

A STRATEGY FOR THE ADOPTION OF AN ANTI-CORRUPTION CODE IN PANAMA

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Scenario

As a consultant retained by Transparency International (TI, Panama Chapter),^{1[1]} I have designed a strategy to build consensus for the adoption of an anti-corruption code in Panama. By adopting strong anti-corruption measures, Panama can help ensure a stable and transparent business environment that will help attract investment and enable long-term sustainable economic growth in the 21st century.

Issue

Corruption is a major impediment to economic development in Panama. Failure to address this issue will threaten the Canal's economic viability, reduce Panama's ability to replace income lost from the United States' withdrawal from Panama (five percent or more of the GDP), and risk further weakening an already sluggish economy.

The United States has identified corruption as a major deterrent to trade and investment in Panama. Indeed, under the U.S. Foreign Corrupt Practices Act,^{2[2]} U.S. companies face severe penalties if caught making bribes in foreign countries; they are unlikely to invest in Panama if they think it will require engaging in bribery. The recent entry into force of the OECD Anti-Bribery Agreement further emphasizes the priority the international community has placed on corruption reform.

It is crucial that Panama implement and enforce legal reforms that make corruption a high risk, low return activity and permit full recourse for companies that encounter corruption. This will involve creating strong enforcement and watchdog agencies that can curb bribery and corruption and assure adherence to international conventions that criminalize such practices.

Executive Summary

As Panama moves toward gaining greater control of its own economic destiny, corruption stands as a major obstacle to attracting the level of investment necessary for privatizing state-owned enterprises and developing the Canal areas. Failure to address the corruption issue will threaten the Canal's economic viability, reduce Panama's ability to replace income lost from the United States' withdrawal from Panama (five percent or more of the GDP), and risk further weakening an already sluggish economy.

Panama needs to establish a stable business climate that encourages investment, improves consumer confidence, and provides for long-term sustainable growth. To achieve these goals, Panama must create a transparent and sound business environment for both foreign and domestic corporations.

In light of Panama's reputation of pervasive corruption, it is crucial that legal reforms be implemented and enforced to make corruption a high risk, low return activity. This involves implementing policies that curb bribery and corruption, adopting international conventions that call for the criminalization of such practices, and creating strong enforcement and watchdog agencies.

Businesses must feel confident that they will be able to function within a fully transparent legal and regulatory framework if they are to invest in Panama. Without such a framework, business costs and overall investment risk are simply too high.

In order to improve Panama's international image as a good place to invest and convert Panama into a thriving economy, Panama's legal and regulatory framework must be brought into line with international standards. However, such reform will not be easy:

- Corrupt government bureaucracies will counteract all attempts to fight corruption.
- The legislative, judicial and executive branches of government lack transparency and accountability. In fact, Panamanians see the judiciary as the most corrupt branch of government.
- Panama lacks a commitment to implement anti-corruption reforms.
- The public generally tolerates the privileged class that has the political and financial means to buy judges and distort the rule of law.
- Panama lacks solidarity and a common national goal.
- Panamanians generally do not adequately understand the economic effects of corruption on individuals' and state welfare.

- Because institutional structures and organizations are inefficient, Panamanians believe that bribery is the only way to obtain adequate services; corrupt behavior is seen as justified by circumstances.

Overall Anti-Corruption Strategy for Transparency International (Panama)

The following strategy is designed to build support for reforms through comprehensive domestic and international strategies. The strategy is to be carried out by Transparency International (Panama) in the in the context of the May 1999 presidential elections and to be implemented in the pre- and post-election stages.

Domestic Strategy

➤ Pre-election Strategy

Anti-corruption reforms need to be made the central issue of Panama's political debate, and strong support must be built for the adoption of an anti-corruption code. This involves will involve two strategies:

- *Coalition Building Strategy.* In order to build widespread support for and commitment to anti-corruption reform as a common national goal, this effort should include academics, the private sector, civil society, religious groups, NGO's, political parties, the judiciary, legislators, and government workers.
- *Media Strategy.* This strategy aims at overcoming opposition and convincing legislators, political candidates, government workers, and national and foreign investors of the need for a world class, transparent, business and legal environment.

➤ Post-election Strategy

- *Executive Strategy.* This strategy aims at gaining the President's commitment to address corruption. The President should introduce reform measures to cabinet, legislative and judiciary officials and set reform as a top issue on the government's agenda. This strategy also aims at finding reform-minded government officials whose constituencies would support corruption reform as a means to further Panama's broader interests.
- *Legislative Strategy.* This effort involves direct lobbying as well as efforts to organize grassroots and other interest groups that can send letters to, call and lobby legislators. To succeed in this strategy, TI will need to identify reform-minded legislators who will support reforms.
- *Judiciary Strategy.* Implementation and enforcement of effective anti-corruption measures will require support from the judiciary. Reform-minded judges who will support reforms must be identified.
- *Media Strategy.* In the post-election phase the initial emphasis should be on ensuring support for the reforms and, once adopted, emphasizing their implementation. A second part of this strategy is a prevention campaign designed to raise awareness within the private sector, government, political class, and general public of the economic effects of corruption.

International Strategy

In order to create momentum for the adoption of strong anti-corruption measures in Latin America, the international strategy calls for the formation of coalitions within regional groups. Coalition members

should include members from the international business community, NGOs, civil society organizations (CSOs), and other TI national chapters in Latin America. Specific sub-strategies follow:

➤ **Coalition Building Strategy**

To build consensus internationally, TI can initiate efforts to create a **Global Coalition on Latin America**, similar to the corruption fighting campaign former World Bank president Robert McNamara leads in Africa. Members could include TI national chapters in Latin America, the International Chamber of Commerce, CSOs, NGOs, and international industry and trade associations.

➤ **International Organization Strategy**

To help focus the government's attention on corruption, coalition members can initiate a dialogue with donor agencies and international organizations such as the World Bank and the InterAmerican Development Bank (IDB). International institutions should be encouraged to make corruption a top priority when providing assistance to member countries.

➤ **Media Strategy**

This strategy is designed to communicate to domestic and international audiences Panama's efforts to develop its economy and consolidate its democracy through good governance. This strategy will help improve Panama's business climate, attract investment, and reverse the harmful legacy of Noriega's dictatorship.

Post-Election Strategy for the Government of Panama:

Domestic Strategy

➤ **Policy Strategy**

- *Create a Watchdog and Enforcement Agency.* A fully empowered, independent investigative, monitoring and enforcement body should be created to ensure effective compliance with anti-corruption measures. This body can work together with Transparency International to secure its independence from the Panamanian government and be charged with establishing a mechanism to measure corrupt practices in the government (phone calls, e-mails, surveys and polls of the different branches of government). It also can introduce diagnostic surveys (public service delivery surveys, enterprise surveys, and public official survey) with World Bank support.
- *Create a National Advisory Committee.* This committee should represent all sectors of society. Its task should be to guide the reform process, as well as to advise on measures that foster public support for reforms. The Committee can also help identify practices and procedures that are conducive to corruption.
- *Introduce Reforms in the Judiciary.* The judicial system can play an important role in limiting corruption at all levels of government by monitoring both civil servants and politicians and by holding them accountable in the event of wrong doing.
- *Empower the Ombudsman.* The Panamanian Ombudsman needs full authority to operate, including a mandate to investigate the judiciary.
- *Introduce Administrative and Civil Service Reforms.* Preventive measures to deter corruption need to be established. These measures include standards of conduct for public officials, mechanisms to enforce these standards, and strengthened government procedures in the areas of hiring, government procurement and tax collection.

- *Government Procurement Reform.* Transparency principles must be incorporated into the procedural standards for every privatization and government transaction. This involves the creation of a single agency to monitor best practices in privatization.
- *Introduce Regulatory Reforms.* Panama's regulatory system also needs to be more transparent. Transparency can help ensure that laws and regulations meet the social and economic objectives they are designed to achieve without burdening economic activity more than necessary.

➤ **Media Strategy**

The government should also initiate a national media campaign to inform the public sector and general public of the need for support, participation and feedback in denouncing corrupt practices.

International Strategy

➤ **Trade Fora Strategy**

Panama can show the world that it is serious about corruption reform by participating in cutting edge discussions on the issue. It should become a full participant in the FTAA working group on investment and take an active role in WTO discussions on government procurement. Panama also should accede to the OECD Anti-Bribery Agreement and negotiate an understanding with the United States in order to address its concerns about the lack of transparency in Panama's government procurement regime.

➤ **International Organization Strategy**

Panama should both request IDB/World Bank technical assistance for implementing anti-corruption reforms and create the necessary regulation for implementation of the OAS anti-corruption principles. These actions would provide a solid beginning for the acceptance and passage of a more comprehensive anti-corruption code.

➤ **Media Strategy**

An international media campaign should be initiated to improve Panama's image among investors, international organizations and governments. This campaign should communicate Panama's commitment to offer a transparent investment climate similar to that of Singapore. The international media strategy will help clear away the mist of corruption associated with Panamanian business practices and bolster Panama's efforts to integrate into the global economy.

In pursuing these strategies TI should be prepared to counter:

- A general lack of commitment to the implementation of necessary reforms. An anti-corruption code needs full support and commitment of the executive branch to be passed, implemented and enforced.
- A lack of legislative support for passing necessary reforms.
- Arguments that reform is not possible because resources are inadequate to create watchdog agencies and auditing mechanisms.
- The newly elected president's rejection of pre-election commitments on corruption power once his/her party is in power.

The government should be prepared to respond to and overcome:3[3]

- An absence of commitment by high level officials. Without such a commitment, the government will lack the moral authority to enforce laws and punish the corrupt.
- A lack of confidence among enforcement officials that their actions against powerful people will be supported by top leaders.
- Overly ambitious promises that might lead to unrealistic expectations and a loss of public confidence.
- Reforms that are piece-meal and uncoordinated. Reforms will not be successful if no one is committed to seeing that they are implemented. Likewise, reforms that rely too much upon the law or enforcement may lead to repression, abuses of enforcement power and the emergence of further corruption.
- Reforms that "overlook" those in leadership roles and focus only on the "small fry." If the law is applied unfairly, it soon ceases to have any legitimacy or deterrent effect.
- Government failure to attract and retain the most capable officials from civil society and the private sector.

Background Paper

According to the 8th International Anti-Corruption Conference held in Lima, Peru in 1997, Panama has one of the highest levels of corruption in Latin America. Government regulation and intervention in the economy have tended to reduce transparency, hinder competition and hamper the efficient allocation of investment. Bid procedures for certain privatizations and government-financed projects have been questioned with respect to transparency, and there have been seemingly unjustified re-submissions of bids. Panama's judicial system continues to be too susceptible to political influence and apparent corruption.

Important bidders have complained about the Panamanian government procurement regime because, as currently implemented, it falls short of best practices and, in some cases, may not even follow the few relevant laws and procedures already in place. In 1996, for example, bidders in the privatization of two important Canal terminals denounced the bid process for its lack of transparency. These cases and several other instances of questionable practices have soured some large international firms on doing business in Panama.

Currently, the government is actively looking for investment in the fields of tourism, maritime services, and in-bond assembly and manufacturing in the Canal areas. The government's passage of important economic reforms has not improved the international perception of Panama as corrupt and lacking adherence to the rule of law.

At the same time, the international community is making a concerted effort to treat corruption as a global problem and bring it under control. International lending organizations have increased their efforts to curb corruption by leveraging their lending power for change. In 1994, for example, aid to Tanzania and Kenya was suspended because of corrupt practices in those countries. The OECD Anti-Bribery Agreement, which entered into force in February 1999, is developed countries' attempts to attack the supply side of corruption by criminalizing bribery of foreign officials.

In Latin America, anti-corruption initiatives have been made a top priority via the Organization of American State's (OAS's) Convention Against Corruption, which requires governments to criminalize bribery, transnational bribery, and illicit enrichment. Panama ratified this Convention in 1997, but it has not yet enacted legislation necessary for its implementation.

Previous Attempts to Curb Corruption in Panama

Article 299 of the Constitution is one of Panama's few legal provisions against corruption. It obligates every high government official to present an affidavit of his/her estate upon taking office. However, Article 299 has had almost no effect because regulations have not been established to govern the content of the affidavit, its public nature, and the penalties for non-fulfillment of this obligation.

In September 1997, a bill was introduced in the Assembly that would have put some regulatory teeth into Article 299, requiring the president, vice-presidents, Supreme Court judges, ministers, vice-ministers and the different directors of government autonomous entities to make affidavits of their financial estate upon taking office. The bill, however, was not even addressed by the Government Commission or introduced for debate in the legislative period.

In 1997, Panama's Attorney General introduced a bill to curb corruption with the participation of TI and the United Nations Development Program. The bill addressed some of the above-mentioned issues by proposing reforms to the judicial and penal codes, criminalizing bribery, and making provisions for combating different forms of corruption. In the end, however, TI and other civil organizations opposed some sections of its content due to its lack of strong language and failure to make public officials accountable. The General Assembly did not even discuss the legislation arguing that there were more important bills awaiting debate.

On a number of occasions, Transparency International (Panama) has denounced the investment climate in Panama; investors often feel forced to offer bribes to officials during government procurement processes because they know other investors engage in such activities. Since 1997, TI has tried to get the government to implement the Pacts of Integrity, which include signed commitments by participants in government procurement to respect the laws prohibiting payment of bribes to government officials. This principle was successfully applied during the privatization of the national telephone company. In general, however, government officials have done little to denounce corrupt behavior.

Legal Framework for Government Procurement

Panama's Constitution gives the executive and legislative branches of government the fundamental power and authority to award administrative contracts and lease or sell state property. It also acknowledges the use of concessions by the government and requires such awards to be based on considerations of social well-being and the public interest.

Rumors abound that bribes have played a large role in these Cabinet awards, which is not surprising given how the government procurement regime's multiple layers allow for inconsistency and lack of transparency. The Constitution, Law 5 of 1988, Law 56 of 1995, and individual sectoral laws all provide their own rules and regulations for privatizations. The recently modified public contracts law (Law 56) introduced transparency principles in bidding processes, but no agency oversees best practices in government procurement.

International Efforts to Curb Corruption

World Trade Organization

In 1996, the WTO launched a new attempt to develop an agreement to ensure transparency in government procurement. The working group on transparency in government procurement is currently discussing how to structure a multilateral agreement, which could become part of the Millennium negotiating round. The WTO secretariat is currently considering a Japanese proposal for a procurement agreement. At present, WTO members agree that such an agreement would require:

- publication of national legislation and procurement procedures,
- information on procurement opportunities,
- transparency of decisions on qualified bidders, and
- transparency of decisions on contract awards.

The voluntary WTO Government Procurement Agreement (GPA) is one of the models being examined by the working group. Its 26 signatories are predominantly industrialized countries.

OAS Inter-American Convention Against Corruption

The OAS Convention Against Corruption was signed by most Latin American governments in 1996. However, its signatories have not enacted legislation and regulations to implement it. The Convention requires governments to cooperate in investigating and prosecuting corrupt acts, including facilitating extradition and providing assistance in recovering illicitly acquired property or wealth. It also requires governments to criminalize bribery, transnational bribery, and illicit enrichment, and it discourages the use of bank secrecy laws as the basis for withholding cooperation from investigations of corruption.

Last March, the OAS and the InterAmerican Development Bank signed an agreement to promote the prompt ratification and implementation of the OAS Convention Against Corruption. The two organizations are co-financing the project with contributions of \$105,000 each. The program will include a series of workshops in several countries to raise awareness of the importance of ratifying and implementing the Convention.

OECD Anti-Bribery/Anti-Corruption Agreement

The OECD Agreement represents a major step in the fight against corruption because it requires countries to help each other prosecute cases. The Agreement is based on the idea that, since each country has an interest in preventing others from gaining an advantage through bribery, each will want to monitor others' adherence to the new convention. Because OECD countries are promising to punish cheaters, the hope is that more companies will choose honesty.

As of January 1999, 11 countries—including five of the 10 largest—had ratified the Agreement: the United States, Germany, the United Kingdom, Canada, Norway, Japan, Finland, Hungary, Korea, Bulgaria, and Iceland. They represent almost 60 percent of OECD exports.

The Agreement went into force in these 11 countries on February 15, 1999. Other big exporters such as France, Belgium, the Netherlands, and Italy, which represent almost one-quarter of all OECD exports, have not signed.

While corruption is worst in developing regions, many bribes come from companies headquartered in highly developed countries. Accordingly, the OECD Convention on Combating Bribery of Foreign Officials in International Business Transactions attacks “the supply side of corruption.” It asks the world's major industrialized democracies to enact laws that end tax deductibility of foreign bribes and prohibit local companies from paying bribes to foreign governments.

The Agreement calls for the application of effective measures to deter, prevent and combat corruption and bribery of foreign public officials in connection with international business transactions and, in particular, the prompt criminalization of such practices. The OECD Agreement prohibits bribery of foreign legislative, administrative, and judicial officials, whether appointed or elected. Bribery is prohibited not only in procuring orders but also in all regulatory affairs concerning, for example, environmental permits, taxation, and customs and judicial proceedings. The Agreement requires strong penalties, including extradition. It also requires mutual legal assistance and the establishment of accounting and auditing rules to prevent off-the-books accounts. The Agreement, however, does not prohibit improper payments to political parties, party officials, and candidates. In 1999, the OECD Anti-Bribery Working Group is reexamining this issue for further action.

The U.S. Foreign Corrupt Practices Act

The United States made bribery of foreign officials a crime in 1977, when it adopted the Foreign Corrupt Practices Act (FCPA). To help in enforcing the FCPA, businesses are required to keep accurate books and records of their transactions.

The United Nations

In December 1996, the UN General Assembly adopted a Declaration against Corruption and Bribery in International Commercial Transactions, as recommended by the UN Economic and Social Council. Although not legally binding, the declaration's wording on criminalizing foreign bribery and ending bribery's tax deductibility signifies broad political agreement in the international community on this matter.

The European Union

On May 21, 1997, the European Commission (EC) adopted a Communication to the Council and the European Parliament on a policy against corruption. The Communication sets out the EC's comprehensive policy on corruption inside the EU, as well as in its relations with non-member countries. The Communication deals with a wide range of actions, including the ratification of conventions that criminalize corrupt acts of EC and member country officials, eliminate the tax deductibility of bribes, and reform public procurement, accounting, and auditing systems. The Communication proposes to establish a "coherent anti-corruption strategy in the area of its cooperation with third countries which benefit from EC assistance."

The World Bank

In 1996, World Bank (WB) president James Wolfensohn made combating corruption a top priority. In 1997, the Bank adopted a comprehensive program that included assistance for corruption reform and strong controls to prevent bribery in connection with WB financed projects. The Bank's efforts to fight international corruption focus on economic and policy reform and institution strengthening.

In June 1998, the Bank created the Anti-Corruption Knowledge Center to help task managers and interested Bank staff understand corruption and to devise strategies that help client governments reduce corrupt practices. These goals are consistent with the Bank's strategy to mainstream anti-corruption work in country operations. The Bank's work focuses on the following:

- Preventing corruption in Bank projects.
- Helping countries reduce corruption upon governments' requests.
- Mainstreaming anti-corruption efforts by integrating the topic in country assistance strategies, economic sector work, and other Bank operations.

The Bank's international efforts to reduce corruption focus on:

- Cooperating with other multilateral development banks and with bilateral donor agencies; informing them of how it plans to help member countries in this area; and undertaking joint or coordinated activities as appropriate.
- Contributing to the work of regional organizations engaged in the fight against corruption (including the OECD, the Council of Europe, and the OAS) and participating in technical assistance and other activities as appropriate.
- Consulting with the business community to better understand its perspectives on corruption.
- Consulting with NGOs to gain their insights and exchange views on the Bank's approach.
- Supporting domestic programs aimed at controlling transnational bribery and money laundering.
- Explaining how international efforts complement domestic action. The WB supports domestic efforts to control transnational bribery and money laundering.

International Business Initiative

In March 1996, the International Chamber of Commerce (ICC) issued revised rules of conduct to combat extortion and bribery in international business transactions. The rules prohibit extortion and bribery for any purpose. The rules are not binding on ICC members but corporations may voluntarily endorse them. To promote the new rules, the ICC has set up a standing committee of business executives, lawyers, and academics. ICC national committees mobilize support for the rules in their countries.

Transparency International

NGOs around the world are participating in the efforts of local governments and other entities to curb corruption. Among the international NGOs, Berlin-based Transparency International (TI) works to curb corruption through international and national coalitions that 1) encourage governments to establish and implement effective laws, policies and anti-corruption programs, and 2) build public support for anti-corruption programs and public transparency and accountability in international business transactions and public procurement. TI has established chapters in more than 70 countries.

Analytical Overview

Panama's economic future depends upon its ability to attract investment. It will need large investment infusions to both develop the Canal areas and offset income lost from the United States' withdrawal from Panama (approximately US\$385 million annually or five percent of the GDP).

To date, however, Noriega's legacy of corruption, along with Panama's failure to develop clear anti-corruption laws and enforcement mechanisms, has undermined investor confidence. By refusing to tackle corruption, the government has created an environment that encourages corrupt practices in both the public and private sectors. Panama's corrupt reputation in the international community could well limit its future ability to achieve long-term sustainable development.

Panama can address the above-mentioned issues by adopting an anti-corruption code. This will require the implementation of domestic policies that severely punish bribery and corruption and the creation of enforcement and watchdog agencies. Panama should sign and come into compliance with international conventions that criminalize bribery. Immediate actions involving the establishment and enforcement of transparent standards in areas such as government procurement and bidding would be a good first step toward establishing Panama's commitment to adequately address this issue.

Commercial Issues

Panama needs large inflows of foreign investment to stimulate its sluggish economy and make up for the United States' withdrawal from the country. Its current growth rates are too weak to support job production or reduce its high, 14 percent unemployment rate. In the last four years, Panama's GDP averaged two percent growth, far below what is needed to sustain development and increase employment.

With an estimated value of US \$5 billion, the former Canal Zone will be critical in shaping the growth of the economy in the next 10 years. The complex shipping and cargo-processing activities related to the Canal are the crown jewel of the government's economic plans to attract foreign investment.

The transfer of the Canal to Panamanian control at the end of 1999 offers an opportunity for Panama to mold its political and economic future to become a model of sustainable development in Latin America. This transition presents a unique opportunity to fully develop the Canal areas into commercial enterprises that create jobs, raise national income and foster economic growth.

Nonetheless, major uncertainties cloud the realization of this goal. Serving as instruments of corruption during Noriega's rule, the government's executive, legislative, and judicial branches still act as deterrents to investment attraction. Costly public relations' campaigns in *The Financial Times* and other well-known newspapers have helped Panama's international image. However, the investment climate continues to be undermined by the lack of transparency in government transactions and public bids.

If Panama is to become integrated into the global economy, with higher living standards driven by sustainable private sector growth, it needs to establish a transparent business environment recognized as such by the world's most important trading and investment partners. Only large inflows of investment will

reverse Panama's declining economy.

Vision for Panama's economic development

Panama's economic success in the new millennium will depend on its ability to exploit its real and comparative advantages: its strategic position, the Canal, and the Canal area assets.

Panama's current situation is similar to that of Singapore's in 1964. Both countries are strategically located in their respective regions, and both have similar population sizes—Singapore has 3.4 million people, and Panama has almost 3 million. When the British withdrew from its Singapore military bases, Singapore lost US\$ 70 million in annual income—a figure not too different, adjusting for inflation, to what Panama will lose from the United States departure today.

But, like Panama, Singapore gained port infrastructure as well as airports, housing and roads. And with these assets in hand, it made a crucial decision to pursue outward development. It began training its workers and promoting savings, investment, social development and exports. Its goal was foreign investment in a free market context, and it succeeded. Singapore remains the best example of sustainable development in the last 30 years. It has achieved an annual per capita income of US\$ 13,000, almost 4 times that of Panama's. Today, Singapore exports approximately US\$ 40 billion, almost seven times more than Panama's GDP.

By December 1999, the United States will have gradually transferred to Panamanian control 94,000 hectares along the Canal, including 7,000 buildings and installations such as airports, hospitals, schools, and ports. By following a development approach similar to Singapore's, Panama could rapidly become a model of Latin American development. But this requires recognizing the linkage between good governance and sustainable growth and following a well-defined economic strategy that focuses on services exports and increasing inward foreign direct investment (FDI).

Panama has a relatively small domestic market. With only 2.8 million people, it is the equivalent of only 15 percent of Mexico City's market or a small portion of Buenos Aires' or Sao Paulo's markets. If Panama is to achieve sustainable economic growth, it needs to become a net exporter. By increasing and diversifying its exports, Panama can substitute and surpass the loss of income resulting from U.S. withdrawal from the Canal areas. Panama has successfully exported services through the Colon Free Zone (the largest in the Western Hemisphere), as well as the Canal and the Banking Center (the largest in Latin America). It is also evident that Panama can increase exports of goods and services by fully developing the Canal areas.

Through the development of the Canal areas Panama can increase its exports to US\$ one billion annually and generate approximately 150,000 jobs. But to realize this potential, Panama requires large amounts of investment, and in order to attract investment, Panama needs to eliminate or reduce corruption. Substantive and procedural policy changes must be implemented to make corruption a high-risk, low return activity. The adoption of transparent and strong anti-corruption measures would signal that Panama is serious about attracting investment to reach its development potential.

Analysis of the Substantive Policy Issues

The adoption of an anti-corruption code will only be a first step toward curbing corruption in Panama. The adoption of the regulatory framework set forth in the OAS Inter-American Convention Against Corruption can create momentum for the passage and implementation of a more complete anti-corruption code. To further improve

Panama's anti-corruption measures and signal that Panama is serious about combating corruption, it can adopt provisions from the OECD Anti-Bribery Agreement and Transparency International's standards—both of which reflect developed-world standards recognized by the largest sources of investment.

OAS Inter-American Convention Against Corruption

Last year, Panama ratified the OAS Inter-American Convention Against Corruption, but it has not yet adopted regulatory measures to enforce it. The OAS Convention could be used as a model for addressing the following issues in Panama.

Illicit enrichment. Under the OAS Convention, it is an offense for a public official to inexplicably gain significant increases in personal assets relative to lawful earnings. Panama needs to implement legislation to this effect.

Government procurement policies. Multiple and sometimes contradictory laws (the Constitution, Law 56, and individual laws for specific sectors) govern the Panamanian government procurement regime; no agency monitors best practices in government procurement; and multiple agencies handle major privatizations. Only the recently modified public contracts law (Law 56) introduced transparency principles in bidding processes. To streamline and strengthen its government procurement regime Panama should:

- Make the transparency principles of Law 56 the procedural standard for every privatization and government transaction.
- Expand the purview of ProPrivat to be the only agency in charge of overseeing privatizations and commercial transactions, including those in the Canal areas.
- Adopt and apply the Transparency International Pacts of Integrity, which involve a signed commitment by participants in government procurement to respect the laws prohibiting payment of bribes to government officials.

Civil service personnel reforms. To improve the quality of the civil service, Administrative Career legislation will need to be updated to ensure objective criteria are used in recruiting staff and reviewing personnel performance. Panama cannot afford to have an inefficient civil service in the 21st century. Government downsizing will meet with resistance if it is tied to the introduction of an anti-corruption code. However, public sector salaries are inadequate because, in part, the government is too large, and the inadequacy of public sector salaries encourages "petty corruption." By downsizing, remuneration can improve and efficiency should increase, resulting in increased business activities and investment. This in turn should open new job opportunities. Singapore has been successful in this endeavor. Gradual pay raises, fair salary structures, and strict penalties for corrupt acts by civil servants all help ensure quality public services. To address corruption at the highest levels, where officials are already well paid, stricter penalties, monitoring and surveillance systems must be put in place. The OAS Convention can serve as a model for these systems. The Convention establishes the need for ethical codes concerning the prevention of conflicts of interest, oversight of state resource and asset allocation, and reporting systems for identifying corrupt acts when they occur.

Accounting and auditing reforms. Reforms in these areas will improve transparency in public spending.

Disclosure requirements. The Panamanian Constitution requires public servants in managerial or top positions (ranging from the president to directors of public entities) to make disclosure statements. Nonetheless, this has not served as an effective deterrent to corruption because the pertinent regulation has not been adopted in the legislature, and disclosures are kept in the Controller's Office where they are not subject to evaluation. Appropriate regulation needs to be enacted. The issue of making affidavits public is very controversial and needs to be subject to public debate. (Legislative opposition to the disclosure requirement was due to legislators' reluctance to make disclosures public.) Annual disclosure of the financial affairs of key players and reviews of disclosure statements by independent enforcement institutions can go a long way toward discouraging corrupt practices.

Establishment of an independent commission against corruption. Corruption monitoring cannot be left only to public prosecutors and other law enforcement bodies. Panama needs to create a new agency or regulatory body to monitor compliance with the anti-corruption code and to offer legal assistance relating to investigations and proceedings within the scope of best practices. To avoid political manipulation, Transparency International (Panama Chapter) can be involved in this monitoring and surveillance task. In cases where complaints are found to be valid, reviewing authorities may have powers to grant relief to complainants.

The OECD Anti-Bribery and Anti-Corruption Agreement

The OECD Agreement helps assure transparency in bidding processes by attacking the supply side of bribery and corruption in international business transactions, including trade and investment.

Eliminating tax deductibility of bribes to foreign public officials. Signatories to the OECD Agreement are required to make bribes of foreign public officials, as well as the proceeds thereof, subject either to seizure and confiscation or to sanctions of comparable effect. Companies are required to issue financial statements disclosing their material contingent liabilities. Although Panamanian laws do not allow tax deductions for bribes, companies are not required to issue financial statement disclosures. By adopting this OECD provision, Panama will send a signal to domestic and foreign companies that it is building a system based on integrity and transparency.

Criminalizing transnational bribery and corruption. Panama's penal code should prohibit transnational bribery and provide for the punishment of such practices. To establish the Panamanian government's serious intent to improve credibility and transparency in business transactions, this issue needs to be attacked on all fronts. It is not enough to simply criminalize the act of making a bribe. Strict legislation should also criminalize the demand side—public officials' misuse of power for private gain. Current Panamanian laws criminalize bribery and corruption but the penal code needs to be revised and updated to tackle new forms of corruption that are not covered by the law. Penalties

might need to be increased to deter corrupt practices. Additionally, Panama has no mechanisms in place to make holders of public office accountable for their decisions and actions. There needs to be a system of checks and balances within the legal framework.

Prohibiting improper payments to political parties. Panama prohibits improper payments to political candidates but has no mechanism for monitoring compliance with this prohibition, and political parties have been accused of receiving bribes in exchange for contract concessions. No international agreement or convention addresses contributions to political parties, but the OECD is studying the issue.

Other Anti-Corruption Issues that Panama Should Consider

Right to petition. Access to information is a critical aspect of anti-corruption programs. Recently approved legislation establishes the right to petition and the right to public information. However, public officials do not comply with this legal provision.

Ethics. The ethical environment must be owned, policed, adapted and updated across the public sector. If the ethical environment has potential weak points, new means of accountability must be introduced or existing means upgraded and reinforced.

Application of the Code. Aside from writing and enacting an anti-corruption code, the government needs to determine whether the code should be retroactive. In the past, there have been accusations that governments have mishandled important contracts and privatization projects. The companies involved are already established under legal terms and employ hundreds of Panamanians. In light of the controversial nature of retroactive application, an anti-corruption code should *not* be retroactive.^{4[4]} Hong Kong, deemed as one of the world's most corruption-free societies, successfully followed this approach.

Political Issues

The adoption of anti-corruption and anti-bribery regulations is a politically sensitive issue for most countries. In many cases, politicians see anti-corruption reforms as political suicide.

Government officials are likely to resist implementation of anti-corruption codes that require higher levels of government accountability and transparency, and accordingly, political interference aimed at watering down proposed anti-corruption legislation should be expected. While the political elite may agree to cosmetic reforms to satisfy TI and international lending organizations, actual enforcement will be weak without civil society's active participation.

Due to the limited scope of international lending institutions' work on governance and participation, it might be difficult to obtain immediate support from them for stronger anti-corruption measures. However, international institutions are paying more and more attention to the negative effects of corruption in development. Efforts to address

corruption in the OECD, and soon in the WTO, will keep a spotlight on the negative impacts of corruption in international trade and economic development.

Political issues that need to be addressed in bringing Panama's legal and regulatory framework into line with international standards include:

- A lack of support for institutional changes from the executive, legislative, and judicial branches of government.
- The unjustifiable benefits and prerogatives that legislators and other high-level government officials now enjoy.
- A widespread tolerance of a privileged class that has access to power and can buy judges.
- A non-transparent judicial system that is seen as the most corrupt branch of the Panamanian government.
- Apathy within the general public toward active participation in the democratic process.

These obstacles will make an anti-corruption campaign both difficult and lengthy. Especially difficult to overcome will be strong opposition from within the government. Opposition to reforms will likely come from the following areas:

Legislators. Members of the Legislative Assembly enjoy unjustifiable privileges and prerogatives that would disappear with a more stringent anti-corruption code. Past attempts to pass anti-corruption reforms encountered legislators' opposition, and reform bills were not even debated. Legislators generally do not consider corruption an important issue (partially because they do not understand its impact on the economy), and they will oppose reforms that will limit their earning potential. Another issue to consider is the partisan nature of the legislature, particularly with respect to bill sponsorship. If introduced by the majority party, anti-corruption measures might get majority support. If introduced by the minority, however, passage is unlikely. As Panama consolidates its democracy, legislators will come under increased scrutiny during election campaigns. Accordingly, anti-corruption reforms should be addressed in the context of these campaigns.

The Executive. Successful anti-corruption reforms will require strong support and leadership from the president. The stakes are so high that powerful high-level officials may try to obstruct reforms and even use violence in order to avoid passage. In the past, Panamanian government officials have given little support to stronger anti-corruption measures and have failed to denounce corrupt behavior. Indeed, after initiating a UNDP-financed corruption control program, the Office of the General Controller decided to transfer it to Transparency International because of its own lack of success in obtaining results.

The Judiciary. Under the current administration, the judiciary has been highly criticized; it is perceived as the least transparent branch of government. Its weak and uneven application of the rule of law reflects a fundamental problem. In the last three years, 15 judges have been fired, and some have resigned alluding to pressure for specific rulings. Because of the judiciary's critical role in the implementation of an anti-corruption code, it will need to undergo important reforms. Judicial reform involves strengthening objective criteria for selecting and retaining judges and other personnel.

Political party leaders. Three presidential candidates have included TI's proposals in their government plans, but once in power, each has caved on anti-corruption; the political costs involved are extremely high and other pressing issues such as poverty, unemployment, health, and education are easy to put at the top of the agenda. Political party agendas reflect the lack of knowledge and awareness of the real impact of corruption in economic development. Additionally, political leaders concerned with election might view reforms as an obstacle to their ability to receive campaign financing and public sector support. Because politicians tend not to fulfill their promises, civil society's scrutiny will play an important role in ensuring compliance.

Private Sector Opposition. Locked in a prisoner's dilemma in which the dominant strategy is bribery, international and local business people have been reluctant to support reforms. Businesses that have close ties with high-level corrupt officials and have been involved in prior misconduct might lose out, at least in the short run, by such reforms. Recently, however, Panama's lack of transparency has been identified as a barrier to private sector development and to increased local and international investment. Further, corruption scandals involving U.S. firms and Panamanian government officials have been exposed in the media—exposure that has negatively impacted the image of those businesses. The entry into force of the OECD Anti-Bribery Agreement, which criminalizes bribery of foreign officials, will help build private sector support for anti-corruption reforms.

Building Consensus for the Adoption of an Anti-Corruption Code

Overall Strategy

In order to succeed, an anti-corruption reform strategy must have the support of all segments of society: governmental, legislative, business and public. Despite the political elite's vested interest in maintaining the status quo, building such support is plausible. Just as national leaders, despite their self-interest in maintaining the status quo, undertook free-market reforms, privatizations, and related policies, these leaders also can be persuaded to support enactment and enforcement of an anti-corruption code.

Broadcasting two messages will be key to the consensus building strategy:

- In the coming years, governments will be increasingly pressured to take action against corruption. Just as global forces pushed for economic reforms, privatization

and openness, they are now pushing for better governance and greater transparency in commercial transactions.

- Reforms are necessary if Panama is to successfully attract FDI and international portfolio investment. Competition for foreign investment is keen, and foreign investors value stability, predictability, transparency, and honesty in government decisions. For Panama to become a model of sustainable development in Latin America, it must reduce corruption.

The May 1999 elections offer a window of opportunity to introduce reforms, especially if the elections result in a change in regime or individual leadership. Polls indicate that a majority of Panamanians are discontent with the government's performance and will support a reform effort

Domestic Strategy

The objective of this strategy is to overcome domestic opposition to reform and build support for the adoption and enforcement of anti-corruption reforms in both pre- and post-election stages.

Pre-Election Strategy

Consensus Building Strategy. In order to create national support for the adoption and enforcement of anti-corruption reform, all sectors of society should be pulled into the campaign as early as possible. TI can pursue the following two-tier strategy:

1. *Coalition Building Strategy.* To build support for anti-corruption reforms and ensure that all sectors of society make such reform a common national goal, the **Panama Anti-Corruption Coalition (PACC)** should be formed. The PACC should include representatives from academia, the private sector (including domestic and international businesses and trade associations), civil society, NGOs, political parties, the judiciary, legislators, unions, government workers, and local government agencies in charge of investment attraction in Panama. Special attention should be placed on efforts to increase awareness of the damaging economic and political effects of corruption. Specific PACC objectives include:
 - *Enhancing public awareness.* Awareness-raising workshops can bring this issue to the attention of civil society, public officials, legislators, and politicians. A sustained participatory process, extending far beyond the initial awareness-raising and mobilization stages, will prove crucial during reform implementation.
 - *Mobilizing civil society constituencies.* These constituencies can help build initial support for anti-corruption efforts by organizing letter writing and phone campaigns targeted at legislators.
 - *Promoting debate.* Open public debate on corruption issues can help all sectors of society understand the different reforms and help define implementation priorities. The debate can encourage participation of civic organizations, political parties, chambers of commerce, industry organizations, professional associations, and other interest groups.
 - *Involving citizens and the public sector in diagnosing corrupt systems.* Public servants and private citizens are valuable sources of information, especially in identifying occurrences of corruption. Client surveys, citizen oversight bodies for public agencies, professional organizations, telephone hot-lines, call-in radio shows, and educational programs can all help in shedding light on corrupt practices.
2. *Media Strategy.* A comprehensive media campaign will help raise awareness of the corruption issue, neutralize opposition forces, and convince legislators, political candidates, government workers, and the private sector of the need for a world-class, transparent business and legal environment in Panama. By conducting and using media sources to disseminate polls on how Panamanians view bribery and corruption,

PACC can make corruption an election issue and help build voter support for the party that shows more interest in and commitment to adopting anti-corruption policies. As a result of the country's democratic reforms, new leaders who are dedicated to fighting corruption and improving public administration are already gaining power as never before.

Post-Election Strategy

1. *Executive Strategy.* The president needs to send a clear message to members of the cabinet, and legislative and judicial branches of government, as well as civil servants, that anti-corruption reform is a top priority and that strong measures will be taken to ensure enforcement. This strategy calls for lobbying the newly elected president and identifying reform-minded decision-makers within the cabinet whose constituencies would support corruption reform to further the country's broader interests. The election of a new government offers an opportunity to identify key political supporters. However these supporters must have the full political support of the president. The executive should help:
 - Create confidence that it is possible to make systemic anti-corruption improvements without committing political suicide. Offering educational consultations and technical assistance to leaders may help them learn from other countries' anti-corruption efforts and pave the way for them to adopt a systematic approach to the problem.
 - Address public sector opposition. Civil servants need to know that their rights will be protected and that downsizing will ensure higher salaries and more efficiency. Corruption reforms will help attract investment and, in turn, create new job opportunities as a result of this investment.
2. *Judiciary Strategy.* This strategy aims at identifying reform-minded judges who will support change and fully implement anti-corruption measures. Coalition members should undertake a lobbying effort as well as write opinion articles and letters to media editors emphasizing the need for judicial support for implementation and enforcement of an integrity system. The media will be especially important to obtaining support from the judiciary.
3. *Legislative Strategy.* Coalition members should lobby lawmakers directly as well as work with grassroots and interest groups to send letters to, call and lobby legislators. Lobbying activities should be focused on those who have not shown support for reforms. **(See Legislative Strategy.)**
4. *Media Strategy.* The media strategy aims at increasing awareness of corruption issues within the private sector, the government, the political class, and citizenry. The media should be used as a sounding board for the reforms **(See Media Strategy.)**

Coalition Building Strategy

To assure broad-based support for the anti-corruption initiative, TI should organize the Panama Anti-Corruption Coalition (PACC). This coalition, which should represent all segments of society, needs to be established early on in the consensus building process. PACC can take on the county's "National Dialogue" anti-corruption initiative, which involves TI, the General Comptroller's Office, the General Attorney's Office, and UNDP.

PACC's purpose would be to create broad support for and commitment to making anti-corruption reform a common national goal. Potential member organizations and government institutions include:

- Industry Organizations
- Business Executives Associations
- American Chamber of Commerce (Panama-Chapter)
- Panamanian Chamber of Commerce, Association of Colon Free Zone Users, National Banking Association
- Political parties
- Members of the Judiciary
- Members of the Legislative
- Members of the Cabinet
- Civil society organizations (Fundación para el Desarrollo de la Libertad Ciudadana, Assembly of Civil Society)
- Ombudsman
- The media
- Unions
- Public sector workers (civil service)
- Religious leaders
- Universities
- Academics
- Rotary Club, Kiwanis Club and De Leones Club
- ARI, ProPanama, ProPrivat (government agencies in charge of investment attraction)

Support from the following groups will be particularly important:

- *Civil Society Organizations (CSOs)*. CSOs raise citizens' awareness of their new responsibilities in consolidating the democratic process and ensuring sustainable development in the 21st century.
- *Religious institutions and religious leaders*. Religious groups and leaders have a large and broad following. They are in an ideal position to preach and counsel on the evils and immorality of corruption. They should be encouraged to promote good morals, integrity, accountability and transparency in people's professional lives.
- *School administrators and teachers*. Schools help educate the younger generation about good morals, behaviors characteristic of good citizens, roles and duties of citizens, and the dangers of corruption. Reform efforts will be in vain unless the culture of corruption is reversed. Governments, schools and religious institutions should launch educational initiatives designed to raise young citizens' awareness

of the incalculable harm done by corruption and the personal risks one runs by engaging in corrupt practices.

- *The private sector.* The private sector can achieve broad support from workers, politicians and government officials concerned with the health of the economy.
- *Members of the judicial and legislative branches of government and cabinet.* Reform-minded members of the government can be instrumental in building consensus within the government.

Pre-Election Actions

Early in the campaign process, efforts should be made to strengthen alliances and build coalitions. Special attention should be placed on efforts that increase awareness of the effort to fight corruption in the coming years. Grassroots interest groups should visit and send letters to presidential and legislative candidates in order to gain their support for anti-corruption measures. PACC should immediately take the following actions:

- Send letters to and meet with presidential and key legislative candidates to press them to address corruption in their platforms.
- Work on persuading presidential and legislative candidates to sign a pledge of support to anti-corruption measures. Such a pledge will help after the election in holding victors accountable for their campaign commitments.
- Organize public debates that can help make the anti-corruption code a central issue of the campaign. Debates can force candidates to articulate their positions on corruption reform.

PACC should not identify or support any specific candidate because this could jeopardize the legitimacy of the anti-corruption code and its future implementation.

Post-Election Actions:

After elections are concluded, PACC should also:

- Ensure elected officials' compliance with the anti-corruption pledges they signed during the election campaign.
- Lobby legislators to ensure support for passage of reforms.
- Lobby the president's staff to secure support, commitment and leadership for the adoption of the Pacts of Integrity.
- Hold integrity seminars for the president, cabinet members, and legislators to promote the issue of corruption as a government priority.
- Hold similar seminars for local council leaders, accounting officers, and election monitoring officials.
- Put pressure on elected officials to avoid giving political appointments to persons known to engage in bribery.
- Assist the government in establishing and implementing effective laws, policies, and anti-corruption programs.
- Organize and enhance public support for and understanding of anti-corruption programs.

- Press for legislation that empowers citizens to bring suits against public officials who take bribes.
- Enhance public sensitivity to the need for public scrutiny of elected officials and political appointees.
- Encourage all parties in business and related areas of national interest to follow the highest levels of integrity and to adhere to certain standards of conduct.

The coalition effort provides an opportunity for PACC to evolve into a formal and more active entity, a **Citizens' Anti-Corruption Organization**. The decision whether or not to create such an organization should be made by coalition members.

Membership in PACC should be subject to payment of a fee. However, low-budget NGOs and public interest groups should be allowed to support the coalition effort with in-kind contributions of personnel support or other non-monetary resources. PACC's board of directors should be comprised of citizens of impeccable integrity and strong public or private sector service experience.

PACC should focus more on prevention and information supply rather than on the actual enforcement of anti-corruption laws.

Legislative Strategy

Panama will need to enact new legislation in order to make corruption a high risk, low return activity. It will need to enact laws against corruption, as well as enforcement codes, and it will need to reform parliamentary practices and procedures to establish a framework of legislative accountability and transparency. The reform process centers on guaranteeing and promoting the openness of the legislative process and empowering select committees to hold the president and cabinet accountable.

Although interest group participation in the legislative process is not common practice in Panama, grassroots organizations should be included in the legislative strategy. Their inclusion will put legislators on notice that citizens at the grassroots level are concerned about this issue, as well as help ensure citizen participation in the Coalition's anti-corruption efforts.

Pre-Election Strategy

- Send letters explaining the importance of reform legislation to legislators seeking re-election.
- Involve legislative candidates in debates to push them toward taking a public stance on corruption.
- Persuade legislative candidates to sign an anti-corruption pledge, thereby committing them to the passage of necessary anti-corruption reforms.

Post-Election Strategy

Lobby the Legislature

With the goal of ensuring support for reforms before they are debated, PACC should implement a comprehensive lobbying strategy during the first month after inauguration. Past failure in the passage of anti-corruption reforms can be attributed to legislators' lack of knowledge of the importance of reforms—knowledge that could have been built through lobbying activities. The goal should be to make it impossible for legislators to use, as they have in the past, the argument that anti-corruption reform is not as important as other issues.

Specifically, PACC should:

- *Capitalize on election momentum by scheduling meetings with newly elected officials soon after inauguration.* In these meetings, PACC representatives can remind officials of their campaign commitments to corruption reform, introduce them to the anti-corruption bill, and urge officials to make its passage a priority issue on their agendas. Efforts should be focused on reform backers who can rally voter support and pull votes from opponents. Also, gaining support from the head of the Government Commission will be crucial. PACC representatives should ensure he understands his personal and professional interest in passing reform measures and seek his input on issues that might affect his support for reforms.
- *Coordinate a “Dear Colleague” letter campaign,* through which legislators supportive of reforms can solicit support of fellow legislators.
- *Schedule meetings with legislators.* Coalition members who have similar interests to or established relationships with specific legislators should be assigned to visit those legislators. At each of these meetings, PACC representatives should leave a written description of the necessary reforms. These meetings should communicate the message that curbing corruption and establishing transparent business and government systems is important to ensuring investment attraction and developing Panama's growth potential, particularly in light of the unique opportunities presented by the Canal and Canal areas turnover.

Tracking PACC Progress

PACC should maintain a legislative scorecard to track which legislators have pledged their support to reforms. The scorecard will help focus lobbying efforts on legislators who have not yet shown support, and help in easily identifying allies within the legislature.

District meetings

PACC members can arrange meetings at the district (circuitos) level to talk about the importance of reform legislation. These meetings will give legislators a forum in which to openly state their views and listen to their constituents' opinions. The meeting should be orchestrated to guide legislators' toward reform votes. PACC should make the results of these meetings public (**See media strategy**).

Schedule a Legislative Day

This informational day with legislators would help keep the reform agenda in legislators' minds. Additionally, at the end of the day, a press conference should be conducted with legislators, PACC members and high-level representatives from the judicial and executive branches of government (including, if possible, the president). A distinctive high profile emblem (a white ribbon) should be distributed to all the legislators to remind them of the need for integrity in all government and business transactions and the importance of their votes.

Establish permanent, periodic training sessions for Legislative Assembly staff.

This will help ensure the passage of solid, transparent reform legislation

Media Strategy

Media coverage will keep the public aware of the reform campaign effort and the crucial role every Panamanian plays both in building consensus and support for reforms and in enforcing anti-corruption laws.

La Prensa, the most influential newspaper in Panama, should be targeted as a primary medium for reaching the public. Because it is independent, *La Prensa* has played an important role in enabling the passage of laws and in exposing government officials' corrupt practices. It also has the highest circulation rates and is the elite's medium of communication. *La Prensa* was founded by the current president of Transparency International (Panama Chapter) and president of the Foundation for the Development of Citizenry, Roberto Eisenmann. Because *La Prensa's* close ties with the Foundation for the Development of the Citizenry and Transparency International, free news coverage and a paid advertising campaign should begin with this newspaper.

Pre-Election Media Campaign

The objective of the pre-election media campaign is to create awareness of the corruption problem and build consensus for the adoption of anti-corruption measures. The media strategy should focus on:

- Making corruption the topic of the year. This can be achieved through media coverage, op-ed pieces, editorials and paid advertisements.
- Raising awareness of the need for reform and its importance for Panama's future economic growth. This is an important part of the media strategy since the majority of the population recognizes that corruption is a pervasive problem in the government but does not identify it as a pressing issue that affects their personal lives. This is due primarily to the fact that the population also faces other immediate and pressing problems such as poverty, unemployment, and inadequate housing, health care and education systems. For those Panamanians who do not deal directly with the government on an everyday basis, they recognize the existence of corruption, but feel it has no direct impact in their lives.
- Ensuring freedom of the press in order to guarantee journalists' independence when covering stories about government corruption. This involves the elimination of gag order legislation.

Possible methods of increasing corruption awareness include:

Broadcasting awareness messages on TV, radio, billboards, and the Internet, as well as in the print media. These messages can identify the problems associated with corruption and describe why corruption is something every Panamanian must recognize and resist. Panamanians need to understand that corruption affects everyone and that reform is possible, but only if citizens demand it and participate in wiping it out. Private citizens can participate in the reform process by:

- Denouncing bad practices.
- Demanding efficient services from the government officials including legislators, judges, ministers and public servants.
- Pressing government officials through mobilization, demonstrations.
- Promoting active civil society.
- Requesting the elimination of gag order legislation.

Broadcasting civic messages on TV, radio, and billboards, as well as in the print media. This campaign should emphasize the need for every Panamanian to actively defend and practice civic values for the benefit of future generations and the development of the country.

Initiate a popular cultural campaign. The most popular and famous artists should be encouraged to write songs about the importance of changing the corruption mentality. Advertising companies could create innovative ads about the importance of civic values. Songs and advertising campaigns reach the most apathetic segments of the population, especially the younger generation. Advertising campaigns can be financed by PACC as well as other sources such as international organizations, civic clubs, NGOs, private individuals, and private sector organizations (**See Budget Exhibit**).

The Message (draft)

The turnover of the Canal and the Canal areas provides a unique opportunity for Panama—an opportunity that could springboard Panama into a period of unprecedented growth and development. But this development won't take off without foreign investment, and foreign investors won't come to Panama if they expect to be confronted by corruption when they arrive. Panama needs to implement and enforce an anti-corruption code that ensures investment attraction and gives the country a chance to develop its full growth potential. Failure to take action against corruption will not only perpetuate Panama's problems but also could drag Panama even closer to the backwaters of developing nations. Just like the Communist countries in the 80s, we can delude ourselves that conditions will improve even if we don't make the tough choices necessary to rid Panama of the damaging effects of corruption. Alternatively, we can take action to curb corruption and move toward sustainable development.

Successful reform of corrupt practices will require the support and commitment of the general population, as well as full participation of the public and private sectors. Without widespread support, anti-corruption efforts would be in vain. The solution lies in changing the general population's apathy and tolerance of corruption. And this will require active participation in the democratic process and scrutiny of all government actions by civil society, the media, watchdog agencies and the legal system. Civil society must insist upon a system of sound governance that holds officials accountable.

Similar to Singapore in the 1960s, we can gather momentum from the great opportunities associated with the reversion of the Canal areas. Singapore, which inherited valuable assets from the British, made the decision to attract foreign investment and pursue outward development. The country's leaders ensured a stable political environment by strengthening the civil service and holding it accountable for wrongdoing. The rest is history. Singapore is one of the most corruption free countries in the world, as well as one of the best examples of sustainable development in the last 30 years. Citizens, the choice is yours!

Post-Election Media Strategy:

Joint TI-government press conference. Transparency International and the government should hold a joint press conference as part of the kick-off of the awareness and prevention campaign. This will shine a spotlight on the campaign right from its start and take advantage of the momentum established with the installation of the newly elected government. The press conference should convey the commitment of the government to fight corruption, inviting the general population, as well as the private and public sectors to participation in this national goal. The underlying message should be to assure Panama's long-term growth and sustainable development by guaranteeing that economic reforms and opportunities created as part of the Canal reversion will not be undermined by corruption.

Gaining support from media editors. Editors and publishers/producers of every form of mass media need to be encouraged not only to participate in the coalition but to sign a pledge to fight corruption in their media.

Gaining support from journalists. PACC can help focus journalists' attention on corruption issues by training them on how to expose corruption cases.

Educational/awareness raising campaign. PACC should produce educational articles, as well as educational videos, exhibitions, bulletins, and flyers. These educational materials should be geared toward public workers, the general public and students (kindergarten, primary, secondary and university levels). This non-traditional media campaign should focus on how to prevent corruption, as well as on practicing good values at work and in the family. This campaign should help form a different attitude regarding corruption.

Additionally, PACC should

- Create a public relations team that will write press releases for news stories and op-ed pieces and provide information for news stories. Press releases for the local media need to be issued in order to keep everybody abreast of the progress of anti-corruption reforms.
- Conduct and publicize public debates on the adoption of an anti-corruption code to help the public, academics, businesses and politicians recognize the importance of corruption reform.
- Visit newspaper, television, and radio editors to get free news and editorial coverage of the benefits of curbing corruption.
- Secure permanent space in newspapers for a weekly publication of:
 - Updates on legislative reforms.
 - Information about the most corrupt sectors of government (number of cases, prosecutions, etc).
 - Information regarding citizens satisfaction or dissatisfaction with government services.
 - Information about future activities (press conferences, training, workshops, meetings).
 - Opinion pieces from think tanks.
 - Press releases on each legislator's stance on the corruption issue as well as other members of the political elite.
 - Results of public surveys on corruption.
 - Opinion polls on the population's perception of corruption and business perceptions of the investment climate.

International Strategy

By making corruption in Latin America a priority issue, international organizations can provide Panamanian leaders with political cover for tackling anti-corruption reforms. International pressure for reforms all over Latin America allows individual leaders to admit to a common problem that is not specific to their own political party, government or business sector and leaves room for leaders to move forward with a united front. International support can come from international groups, including the international business community, civic groups, CSOs and TI chapters. The following actions will help consolidate international pressure for Panama's leaders to adopt anti-corruption reforms:

Establish a Global Coalition on Latin America. To build international support and momentum for reforms, the Panama Anti-Corruption Coalition can take a leading role in initiating a **Global Coalition On Latin America** (GCOLA) to help fight corruption, similar to the African Coalition, headed by former World Bank president Robert McNamara. A global coalition to fight corruption in Latin America will help build momentum to pass reforms in Panama and other countries of the region. PACC members can establish communication with McNamara, and Panama's newly elected government should be encouraged to make a formal request for assistance to McNamara. McNamara's role in Africa has been important in raising awareness among international investors of the need for change. A similar approach in Latin America will help raise awareness among the Latin American politicians, legislators, businessmen and citizens about the need for anti-corruption measures. GCOLA should be comprised of the Latin American TI chapters, the International Chamber of Commerce, major trade associations, civil society organizations, and NGOs of the region. GCOLA should take the following actions:

- Introduce and incorporate transparency principles in government procurement in all regional trade fora such as the FTAA, Mercosur and Pacto Andino.
- Push for the adoption of the OECD anti-bribery principles in all trade agreements.
- Push governments to adopt comprehensive anti-corruption legislation with emphasis on stronger enforcement and penalties. It should be emphasized that watchdog agencies require full authority and independence to operate effectively.

Initiate dialogues with international organizations. These dialogues should revolve around how international organizations and donor groups can help focus the Panamanian government's attention on corruption reforms. International institutions can make anti-corruption reform a top priority when providing assistance to member countries. The InterAmerican Development Bank (IDB) and the World Bank can bring the issues to governments' attention through their Country Assistance Strategy and by requiring fiduciary responsibility on projects they sponsor. These two important financial institutions can play a critical role by:

- *Making good governance and anti-corrupt practices their primary goals for the new millennium.* This would send a signal to the political elite that prompt adoption of reform measures is expected.
- *Enhancing supervision of procurement and instituting more rigorous reviews of procurement procedures.* The IDB and WB have announced their willingness to review contract award processes when other bidders raise complaints about a lack of transparency. They are already contemplating denying companies that have engaged in corrupt practices the possibility of participation in Bank-financed contracts, either indefinitely or for a stated period of time. Because the Panamanian government will require loans and technical assistance in modernizing the infrastructure of the Canal areas, these two institutions can use this stipulation to require transparency in the management of commercial transactions taking place in the Canal areas.
- *Providing technical assistance for judicial and civil service reform, as well as local capacity building.* World Bank and IDB commitments to assist in the development of technical capabilities and institution building can help build support for reforms.
- *Begin an international media campaign.* International media coverage of the historic opportunities opening up to Panama can create awareness of the need for change. PACC members can pursue free news coverage, taking advantage of international media coverage of the elections and the Canal turnover. PACC should:

- Hold a PACC-government press conference to promote their joint anti-corruption effort.
- Use international wire services to post the progress of reforms and investment opportunities in Panama.
- Use GCOLA as a means to attract free media coverage. Among other activities, GCOLA can organize a press conference to announce the beginning of this regional effort to fight corruption.
- Initiate a paid media campaign to publicize Panama's anti-corruption reforms. PACC members, especially the private sector, should publicize the changes in an effort to improve the country's international image and attract foreign investor interest in Panama.
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Footnotes:

5^[1] Transparency International, a non-profit NGO headquartered in Germany, is the leading worldwide advocate for corruption reform.

6^[2] A recent case involving the U.S. firm Saybolt, which paid exorbitant "fees" to Panamanian officials, resulted in a US\$2.4 million fine to the company and imprisonment of a company official. This case was widely publicized around the world, further damaging Panama's image as a place to invest.

7^[3] Langesh, Peter, Rick Staphenurst, and Jeremy Pope, *The Role of a National Integrity System in Fighting Corruption*. The World Bank, 1997.

8^[4] Transparencia Internacional. *La Hora de la Transparencia en América Latina: El Manual de Anti-Corrupción de la Función Pública*, Ediciones Granica, 1998, p. 125.

Supplemental Government Strategy^{9[11]}

Domestic Government Strategy

The domestic government strategy includes two parts: a policy strategy and a media strategy.

Policy Strategy

Anti-corruption efforts should be initiated first in areas where the public perceives corruption problems to be the worst or in areas where changes can be implemented easily and quickly. To build its credibility, the anti-corruption campaign should achieve some tangible successes within six months. All changes should be accomplished without introducing overly burdensome bureaucratic procedures that could undermine the

campaign's success. The following government actions will ensure the effectiveness of anti-corruption reform:

- *Create a Watchdog and Enforcement Agency.* To ensure compliance with anti-corruption laws, an investigative and monitoring unit should be established with appropriate authority—perhaps reporting directly to the legislative body. To secure its independence from other political offices, this unit should work together with Transparency International and a National Advisory Committee. The new enforcement agency could be required to periodically evaluate public services based, in part, on citizen polling. Such evaluations will help keep corruption on the front burner and will provide continuous input for governance improvement. To operate successfully, an anti-corruption agency must possess the following^{10[2]}:
 - Committed political backing at the highest levels of government.
 - Political and operational independence to investigate all levels of government.
 - Adequate powers for accessing documentation and questioning witnesses.
 - Leaders who are publicly perceived as maintaining the highest integrity.
 - Power to freeze assets when suspicions of corruption are reasonably substantiated. This presupposes the implementation of a system for monitoring the assets, income, liabilities, and lifestyles of decision-makers and public service officers.
 - Power to protect informants.

Additionally, the anti-corruption unit should conform to international human rights norms and be accountable to the courts for upholding the law.

- *Create a National Advisory Committee.* The government can encourage the formation of a National Advisory Committee on Transparency to ensure participation of the different sectors of society in the adoption and implementation of an anti-corruption code. This Advisory Committee^{11[3]} should work together with the watchdog agencies to guide the reform process. It could advise on measures to foster public support and on how to modify practices and procedures that are conducive to corruption. The Advisory Committee, as well as the watchdog agencies, should be required to publish quarterly reports on the state of corruption in the different government institutions. Panama can follow Hong Kong's approach in organizing this Committee (**See Exhibit #13**).
 - *Empower the Ombudsman.* The Ombudsman should be fully empowered to ensure integrity within the government. Most important, the Ombudsman needs full Constitutional power to investigate non-jurisdictional activities of the judiciary. It can recommend improvements to procedures and practices and provide an incentive for public officials to keep their files in order at all times. The Office of the Ombudsman
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needs to be responsible for its own budget and not rely on another larger department for its funding.

- *Reform the Judiciary.* The judicial system needs to be reformed in order to limit corruption at all levels of government. Most important, a separation of power between the judiciary and the other branches of government needs to be clearly established, and mechanisms designed to ensure the integrity of security and law enforcement officers (and their managers) need to be instituted.
- *Introduce Civil Service Reform.* The government workforce needs to be downsized and revised to most efficiently serve the public. Both conduct standards for public officials and improved hiring procedures should be established. To complement this effort, it is important to fully implement the provisions of the Administrative Career legislation. Additionally, there needs to be an effective mechanism for protecting those who report corruption, and penalties for corruption need to be more severe. (The Singaporean anti-corruption law can be used as a model.^{12[4]}) If a public official receives \$20,000 or less as a bribe payment, imprisonment should be for a term not exceeding two years; if the amount ranges from \$20,000 to \$50,000, imprisonment should be for a term not exceeding five years; if the amount ranges from \$50,000 to \$100,000, imprisonment should be for a term not exceeding seven years; and if the amount exceeds \$100,000, imprisonment should be for a term not exceeding 10 years.
- *Introduce Administrative Reforms.* To reduce opportunities for corruption, conflicts of interests within the public administration must be addressed. Legislators' unjustifiable benefits and prerogatives should be curtailed and officials in all three branches of government need to be held accountable for all their income sources.
- *Government Procurement Reform.* Transparency principles should be incorporated into the procedural standards for every privatization and government transaction. To ensure such transparency, an independent agency should be given power to monitor best practices in privatization and commercial transactions, including those in the Canal areas. Moreover, to ensure compliance with the laws prohibiting payment of bribes to government officials, the government should adopt and apply Transparency International's Pacts of Integrity to government procurement transactions.
- *Introduce Regulatory Reforms.* Transparency principles need to be adopted to ensure that laws and regulations achieve their desired social and economic objectives without burdening economic activity more than necessary. Regulatory reform will improve the investment climate, which is critical to ensuring sustainable economic growth (**See Principles for Regulatory Reform**).

Media Strategy

A national media strategy will help enlist community and public sector support for anti-corruption reforms. Both businesspeople and the general public need to understand their

role in identifying and denouncing corrupt practices. Toward this end, two campaigns should be initiated:

- *Mass media campaign.* The National Advisory Committee and the watchdog agency can organize regular media publicity, including paid and non-paid radio, television and newspaper coverage. Radio and television dramas of investigative work, news programs, and press releases should be used to communicate anti-corruption messages.
- *Non-traditional media campaign.*
 - Create billboard messages emphasizing civic and moral values.
 - Create a web page featuring the National Advisory Committee's and the watchdog agency's activities.
 - Produce educational videos on how to prevent corruption.
 - Produce educational bulletins for the private sector and the general public, especially for students at the kindergarten, primary, secondary and university levels.

Principles for Regulatory Reform

For Panama's anti-corruption campaign to succeed, regulatory reform will need to accompany the adoption of an anti-corruption code. Ineffective and excessively intrusive regulations must be eliminated, along with government protection of monopolies and barriers to foreign trade and investment that unnecessarily increase investors' costs. As international trade policy expert Geza Feketekuty has noted, "When government regulations are not well targeted at a clear social objective, or anytime they seek to accomplish the identified social objective through more red tape and government intervention than necessary, they introduce unnecessary costs. The increased cost of business services translates into increased costs for everything a country produces and to consumers."¹³

The recent Asian financial crisis illustrates the problems associated with inefficient regulation. It resulted from a combination of inadequate regulatory supervision of market participants' fiduciary performance and insufficient liberalization of controls on investment opportunities.

Regulatory reform may also be needed to curb discretionary controls that are built into many of Panama's regulations and provide opportunities for bribery and corruption.

The following good governance principles can guide Panama's government in developing sound laws and regulations¹⁴:

- Transparency
- Due process
- Predictability
- Nondiscrimination
- Objective, performance-based criteria
- Minimizing the regulatory burden
- Transparency of regulatory objectives
- Use of market mechanisms
- Minimizing the scope of regulations

Transparency. Transparency is the most important principle of sound governance. It holds that governments should publish all the laws, regulations, and administrative proceedings that affect market participants. To ensure fairness and economic efficiency, it is important that everybody affected by laws and regulations understand those laws and regulations prior to engaging in economic activity. The private sector cannot make informed decisions if government regulations are not published and transparent.

Due process. Due process assures that laws are administered in an impartial and objective manner and helps boost economic growth. It provides a predictable regulatory framework for market participants, makes the application of laws more efficient, and helps ensure that the most competitive firms succeed in the market place. Through this principle, firms are guaranteed the right to:

- Consult the government on the interpretation and application of the regulations that affect them.
- Appeal regulatory decisions to appropriate judicial bodies.
- Obtain timely responses to requests for regulatory decisions.

Predictability. Predictability lowers investment risk by enabling market participants to make long-term plans. Governments should not arbitrarily change laws and regulations. When changes are necessary, interested parties need to receive adequate notification.

Nondiscrimination. In applying laws and regulations, governments should not discriminate against any player. By eliminating arbitrary discrimination, the state ensures that the most efficient firms are not disadvantaged.

Objective, performance-based criteria. To ensure that a regulatory system does not impede economic performance, its provisions and enforcement mechanisms should be based on objective, measurable, performance-based criteria. Objective criteria not only add predictability and transparency to enforcement of the regulations but also ensure that laws and regulations have a clear purpose. Objective, performance-based criteria eliminate discretion that can lead to corruption.

Minimizing the regulatory burden. Laws and regulations should be designed so that they do not burden economic activity. That is, the regulatory system should not be more burdensome than necessary.

Transparency of regulatory objectives. The objectives of laws and regulations should be clearly stated. This helps eliminate unnecessary laws and confusion as to their purpose.

Use of market mechanisms. Whenever possible, governments should allow market mechanisms to accomplish social regulatory goals. This implies allowing market forces to determine the most efficient manner to accomplish a social objective. Preferential treatment creates domestic inefficiencies and distorts trade and competition.

Minimizing the scope of regulations. To minimize the economic costs of regulation—costs that can distort market competition—governments should only regulate activities directly related to achieving a regulatory objective.

International Government Strategy

Panama can advance anti-corruption reform and signal its commitment to provide a transparent and fair investment climate by playing an active role in international trade fora and other international organizations. Additionally, Panama needs to publicize its anti-corruption actions internationally through a comprehensive media strategy.

Trade Fora Strategy

Panama needs to take an active role in international trade organizations to address trading partners' negative evaluations of our investment climate and procurement regime. This strategy involves:

- *Becoming a full participant in the FTAA.* By participating in the FTAA Working Group on Investment, Panama can convey that it is committed to the creation of a stable and predictable environment that protects investors, their investments and related transactions. The goal of this working group is to establish a fair and transparent legal framework to promote investment in the region.
- *Taking an active role in the WTO.* Panama can play an active role in WTO discussions of transparency in government procurement and demonstrate that it is ahead of the game in complying with its WTO commitments. The WTO is likely to take action on the issue of transparency in the Millennium Round.
- *Acceding to the OECD Anti-Bribery Agreement.* Panama's adoption of the OECD Agreement will also signal to the international community that it is enacting first-world standards and that it is serious about creating the right climate for investment attraction. Argentina, Brazil and Chile have already voluntarily adopted the OECD Anti-Bribery Agreement. **(See Procedure to Accede to the OECD Agreement).**
- *Negotiating an understanding with the United States.* Panama can negotiate an understanding with the United States to eliminate its negative evaluation of Panama's investment climate and government procurement regime. This effort will also help secure USTR's commitment to promote and communicate Panama's potential to U.S. investors. **(See Negotiation Strategy).**

International Organizations Strategy

Panama should adopt several international standards and request technical assistance in reforming Panamanian institutions involved in anti-corruption reform. Specifically, Panama should:

- *Implement the OAS Convention on Corruption.* Pushing for implementation of the OAS anti-corruption principles is a solid beginning for acceptance and passage of a more comprehensive anti-corruption code. Implementing the OAS convention will also enhance Panama's stature in the region and serve as the impetus for other governments to take similar actions.
- *Request IDB/World Bank Assistance.* By requesting the World Bank's Anti-Corruption Action Plan assistance, Panama can receive support in reforming institutions as well as technical assistance on anti-corruption programs, including diagnostic surveys, training workshops and policy advice. The WB program focuses on capability building and is results oriented. Panama can also request IDB assistance for the implementation of the OAS Convention on Corruption.

Media Strategy

An international media strategy will help clean up Panama's image within international business circles. Recommended actions include:

- *Implementing a paid media campaign.* Advertisements should emphasize the changes taking place in Panama and the opportunities open for investment. The *Financial Times*, *New York Times* and *The Economist* should be targeted along with other reputable media.
- *Gaining free news coverage.* The transfer of the Canal on December 31, 1999 will attract international media coverage. The transfer should be used as an opportunity to gain free media coverage of Panama's anti-corruption reforms, as well as investment opportunities in the Canal areas. Additionally, periodic press releases should be sent to wire service agencies, Panamanian embassies and consulates abroad. They, in turn, should send the releases to newspapers and news wire service agencies for free coverage. Ambassadors should visit news media to arrange interviews and free news coverage of government actions.
- *Using the Web.* An Internet web site can provide information on the new government, democracy, Panama's stable economy, its strict anti-corruption reforms, the Canal operations after the hand over, the Canal areas investment opportunities, the Banking Center, the Colon Free Zone, and tourism.

Negotiation Strategy^{15[7]}

Issue:

The United States has expressed concern in its Foreign Trade Barriers Report about the lack of transparency in Panama's government procurement regime. This perception of corruption deters U.S. companies from investing in Panama and increases the uncertainty and risk level of U.S. companies already located in Panama. Moreover, if the United States identifies trade barriers in the future, it may decide to take retaliatory action against Panama.

Panama could seek to negotiate an understanding with the United States after implementing anti-corruption reforms. An understanding with United States could serve as a tool to attract U.S. investment and improve Panama-U.S. trade relations.

Preferred Outcomes for Panama:

- Eliminate the United States' negative evaluation of the Panamanian government procurement regime and the perception that it works as a trade barrier.
- Avoid future commercial disputes and/or U.S. trade sanctions.
- Secure the United States' commitment to promote and communicate these changes in its different publications and reports available to other government agencies and investors.
- Obtain the United State's promise to uphold Panama as a model of reform in Latin America.
- Increase investment and trade with the United States.

Allies:

Private sector. The negotiation of an understanding with the United States will receive support from international investors, especially U.S. investors, who represent the largest portion of foreign direct investment in Panama. Panamanian industry associations will also support such an agreement because it would open additional opportunities for increased investment and trade with the United States.

Government. The Trade Ministry, specifically the vice-ministry for foreign trade, will support negotiations with the United States as a means of strengthening Panama-U.S. trade relations and demonstrating that Panama is committed to open trade with one of our most important trading partners.

A win-win strategy:

Negotiating an understanding concerning government procurement with the United States should be straightforward. By taking the initiative on this issue, Panama will not only avoid a future trade dispute with the United States but also increase U.S. investment. The United States is expected to be satisfied with Panama's streamlined government procurement regime, especially because it will assure equal opportunities to U.S. investors.

Benchmarks:

USTR and Panama could together identify benchmarks for judging Panama's progress in reforming its government procurement regime. Additionally, USTR could be invited to monitor Panama's successes.

Objective Criteria:

The following standards should be used in assessing the necessary government procurement reforms and identifying benchmarks:

- WTO standards on government procurement
- UN standards
- OECD Anti-Bribery Agreement
- OAS Convention on Corruption
- EU standards

Footnotes:

16^[1] This strategy addresses those policy decisions the government needs to make in order to curb corruption in Panama. It is designed to complement Transparency International's domestic and international strategies, addresses those policy decisions the government needs to make in order to curb corruption in Panama.

17^[2] Langesh, Peter, Rick Stapenhurst, and Jeremy Pope, *The Role of a National Integrity System in Fighting Corruption*. The World Bank, 1997.

18^[3] See Hong Kong's Independent Commission Against Corruption (ICAC) in the Exhibits.

19^[4] Singapore is one of the most corrupt free countries in the world.

20^[5] Feketekuty, Geza. *Principles of Sound Regulation in Services: The key to long term economic growth in the new global economy*, Monterey Institute of International Studies, October, 1998.

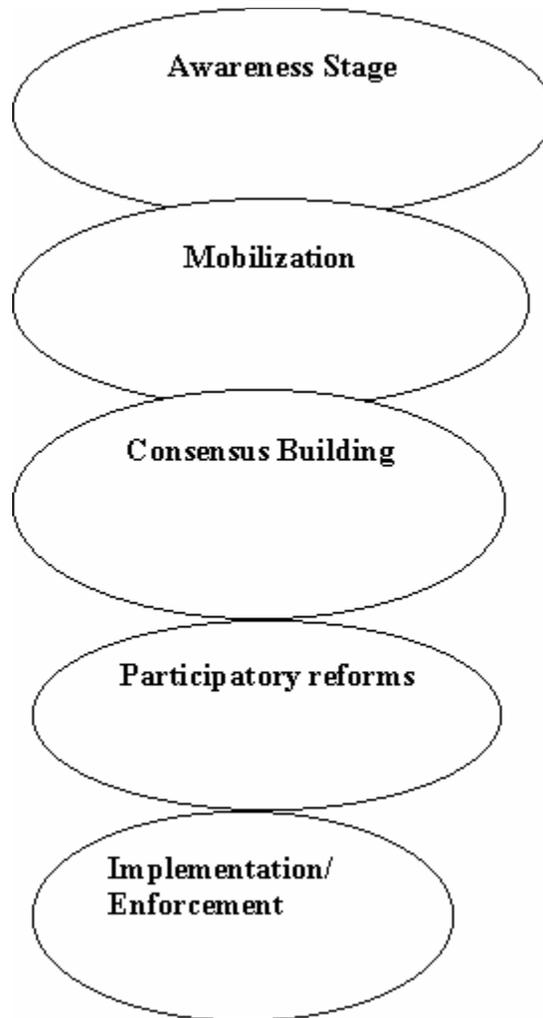
21^[6] Feketekuty. Ibid.

22^[7] A similar negotiating strategy can be employed with other important trading partners such as the EU, Taiwan, Spain and Hong Kong.

Exhibits

1. [Stages of an Anti-Corruption Program](#)
2. [White Paper](#)
3. [Letter to the Editor](#)
4. [Press Release #1](#)
5. [Press Release #2](#)
6. [Sample letter to a potential PACC member](#)
7. [Sample letter to a potential NGO member](#)
8. [Dear colleague letter to legislators](#)
9. [Sample letter from Robert McNamara](#)
10. [The C-Word Rap Song](#)
11. [Sample of survey questions](#)
12. [Q & A from the World Bank](#)
13. [Anti-corruption reforms in other countries](#)
14. [Timetables](#)
15. [Estimated Budget](#)
16. [Summary of Obstacles](#)
17. [Steps to Accede to the OECD Anti-Bribery Agreement](#)

Stages of an Anti-Corruption Program^{23[1]}



24^[1] Based on *Good Governance in Africa. A Case Study from Uganda*, The Economic Development Institute of the World Bank 1997, p.27.

White Paper

As Panama moves toward gaining greater control of its own economic destiny, corruption stands as a major obstacle to attracting the level of investment necessary for privatizing state-owned enterprises and developing the Canal areas. Failure to address the corruption issue will threaten the Canal's economic viability, reduce Panama's ability to replace income lost from the United States' withdrawal from Panama (five percent or more of GDP), and risk further weakening an already sluggish economy.

A host of nations and, most recently, the United States have identified corruption in Panama as a major deterrent to trade and investment. The international community views

Panama's business and government as pervasively corrupt. To counter this perception, it is crucial that legal reforms be implemented and enforced to reduce corruption and to permit full recourse for companies that encounter difficulties. This involves implementing policies that curb bribery and corruption, assuring adherence to international conventions that criminalize such practices, and establishing strong enforcement and watchdog agencies. Without these measures, Panama's past will continue to haunt its future.

Noriega's legacy of corruption and Panama's weak anti-corruption laws have raised doubts about Panama's ability to operate the Canal efficiently and to transform former U.S. military installations for productive uses. Panama needs to persuade the international maritime community, investors, and governments that it can offer legal certainty to investors and that it can operate the Canal responsibly without political influence and corruption.

What is corruption?

Corruption is the use of public office for private gain. It involves competition in bribery rather than competition in the quality and price of goods and services,^{25[1]} and it adversely affects the flow of public and private funds for investment.

Why is this important to Panama?

Panama needs large inflows of foreign investment to stimulate its sluggish economy and replace income lost from the United States' withdrawal from Panama (five percent or more of the GDP, as well as 6,000 high paying jobs). Panama's growth rates are too weak to significantly reduce its high, 14 percent unemployment rate. In the last four years, Panama's GDP averaged just two percent growth, far below what is needed to sustain development, create jobs, and raise the standard of living.

With an estimated value of US \$5 billion, the former Canal Zone will be critical in shaping the actual growth of Panama's economy in the next 10 years. The complex shipping and cargo-processing activities related to the Canal are the crown jewel of the government's economic plans to attract foreign investment.

In short, the reversion of the Canal areas and the transfer of the Canal to Panamanian control at the end of 1999 offer an opportunity for Panama to mold its political and economic future and become a model of sustainable development in Latin America. This transition presents a unique opportunity to fully develop the Canal areas into commercial enterprises that create jobs, raise national income and foster economic growth.

But Panama's chance of success in this endeavor will be greatly diminished unless it adopts sound anti-corruption measures that dish up stiff criminal penalties for corrupt practices that now plague and hinder Panama's economic growth.

Criminalization of corruption is not only an ethical and legal issue, but also an economic one. In Italy, for example, following recent investigations and trials on widespread corruption cases, the cost of many public works or services fell by up to 30 percent. When a bribe is paid to secure goods or services, it raises everyone's costs and therefore penalizes consumers, distorts public sector contract awards, and reduces

government revenues. Panamanian consumers, as well as the country as a whole, can gain substantial economic benefits from corruption reform.

Bribery is now punished internationally

Following the recent entry into force of the OECD Anti-Bribery Agreement, a number of Panama's investment partners have taken measures to criminalize bribery of foreign officials. The OECD resolution was a landmark; it set a new international standard against corruption. In this international climate, Panama cannot afford to continue operating in anything less than a fully transparent business environment. This means compliance with new international standards on corruption and strict enforcement of anti-corruption laws.

A case against corruption

Corruption generates inefficiencies by permitting the best briber to be the recipient of government contracts, regardless of whether that briber is the most efficient. In addition, since the cost of bribes is included in the price of the goods produced, demand tends to be reduced, the structure of production tends to become biased, consumption falls below efficiency levels, and government revenues suffer.

In a recent World Bank survey of more than 150 high-ranking public officials and key members of civil society from more than 60 developing countries, the respondents ranked public sector corruption as the most severe impediment to development and growth of their economies.

The costs of corruption can be summarized in the following categories²⁶^[2]:

- *Wasted resources.* If corruption takes the form of a kickback, it diminishes the amount of resources available for public use. Corruption also results in productivity losses because the prospect of payoffs can lead officials to create artificial scarcity and red tape. Corruption increases the price of administration—a price that taxpayers ultimately pay.
 - *Allocation distortions.* Corruption causes decisions to be weighted in terms of payoffs rather than human need or efficiency. It undermines the state's ability to raise revenues and leads to ever-higher tax rates.
 - *Increased transaction costs and uncertainty in the economy.*
 - *Inefficient economic outcomes.* Corruption impedes long-term foreign and domestic investment and misallocates human and other resources to rent-seeking activities.
 - *Undermined state legitimacy.* Incipient democracies such as Panama's are unlikely to succeed if corruption and bribery are the principal objectives of running for office.
-

Investors are reluctant to invest in unstable democracies because it increases their costs and risks.

Corruption decreases the state's ability to provide essential public goods, which in turn affects development prospects. In addition to the strong economic repercussions of corruption in Panamanian development, there are important political considerations.

As recently as the 1990s, governments have collapsed in part because the people they governed would no longer tolerate the corruption of politicians. The indignation of ordinary people has been reinforced by an alliance of aid donors, lawmakers and businessmen who had previously simply wrung their hands. These changed attitudes have led to enforcement and judicial actions in some countries.

In Latin America, bribery charges resulted in the impeachment of Brazilian president Fernando Collor de Mello and Venezuelan president Carlos Andres Perez, as well as the resignation of Ecuadorian president Abdala Bucaram. In Mexico, President Carlos Salinas de Gortari was shadowed by his brother's illicit accumulation of huge sums of money. Colombian president Ernesto Samper avoided impeachment over his acceptance of campaign funds from the Cali drug cartel, but the incident eroded his political authority and caused his party to lose the last presidential election.

Does corruption have some advantages?

Some sectors argue that bribery can have positive effects under certain circumstances because it gives firms and individuals a means of avoiding burdensome regulations and ineffective legal systems. This argument, however, ignores the enormous discretionary power that many politicians and bureaucrats have over the creation and interpretation of non-transparent regulations. Instead of corruption being the grease that facilitates business, it fuels the growth of excessive, discretionary and non-transparent regulation. The argument that corruption enhances efficiency by expediting transactions is also questionable. Just the mere likelihood of bribery causes the process to slow down or even stall. Enterprise managers tend to spend a greater share of management time with bureaucrats and public officials negotiating licenses, signatures and taxes.^{27^[3]}

Recommendations

In order to attract needed investment and establish a stable political climate for sustainable growth into the 21st century, it is imperative for Panama to introduce, implement and enforce anti-corruption measures. This is a critical time in Panama's history. Academics, the private sector, civil society, NGO's, political parties, the judiciary, legislators, and government workers, all sectors of society need to join in achieving the common national goal of becoming a model of sustainable development in Latin America.

The following are important components of a strategy to curb corruption in Panama

- *Watchdog agencies.* Such agencies need to be established and empowered to monitor public officials' behavior and compliance with anti-corrupt measures.
- *Training and institutional restructuring.* Training and restructuring efforts will be important in reducing opportunities for corruption. As part of the restructuring effort, diagnostic surveys might be employed (e.g., public service delivery surveys, enterprise surveys, and public official surveys that the World Bank could support).
- *National Advisory Committee.* This committee should represent all sectors of society. Its task would be to guide the reform process by recommending measures designed to foster public support and identifying practices and procedures that are conducive to corruption.
- *Judicial reform.* The judicial system can play an important role in limiting corruption at all levels of government by monitoring both civil servants and politicians and by holding government employees accountable in the event of wrong doing. Additionally, the judiciary needs to be given complete independence and provide fair and prompt conflict resolution.
- *Empowering the Ombudsman.* The Panamanian ombudsman needs to have constitutionally defined powers and full authority to investigate non-jurisdictional activities of the judiciary.
- *Civil service reform.* Preventive measures to deter corruption need to be taken. These measures include standards of conduct for public officials, mechanisms to enforce these standards, stricter penalties for wrongdoing, and improved procedures for government hiring, government procurement, and tax collection.
- *Regulatory reform.* Panama's regulatory system needs to be based on transparency principles—principles that help assure that laws and regulations provide desired social and economic objectives without unnecessarily burdening economic activity.

Additional actions will be needed to improve Panama's international image:

- *Implement the OAS Convention Against Corruption.* Panama ratified the OAS Convention in 1998. Now it must adopt legislation needed to implement it. The Convention requires governments to cooperate with foreign government efforts to investigate and prosecute corrupt acts, including cooperation where extradition is called for and assistance in recovering illicitly acquired property or wealth. The Convention further requires governments to criminalize bribery, transnational bribery, and illicit enrichment, and it discourages the use of bank secrecy laws as the basis for withholding cooperation from investigations of corruption.
- *Adopt the OECD Anti-Bribery Agreement.* Through the OECD Agreement, Western-based multinational companies are being required by their governments to work together to limit the amount of bribery in which they engage. As a result, multinational corporations will be more careful where they invest. If Panama wants to

offer legal certainty to investors, it should voluntarily adopt the OECD Anti-Bribery Agreement just as Argentina, Brazil and Chile already have.

- *Request IDB/World Bank assistance.* By requesting the World Bank's Anti-Corruption Action Plan assistance, Panama can receive support and technical assistance for reforming institutions and implementing anti-corruption programs. The WB program offers diagnostic surveys, training workshops and policy advice and focuses on capacity building. Panama can also request IDB assistance for implementation of the OAS Convention Against Corruption.
- *Participate in International Trade Fora.* Panama's active participation in international trade organizations will help convey Panama's commitment to creating a stable and predictable environment that protects investment. By becoming a full participant in the FTAA Working Group on Investment, Panama will signal its commitment to establishing a fair and transparent legal framework. Panama can also take an active role in the WTO Working Group on Government Procurement in order to address trading partners' negative evaluations of its investment climate and procurement regime.

Failure to take action against corruption not only prolongs the problem but could drag Panama even closer to the backwaters of developing nations. Just as the Communist countries deluded themselves in the 80s, we too can delude ourselves that conditions will improve even if we don't make the tough choices necessary to rid Panama of the damaging effects of corruption. Alternatively, we can take action to curb corruption and move toward sustainable development.

Footnotes:

28^[1] Langseth, Peter, Rick Stapenhurst and Jerrey Pope, *The Role of a National Integrity System in Fighting Corruption*, The Economic Development Institute of the World Bank, 1997, p.1.

29^[2] Ibid, p.5.

30^[3] Kaufman Daniel, *The World Bank. Finance and Development*, March 1998, p.7

Sample Letter to the Editor

By the President of the PACC

The turnover of the Canal and the Canal areas provides a unique opportunity for Panama—an opportunity that could springboard Panama into a period of unprecedented growth and development. But this development won't take off without foreign investment, and foreign investors won't come to Panama if they expect to be confronted by corruption when they arrive.

Panama needs to implement and enforce an anti-corruption code that ensures investment attraction and gives the country a chance to develop its full growth potential.

Failure to take action against corruption will not only perpetuate Panama's problems but also could drag Panama even closer to the backwaters of developing nations. Just as the Communist countries deluded themselves in the 80s, we too can delude ourselves that conditions will improve even if we don't make the tough choices necessary to rid Panama of the damaging effects of corruption. Alternatively, we can take action to curb corruption and move toward sustainable development.

Stopping corruption will require the support and commitment of the general population, as well as full participation of the public and private sectors. Without this widespread support, anti-corruption efforts would be in vain. The solution lies in changing the general population's apathy and tolerance toward corruption. Private citizens need to participate actively in the democratic process and insist upon a system of sound governance that holds officials accountable for their actions.

Panamanians need to work together to create a transparent and sound business environment for both foreign and domestic corporations. Businesses must feel confident that they will be able to function within a fully transparent legal and regulatory framework that reduces investment risk and cost. This involves implementing policies that curb bribery and corruption, assuring compliance with and adherence to international conventions that criminalize such practices, and creating enforcement and watchdog agencies.

In the 1960s, when Singapore inherited valuable assets from the British, it wasted no time in taking measures that would ensure a stable political environment. Most importantly, the country made civil service employees accountable for their actions. The rest is history. Singapore is a model of civil society and one of the best examples of sustainable development in the last 30 years.

Like Singapore, Panama can gain momentum from the enormous opportunity presented by the reversion of the Canal areas. Panama can make the decision to attract foreign investment and to pursue outward development.

Transparency International is leading the Panama Anti-Corruption Coalition (PACC) to make sure that Panama has good governance and an appropriate business climate to help attract the investment needed to succeed and flourish into the New Millennium. Citizens, the choice is yours!

Sample Press Release #1

Panama Adopts OECD Agreement on Combating Bribery of Foreign Public Officials

Panama has taken a major step in its fight against corruption by adopting the OECD Agreement on Combating Bribery of Foreign Public Officials. The Panamanian president will make the official announcement at a news conference scheduled as a part of this weekend's media seminar on the OECD Anti-Bribery Agreement.

The Agreement, which entered into force on 15 February 1999, outlaws the payment of bribes to foreign officials. Its goal is to level the playing field for companies that compete for business contracts outside their home countries. By contributing to a more efficient allocation of economic resources, it will also benefit private citizens in countries where contracts are issued.

Will the treaty work? How will it be monitored? What more needs to be done to ensure enforcement and effective international cooperation in the fight against corruption?

To pursue these and other questions, you are invited to attend a media seminar at Transparency International's offices at 2.30 p.m. on November 10, 1999.

The seminar will include a two-and-a-half day session with the chairman of Transparency International, Peter Eigen, OECD and Panamanian officials, and other internationally noted authorities on corruption.

For more information and to register for the seminar, please contact the Media Relations Division of Transparency International.

Sample Press Release #2

Latin American Governments and Foreign Firms to Fight Bribery and Corruption

PANAMA CITY.-- The presidents of Panama, Mexico, Argentina, Brazil and Chile, and former World Bank President Robert McNamara, announced the initiation of a regional coalition to firmly fight corruption in Latin America.

In the first presidential meeting to address corruption, the heads of state, McNamara and TI representatives announced the creation of the Global Coalition on Latin America, which is an extension of McNamara's efforts against corruption in other continents.

McNamara urged the presidents to take strong measures in the fight against corruption and appealed to the private sector to focus on the supply side of corruption.

During his visit to Panama to launch the new Global Coalition on Latin America, McNamara and TI representatives discussed the prospects for turning the Integrity Pact concept into practice in Latin America.

McNamara and TI representatives stressed the need for Latin American governments to implement the necessary anti-corruption measures in order to obtain concrete results sooner rather than later.

Sample Letter to Send to Potential PACC Members

Dear Trade Association President:

We are writing to seek your support for corruption reforms as proposed by the **Panama Anti-Corruption Coalition (PACC)**. Panama's continued failure to eliminate corruption impedes foreign investment in the Canal areas, the foremost pillar of our economic strategy to achieving high-rate economic growth.

Investment is the only means of revitalizing Panama's already sluggish economy and offsetting the \$360 million (five percent of GDP) and 6,000 high paying jobs that we will lose when the United States withdraws from the Canal areas.

If we fail to provide a transparent business climate, we could unwittingly be engineering the transformation of the Canal areas into a depressed region rich in facilities but lacking the necessary investment to overcome Panama's high unemployment and low economic growth.

The reversion of the Canal areas and the transfer of the Canal to Panamanian control offer an opportunity for Panama to regain control of its own political and economic future. However, widespread corruption clouds the realization of this goal.

We wish to introduce to you the **Panama Anti-Corruption Coalition**, an initiative recently undertaken by Transparency International, the UNDP and the General Comptroller's Office. PACC seeks to accelerate economic and social advances in Panama by bringing together all sectors of society in the fight against corruption. PACC will:

- Assist the government in establishing and implementing effective anti-corruption laws, policies, and programs.
- Organize and enhance public support and understanding of anti-corruption programs.
- Enhance public sensitivity to the need for transparency and accountability among government officials.
- Encourage all parties in business and related areas of national interest to follow the highest levels of integrity and adhere to certain standards of conduct.
- Veto public appointments of corrupt officials through lobbying or by providing information to the appointing body.
- Hold integrity seminars for the president, cabinet, and legislators following the elections to promote the issue of corruption as a state priority.

We believe that endorsement of this Panamanian initiative and a commitment to its provisions by companies such as yours will send a strong signal that the international business community will no longer tolerate corruption.

Panama is at a critical time in its history. It is crucial that all member of society participate in achieving the common national goal of becoming a model of sustainable development in Latin America.

If you or your associates have questions on any of these issues, please let us know. We will be happy to answer in writing or in person.

Sincerely,
President of the PACC

Sample Letter to Send to Potential NGO Members

Dear NGO President:

We are writing to seek your support for corruption reforms proposed by the Panama Anti-Corruption Coalition (PACC). As Panama moves toward gaining greater control of its own economic destiny, corruption stands as a major impediment to attracting foreign investment needed for privatizing and developing the Canal areas.

Failure to address the corruption issue threatens the Canal's economic viability, reduces Panama's ability to replace income we will lose as a result of the United States' withdrawal from Panama (five percent or more of GDP), and risks further weakening our already sluggish economy.

Investment attraction is the only means of revitalizing Panama's economy. If we fail to provide a transparent business climate, we could unwittingly be engineering the transformation of the Canal areas into a depressed region rich in facilities but lacking the necessary investment to overcome Panama's high unemployment and low economic growth.

I wish to inform you of and solicit your support for the **Panama Anti-Corruption Coalition**, an initiative recently undertaken by Transparency International, the UNDP and the General Comptroller's Office. PACC seeks to accelerate economic and social advances in Panama by bringing together all sectors of society in the fight against corruption. PACC will:

- Assist the government in establishing and implementing effective anti-corruption laws, policies, and programs.
- Organize and enhance public support and understanding of anti-corruption programs.
- Enhance public sensitivity to the need for transparency and accountability among government officials.
- Encourage all parties in business and related areas of national interest to follow the highest levels of integrity and adhere to certain standards of conduct.
- Veto public appointments of corrupt officials through lobbying or by providing information to the appointing body.
- Hold integrity seminars for the president, cabinet, and legislators following the elections to promote the issue of corruption as a state priority.

We believe that endorsement of this Panamanian initiative and a commitment to its provisions by organizations such as yours will send a strong signal that corruption will no

longer be tolerated. Panama is at a critical time in its history. It is crucial that all members of society participate in achieving the common national goal of becoming a model of sustainable development in Latin America. If you or your associates have questions on any of these issues, please let us know. We will be happy to answer in writing or in person.

Sincerely,
President of PACC

Sample Letter to Send to Legislators

Dear Fellow Legislator:

I am writing to seek your support for corruption reforms as proposed by the **Panama Anti-Corruption Coalition (PACC)**. Panama needs to implement and enforce an anti-corruption code that provides a transparent investment climate and enables the country to capitalize on the reversion of the Canal.

Taking advantage of this opportunity could springboard Panama into a period of unprecedented growth and development. Failure to take action against corruption, however, will not only impede this endeavor but also could drag Panama even closer to the backwaters of developing nations. Just as the Communist countries deluded themselves in the 80s, we can delude ourselves that conditions will improve even if we don't make the tough choices necessary to rid Panama of the damaging effects of corruption. Alternatively, we can take action to wipe out corruption and move toward achieving sustainable development.

To revitalize our sluggish economy, develop the Canal Zone and offset the impact of the United States' withdrawal (which amounts to the loss of both 6,000 jobs and an annual capital inflow of \$360 million—five percent of GDP), Panama needs to establish a transparent business climate that encourages investment.

The reversion of the Canal areas and the transfer of the Canal to Panamanian control offer an opportunity for Panama to mold its own political and economic future. If we fail to provide a transparent business climate, however, we could unwittingly be engineering the transformation of the Canal areas into a depressed region rich in facilities but lacking the necessary investment to overcome Panama's high unemployment and low economic growth.

Panama must provide guarantees that all government transactions are equitable, fully transparent, and broadly supported by government officials. This will require implementing policies that curb bribery and corruption, assuring compliance with and adherence to international conventions that criminalize such practices, and establishing strong enforcement and watchdog agencies.

I wish to introduce to you the Anti-Corruption bill, which seeks to accelerate economic and social advancement in Panama by introducing the necessary laws and regulation to fight corruption.

As you are already aware, the President has declared the fight against corruption a top priority of the government. Your endorsement of this national effort and your

commitment to pass the necessary reforms will help springboard us into long-term sustainable growth as we enter the new millennium. Most important, it will help create jobs for hundreds of thousands of Panamanians.

If you have questions on any of these issues, please let me know. I will be happy to answer in writing or in person.

Sincerely,

Juan Transparente
President of the Government Commission

Sample Letter for McNamara to Send to CEOs^[1]

Dear Mr. X:

As a former president of Ford Motor Company and the World Bank and as a director of several international corporations, I have seen corruption related to business transactions increase throughout the developing world. Corruption has now reached levels where it not only diverts scarce public resources into private pockets, but it literally undermines effective governance, endangering democracy and eroding the social and moral fabric of relations.

I wish to inform you of and solicit your support for an initiative recently undertaken by the Global Coalition for Africa (CGA) related to this problem. The Global Coalition seeks to accelerate economic and social advance in Africa by bringing together African political leaders and development assistance administrators of the OECD nations. It is co-chaired by President Masire of Botswana, President Konare of Mali, Prime Ministers Meles of Ethiopia, Dr. Ginwala of South Africa, Minister Pronk of the Netherlands, Minister Marleau of Canada and myself.

Several heads of state of African countries asked the Coalition for assistance in combating corruption within their own countries. I volunteered to help them and suggested that we begin by introducing anti-bribery clauses into all major procurement contracts, whether with domestic or international suppliers. The governments would commit themselves to instruct their officials that they were prohibited from requesting or accepting bribes. And the governments would require that the chief executive officers of all companies that bid on such contracts certify that their employees and agents have been forbidden to offer or pay bribes. In the event that bribery occurred, both public officials who accepted bribes and the companies involved would face stiff penalties.

Six countries—Malawi, Benin, Tanzania, Uganda, Ethiopia and Mali—asked for my assistance in introducing the new terms into their procurement procedure. Along with Ambassador Ould-Abdallah, Executive Secretary of GCA, and a representative of Transparency International, I visited the President or Prime Minister of each of the six. They are all rewriting their procurement regulations to introduce the new terms into all major procurement contracts beginning early next year. I am sending this letter to you because your company may be interested in bidding on such contracts.

Before undertaking my visits, I discussed my proposal with James Wolfensohn, President of the World Bank. He endorsed it fully, promising support not only in relation to contracts financed by the World Bank, but also more generally, in the effort to reduce fraud and corruption throughout the developing world.

31^[1] As provided by the World Bank.

You may have noticed that he referred to the subject in an extraordinarily powerful speech at the annual meeting of the World Bank and IMF in Hong Kong on September 23, 1997. He said: "Last year, I highlighted the importance of tackling the cancer of corruption. Since then, we have issued new guidelines to staff for dealing with corruption—and for ensuring that our own procedures meet the highest standards for transparency and prosperity. We have also begun working with a half dozen of our member countries (these are the six I visited) to develop anti-corruption programs."

At the annual meeting of the Global Coalition for Africa in Maputo, Mozambique, on November 1-2 1997, the subject of corruption was the main item on the agenda. I chaired the session on the means to combat it and attach my summary of that debate.

I know that the International Chamber of Commerce is concerned about the costs and consequences of corruption and that many individual companies have developed their own codes of conduct to combat bribery. I believe that endorsement of this African initiative, and a commitment to its provisions by companies such as yours, will send a strong signal that corruption will not be tolerated by the international business community.

If you or your associates have questions on any of these issues, please let me know. I will be happy to try to answer them in writing or in person.

Sincerely,

Robert S. McNamara

The C-Word Rap Song!³²^[1]

Lyrics: Anne Williams USAID

I find I have a problem
It begins with a C
It's a problem, It's a problem
For you and for me
The Bishop he tells us
It really is a sin
Eradicate, eradicate
But where do you begin?

Chorus:

I've thought and thought
And I meditated
To find the recipe
That would eradicate it.

First you take a bowl
Make sure it's transparent
Fill it with soul
And integral intent,
Play a decent role
With immaculate scent.

³²^[1] **TI Newsletter**, *The C-word rap song*, September 1998, p.16.

To this stirring mix
Add some prevention and
For a proper fix,
A dash of popular attention
And to make sure it sticks
Investigation and detention

Chorus

(This song could be translated into Spanish)

Example of Surveys that Can Be Conducted by TI and Dichter and Neira. 33¹¹

Where does corruption occur in Panama?

- *Export and Import permits*
- *Clearances for procurement or privatization*
- *Water and electricity services*
- *Tax and financial inspections*
- *Fire and sanitary inspections*
- *Weights and measures inspections*
- *Phone line installations*
- *Enterprise registration*
- *Building permits*
- *State banking services*
- *Property registration*
- *Leases of state-owned commercial real state*
- *Border crossing and customs*
- *State health services*

Corruption and lost tax revenues

- *Enterprises willing to pay higher taxes if corruption were eliminated*
- *Additional taxes as a share of revenue of those enterprises willing to pay higher taxes if corruption were eliminated*
- *Additional taxes as a share of revenue all enterprises are willing to pay if corruption were eliminated*

Questions and Answers from the World Bank^[2]

1. *How Can the Bank Help a Country Develop an Anti-corruption Strategy?*

An initial step would be to 'map' the areas where corruption is most prevalent and economically costly. Although in a broad sense such surveys may not tell local policy makers much more than they know already, surveys can crystallize the debate by measuring how corruption is perceived and enabling comparisons to be made over time and between different parts of the economy. Based on the results of 'mapping,' a dialogue on priority steps to take can occur.

2. *What Should Guide the Design of Anti-Corruption Programs?*

Anti-corruption is not an 'add-on,' satisfied by the strengthening of enforcement machinery, public campaigns and threats of punishment. Sustainable anti-corruption means identifying the underlying causes of corruption and addressing them. Thus one pillar of a successful anti-corruption program may be economic reforms that reduce rents by macroeconomic measures, simplifying tax and tariff regimes, and other liberalization and deregulation steps. A second pillar will be strengthening institutions: re-creating a professional civil service, building strong watchdog bodies, strengthening prosecutorial capacity and the judicial system, creating effective regulatory bodies, strengthening financial management, and making government at all levels more responsive to citizen needs.

3. *What is a Realistic Objective in the Fight Against Corruption?*

Although a few countries (e.g., Singapore) have made rapid progress, it is unrealistic to expect a country facing extensive systemic corruption to move to the upper ranks of countries which control corruption in a few years. Making the transition from systemic to isolated corruption for most countries is a historical process, playing out over many decades and linked to education levels and the growth of politician accountability.

What is realistic in a shorter time frame is to tackle the most egregious focal points of systemic corruption in a country, and thereby move it along the spectrum towards a situation where corruption still occurs but is an isolated event, and institutions are strong enough to control it.

4. *The Costs of Corruption for Private Business (Evidence from World Bank Surveys)*

One way to discover how corruption affects private business is to survey managers concerning their relations with government. The authors summarize the results of two particularly useful surveys of private enterprise in Ukraine and Pakistan.

They find that first, despite some differences in patterns between countries, the smallest firms pay proportionally more in bribes than larger firms, implying that bribery may be both a barrier to entry and a drag on growth of micro- and small enterprise.

Second, bribes buy relief from a few basic things: most commonly, relief from potential tax or customs obligations, relief from the burden of complying with regulatory or administrative procedures and relief from uncertainty arising either from changing and unclear rules or from arbitrary, discretionary behavior by bureaucrats. However, the relationship of bribes to the burden of taxes and regulation is starkly different between countries, suggesting that bribes buy different things in different places. In Pakistan, bribery is associated with a lesser perceived burden of taxes, while in Ukraine, the level of bribes and the burden of taxes are positively related.

Third, bribes are higher in the commercial sector than in industry or services. This suggests two things -- first, "that extraction of rents or the complicitous sharing of the benefits of illegal behavior is easier or more attractive in trade, and second, that like any 'tax,' a disproportionate burden on one type of activity will distort investment decisions" (unless it is matched or exceeded by disproportionate benefits).

Fourth, the variability of reported bribe payments across firms suggests that corruption increases economic uncertainty. Controlling for both size and activity categories of firms, bribe levels vary tremendously within groups of firms. This suggests that however much bribes may ameliorate harsh and unreasonable taxes and regulations, they are by no means uniform. Individual firms may perceive bribes as a way to deal with uncertainty, but the larger picture suggests bribery offers a poor substitute for a reformed, stable set of regulations that levels the playing field for all competitors and affords predictable costs of doing business.

Anti-Corruption reforms in Latin America, Hong Kong and Singapore

- **Venezuela** is leading judicial reform in Latin America, where slow, corrupt and politicized courts have long undermined public confidence in the law. Venezuela is investing US\$120 million to revamp a plodding criminal justice system. Its congress passed the Criminal Procedure Law in December last year, which scrapped the secretive system that often gave rise to scandals. The new law aims at curbing corruption by making trials public.
 - **Haiti** launched an anti-corruption campaign in May 1998, requiring civil servants to have a special identity card to collect their salary checks. The purpose of this effort is to eliminate "zombie" checks issued to long-dead people. Nearly 100 people were arrested for check fraud in early June.
 - **Hong Kong**³⁵ has taken a multifaceted approach to combating corruption by tackling enforcement, education, and prevention. It began its fight against corruption in 1973 when the government formally established the Independent Commission Against Corruption (ICAC). The Commission is independent of the civil service and the Commissioner reports directly to the chief executive of the Special Administrative Region Government. ICAC is committed to fighting corruption through effective law enforcement, education, and prevention. An independent committee comprised of citizen (non-official) leaders scrutinizes each area of the ICAC. ICAC is divided into three functional departments: operations, corruption prevention, and community relations. Each department is scrutinized by the following committees:
 - *The Advisory Committee on Corruption* advises on Commission-wide policies on any aspect of corruption.
 - *The Operations Review Committee* monitors and advises on investigations.
-

- *The Corruption Prevention Advisory Committee* focuses on the modification of practices and procedures that are conducive to corruption.
- *The Citizens Advisory Committee on Relations* focuses on measures to educate the public and to promote public support in combating corruption.
- *The Independent Complaints Committee* examines complaints against ICAC, monitors the handling of complaints, and advises on any action.

The Operations Department is the investigative arm of the Commission and comprises almost three-quarters of the total Commission. The department is responsible for investigating the conduct of any public official, who in the opinion of the commissioner, is suspected of corrupt practices. Investigating officers have full powers to make arrests without a warrant. The head of operations is also the deputy commissioner. The Department of Justice examines evidence gathered by the department and advises on which cases should be prosecuted.³⁶^[4]

- **Singapore**, like Hong Kong, has succeeded in reducing corruption because of the commitment of its political leadership, its comprehensive anti-corruption legislation, and the establishment of an anti-corruption agency that investigates and enforces violations of the Prevention of Corrupt Act (POCA).

Civil Service Reform: Lessons from Advanced Industrialized Countries³⁷^[5]

Current civil service management (CSM) practices in advanced industrialized countries can help provide guidance for developing country governments that face the dilemma of recruiting, retaining, and motivating skilled staff at affordable costs. Industrialized countries are following two distinct paths to improving CSM.

The United Kingdom, for instance, is engaged in sweeping managerial reforms that decentralize civil service functions and make them more responsive to the client public. By introducing complex financial reporting systems, the UK has been able to give managers increased autonomy, spinning them off into semi-autonomous agencies that operate on an increasingly commercial basis.

By contrast, Singapore has retained more traditional, largely centralized civil service structures, pursuing only incremental improvements in specific aspects of CSM.

According to the World Bank, two functions—personnel establishment control and staff recruitment—are essential for civil service performance and should receive top priority.

Footnotes:

38^[1] Based on survey studies by the World Bank Poverty Reduction and Economic Management Network, October 1998.

39^[2] Extract from the World Bank homepage: www.worldbank.org.

40^[3] Independent Commission Against Corruption. www.icac.org.hk

41^[4] From 1974 to 1997, the Operations Department carried out a total of 34,413 investigations, resulting in 8,382 prosecutions. Of these prosecutions, 1,617 were directed against government servants and 2,587 concerned private individuals who either attempted to bribe civil servants or were involved with them in other offenses.

[42^[5] Nunberg, Barbara, World Bank Discussion paper. p204, 1995.

Anti-Corruption Measures in the Public Sector
For the Year 1999

Mechanisms	September	October	November	December
Legislation proscribing corruption and establishing sanctions		X	X	
Other anti-corruption regulations			X	
Oversight by legislature				
Bodies with power to investigate corruption				
Supreme financial audit authority				
Ombudsman				
Specialized bodies to prosecute corruption				
Human resource management control				
Organizational management policies, controls				
Transparency mechanisms		X		
Guidance and training for public officials		X		X
Adoption of OECD A/C Agreement				
Implementation of OAS A/C Agreement		X		

TIMETABLE

Anti-Corruption Measures in the Public Sector For the Year 2000

	J	F	M	A	M	J	J	A	S	O	N	D
Mechanisms												
Legislation proscribing corruption and establishing sanctions												
Enact anti-corruption regulations			X									
Oversight by legislature								X				
Bodies with power to investigate corruption			X									
Supreme financial audit authority			X									
Ombudsman ⁴³ ^[1]			X									
Specialized bodies to prosecute corruption			X									
Human resource personnel review				X								
Organizational management policies, controls		X										
Transparency mechanisms			X									
Guidance and training for public officials		X										
Adoption of OECD A/C Agreement			X									
Others												

44^[1] The Ombudsman needs constitutional power to investigate the judiciary.

PACC First Year Estimated Budget^{45[1]}

Lobbying staff (3 people)	\$120,000
Lobbying Expense	\$ 12,500
Travel & Lodging	\$ 25,500
Office Expense	\$ 22,500
Coalition Recruitment	\$ 15,000
Seminars and Training	(Sponsored by UNDP and WB) Valued at \$75,000
Media paid Advertising (TV, radio, newspapers, and billboards)	\$ 125,000
Web page	\$ 3,000
Surveys and Questionnaires	\$ 8,500
TOTAL	\$ 332,000

Summary of Obstacles^{46[2]}

During Noriega's 21-year military dictatorship, democracy, transparency and accountability were all severely curtailed in Panama; the government and legislative and judicial systems were instruments of corruption. The purging process has been difficult and lengthy and is far from complete. Indeed, corruption is still widespread in Panama because conditions are still ripe for its existence.

Laws and principles of ethics in government are poorly developed, if they exist at all, and the legal institutions charged with enforcement of these laws are corrupt themselves. Because the opposition party usually limits its attention to non-constructive criticism, it loses credibility when it denounces government corruption. Currently, the independent media remain the only means of exposing corruption.

In this situation, vulnerable and weak institutions play into the hands of political and economic interests, and the motivation to earn income through illicit payments is extremely high because civil service salaries are generally very low.

Panama also has not done an adequate job of disseminating and enforcing rules and regulations. In fact, citizens are usually ignorant of government procedures because laws are not transparent.

This year's presidential and legislative elections will raise a number of issues that demand the attention of national decisionmakers. Accordingly, the corruption issue might not be a top priority for presidential candidates; corruption reform entails political sacrifices that the government and political candidates may not be willing to take.

An apathetic civil society

The Panamanian public's weak involvement in the lawmaking process is not surprising given the General Assembly's policy of not performing systematic and broad-based deliberations with stakeholders and citizens in general.

Due to Noriega's legacy, Panamanian citizens generally are distrustful of the government and do not believe they can play a role in effecting change. Apathy concerning civic issues is most noticeable among the poorer segments of the population, which lack resources to organize associations and voice their needs to the government. With more spare time and economic resources, other segments of the population participate more, but about 52 percent of the Panamanian population is poor and within this population about 23 percent live in extreme poverty.

Panama's civil society is generally not well developed because civil liberties were severely restricted during the years of dictatorship. Civil society organizations and local NGOs are not well established and lack resources and capabilities to affect policies. Community groups lack sufficient funds to begin their own development efforts and frequently lack adequate organizational, administrative and technical skills to design and implement activities.

Another fundamental reason for the lack of public participation in Panamanian politics is poor public awareness of individuals' rights and knowledge of how to make full use of them.

Legislative branch

The technical capability of Panama's legislative process needs to be upgraded because bills often contain loopholes and ambiguities, which in turn erode the credibility and soundness of the legal system. A March 1998 survey conducted by Transparency International revealed that 73 percent of the Panamanian population was not satisfied with the performance of the Legislative Assembly. The public's dissatisfaction with the legislative process might be in part because of its lack of participation in the process. The legislative system does not invite testimony from interest groups. The lobbying process in Panama is still in its early stages of development and citizens are relatively unfamiliar with how to use this as a tool to advance their interests. Usually, only firms' representatives who have something at stake make use of the lobbying process.

Judicial branch

While the need for a complete overhaul of the administrative justice system was flagged as a top priority after Noriega's ouster, there has been no action towards implementing real reforms until recently; complete independence of the judicial system has yet to be achieved. Under the current administration, the judicial branch's performance is the most criticized and is perceived as the least transparent branch of government.^{47^[3]} In the last three years, 15 judges have been fired and some have resigned alluding to pressure for specific rulings. Further, the institutions responsible for dispensing justice are unable to keep up with civic demand in an expeditious and accessible manner. A 1996 survey by the American Chamber of Commerce showed that Panama had one of the lowest scores for the capacity of the judicial system to provide prompt conflict resolution.^{48^[4]} A 1995 backlog of 157,000 cases continues to grow at an average of two percent per year, and in early 1998, approximately 60 percent of cases had been waiting for a hearing for more than one year; 41.3 percent had been waiting for over three years.^{49^[5]}

Political Constraints

The lack of political support or commitment from the government to reform may pose a serious threat to PACC achieving its objectives. Additionally, partisan politics could undermine legitimate efforts to involve civil society in the policy making process. Unwilling to sacrifice their illegitimate benefits, corrupt officials are likely to create barriers to the implementation of anti-corruption reforms. The political elite involved in corrupt practices might be willing to make cosmetic reforms to satisfy TI and lending organizations, but these reforms may not be far reaching enough and may be poorly enforced. Because international lending institutions' work on governance and participation is still limited, it might be difficult to obtain their immediate support for stronger policy measures. Nonetheless, international organizations, particularly trade fora such as the OECD and the WTO, are keen to spotlight the disruptive impact of corruption in international trade and economic development.

Cognitive Constraints

Lack of consensus in the objectives and outcomes expected from the reforms could undermine the successful implementation of the strategy. Moreover, both the public's and officials' mindsets could act as obstacles to reform. Good governance is still a relatively new concept in developing countries, which can make implementation of accountability and transparency policies difficult. In Panama, most citizens have learned about good governance principles and citizen participation in government only since the overthrow of Noriega. Some opponents might even argue that the concepts of participation (citizen's empowerment), transparency and public sector accountability have been imposed by the United States and that the Panamanian system needs a different approach—one more suitable for its resources and capabilities.

Panamaian suspicion and distrust of the government elite could cause them to reject institutional reform. If the public is not involved in the process of institutional reform, the citizenry could perceive it as yet another attempt by politicians to steal the country's resources. Finally, because many Panamanians view corruption almost as an accepted method of governance, some politicians could seize on this nation-wide acceptance of the status quo as an excuse to ignore and resist the anti-corruption reforms.

Steps to Accede to the OECD Anti-Bribery Agreement^{50[6]}

Non-OECD members can adopt the Anti-Bribery Agreement if they:

- Request to adhere to the Agreement;
- Agree to sign and ratify the Agreement and incorporate it into national legislation;
- Adhere to the 1997 Revised Recommendation of the Council on Combating Bribery and the Recommendation on the Tax Deductibility of Bribes of Foreign Public Officials (adopted on April 11 1996);
- Participate fully in the activities of the Working Group on Bribery, including the self-and mutual evaluations for assessing implementation of the Agreement and 1997 Recommendation; and
- Contribute financially to the Working Group on Bribery.

In February 1999, the Working Group on Bribery in International Transactions began assessing whether participating countries' legislation conforms to the Agreement. In 2000, it will begin country examinations to determine the effectiveness of national enforcement practices.

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- 20- <http://www.oecd.org/daf/nocorruption>
- 21- www.oas.org (Convention Against Corruption)

- 22- www.wto.org (Working Group on Transparency on Government Procurement)
- 23- www.icac.org.hk (Independent Commission Against Corruption)
- 24- www.transparency.de (TI Source Book).

Footnotes:

51^[1] Resources could come from the following sources: UNDP and WB technical assistance, Coalition members, private corporate funding, government funds, private individuals, and international trade organizations. The private sector should be used as a principal source for funds as this strategy reduces risks and costs of doing business in Panama.

52^[2] This section, which places my strategies into context with the Panamanian reality, intends to explain the obstacles to an anti-corruption reform.

53^[3] A March 1997 poll by Transparency International (Panama Chapter) indicated that 79% of the population felt the judicial branch lacks transparency. This number increased to 85% a year later.

54^[4] American Chamber of Commerce, Survey on conflict resolution in the Latin American judicial system, 1996.

55^[5] InterAmerican Development Bank, "Study of the Panamanian Judicial System." January 1998.

56^[6] Further information can be found on the OECD anti-corruption homepage:

<http://www.oecd.org/daf/nocorruption> or e-mail Frederic.WEHRLE@oecd.org
