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—COMMANDER ED THOMPSON,  
UNITED STATES COAST GUARD (1992)

# Models of Public Oversight of Government and Industry

Richard Steiner

## The Importance of Informed Public Participation

Democratic governance very much depends on informed public participation, yet even in mature democracies such participation is often an elusive goal. The emerging democracies of Russia and the other former Soviet republics, including the countries of the Caspian region, present both a challenge and opportunity to improve public participation.

Much discussion in civil society has been devoted to the concept of transparency, while less attention has been given to the concept of informed public participation. There are important differences between these two ideas. Transparency implies simply that the public has unfettered access to information about government and industry, and a clear understanding (or literally a “clear view”) of what government and industry are doing. However, transparency

does not imply that the public has a formal, active voice in the operations of government and industry. For instance, even though the government provides an unprecedented level of public transparency in the U.S.—through the federal Freedom of Information Act (FOIA), state open meetings and public records disclosure acts, and other administrative disclosure instruments—much of the U.S. public remains uninvolved in the policy formulation processes that affect their lives.

Put simply, transparency is a necessary but not sufficient component of informed public participation in democracy. To have an active voice, the public, or at least a representative body of the public, needs to have a legitimate and formalized role overseeing and interacting with industry and government.

### **The relationship between government, industry, and the public**

Even in long-established democracies the relationship between government, industry, and the public is problematic and often fails to serve the common public interest.<sup>1</sup> Although government agencies and legislative bodies are legally obliged to operate in the highest and best interests of the public, many regulatory agencies are too closely tied to the industries they regulate to provide effective oversight. Regulation and legislation in such a symbiotic environment tends to favor industry at the expense of the environment, social justice, and economic justice.

One reason for industry favoritism is simply that campaigns for public or consumer interests are generally poorly organized, poorly funded, and short-lived whereas groups representing corporate interests are well organized, well funded, and a permanent presence in government circles.<sup>2</sup> Public opinion tends to flare up when there is an obvious, acute failure in the system, such as an oil spill, plane crash, or financial collapse, or during an electoral campaign, but it dies down again just as soon as the crisis or election is over.

Thus, our ideal of a well-informed, participatory public, a government always receptive to public concerns, and a cooperative industry all working to protect the public interest is in fact far from the actual practice of democracy.

### **Regional Citizens Advisory Councils—mechanisms for informed public participation**

To create a more equitable, transparent, and truly participatory process for important activities that affect the public, such as oil and gas development, it is necessary to establish a fully funded, empowered, independent, and aggressive citizens institution to provide oversight. The Regional Citizens Advisory Councils (RCACs) in Alaska represent such an initiative.

The disastrous 1989 Exxon Valdez Oil Spill in Alaska resulted in part from a prior lack of informed public participation and oversight as well as from the recklessness of the Exxon Corporation. Had the local public provided oversight to the spill prevention and response system prior to the spill beyond the obviously ineffective government oversight, the system's short-

comings—such as the lack of tug escorts, inadequate tanker traffic monitoring, and insufficient stockpiles of spill response equipment—would have been apparent and likely corrected. In the aftermath of the spill, citizens in the region set about immediately to remedy this problem. Two RCACs were established in Alaska to provide direct citizen oversight of oil industry activities in Prince William Sound and Cook Inlet. (REFERENCE TO MAP?) Similar citizens councils were established in California and Maine.

Although these councils were established in reaction to oil spill disasters and focus on preventing and responding to such incidents, their structure and function could serve a broader mandate in the emerging democracies of Azerbaijan and Kazakhstan. In these countries, citizens advisory councils could provide citizens with an opportunity to participate in and provide oversight of various aspects of petroleum development—permitting exploration, development, transportation, refining, government revenue collection and distribution, risk management, and environmental compliance. Such councils could represent citizens in the oversight of the petroleum fiscal system and would be a substantial step toward informed public participation.

This sort of public participation will no doubt require a long and difficult evolution for civil society in Azerbaijan and Kazakhstan. This chapter recognizes that with the current challenges to freedom of association in Azerbaijan and Kazakhstan, discussed in greater detail in chapters five and six, citizens advisory councils will take time to take root. However, as the discussion of the role played by NGO's in assisting privatization efforts in Latin America will show, citizen oversight of public administration is possible and desirable in developing democracies. Closer to home, in Georgia, civil society has been active in helping draft and improve public awareness about legislation. The discussion of RCACs and these other models of public oversight suggest that citizen oversight of petroleum activities and their ensuing revenues are not only possible but desirable for the public good.

### **Exxon Valdez and the rise of RCACs in Alaska**

Even before the 1989 Exxon Valdez disaster, there was sufficient public concern regarding the safety and integrity of the oil transportation system through Prince William Sound to warrant the establishment of an RCAC. In 1986, the author of this report had studied an effective citizens' council at the North Sea oil terminal in Sullom Voe, Scotland and proposed the establishment of a similar council in Alaska. The Shetland Oil Terminal Environmental Advisory Group (SOTEAG), established by the local government and oil industry at the time of oil terminal construction in the Shetland Islands, seemed to provide a good template for public participation in Alaska.

The request to establish an RCAC for Prince William Sound was made in 1986 directly to the President of Alyeska Pipeline Service Company (the owner and operator of the Trans Alaska Pipeline System — TAPS)—a consortium of BP, Exxon, ARCO, Mobil, Amerada Hess,

Phillips, and Unocal. At that time, oil companies felt no compelling political need to accommodate any increase in citizen oversight of their operations, and the request to establish an RCAC was declined. Further efforts by the author to establish such a group through the Alaska legislature met with similar resistance, and the proposal to study the establishment of such groups was quickly defeated in 1987 in the State Senate by the powerful oil lobby. Thus, the oil companies and the state and federal governments continued conducting their business largely “out-of-sight / out-of-mind” of the public.

With the Exxon Valdez Oil Spill, the political dynamic took a dramatic shift in response to an outraged local public. In a private meeting with all TAPS owners and oil shippers called by local commercial fishing industry leaders in June 1989, most of the companies present, in particular the majority owner BP, consented to the demand for an RCAC. To ensure the companies kept their promise to fund and cooperate with this new citizens oversight group, the Oil Pollution Act of 1990 (OPA 90) mandated the establishment of two national demonstration RCACs in Alaska—one in Prince William Sound, and the other in Cook Inlet. OPA 90 was the federal government’s response to the Exxon Valdez spill, and in addition to the RCACs, it also mandated the phase-in of double-hulled oil tankers in U.S. waters, stricter liability provisions, the establishment of the federal Oil Spill Liability Trust Fund, more research, and more stringent safety protocols for tanker crews.

In the OPA 90 RCAC provision, the U.S. Congress noted that “the present system of regulation and oversight of crude oil terminals in the United States has degenerated into a process of continual mistrust and confrontation...only when local citizens are involved in the process will the trust develop that is necessary to change the present system from confrontation to consensus.”

In December 1989 (prior to the passage of OPA 90) the Prince William Sound (PWS) RCAC had been incorporated as a nonprofit corporation, and in February 1990, it entered into a contract with the pipeline owner, Alyeska Pipeline Service Company.<sup>3</sup> Through the negotiated contract, Alyeska agreed to provide four things to the PWS RCAC: \$2 million in annual funding, adjusted for inflation; absolute independence from Alyeska; access to Alyeska facilities; and that the contract would continue “for as long as oil flowed through the pipeline.” The Cook Inlet RCAC was incorporated in December 1990, and entered into a contract with a consortium of oil companies and tanker operators in its region—Cook Inlet Pipeline Co., Kenai Pipeline Co., Phillips Petroleum, Tesoro Alaska Petroleum, UNOCAL, Marathon Oil, and Cross Timbers—with an annual funding level of approximately \$600,000.<sup>4</sup>

The subsequent requirement in OPA 90 for the RCACs simply made such institutions mandatory. It is also worth noting that OPA 90 required that “similar [RCAC] programs should be established in other major crude oil terminals in the United States.” And although the federal government has been resistant to implementing this provision, citizen advisory councils were established by the states of Maine and California subsequent to the Exxon Valdez.

The Maine Oil Spill Advisory Committee has eight members appointed by the governor, two by the president of the Senate, and three by the speaker of the house. The California Oil Spill Technical Advisory Committee consists of five citizen representatives appointed by the governor and four appointed by the speaker of the state assembly. Many of those involved in the Alaska RCACs feel that gubernatorial appointment is an unsatisfactory method by which to constitute a citizens council. To retain independence and work effectively, the council members should be appointed by their respective organizations—not the governor or federal administration.

More recently, citizens in Washington state (U.S.) have proposed the establishment of a citizens oversight group modeled on the Alaska RCACs. As envisioned, the proposed “Pipeline Safety Trust” would use \$8 million of the \$13.5 million in fines paid by the company responsible for the Olympic pipeline explosion in 1999 that killed three people. The \$8 million would be managed as an endowment to provide annual funding to operate the citizens group which would provide continuing oversight of pipeline safety, and a national center for information on pipelines.<sup>5</sup>

## Structure and Function of an Alaskan RCAC

These RCACs provide citizens an advisory role in oil issues in the region, monitor impacts, review spill prevention and response plans, and recommend continual improvements in the system. The broad concept is to give local citizens a direct voice in the corporate and governmental decisions that affect them and their communities. The group is also the primary conduit through which government and industry communicate to the public on oil issues. In a real sense, the RCAC has become the “the eyes, ears, and voice” for the local public on oil issues. The public relies on the RCACs to safeguard its interests and assure transparency in the relationship with industry and government. This is a novel, and indeed experimental effort.

Among RCACs, the Prince William Sound RCAC (PWS RCAC) is the largest and perhaps most successful. The PWS RCAC has three main structural components: the board of directors, the staff, and the committees.

**Board of Directors:** consists of 19 members representing the communities and major citizen constituencies affected by the Exxon Valdez Oil Spill—commercial fishing, Alaska Natives, aquaculture, conservation, recreation, and tourism. Members represent the cities and organizations affected, such as the Prince William Sound Aquaculture Corporation, Cordova District Fishermen United, Oil Spill Region Environmental Coalition, Alaska State Chamber of Commerce, Alaska Wilderness Recreation and Tourism Association, and the Native villages of Tatitlek and Chenega Bay. The city of Valdez, as home to the tanker terminal, has two mem-

bers, and all other organizations have one member appointed for a two-year term. RCAC board members are chosen by their respective institutions, generally by the institution's Board of Directors, City Council, etc. Board members are thus ultimately accountable to the institution they represent. There is no limit to the number of consecutive terms an RCAC board member can serve. Both the Prince William Sound RCAC and the Cook Inlet RCAC, with a 13-member board, have several ex-officio, non-voting board members representing the relevant state and federal agencies.

All RCAC board members are volunteers. They receive no financial compensation other than for travel expenses to attend meetings and other events (as discussed below in the Caspian section, the compensation issue may need to be reconsidered in order to attract the best possible people to serve on citizen councils in the emerging democracies). The RCAC Board of Directors meets at least four times a year, one of which is the annual meeting. At each RCAC board meeting, representatives of industry and government report on their issues of concern and operations, and hear from the citizens regarding issues of importance to them. This regular interchange provides a line of communication vital to the interest of each constituency, and results in a constructive climate for problem solving.

The board is responsible for allocating the annual budget. The PWS RCAC has an annual budget that has averaged about \$3 million (FY 2003 was \$3.2 million) of which on average about 38 percent (\$1.14 million/yr.) is devoted to staff, 33 percent (\$1 million/yr.) for contracts and research, and 29 percent (\$860,000) to office rent, supplies, equipment, and audits. An annual audit of all finances is conducted and approved. The U.S. Coast Guard also conducts an annual recertification of the group as being in compliance with the terms of OPA 90. All of the RCAC's work is open to the public on whose behalf it operates, and interested citizens can attend and provide public comment as well. These checks and balances provide a high level of integrity and credibility to the process.

**Staff:** Much of the day-to-day activity of the PWS RCAC is the responsibility of a paid staff of 18, located in two offices—one in Anchorage, where most business in Alaska is conducted and where Alyeska headquarters are located; and the other in Valdez, where the pipeline terminal is located. Staffing includes an executive director, two deputy directors, public information manager, community liaison, finance manager, seven project managers, and administrative assistance.<sup>6</sup> The staff is hired by and reports to the Council's executive director.

**Committees:** Much of the council's work is conducted by four technical committees, each with a dedicated RCAC staff liaison: Oil Spill Prevention and Response; Terminal Operations and Environmental Monitoring; Port Operations and Vessel Traffic Systems; and Scientific Advisory. These volunteer committees are appointed by the board to two-year terms, and membership is solicited from citizens throughout the region. Council Board or staff members solicit

committee members based on their expertise, interest, and willingness to serve. The technical committees meet regularly to discuss any and all issues within their purview, draft and recommend policy actions to the RCAC Board, and conduct research approved and financed by the Board. The board's seven-member executive committee meets every few weeks to handle details and issues that arise between the quarterly board meetings. The technical committees advise the board of directors, the executive committee, and staff.<sup>7</sup>

**Responsibilities:** The work of the council is multifaceted. The broad mission is to organize citizens to promote the environmentally safe operation of the Alyeska Pipeline Service Company terminal in Valdez and the oil tankers that use it. Within this mission, the council reviews and submits written comments on any and all operations of the Alyeska pipeline terminal and its associated tankers. Also, there is presently an effort to establish a similar citizens oversight group with responsibility for the pipeline itself. This oversight, review, comment, and recommendation can include such issues as state and federal legislation, regulations and permits, industry policy and procedure, and so on.

At the request of its committees, the RCAC commissions independent scientific studies and reports on relevant issues to the public, the media, government agencies and legislative bodies, and the industry. The research reports often form the basis of policy recommendations from RCAC to either government or the oil industry. Much of this research, conducted jointly with government and industry, has fostered a more cooperative spirit among these groups, minimizing conflict and contention. The RCAC monitors and plays an active role in all spill drills and exercises, and recommends improvements in post-drill debriefing. In the response effort to actual spills, the organization's formal role is to observe the response, keep its members informed, verify information from the command structure, and advise the incident commander.

Not surprisingly, the initial relationship between these citizens councils and the oil industry was somewhat distrustful, but gradually became dynamic and effective. In 1993, the Prince William Sound council and Alyeska Pipeline agreed to a detailed communication protocol in which, as stated by the U.S. Government Accounting Office report, "representatives of industry and the council meet regularly to discuss and attempt to resolve issues of concern, including problems associated with the review and release of study results." The councils and industry meet regularly to discuss planned projects, communicate study results, and clearly convey advice and recommendations between citizen and industry representatives. These meetings facilitate changes in project scope and methodology, reduce unnecessary duplication, and consideration of further projects. Industry representatives are present at each of the quarterly meetings of the RCACs, and RCAC board members meet with oil company executives—shippers, Alyeska owners, etc.—often to apprise them of their issues and concerns. The communication protocol has helped to reduce the acrimony between the councils and

industry. Such safeguards have increased the oil industry's comfort in working with the councils, and minimized polarization on contentious issues. As a last safeguard, the RCAC contracts include an arbitration provision to resolve disputes.

### **RCAC successes**

According to the U.S. Government Accounting Office's 1993 congressionally mandated review (a one-time mandate) of the two Alaska "demonstration" RCAC programs,

The demonstration programs have substantially increased the level of citizens' involvement with the oil industry and with government regulators in the environmental oversight of oil terminal and tanker operations. Through various projects and activities, the citizen councils have provided extensive input into matters such as oil-spill contingency plans, tanker navigation and escort procedures, and oil terminal operations. Industry and government officials acknowledge that many of the councils' projects and activities have been helpful.<sup>8</sup>

The recommendations of the RCAC are non-binding, and government regulators and industry do not always take the council's advice. Yet many recommendations are adopted because of the thorough research and vetting facilitated by the council's public/industry/government framework that provides regular meetings to discuss research objectives, methodologies and results.

The extraordinary successes of the PWS RCAC attest to the sort of cooperative problem solving that can be accomplished with genuine, informed public participation. Overall, the Council has been a primary driver in the improvement of the safety and integrity of the system for oil transportation through Prince William Sound, making this arguably the safest system anywhere in the world. And, it is important to underscore that this improvement was largely due to the RCAC. The following are some of the more significant improvements that the RCAC either recommended or played a pivotal role in:

- ▶ Deployment of powerful, maneuverable tugs to escort all outbound, laden tankers
- ▶ Monitoring the compliance with phase-in requirements for double-hull tankers
- ▶ Installation of ice-detecting radar to warn of iceberg hazards in the shipping lanes
- ▶ Development of nearshore spill response strategies and contingencies
- ▶ Improved Vessel Traffic System (VTS) surveillance of all tankers in the system
- ▶ More stringent weather restrictions and speed limits for tanker traffic

- ▶ More stringent tanker inspection, both in Alaska and beyond
- ▶ Advocacy for better government oversight, more personnel, and more funding
- ▶ Deployment of new weather buoys along the shipping lanes for real-time weather
- ▶ Improved spill contingency plans, response equipment on hand, and training
- ▶ Improved understanding of community impacts from technological disasters
- ▶ Conducted comprehensive environmental monitoring to assess oil impacts
- ▶ Pioneered the control of ballast water treatment to control pollutants and nuisance species
- ▶ The construction of a Vapor Control System to capture volatile hydrocarbon vapors released during tanker loading
- ▶ Improved fire prevention and response capability at terminal and on tankers

## Lessons Learned

As described in the “RCAC Retrospective,” there have been many important lessons learned over the PWS RCAC’s history.<sup>9</sup> Although the oil production and transportation sectors in Kazakhstan and Azerbaijan differ from those in Alaska, the public process lessons learned in Alaska should be of relevance. Many of these lessons may be somewhat counter to conventional models and practice of public advocacy, but have nonetheless proven to work in the RCAC’s particular context. Without necessarily condoning all of these as the best and most appropriate public advocacy methodologies everywhere and at all times, a number of lessons with relevance to the issue of public participation in Kazakhstan and Azerbaijan are briefly outlined below:

- ▶ ***Cooperation works better than confrontation:*** A good-faith effort to resolve conflicts and disagreements leads to positive change faster than public criticism.
- ▶ ***Conflict is inherent:*** Priorities of citizens and the petroleum companies are inherently different, but do not preclude common ground.
- ▶ ***Trust between citizens and industry is difficult to establish and even harder to maintain:*** Trust and mutual respect are fragile, can develop on some issues and not on others, and can be maintained by regular informal meetings.

- ▶ ***Sufficient funding is essential:*** A significant difference between the RCAC and other citizens councils is that they have the financial resources with which to hire technical consultants and to commission independent research, dramatically improving their credibility and level of participation.
- ▶ ***A citizens group can be independent with industry funding:*** The contract between Alyeska and the PWS RCAC specifically protects the RCAC's independence, and provides continued funding for the life of the pipeline. Although there will always exist concerns regarding independence, thus far RCACs have done a better job of representing the public interest than government regulatory committees.
- ▶ ***Agreeing on how to disagree reduces conflict:*** RCAC and the industry agreed to a protocol in 1995 with which to handle sensitive and controversial issues, outlining communications and mediation procedures. This arrangement has eliminated surprises and led to a better working relationship. Collaboration has worked better than adversarial confrontation for resolving disputes.
- ▶ ***Logic makes passion persuasive:*** Using sound reasoning, scientific documentation and logic, citizens impassioned by an issue argue more persuasively for progressive change.
- ▶ ***It pays to acknowledge industry and regulators when they do right:*** Positive recognition reinforces the notion that good works generate reward, and makes constructive criticism more credible.
- ▶ ***All affected citizens should be represented on Boards of Directors:*** Members from across the affected region, and across the political spectrum add to the influence of the group.
- ▶ ***A small board, whenever possible, is more efficient and easier to manage:*** Boards with about 8-10 members are recommended as ideal, but they should not be created at the expense of adequate representation for all affected citizens. Although the PWS RCAC has a 19-member board, this was deemed necessary to provide adequate public representation.
- ▶ ***Expectations of directors should be realistic:*** Time demands on a volunteer board can be high, even though some can incorporate RCAC work into their normal jobs.
- ▶ ***Expectations of Directors should be clearly communicated and enforced:*** Inactivity and absenteeism can be a problem for the Board of Directors, and should be managed.
- ▶ ***Board members do not have to be experts:*** But they need to be diligent and sufficiently oriented to the issues and tasks when assuming a board post.
- ▶ ***The role of technical advisory committees should be clear from the start:*** Conflict between committees, the board, and staff could be avoided with clear understandings of their respective roles.

- ▶ ***Concerned citizens should have the opportunity to participate in a meaningful way:*** Each board member represents the interests of their own group, but other citizens should always have a way of contributing their concerns, knowledge, and perspective. The RCAC meetings are open to the public, and any citizen is provided the opportunity to speak before the meeting.
- ▶ ***A diverse constituency needs strong community outreach:*** Part of each board member’s job is to act as liaison between RCAC and their group or community. The RCAC publishes a quarterly newsletter and has a staff position dedicated to community liaison.
- ▶ ***Funding should not have strings attached:*** Although the contract between the pipeline owner and the RCAC stipulates that the RCAC will be funded for the life of the pipeline at a level of at least \$2 million a year, the exact level of funding is renegotiated every three years. Some have suggested that an independent, third party should arbitrate the level of funding in order to retain independence and protect the group from industry pressures and reprisals.
- ▶ ***Advisory groups should be mandated by state or federal statute:*** The statutory mandate in federal law (OPA 90) to establish the Alaska RCACs represents an assurance that the group will continue, regardless of changes in oil industry leadership or priorities.
- ▶ ***A clear mission and identity should be established early on:*** The group needs to decide whether they intend to be just a watchdog—implying oversight, criticism, and a hint of enforcement—or a partner. Members of the PWS RCAC sees themselves more as a “vocal advisor” than an industry or government “watchdog.”
- ▶ ***Citizens are more effective if they have formal relationships with those who make decisions:*** The PWS RCAC contract formalizes a relationship between the pipeline owner, Alyeska, and the RCAC, but not necessarily with the Alyeska owner companies nor the shippers *per se*. The formal relationships should be considered carefully in negotiating the most effective contract.
- ▶ ***Backsliding is always a threat:*** Large accidents can generate a great deal of public attention, but memories dim and complacency can set in for industry, government, and the public. Thus the RCAC must remain vigilant to such degradation.

### **Confidentiality, independence, and transparency**

Another central issue for these citizen advisory councils is confidentiality versus public access. In Alaska, although there was disagreement between the RCACs and the oil industry regarding this issue, it was resolved in the only real way it could have been in order to retain transparency—in favor of open access.<sup>10</sup> Citizens recognized that for the RCACs to succeed, all of their business had to be open to the public on whose behalf they were established. On this issue, the Alyeska / RCAC contract states the following:

The independence, and public perception of independence, of the [RCAC] Committee is of overriding importance to the Committee in fulfilling its functions and in meeting public needs. This Contract shall be interpreted in such a way as to promote the independence, both actual and perceived, of the Committee from Alyeska

And, as former RCAC staff stated on this issue:

[For the RCAC] to work in anything less than an open, public environment invites suspicion and charges that it is a lapdog rather than a watchdog. The RCAC cannot function under a veil of confidentiality....Its contract with Alyeska places the highest premium on both the fact and perception of independence.<sup>11</sup>

Another component of transparency that should be considered is statutory mandate for open process in government. In the United States, for instance, the federal Freedom of Information Act (FOIA) allows citizens to request information on any topic from federal agencies, establishes a time-period within which the agency has to respond, and provides a judicial process for appealing denials of information. Further, some states, such as Alaska, have strong public records and open meetings acts that give citizens access to meetings of state officials and to documents they generate and receive.

An academic evaluation of the RCAC concept found that “Citizen advisory councils are capable of making important contributions to the production of new knowledge in the policy process...” and “Research projects...have played a central role in allowing the councils to generate new knowledge in a policy area involving complex questions of science and technology.”<sup>12</sup>

In an interview regarding the government’s perspective on how the RCAC has shifted the political environment toward greater transparency, a Commander in the U.S. Coast Guard (having the responsibility to review and recertify the RCAC annually) summed up the PWS RCAC as follows:

It adds accountability on the part of regulators like me, and the government and the industry. We have to operate in the open, and talk about things in the open, and take the time to bring the citizenry along with us in the logical path to the solutions for our problems. It’s an organized and disciplined way to get citizen involvement in what we do. I think that’s good, because the system really isn’t worth much unless citizens are involved with it.

That, of course, is what the concept of transparency and informed public participation is all about.

## Public oversight in developing democracies

Oversight of activities between public administration and industry occurs not only in advanced industrial democracies but in emerging ones as well. This section discusses several models of oversight in privatization of state services in Colombia, Argentina, and Panama. While these examples are not in the oil sector, they provide important lessons in how providing an oversight role for the public can help control corruption, build trust in government, and save money.

### Integrity Pacts

In Colombia and Panama, local Transparency International (TI) chapters have helped implement so-called integrity pacts for telephone service contracts by acting either as government consultants or as monitors providing information to the public. Integrity pacts are signed by government officials and senior executives from the private firms bidding on public contracts. The pacts require participants in the bidding process to pledge not to offer or accept bribes while submitting bids on public projects. By establishing transparent procedures, integrity pacts build the confidence of civil servants, bidders, and the general public; develop a cultural of voluntary adherence to ethical and legal frameworks; establish common rules for all parties; and identify the points where corruption is likely to enter the process.

In Panama, Transparency International — Panama (TI-PAN) monitored the bidding process for privatization of the state telephone company, INTEL. At the government's request, TI - PAN took on the role of an observer committed to informing the public about all aspects of the privatization process. It received invitations to attend all meetings of INTEL's Board of Directors and had access to all relevant documents. Working with an international expert, TI-Panama closely monitored the bidding process and published weekly bulletins in a leading newspaper. The two companies bidding for INTEL, Cable & Wireless and GTE, signed an integrity pact that included a "no bribery" clause. The bidding resulted in a significant gain for the government: the winning bid for INTEL's assets was \$152 million above the base price, and \$201 million above the other bidder's offer. Both bidders were satisfied with the process and there was general consensus that TI-Panama's participation was crucial to bringing transparency to the deal and increasing public confidence in the privatization process.<sup>13</sup>

The use of integrity pacts in Colombia was the result of a 1999 presidential directive ordering the Ministry of Communications to utilize integrity pacts with the assistance of Transparency International-Colombia (TI-COL) "to the extent that it is possible." Since then, TI-COL has overseen the implementation of 51 integrity pacts. The Colombian telephone service contract integrity pacts included an agreement by bidders to report violations and penalties for bidders who violated the terms of the pact as well as an agreement establishing an independent arbitrator to review complaints concerning pact signatories. In addition, other government officials concerned with the particular procurement were asked to sign an "Ethics Proclama-

tion.” As a condition of participating in the process, TI-COL asked for, and received, the right to review and make suggestions regarding the bidding documents.

## **Public Hearings**

Public hearings are one of the most direct forms of involving citizens in the process of bringing transparency to deals between government and the private sector. Hearings provide the opportunity for many citizens to play a role in the procurement decision making process, which can be particularly important in communities and countries where this has not been a common practice. By opening negotiations to citizens, public hearings work to build trust in government decision making. Hearings can also open up the bidding process, resulting in lower costs and greater efficiency.

In Panama and Argentina, where public procurement has long been associated with corruption, public hearings fused with integrity pacts resulted in both high approval ratings from participants and significant savings of public funds.

In Panama, two public hearings examined government plans to purchase land for a new clinic. The first hearing was a discussion of the pros and cons of various sites. At the second hearing, one month later, a technical committee presented a set of recommendations based on the previous discussion for public comment. A survey of participants indicated that 98 percent of them were satisfied with the hearing process. Seventy percent of the participants agreed with the final recommendations and decision made by the technical committee. The open purchasing process helped the government locate a site for about half the cost of the original \$1 million budget allocation.

In Argentina, the mayor of the Municipality of Moron took office with a commitment to eradicating corruption. One of the first challenges was to break the monopoly influence over public waste collection contracts by a cartel of domestic firms. Once the previous contract expired, the mayor and the municipal government worked with a local TI chapter, Poder Ciudadano, to organize public hearings about the bidding process for a new contract. Officials publicized hearings and solicited bids from foreign firms. Experts and the public came together before bidding started to review and revise documents to maximize competition. The process also incorporated a clearly defined integrity pact before bidding began. The pact required all parties to commit to not taking bribes and to report illegal behavior. The pact specified heavy sanctions for any party that violated these rules. The pact also required officials to fully disclose how they made the final contract award decision. In the end, the mayor’s commitment to fight corruption, the use of public hearings and an integrity pact, and the solicitation of foreign bids broke the domestic cartel’s monopoly; the final contract went to a Spanish firm with a bid that saved the government \$13 million over four years.<sup>14</sup>

Closer to the Caspian basin, Georgian NGO’s are active in shaping public policy through the development of draft legislation and provision of expert opinions. The Associa-

tion of Young Economists, for example, frequently helps draft economic laws and also participated in a working group which drafted the program of economic development under which the country's economic reforms are being implemented. The Georgian Young Lawyers Association is frequently asked by parliament for commentary on draft bills. In addition to developing a law on grant awards that significantly eased registration procedures for NGOs, they were influential in developing the 1994 Georgian constitution, the law on ordinary courts, and the judicial reform process. The association also assisted in development of a law on a Georgian bar association and a process of examining Georgian laws.

## The Challenges and Opportunities for RCACs in Azerbaijan and Kazakhstan

The establishment of citizens' councils or other models of citizen oversight have increased transparency and public involvement in oil and gas issues in the United States and public administration in countries such as Argentina, Panama, and Colombia. It is worth exploring whether the citizens and governments of Kazakhstan and Azerbaijan can begin to lay the groundwork for the establishment of such groups as well. Although there may be initial resistance to the concept within industry, government, and even the public, none of this should prove insurmountable. The importance of citizens' councils is paramount—they are not government, they are not industry, but they are established and operated solely by and for the citizens of the country.

If citizens advisory councils are pursued in Azerbaijan and Kazakhstan, they need not be limited by the scope of the Alaskan RCACs. Caspian-based citizens advisory councils could be empowered to provide oversight of various aspects of petroleum development—permitting, exploration, production, transportation, refining, public revenue collection and expenditure, risk management, or environmental compliance. With regard to the public collection and use of petroleum revenues, the Azerbaijan or Kazakhstan RCACs could monitor and advise government and the public on the public finance dimension of petroleum development—revenues, costs, taxes, royalties, and other payments. These councils could also have a voice in the use of oil and gas revenues, including monitoring how the government uses its earnings to address social and environmental needs. Finally, they could commission annual audits of both industry and government petroleum revenues.

If citizens' advisory councils are pursued, they should represent all major constituencies with directors being democratically chosen by their respective interest groups. It is in the government's interest to become a cooperative partner with these groups, granting them access to needed information and deliberations. Such cooperation, as we have seen in the examples of Argentina and Panama, help build trust in government and serve as a check

against corruption. Access to information, however, will require strong public access statutes similar to the United States FOIA, as well as open meetings acts and other public disclosure protocols, which do not currently exist in Azerbaijan or Kazakhstan.

The long-term, substantial, and stable funding for such groups will be of immediate concern. Their budget should be commensurate with the responsibilities of the new RCACs, and include sufficient funds to commission research and technical studies as the RCACs deem appropriate. If there is one thing that distinguishes the RCAC concept from other advisory structures, it is that the RCACs have sufficient funding to do the work that they feel is necessary. Having the capability to conduct their own research greatly enhances the ability of the group to support their policy recommendations.

There are several possible avenues for securing such financial support:

- \*► ***Direct funding by the petroleum industry:*** Funding could come directly from the oil and gas companies and/or their consortia (OKIOC, AIOC, etc.). But, as was the case in the United States prior to the Exxon Valdez disaster, citizens in the Caspian may not have sufficient political power to persuade the petroleum industry to establish and finance such groups on their own. Direct industry funding could also lead to suspicions of bias and lack of independence among the local public, which would make it difficult for the RCAC to perform its duties effectively. One alternative is for industry establishment of an endowment, which would limit the possibility of day-to-day interventions in the activities of the RCACs.
  
- ***Loan institutions requiring the establishment of RCACs as a condition of their loan:*** Lacking direct support by the oil and gas companies, the International Financial Institutions (IFIs) could simply require companies receiving loans to establish and fund such independent, credible public participation as a condition of their loan. The IFIs could stipulate what sort of audit, review protocols, representation, and government and industry cooperation must be put in place to ensure the highest levels of integrity and effective action of the groups. As discussed in chapter two, the World Bank has pursued such an approach in Chad.
  
- ***Government support:*** The governments of the region could themselves establish and finance such citizen participation from public revenues derived from oil and gas projects. In the long run, this may be the best of all possibilities because it provides a level of government buy-in necessary for cooperative action and removes industry from any direct role in the group's budget.
  
- ***Interim, start-up support from outside philanthropic, non-governmental organizations (NGOs):*** If none of the above financial instruments is attainable in the short-term, then the assistance of an outside, philanthropic NGO should be solicited. This would at best represent an interim solution to the issue of developing sustainable, informed public participation in the region. If the interim RCACs prove themselves a worthy mechanism for informed public participation in the region, then their funding should be picked up directly

by government or industry. This may be a necessary first step in order to catalyze the formation of these groups.

A concern often voiced regarding establishing RCACs in the emerging democracies of the Caspian region and other areas is that of corruption. And although the Alaska case is admittedly different in some respects, its structural impediments to corruption are applicable anywhere. The RCACs commission annual financial audits by independent firms and report their results in their annual reports, which are available to the public. Both the U.S. Coast Guard (the federal liaison agency) and Alyeska (the contracting oil industry body) have the right to conduct yearly financial audits of the RCAC-and on occasion avail themselves of this right. The U.S. Government Accounting Office (GAO), in its report to the U.S. Congress on the Alaska RCACs, concluded the following with regard to financial procedures and integrity:

Regarding their handling of funds, both councils appeared to have adequate policies and procedures and a system of internal controls for managing their operations and funds. Our analysis of key functions, such as travel and contracting, did not disclose any material weaknesses...A review of several independent audit reports evaluating the two programs' financial activities confirmed our findings. These reports showed no material internal control weaknesses or improprieties.<sup>15</sup>

Thus, although financial integrity is a serious concern, there are relatively straightforward audit and disclosure mechanisms that can be employed to prevent corruption. Providing financial compensation to council members for work performed should be considered in emerging democracies in order to attract the best possible people to the job. Careful consideration should be given to putting in place the proper checks and balances and restrictions on receipt of gifts to ensure the highest possible level of ethics and integrity.

A related concern regarding the establishment of RCACs is possible co-option of the group. Civil society in Azerbaijan and Kazakhstan is still in its early stages of development, most NGOs lack grassroots support, many are denied registration, and government-backed NGOs (GONGO's) are often indistinguishable from other NGOs. While there is clearly no absolute safeguard against this tendency, the group should be designed to reduce such potential. RCAC members being accountable to their respective organizations, together with transparent activity, are the foremost safeguards against co-option. As mentioned earlier, this is an absolutely critical and fundamental concept to the success of any RCAC. If an organization (e.g., citizens interest group) feels its RCAC representative is not working for its interests, they can correct or replace that representative. Hence, for RCACs to act as credible oversight agencies, freedom of association in Azerbaijan and Kazakhstan must be improved. The registration process for Azerbaijani NGO's should be made more transparent and the oppressive

environment in which journalists and other government watchdogs in Kazakhstan currently operate will need to be improved in order for constituencies to develop which the RCACs would serve.

## **Conclusion**

The establishment of RCACs in Azerbaijan or Kazakhstan would provide an unprecedented level of transparency and informed public participation with regard to oil and gas activities necessary to fulfill the promise of democratic governance in these countries. They would essentially become the fully engaged “eyes, ears, and voice” for citizens with regard to petroleum issues that affect their lives, including but not limited to petroleum revenue collection and use. Limits to access to information and restrictions on freedom of association in Azerbaijan and Kazakhstan are substantial challenges to the establishment of Alaska-style RCACs. Nevertheless, as the examples from Latin America and Georgia show, it is possible for civil society to participate in the improvement of public administration and public policy in developing democracies. Oil companies, international financial institutions, and private donors can help this process in Azerbaijan and Kazakhstan by providing funding, technical assistance, and access to information for such councils to begin work.