

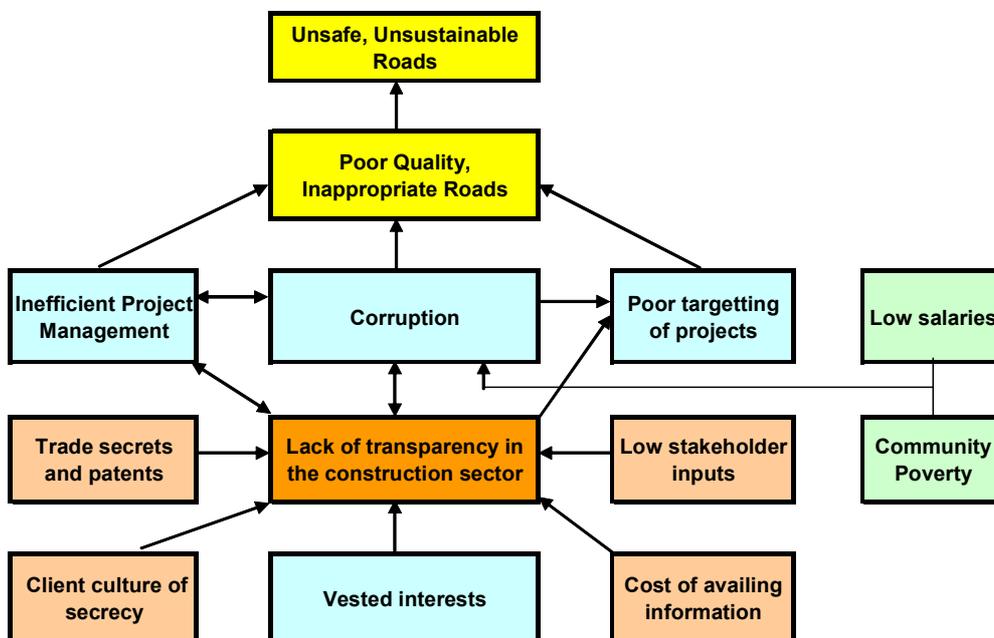
Construction Industry Transparency

by

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ABSTRACT

Enhanced transparency in the construction sector has two main benefits. First, corruption is reduced since persons intending illegality would perceive a greater risk of getting caught thus modifying their behaviour; and second, management would improve since slack practices would come to light and more care would be taken. Corruption and bad management both lead poor quality, inappropriate structures that are unsafe and unsustainable. This paper: (1) discusses the consequences of corruption in the road sector with examples, (2) proposes how the problems indicated in the diagram below can be reduced via processes such as the Construction Industry Transparency Initiative (CoST) and the Project Anti-Corruption System (PACS), and (3) outlines the process of setting up CoST in Tanzania including a summary of the results of a survey carried out in the country as part of that process.



1. Corruption in the road sector and its consequences

Corruption in the form of bribery and fraud can occur in relation to any phase of a road project. It may involve a number of project participants including officers or employees of the project owner, government officials, donors, funders, contractors, consultants, joint venture partners, sub-contractors and agents. Some examples of such corruption include:

- Selection of a road project by a government official for corrupt reasons.
- Misappropriation of project funds by a government official;
- Collusion between a government official and a donor or lending officer resulting in corrupt lending terms;
- Over design of a project to inflate the contract price;
- Bribery by tenderers to win contracts, and the concealment of the cost of the bribes in the contract price;
- Fraudulent claims by contractors or consultants during the works;
- Defective works by contractors to maximise profits;
- Extortion of contractors or consultants by officers of the project owner requiring bribes in order to certify payments due.

In each case, the corruption will have a direct impact on the safety and/or well-being of the public and of the project participants. Misappropriation of funds will mean that roads may not be built or that they will not be of the required quality. Corrupt lending terms, bribes, and fraudulent claims will result in inflation of contract prices which will deplete public funds. Defective works will result in roads that may be unsuitable, unsafe, or which deteriorate rapidly. Whistle-blowers may be placed in physical danger or suffer discrimination at work. Contractors and consultants may be forced to participate in corruption or withdraw from corrupt markets. Individuals and organisations involved in corruption will respectively be at risk of imprisonment or fines.

Corruption is not the sole preserve of the developing world. It occurs in both developing and developed countries. However, due to the lack of adequate infrastructure in developing countries the effects of such corruption are considerably more damaging. Corruption prevents the provision of adequate transport to work, schools, hospitals, and trade centres. As a result, such corruption is directly responsible for poverty, sickness and death.

In order to provide strength to the anti-corruption argument, people look for *real-life* examples of such corruption and of the damage it can cause. However, ironically, there are not many concrete examples of proven corruption (where there has been investigation, prosecution and conviction).

Evidence of *suspected* corruption is widespread in developing countries. Prematurely pot-holed, barely usable roads are common and are regarded as being a result of fraudulent short-cuts in execution of works or use of sub-quality materials. Allegations abound of roads having been constructed corruptly to suit the personal ambitions of particular politicians, while other areas of a country are left without an adequate road network. Government officials may be widely rumoured to share in the illicit profits of over-priced or white elephant road projects.

But there is little investigation or prosecution of such suspicions, and so they remain merely suspicions or rumours. Lack of prosecution is a feature of both developing and developed countries.

One of the most notorious examples of suspected corruption in the road sector in recent years relates to the **Golden Quadrilateral Highway Project** in India. This is notorious, not for its success in detecting and prosecuting corruption, but for the murder of a whistle-blower who tried to uncover alleged widespread corruption.¹ In 2003, Satyendra Dubey, an engineer working for the National Highway Authority of India, made a report to the NHIA, and to the Prime Minister, regarding corruption by contractors (in providing defective works). He requested confidentiality but his reports were leaked, he received numerous threats from those on whom he had reported, and was shortly thereafter murdered.² There is no evidence that Mr. Dubey's reports were ever investigated. In December 2003, reports suggested that the Dubey incident was just a tip of the iceberg in terms of corruption. It was alleged that there was considerable corruption by way of over-specification of material quantities, followed by under supply in the actual construction of the road. Consultants allegedly submitted false variation claims. Amounts paid for these false variations were then corruptly shared by the participants. In February 2006, a 600 meter stretch of the highway connecting Kolkata to Chennai subsided into the ground, opening up a ten meter gorge. This stretch had been completed a year earlier by a multinational firm, selected after global competitive tendering. There was no loss of life. There is no indication that this event or the earlier events have been investigated for corruption.

Another well-publicised example of alleged corruption relates to the **PMU 18 Road Agency in Vietnam**. In August 2007, eight officials of PMU 18, a transport state agency of the Vietnam government, were jailed for embezzlement and bribery. It was alleged that development aid may have been misappropriated and that the corruption involved bribery in tendering of up to 15% of the total project price, poor quality construction (one section of the road sank after completion of construction), inflation of material prices, fabrication of tenders to create the illusion of competition, and issuance of completion certificates where work had barely started. However, the World Bank has recently published a Detailed Implementation Review (DIR) which concluded that no evidence had been found to support allegations of fraud and corruption against PMU 18 officials. The review examined two projects

¹ <http://infrastructure.gov.in/about.htm>

² S.K. Dubey Foundation for Fight Against Corruption in India
(<http://www.skubeyfoundation.org/index.php>)

that used World Bank funds to build more than 1800 roads in Vietnam between 2000 and 2006 and also to maintain and improve 1,700 km (1,060 miles) of national roads since 2004. The DIR stated that "indicators of irregularities" were found in the handling of 285 contracts out of the total 742 awarded for the projects, including weaknesses in the handling of tenders, poor financial management capability and slow implementation, but the bank said it would not point a finger of blame at specific individuals or firms.³

These two examples demonstrate what appears to be a common situation: *Corruption, corruption seemingly everywhere but rarely a conviction to be found.*

One of the few conclusive examples of proven corruption in the construction sector is the **Lesotho Highlands Water Project (LHWP)**, Africa's largest infrastructure project. It is notable that the prosecution was successfully brought by a small developing country, not by a larger developing country or a developed country. The prosecutions commenced in 1998, and have to date resulted in the conviction of the LHWP Chief Executive and three international companies. During the prosecution, one of the key witnesses died, and was suspected to have been murdered. He had allegedly acted as agent in securing corrupt contracts during the project.

Generally, despite the lack of concrete examples, corruption is widely known to be prevalent in the road sector (and the infrastructure sector as a whole). Such corruption exists largely because of the failure by relevant governments and funders to take proper measures to prevent, detect, investigate and prosecute corruption. The result of this is that the corrupt are able to continue to be corrupt with little fear of investigation or penalty. Adequate and good quality infrastructure is not provided and the poor remain the primary victims of the corruption.

Corruption on construction projects is a complex problem. It may occur in the form of bribery, extortion, fraud or collusion. It can take place during any phase of a project, including project identification, planning, financing, design, tender, execution, operation and maintenance. In each project phase, corruption may involve any one or more of the government, project owner, funders, consultants, contractors, sub-contractors, suppliers, joint venture partners, and agents. It may occur at any level of the contractual structure. Furthermore, corruption is concealed and those aware of it are either complicit in it or reluctant to report it. This makes it more difficult to detect. There is no "quick fix" by which to prevent such corruption. In order to address the problem, a systematic approach must be taken which:

- uses a number of anti-corruption measures
- impacts on all relevant stakeholders
- operates through all project phases
- addresses all types of corruption that may occur
- seeks to prevent, detect, report and punish corruption.

³ <http://uk.reuters.com/article/worldNews/idUKHAN19810120070528>

A systematic approach has been taken in order to improve health and safety in construction. A similar approach should be taken in relation to corruption. Unless this is done, corruption will not be materially reduced. Two ways of doing this are presented in the next section.

2. Initiatives to Increase Transparency and Reduce Corruption

2.1

Construction
Sector
Transparency
Initiative

The Construction Sector Transparency Initiative (CoST) is about to be launched internationally from Tanzania in January/February 2008. Based on the Extractive Industries Transparency Initiative, DFID has decided to start a similar initiative for the construction sector. Following a consultative meeting on 20th June 2007 in London attended by participants from all over the world, a document entitled “CoST Design for Pilot Phase” was prepared, dated July 2007. This document explained that the core concept of CoST is ‘Get What You Pay For’, by enhancing the transparency of material project information. The ultimate aim is to enhance the accountability of procuring entities and construction companies for the cost and quality of public sector construction projects, by improving transparency to a broad range of stakeholders.

A set of Principles and Criteria have been developed for CoST. The CoST Principles reflect a shared commitment to transparency and accountability on the part of construction sector stakeholders, and outline a set of aspirational beliefs and values. The proposed Criteria have a more operational focus, and represent the concept that is to be piloted.

The challenge is to balance the widely accepted need for greater transparency with the necessity of designing a system that is practicable. CoST comprises two components: the disclosure of material project information on a selection of construction projects; and a structure to provide a framework within which all stakeholders (including civil society) can engage effectively.

Disclosures: the core disclosures relate to key project information at contract award through to final build, together with significant changes during project execution. Other disclosures should also be made relating to earlier stages in the project cycle, since difficulties that arise during contract execution may have their origins in these other stages. Disclosures are envisaged on a selection of projects to ensure that CoST is manageable and practicable. The level of disclosure expected is given in annex A.

Structure: at the heart of CoST is a multi-stakeholder group (MSG), a representative body comprising key stakeholders, including government, the construction industry, and civil society. The MSG oversees the implementation of CoST. At a technical level the MSG is supported by an independent Assurance Team that plays an interpretative role in helping to

make raw data disclosures more intelligible to the MSG, and to enable appropriate conclusions to be drawn. Overall responsibility for ensuring that CoST is implemented is exercised by a senior level Government representative, or 'CoST champion'.

The process for implementing CoST comprises two phases. The first is an initial preparation phase to establish the structure and main processes to be followed. The second is the operation phase which is envisaged to take place in three stages: public disclosure of material information on selected projects by the procuring entities; analysis/interpretation of the disclosures by the Assurance Team and presentation of its findings to the MSG; and reporting of the main findings to the public. This process is illustrated in Annex B.

It is expected that the Pilot Phase will start after the launch of CoST in January 2008. Pilot countries will be supported, as appropriate, by donors in the form of: practical guidance, capacity building, informal quality assurance, and initial facilitation of a lesson-learning forum to be carried on by the pilot countries. Capacity building will be an important ingredient of the Pilot Phase for many countries. Section 3 below discusses the design of the Pilot for CoST Tanzania.

2.2 PACS

CoST is a valuable initiative but it should not be regarded as the panacea that will eliminate corruption in construction. Other specific anti-corruption measures are required to combat corruption at project level. In addition to transparency, the following anti-corruption measures should be introduced in road (and other infrastructure) projects:

- Independent assessment whereby an independent third party monitors and reports on the project *throughout* its life cycle on an *on-going* basis – from funding, planning and design, through execution to completion. Obviously, there is a risk that this assessor will himself be corrupt. It is essential, therefore, that persons of integrity are appointed.
- Pre-contract disclosure of information between the main project participants with a view to disclosing any information that will reveal a risk of corruption, such as the scope of work and fees of an appointed agent.
- Contractual anti-corruption commitments between the main project participants.
- Government anti-corruption commitments to be provided by government departments who may be involved in the project whether as project owner, or in the provision of permits and licences.
- Raising awareness amongst relevant project staff of the way in which corruption can occur and of the risks of criminal penalty for involvement in corruption. This can be done by training sessions and anti-corruption rules.
- Involvement of funders to encourage funders to take a more pro-active role in ensuring that adequate anti-corruption measures are implemented on the projects funder by them.

- Compliance programmes should be operated by project participants to ensure that their internal procedures are regulated so as to minimise the risk of corruption.
- Reporting of corruption by project officers and employees and members of the public should be facilitated by setting up safe and confidential project reporting procedures. Where an independent assessor has been appointed (as recommended above), he would be one of the primary reporting channels.
- Enforcement of penalties – Project participants and their employees must be made aware that there is a zero-tolerance of corruption on the project and any suspected corruption will be fully investigated and prosecuted.

The introduction of anti-corruption measures is often resisted on the grounds of cost. This is an irrational objection. Corruption is suspected to be one of the greatest obstacles to economic development of developing countries. It is estimated to account for between 5% - 50% of a project price, and in global terms to amount to annual losses of billions of dollars. It is suspected to cause poverty and death. Yet project owners, funders and other stakeholders quibble over the cost of introducing anti-corruption measures.

The anti-corruption measures (together with greater transparency) recommended above may be adapted to suit the size of project in question so that the cost of implementing these measures is not disproportionate to the value of the project. They will not impose an undue burden on the parties required to implement them. On the contrary, for those parties who are genuinely concerned to avoid corruption, such measures will be of great benefit.

Transparency International has designed a Project Anti-Corruption System (PACS) which is an integrated and comprehensive system to assist in the prevention of corruption on construction projects. PACS comprises:

- **The PACS Standards:** These recommend anti-corruption measures which should be used on construction projects.
- **The PACS Templates:** These provide the tools by which the measures recommended in the PACS Standards may be implemented.

A government, a public or private sector project owner, or a funder may use PACS as follows.

- It can assess its existing project anti-corruption measures against the PACS Standards.
- It can modify its existing measures in accordance with the PACS Standards.
- It can use some or all of the PACS Templates, appropriately customised, in order to implement its anti-corruption measures.

PACS is freely available on Transparency International's website at: www.transparency.org/tools/contracting/construction_projects/section_a_pacs

3. CoST Tanzania

As part of the process of designing CoST, consultations were held in Ghana, Tanzania and Vietnam. For Tanzania, the consultation started in January 2007 with the head or senior official from the following 12 organisations being asked to give their opinions to a number of questions:

- Association of Consulting Engineers Tanzania, ACET
- European Commission, EC
- Engineers Registration Board, ERB
- Institution of Engineers Tanzania, IET
- Ministry of Infrastructure & Development, MoID (Planning Division)
- Ministry of Infrastructure & Development, MoID (Roads Division)
- National Construction Council, NCC
- National Social Security Fund, NSSF
- Public Procurement Regulatory Authority, PPRA
- Tanzania Civil Engineering Contractors Association, TACECA
- Tanzania National Road Agency, Tanroads
- World Bank, WB

The questions and answers are summarised below. Annex C gives a matrix of responses of particular respondents.

General Questions

Q. Does lack of transparency limit socio-economic growth? A. *9 out of 12 believed it does and 2 that it did not.*

Q. Is your organisations stakeholder consultation policy implemented well? A. *3 replied excellent, 3 fair, 2 very poor, and 4 did not have this policy available.*

Q. What capacity has your organisation to bring about change? A. *6 believed it was adequate, and 5 believed it was inadequate.*

Q. Think of an example contract. Does your example contract achieve its development aims? A. *3 said excellent, 2 fair, and 4 poor.*

Q. Does your example contract give value for money? A. *6 gave fair and 3 very poor.*

Generally, it can be concluded that most respondents believed a lack of transparency limited growth. There was a mixed response to how organisations implemented their consultation policy if it existed. The performance of contracts in terms of achieving objectives and providing value for money varied.

Questions about whether sector has improved over last 5 years

Q. Has public information about projects improved? *A. 9 believed it had whereas one considered it had got worse.*

Q. Has public financial management improved? *A. 1 believed much better and 6 better*

Q. Are the poor better targeted with benefits of projects? *A. 7 believed better and 2 worse.*

Q. Has dispute resolution improved? *A. 6 believed it had and 1 worse.*

Q. Are NGOs raising issues better? *A. 7 believed better and 1 worse.*

Q. Has citizen participation improved? *A. 7 believed better and 2 worse.*

Overall, respondents believed the sector has got better in the last 5 years. This helps provide a degree of confidence that CoST could be taken up and have an impact in the country.

Documentation Transparency

Q. Should tender evaluation panel be open to external stakeholders? *A. 8 agreed and 4 disagreed.*

Q. Should names of all bidders (winners and losers) be published? *A. All but one agreed.*

Q. Should bid evaluation report be published? *A. 6 agreed and 5 disagreed.*

Q. Should contract and specifications be published? *A. Half agreed and other half disagreed.*

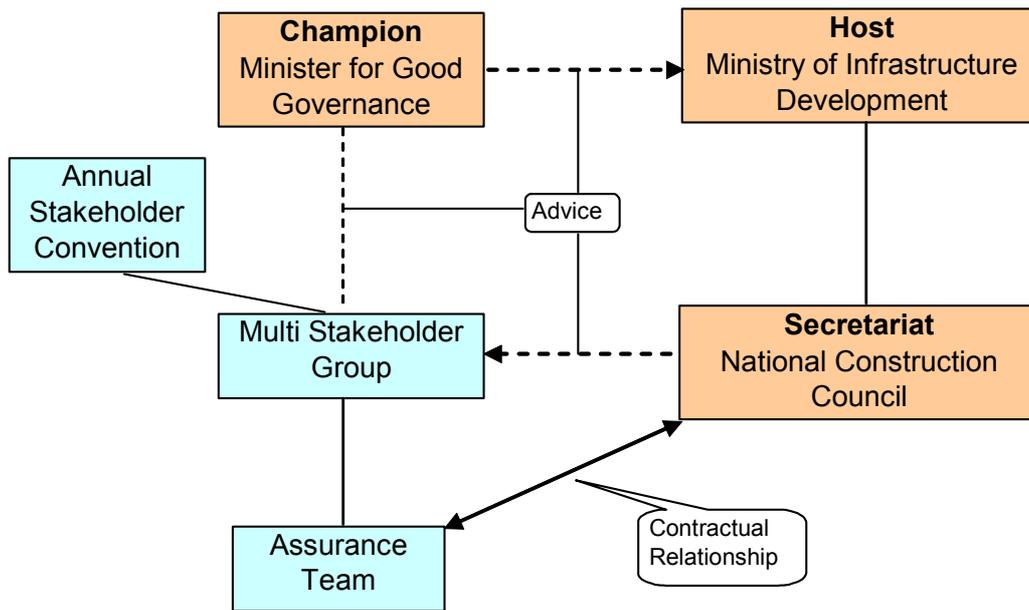
Q. Should supplier's rates against going rates be published? *A. 5 Agreed and 4 disagreed.*

Q. Should project achievements against targets be published? *A. Virtually all respondents agreed to this.*

Overall, respondents were in favour of more transparency although views differed regarding details.

Following consideration of these views, the outline of CoST was presented to a meeting of 58 stakeholders in Dar es Salaam on 6th September 2007. This workshop led to the proposal of forming CoST Tanzania with the following structure:

CoST Tanzania Organisation Structure



An interim MSG with representatives from the following organisations was formed:

- National Audit Office (NAO)
- Prevention and Combating of Corruption Bureau (PCCB)
- Tanzania Civil Engineering Association (TACECA)
- Tanzania Chamber of Commerce Industry and Agriculture (TCCIA)
- Architects Association of Tanzania (AAT)
- Association of Consulting Engineers Tanzania (ACET)
- Public Procurement Regulatory Authority (PPRA)
- Front Against Corrupt Elements in Tanzania (FACEIT)
- National Construction Council (NCC)

Further meetings of the MSG are now preparing a country work plan including the appointment of an Assurance Team.

ANNEX A: Cost Disclosures

Stage in Project Cycle		Disclosure
Prior disclosures in support of CoST	<i>Project identification</i>	<ul style="list-style-type: none"> • Project outline • Purpose • Location • Intended beneficiaries • Feasibility study
	<i>Project funding</i>	<ul style="list-style-type: none"> • Financing agreement
	<i>Tender process (Main contracts for works and/or services⁴)</i>	<ul style="list-style-type: none"> • List of tenderers • Tender evaluation report
Core disclosures in support of CoST	<i>Contract award (Main contract for works)</i>	<ul style="list-style-type: none"> • Contractor name • Contract price • Contract scope of work • Contract programme • Details of subcontractors
	<i>Contract execution (Main contract for works)</i>	<ul style="list-style-type: none"> • Changes to the contract which significantly affect the price, duration or specification with reasons. • Actual payment record compared to contract (on time and correct amount) • Details of any re-award of main contract
	<i>Post contract completion (Main contract for works)</i>	<ul style="list-style-type: none"> • Contractor name • Actual contract price • Final contract payment • Actual contract scope of work • Actual contract programme • Project evaluation report (upon completion and on-going)

⁴ This would include, for example, consultant contracts for design and supervision.

Key		a	b	c	d									
Type	Question	ACET	EC	ERB	IFT	MOID (planning)	MOID (roads)	NCC	NSSF	PPRA	TACECA	Tanroads	WB	Average
			1 Agree -1 Disagree		2 Excellent 1 fair 0 n/a -1 poor -2 very poor			1 adequate -1 inadequate					1 Better 0 Same -1 Worse	
General														
a	Does lack of transparency limit socio-economic growth?	0.5	-1	1	1	1	1	1	1	1	1	1	1	0.63
b	Is Your Stakeholder Consultation Policy Implemented Well?	2	1	1	-2	0	0	2	-2	0	2	0	1	0.42
c	What capacity has your organisation to bring about change?	1	1	-1	-1	-1	1	-1	1	0.5	-1	1	1	0.13
b	Does your example contract achieve its development aims?	1	2	-1	-1	-1	-1	1	2	-1	-1	2	-1	0.44
b	Does your example contract give value for money?	1	1	-2	-2	-2	1	1	1	-2	-2	1	1	0
Sector Change in last 5 years														
d	Public info about projects	1	0	0	1	-1	1	1	1	1	1	1	1	0.67
d	Public financial management	1	1	1	1	0	1	0	-	0	0	1	1	0.64
d	Targetting poor with benefits	1	1	0	1	-1	1	0	-	-1	1	1	1	0.45
d	Dispute resolution	0	1	1	1	-1	0	1	1	0	0	0	1	0.42
d	NGOs raising issues	1	1	1	1	-1	1	0	0	0	1	0	1	0.5
d	Citizen participation	1	0	1	1	-1	1	1	1	-1	1	0	0	0.42
	Average	0.8	0.7	0.7	1	-0.8	0.8	0.5	0.8	-0.2	0.7	0.5	0.8	0.52
Documentation Transparency														
a	Should tender evaluation panel be open to external stakeholders?	1	-1	-1	1	-1	1	1	1	1	1	1	-1	0.33
a	Should names of all bidders (winners and losers) be published?	1	1	1	1	1	1	1	-1	1	1	1	1	0.83
a	Should bid evaluation report be published?	1	1	-1	1	1	1	-1	-1	-1	1	-1	0.5	0.13
a	Should contract and specifications be published?	-1	-1	1	1	1	1	-1	-1	1	1	-1	-1	0
a	Should suppliers rates against going rates be published?	0.5	0	0	-1	1	-1	1	-1	1	1	1	-1	0.13
a	Should project achievements against targets be published?	1	1	1	1	1	1	1	1	1	1	0.5	1	0.96
	Average	0.6	0.2	0.2	0.7	0.7	0.7	0.3	-0.3	0.7	1	0.3	-0.1	0.4