesn’t happen often,” Executive Director Roberto Rubio of the National Foundation for Development (Fundación Nacional para el Desarrollo, or FUNDE), said. “It was a way to show that yes, this is possible, if you’re doing things correctly.”

Even so, getting attitudes toward transparency to shift was a gradual process. “We can make a lot of laws and regulations, but honestly, we’re new to this culture of transparency,” said Marco Iraheta, legal manager at the Ministry of Public Works.

Although those involved viewed integrity pacts as a first step toward changing attitudes and behaviors, in the short term much depended on the commitment of the initiative’s leaders—particularly Martínez. “A lot of it is driven by the personal interest of Minister Gerson Martínez,” ISD executive director Ramón Villalta said. Martínez gave integrity pacts top-level support and facilitated cooperation among the participants.

“I think a big part of [why it worked] was the personal relationship that existed between the minister, CASALCO, and us, so we were able to untangle or unblock any resistance we found just through personal conversations and talking through things,” Rubio said.

Several aspects of El Salvador’s system made sustaining integrity pacts a challenge. Former CASALCO president Mario Rivera applauded Martínez’s commitment but cautioned that “he’s just one person. . . . If he’s the only person digging holes in the sand and if a wave comes to fill the holes back in, that’s not going to work. Transparency shouldn’t just be a matter of individual commitments but should be guaranteed by independent institutions.”

Rubio added that the success of integrity pacts “depends not only on the will of the people involved . . . but also on being able to drive that down to all levels of the organization.”

In addition, integrity pacts were implemented on a project-to-project basis and depended on the willingness of all parties to participate. “I think the biggest challenge is the institutionalization of a system that can be independent of whoever is in power at the time—in both the government and CASALCO,” said Ismael Nolasco, former executive director of the industry group.

Inconsistent funding, too, posed a threat to sustainability. The Law on Public Access to Information obligated the ministry to continue disclosing a significant amount of information, but without funding for monitors there was no guarantee that the information would be scrutinized. To ensure integrity pacts were applied effectively and continuously, ISD transparency coordinator Óscar Campos suggested that future projects include budget lines for monitoring.

In an environment in which cooperation was vital, maintaining political support for transparency was a challenge not only within the Ministry of Public Works but also throughout government. An active civil society that demanded transparency, participation, and anti-corruption measures helped press officials follow through, said Laura Rivera Marinero, who worked on transparency and public access to information at a research organization and in the United Nations Development Programme. She added

that international commitments such as the Open Government Partnership, the UN Convention against Corruption, and the Organization of American States' Inter-American Convention Against Corruption offered avenues whereby civil society could both collaborate with government and hold officials accountable.

Although they considered integrity pacts a positive step, many of those involved said it was critical to create public expectations of an open and honest government. Giovanni Fuentes, transparency coordinator at FUNDE, said that in

the long term, “if you don’t have citizens who are empowered to use the information, are active in voicing their opinions, and demand accountability from government officials, there won’t be much transparency.”

Developing a way for government, the private sector, and civil society to work together for transparency was only a first step. “I wouldn’t say that this in itself was a big change,” Martínez said. “This is a small piece of a much bigger transition that needs to happen.”

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