



Translated extract from

Peter Eigen
Das Netz der Korruption
Wie eine weltweite Bewegung gegen Bestechung kämpft
Campus Verlag
Frankfurt am Main 2003
ISBN 3-593-37188-X

pp. 74-81 and 173-180

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The Web of Corruption
How a Global Movement Fights Graft

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8. The Integrity Pact

The Integrity Pact is a tool Transparency International developed in the 1990s to assist governments, businesses and civil societies which are prepared to fight corruption to do so in the area of public procurement. The Integrity Pact helps to enhance public trust in government contracting and contributes to improving the credibility of governmental and administrative procedures in general.

Transparency International on the Integrity Pact

The concept is equally simple and revolutionary. In a clearly delimited market, in one single competitive situation, all parties involved sit down at the same table, both the corporation or government office which is inviting tenders and all potential bidders who are competing for a slice of the cake. Then - regardless of how they conduct themselves in other markets or whether they have a long history of paying or receiving bribes - they are persuaded to enter a binding agreement which regulates only one thing: in this specific competitive situation all participants will abstain from using corrupt practices. An independent agency, if possible a nongovernmental organization such as a national chapter of TI, for example, is appointed to monitor the agreement. Any party that violates the agreement incurs severe penalties. That, briefly outlined, is the Integrity Pact (IP), one of our most effective tools in the fight against corruption.

Today, no one at Transparency International can say whose idea it actually was. When I discussed the concept with Robert McNamara at the end of 1992, he was electrified. At the time I was still using the term "Islands of Integrity" to illustrate that we were not requiring the participants to change the way they conducted business from one day to the next across the globe. The object was for them to make a start in a single area where they could rest assured that their competitors would be bound by the same set of rules. It was like offering an escape route from the dilemma in which they had become entangled. McNamara put such great stock in the mechanism that he would accept my invitation to attend our founding conference in Berlin only on condition that the "Islands of Integrity" idea would head our agenda. In his opinion it was the only way to achieve success in the struggle against corruption. The day before the conference he negotiated, as agreed, with Alberto Dahik from Ecuador, Fritz Heimann and myself into the early

morning hours to gain assurances that the "Islands of Integrity" pact would be implemented at one of the forthcoming projects in Ecuador. He pledged a personal contribution of \$10,000 to TI for the first time the pact was carried out successfully. After we had worked out all the details he expressed great satisfaction and consented to our using his name for the founding conference, although he himself did not want to participate. Later, he repeatedly called me for updates on the status of the "Islands of Integrity." Finally, he traveled with us to visit our friends among African heads of state and to convince them of the concept's usefulness.

The idea also caught on with major corporations. For them it seemed to offer a plausible opportunity to escape the corruption trap without losing important contracts to competitors who continued to resort to bribery. Our efforts to understand the interests of the key players and to smooth the way for them to escape their predicament was surely characteristic of the common strategic considerations we pursued when we founded Transparency International. Once again we were thoroughly pragmatic, as our basic approach had been, and we were prepared to move forward by taking the small practical steps entailed in the "Islands of Integrity."

In the words of Hansjörg Elshorst: "I still remember a conversation with the chief economist of the GTZ on the flight from Frankfurt to London just before our pioneering conference at Latimer House. He was extremely skeptical and thought the whole idea was nonsense. To my knowledge this discussion was the first time we spoke of the need to ensure that the practices in an "Island of Integrity" actually conformed to our expectations. The idea was in the air, and Peter and Michael Wiehen probably had it at roughly the same time, so that I can lay no claim to its birthright. Even in those days it was an idea whose time had come: to call a large number of people together from very different walks of life and forge their abilities and ideas into a coalition through a common effort."

It was Michael Wiehen who drew up the Integrity Pact after he left the World Bank, refining the idea into the sophisticated and flexible tool it is today. He recalls: "The Integrity Pact is a reciprocal promise and it's binding for both parties, for example, governmental ministries on one side and construction companies, suppliers and technical consultants on the other. It requires the authority inviting tenders to make known in the solicitation of bids that it intends to implement

the pact and that compliance of all contractors is mandatory. The important thing is that both the authority as well as the contractor are subject to sanctions. Thus, for example, the authority places itself under obligation to take disciplinary measures against corrupt employees. Naturally, potential contractors lose their contracts if they are shown to have used corrupt methods. In addition the pact entails forfeiture of the bid security, i.e. the amount the bidder must pay the authority in advance as a bond. Given a project scope of €50 million, bid security would generally entail the sum of €3-5 million. Furthermore, the party which has resorted to graft is liable for compensatory damages, placed on a blacklist, and barred from future tenders."

The pact is overseen by either TI or other representatives of civil society. The tenderer may also appoint an external firm as a monitor. The essential point is that the monitor must receive access to all documentation.

Those who are most effective at exposing corruption, we have discovered, are the competitors of the corrupt firms themselves, because the competitors are often the first to know that palms must have been greased. Thus, we also rely on the pressure created by contenders who have been put at a disadvantage.

The core elements of the Integrity Pact are quickly summarized. For the authority or organization awarding the contract it stipulates the following, as may also be read in our relevant white papers:

- No official of the authority shall demand or accept - directly or through intermediaries - any bribe, gift, favor or other advantage for him/herself or any other person, organization or third party related to the award of the contract in exchange for an advantage in the bidding process.
- The authority shall make publicly available all necessary and appropriate technical, legal and administrative information pertaining to the current or prospective contract.
- No representative of the authority shall disclose confidential information to a bidder or contractor providing the bidder or contractor an undue advantage in the procurement or implementation of the contract.

- Every representative of the authority involved in the bidding, evaluation, and implementation of the contract shall disclose all conflicts of interest in connection with the contract. It would be highly desirable that they also disclose their and their family's assets in the same way.
- All representatives of the authority will report to the appropriate government office any attempted or actual breaches of the agreement as well as any substantiated suspicion that such breaches may have occurred.

For potential contractors the rules are similar:

- They shall not offer, either directly or through intermediaries, any bribe, gift, favor or other advantage to any representative or to a relative or friend of any representative of the authority in exchange for an advantage in the bidding process.
- They shall not collude with other parties interested in the contract so as to impair the necessary transparency and fairness of the bidding process and completion of the contract.
- They shall not accept any advantage in exchange for unprofessional behavior.
- They shall disclose all payments made to agents and other intermediaries, who additionally must not under any circumstances receive more than fair pay for their services. Preferably, such disclosure should be made by all bidders at the time of bidding, but at the very latest at the time the contract is awarded.

Application of the pact is multifunctional. It is suitable not only for the award of construction projects but can also be used in any situation where a limited number of competitors are all focusing on the same concrete market, in other words for privatization projects and the award of concessions or licenses, for example for raw material extraction, mining, petroleum production, forestry rights, energy or water supply, telephone service or waste removal. Naturally, it is essential that truly all potential parties in the bidding process join in the Integrity Pact. The model won't work if even one party refuses. That, by the way, formed the basis for a dispute with the World Bank which resisted excluding tenderers from the bidding process who refused to endorse the pact. Drawing on the agreement's inherent logic, however, we naturally exerted influence on the contract-awarding authorities to make the endorsement mandatory for all potential bidders. If some of the bidders expressed skepticism, the contract was to be negotiated

and revised for as long as necessary to finally arrive at an Integrity Pact which was acceptable to all participants.

The Integrity Pact is not a law carved in stone but can be adjusted to suit many needs. In addition, we continually review the usefulness of the concept in general as well as its specific form and upgrade it based on new insights.

Currently it is used throughout the world, for example in 60-70 projects in Columbia and two or three projects each in Pakistan, Italy, Korea, Panama, Nepal, Paraguay and Mexico.

In May 1999, the Pastrana government in Columbia even included our Integrity Pact on the priority list for its "National Development Plan," where Article 4, Paragraph 2, reads: "In order to enlist civil society in the fight against corruption we will propagate implementation of Transparency International's "Islands of Integrity" program so that bidders in national and international invitations to tender will document their commitment to personal and corporate responsibility through anticorruption agreements."

Within one year TI Columbia had already successfully implemented roughly 40 projects using the Integrity Pact. Some of these projects also involved the participation of international institutions such as the World Bank, the InterAmerican Development Bank, UNDP (the United Nations Development Program) or Germany's GTZ.

Several further examples will suffice to illustrate. In the Argentine City of Morón an Integrity Pact was sealed between the municipal government and a total of four companies bidding on a four-year waste removal contract. The scope of the project was roughly \$32 million. In Italy our chapter convinced the city governments of Milan, Genoa, Varese and Bergamo to use our pact. As soon as the municipal administration and the parliament of the City of Milan approved the use of the pact for public procurement projects, another six Italian municipalities immediately also signaled their interest. And indeed, several companies in Milan were caught committing violations of the pact. In the South Korean capital of Seoul we were also successful. In the year

2000 alone Integrity Pacts were implemented in a total of 62 projects with a total volume of \$105 million. Incidentally, further information can be found on the Internet at www.metro.seoul.kr.

Following is Michael Wiehen's description of one of our most recent projects: "We are particularly pleased that an Integrity Pact has now also been implemented for the first time in Pakistan. Here, the project involved planning a roughly 150 km water pipeline. A similar project 4 years previously had cost \$200 million. Today, it will cost just \$50 million. Naturally, we don't attribute this to the Integrity Pact alone but also to increased public interest in the project - but there can be no doubt that we did make a modest contribution."

Thus, we are actively promoting our Integrity Pact across the world, and the results are thoroughly encouraging. Corrupt government officials and the companies that grease their palms have been exposed, bidding processes have been opened to public scrutiny, and the costs which governments incur to fund projects have been lowered. But our successful track record breaks down here in our own country, of all places. Michael Wiehen explains: "In Germany six years ago we offered our assistance on the construction project for Berlin Schönefeld airport. At the time both the bidders and the governments of Berlin and Brandenburg had expressed consent. But the operator company opposed the pact vehemently and blocked it. They complained bitterly about our presumption that corruption might be an issue in the project. Three months later the first incident of corruption was exposed. We have already spoken with or are currently conducting talks with an entire series of German municipalities. We have a substantial amount of information indicating that Germans are world champions at bribery. In Wuppertal alone there are now 750 corruption cases before the courts. But to date no one has yet agreed to implement an Integrity Pact. The need for a major persuasive effort simply remains."

18. The Global Corruption Report

The first attempt by an organization to portray the global fight against corruption. A travel guide of sorts, through the jungle of diverse standards and across different regions of the world.

The Guardian (UK), October 16, 2001, on the first Global Corruption Report

Corruption undermines the development of nations and international economic relationships. It is a malignant canker that inflicts serious injury on justice and equal opportunity. Corruption hampers permanent development and has an especially negative impact on the poor. Anyone who supports economic expansion, particularly in impoverished countries, must advocate a just economic order based on the principles of law and must consequently also oppose corruption with determination.

Heidemarie Wieczorek-Zeul, Federal Minister for Economic Co-operation and Development, at the presentation of the Second Global Corruption Report on January 22, 2003

Can the current status of worldwide corruption be packed into a single report, into one single book? We have at least attempted to do so. Our Global Corruption Report (GCR), published annually, allows employees of TI, journalists, activists and academics from all over the world to speak out on selected topics and report on the most important regions of corruption. They tell of progress and setbacks, resistance, new developments, questionable trends and initiatives undertaken against corruption at the local level. A book which draws on so many sources cannot necessarily represent the official voice of Transparency International, although it does take stock of what's going on in the world and where. The main purpose of the Global Corruption Report, however, is to point out that the media and civil society must remain vigilant and that our efforts to conquer corruption continue to rely on the courage of investigative journalists and whistleblowers.

Even if corruption still seems ubiquitous, over the past years we have always been able to paint an increasingly positive picture. It has become apparent that corruption finds ever fewer safe havens, globally speaking, and that politicians, economic leaders and civil society itself are including the topic of corruption in their agendas more and more often. The Internet and the mass media have also contributed. Through the accelerated flow of information the media and a global public have become increasingly outspoken in demanding accountability from corporations and politicians. We at Transparency International strive to do our part to foster and secure the flow of information.

In an ever-growing number of countries, governments are beginning to follow the example of Scandinavian countries and take measures for greater transparency. TI as well as other organizations of civil society scrutinize their activities and encourage them to monitor themselves constantly. From Chile and Brazil to South Korea and India, e-government is expanding. The Internet is used increasingly to inform the general public about important decision processes, for example the interpretation of statutes governing privatizations and public invitations to tender. In the 2003 GCR Jeremy Pope writes: "During every stage of life average citizens need access to information about the government so that they can exercise their rights. Absent such access they are easy prey for corruption and malfeasance."

The positive example set by the countries which are increasingly adopting these insights are just as important for the industrialized world as for developing nations. To those countries which today still refuse to take appropriate steps, they demonstrate that there is another way to do things after all.

The regional reports in our latest edition of the GCR begin with Western Europe and North America. Particularly in the USA the subject of transparency has rarely been of greater importance. The Enron scandal, for example, deeply shocked the business world and seriously undermined public trust in corporate integrity. Enron and subsequent debacles strengthened the general sense that accountants, tax consultants, attorneys and bankers collude with their corporate clients to falsify balance sheets and provide senior executives with short-term profitability – and willingly assent to betraying the trust of shareholders, employees and the greater public in the process.

Reports from our friends across the world also provide detailed information showing that the effect of the OECD Anti-Bribery Convention still leaves much to be desired. We were forced to conclude that in the signatory countries of the Convention the new legal situation, i.e. the prohibition of foreign bribery, has been insufficiently publicized and that only a small number of violations are actually prosecuted. Apparently, most OECD countries lack the political will to bring their citizens to court in major bribery cases if the crimes have been committed abroad. Additionally, the monitoring process intended to supervise and guarantee the effective

application of the Convention by member states lacks sufficient funding and has fallen behind schedule. If the OECD does not succeed in moving governments to prosecute offenders, the Convention will fail – which is another conclusion reached in our current report.

Naturally, legal reform is not enough to promote transparency. Within the business world itself corporate boards of directors must also rise to the challenge of beating corruption. For all that, many companies have realized in the meantime that fighting corruption makes good economic sense. According to a study published by Social Weather Stations at the end of 2001, businesses in the Philippines were willing to spend 2 percent of their net income to finance anticorruption programs. Their own estimates showed that corruption prevention would lead to a 5 percent increase in net income and a 10 percent savings on contract costs.

It is also encouraging that in the EU accession countries of Central and Eastern Europe the political will and the efforts of civil society – responding in part to pressure from international institutions – have resulted in advances for transparency and good governance, i.e. government based on the participation of social forces. In spite of all this, however, progress in overcoming the bad reputations of some who hold political, economic and social responsibility will continue to be halting since the public has lost confidence in politicians on a global scale. Political parties enjoy less trust than any other institution. The latest New Europe Barometer surveys report that in Central and Eastern Europe only every eighth citizen puts any trust in political parties and only every seventh in the person of a political representative. So there is still more than ample room for improvement.

The 2003 Global Corruption Report also points to several positive trends in developmental aid organizations. They have now begun to impose a growing number of binding rules against corruption on themselves and to take measures to thwart it. Consistent with this many developmental aid organizations have also introduced public reporting to ensure independent oversight. Globally, meanwhile, such organizations are now urging that the fiscal policies of the countries where they operate likewise be opened to public scrutiny and that the countries step up their own anti-corruption efforts.

The GCR, in turn, confirms and reinforces the demand that donor organizations should insist that expenditures for development projects be monitored entirely through institutions of civil society, thereby ensuring that the monies reach their intended recipients such as schools and hospitals. It is the institutions of civil society which can advance the fight against corruption and contribute to greater transparency, especially in a number of African countries.

Our national chapters in Africa are heading a campaign to help repatriate assets stolen by former dictators from their own people and deposited in bank accounts in London, Zurich, New York, Frankfurt and Liechtenstein - a laborious undertaking to say the least. Jermyn Brooks describes the difficulties: "The problem is that the Nigerians, say, who are on the trail of the plundered monies must be conversant with the legal situation and procedures in every country involved, from New York to Zurich. All too frequently the procedures themselves are anything but transparent which necessitates hiring attorneys in each country to clear a swath through the legal jungle."

For example, in 2002 the Nigerians suffered a bitter setback when their attempt failed to recoup \$1.2 billion misappropriated by former dictator Sani Abacha. Abacha's son refused to sign an agreement which had already been made: it stipulated that indictments against him and his business partner for larceny and money laundering would be dropped, but not those for murder.

In South America, by contrast, the search for illegally appropriated state funds was successful. In Peru the government of Alejandro Toledo went to great lengths to provide restitution for the injustices of the Fujimori era. For example, bank accounts were frozen containing \$225 million of corrupt money which belonged, among others, to Fujimori's secret police chief, Vladimiro Montesinos, who is now behind bars.

The war against corruption is waged on many fronts. Among the most important allies of civil society number the investigative journalists who have no fear of exposing wrongdoing. A pursuit, as we were to learn, which is not without danger. Every fourth journalist killed in the year 2001 lost his or her life while investigating corruption. While fewer journalists were murdered in 2002, the danger has not abated. The powerful everywhere continue to intimidate

reporters who are searching for clues to corruption, and all too frequently the threats are made good. In Bangladesh, Columbia, Russia and the Philippines journalists who were writing about graft were murdered.

Conversely, there are also numerous cases where the media do not dutifully fulfill their oversight role and instead maintain inappropriately close relations to leading politicians. In such cases the media can hardly contribute to uncovering cases of graft. A World Bank study, for example, documents that government-owned media contain fewer reports exposing corruption than media in private ownership. In the Middle East television stations often belong to ministers of state in local governments; conflicts of interest are taboo. Journalists who criticize political leaders must reckon with imprisonment because the right to freedom of information is virtually unknown in the Arab world.

High journalistic standards are not only compromised through political pressure and impermissible relationships between journalists and government representatives, however. In many countries the concentration of private wealth in one hand poses an equal danger in the media's battle against corruption. This is especially obvious in Italy where Minister President Silvio Berlusconi owns a majority of the private television stations and, as head of state, also has control of national television. Before his election Berlusconi promised to resolve the conflicts of interest between his political function and his media holdings within his first 100 days in office. To date, however, all that remains is the promise. The situation in Italy, which is an EU member, sends a dire message to EU candidates who have only recently escaped the grip of Stalinist censorship.

The 16 reports in the 2003 GCR have been compiled from every corner of the globe. They review both negative developments and cases of corruption as well as positive reforms. Additionally, the GCR contains articles by Ronald Noble, Secretary-General of Interpol, and Eva Joly, a French woman who received a TI Integrity Award in 2001 for the courage she showed as prosecutor in the Elf Aquitaine affair. As a useful reference source, an extensive "Data and Research" section with figures and graphs rounds out the Global Corruption Report. The current issue of the GCR and many of the articles it contains focus specifically on access to information,

a pivotal concern in the war on corruption. Toby Mendel, Head of Law Programme at Article 19, the prestigious free expression protection organization, writes in the 2003 GCR:

Experience shows that constitutional provisions alone are insufficient to ensure the right to freedom of information in practice; legislation must also be implemented. Countries around the world are adopting such laws, with Bosnia-Herzegovina, Great Britain, Kyrgyzstan, Poland and South Africa among those to have done so since 2000. Draft laws are under consideration in Guatemala, India, Indonesia, Nigeria and numerous other countries.

In the year 2002 national TI chapters in Germany, Lebanon, Mexico, Panama and other nations campaigned for freedom of information. In a dramatic, exceptional case we participated in the "Publish What You Pay" campaign sponsored by Global Witness, an NGO which pressures petroleum and mining corporations. Such companies should come clean on the concession fees and extraction royalties they pay to the powers that be in their host countries, particularly in conflict zones like Angola, Congo and Sierra Leone. Several major corporations such as Shell and BP were receptive to the idea themselves, but when they tried to implement it they were forced to realize that the rulers of the countries where they operate were anything but pleased. On the contrary, the potentates threatened the corporations with sanctions for breaching their contractual assurances of confidentiality. Consequently, TI and Global Witness lobbied the regulatory agencies in the countries where the corporations are headquartered to make disclosures such as "Publish What You Pay" mandatory, for example as a condition for being listed on the stock market.

With the assistance of my co-workers at TI, I have summarized in the appendix both positive and negative examples of specific findings on corruption during recent years in key regions of the world, as published in the 2002 GCR.