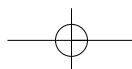
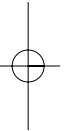
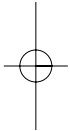
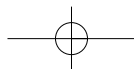


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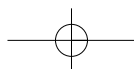
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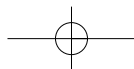
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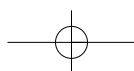
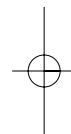
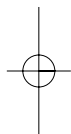
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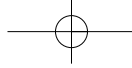
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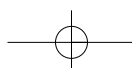
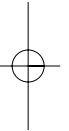
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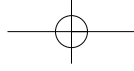


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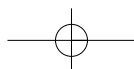
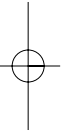
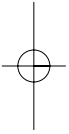
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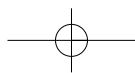
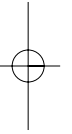
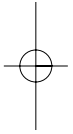
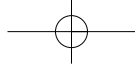


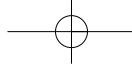


Part one

Political corruption







1 Introduction

*Robin Hodess*¹

What is political corruption?

Political corruption is the abuse of entrusted power by political leaders for private gain, with the objective of increasing power or wealth.² Political corruption need not involve money changing hands; it may take the form of ‘trading in influence’ or granting favours that poison politics and threaten democracy.

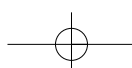
Political corruption involves a wide range of crimes and illicit acts committed by political leaders before, during and after leaving office. It is distinct from petty or bureaucratic corruption in so far as it is perpetrated by political leaders or elected officials who have been vested with public authority and who bear the responsibility of representing the public interest. There is also a supply side to political corruption – the bribes paid to politicians – that must be addressed.

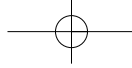
Political corruption is an obstacle to transparency in public life. In established democracies, the loss of faith in politics and lack of trust in politicians and parties challenge democratic values, a trend that has deepened with the exposure of corruption in the past decade.³ In transition and developing states, political corruption threatens the very viability of democracy, as it makes the newer institutions of democracy vulnerable.

Political corruption is a primary focus of Transparency International’s work. Indeed, one reason for selecting political corruption as the theme of this year’s *Global Corruption Report* is the priority of this issue in TI’s network of national chapters around the world, many of which hold political corruption to be a major concern in their country and have made political corruption a focus of their advocacy efforts.

The impact of political corruption

The revelation of political corruption often sends shockwaves through a society. Yet, despite strong demands for justice, prominent world leaders who are suspected of corruption prove difficult to prosecute or convict. Many leaders are out of office or dead before their crimes come to light. TI has put together a list of alleged embezzlers from Sani Abacha to Mohamed Suharto (see Table 1.1, page 13), showing estimates of the money they allegedly stole as compared with per capita income. This list is a powerful reminder of just how massive and devastating the scale of abuse can be.





The general public around the world has taken note of political corruption. TI's Global Corruption Barometer (see 'Global Corruption Barometer 2003', Chapter 11, page 288), a new instrument that assesses the general public's experiences of and attitudes towards corruption, finds that if citizens could wave a magic wand to eliminate corruption from just one institution, more would choose to clean up political parties than any other institution. For parties, which play a crucial role in public life in any democracy, the message is clear: there must be absolute probity of party members and officials, and parties themselves must clean up their internal practices.

Business people also sense the effects of political corruption. A survey by the World Economic Forum shows that business people believe that legal donations have a high impact on politics, that bribery does feature as a regular means of achieving policy goals in about 20 per cent of countries surveyed, and that illegal political contributions are standard practice in nearly half of all countries surveyed (see Box 2.4, 'Political corruption: a global comparison', page 30).

Political corruption points to a lack of transparency, but also to related concerns about equity and justice: corruption feeds the wrongs that deny human rights and prevent human needs from being met. Former UN High Commissioner for Human Rights Mary Robinson argues that corruption hinders participation in political life and proper access to justice (see box 'Corruption and human rights', page 7).

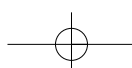
Focus of the report

This year's *Global Corruption Report* focuses on corruption in the political process, and on the insidious impact of corrupt politics on public life in societies across the globe. It addresses the following areas in the context of political corruption:

- the regulation of political finance
- the disclosure of money flows in politics and the enforcement of political finance laws
- elections – specifically vote buying
- the private sector – with a focus on the arms and oil sectors, and
- tackling the abuse of office – including reducing conflicts of interest, limiting recourse to immunity, pursuing extradition and repatriating stolen wealth.

The report also evaluates various mechanisms that can curb corruption in politics, from citizen action to the creation of new international norms and standards, such as Transparency International's Standards on Political Finance and Favours (see below).

By focusing on the above topics, the *Global Corruption Report* addresses particular weak spots in political life: the abuse of money in the political system by candidates and political officials; the lack of transparency about money flows in politics; the potential of the private sector to purchase influence, distorting both the marketplace and the fair representation of the public interest; the corruption of the electoral process; and the ways the legal system can affect the ability of states to pursue justice in major corruption crimes.



Box 1.1: Where did the money go?

Table 1.1 illustrates the scale of the problem of alleged political corruption through estimates of the funds allegedly embezzled by some of the most notorious leaders of the last 20 years. To put the figures in context, the right-hand column gives the GDP per capita of each country.

The 10 leaders in the table are not necessarily the 10 most corrupt leaders of the period and the estimates of funds allegedly embezzled are extremely approximate. The table is drawn from respected and widely available sources. In general, very little is known about the amounts allegedly embezzled by many leaders.

Table 1.1

Head of government		Estimates of funds allegedly embezzled	GDP per capita (2001)
Mohamed Suharto	President of Indonesia, 1967–98	US \$ 15 to 35 billion	US \$ 695
Ferdinand Marcos	President of Philippines, 1972–86	US \$ 5 to 10 billion	US \$ 912
Mobutu Sese Seko	President of Zaire, 1965–97	US \$ 5 billion	US \$ 99
Sani Abacha	President of Nigeria, 1993–98	US \$ 2 to 5 billion	US \$ 319
Slobodan Milosevic	President of Serbia/Yugoslavia, 1989–2000	US \$ 1 billion	n/a
Jean-Claude Duvalier	President of Haiti, 1971–86	US \$ 300 to 800 million	US \$ 460
Alberto Fujimori	President of Peru, 1990–2000	US \$ 600 million	US \$ 2,051
Pavlo Lazarenko	Prime Minister of Ukraine, 1996–97	US \$ 114 to 200 million	US \$ 766
Arnoldo Alemán	President of Nicaragua, 1997–2002	US \$ 100 million	US \$ 490
Joseph Estrada	President of Philippines, 1998–2001	US \$ 78 to 80 million	US \$ 912

Sources:

GDP figures: UN *Human Development Report 2003* (New York: Oxford University Press, 2003); IMF Country Report No. 02/269 (2002).

Suharto: *Time Asia*, 24 May 1999; Inter Press, 24 June 2003.

Marcos: CNN, February 1998; *Time Asia*, 24 May 1999; UN Office on Drugs and Crime (UNODC), *Anti-Corruption Toolkit*, version 5, available at www.unodc.org/unodc/en/corruption_toolkit.html

Mobutu: UN General Assembly, 'Global Study on the Transfer of Funds of Illicit Origin, Especially Funds Derived from Acts of Corruption', November 2002; *Time Asia*, 24 May 1999.

Abacha: UNODC, *Anti-Corruption Toolkit*; BBC News (Britain), 4 September 2000; see also 'Repatriation of looted state assets', Chapter 6, page 100.

Milosevic: Associated Press, 2 December 2000.

Duvalier: Robert Heintz, Nancy Heintz and Michael Heintz, *Written in Blood: The Story of the Haitian People 1492–1995* (Lanham: University Press of America, 1996); *Time Asia*, 24 May 1999; UNODC, *Anti-Corruption Toolkit*; *L'Humanité* (France), 11 May 1999.

Fujimori: Office of the Special State Attorney for the Montesinos/Fujimori case, Peru.

Lazarenko: *Financial Times* (Britain), 14 May 2003; *Chicago Tribune* (United States), 9 June 2003.

Alemán: BBC News (Britain), 10 September 2002.

Estrada: CNN, 22 April 2001; Inter Press, 24 June 2003.

We chose these areas for a number of reasons. First, the prominence we give to **political finance** (whether campaign finance or political party finance) reflects the fact that often political corruption starts here, with financing. There is a great deal of concern about the cost of elections in both new and established democracies as well

as about the influence of private money on political outcomes and the lack of public information on the real sources of political funding.

In looking at corrupt forms of political finance, we demystify the topic (see Table 2.1, 'Major types of political finance-related corruption', page 20) and expose the legal and systemic obstacles to cleaning up political finance. Our report presents the pros and cons of bans, limits, disclosure rules and public funding as remedies to corruption in political finance – and provides evidence from a number of countries where these measures are in place.

We then feature one remedy to corrupt political finance – **disclosure** – that is central to the philosophy and approach of Transparency International. Disclosure of the flow of money in politics, whether financing parties or candidates or spent on elections or on public contracting, is critical. Political finance needs to be accounted for and, above all, clean. There is very little justification for anything but maximum transparency about political funds. This emphasis on disclosure tends to be a point of consensus for politicians and activists alike. Yet the reality of disclosure rules, and their enforcement, tells a different story – one in which there are numerous ways to limit disclosure.

Enforcement is the linchpin of a successful political finance regime: even the best laws are valuable only if they are enforced. In nearly every country, enforcement has proved perhaps the most difficult element to realise in a framework designed to stop political corruption. Effective enforcement requires appropriate powers of investigation on the part of the agencies involved, an independent and competent judiciary as well as the necessary political will. We include reports that look at enforcement in practice, via various types of sanctions, providing a sense of what works and why.

In addition to evaluating rules for candidates, parties and governments, we also assess what role the **private sector** plays in political corruption. We feature experts on the arms and oil sectors who evaluate recent revelations of political corruption with an eye to what made corruption possible. We endeavour to analyse current reforms of business practices, particularly those pursued as a result of civil society efforts.

Political corruption is not limited to political finance. We use this special section to consider a form of political corruption that affects the election process the world over: **vote buying**. Our contributors assess why and how vote buying occurs and how it changes not only elections and their outcomes, but also the relationship between elected officials and voters. As a number of other institutions are dedicated to the assessment of practices such as the rigging of ballots, we decided to focus on vote buying, a corrupt political practice that has received less systematic analysis.⁴

To complete this special section, we sought to capture how **justice** is often difficult to pursue. Contributors reflect on the use (and abuse) of immunity and laws on conflict of interest, obstacles to repatriation and the cumbersome process of returning stolen public assets. In all of the above, contributions focus on the legal hurdles faced by prosecutors and populations in many alleged crimes of political corruption. They also detail the way forces of change are emerging at both the international and national levels.

Throughout the section on political corruption, we feature Transparency International's 2003 Integrity Awards winners. Many of these individuals – some of whom paid for their integrity with their lives – demonstrate that it is possible to fight the system,

to stand up to political corruption and to demand an end to the damage it causes to all people.



‘Corruption. Moral decay. Political parties. Opportunism.’

Rac, Panama

Transparency International: shining a spotlight on political corruption

Political corruption can elicit a number of responses. One is voter apathy, accompanied by public disillusionment with democracy and its capacity to limit corruption. Another response, the one we at Transparency International aim to capture in our report, is the ignition of citizen action – and, in some cases, positive government and private sector measures.

How can society address the issue of political corruption? One answer, which builds on an idea presented in the *Global Corruption Report 2001*, is to set standards of probity in political finance.⁵ This volume introduces Transparency International’s own Standards on Political Finance and Favours (see Box 1.2, page 16), which can serve as benchmarks for policy-makers and activists, to be adapted to national (or local) settings. They provide a normative framework. TI’s Standards go further than many of those currently available, as they include civil society’s critical role in monitoring political transparency.⁶

Political leaders, elected by the public and vested with the power to shape public life, owe it to citizens to set better standards regarding their use of money, and their conduct, both in and out of office.

Transparency International will continue to speak out against political corruption – and will remain resolute in its commitment to greater transparency in the political process. TI’s Standards on Political Finance and Favours are one aspect of our global advocacy efforts, which also include the following aims:

- **The ratification and enforcement of the UN Convention against Corruption.**

TI will monitor the ratification and enforcement of the convention, encouraging each signatory to adopt and apply national legislation that complies with the convention. The convention requires ratification by 30 countries before coming into effect.

Box 1.2: Transparency International's Standards on Political Finance and Favours

The TI Standards on Political Finance and Favours are based on the values of integrity, equity, transparency and accountability. They arise out of concern about the influence of money and favours in politics, which undermines democratic processes and the rule of law. They are presented against the background of an international commitment to countering corruption expressed in the UN Convention against Corruption, at this writing due to be adopted in December 2003, and they are anchored in the global recognition of human rights endorsed in the Universal Declaration and related conventions.

1. Curbing influence peddling and conflicts of interest

Donations to political parties, candidates and elected officials should not be a means to gain personal or policy favours or buy access to politicians or civil servants. Parties and candidates must themselves practise transparency and demonstrate commitment to ethical standards in public life. Governments must implement adequate conflict of interest legislation, including laws that regulate the circumstances under which an elected official may hold a position in the private sector or a state-owned company.

2. Transparency through disclosure and publication

Political parties, candidates and politicians should disclose assets, income and expenditure to an independent agency. Such information should be presented in a timely fashion, on an annual basis, but particularly before and after elections. It should list donors and the amount of their donations, including in-kind contributions and loans, and should also list destinations of expenditure. The information should, subject to consideration of demonstrable security risks to donors or recipients, be made publicly available in a timely manner so that the public can take account of it prior to elections.

Furthermore, publicly held companies should be required to list all donations to political parties in any country in their annual reports to shareholders and consideration should be given to requiring shareholder approval for such donations.

3. Effectiveness in the enforcement and supervision of regulatory measures

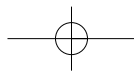
Public oversight bodies must effectively supervise the observance of regulatory laws and measures. To this end, they must be endowed with the necessary resources, skills, independence and powers of investigation. Together with independent courts, they must ensure that offenders be held accountable and that they be duly sanctioned. The funding of political parties with illegal sources should be criminalised.

4. Diversity of income and spending limits

Careful consideration should be given to the benefits of state funding of parties and candidates and to the encouragement of citizens' participation through small donations and membership fees. Consideration should also be given to limiting corporate and foreign support, as well as large individual donations.

To control the demand for political financing, mechanisms such as spending limits and subsidised access to the media should be considered.





5. Fairness and integrity in access to the media

Candidates and parties should have fair access to the media. Standards for achieving balanced media coverage and media integrity must be established, applied and maintained. The media should play an independent and critical role, both in election campaigns and in the broader political process. Instruments such as conflict of interest legislation should be used to prevent political control of public and private media from creating a bias in the coverage of politics.

6. Civil society participation

Civil society should actively participate in promoting adequate legislation in the field of political finance and in the monitoring of political finance and its impact on political representation. The legal framework, both regulatory and institutional, must enable civil society organisations, in conjunction with independent media, to undertake such activities. This framework should also provide access to information, the opportunity for civil society input on pending legislation, and legal remedies, among other measures.

TI is particularly concerned that the convention's provisions on asset recovery be realised. Stolen wealth must be returned to its rightful owners. This aim dovetails with TI's campaign to trace laundered money, launched at Nyanga in March 2001.⁷

In addition to setting standards for its signatories to stop bribery, the UN itself must be vigilant, targeting unfair practices (such as vote buying) within the UN system.

- **The strengthening of the OECD Anti-Bribery Convention.**

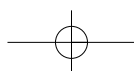
Not only must the Anti-Bribery Convention be better enforced, but it must also be amended to include a ban on bribery of foreign political parties and their officials (see 'Will the OECD Convention stop foreign bribery?', Chapter 7, page 128).

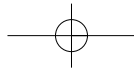
- **The establishment of political corruption on the donor agenda.**

International financial institutions and bilateral donor agencies must consider more carefully political corruption in countries to which they lend or grant money, yet establish sensitive evaluation criteria regarding corruption levels (see 'Governance, corruption and the Millennium Challenge Account', Chapter 7, page 135). Recipients of international aid need incentives to improve their records on transparency and enforcement of political finance rules, conflict of interest legislation and the granting of immunity.

- **The enhancement of legislation at the national level on political funding, disclosure and conflict of interest, and the strengthening of institutions in the area of enforcement.**

TI will promote better legislation as well as its enforcement at both national and international levels, in the hope that stonger and more comprehensive legal regimes against political corruption will have a direct impact on the achievement of justice. Transparency International demands that civil society actors around the world be



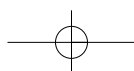


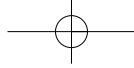
provided the access to information and legal recourse that would enable them to play a constructive role in the monitoring of political finance.

Political corruption is an abuse of the political system, of trust and of the principles that make democratic society work. We hope this volume enlivens the policy debate about political corruption, inspires action and results in positive change. Much remains to be done to stop political corruption. Through the strength of its network of national chapters, Transparency International intends to play an active role in constructing the road ahead.

Notes

1. Robin Hodess edits the *Global Corruption Report*.
2. The difficulty of defining political corruption has occupied scholars for decades, starting perhaps with Arnold Heidenheimer's seminal text, *Political Corruption: Readings in Comparative Analysis* (New York: Holt, Rinehart & Winston, 1970), which offers public office-centred, public interest-centred and market definitions. The definition above is necessary to set a framework for this report, and necessarily reductive, so as to provide a point of departure for the material to follow.
3. Corruption has always existed – but a recent wave of exposure has created a sense that corruption has increased. Paul Heywood (ed.), *Political Corruption* (Oxford: Blackwell, 1997).
4. Several organisations (the OSCE, NDI, IFES, Electoral Reform International Services, or ERIS, and The Carter Center) have established substantial expertise in election monitoring around the globe, often working in conjunction with in-country partners.
5. Keith Ewing, 'Corruption in Party Finance: The Case for Global Standards', *Global Corruption Report 2001* (Berlin: Transparency International, 2001).
6. Existing standards focus more on regulatory control and less on public monitoring. Good examples of standards include the Council of Europe's Committee of Ministers recommendation (2003–04) on common rules against corruption in the funding of political parties and electoral campaigns, adopted on 8 April 2003, and The Carter Center's 'Principles for Political Financing', www.cartercenter.org/documents/1487.pdf
7. See www.transparency.org/pressreleases_archive/2001/2001.03.13.nyanga_declaration.html





2 Political finance

Corruption in political finance takes many forms, from the use of donations for personal enrichment to the abuse of state resources. Marcin Walecki's essay examines corruption in political finance and the way it degrades the political process. It also evaluates the regulations that govern political finance around the globe.

Two contributions explore how corruption in the financing of politics can lead to differential access to the political system: Judith February and Hennie van Vuuren consider attempts to level the political playing field in South Africa and Michael Johnston looks at soft money reform in the United States. The World Economic Forum presents data on the extent of political corruption around the world.

Transparency International provides a table evaluating the year's legislative changes in political party governance, funding and disclosure. Illustrating the breadth of new legislation in South America, Bruno Wilhelm Speck contributes an overview of political finance regulation in the region. Finally, Musikari Kombo, a member of the Global Organization of Parliamentarians against Corruption, or GOPAC, shares his perspective as a politician engaged in the fight against corruption in Kenya.

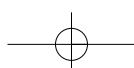
Political money and corruption

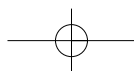
*Marcin Walecki*¹

Money matters for democracy because much of democratic political activity simply could not occur without it. The misuse of money in politics, particularly when it reflects corrupt practices, creates major problems for democracies – not least because it threatens democratic principles of equal justice and fair representation. The public interprets irregularities in party and campaign finance in a broader context, leading to distrust of the political institutions and processes.

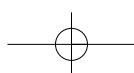
Political finance is influenced by – and influences – relations between parties, politicians, party members and the electorate. Problems of political finance lie at the heart of a public debate on political corruption. Political finance and corruption are separate notions, but when their valences overlap, the zone of political corruption emerges.

Just what constitutes corruption in political finance is often unclear. In general, corrupt political finance involves the improper or unlawful conduct of financial operations (often by a candidate or a party) for the profit of an individual candidate, political party or interest group. Table 2.1 provides a typology of corrupt forms of political finance.



Table 2.1: Major types of political finance-related corruption²

Type	Actor group vulnerable to corruption	Description
Illegal expenditure including vote buying	Voters and election officials	A political party or candidate may directly or indirectly bribe voters and election officials. They may alternatively offer the electorate different kinds of incentives (gifts, food, alcohol or even short-term employment). Besides elections, in some parliaments there is an unofficial market for votes – parliamentarians or councillors might be paid for votes or for joining different caucuses.
Funding from infamous sources	Candidates and political parties	A political party or candidate may accept money from organised crime (such as drug traffickers), terrorist groups or foreign governments. These groups might even form their own political parties.
Selling appointments, honours or access to information	Public servants and candidates	Contributors may gain rewards in the form of job selections, appointments (ambassadorial, ministerial or judicial), decorations or titles of nobility. Money may also be used to buy a seat in parliament or a candidacy.
Abuse of state resources	Public sector	Certain state resources, such as money and infrastructure, that are available to office holders may be extensively used for electioneering. In addition, the political party or candidate may capture state resources through the unauthorised channelling of public funding into companies, organisations or individuals.
Personal enrichment	Candidates and politicians	Candidates may be required to contribute significant amounts to a party's election fund and also to pay for their individual campaign. Politics then becomes a rich man's game and elected representatives accumulate necessary funds to pay for the next elections by taking a percentage on secret commissions and accepting bribes.
Demanding contributions from public servants	Public servants and public sector	A political party or candidate in need of money may impose excises upon office holders, both public and elected. In some regimes a political party may also force public servants to become party members and then extort kickbacks from their salaries for some party expenditures.
Activities disobeying political finance regulations	Political parties	A political party or candidate may accept donations from prohibited sources or spend more than the legal ceiling permits. Violations of disclosure requirements, such as inaccurate accounting or reporting, or lack of transparent funding, are often the cause of political scandals.
Political contributions for favours, contracts or policy change	Private sector	One of the motives for political contributions to a political party or candidate is the possibility of payoffs in the shape of licences and government contracts. Donations may also be given for a governmental policy change or legislation favourable to a specific interest group.
Forcing private sector to pay 'protection money'	Private sector	Extortion, for instance using tax and customs inspections to force entrepreneurs to hand over part of their profits to a political party.
Limiting access to funding for opposition parties	Opposition parties and candidates	Authoritarian regimes with a patrimonial economic system and political repression may seriously constrain financial resources available to opposition parties.



Narrow definitions of political corruption, such as ‘the use of public office for unauthorised private gain’, do not include many forms of finance-related political corruption. For example, a senior position in a political party does not in most countries constitute a ‘public office’ holder. Extra-party actors must also be included in any discussion of corrupt political finance since they may participate in political competition in order to shape public policy agendas, to influence legislation or to sway electoral debates and outcomes.

Moreover, the unfair advantage enjoyed by some parties or candidates in elective democracies is not only a matter of corruption, since it may result from the unequal distribution of wealth across the population. A system that prohibits corrupt practices in the funding of parties and election campaigns does not necessarily promote political equality (see Box 2.1, ‘The challenge of achieving political equality in South Africa’, below).

Box 2.1: The challenge of achieving political equality in South Africa

At its heart, the regulation of party funding is a question of political equality. Perhaps the single moment when all citizens experience equality is when they cast their vote at the ballot box. A hard-won right in South Africa, this simple democratic act has immense value to many and is a tangible manifestation of democracy to most. But lack of control over the private funding of political parties may allow the wealthy to ‘buy’ influence and access through secret donations, drowning out the citizen’s voice and undermining the equal value of each person’s vote. Unregulated private money in politics raises the real prospect that the wealthy will have undue influence on the government’s direction or policy options.

Corrupt payments to political parties to secure a private benefit are found the world over, but they take on glaring dimensions in democracies plagued by huge income disparities, such as the United States, Brazil or South Africa. Racial disparities still exist in South Africa, but analysts are beginning to re-conceptualise what is meant by ‘the two South African nations’. The one can be characterised as an increasingly multiracial class, comprising one-third of the population, which owns almost all the property and is socio-economically dominant, while the ‘other two-thirds’ is drawn from a class that often lives a hand-to-mouth existence despite being a clear majority of the electorate. Despite the government’s many efforts to promote development, South Africa represents a microcosm of globalisation dilemmas – including the challenge of ensuring political equality in a society with deep socio-economic fault lines.

After nearly 10 years of democracy, the secrecy surrounding the private funding of political parties has not been pierced because there remains a glaring lacuna in South African law. There *is* no law regulating private funding to political parties. The private funding of political parties remains one of the last ‘legitimate’ avenues by which the private sector, foreign governments or even criminals can exert indirect influence on public officials.

The Public Funding of Represented Parties Act provides for a certain amount of public money to fund political parties’ activities ‘equitably’ and ‘proportionately’. But in the country’s second democratic election in 1999 parties spent 300–500 million rand (US \$40–67 million) on the campaign, of which just 54 million rand (US \$7 million) stemmed from the public purse.



The funding that fills the gap is raised by private means and is clearly not sourced proportionally between the majority of the electorate – which remains impoverished – and large corporations, foreign governments and wealthy private donors. Indeed, since the political transformation of South Africa in 1994, income inequalities have become further entrenched. The richest 20 per cent of South Africans receive 66.5 per cent of all income, while the poorest 20 per cent receive just 2 per cent.¹

South Africa's parliament was recently provided with an opportune moment to reduce the resulting political inequality: in 2002 the government submitted in parliament an otherwise innovative piece of legislation, the Prevention of Corruption Bill (see the South Africa country report, Chapter 8, page 258). However, the bill has so far failed to include provisions on political party financing, and it remains to be seen whether lawmakers will now grasp the nettle and address the omission.

Using what legislation is available – the Promotion of Access to Information Act (PAIA) of 2000 – the Institute for Democracy in South Africa (Idasa) has requested all political parties represented in the National Assembly to provide information on the identities of all private donors since 1994; the amount of the donations; and the date on which they were given. What happens next will depend on the parties' responses. The case is important not only for the use of PAIA but because it may give the high court (and ultimately the constitutional court) an opportunity to pronounce on whether political parties are public or private bodies. If it decides they are public bodies, a way to regulate private funding may be opened. The timing of the court's decision is crucial since 2004 is an election year.

The challenge is before the legislators and politicians. What is required now is the political will to achieve the equality of all voters in South Africa's democracy.

*Judith February (Idasa) and
Hennie van Vuuren (Institute for Security Studies, South Africa)*

Note

1. Income inequality in South Africa is the eighth highest out of the 125 countries assessed by the UNDP, *Human Development Report 2003* (New York: Oxford University Press, 2003).

Nor is corrupt political financing limited to illegal political finance. Illegal political finance involves the contribution, or use, of money that contravenes existing laws. It is often assumed that a political act is corrupt when it violates the legal standards of behaviour, but the definition is simultaneously too narrow and too broad in scope: some illegal acts are not necessarily corrupt (the foreign funding of democratic opposition, such as the Polish Solidarity Trade Union in the 1980s) and some corrupt acts are not necessarily illegal (campaign contributions from organised crime).

Indeed, the range of definitions of illegal political funding depends on country-specific regulations, while 'irregular' political finance emerges in the gap that exists between a country's legal provisions and the reality of its practices. The irregular or informal political finance system refers to legal contributions from disreputable sources, or the acceptance of money in exchange for favours.

Private gain as political gain

Political finance scandals might initially consist of criminal behaviour by politicians, or they may be more overtly concerned with corruption in political finance. A definitional problem arises from the fact that money obtained corruptly by politicians for private use may in fact be used to fund their campaigns, in which case it is an example of corruption in political finance. Such was the case in France when 37 defendants were accused in 2003 of accepting nearly €400 million (US \$457 million) from the former state oil group Elf Aquitaine for personal enrichment and political kickbacks during the late 1980s and early 1990s. The company's senior executives subsequently admitted that the money was routinely used to finance French political parties and presidential candidates.³

Research from post-communist countries has highlighted the private character of political corruption. In Poland and Ukraine, out of a 5 per cent kickback, about 0.5 per cent goes to party coffers and 4.5 per cent ends up in private accounts.⁴ The latter might still be channelled back into political activities, however, bolstering the account holders' political, rather than material, position.

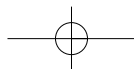
The fragmented and non-institutionalised party system in Central and Eastern Europe encourages big business to form client circles, establish political parties, set up parliamentary factions or become media owners. In Ukraine, for example, informal political actors – financial-industrial groups and oligarchs – have dominated the political spectrum by forming business-oriented parties. Not only have these parties had a clear majority in parliament in recent years, but they also control most of the national media.⁵ Politics in countries like Ukraine is a combination of business projects run by oligarchs enjoying political immunity, and individuals who use public office to gain personal wealth. There is, therefore, no clear boundary between individual criminality and the systemic corruption of political finance.

New democracies, new problems

The most advanced 'consolidated democracies' and 'consolidated autocracies' have low levels of illegal private political finance.⁶ In consolidated democracies, progress in liberalising the economy, strengthening bureaucratic accountability and promoting transparency thwarts corruption in political finance. Consolidated autocracies are often based on strong presidential or one-party systems, with economic power derived from political patronage.

In consolidated autocracies, major economic interests are closely linked to the president and his inner circle; as a result, there is little interest in supporting opposition political parties, which are often weak. The concentration of economic resources in the executive branch and the lack of foreign investment restricts the resources available to opposition parties and gradually wipes them out, since they cannot rely financially on their members or other interest groups. At the same time the vast public resources available to office holders are used to sustain the authoritarian regime.

Especially in new democracies the role of large donors, both business and individual, raises concerns about the operation of representative government. In one survey of the



transition countries of Central and Eastern Europe, the World Bank identified ‘illegal political finance’ as one of six dimensions of the ‘state capture’ phenomenon.⁷ It found that approximately one-fifth of all firms surveyed considered themselves to be significantly or very significantly affected by illegal political donations.⁸

The survey does not give a complete picture of corrupt political finance, since it does not consider other forms of irregular political finance, such as misappropriation of public funds (when a ruling party uses its power to embezzle funds from state-owned companies, for example) or the abuse of state resources (the use of state employees, offices and vehicles for campaign purposes).

Measures to regulate political finance

Unregulated political financing presents specific problems for modern liberal democracies in that it fails to provide a framework in which candidates and political parties can compete on equal terms. Political competition under unregulated political financing, according to one noted expert, is like ‘inviting two people to participate in the race, with one participant turning up with a bicycle and the other with a sports car’.⁹

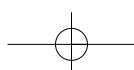
In general, measures concerning political financing are divided into regulations and subsidies. These include: (1) bans on certain types of donations, (2) contribution limits, (3) spending limits for political parties and presidential candidates, (4) public subsidies, (5) indirect public funding and in-kind subsidies (including regulations concerning political broadcasting), (6) comprehensive disclosure and reporting regulations, and (7) severe penalties.

Controls on income and spending

Most democracies restrict the use of at least some sources of private donations, either by setting limits or banning them altogether. Worldwide, half of the countries surveyed ban certain kinds of donations, with bans most prevalent in Central and Eastern Europe and Latin America (see Table 3.1, page 39).

The regulation of expenditure generally involves restrictions on direct vote buying, or limitations on the expenditures of parties or individual candidates. Restrictions on how much parties spend on their activities are based on the assumption that unregulated political finance denies societies a level playing field in the competition for power. But certain political environments require special caution: authoritarian regimes impose strict limits on campaign expenditure that marginalise the opposition and aid the non-democratic regime by allowing it to exploit resources, such as state-controlled television.

Transparent public funding, if awarded based on objective and fair criteria, is one option for combating the abuse of state resources and the illegal funding that fuels corruption in politics. In semi-authoritarian regimes, the absence of public funding starves the opposition of resources, while the existence of such funding – including indirect subsidies like state-regulated airtime – limits the opportunities for oligarchs to capture parties and their policy-making. In all countries, direct public funding relieves parties of the incessant pressure to raise funds. Public funding is very common in Western



Europe, Central and Eastern Europe and Latin America. Yet as scandals worldwide demonstrate, even substantial public funding is not enough to eliminate other forms of political finance-related corruption, such as personal enrichment, illegal expenditure or vote buying.

Box 2.2: Soft money 'reform' in the United States: has anything changed?

The need for campaign finance reform has been a dominant corruption issue in the United States for many years. Opinion polls indicate that a substantial majority think the US campaign finance system gives excessive influence to big contributors. Reduced voter turnout and a decrease in trust are both symptoms of an electoral system in trouble.

After being introduced and debated in every Congress since 1995, the Bipartisan Campaign Reform Act (BCRA), also known as the McCain-Feingold-Cochran Bill, was passed in March 2002 and took effect on 6 November 2002 – the day after the mid-term congressional elections.

Proponents consider the BCRA a significant step toward reducing corruption in politics by putting an end to soft money and restricting issue advertising. These claims, however, are questionable since the legislation has already been subjected to legal challenges and other efforts to circumvent it.

The BCRA bans 'soft money' – *unlimited* contributions channelled through parties ostensibly for get-out-the-vote and 'party-building' activities – as opposed to 'hard money' – money donated to registered campaign committees with stricter limits on amounts and disclosure requirements. Soft money contributions grew rapidly from the late 1980s onwards.¹ While disclosed at the federal level, the soft money given to state party committees drew much less scrutiny.

A connected concern was the use of funds for 'issue ads' – advertisements that escaped regulation because they advocated points of view on issues, without mentioning candidate names. To the viewer, however, issue ads were little better than thinly disguised attack ads.

The BCRA's four main provisions aimed to address these problems.² They include a total ban on soft money in federal campaigns, and the requirement that all 'electioneering communication' (in effect, most broadcast advertising) within 60 days of a general election and 30 days of a primary should be paid out of hard money contributions. In effect, the law bans issue ads during those critical periods.

Limits on individual contributions to campaigns were raised from US \$1,000 to US \$2,000 per federal election campaign (one candidate running in one primary or general election is treated as a campaign). This increase was a welcome change since inflation had reduced the value of the previous maximum contribution of US \$1,000, enacted in 1976, to US \$316 in constant dollars, forcing candidates to fund ever more expensive campaigns with smaller and smaller contributions. Limits on individuals' total contributions across a two-year election cycle were also raised, and both the total and the per-campaign limits were indexed for inflation. Political action committee contribution limits, by contrast, were neither raised nor indexed.

Finally, a 'millionaire opponent' provision applies to House and Senate candidates whose opponents spend large amounts of their own personal funds – spending that remains unlimited. Ceilings on individual contributions to those facing such opponents are raised and limits on party spending on behalf of those candidates are removed as opponents' expenditures from personal funds exceed various thresholds.



The BCRA was hailed as a first and important step towards cleaner politics. Others are more sceptical, waiting to see whether the soft money ban will be effective at the federal level, or simply provide new incentives to route it through state and local committees. Private foundations and think tanks closely allied to – but legally separate from – the major parties and campaign committees have already emerged to raise and spend campaign funds without any form of disclosure requirements.

Typical of the complexity of any reform is the concern that any all-hard-money regime, if realised, will be slanted in favour of incumbents, who find it far easier to raise hard money (via modest contributions directly to a campaign fund) than challengers. The restriction on issue ads – already the subject of several first amendment challenges over the implications for free speech – is also viewed as aiding incumbents, since issue ads are most often targeted against them. The millionaire opponent provision, which aims to deal with an obvious unfairness, could also be interpreted as working in favour of the incumbent since challengers are more likely to spend large amounts from personal resources than incumbents, who – again – find hard money easy to acquire.

The re-election of incumbents is not necessarily a bad thing. However, from 1980 to 2000, the share of incumbents whose re-election bids were successful ranged between 90.5 and 98.8 per cent, while the proportion winning with at least 60 per cent of the vote ranged between 65.2 and 88.0 per cent.³ Re-election rates are only somewhat lower in the Senate.⁴ Nearly a quarter of House incumbents running in 2000 faced only token opposition, or none at all.⁵ There are many reasons for such high re-election rates, but if the BCRA actually proves to make life more difficult for challengers, it will further tarnish the quality of political life and make it more difficult to fight corruption at the polls.

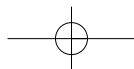
The future of several BCRA provisions will remain in doubt until they are resolved in court. A contradictory bundle of rulings by a special three-judge federal court in May 2003 only set the stage for the real legal battle before the US Supreme Court, which assembled for a rare one-day special session in September 2003. Ten groups of plaintiffs squared off against the bill's powerful backers.

Opponents argued that the soft money and issue ad provisions of the BCRA are wholly in violation of the Constitution. Proponents held that a compelling public interest in limiting corruption justified the soft money restrictions, and that the issue advertising ban would further reduce the role of money in election campaigns. The court's eventual decision is difficult to predict, although a group of Supreme Court justices regards political money as a 'form of speech', to be protected by the Constitution like any other. No doubt they will find it difficult to disentangle the issues raised by the BCRA, raising the possibility that the 2004 federal election campaigns will get underway in an unsettled legal environment.

Michael Johnston (Colgate University, United States)

Notes

1. In the 1996 election cycle, national party committees raised and spent more than US \$250 million in soft money exempt from federal contribution limits. Committee for Economic Development (CED), *Investing in the People's Business* (New York: CED, 1999).
2. An excellent summary is available from the Campaign Finance Institute at www.cfinst.org/eguide/update/bcra.html
3. Norman J. Ornstein, Thomas E. Mann and Michael J. Malbin, *Vital Statistics on Congress 2001–2002* (Washington, D.C.: American Enterprise Institute, 2002). Tables and commentary available online at www.cfinst.org/studies/vital/3-3.htm
4. *Ibid.*
5. *Ibid.*



Disclosure

As an anti-corruption measure, disclosure requires systematic reporting, auditing and public access to records. The purpose of disclosing political finances is to enhance incentives for honesty, by making party and politicians' accounts public knowledge and subject to free debate (see 'The role of disclosure in combating corruption in political finance', Chapter 3, page 38).

Civil society organisations are increasingly active in promoting better disclosure and transparency, lobbying for reform in party and campaign finance. Pressure from NGOs and the mass media is vital to the creation of an atmosphere that promotes anti-corruption initiatives, and the two groups can serve as reliable watchdogs of party and campaign finance.

Enforcement

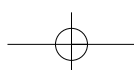
A critical weakness undermining the implementation of effective political finance regulation is the lack of independent enforcement mechanisms. Effective enforcement requires the law to impose penalties to serve as a deterrent to violators, but proportionate sanctions should not always be limited to criminal law. Recent evidence from Central Europe indicates that more effective enforcement results from administrative sanctions and the possibility of forgoing public funding through cuts in the reimbursement of election expenses or direct state subsidies, rather than from severe criminal penalties. In fact, some argue that when penalties are too severe, they discourage enforcement.¹⁰ What is more alarming, however, is when criminal sanctions against illegal party funding are used selectively.

Effective enforcement of political funding requires parties to introduce internal control mechanisms in the form of financial agents and managers, codes of conduct, accounting procedures, financial checks and balances and ethics committees to oversee management and fundraising activities. Parties must be required to maintain professional bookkeeping and conduct most of their financial operations through bank accounts. An independent and professional audit should review the campaign and the party's financial reports (see 'Enforcement: how regulation of political party finance is managed in practice', Chapter 3, page 53).

Finding the right formula

The legal framework of political finance should be comprehensive (including provisions for sources of funding, allowed expenses, disclosure, reporting, enforcement and sanctions), should be stated in clear and unambiguous language and should be objective and based on political consensus.

State enterprises and other public bodies should remain politically neutral, however. Legal entities providing goods or services for any public administration and publicly owned companies should be prohibited from making donations to political parties. Extra measures to prevent such prohibitions from being circumvented should be adopted.



Box 2.3: A selection of the year's legislation on political party governance, funding and disclosure

Positive developments:

Brazil: Legislation approved in February 2002 requires candidates to present their campaign donation and expenditure statements electronically. Previously, such statements were presented only in paper format, making it virtually impossible to organise and aggregate the data or make it available to a broader public.

Canada: Amendments to the Canada Elections Act approved in June 2003 introduced strict limits on political donations. To compensate for the loss of private financing, parties will receive state financing in proportion to the number of votes received.

Costa Rica: The constitutional court ruled in May 2003 that bank secrecy privileges do not apply to political party assets. All accounts held by political parties at state or private banks or any non-bank entity must now be made available to the general public.

USA: The Bipartisan Campaign Reform Act (BCRA), otherwise known as the McCain-Feingold-Cochran Bill, was passed in March 2002. Proponents consider it a major step towards reducing corruption in US politics by putting an end to 'soft money' and restricting candidate-specific 'issue' advertising. However, the legislation has shortcomings and has already been subject to legal challenges and efforts to circumvent it.

Mixed developments:

Kenya: The Public Officer Ethics Act of May 2003 requires all public officials, including members of parliament, to declare their wealth. It does not provide public access to the information, however, nor does it provide a framework for inspecting declarations.

Uganda: On the positive side, the Leadership Code 2002 requires elected politicians and senior public officials to declare income and assets or face a penalty, and provides for their declarations to be made public. Nevertheless, the Political Parties and Organisations Act 2002 bars political parties from campaigning for office, limits their freedom to hold public meetings and stops them from operating outside the capital. The law's constitutionality is still being challenged.

Negative developments:

Azerbaijan: Adopted by referendum in August 2002, a constitutional amendment allows ordinary courts to close down political parties; formerly, only higher level courts could ban parties. A second amendment increases the term for official confirmation of election results from seven to 14 post-election days, which gives incumbents a better opportunity to falsify results.

Kazakhstan: The July 2002 law on political parties controls donations, but crucially also increases the number of members required to set up a party from 3,000 to 50,000 people. As a result the number of parties in existence was reduced from 19 to seven, of which only one is an opposition party.

Zambia: In March 2003, the president refused to give his assent to the parliamentary Political Parties Fund Bill, which would have funded political parties in proportion to their number of members of parliament.



"I've moved my campaign headquarters to Nevis,
so I can keep my fundraising secret from the I.R.S."

Harley Schwadron, United States, www.CartoonStock.com

One formula for greater public control of money in politics requires a comprehensive system of political financing based on three main pillars: (1) full disclosure, (2) an independent enforcement agency and (3) reasonable public funding.

Disclosure encourages transparency in fundraising and spending. Effective enforcement requires an independent agency endowed with the necessary powers to supervise, verify, investigate and, if required, institute legal proceedings. Assuming that private funding will remain a constant, the regular, adequate funding of parties by the state provides a guarantee of a diversification of parties' financial resources and reduces the possibilities of state capture.

Notes

1. Marcin Walecki is the adviser for political finance at the International Foundation for Election Systems, or IFES.
2. This typology borrows from Michael Pinto-Duschinsky, 'Financing Politics: A Global View', *Journal of Democracy*, vol. 13, no. 4, October 2002.
3. BBC News (Britain), 18 June 2001; *Financial Times* (Britain), 15 April 2003.

4. Donatella della Porta and Alberto Vannucci, *Corrupt Exchanges: Actors, Resources, and Mechanisms of Political Corruption* (New York: Aldine de Gruyter, 1999).
5. Author's interviews with senior politicians, Warsaw and Kiev, 2001.
6. Based on Freedom House categories, which classify countries as 'consolidated democracies', 'transitional governments' and 'consolidated autocracies'. See www.freedomhouse.org/research/nitransit/2001/index.htm
7. State capture is defined by Joel S. Hellman, Geraint Jones and Daniel Kaufmann as 'shaping the formation of the basic rules of the game (i.e. laws, rules, decrees and regulations) through illicit and non-transparent private payments to public officials'. See www.econ.worldbank.org/docs/1199.pdf
8. The data comes from the 1999 Business Environment and Enterprise Performance Survey (BEEPS). See www.worldbank.org
9. Keith D. Ewing, *Money, Politics and Law: A Study of Electoral Campaign Finance Reform in Canada* (Oxford: Oxford University Press, 1992).
10. Author's interview with representatives of the Polish ministry of justice and the national electoral commission, Warsaw, June 2002.

Box 2.4: Political corruption: a global comparison

New data gathered by the World Economic Forum (WEF) draws attention to the extent of political corruption around the world. In October 2003, the WEF published the results of its 2003 Executive Opinion Survey in the *Global Competitiveness Report*. The survey, which aims to obtain information about the economic environment in which firms operate, asked business leaders in 102 countries about how their own countries compared to global standards across a range of economic, technological and institutional dimensions. Worldwide 7,741 firms were surveyed.

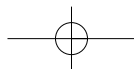
Of the more than 100 questions in the 2003 survey, three were intended to assess the frequency of different forms of political corruption (see Table 2.2).

The first question asked businesses to estimate how commonly firms in their industry make undocumented extra payments or **bribes to influence government policy-making**. Business leaders in only 27 per cent of the countries state that such payments never or rarely occur in their industry, while business leaders in 17 per cent say such payments are common or fairly common.

The second question asked business leaders to assess how common **illegal donations to political parties** are in their countries. Responses to this question are even more negative; in only 18 per cent of the countries do business leaders claim that illegal donations are rare or fairly rare, and these countries include some – such as China and Vietnam – where the rating may reflect not so much the extent of corruption as the nature of political parties. Business leaders in 41 per cent of the countries regard illegal donations as common or fairly common.

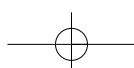
The third question asked business leaders to estimate the extent of the **direct influence of legal political donations on policy outcomes** in their country. In 89 per cent of the countries, businesses regard the impact as either moderate or high. The question highlights how businesses may remain within the law while nevertheless engaging in what may be regarded as corrupt practices. Business leaders in the United States make a striking claim. While irregular payments (score 5.1 on a scale from 1 to 7, where 7 indicates low political corruption) and illegal donations (score 4.8) are perceived to be less common in the

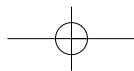


Table 2.2^a

	1. Irregular payments in government policy-making	2. Prevalence of illegal political donations	3. Policy consequences of legal political donations
Low political corruption (score ≥ 5)	27% of the 102 countries (Australia, Austria, Belgium, Botswana, Canada, Denmark, Finland, France, Germany, Hong Kong, Iceland, Israel, Jordan, Luxembourg, Malaysia, Malta, Netherlands, New Zealand, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, Taiwan, Tunisia, United Kingdom, United States)	18% of the countries (Australia, Austria, China, Denmark, Finland, Hong Kong, Iceland, Jordan, Luxembourg, Netherlands, New Zealand, Norway, Singapore, Sweden, Switzerland, Tunisia, United Kingdom, Vietnam)	11% of the countries (Denmark, Finland, Hong Kong, Iceland, Jordan, Luxembourg, Netherlands, New Zealand, Singapore, Sweden, Tunisia)
Medium political corruption (score between 3 and 5)	56% of the countries (Algeria, Brazil, Bulgaria, Cameroon, Chile, China, Colombia, Costa Rica, Croatia, Czech Republic, Egypt, El Salvador, Estonia, Ethiopia, Gambia, Ghana, Greece, Hungary, India, Indonesia, Ireland, Italy, Jamaica, Japan, Kenya, Korea, Latvia, Lithuania, Macedonia, Malawi, Mauritius, Mexico, Morocco, Mozambique, Namibia, Nicaragua, Pakistan, Peru, Poland, Russian Federation, Senegal, Serbia, Slovak Republic, Slovenia, South Africa, Sri Lanka, Tanzania, Thailand, Trinidad and Tobago, Turkey, Uganda, Ukraine, Uruguay, Venezuela, Vietnam, Zambia, Zimbabwe)	41% of the countries (Algeria, Belgium, Botswana, Canada, Egypt, El Salvador, Estonia, Ethiopia, France, Gambia, Germany, Greece, Hungary, Indonesia, Ireland, Israel, Italy, Japan, Korea, Latvia, Lithuania, Malawi, Malaysia, Mali, Malta, Morocco, Mozambique, Namibia, Pakistan, Poland, Portugal, Senegal, Serbia, Slovenia, South Africa, Spain, Taiwan, Tanzania, Thailand, Uganda, United States, Uruguay)	69% of the countries (Algeria, Angola, Australia, Austria, Bangladesh, Belgium, Botswana, Brazil, Cameroon, Canada, Chad, Chile, China, Costa Rica, Croatia, Czech Republic, Dominican Republic, Egypt, El Salvador, Estonia, Ethiopia, France, Gambia, Germany, Ghana, Greece, Haiti, Hungary, India, Indonesia, Ireland, Israel, Italy, Jamaica, Japan, Kenya, Korea, Latvia, Lithuania, Macedonia, Malawi, Malaysia, Mali, Malta, Mauritius, Mexico, Morocco, Mozambique, Namibia, Nigeria, Norway, Pakistan, Poland, Portugal, Senegal, Slovenia, South Africa, Spain, Sri Lanka, Switzerland, Taiwan, Tanzania, Thailand, Turkey, Uganda, United Kingdom, Uruguay, Vietnam, Zambia, Zimbabwe)
High political corruption (score ≤ 3)	17% of the countries (Angola, Argentina, Bangladesh, Bolivia, Chad, Dominican Republic, Ecuador, Guatemala, Haiti, Honduras, Madagascar, Mali, Nigeria, Panama, Paraguay, Philippines, Romania)	41% of the countries (Angola, Argentina, Bangladesh, Bolivia, Brazil, Bulgaria, Cameroon, Chad, Chile, Colombia, Costa Rica, Croatia, Czech Republic, Dominican Republic, Ecuador, Ghana, Guatemala, Haiti, Honduras, India, Jamaica, Kenya, Macedonia, Madagascar, Mauritius, Mexico, Nicaragua, Nigeria, Panama, Paraguay, Peru, Philippines, Romania, Russian Federation, Slovak Republic, Sri Lanka, Trinidad and Tobago, Turkey, Ukraine, Venezuela, Zambia, Zimbabwe)	21% of the countries (Argentina, Bolivia, Bulgaria, Colombia, Ecuador, Guatemala, Honduras, Madagascar, Nicaragua, Panama, Paraguay, Peru, Philippines, Romania, Russian Federation, Serbia, Slovak Republic, Trinidad and Tobago, Ukraine, United States, Venezuela)
Average (median) score	4.1	3.25	3.8

^a In each case, respondents were asked to indicate the extent or impact of a given corrupt practice on a scale from 1 to 7, where 1 indicates the practice is common or very influential, and 7 indicates the practice is rare or not influential. The table places countries in three groups for each question: countries with a score of 5 or better ('low political corruption'), between 3 and 5 ('medium political corruption') and 3 or worse ('high political corruption').





United States than the average of the 102 countries, legal donations are perceived to have a noticeably greater impact on policy outcomes (score 3.0) than average.

While each question addresses a specific type of practice, taken together the questions may allow a comparison of the extent of political corruption across the world. Eleven countries are consistently in the 'low political corruption' category, and three have an average score for the three questions of 6.0 or above: Denmark, Finland and Singapore. In contrast, the 'high political corruption' category consistently includes 10 countries, of which three are in Central America (Guatemala, Honduras and Panama), four in South America (Argentina, Bolivia, Ecuador and Paraguay) and three elsewhere (Madagascar, Philippines and Romania).

Scores cut across the divide between the developed and developing world. Two developing countries have an average score greater than 5.0 for the three questions: Jordan and Tunisia. On the other hand, among those countries with an average score less than 4.0, three are members of the European Union: Greece, Ireland and Italy.

World Economic Forum (www.weforum.org/gcr)

Campaign finance reform: is Latin America on the road to transparency?

*Bruno Wilhelm Speck*¹

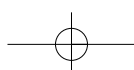
Most Latin American countries have introduced some legislation on party or electoral finance in the last decade (for an overview see Table 2.3, page 35).² While some started with higher standards, most face the task of balancing integrity and equity with the legitimate demand for resources to finance political competition.

Severe shortfalls in public purses across the region, with their direct impact on people's welfare, have made Latin Americans unwilling to grant more resources for political competition, regardless of evidence demonstrating that some public funding tends to clean up politics. Although state resources already play a significant role in some countries, they coexist with only moderate limits on private funding sources.

Bans and limits

Despite a wave of reforms of party and electoral legislation since 1990, bans and limits were adopted only recently in several Latin American countries. Half of the countries have still not set any limit on the amount of private financing for electoral campaigns. In those countries where funding limits have been established, doubts remain about the respective control bodies' ability to implement them.

Most countries have, however, totally prohibited foreign funds, except Colombia, Peru and Uruguay, where laws still allow for contributions from any source. In Paraguay, legislation to ban such funding explicitly covers financing by multinational companies and the activities of political parties' international foundations.



Several countries prohibit funding from companies doing business with government, but the very definition of what this means varies across the region. In Argentina and Ecuador the law excludes suppliers of public goods and services from making donations, while Brazil and Paraguay allow donations from these sources, but exclude companies that depend on public licences (such as broadcasting companies). In the past, legislation in some countries prohibited donations from any legal entity on the grounds that democracy serves citizens, not companies. In Brazil, a ban on business donations was abandoned in 1993 after the investigations that resulted in the impeachment of President Fernando Collor. Reformers recognised that campaign funding by private companies was an undeniable reality and concluded that the law must be adapted to be applicable.

Current legislation in South America also bans financing by certain organised social groups, such as churches, unions, business associations and professional associations. Bolivia's law on political parties does not allow contributions from any non-governmental organisation or religious group. Similar prohibitions are in place in Argentina, Brazil and Paraguay. Bolivia also specifically bans money from illicit activities or criminal sources.

Argentina has the most complete model for limitations, with restrictions on the size of individual donations and the total amount of private contributions. These are defined in relation to the total volume of funds raised by the candidate or party. While Argentina stipulates that individual donors can contribute up to 1 per cent of the total amount raised by a party, Bolivia and Ecuador have 10 per cent limits – illustrating the difficulty of defining a line that distinguishes desirable donations from problematic ones. Brazil's particular solution was to set donation caps for legal entities and individuals, based on corporate or personal wealth, respectively. The caps, apparently, were imposed to protect business owners from candidates, not candidates from donors.

Similar heterogeneity is found in the amounts defined for caps on individual donations. While some countries set low absolute amounts, others set them at a considerable volume. In Paraguay the absolute limit is six times the minimum monthly salary; in Costa Rica it is 45 times the minimum monthly salary.

Argentina, Colombia and Ecuador have recently developed rules to limit expenditures.

Public subsidies

Public financing has a long tradition in Latin America. Candidates or parties in most countries receive some direct or indirect public support. But subsidies vary widely in form and importance. For a long time, state support was limited to free public services, tax exemption for party activities and other benefits with only minor economic impact. This symbolic support exists in nearly every country. Cash contributions from the state to parties were introduced in Costa Rica as early as 1956, but significant cash subsidies only came about elsewhere after re-democratisation at the end of the 1970s (Ecuador 1978, Argentina 1985, Colombia 1986, Brazil 1995). Public contributions range tremendously from a few cents to several dollars per voter. Venezuela is the only Latin American country to have revoked public financing of parties. President Hugo Chávez withdrew funding in 1997 to cut down the privileges of what he considered a corrupt political class.

Brazilian parties are granted free airtime on public and private stations but are forbidden from buying additional time. Other countries have introduced less comprehensive laws on media access: limiting the free time on radio and television to the electoral campaign period (Paraguay) or providing free access to parties and candidates only for radio (Argentina) or exclusively for state-owned media (Bolivia). Complementing this effort to provide free media access for all candidates, Brazil and Chile have also developed laws that limit paid advertising time in private media (see Box 3.2, 'Media discounts for politicians: examples from Latin America', page 49).

Transparency and control

The reality of financial reporting differs across countries. In Peru and Uruguay, parties are not required to report in any form on their income. In other countries, parties and candidates are required merely to keep accounting records for a certain period but they are not submitted to the electoral courts or any other regulatory body (see 'The role of disclosure in combating corruption in political finance', Chapter 3, page 38).

And there are numerous ways in which parties and candidates can avoid identifying their contributors and the amounts donated. Sources can be camouflaged through mass collections, as in Argentina, or by not revealing donors' names for a certain period of time. Legislation in Argentina – one of the most permissive in the past – is now exemplary, requiring an interim report prior to voting taking place, as well as full accounts after the elections. It is the only country in South America to require some form of pre-electoral accounts reporting.

Peru is an example of continuing negligence. The electoral court's attempt to introduce more reporting requirements in 2002 was rejected by legislators, who responded by drafting a law that actually withdrew any obligation for parties and candidates to report on their fundraising activities.

When accounts information is submitted to electoral courts, it is not easily available to the general public. Brazil is the only country in the region to post such information on the Internet. Elsewhere, researchers must pore over official journals or make an individual request to the electoral courts. In many cases, broader citizen access is not provided for in legislation; in others, existing laws on access to information are simply ignored. It remains problematic that electoral courts and other oversight bodies have a monopoly on campaign information as well as regulatory responsibility.

Notes

1. Bruno Wilhelm Speck teaches political science at the State University of Campinas, Brazil, and is director of research at Transparência Brasil.
2. This review of political finance regulation in Latin America is based on research coordinated by the author for Transparency International – Latin America and the Caribbean. Reports prepared by national chapters of TI have been complemented by additional research. The core study is based on nine countries in South America (Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Paraguay, Peru and Venezuela). Additional examples are drawn from Costa Rica, Panama and Uruguay. For more on this research project, see www.transparency.org/tilac/trabajo_en_red/financiamiento/diagnostico-comperativo.html

Table 2.3: Recent reforms regarding transparency of party and candidate accounts in South America

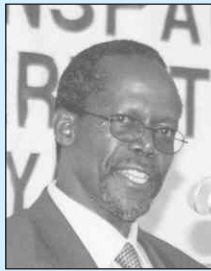
	Reporting on accounts	Identification of donations	Access
Argentina	Since 1985, account records within 60 days after the fiscal year and after campaigns. In addition, in campaigns, complete information 10 days prior to and 60 days after the elections.	Legislation from 1985 still provides for the possibility of mass collections and the non-disclosure of donors. Since 2002, the identification of donations has been mandatory.	Since 1985, publication of accounting records of parties and campaigns in official gazette. Since 2002, posting on the Internet has been required. The law requires access by any citizen to the information.
Bolivia	Since 1999, parties have been required to report on their accounts annually regarding the source and purpose of funds.	Individual identification of donations.	Information is public.
Brazil	Since 1995, balance of party accounts within 120 days after the fiscal year. Since 1993, reporting on accounts within 30 days after election.	Source and amount of donations must be identified individually.	Information on parties is published annually in official journals. Since 2002, access to information on campaign finance on the Internet.
Chile	Since July 2003, parties are required to report monthly to the electoral authority on large donations received, and must report on accounts 30 days after elections.	Since July 2003, donations above US \$500 must be identified. Smaller donations need only be identified if they exceed 20 per cent of total donations.	Since July 2003, information on campaign finance must be made available to the public on request.
Colombia	Since 1994, parties must report on accounts annually, and separately on elections.	Since 1994, donations must be identified individually.	Information is published.
Ecuador	For parties, since 1978 legislation has required accounting records, but oversight refers only to public funds. For elections, since 2000, reporting on accounts within 90 days.	Since 2002, complete information on individual donations.	Information is not accessible in practice, although the law requires it to be available to the public.
Paraguay	Since 1990, complete report on both party and election accounts.	Since 1996, inclusion of source of donations.	No information published.
Peru	Parties do not report on accounts. Regarding elections, candidates must provide estimate 60 days prior to election, and report on accounts 60 days after election.	Attempt by electoral courts to introduce individual identification of donations was rejected by the legislature in 2002.	No information published.
Venezuela	Since 1964, parties must keep accounting records with revenue and expenses.	No individual identification of donations.	No information published.

Box 2.5: Parliamentarians join the fight against corruption

The Global Organization of Parliamentarians against Corruption (GOPAC) is an international network of parliamentarians working to build integrity and promote effective governance. GOPAC is organised into regional networks and national chapters. Its regional network for Africa – the African Parliamentarians Network against Corruption (APNAC) – was formed in 1999 in Kampala, Uganda.

The fight against corruption has to resound in the personal convictions of elected leaders. My personal conviction and that of other Kenyan politicians led to the establishment in 2001 of the Kenyan chapter of APNAC. This is an association of members of parliament who are committed to fighting corruption from the floor of the House and to extending the fight to all spheres of life in which they are engaged.

Of the original 21 members, 12 were re-elected in the December 2002 general elections, and the APNAC-Kenya Chapter intends to increase its membership. Of those who were re-elected, eight are now in the cabinet, following the change of government. As I am now a government minister, I remain keenly aware that the National Rainbow Coalition government was elected on an anti-corruption platform. President Kibaki himself is on record as saying that his government intends to fight corruption 'from the top'. I cannot agree more.



Prior to the recent election, I served as chairman of Kenya's first parliamentary select committee on corruption. The committee did eventually achieve its objectives, in spite of difficulties along the way. It prepared a 'list of shame' that identified specific instances of official corruption and the individuals who were culpable, but the House voted to delete the names of individuals from the select committee's report. The committee's work also helped re-establish the Kenya Anti-Corruption Authority, headed first by a politician-cum-businessman and, thereafter, by a respected high court judge. As happens in many parts of the world, however, the Anti-Corruption Authority was frustrated by political intrigues aimed at shielding corrupt officials.

Nevertheless, we did not relent. The original bill against corruption, which was drafted by the select committee, took many forms before it was eventually enacted in May 2003 as the Anti-Corruption and Economic Crimes Act, alongside the Public Officer Ethics Act. The momentum to enact these two pieces of legislation was sustained by great personal commitment from members of the APNAC-Kenya Chapter.

We now have a golden opportunity in Kenya to pull out corruption by the roots. It is a challenge that we have accepted. It is a fight we have every intention of winning.

*Musikari Kumbo
(minister for regional development, and former chairman of the parliamentary select
committee on corruption, Kenya)*

Box 2.6: Anna Hazare: TI Integrity Awards winner 2003

Anna Hazare (as Kisan Babu Rao is widely known) is a renowned anti-corruption campaigner in the Indian state of Maharashtra. He has been campaigning for more than 20 years to end corruption in local government and the forestry industry in his home state.

As a result of Hazare's efforts, two ministers in the ruling party in Maharashtra resigned over corruption and the government took legal action against corrupt officials in the forestry department. Hazare and a team of lawyers now handle corruption cases brought to their attention by citizens and have submitted more than 700 to the government.



Hazare has suffered personally in his fight against corruption. He was sentenced to three months in prison in 1998 for defamation in a corruption case against a former state minister. He was released after more than 125,000 people travelled to his village in protest.

Hazare threatened to 'fast unto death' from 9 August 2003 unless appropriate action was taken to investigate corrupt politicians and officials, including four ministers. Nine days into his hunger strike, the government finally conceded most of his demands.

3 Disclosure and enforcement

Requirements to disclose the sources of party funding exist on paper in many countries, but there is much work to be done to ensure that disclosure is practised. Gene Ward provides an overview of disclosure, examining what it encompasses and where and to what extent it is effectively practised. A cautionary note is sounded by Marcin Walecki, who looks at how disclosure may be abused if the authority charged with monitoring the process is not independent. Kevin Casas-Zamora's contribution on media subsidies in Latin America illustrates the complexity of the disclosure task.

Civil society groups have played an important role in achieving increased disclosure. Transparency International provides three examples of NGO efforts that demonstrate that disclosure is necessary not only for sources of party funding, but also for candidates' assets and criminal records.

Besides appropriate disclosure rules, effective enforcement is an essential element in any successful political finance regime. Yves-Marie Doublet examines how regulation of political finance is managed in a number of countries. Alonso Lujambio relates the experience of the leading enforcement agency in Mexico.

The role of disclosure in combating corruption in political finance

*Gene Ward*¹

More is known about how to build a democracy than how to finance one. Escalating costs and corruption in democracies should alert all nations to the need for a better understanding of the role money plays in political processes. Secret money and corruption hurt the economy and polity of a nation, distorting the behaviour of politicians, stunting development and weakening citizen confidence in democracy. The perception – and, perhaps, the reality – is that many elected officials make decisions prompted more by the need to repay their contributors than to represent their constituents, while lawmakers bend or break the rules to stay in power and protect their wealthy sponsors. If this is indeed the case, what has or can be done about it?

Disclosure is one of five different types of effort to control the flows of money in politics, as seen in Table 3.1. Most countries have some form of public financing of political parties, yet half still rely on private funds from corporations, trade unions or foreigners – three sources considered very influential in determining the outcome of an election and with great potential for corruption. With regard to limits, restrictions on spending (41 per cent) are more popular than restrictions on contributions (28 per cent), though the majority of countries practise neither. Disclosure, or what this article

terms ‘full disclosure’ – where the public is informed of ‘who gave how much to whom for what purpose and when’ – appears to be the least practised of all (13 per cent).²

Table 3.1: Prevalent approaches to controlling money in politics

Type of approach	Percentage of countries utilising this approach to control money in politics (104 countries surveyed)
Public financing	79
Bans and prohibitions ^a	50
Spending limits	41
Contribution limits	28
Full disclosure	13

^a Primarily on corporations, trade unions and foreign donors.

Sources: These numbers are estimates by Michael Pinto-Duschinsky in ‘Financing Politics: A Global View’, *Journal of Democracy*, vol. 13, no. 4, October 2002, except for the author’s data on ‘full disclosure’, excerpted from *Money in Politics Handbook: A Guide to Increasing Transparency in Emerging Democracies* (Washington, D.C.: USAID, 2003).

Why disclosure is important

Disclosure is to politics what financial statements are to business. The knowledge of quantities in business and politics must be reasonably exact before they can be controlled, curtailed or reformed. In political finance, unfortunately, estimates of campaign costs are more frequently used than accurate numbers, especially in developing countries, where much of what is discussed is highly speculative, anecdotal or otherwise lacking in empiricism.

Disclosure fulfils two very important functions: accounting and accountability, which serve as both preventive measures and monitoring tools in combating political corruption. The accounting function allows for the construction of itemised reports of funds received and spent by political parties and candidates. The accountability function is the presentation of these reports to the public so that voters can make more informed choices about their parties and candidates. There are four major benefits of the disclosure process:

The ability to ‘follow the money’. Disclosure is the cornerstone of *all* campaign and political party regulations. Without it there is no way to keep track of – and thereby enforce – limits, bans or prohibitions. The ability to ‘follow the money’, or construct an ‘audit trail’, is the first defence against system irregularities and can have an impact on democracy and governance.

Disclosure as a preventive measure. Disclosure serves to monitor and reveal information that can help close the revolving doors between business and politics, and prevent conflicts of interest. It provides watchdog groups and the media with informed analysis of political finance and creates more educated voters. Through ‘name and shame’ exercises, it also serves to warn elected and appointed officials that they must act in the public interest, not for private gain.



'... And you have 3 mansions, 2 planes and \$12 million?'

'... Not yet, but when I leave office, I will'

Fernando Santana, United States

Disclosure is the less polemical measure. This does not necessarily make it more effective as a control mechanism than limits, bans or prohibitions on money in politics, but it is an easier reform for which to win legislative support. Evidence for this is suggested by the number of countries that have passed asset disclosure laws as an indirect method of combating misuse of money in politics. Asset disclosure begins at the 'ethical' or personal level (opening up to scrutiny what an elected official owns and owes), but it can be extended to party and institutional levels. The existence of asset disclosure laws provides a useful indication of a country's readiness for other forms of political finance disclosure.

Disclosure builds confidence in the democratic process. In a democracy, the underlying principle behind disclosure is that the more transparent and open a nation's public and political finances, the more its citizens will trust the government. Hidden or secret methods of funding the electoral process breed scepticism and cynicism about democratic politics.

Two schools of thought with very different readings of the importance of disclosure are worth mentioning. One sees a moral equivalence between the 'secrecy of the ballot' and the 'secrecy of a donation', a position espoused in Sweden and also practised in Finland and Switzerland, where there are no disclosure requirements. The other school is concerned about the harassment visited upon political donors when discovered to

have backed the 'wrong' party or candidate, as has happened recently in Ukraine and Egypt (see Box 3.1, 'Ukraine: the authoritarian abuse of disclosure', below). As democracies mature, however, such incidences decrease and transparency more easily takes root. Getting transparency codified into law is a critical first step.

Box 3.1: Ukraine: the authoritarian abuse of disclosure

In line with most post-communist countries, Ukraine has high disclosure requirements, including reporting the names of donors to political parties. Yet undeclared funds used in election campaigns account for 60–90 per cent of the total.¹ While there are many reasons why such large amounts of money go undeclared, the biggest is the fear of politically motivated harassment. Disclosure can be abused by non-democratic regimes to deprive the opposition of the right to participate in the electoral process. It provides information that can be used by partisan enforcement mechanisms (including tax, fire inspection and police) against opposition parties, their contributors and the independent media.

There is ample evidence that the main opposition forces in Ukraine were harassed by the regime during the 1999 presidential elections and the 2002 parliamentary elections, and subjected to strong administrative restrictions.² For instance, in the presidential election, contributors to opposition candidate Oleksander Moroz's campaign were requested to report to local state tax inspection branches and explain the sources of their money, according to local press reports.³ Not surprisingly, most of Moroz's corporate donors insisted on full privacy and broke the disclosure laws. After the election, a dozen small retail companies, whose details had been published in Moroz's financial report, were subjected to harassment by different state inspectorates and several were forced into bankruptcy. Publishing houses such as Migrodinaka and Topografic, which produced campaign materials for opposition candidates, received similar treatment from administrative bodies after the election.⁴

The government of President Leonid Kuchma continued to harass opposition leaders and their supporters in the run-up to the 2002 parliamentary elections. Opposition activists were detained and the offices of papers that gave positive coverage to the opposition campaign were raided on the grounds they had allegedly evaded taxes. For instance, Borys Feldman, a business partner of former deputy prime minister Yuliya Tymoshenko, received a nine-year prison sentence for tax evasion and financial mismanagement.⁵

The risk that disclosure of financial support to the political opposition might expose donors to harassment in authoritarian and semi-authoritarian regimes is compounded by the patrimonial nature of the economic systems in such countries. Those engaged in economic activity in autocracies are generally linked to the regime, which magnifies the potential impact of commercial reprisals for supporting opposition parties. This influences the environment for opposition political parties since it excludes the private sector as an important transparent funding source for them.

In sum, where enforcement of campaign finance regulations is highly partisan, full public disclosure may be abused rather than used as an instrument of transparency. Full disclosure can allow an authoritarian regime to weaken opposition parties by undermining the financial support of their sympathisers or allied interest groups. For a democracy to function, a vibrant opposition, able to participate in free and fair elections, needs to exist. Ukraine has not yet reached this stage of political development and still uses its disclosure



laws to prevent democracy from progressing. In such a system, opposition parties will continue to need a high degree of privacy and freedom from harassment, while their donors are forced to remain anonymous.

Marcin Walecki (Oxford University, Britain)

Notes

1. Centre for Forecasting of Socio-Economic and Political Processes, 'Survey on Shadow Funding of the Ukrainian Political Parties', Kiev, January 1999; Anatolij Romaniuk, *Parliament*, nos 3–4 (Kiev: Laboratory for Legislative Initiatives, 2003).
2. For a detailed description of physical assaults, political harassment and the administrative restrictions imposed on opposition parties and their supporters, see OSCE, 'Ukraine Parliamentary Elections 31 March 2002', 27 May 2002; US Department of State, 'Ukraine – Country Reports on Human Rights Practices 2002', 31 March 2002; and Razumkov Centre, 'National Security and Defence Report' no. 12, Kiev, USEPS.
3. *Tovarysh*, no. 33 (August 1999).
4. Interview with Oleksander Moroz, leader of the Socialist Party, Kiev, March 2001.
5. International Helsinki Federation for Human Rights, *2002 IHF Annual Report*, www.ihf-hr.org/viewbinary/viewdocument.php?doc_id=2654

Full disclosure defined

The disclosure process is a labyrinth of data collection, analysis and dissemination. Figure 3.1 describes the ideal disclosure process. Reports are first prepared by political parties and candidates, then collected and audited by a governing body and, finally, viewed by the public. While this appears quite simple, there are unlimited permutations and obstacles that make the process almost unworkable in some countries.

In the absence of any international standards, pitfalls that mar the disclosure process include:

Deceptive interpretations. Few words in political finance are as overused and poorly defined as 'disclosure'. It can mean that a country has minimal political finance reporting requirements as opposed to not having any reporting requirements at all; that the government will share financial reports with the public, rather than keep them secret; or that the government will share information with the public, but will make it very difficult for it to be understood or accessed.

Limited access to data. Opening records to the public is the ideal, but some governments make accessing them difficult. For example, access may be given, but only through hand copying, which takes time. Ideally a country would allow a number of accessing options, including fax, photocopying or publishing the information in a gazette, newspaper or website. Also important is when campaign finance reports are due – before or after the election.

Poor quality of data. A more subtle form of deception is the quality of data that many disclosure laws produce. Most disclosure data is aggregated and largely unauditible, hence meaningless for the disclosure process. Also important is the data's accuracy.

Low quantity of data. Many countries claim disclosure, but fulfil only some of the variables required for full disclosure. For example, Argentine law requires political party disclosure, but turns a blind eye to candidates and their private fundraising activities,

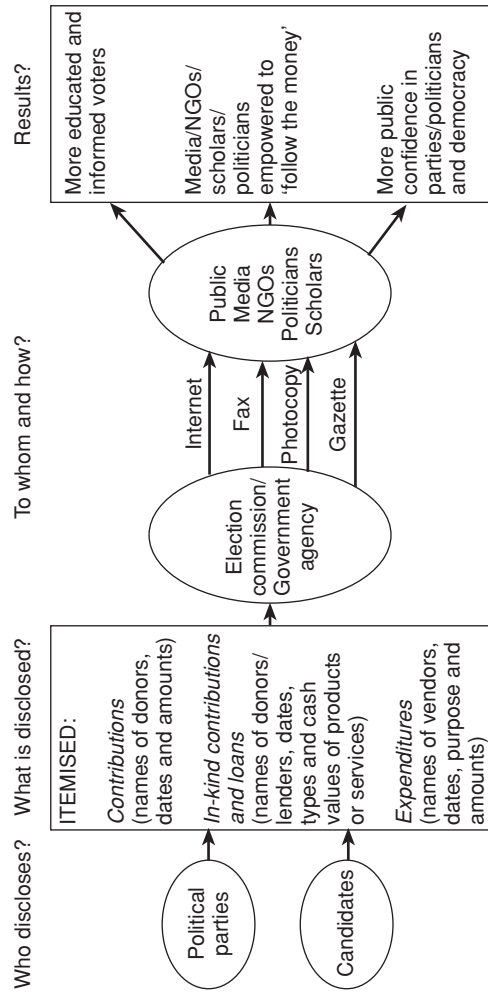


Figure 3.1: The ideal disclosure process

which are not reported at all. 'Full disclosure', the maximum extent of openness in reporting political contributions, requires information on: how much money a party and/or a candidate received; how much free in-kind support was given to the party or candidate (goods, services or loans); the names (and sometimes addresses) of the 'givers'; how much money the party or candidate spent during the campaign and on what; and names (and sometimes addresses) of companies or persons who received the money spent on goods and services provided to the campaign. Full disclosure also requires candidates to file financial assets (ownership and debts) as a requirement for running for office. Also important for full disclosure is the threshold placed on the size of donations before they have to be reported on a campaign report.

Limited public viewing. A recent survey of 118 countries by the International Foundation for Election Systems (IFES) shows that 17 per cent of them have 'hidden disclosure' and do not show party or candidate financial reports to the public (see Table 3.3).³ Such governments contend that they have disclosure, but this may simply mean 'for the government's eyes only' and not for the public, watchdog NGOs or the media. A critical question is whether such governments can be trusted not to misuse this information against opposition parties and their donors.

Misperceptions about disclosure. The fear that legitimate revenues may dry up if their sources are revealed through new disclosure laws is one of the steepest barriers to political parties' and candidates' appreciation of the value of disclosure and it has prevented many countries from reforming disclosure laws, or led them to institute 'hidden disclosure' rules instead. No research confirms that legitimate revenues to parties decrease when disclosed. The opposite may, in fact, be true, since money in politics flourishes in countries where it is most disclosed, as in the United States (see Box 4.3, 'Following the Enron money trail', page 74).

What does disclosure look like in the regions of the world?

Disclosure laws throughout the world range from the totally transparent to the totally opaque, with the latter predominating. Based on a survey of disclosure laws in 118 nations, USAID developed a composite snapshot of the state of disclosure. Table 3.2 illustrates the extent to which surveyed countries have disclosure laws on the books, by region and by type of disclosure law.

Outside of North America, disclosure laws are mostly to be found in Europe. In Eastern Europe, 89 per cent have some form of reporting campaign and party finances to the public, a remarkable achievement over little more than 10 years. All nations surveyed from the former Soviet Union (FSU) have disclosure laws. There is a considerable difference, however, between having a legal framework for disclosure and the actual practice of disclosure: despite numerous laws on their books, FSU nations and countries in Eastern Europe still lack enforcement.

A more detailed picture emerges when countries are grouped according to the type of reporting requirement: disclosure by political parties of income and/or expenditure accounts, disclosure by candidates of income and/or expenditure accounts and disclosure of the names of donors to political parties.

Table 3.2: Prevalence of public disclosure

Region	No. of countries surveyed	Percentage of countries requiring:			Names of donors to parties
		Public disclosure reports	Party income and/or expenses	Candidate income and/or expenses	
Africa	27	44	33	11	3
The Americas:					
North	3	100	100	67	67
Caribbean	12	25	0	25	0
Central	7	29	0	14	0
South	11	73	73	9	27
Europe:					
Western	16	81	69	38	56
Eastern	18	89	83	39	67
Asia	15	67	47	53	27
Pacific/Oceania	9	44	33	33	33

With respect to reporting party income and/or expenses, Caribbean and Central American nations stand out for having no disclosure requirements at all. In Africa, Pacific/Oceania and Asia, less than half of the countries require such figures to be reported.

With respect to disclosure of candidate income and/or expenses, South America rates lowest. The rate is also low among African, Central American and Caribbean nations.

The differences between party and candidate reporting requirements are significant. In some countries in Africa and the Caribbean, disclosure laws cover political party funding but exclude any requirement for candidates to disclose. This means that considerable amounts of money going to, and spent by, candidates remain hidden.

With respect to disclosure of the names of donors to parties, Caribbean and Central American countries have no such laws and only a handful of countries in Africa do. These three regions appear to be the bastions of secrecy for money in politics. While many South American countries require disclosure of party income and/or expenses, many do not require disclosure of party donor names, and disclosure of candidate income and/or expenses is very rare.

What does disclosure look like in country comparisons?

Table 3.3 is a categorisation of the 118 countries surveyed based on their ranking against three primary variables: disclosure by political parties of income and/or expenditure accounts; disclosure by candidates of income and/or expenditure accounts; and disclosure of the identity of donors to political parties. Countries with *high* public disclosure require reports from all three variables; *medium* countries require reports from two variables, while countries that have only one kind of disclosure are considered *low*. *Hidden* disclosure means that governments see the financial reports, but the public doesn't, while *none* means a nation has no reporting requirements.

Table 3.3: Money in politics: transparency laws

Level of public disclosure	Countries
High (13%)	Armenia, Australia, Brazil, Canada, Denmark, Greece, Japan, Lithuania, New Zealand, Philippines, Russia, Thailand, Ukraine, United Kingdom, United States
Medium (22%)	Argentina, Azerbaijan, Belgium, Benin, Bosnia and Herzegovina, Colombia, Czech Republic, France, Germany, Hungary, Ireland, Italy, Latvia, Lesotho, Macedonia, Moldova, Netherlands, Norway, Papua New Guinea, Poland, Portugal, Romania, Singapore, Slovakia, South Korea, Tanzania
Low (25%)	Austria, ^a Bangladesh, Barbados, Belarus, Bolivia, Botswana, Bulgaria, Chile, Costa Rica, ^a Ecuador, ^a the Gambia, Ghana, India, ^a Indonesia, ^a Israel, ^a Jamaica, Kenya, Mali, ^a Malta, Mauritius, Mexico, ^a Morocco, ^a Namibia, Nicaragua, ^a Nigeria, Peru, Spain, Taiwan, Tonga, Trinidad and Tobago
Hidden (17%)	Algeria, Central African Republic, Dominican Republic, Finland, Gabon, Guatemala, Guyana, Honduras, Lebanon, Malaysia, Maldives, Niger, Panama, Paraguay, Senegal, Seychelles, Togo, Tunisia, Turkey, Venezuela
None (23%)	Albania, Angola, Antigua and Barbuda, Bahamas, Belize, Croatia, Dominica, El Salvador, Fiji, Grenada, Kiribati, Madagascar, Malawi, Mozambique, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Samoa, South Africa, Sri Lanka, Sweden, Switzerland, Tuvalu, Uganda, Uruguay, Vanuatu, Zambia

^a Public access to some, but not all, financial reports filed.

It is important to distinguish between ‘high’ disclosure and the ‘full disclosure’ previously discussed in this article. Even with a weaker definition, the number of countries considered to have high public disclosure is only 13 per cent. This very small figure should confirm suspicions that the practice of disclosure is not widespread.

Twenty-three per cent of the countries surveyed had no disclosure laws and another 17 per cent had ‘hidden disclosure’, meaning that for all practical purposes 40 per cent of nations in the world told their publics nothing about money in politics. If countries with low or medium disclosure are added to this group, 87 per cent of countries surveyed have hidden, partial or no disclosure.

What can be done to enhance disclosure?

Each country requires a tailored approach to increase disclosure, based on the resources available and its readiness to tackle the issue of money in politics. It is up to democracy practitioners to select the appropriate path, or combination of paths, with the highest potential for impact. The role of civil society in this endeavour is crucial, and can be helped by strengthening ties between NGOs, the media, research scholars and reformist politicians. Political parties and leaders can also be engines of political finance reform. Some illustrative approaches include:

Supporting reform-minded parties and political leaders. At a workshop for reform-minded political and party leaders in Bangkok in early 2002, coordinated by the National Democratic Institute for International Affairs and the Council of Asian Liberals and Democrats, participants conducted research and addressed strategies for preventing corruption within their own parties, as well as their societies. This event was one of the first to bring the topic of political party corruption into the open. The next meeting will include members of the NGO and academic communities and subsequent plans include engaging the press in disseminating political finance reform action plans.

Facilitating the development of a reform agenda. Parties that are not in power are usually in the best position to benefit from reform and may supply the largest number of reform-minded politicians with whom to work. For example, the Millennium Democratic Party of South Korea and the Democratic Progressive Party of Taiwan were opposition parties when they engaged in transparency reforms. They are now ruling parties.

Increasing accountability and improving reporting. Even where disclosure laws are plentiful, political party accounting and reporting may not be accurate. While in some cases inaccuracy may be deliberate, some parties simply lack the accounting capacity or resources to enable them to comply with reporting requirements. One project aimed at countering this problem is a software database, developed by IFES, that supports bookkeeping and the posting of campaign finance reports on the Internet. It is currently being pioneered in Lithuania, Latvia, Romania and Hungary.

Strengthening enforcement. Complex, unclear or absent laws and regulations make it difficult for enforcement bodies to do their work, including sanctioning non-compliance. Assistance can include careful analysis of two areas. First, whether laws and regulations provide the independence, autonomy, authority, resources and clear guidance that enforcement bodies require. And second, whether they clearly delineate which bodies are responsible for which functions, the powers of each, professional qualifications of members and the extent of their budgetary autonomy. The Organization of American States has launched a hemispheric study of money and politics, including disclosure, and the Mexican Federal Electoral Institute has organised a number of conferences addressing this issue.

Developing capacity. Staff may lack the skills to enforce political finance controls. Training and technical assistance must be given in key enforcement functions, including compliance, oversight and sanctions. For example, IFES is testing a diagnostic tool for analysing a country's strengths and weaknesses in enforcing campaign and party finance laws and developing a training programme for shoring up investigative and detection techniques in several compliance settings.

Linking with anti-corruption programming. Asset disclosure is becoming increasingly popular within the context of countering corruption and is relatively easy to verify. President Vicente Fox of Mexico posted his personal finances on the Internet as an example to 150,000 federal employees who were required to do the same under the terms of a new law. In contrast, a court case involving the lack of asset disclosure by Thai prime minister Thaksin Shinawatra nearly led to his dismissal. Introducing

limited, relatively mild asset-disclosure reforms within the umbrella of anti-corruption programming helps lay the foundation for broader reform in the longer term. This link is reflected in increasing dialogue about party finance in the anti-corruption efforts of the World Bank, the United Nations, Transparency International and the Soros foundations.

International monitoring of campaign and party financing. At a British Council-sponsored anti-corruption and political finance workshop in March 2002, a group of Peruvians spoke in favour of campaign and party finance reform in their country, but said they needed outsiders, either regional or international, to assist in their efforts to ensure parties adhere to international standards. Since then the conviction has grown that campaign finance monitoring should assume a similar international status to that accorded to election monitoring, though it might risk accusations of interventionism, as occurred with election monitoring when it was pioneered more than 10 years ago. In mid-2003, at least one prominent South American NGO was close to piloting this concept.

Disclosure: revealing the cost of democracy

Our knowledge of the history and current reality of political finance is incomplete. The chief frustration is the paucity of data, due to a lack of adequate disclosure accompanied by adequate enforcement. Each nation moves at its own pace – it took the US Congress 64 years, from the time it first placed public disclosure on the books in 1910, to finally call for serious enforcement after Watergate – but a priority must be bringing electoral finances in line with other democratic advances.

Disclosure mechanisms across the world have thus far proven inadequate for keeping track of money in politics, given that the majority of leaders in democracies are still not required to reveal who funded their victories.⁴ Intelligent guesses continue to be the only method of estimating what it costs society to run a democracy. Adequate disclosure would allow both governments and the public to keep track of the amounts, sources and destinations of campaign finance. Without these declarations of accounts, governments and citizens risk never knowing the price of their democracy, or the identity of the major influences behind it, whether corporate, union, general public, special interest groups – or drug lords and other criminal syndicates.

Political finance is a vital issue for democracy and development. No matter how flawless a country's elections, how active its civil society, how competitive its political parties and how responsible its local authorities, money in politics undeniably influences the quality of democracy and governance. Only through greater transparency will we fully understand the extent and nature of this influence.

Notes

1. Gene Ward, PhD, is a senior adviser in political finance at the USAID Office of Democracy and Governance, United States. The views expressed about the data or about disclosure in this paper are views of the author and do not represent the views of any organisation with which the author may be affiliated.

2. For example, Pinto-Duschinsky ('Financing Politics: A Global View', *Journal of Democracy*, vol. 13, no. 4, October 2002) notes that a majority of countries have some form of public disclosure law regulating party and campaign finance. A more detailed examination of these laws reveals, however, that a majority of countries do not tell their publics how much money both parties and candidates spent and few, if any, identify the source of contributions. While technically correct, it is therefore misleading to say that a majority of nations in the world have political finance disclosure.
3. All survey data used in this paper are from *Money in Politics Handbook: A Guide to Increasing Transparency in Emerging Democracies* (Washington, D.C.: USAID, 2003). With USAID sponsorship, IFES collected data on 118 countries based upon its availability between January and June 2001. The 118 countries comprised 79 per cent of the world's 121 electoral democracies (as defined by Freedom House) and 61 per cent of the world's 193 sovereign nations.
4. For example, Larry Diamond notes that 'a good portion' of the money siphoned off from the public good in corrupt societies is diverted to political parties. See Diamond, 'Moving Up Out of Poverty: What Does Democracy Have to Do With It?', paper presented at World Bank workshop, 'Moving Up Out of Poverty: Understanding Growth and Freedom from the Bottom Up', Washington, D.C., 15–16 July 2003.

Box 3.2: Media discounts for politicians: examples from Latin America

There is little question about the crucial role the mass media plays in modern election-eering. Less clear are its implications for the funding of parties and elections. The narrow focus on the growth of media expenses in many democracies has obscured other aspects of the problem that are, arguably, as important from a political finance perspective. Chief among them is the phenomenon of hefty price discounts granted to parties and candidates during the campaign season by privately owned media outlets, particularly television networks. This practice has in many cases given rise to severe electoral inequities, as well as questionable exchanges between public decision-makers and media owners.

- In Uruguay, the family-controlled groups that have owned the country's three private television networks since the 1950s have come to operate, with the acquiescence of public authorities, as a powerful business cartel. Examples of this were the government's 1994 decision to turn Montevideo's cable television market into a closed shop jointly controlled by the three private networks, as well as its 2000 ruling banning the import of satellite television decoders unless done by the existing cable operators (this decision was later reversed). In exchange, while political actors rarely pay official advertising rates, discounts offered to factions of the long-ruling Colorado and National parties during elections reach up to 95 per cent of the price.¹ The impact of these rebates is compounded by the networks' frequent practice of condoning campaign debts.² The main left-wing competitor party, the Broad Front, has long denounced these practices, deeming them media discrimination.
- In Costa Rica, the legal requirement that media firms publicise their advertising rates and give equal treatment to all parties does not prevent them from making donations in kind to specific parties. In the case of the winning party in 1998, reported party outlays stood at less than one-quarter of the official price of purchased advertising time, a discount amounting to a net donation of US \$1.7 million,



probably the largest contribution by any economic sector in the entire election cycle.³ The weight of government advertising, and the fact that frequencies are owned by the state and licensed to private companies for negligible annual fees, are major incentives for media owners to be generous towards future state authorities.

- In Guatemala, terrestrial television is monopolised by a private operator, Miami-based Mexican entrepreneur Remigio Angel González. Since the mid-1980s this monopoly has granted González extraordinary political influence in the country. During the 1999 presidential campaign, González put the weight of his monopoly behind the candidacy of the eventual winner, Alfonso Portillo, reportedly donating most of his advertisements.⁴ In return, according to interpretations in the local press, González's son-in-law and legal adviser, Luis Rabbé, was appointed minister of communications and infrastructure – entrusted with the task of regulating the operation of his father-in-law's channels. Rabbé was dismissed in June 2001, following a congressional corruption probe. Despite President Portillo's commitment to auction two state-owned television frequencies, González's monopoly remains intact.⁵

The evidence that the level of spending on media in some countries is much lower than previously thought has clear policy implications. The most critical political finance issue in these countries is not too much expenditure on television but that some parties pay *too little* for their publicity and, to varying degrees, become addicted to enormous rate discounts. This effectively turns media owners into singularly large and powerful political donors.

A number of countries have taken steps to limit the influence of media owners on elections. Most West European countries, as well as some East Asian countries and Chile and Brazil in Latin America, ban the purchase of campaign advertising by parties and candidates. In some cases, the electoral authority buys the advertising from private channels and then proceeds to distribute it between the parties. Alternatively, the government may provide advertising slots in the state-owned network (typical of Western Europe) or private channels may be forced by law to donate airtime, as in Chile. Yet another route, practised in Canada, is rigorously monitoring in-kind donations, including TV discounts. Rather than capping television expenditure, it is transparency of the dealings between parties and media outlets that needs to be secured.

Kevin Casas-Zamora (University of Costa Rica)

Notes

1. Kevin Casas-Zamora, 'Paying for Democracy in Latin America: Political Finance and State Funding for Parties in Costa Rica and Uruguay', University of Oxford, PhD thesis, 2002.
2. Ibid.
3. Figures from Servicios Publicitarios based on expenses reported by parties to the electoral authority.
4. *La Prensa Libre* (Guatemala), 14 February 2000 and 5 March 2000.
5. In August 2003 González continued to own all the privately owned television networks. His monopoly has attracted criticism from the OAS and the Inter-American Press Society.

Box 3.3: NGO monitoring efforts: Latvia, Ecuador and India

TI Latvia successfully pushes for improved disclosure

Latvia's 2002 elections to the Saeima (parliament), the fourth since the country gained independence from the former Soviet Union, were a watershed for the transparency of



political party financing. This was largely due to a civil-society monitoring project by TI Latvia and the Soros Foundation, which uncovered a dramatic increase in the cost of campaigning, especially on TV and billboard advertising.

The project began monitoring advertisements in January 2002, early enough to provide the public with information about the cost of elections before voting took place in October.

The project revealed that spending on advertising more than tripled since the 1998 elections. In total, parties spent US \$10 million, or about 4 lats (US \$7) per voter. This is 10 times more per voter than in the 1997 British general election and just under four times more per voter than in the 2002 French presidential and Swedish parliamentary elections.¹

To meet the target of making information on party expenditure available ahead of the election, work was done to tighten disclosure laws: it was clear parties would not disclose if not legally obliged. Parliament was lobbied through a mixture of public roundtables and media attention. Within six months, in June 2002, the Saeima approved the first major amendments to the 1995 party finance law.

Now Latvia has one of the fullest disclosure systems in the region. Parties must post all donations on the Internet within 10 days of receipt and provide a list of all donors' names. A monitoring body, the anti-corruption bureau, was given the task of verifying the declarations. It released its first findings in September 2003, including information about third-party donations and falsified signatures.

The Alliance of the Latvian Green Party and the Latvian Farmers' Union were asked to return about US \$120,000 in donations from dubious sources, and criminal charges were filed in connection with alleged falsified signatures. These donations were identified and publicised prior to the elections by TI Latvia and Soros.

One of the project's key objectives was to detect hidden advertising in the media. TI Latvia and Soros had identified several cases of political advertisements masquerading as news in the 2001 municipal elections. In 2002 they were joined by 54 NGOs and the official media monitoring body in urging media owners to abstain from such behaviour.

The situation appeared to improve during the 2002 elections. Most news on TV, radio and in the newspapers was genuine, though the number of articles marked 'paid' increased. NGOs are now pressing for political advertisements on TV to be restricted, or banned outright. Although the head of the parliamentary anti-corruption commission supports the proposal, it faces opposition from stations that do not want to forfeit the lucrative business.

Ecuadorian NGOs force media companies to respect ceilings

CLD, TI's Ecuadorian chapter, identified the political system as a major factor of corruption several years ago and decided to observe the presidential elections in October and November 2002 with a view to monitoring campaign expenditures.

Other civil society organisations and individuals became interested and a new organisation, Citizen's Participation Ecuador (PCE), was created. PCE built on previous electoral monitoring experiences by TI chapters in Peru, Argentina and Costa Rica.

The monitoring experience in Ecuador was restricted to spending on newspapers, television and radio. PCE hired a company to follow all political advertisements, both paid and unpaid.

A major concern was to ensure that PCE received information on campaign expenditure in the media on a daily basis to allow it to keep the public informed. PCE's daily press bulletin, *Campanazo* (or 'bell ringing'), was printed daily on the front pages of all newspapers.



This allowed PCE to pinpoint precisely when candidates exceeded the ceiling for campaign expenditure and to request that the national electoral tribunal (TSE) issue a prohibition against further spending. On 17 September 2002 the TSE announced a ban on advertising by any party that had exceeded its campaign-expenditure cap and notified media that they must not air advertisements for the PRIAN and Patriotic Society parties, since both had exceeded their limits. A large number of media outlets complied with the order; the TSE is debating what sanctions should be applied to those that did not.

To obtain a complete report on campaign expenditures, PCE asked the TSE for copies of all reports filed by the presidential candidates and their parties. The TSE is obligated to provide such reports upon request, since they are considered public information. But the TSE ruled that the information be deemed confidential until it had finished revising it and had issued its own report. PCE filed a lawsuit against the decision on the grounds that it infringed the citizen's right to information and was unconstitutional.

By mid-2003 the constitutional court had still not issued its judgment, but PCE is confident it will finally obtain the requested information and be able to present an accurate portrait of financing and expenditure during the 2002 presidential campaign.

Indian NGOs monitor disclosure of candidates' assets and criminal records

The last few years have seen some innovative monitoring initiatives in India. This year, the legal background to these efforts has been complicated by a dispute between branches of government over disclosure regulations for political parties and candidates. In response, NGOs are pooling resources to ensure that requirements are complied with.

They have plenty of experience to draw on. In 1999, the NGO Lok Satta documented massive electoral fraud in Hyderabad (Andhra Pradesh), alleging that 22 per cent of votes were bogus, cast by people who did not live in the district, by fictitious voters or by people who did not, in fact, vote. In the 2002 Gujarat assembly elections, the Association for Democratic Reform in Ahmedabad published a newspaper advertisement inviting citizens of the 183 state constituencies to denounce crimes committed by candidates. Criminal allegations were subsequently made against 138 candidates, 63 of them from the two major political parties.

NGOs intend to be no less vigilant this year, but their work may be hampered by the standoff between the judiciary and the legislature. In May 2002, the supreme court ordered candidates to provide details to the election commission of any criminal charges filed against them, past or ongoing; of assets belonging to themselves and dependents; of liabilities, in particular dues pertaining to governmental or financial institutions; and educational qualifications. But the order was rejected in July 2002 by representatives of all political parties, who passed a more limited version of the disclosure law. In March 2003 the supreme court reiterated its original judgment. Given the politicians' resistance to increased disclosure requirements, it is unclear whether the initial instructions to the election commission – achieved through such NGO initiatives as the People's Union for Civil Liberties' petition to the high court of Delhi – will be respected.

Several organisations have launched initiatives to ensure the election commission's guidelines are implemented, in line with the supreme court ruling. In one municipality near Bangalore (Karnataka), in August 2003 the Public Affairs Centre collected copies of the candidates' affidavits. There were significant differences in the quality of disclosure. Similarly, 'election watches' were established for the state assembly elections in November 2003² with the help of the National Campaign for the People's Right to Information. Delhi's election watch has organised electoral-roll verification and plans to widely disseminate

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candidates' affidavits and previous work records. Transparency International India was involved in all these activities.

While it is too early to say how effective these efforts will prove, civil society organisations are optimistic. But the same organisations warn against the possibility of co-option by branches of government with an interest in undermining certain parties. Monitoring is therefore essential to ensure that disclosure requirements are uniformly enforced, and are not used to target opponents. 'Many of us seeking reform have great respect for the political process', said Jayaprakash Narayan of the NGO Lok Satta. 'We are working hard to improve, not undermine, democracy.'

Inese Voika (TI Latvia)

Valeria Merino Dirani (Corporación Latinoamericana para el Desarrollo, Ecuador)

Michael Schied (Transparency International)

Notes

1. Valts Kalniņš and Lolita Čigāne, 'On the Road toward a More Honest Society: The Latest Trends in Anti-Corruption Policy in Latvia', January 2003, www.lai.lv/9on_the_road_to.doc
2. Elections will be held in Mizoram, Delhi, Rajasthan, Madhya Pradesh and Chhattisgarh. The guidelines issued by the election commission apply in all states.

Enforcement: how regulation of political party finance is managed in practice

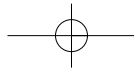
Yves-Marie Doublet¹

The field of political finance has witnessed numerous legal developments, but mechanisms to ensure that legislation is enforced are rarely more than a matter of formality. Enforcement agencies charged with supervising political party finance often lack legitimacy and possess only limited investigative powers. They are seldom able to provide effective checks at the national level, given the constitutional status of parties and the variety of their sources of funding and expenditure. Despite these restrictions, however, enforcement bodies are increasingly empowered to control political party finance in countries around the world. This brief review illustrates what types of regulatory bodies, investigative approaches and sanctions for violations are employed in some European and other selected countries.

Types of enforcement bodies

In some cases, political bodies play a regulatory role: a parliamentary committee in Belgium, the president of the Bundestag in Germany and a six-member federal election commission in the United States.

Other countries have independent audit bodies, such as the electoral commission in Australia, the campaign accounts and political funding committee in France and the constitutional tribunal in Portugal. In Britain, parliament confirms appointments of members to an electoral commission.



In a relatively small number of countries, the national accounting office regulates party funding, as is the case in Bulgaria, Hungary, Israel, Italy and Spain.

In stark contrast to these systems, the Japanese framework of regulations does not empower any enforcement agency to monitor violations or apply sanctions.

Methods of investigation

There are generally two levels of control: one by a certified accountancy firm – individually commissioned and paid by each political party – and one by a regulatory body.

Two chartered accountants from two separate audit offices must certify party accounts in France. While these accountants adhere to confidentiality principles, they must inform the party managers of any irregularities they discover.

German auditors may require a party's executive committee and its representatives to furnish any information and proof they need to fulfil their assignment. Rather than assessing or evaluating presented information, the auditors only control it, an approach difficult to reconcile with the investigative nature of their work.

In Germany the second level of control involves the president of the Bundestag, who examines statements of party accounts from the formal and legal points of view. He may call for further information or select another accountant.

In Britain, the election commission is empowered to require an authorised person to produce books, documents or records relating to the party. The commission may also authorise an individual to enter the premises of a political party to inspect its books. In Spain, however, members of the audit office have only limited powers to go beyond the information provided by political parties, to whom they generally have strong ties.

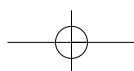
Sanctions for party funding violations

Three kinds of sanctions may be used to punish offences in political party financing: financial, penal and electoral.

The penalty most commonly applied to an offender is the loss of public subsidy. This sanction can be imposed in France, Germany, Russia, Spain and many countries in Latin America (see 'Campaign finance reform: is Latin America on the road to transparency?', Chapter 2, page 32).

If a party obtains donations illegally in Germany, the president of the Bundestag can claim back three times the amount of the illegal donation; if the donation was incorrectly published, or the statement falsified, the president can claim twice the amount of the donation, or the false amount. If the party does not produce its statement of accounts on time, it loses its entire allocation of public funding.

Provisions entailing criminal penalties are rarer but are in force in Britain, Canada, France, Italy, Spain and the United States. German electoral law provides for a two-year prison term or a fine for those found guilty of supplying false information about party income and assets. Sanctions of three years in prison or a fine apply to any accountant who conceals information.



In Britain, parties that break the law are liable to a civil penalty; in addition, the party treasurer also carries criminal liability. Seventy offences are on the books and the electoral commission may pass a file to the criminal prosecuting authorities. In Italy, the accounting office has the power to impose a fine for any violations of funding rules.

In the United States, electoral funding violations are treated as civil infractions and handled through the Federal Election Commission (FEC) enforcement process. Sanctions were strengthened in 2002 to a maximum of 300 per cent of the illegal contribution and up to US \$50,000 in fines. Aggravating factors must be on hand for an infraction to be pursued as a criminal matter: the violation must surpass a monetary threshold of US \$2,000 and have been committed knowingly and wilfully. Despite these provisions, the FEC has developed a relatively poor reputation for effective law enforcement over the years.

The most effective sanction is electoral, namely disqualification, or the loss of a mandate, as is the case for the head of a political party in Québec. In France, candidates who fail to abide by transparency regulations governing party funding will not be disqualified unless their campaign accounts are rejected.

Closely related to the development of a sanctions regime is the problem of determining who should be sanctioned – the politician or the party. One view holds that activists and party members are not responsible for their leaders' illegal behaviour. In most countries, however, candidates are largely shielded from liability, except when they were actively involved in a particular violation. In Germany, the executive committee member responsible for the party's financial affairs is the one who risks sanctions for wrongdoing. A similar approach was adopted in the United States, where the committee treasurer – not the candidate – shoulders the burden if illegal contributions are accepted or reports are filed inaccurately.

Note

1. Yves-Marie Doublet is senior lecturer at the Ecole Nationale d'Administration, France.

Enforcement: the experience in Mexico

*Alonso Lujambio*¹

The enforcement of regulations governing political party and campaign financing has proved challenging in Mexico in recent years, first during the democratic transition phase and now during the period of democratic consolidation. These have been difficult years because, given the particular problems associated with financing under the post-revolutionary hegemonic party system, the democratic transition process strengthened legal controls and, consequently, led to a multitude of enforcement dilemmas. Adding a further level of complexity, Mexico has 33 party financing laws (32 state laws and one federal), often with competing jurisdictions.

But while financing regulations may be difficult to enforce, this does not mean they should not exist. For rules that cannot be verified directly, such as by auditing reports, there are indirect alternatives, such as the incentives for compliance created by disclosure and the investigation of subsequent complaints. While the hundreds of millions of dollars in public funding for campaigns (US \$300 million in 2000) is scrupulously audited, effective enforcement of the ceiling on private donations is much harder to verify. At the Mexican Federal Electoral Institute, our biggest headaches are third-party donations and, in the worst cases, double accounting. It is here, where direct verification is impossible, that disclosing the names of donors and sums involved can serve as an indirect enforcement mechanism.

In order for disclosure to work, certain conditions must be met. Citizens must be able to file complaints easily (even anonymously); they should be given access to simplified regulations; and regulations and caps must be widely known. The specific mechanism used to publicise the information is also important. It may include reference to personal documents, for instance, and may vary as to how widely the data is disseminated.

After analysing the Canadian experience, in late 2002 we published the names and amounts of all donations to political parties in 2000 on the Internet. In the first few weeks, the website was consulted hundreds of thousands of times. Afterwards, the level of interest waned, but not before people had been prompted to file complaints about false or imprecise information. This, without doubt, will help inhibit future unlawful acts.

The chain of enforcement is broken, however, when the authority responsible for compliance lacks tools to carry out an in-depth investigation of alleged illegal acts. The electoral authority needs to be able to compare statements given by political parties with information about bank accounts, tax declarations (where applicable) and the cost of campaign publicity. But in Mexico we have run into difficulties: the electoral authority's competence to penetrate bank secrecy norms is under debate. The judicial branch of government has established that the Mexican Federal Electoral Institute may have access to bank data. This access currently may only be exercised on a case-by-case basis, depending on the rulings of the electoral court. It is indispensable to create legal instruments that acknowledge this faculty.

The lack of access to data from banks, the tax office and private companies limits the effectiveness of disclosure as an enforcement mechanism. If cash and anonymous donations are prohibited and all donations must be made by cheque or identifiable bank transfer and registered in annual tax statements, and all political party income and expenditure must go through bank accounts, then the electoral authority needs to be able to analyse that information. Without such necessary evidence, it cannot sanction wrongdoers and so these cases cannot serve as examples to inhibit future infractions.

We also run into difficulties when it comes to spending limits. In Latin America, caps on expenditure are less common than on income. In their absence, we can do little more than monitor spending (specifically that which leaves a trace, such as spending on radio and television airtime) and make inferences from this about income. But when

market rates for radio and television spots vary for the different parties, it is difficult to extract definitive conclusions from monitoring efforts. The European approach is to control or eliminate the market completely by providing state airtime for campaign spots. Chile and Brazil have followed this route. In Mexico, we have opted not to control the market, but, for now, to make its motivations transparent. In the future we will publish information on the unit value of every promotional radio or television spot paid for by political parties so that this might lead to improved transparency and equity in the treatment the mass media affords political parties.

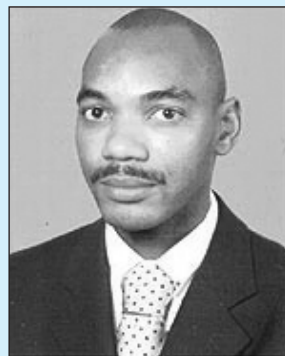
An additional party financing worry in Latin America is the illegal deviation of public resources to particular parties and candidates. Given the importance of the issue, a specialised electoral body, with proper investigative powers, including the power to access information, is needed to enforce the political party financing law directly. But even then, the authority would need support. For this, it is vital that congress audit public spending by the executive branch of government. For it to do so scrupulously, horizontal accountability, underpinned by a true separation of powers, needs to be achieved, which in Latin America is a long way off.

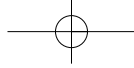
Note

1. Alonso Lujambio is electoral councillor and president of the political party finance control committee and of the committee for international affairs of the general council of the Mexican Federal Electoral Institute.

Box 3.4: António Siba-Siba Macuácuá: posthumous TI Integrity Awards winner 2003

António Siba-Siba Macuácuá was a senior auditor at the central bank of Mozambique. He was hurled to his death from the top of the stairwell of Banco Austral on 11 August 2001, while investigating allegations of corruption there. He was just 33.

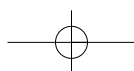
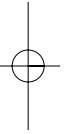
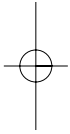




Two days later, Siba-Siba had been due to submit a report on the financial situation of Banco Austral, the largest commercial bank in Mozambique. He had been appointed emergency chair of the privatised bank after it collapsed in April 2001 following fraud by highly placed people. He attempted to recover bad debts from senior members of government and in the ruling Frelimo party. He cancelled contracts signed by the previous board, including one with Nyimpine Chissano, son of President Joaquim Chissano, who had been paid US \$3,000 per month despite his total lack of banking experience.

The group of prominent Mozambicans who nominated Siba-Siba for the TI award says his murder 'was meant to send a signal that organised crime was very much in control'. His death has been linked to that of Mozambique's leading journalist Carlos Cardoso, who was gunned down in November 2000 while investigating corruption during the privatisation of Banco Austral. His killers were convicted in early 2003.

Siba-Siba's murder remains unresolved.



4 Corporate money

Lessons from the South African arms scandal and the Elf affair shed light on the need to clean up the corrupt dealings between business and politics. Joe Roeber examines how politicians involved in the arms trade abuse a secrecy they justify on the grounds of national defence; Nicholas Shaxson explores political corruption in the oil industry and considers the pros and cons of initiatives such as the Publish What You Pay campaign.

Juanita Olaya shows that because government contracting involves competing interests and policy demands, anything less than a transparent selection process lays the government open to claims of unfairness or even corruption. Duff Conacher homes in on the narrow divide between legitimate and illegitimate influence in the world of corporate lobbying. Larry Noble and Steven Weiss illustrate how civil society groups can monitor this division by exposing the flow of corporate money into politics.

The politics of corruption in the arms trade: South Africa's arms scandal and the Elf affair

*Joe Roeber*¹

The official arms trade is among the most corrupt of all legal international trades and one in which governments are inextricably entangled.² Since governments make the decision to buy and sell, it is inevitable that corruption in the trade is very often political. Moreover, governments are often at the root of the problem. While it is difficult enough to monitor deals in such an opaque market, the government-sanctioned secrecy surrounding critical aspects of the business actually provides the conditions that allow corruption to flourish.

Politicians on both sides of an arms deal may be on the take, either as individuals or recipients of illicit party funding. While importer governments play the role of customer and paymaster, exporter governments are more involved as promoters of their industries. Exporter governments have been central players in scandals involving Germany's Thyssen, Sweden's Bofors, France's Thomson-CSF (now Thales) and Britain's BAE Systems. These companies and their supporters prefer to describe as 'commissions' what others call bribes. Bribe taking is almost universally proscribed but, until recently and with the single exception of the United States, bribes were effectively legal in the countries where the payment originated, provided they were made abroad.³

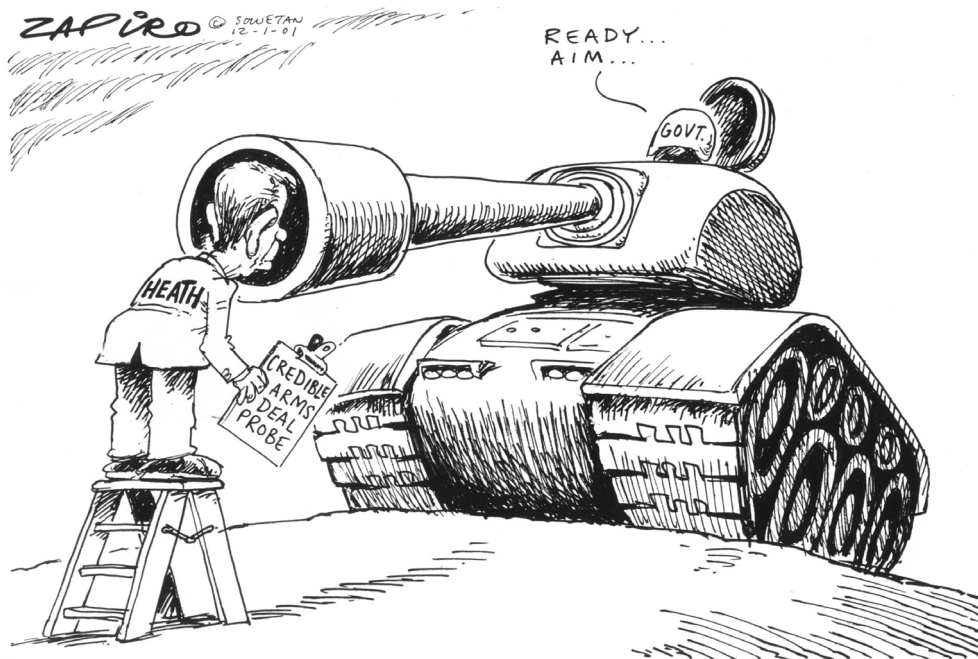
The post-cold war arms market is still plagued with overcapacity and the negotiating position of some manufacturers is weak. European companies, the largest of which are in Britain and France, struggle in a market dominated by US manufacturers. Companies of all nationalities use the inducements of bribes, which weaker players see as 'levelling the playing field'. They also use 'offsets', complex arrangements that help buyers generate the foreign exchange needed for the transaction. Offsets are opaque, difficult to monitor and hence an efficient route for corrupt payments.

In the main exporting countries, political corruption tends to be more complicated and opaque because public intolerance and an independent press add to pressures for concealment, but also because of the complexity of governments' reasons for supporting their arms industries. Governments see such industries as an integral part of their defence capability, an adjunct to foreign policy, a provider of employment and a technological research base for the national economy. As a result, exporter governments curtail public debate, invariably on grounds involving national security. The same reasons are used to justify government-sanctioned secrecy and the involvement of intelligence services. But no matter what the initial justification, someone will always find a way to use it to enrich himself. Britain's 1996 Scott Report, investigating government complicity in an embargo-busting scandal that involved the sale of dual-use equipment to Iraq, was as much as anything else a demonstration of how secrecy can be abused.⁴

Political elites and their associates in developing countries can expect to receive life-changing sums for approving arms purchases, together with those in the military and civil service who are involved. The payments come in many forms and through many routes, of which the brown envelope slipped to the man at the top (or, more likely, payment into an offshore account) is the least likely to emerge into the open. Companies have taken the techniques of making illegal payments to a high level of sophistication and politicians have efficient means of self-protection, such as the ability to influence the bodies that should be investigating them. The recent South African arms deal is representative.

South Africa's arms scandal

It is a tribute to the openness of post-apartheid South Africa that concerns about corruption in the US \$4.8 billion arms deal signed in 1999 remained vividly alive in spite of robust attempts by the government to crush them. Activists raised the issue in parliament, experienced the full force of attempts to suppress discussion and were swatted away in 2001 with a report that was widely dismissed as a whitewash – not least because the only body with a credible claim to independence, the Heath Special Investigation Unit, was excluded from inquiry by a dubious constitutional manoeuvre.⁵ Nevertheless, two challenges are making their way through the courts. One, brought by Economists Allied for Arms Reduction, is being mounted against the financing of the deal. The other, brought by Richard Young, a South African defence contractor, is seeking compensation for having lost out to a Thomson subsidiary in a tender.



Zapiro, South Africa

In addition, South Africa's deputy president Jacob Zuma came under investigation for allegations that he attempted to solicit a bribe from Thomson's South African head in return for protecting the company from investigation and giving it his 'permanent support'.⁶ The case was brought to an end when the director of prosecutions, Bulelani Ngcuka, announced in August 2003 that Zuma would not be charged because, though there is a strong prima facie case against him, the government could not be sure to win the case in court. The charges against Schabir Shaikh, a businessman closely involved with Zuma, spell out in considerable detail just what the evidence is – the money and other benefits Zuma allegedly received.⁷ Closely linked to Zuma's case is that of former chief whip of the ruling African National Congress, Tony Yengeni. In March 2003, he was sentenced to four years in prison for fraud related to the tender process involving an affiliate of the German shareholder in the European Aeronautic Defence and Space Company. Yengeni appealed.⁸

Other questions remain unanswered. BAE Systems won a contract for jet trainers with their venerable Hawk in competition with the cheaper Aermacchi MB339, preferred by the South African air force, raising questions about the tender process. (Performance parameters were modified and, when this manipulation did not produce the answer, the ministers' committee instructed evaluators to ignore price in the approved value system.⁹) The offset arrangements, touted as the crowning triumph of the financing process and ultimate justification for the deal, have been widely questioned. Sweetheart deals abound as part of the offset programme, allegedly giving friends of senior politicians

– and even President Thabo Mbeki’s brother, Moeletsi – a share of the defence pie under the rubric of ‘black empowerment’.¹⁰

One example among many concerns the then minister of defence, the late Joe Modise, who bought an interest in a company, Conlog, with money lent from Germany while he was still minister. The company was expected to benefit from the defence package through black empowerment and the loan was channelled through an account belonging to the sister-in-law of Chippy Shaikh, the head of procurement in the defence ministry and brother of the head of the Thomson subsidiary mentioned above. Modise’s last act as defence minister was to sign the contract to buy submarines from German shipbuilder HRW before the money had been approved.¹¹

Underlying South African arms procurement are fundamental questions about the strategic rationale for buying expensive and technically complex systems – specifically Anglo-Swedish Gripen fighters, British Hawk trainers and state-of-the-art German frigates for deep-sea operations – to defend South Africa against neighbours that are no military threat.¹² A thorough review process came up with four alternative defence options costing 4–6 billion rand (US \$0.7 billion) but, after many trips to Europe, a hi-tech package costing 29 billion rand (then US \$4.8 billion) finally emerged. With the cost of financing and a weaker rand, the deal now runs to 66 billion rand (US \$9.1 billion) – and it doesn’t end there.¹³ The defence ministry is now seeking increased funding from the treasury to bring the equipment up to operational status.¹⁴ In the light of South Africa’s desperate need for social investment, this would be a major scandal even without the garnish of corruption. At this late stage, the least we can do is ask what part corruption played in arriving at this overgrown defence package.

Box 4.1: Political corruption and the politics of procurement

The awarding of contracts after the latest Iraq war brought the interface between politics and government contracting into sharp focus. Under a recent headline, reading ‘Iraq deals: secrecy vs. disclosure’, the *New York Times* observed that ‘executives of publicly traded companies are wary of complying with regulations to fully disclose significant business developments for fear of alienating agencies awarding Iraqi contracts’.¹

Discussions about political corruption often focus on political party finance and electoral systems. But there is also ample scope for political corruption in public contracting, especially when secrecy reigns. One clear case is when political parties and politicians use government assets (among them public policy, contracts, jobs, state property and immunity) for their own private benefit. A recent illustration was the arrest in Japan of politician Suzuki Muneo, who allegedly took bribes from logging companies in exchange for contracts and tried to influence Japan’s foreign and aid policy to benefit a construction firm locked in a dispute in Russia.² Power may also be used to pay back political supporters or to secure future support. This was an allegation made in relation to the privatisation auction for Slavneft, Russia’s eighth-largest oil company. One of President Vladimir Putin’s main financiers and long-time supporters allegedly benefited in the sale.³

Government contracting is often used as a public policy tool. Around 68 per cent of a national spending budget is given over to contracts⁴ and governments are usually

concerned not only with the works on offer, but also with the impact they may have on local industries, employment or overall expenditure. The fact that various interests are in play need not be a problem so long as the public interest is paramount and the government adjudicates between competing claims fairly and transparently. When the contracting process is not transparent, governments expose themselves to accusations of corruption.

The political dimension of procurement looks starkest in the context of war and post-war reconstruction. In relation to the first phase of post-war reconstruction in Iraq in 2003, for instance, when talk of the reconstruction preceded the war itself, can one talk about how transparent and clean the contracting is for the reconstruction process without referring to the political context and the use of force that created the reconstruction need? Much has been said about the fact that contracts were awarded to companies that had made significant contributions to the US Republican Party campaign in a bidding process that was not open. If there had been fair and open competition for the contracts, questions about process – and related doubts over their timing, quality and price – would not now be raised. Good politics and good procurement go hand in hand, with transparency underpinning both.

The above examples have clear policy implications. First, political party finance laws must also consider the related issues of conflict of interest and statutes of limitations for both contractors and government officials. This can help to halt the abuse of privileged information and power that emerges from the 'revolving door' that allows former office holders to pass directly into senior corporate positions and vice versa. Secondly, corruption is not a spot market: today's favour need not be repaid tomorrow, but often several electoral terms in the future. Therefore, information requirements and control systems must be fashioned so that they apply over the long term.

Juanita Olaya (Transparency International)

Notes

1. *New York Times* (US), 12 April 2003.
2. *Asia Times* (Japan), 5 August 2003; BBC News (Britain), *Asia-Pacific*, 16 July 2002.
3. *Washington Post* (US), 25 January 2003.
4. UNPAN Statistical Database, central government expenditures by type and function, as percentage of all central government expenditure as of 1997 (calculations by author). Resulting figure excludes expenditure on wages and interest payments from the world average. Differences according to country development level may arise.

The arms dimension of the Elf case

Arms corruption scandals and near-scandals are not new to Europe, whose most recent affair centres on the Elf investigations in France. In January 2003, Roland Dumas, foreign minister under François Mitterrand, was declared innocent of enjoying the fruits of corruption from Elf (*'recel et abus de biens sociaux'*) passed on to him through his mistress, Christine Deviers-Joncour, an offence of which he had been found guilty two years before.¹⁵ The appeal court decided that, although Joncour was hired specifically to open the back door to his office, Dumas had not known that the 17 million franc (US \$3 million) flat where they met – or the thousands of dollars lavished on him from her unlimited credit card – had been corruptly supplied by Elf.¹⁶ Nor was it even suggested that he had received any of the 65 million francs (US \$12 million) she was

allegedly paid to induce him to change government policy to permit the sale of frigates to Taiwan for 14.6 billion francs (US \$2.6 billion). Policy was indeed changed and, according to Dumas himself, the shipbuilder, Thomson-CSE, paid US \$500 million in 'commissions' to people known to himself and President Mitterrand. In effect, the court appears to have judged that Dumas, a lawyer to the rich and famous, close friend of the president, government minister and president of the highest court in France, had simply been naive.

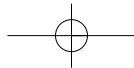
Investigation of the Taiwan deal has since disappeared from sight, sucked into arbitration. Meanwhile, some of Dumas' co-defendants went back to court along with others, mostly Elf managers, charged with bribing African politicians and helping themselves on the way.¹⁷ Evidence of payments to French politicians was declared a 'defence secret' by the government and not allowed into court.

The ramifications of the Elf case wind across the border to Germany, where they helped to destroy the reputation of ex-chancellor Helmut Kohl. At the heart of the matter are the 'commissions' allegedly paid by Elf to 'facilitate' the purchase of the moribund Leuna refinery in East Germany. According to Loïk Le Floch-Prigent, Elf's director general, the company bought the refinery at Mitterrand's insistence to help his friend Helmut, whose modus operandi allegedly included buying the allegiance of the Christian Democratic Union's (CDU) regional agents with money from a party slush fund. The process that led to the end of Kohl's long career began with the suggestion that bribes may have been paid to facilitate the sale of tanks to Saudi Arabia by Thyssen.

South Africa ordered 36 tanks after the 1990 Gulf War in a non-competitive tender at a cost of 446 million marks (US \$223 million), of which half was commissions. It is reasonable to assume that most of the commission flowed to the princely sponsors of the deal, as is traditional. But a chunk stayed with middleman Karl-Heinz Schreiber; some flowed back to Thyssen managers (which is when the German tax authorities became interested); and a small piece went to the CDU, which is when journalists perked up and Kohl's career started to unravel.¹⁸

Under German rules, only half the tanks qualified for export licences. On 20 February 1991, Schreiber, a Bavarian fixer whose thumbprint is to be found on many deals, contacted the CDU's treasurer, Walther Leisler Kiep, for help.¹⁹ It seems the CDU was paid for a change of government policy: a week later, the federal security council overrode the foreign ministry and approved the export of the tanks. On 2 August Thyssen paid the first instalment of Schreiber's commissions, 11 million marks (US \$5.7 million), and just over three weeks later Schreiber gave a briefcase containing 1 million marks (US \$500,000) in cash to the CDU's accountant in the presence of Kiep. The subsequent history of the money tells us about how slush funds are sometimes used: 422,800 marks (US \$211,400) went to the accountancy firm, 370,000 marks (US \$185,000) to a CDU trusty and the rest stayed with Kiep.

In May 1999, the Augsburg tax office arrested two Thyssen managers for tax fraud, claiming they omitted to declare 12.5 million marks (US \$6.25 million) received from Schreiber. A warrant was also issued for the arrest of Ludwig-Holger Pfahls, the former secretary of state in the ministry of defence and later president of the German consti-



tutional court, on the grounds that he had not declared a 3.8 million mark (US \$1.9 million) bribe. He has remained out of the country.

Deductions and recommendations

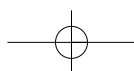
What do these details tell us about political corruption in the arms trade? They tell us that it happens, although they cannot tell us how often. They seem to suggest the problem is endemic, given that such deals are few in number, large and discontinuous. Industry apologists will claim they demonstrate how rare such occurrences are. Critics say they show how rarely they are discovered. To decide which explanation is the most likely, we must look at the nature of the industry, at the circumstances in which corruption flourishes and at the role of politics.

The arms trade shares the properties of other corruptible trades, but it is set apart by two features: the lack of price transparency – the prerequisite of a functioning market – and officially sanctioned secrecy. It is this combination that hard-wires the trade for corruption. The close involvement of government in its activities merely makes things worse. It is not surprising that the political system, from time to time, should be up for sale to potential beneficiaries. The resulting positive feedback loop of corruption inflates the business and adds to the supply of arms into unstable regions.

Can anything be done? There are many possible actions, of which we shall mention three – with two preconditions: first, the only measures worth taking must have a good chance of success and be multilateral. The second condition is that a campaign for action should not be captured by the much wider campaign against the arms trade per se. In that context, it is paradoxical that the thrust of an anti-corruption effort would be not to ban the arms trade, but to improve it by preventing distortions in defence procurement.

- The first and most important action would be to **make the OECD Anti-Bribery Convention effective** – starting with a rigorous and independent monitoring system with a secure hotline for whistleblowers (see ‘Will the OECD Convention stop foreign bribery?’, Chapter 7, page 128).
- Second, given that exporter governments have the power to issue, or withhold, export licences within certain legal and political parameters, the **approval of export licences** should be made conditional on companies having pre-qualified themselves with annual undertakings from the companies’ top management and lodged with export control departments. These undertakings, akin to the ‘annual sign-off letters’ now routine in large oil companies, would certify that, to the managers’ knowledge, no bribery was involved in getting the business.
- Borrowing from the ‘Publish What You Pay’ initiative in the extractive industries, the third action would be to change accounting rules to require the **reporting of all payments** on a national basis.

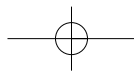
If these proposals are not acceptable to governments, voters should be encouraged to ask their governments to justify the practice of bribing the political elites in some of



the poorest countries in the world to buy arms they may not need with money they probably cannot afford.

Notes

1. Joe Roeber is a freelance journalist and member of TI UK.
2. The official arms trade is the legal, open market trade that usually involves governments as buyers or sellers. This report does not consider arms and systems traded in the black or grey markets or smuggled to embargoed destinations.
3. The practice of bribing foreign officials is banned in countries that have ratified the 1997 OECD Anti-Bribery Convention.
4. Sir Richard Scott published his five-volume report of the *Inquiry into the Export of Defence Equipment and Dual-Use Goods to Iraq and Related Prosecutions* in February 1996. See www.ombudsman.org.uk/pca/document/hc804/a30-95.htm
5. See www.idasact.org.za/pims/arms/review.htm
6. See 'Zuma Denies Bribery Allegations', SABC News (South Africa), 29 November 2002; 'Bank Record Raises New Questions on "Bribe"', *Business Day* (South Africa), 7 July 2003; and 'Zuma Investigation Stirs Dormant Party and Empowerment Tensions', *Financial Mail* (South Africa), 8 August 2003.
7. 'Zuma off the Hook', *Sunday Times* (South Africa), 24 August 2003; 'Shaikh Case Puts Zuma back in the Spotlight', *Business Day* (South Africa), 26 August 2003.
8. 'Yengeni out on Bail Pending Appeal against Sentence', SAPA (South Africa), 19 March 2003.
9. Report to Parliament of the Joint Investigation into Strategic Procurement Packages, 14 November 2001, Chapter 4. A series of reports in the *Guardian* (Britain), 13, 14 and 16 June 2003, looks at the trade, focusing on the South African deal, and suggests that the then minister of defence, Joe Modise, was handsomely paid for his help; see 'BAE "Paid Millions" to Win Hawk Jet Contracts', *Guardian* (Britain), 30 June 2003.
10. See 'President's Brother Buys into Arms Deal', Paul Kirk, *Mail and Guardian* (South Africa), 27 July 2001 and 'More Arms Deal Revelations', Raenette Taljaard MP, Democratic Alliance website, 26 March 2002.
11. The story of Modise's involvement is told in 'Soldiers of Fortune', Peter Honey, *Financial Mail* (South Africa), 26 March 2002.
12. See 'The New Defence Equipment' page of the South Africa Government Online website, www.gov.za/projects/procurement/background/new_equipment.htm
13. 'South Africa's Multi-billion Arms Programme Revisited', *Defence Systems Daily*, 19 November 2001, www.defence-data.com/features/fpage47.htm
14. See vote 22 in the Budget 2003 document, available on the National Treasury website, www.treasury.gov.za
15. The background to the 2001 trial (sketching in the German connection) is to be found in David Ignatius, 'True Crime: The Scent of French Scandal', *Legal Affairs* (US), June 2002.
16. 'Court Overturns Dumas Conviction for Corruption', *Independent* (Britain), 30 January 2003.
17. For background, see 'The Elf Affair: Who's Who', *Financial Times* (Britain), 15 April 2003. The court process finished in July 2003, with the verdict expected in November.
18. The beginning of the Thyssen story is found in 'Schreiber muss mit Auslieferung rechnen' (Schreiber faces extradition) *Süddeutsche Zeitung* (Germany), 8 May 1999; and 'BND prüft Verstrickung in Waffengeschäfte' (Federal Intelligence Service checks involvement in



arms deals), *Süddeutsche Zeitung* (Germany), 1 October 1999. An extensive account is to be found in 'Goldgräber in Kriegszeiten' (Gold-diggers in times of war), *Der Spiegel* (Germany), no. 46, 1999.

19. For Schreiber's modus operandi see Stevie Cameron and Harvey Cashore, *The Last Amigo: Karl-Heinz Schreiber and the Anatomy of a Scandal* (Toronto: Macfarlane Walter & Ross, 2001).

The Elf trial: political corruption and the oil industry

Nicholas Shaxson¹

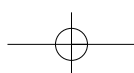
Less than 30 per cent of the world's oil, according to BP, comes from OECD countries.² Much of the rest comes from poor countries whose governance problems, according to emerging research, are often exacerbated by oil dependence.³ Since colonial times poor governments have taken significant control over their oil and gas industries: they can now more easily dictate the terms on which their oil is extracted. The result, when Western oil firms accept corrupt leaders' demands, can be the export of corruption into the rich world, via oil firms and banks that use tax havens in deregulated financial markets to deal secretly with corrupt leaders. Flows of oil money are so huge they can distort decision-making not just in poor producer countries, but in the rich world too.

Political corruption in the oil business takes many forms. One is simply the payment of bribes to national leaders in pursuit of oil deals, often covered by the smokescreen of intermediaries or layers of secret bank accounts in tax havens. Such bribes can run into tens, even hundreds of millions of dollars. Companies deny bribery but weak national laws in producing countries allow them to negotiate official contracts containing payments that flow to elites, bypassing national treasuries. Firms can then say the problem is not one of bribery, but of flawed national accounting, or just bad revenue management.

The Elf trial and beyond

French magistrates investigating former state oil firm Elf Aquitaine (now renamed Total) since 1994 have opened a window on some of the oil industry's secrets. The investigations, which Britain's *Guardian* newspaper called 'perhaps the biggest financial scandal in a western democracy since the end of the Second World War',⁴ illustrate the problems of political corruption that have characterised the oil industry for decades. Elf had no monopoly on political corruption but it makes an excellent case study, because it 'got caught'.

Elf was state-owned until 1994. Graduates of elite French institutions regularly rotate between political and diplomatic posts, state firms like Elf, big private companies and the secret services. Matters are complicated, especially in Africa, by elaborate 'réseaux': solidarity networks, masonic structures, secret services, overseen by men like the shadowy Jacques Foccart, an agent of French presidents for whom Elf was his most powerful tool and perhaps his most important consideration.⁵



Elf used French political influence in oil-rich Gabon to sign favourable contracts generating large super-normal profits as it built itself into General de Gaulle's vision of a French national champion able to rival 'Anglo-Saxon' competitors. Gabon and Elf Gabon were also giant piggy banks that allowed Elf and France to conceal bribery and wield other tools such as mercenary and arms-dealing services, either in pursuit of oil deals or towards more overtly geopolitical ends. The Elf trials have uncovered payments to politicians in Africa, Central Asia, China, France, Germany, Russia, Spain, Taiwan, the United States and Venezuela. Details of Elf's payments, the court has heard, were even sent for approval to French budgetary authorities, the presidency and customs.

The Elf 'system', in place since the 1960s, had two other purposes, essential for its survival. One was the covert financing of France's main political parties and secret services. The second, also essential in preserving silence, was personal enrichment.

After 1989, when the late French president François Mitterrand appointed Loïk Le Floch-Prigent head of Elf, corruption escalated. President Mitterrand, just re-elected, was unhappy that the Elf system mostly benefited rival right-wing or 'Gaullist' political groups and said his Socialist Party should get a bigger cut.⁶ This was a go-ahead to expand the Elf system.

'Originally, everything was more or less Gaullist-controlled', said François-Xavier Verschave, head of Survie, a Paris-based campaigning group.⁷ 'Then Le Floch-Prigent came along. The system became less classical, more heterodox, more baroque. So it became vulnerable.'

New rivalries in French politics and the secret services created leaks, counter-leaks and denunciations. French laws gave the magistrates wide powers (in contrast to some 'Anglo-Saxon' jurisdictions where plea bargaining and other features can allow deals to prevent dirty secrets from being aired) and the case took on a life of its own. Pulling each thread produced others, and the complexity multiplied.

Magistrates like Eva Joly, who launched the investigations in 1994, received death threats and needed bodyguards at times.⁸ Obstruction in France was worsened by poor cooperation from Britain, Liechtenstein and Monaco, though Swiss judges have been more helpful. French laws make it hard to prove bribery of officials, so magistrates tend to focus on personal enrichment or kickbacks. Even so, the investigations have brought the wider Elf system to light.

The effects of the Elf trials are ambiguous. They have exposed corruption but recent legislation has curbed the investigating magistrates' powers, and more restrictions are likely to come. 'It is as if [Eva] Joly had netted a load of fish, which are now left to rot in the sun while the French public politely holds its nose', wrote commentator David Ignatius. 'She prised open a door, at great personal risk, but the political class refused to follow her through it into a new era of accountability ... for a moment at least, the system was weak, exposed and, perhaps, even ready to topple, but it survived because of the code of silence of the French elite.'⁹ Senior French politicians like Charles Pasqua and even President Jacques Chirac have been named, or alluded to, in the trials, but have so far escaped legal punishment. Chirac has presidential immunity.

The trials have identified many corrupt or questionable mechanisms: overpayment for assets generating hidden subsidies, payments through chains of offshore accounts,

the use of Gabon as an offshore financial turntable for generating hidden payments, and the use of secrecy and commercial intelligence as keys to financial success. There are 'revolving door' problems; the use of politically networked intermediaries to win deals; specialised trading companies that confuse revenue flows; persistent links between oil and the covert arms trade; and the assumption by oil firms of diplomatic functions.

As revealed in the Elf trials, political corruption in oil is tied up with banking. One example was the renegotiation of Angola's US \$5 billion debt to Russia in 1996: after a debt reduction deal to US \$1.5 billion, the debt was purchased by Russian oligarchs who used political connections in Moscow to obtain the debt privately. Then two intermediaries who featured in the Elf trials helped persuade Angola to repay the debt in oil through a murky loan arrangement led by French banks.

A French parliamentary report in 2001 on money laundering identified London and territories linked to Britain, including Bermuda, Gibraltar, the Channel Islands, the British Virgin and Cayman Islands, and the Isle of Man, as a huge under-regulated terrain ideal for money laundering; oil money often transits these zones.¹⁰ The looting of several billion dollars in oil revenues by former Nigerian dictator Sani Abacha, with the complicity of Britain-based banks, is well documented. An American intermediary, James Giffen, was indicted in 2003 for violating the US Foreign Corrupt Practices Act by allegedly paying US \$78 million to top political officials in Kazakhstan on behalf of Mobil (now ExxonMobil) (see the country report on Kazakhstan, Chapter 8, page 202).

Cleaning up corrupt oil

In the light of this complexity – of which the above is only a taster – it is worth examining Publish What You Pay (PWYP), an NGO-led campaign that emerged out of corruption investigations by Global Witness in Angola but has since acquired international force.¹¹ PWYP wants regulators in rich countries, and possibly institutions like export credit agencies, to require natural resource companies to publish disaggregated data, country by country, to show oil firms' tax and other payments clearly. From published accounts, it is usually impossible to unpick revenue flows between companies and countries such as Angola.

PWYP faces technical and political challenges. Its approach cannot capture all contractual revenue flows: under production-sharing contracts, host governments like Angola's own the oil under the ground, and they pay oil firms for their services – not vice versa. Only some payments, like corporate taxes or signature bonuses, flow from companies to governments. So disclosure by companies of their payments to host governments would not capture, for example, a state's profits from its own share of oil production, which can be more than half of total state revenue. State oil firms can also mingle revenue flows from oil, refineries, gas, chemicals, petrol stations and state joint ventures with oil service companies, which are outside PWYP's scope. Cloudy revenue flows from downstream operations, such as refineries, are especially difficult in countries like Nigeria, which has large refining interests and where state subsidies make the issue murkier still.

The Extractive Industries Transparency Initiative (EITI), backed by the British government, aims to fill some technical gaps by focusing not just on international oil companies, but also on host governments. 'We need joint action by governments and companies, working in tandem', said British prime minister Tony Blair at an EITI meeting in June 2003. 'We need to link "Publish What You Pay" with "Publish What You Earn".' But by aiming to bring governments like Angola's on board it sets itself ambitious targets; there are fears that the countries for whom the issue is most important will be the ones most resistant to joining up: corrupt payments are often used as tools of political power. Individuals involved in PWYP argue that a purely voluntary approach (which the EITI and others advocate) is not strong enough to make companies change.

But neither PWYP nor EITI tackles forms of corruption such as revolving doors and conflicts of interest. It is also outside their scope to assess whether investment costs in, say, an oilfield (recorded under the term 'cost oil' in production-sharing contracts) reflect true market value or contain hidden subsidies that could generate bribes. The Elf trial has uncovered several examples of bribes hidden inside inflated investment costs. In 2001 Angola agreed the details of an 'oil diagnostic study' with the IMF, which explicitly recognises this problem and recommends safeguards against 'overstating unit costs of production, operating costs and field development cost; and inclusion of unauthorised costs in the cost-recovery account'.¹²

Developments like the creation by Angolan state oil firm Sonangol of more than 60 joint ventures and subsidiaries with foreign oil service firms for oil platforms, drill ships and the like, covering most areas of 'investment costs', complicate matters further. Oil firms plan to invest US \$23 billion in Angola over the next five years,¹³ so this area is potentially a vast 'black box' in which oil service companies are only supervised by host governments and oil companies. Collaboration in hiding revenue flows in this arena is highly likely.

'Neither EITI nor PWYP touch cost oil, let alone go inside the "black box"', said an oil company official. 'Neither will reveal anything about bribes; it is an illusion to think that. I do not even understand why people think corruption is the biggest revenue management problem. I think of it as a sideshow, albeit an important and particularly disgusting one.'¹⁴

PWYP and EITI are aware of the challenges – and of the hostility of some oil firms to PWYP, with its emphasis on mandatory disclosure. 'PWYP will not capture everything but it is a very important first step', said Simon Taylor of Global Witness, adding that PWYP's demands, if met, would remove a hypocrisy by which different standards are applied in the rich and poor worlds, and would still reduce the scope for corrupt payments.¹⁵ 'It is a question of enshrining new global best practice. We are at the beginning of a process.'

The two campaigns have significant political momentum: more than 160 NGOs have signed up to PWYP and, at the June 2003 EITI meeting, a group of institutions representing an astonishing US \$3 trillion in managed funds publicly supported the initiative.¹⁶

The size of the oil companies and the strategic significance of their product explain their abilities to override national laws, or to change them in their favour. This is the

source of much of the corruption. In *The Seven Sisters*, Anthony Sampson's classic 1975 history of the oil industry, oil firms 'appeared to be part of World Government ... financing whole nations, fuelling wars ... an enduring subject of suspicion and investigation; their supranational expertise was beyond the ability of national governments'.¹⁷ The scale and endurance of political corruption in oil over so many decades suggests it will never be eradicated, only tempered, in a permanent struggle between oil interests, on the one hand, and political actors in the rich world or civil society and political interests in poor countries, on the other. In general terms, the larger the oil sector relative to a country's economy and institutional strength, the greater the potential for political corruption.

Within national borders, checks and balances have developed, often through democratic processes, to curb political corruption. The problems often appear not within countries but between them, in a global terrain where multinational firms like the oil majors exploit the fact that the array of different national legal systems meshes together so poorly. This provides huge opportunities for loopholes. Tackling political corruption in the oil business is part of a wider challenge to strengthen and coordinate global governance.

Notes

1. Nicholas Shaxson is the author of country reports on Angola and Gabon for the Economist Intelligence Unit and a regular contributor to the *Financial Times* (Britain) and *Financial Times Energy* (Britain).
2. BP, *BP Statistical Review of World Energy* (London: BP, 2003).
3. For a good account of the problems, see Catholic Relief Services, *Bottom of the Barrel: Africa's Oil Boom and the Poor* (Baltimore: Catholic Relief Services, 2003).
4. *Guardian* (Britain), 2 June 2001.
5. See Antoine Glaser and Stephen Smith, *Ces messieurs Afrique* (Paris: Calmann-Lévy, 1994) and their later book, *Ces messieurs Afrique 2: Des réseaux aux lobbies* (Paris: Calmann-Lévy, 1997). Foccart died in 1997.
6. Le Floch-Prigent confirmed Mitterrand's request during the trials.
7. Interview with author.
8. Joly describes some of the threats and intimidation in a new book, *Est-ce dans ce monde-là que nous voulons vivre?* ('Is this the world we want to live in?') (Paris: Les Arènes, 2003).
9. David Ignatius, 'True Crime: The Scent of French Scandal', *Legal Affairs* (May-June 2002).
10. Arnaud Montebourg and Vincent Peillon, *Rapport d'information*, 10 October 2001.
11. See www.publishwhatyoupay.org
12. 'Terms of Reference: Financial Diagnosis and Monitoring of State Petroleum Reserves', published in 2001 on the state media website www.angola.org
13. Dow Jones Business News, 18 June 2003.
14. Interview with author.
15. Interview with author.
16. 'Investors' Statement on Transparency in the Extractives Sector', organised by ISIS Asset Management, June 2003.
17. Anthony Sampson, *The Seven Sisters: The Great Oil Companies and the World They Made* (New York: Viking Press, 1975).

Box 4.2: Canada's rules on lobbying: key loopholes remain

Canada's rules on lobbying are often cited as a model for the rest of the world, but after a series of scandals involving political donations and the misuse of public funds, Prime Minister Jean Chrétien proposed significant changes to the federal laws on lobbying, political finance and ethics rules in June 2002. The reforms are intended to increase the transparency of lobbying, to set limits on political donations and to reform the institutions that oversee the ethical behaviour of government ministers and parliamentarians. Unfortunately, the changes still leave large loopholes.¹ In the case of lobbying, rules on disclosure remain too limited and weak enforcement is a particular problem.

Regulating lobbyists – and ensuring transparency – is critical in the fight against political corruption because the line between legitimate and illegitimate lobbying is thin. Canadian lobbyists are governed by the Lobbyists Registration Act (LRA) and a code of conduct introduced in 1997 under the provisions of the LRA.

In principle, the LRA should ensure the registration of all lobbyists, but the law only requires them to register if they are specifically paid for the purpose of lobbying. The law specifies three categories of lobbyists: consultant lobbyists (hired, usually by corporations, to work on specific efforts); in-house lobbyists working for corporations; and in-house lobbyists working for non-profit organisations. By these definitions, a significant proportion of corporate lobbying is not disclosed: paid employees of corporations often gather the information needed to lobby, but don't have to register as lobbyists, while corporate directors and retired executives (who are not always paid, and therefore do not need to register) actually do the lobbying.

A number of interest groups and the media have consistently called on ministers and senior civil servants to disclose who lobbies them, since this would ensure that *all* lobbying efforts aimed at these key policy-makers are transparent. However, the federal government has refused to enact this measure and the provinces of Ontario, British Columbia, Nova Scotia and Québec have all enacted lobbying legislation based on the weak federal example.

The LRA requires registered lobbyists to disclose basic details about themselves (or the client, in the case of a consultant lobbyist), the departments lobbied, the aim of the lobbying and the techniques used. The recent amendments, enacted in June 2003, include one significant addition: a requirement that lobbyists disclose past work with the government. This is a step forward since it will shed light on the problem of 'revolving doors' through which former public officials cash in on their inside knowledge and access by becoming lobbyists.

But disclosure of another crucial piece of information – how much is spent on a lobbying campaign – is still not required in Canada (though it is in more than 30 US states); nor are lobbyists asked to disclose previous work with political parties or candidates.

The real flaw in Canada's lobbying system, however, is a lack of enforcement and penalties for violations of ethics. The enforcement front-line consists of the Lobbyists Registrar and the Ethics Counsellor, which both lack sufficient resources to audit the lobbying industry and ensure compliance with the Lobbyists' Code of Conduct. Furthermore, the Ethics Counsellor is appointed by and can be overruled by the prime minister, which creates a risk of bias because the Ethics Counsellor's rulings may affect the prime minister or members of his cabinet.

▷

Among its other stipulations, rule 8 of the lobbyists' code prohibits lobbyists from placing public officials 'in a conflict of interest by proposing, or undertaking, any activity that would constitute an improper influence' on the official. The interpretation of this rule is crucial to its enforcement. The Ottawa-based citizens' group Democracy Watch has filed a number of complaints about lobbyists breaking rule 8 by fundraising, working for or giving gifts to the prime minister, or to ministers they were lobbying. The Ethics Counsellor has dismissed several of the complaints on the basis of a narrow interpretation of the rule, and Democracy Watch is challenging the dismissals in court.²

Although the federal government refused to require lobbyists to disclose how much they spend, recent changes to the federal political finance law closed several (but not all) loopholes in the disclosure of donations. Bill C-24, which amends the Canada Elections Act and comes into force in January 2004, also sets limits on political donations for the first time. In terms of its effects on lobbying, lobbyists' donations to parties and candidates will now be more fully identified.

Bill C-34, due to become law by December 2003, is the final part of Prime Minister Chrétien's ethics package. If passed in its entirety, the bill will see the Ethics Counsellor replaced with three new ethics watchdogs. A new Ethics Commissioner with more independence will enforce rules for cabinet ministers and parliamentarians; an Ethics Officer will watch over senators; and the Registrar will enforce the Lobbyists' Code of Conduct.³

However, key loopholes remain in the bill: the ethics watchdogs will not be fully independent since the cabinet will still control appointments; the public will not be allowed to file complaints with the watchdogs; and the courts will be barred from reviewing the watchdogs' decisions. There will continue to be no independent enforcement of ethics rules for federal civil servants (nor effective whistleblower protection). A better system, which Democracy Watch continues to advocate, would be a single fully independent, fully empowered, fully accountable ethics watchdog for ministers, all parliamentarians, civil servants and lobbyists.

Nearly 140 years after achieving nationhood, Canada's federal government still lacks key anti-corruption measures to ensure that secret political donations and high-powered lobbyists cannot distort the public interest by gaining undue influence over politicians. The changes to the lobbying, political finance and ethics laws introduced in 2003 are a step in the right direction, but much more remains to be done.

Duff Conacher (Democracy Watch, Canada, www.dwatch.ca)

Notes

1. For details of the bills see: www.parl.gc.ca/LEGISINFO/index.asp?Lang=E and for details of the laws see: www.lois.justice.gc.ca/en/index.html
2. In January 2003 the Ethics Counsellor stated that a lobbyist has violated rule 8 if he did something to 'interfere with the decision, judgement or action' of a public official in a way that amounted to 'a wrongful constraint, whereby the will of the public office holder was overpowered'.
3. In addition, Bill C-34 provides further impetus to efforts to pass ethics rules for all members of the House of Commons and senators. Previous attempts to pass such rules failed when federal politicians refused to enact rules that cover themselves. In contrast, the Québec government reacted to an ethics scandal involving lobbyists and ministers in early 2002 by enacting even stronger measures by the end of the year and setting up a new watchdog, just for lobbyists.

Box 4.3: Following the Enron money trail

Rumours began in autumn 2001 that the Texas-based energy giant, Enron, was in serious financial trouble. Not only was the company about to declare bankruptcy, but it was also guilty of ethical and accounting misdeeds that would culminate in criminal charges and numerous inquiries by the US Congress.

Enron was more than just a financial scandal, of course. It was also a political bombshell, largely due to reporting by the Washington-based Center for Responsive Politics (CRP). Shortly after Enron's troubles became public, CRP released statistics showing the corporation and its employees had donated nearly US \$6 million to candidates for Congress or the president, and to the national political parties, over the previous 13 years. CRP also showed that Enron's former CEOs, Ken Lay and Jeffrey Skilling, were among the most generous givers in the company.

Enron's extensive political connections led many to wonder if Washington had turned a blind eye to the company's transgressions. A story that had begun in the business section leapt to the front page of every major publication in the United States and around the world.

CRP has tracked all political contributions at the federal and national level every day since 1989. It benefits from a robust disclosure system in the United States that places particular emphasis on pre-election disclosure. Several times a year, every candidate for high office, as well as the political parties, must file disclosure reports with the Federal Election Commission (FEC) that detail their fundraising and spending. Recipients of contributions totalling over US \$200 in a year are legally required to list the donor's name and address. The recipient is also required to ask for the donor's occupation and employer, and report that information if it is provided.

That detail is critical, for it allows CRP to examine contribution information, downloaded from the FEC, in a bid to identify political donors and the interests they represent. For every contribution CRP can fingerprint, it assigns different codes identifying the donor, their employer, their occupation and the broad industry or interest group into which they fall. A contribution from a Microsoft employee, for example, will carry one code unique to the donor, another assigned to all Microsoft employees, yet another given to all employees of computer companies, and so on.

As a result, CRP can not only gauge how much money a particular donor, company or industry has contributed overall, but also how much was given to the Democratic party or the Republican party, and incumbents versus challengers. All this information is available free on CRP's website, www.opensecrets.org. CRP's biggest audience is the media, but NGOs focused on a wide range of issues also pay close attention, as do academics, to political players themselves – and their adversaries.

CRP's mission is to make the public more aware of the role money plays in who wins elections, what interests have the most influence among politicians and which legislative proposals have the best chance of passage. CRP does the research and analysis that the government agency collecting the information cannot, or will not, do.

CRP doesn't say money buys votes. It does say that big donors get access to politicians that others do not. Donors use this access to establish relationships with elected officials, developing influence at the highest levels of power. Often, they get what they want. Enron was just one example of a corporation playing the political game to its advantage. CRP believes that public awareness of who finances whom in US elections is the best way possible to ensure against future occurrence of such abuses.

Larry Noble and Steven Weiss (Center for Responsive Politics, United States)

Box 4.4: Dora Akunyili: TI Integrity Awards winner 2003

Dora Akunyili is Director General of Nigeria's National Agency for Food and Drug Administration and Control. She has defied death threats while tackling corrupt practices in the manufacture, import and export of drugs, cosmetics and food products.



Since taking up her position in April 2001, Akunyili – a pharmacologist by training – has earned nationwide respect for her persistence in prosecuting illegal drug traders and imposing strict standards on multinational companies. She has pursued manufacturers and importers of counterfeit drugs, deemed to be a leading cause of deaths by stroke and heart failure in Nigeria.

Counterfeit drugs worth an estimated US \$16 million have been confiscated and destroyed by Akunyili and her staff, saving countless Nigerian lives in the process.

'Corruption in the health sector is murder', Akunyili said. She dedicated her award to all who have died as a result of using counterfeit drugs.

5 Vote buying

One of the most blatant manifestations of political corruption takes place during elections, when politicians attempt to bribe their constituents directly. Focusing on Latin America and East Asia, respectively, Silke Pfeiffer and Frederic Charles Schaffer show that votes are often bought via brokers who forge long-term relationships with target populations, frequently in poorer regions. Using surveys of vote buying in Brazil, Claudio Weber Abramo questions assumptions about levels of bribery in both local and national elections. Leslie Busby assesses an altogether different forum for vote buying: international policy institutions. In her article, she examines the Japanese government's use of overseas development aid to further its interests in the International Whaling Commission.

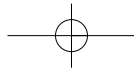
Vote buying and its implications for democracy: evidence from Latin America

*Silke Pfeiffer*¹

When we talk about electoral corruption we refer to arrangements between parties or candidates and their donors, on the one hand, or parties or candidates and the electoral administration, on the other. In the first case, donations to election campaigns are returned, or paid off, by favours after the candidate is in power. In the latter, parties or candidates manipulate election results by bribing electoral officers. In the case of vote buying, parties and candidates deal with their constituency directly; voters are bribed for a commitment to a particular electoral behaviour.

Why do people sell their votes? Are they sacrificing political rights and democratic duties for immediate, material benefits, or are they placing their votes under rightful, but different, criteria of preference? Do politicians disregard the principle of gaining power on a convincing political platform when they buy people's votes, or is it a legitimate way to influence voting behaviour prior to an election? And how can vote buying be a profitable business when the secrecy of the ballot must surely guarantee that voters make their decision independently of prior commitments?

In a poll of Latin American national chapters of Transparency International, many respondents pointed to vote buying as a routine aspect of electoral corruption and highlighted the need for better understanding of the problem. In Brazil's municipal elections in March 2001, for example, 7 per cent of voters were offered money for their votes.² Different surveys in Mexico place the frequency of vote buying at between 5



per cent and 26 per cent,³ while a 1999 Gallup survey in Argentina found that 24 per cent of interviewees knew someone who sold his or her vote.⁴

What is bought and sold

Vote buying refers to the moment an inducement is offered by a candidate or a candidate's agent with the clear intention of harvesting the recipient's vote. Voters may be asked to commit to vote in favour or against a particular candidate; they may also commit to abstain from voting.

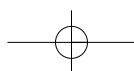
The voter may not end up delivering on the commitment (see 'Vote buying in East Asia', page 83). In cases where the commitment to vote in a specific way was fulfilled, the voter may not actually have been swayed by the payment. A number of parties have run campaigns that focused on disassociating the acceptance of the offer from the actual vote: in Mexico's presidential elections in 2000, opposition candidates called on voters to 'take the gift, but vote as you please'.

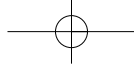
The object of transaction is not always cash. Offers include food, clothes, household goods, medicine, infrastructure, construction material, agricultural inputs and the provision of other services. Short-term jobs and public contracts were traded in Colombia's 2002 presidential campaign.⁵ Voters may be granted access to social programmes or other public services in exchange for their vote; they may also be threatened with deprivation of benefits if they do not vote as 'commissioned'. Such threats were one of the foundations of Alberto Fujimori's re-election strategy in Peru in 2000: beneficiaries of the national programme of food assistance, Pronaa, were pressured into giving their vote to Fujimori, attending his campaign events and wearing stickers that promoted his party, as a tacit condition for continuing to receive food subsidies.⁶

This example highlights how vote buying is often accompanied by a second crime: the misuse of public funds to finance vote purchases. As vote buying and selling becomes entrenched in the political culture of a country, the buyer is encouraged to look for more resources to fuel the activity. In Colombia, mayors from the southwestern department of Nariño were accused of using funds from Plan Colombia (a US-sponsored initiative aimed at tackling drugs production and trafficking) to finance their vote buying activities.⁷ In another example, governors from Mexico's ruling party, the Institutional Revolutionary Party (PRI), threatened voters that vouchers distributed in southern states via the Progresa poverty-alleviation programme would be withdrawn if they voted for the opposition in the 2000 elections.⁸

Who sells and who buys

Different objects of transaction relate to different types of relationships established between buyers and sellers. In some cases, the exchange of benefits or inducements for a voting commitment occurs as a brief transaction immediately before the election. The contact between buyers and sellers is limited to this single moment and it is mostly cash or material goods that are traded. This is quite effective in that it reaches out to a large number of voters. It suffers, however, from a high degree of 'betrayal': voters accept the inducement but don't vote according to the pact.





A contrasting scenario is where vote buying takes place in the context of long-term relations between candidates, their agents and the population of a community. In this case, relations are cultivated throughout the entire electoral cycle.

In communities where the public service system is dysfunctional or non-accessible, private agents – who act as intermediaries between politicians and the electorate – establish networks of patronage (*clientelismo*) within the community. In Brazil such agents have earned a distinctive soubriquet, *cabos eleitorais*, which can be loosely translated as ‘precinct captain’. ‘Captains’ operate in a network of contacts and favours and are crucial community reference points since they have the power to grant access to public services and provide other help in solving problems. Because they guarantee access to state services, they generate trust, commitment, but, above all, dependency. This pays off on election day: commitments to vote generated under these conditions result in high rates of compliance.⁹

The linkage between patronage and vote buying seems to indicate that low-income sectors are more prone to be targeted by vote buyers. While 6 per cent of respondents of an Argentine survey indicated that they received something from a candidate or party in the October 2001 legislative elections, this share increased to 17 per cent among low-income respondents.¹⁰ Mexican surveys confirm low-income neighbourhoods are more likely to be subject to vote buying.¹¹ But the correlation may not always hold, as suggested by the results of recent surveys carried out by Transparência Brasil (see Box 5.1, ‘Vote buying in Brazil: less of a problem than believed?’, below).

Box 5.1: Vote buying in Brazil: less of a problem than believed?

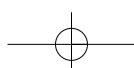
Vote buying is a concern raised periodically in the Brazilian media, by politicians and civil society organisations. Transparência Brasil sought to test whether this concern reflected reality, conducting surveys after the 2000 municipal elections and the 2002 federal and state elections (including the election of president and state governors). Both surveys involved nationally representative samples of 2,000 voters.¹

In both elections the concentration of vote buying was found to be more marked in less-developed regions (North-Centre West and North-East) than in the richest parts of the country (South and South-East). But its incidence did not reach levels that corroborate the grim view commonly held by Brazilians.

In the 2000 elections, 6 per cent of voters interviewed reported that they had been asked to sell their votes for money. In the 2002 survey, the question was rephrased to include offers of goods or favours extended by the public administration. Although the question was broader, the overall percentage of offers of vote buying in 2002 was lower, at 3 per cent.

The shift from 6 per cent in 2000 to 3 per cent two years later cannot be directly interpreted as a falling trend in vote buying.² It is more likely due to the different nature of the elections. Municipal elections (2000) involve only local candidates and voters, who tend to have closer socio-political exchanges, while federal and state elections (2002) are broader and voters tend not to know the candidates personally.

New legislation enacted in 1999, making it easier to disqualify candidates involved in vote buying, may have played a role. The electoral justice system in 2000 was not fully



prepared to enforce the new law. By May 2003, the federal Supreme Electoral Court had begun reviewing nine cases against governors elected in 2002 and eight against state legislators, all accused of 'illicitly pursuing votes' (more than vote buying, this charge extends to the provision of transportation to voters on election days and other illegal practices).

Both surveys indicated that there are misconceptions about vote buying in Brazil. The educational level of the voters had only moderate influence on offers to buy their votes. Perhaps surprisingly, fewer voters with only primary education or below were subjected to offers than persons with secondary or higher education. Age, however, was significant: the younger the voters, the more frequently they were asked to sell votes.

Another common belief is that the poorer the voters, the more vulnerable they are to offers. The surveys showed this not to be true. Offers cut equally across all income levels and, in fact, were less frequent among lower-income voters than higher-income ones. However, given that the poor make up the largest portion of the population, in raw numbers, more offers were made to the poor than to people from wealthier classes.

Also contrary to common belief, the size and type of the city (capital, periphery or interior) seems irrelevant to the frequency of the vote buying phenomenon.

Saying that vote buying is less of a problem than widely believed is not to say it is not a problem. Projected on to the electoral demographic of 100 million voters (voting is mandatory in Brazil), the reported cases suggest that about 6 million people were offered money for votes in 2000. In 2002, some 3 million voters were subjected to offers to trade votes for money, goods or favours. These are not small numbers.

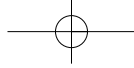
The results also indicate that strategies to combat spurious electoral transactions (such as public campaigns against vote buying) need to address the entire spectrum of voters, not just specific segments, though special attention should be paid to more vulnerable regions.

Claudio Weber Abramo (Transparência Brasil)

Notes

1. For more information on the survey see www.transparencia.org.br. The 2000 survey was conducted by Ibope on behalf of Transparência Brasil and Instituto Paulo Montenegro, based on personal interviews conducted 15–20 March 2001. The 2002 survey was conducted by Ibope on behalf of Transparência Brasil and União Nacional dos Analistas e Técnicos de Finanças e Controle, interviews conducted 14–17 November 2002. The surveys were conducted in four regions, with age and income selection based on data from the Brazilian census and Supreme Electoral Court. Margin of error: 2.2 percentage points and confidence level of 95 per cent. Auditing of interviews: Approx. 20 per cent. The samples used in the surveys reported here allowed for conclusions concerning only the primary question. In order to test hypotheses relating to socio-economic strata, how many voters who sold their votes actually voted for the paying candidate, or similar ones, much larger samples would be needed.
2. Transparência Brasil intends to repeat the surveys systematically, which will provide the data needed to assess trends.

A further assumption that follows from the connection between patronage and vote buying is that parties traditionally involved, or identified, with clientelistic practices are more likely to buy votes than others. Surveys in Argentina provide clear evidence that not only class, but also party – the Partido Justicialista in Argentina's case – is linked to vote buying.¹² In Mexico, where 4.4 per cent of interviewees reported receiving gifts from the opposition National Action Party (PAN) in the 2000 elections, 15.3 per cent admitted accepting gifts from the ruling PRI.¹³ Interestingly, the effectiveness of the two



parties' vote buying strategies differed considerably; survey data reveals that, while less than 50 per cent of voters who took inducements for the PRI voted for its presidential candidate, the rate of effectiveness among PAN's purchased voters was 82 per cent.¹⁴

Enforcing the pact between buyers and sellers

The degree to which vote buying prevails in a society reflects the capacity to reinforce and monitor the pact established between agents and voters. From a candidate's perspective, this determines the cost benefit relationship of his or her investment; from a voter's perspective, it determines the risk associated with non-compliance.

Candidates and agents make use of a range of strategies to reinforce the pact with voters. Frequently, voters fear reprisals if they don't accept the inducement or don't vote as instructed. In cases where payment comes after the vote, the risk of non-compliance is that the voter will not be paid. In Argentina, Uruguay and Panama, the parties themselves produce ballots. Here one frequent strategy, as described by a party operative in the Argentine province of Misiones, is 'giving voters food and drink, keeping them in their houses overnight and then slipping ballots "straight into their pockets" as they were taken off to the polls'.¹⁵

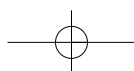
Another effective vote buying scheme is 'the carousel'. The buyer gives the voter a pre-marked ballot paper and offers money in return for a blank one. The voter deposits the pre-marked ballot and returns the blank one given to him by the election officials to the buyer. The buyer then gives the seller the promised money or goods.¹⁶ In many countries, party operatives offer bus transportation from outlying areas to polling places, a strategy that in Mexico has earned its own name, *acarreo* (which literally means 'transport', but in Mexico is taken to mean specifically peasants being bussed in to vote). While not an actual act of vote buying, the service reinforces the pact between buyer and seller.

But again, these strategies can only be effective if candidates have a way of monitoring the outcome. Sophisticated methods may be employed to hinder voters from issuing their votes secretly, for instance by forcing them to record how they voted, or to fold the ballot in a distinctive way.

A by-product of the shift to counting and declaring voting results in smaller polling areas – which increases transparency in the counting process – is that it also affords the vote buyer more accurate information on the target population. In cases where direct observation of a voter's choice isn't possible, party workers can observe other actions and behaviour from which they can deduce voters' choices. 'You know who's with you and who's not with you', said a Peronist party worker in Argentina.¹⁷ In this context, the notion of a secret vote becomes relative – and so does the voter's ability to separate the offer from the actual vote.

The accountability question: where to draw the line

If vote buying compromises the secrecy and freedom of the vote, it necessarily affects the grounds of accountability and democracy. This leads us back to questions raised



above. Can a dividing line be cleanly drawn between vote buying – a criminal offence in most jurisdictions – and other legitimate forms of influencing and manipulating the vote during election campaigns? Or are there areas where the distinction is blurred?

Indeed, we are used to election propaganda that plays with attractive promises, very often directed at particular social sectors, which diminishes their claim to be collective political programmes. We are equally used to campaign parties at which food and drinks are offered for free.¹⁸ If we look closer at the problem, however, there are criteria that can help us to position particular actions and behaviour along a continuum, with vote buying at one extreme and the use of the vote as a fundamental instrument of democratic control at the other.¹⁹

The manipulation of votes always carries an element of privatising and personalising the relationship between politicians and the electorate – election campaigns target particular interest groups. Vote buying, however, drives this privatisation to an extreme. It breaks it down to a bilateral relationship between a vote buyer and a vote seller with the tribute for the vote mostly provided prior to the election. While this doesn't necessarily preclude the voter from having expectations of the politician after the election, acceptance of the offer may well influence the incumbent's perception of his or her mandate. Seen from this perspective, it is irrelevant whether the vote is cast as committed. In this, vote buying differs from election promises that raise legitimate expectations and can arguably become the baseline for monitoring once the elected candidate is in power.

What is traded against the vote in this bilateral relationship is cash or material goods, not a political platform against which the candidate can be held accountable after being elected. And finally, while the vote becomes an effective instrument for accountability only through its collective force, a bilateral relationship between a vote buyer and a vote seller implies a strong imbalance of power, especially in cases where the vote is sold as a result of coercive pressure.

In sum, the more personalised, short-term, material and coercive the exchange between politician and voter, the more clearly we can talk about the criminal offence of vote buying – and the clearer the negative implications for accountability.

Reform efforts

Given these negative implications, what can be done to curtail vote buying? Reform activities have tended to focus on raising awareness and changing voter attitudes, on the one hand, and reforming the regulatory and institutional framework for elections in order to decrease incentives for candidates to buy votes, on the other. The latter obviously starts with criminalising vote buying by enacting the relevant laws. The law needs to establish a clear definition of the offence and provide for adequate sanctions. Two modifications introduced into the Brazilian legislation on vote buying in 1999 made it more powerful: the new law debars candidates who attempt to buy votes and exempts those who sell their votes from sanctions in order to encourage voters to denounce vote buying candidates.²⁰

Apart from specific laws on vote buying, the general normative framework around elections and political finance can help generate an environment hostile to vote buying, provided that laws are enforced. High levels of disclosure provided by campaign finance rules increase the incentives for candidates to channel their campaign expenses towards legitimate areas. The capacity to reinforce and monitor the commitment made by voters will vary with the vote-secrecy safeguards provided under the electoral system. Also, centralised counting procedures (with maximum, as well as minimum, numbers of voters at polling stations) can limit the possibility of monitoring election outcomes, while party list systems depersonalise election campaigns.²¹ Party-neutral ballots produced by public entities at public expense with careful control over their distribution, and with all candidates for office listed simultaneously, help to ensure free and secret voting. Systematic analysis of the impact of these measures remains both a challenge and a necessity. The accompanying case study on Thailand, to cite one example, does not paint a very encouraging picture (see 'Vote buying in East Asia', page 83).

Another case worth studying is Mexico, where the traditional vote buying activities of the PRI lost their effectiveness in the 2000 elections. One reading of this is that seven decades of authoritarian rule and dubious electoral practices had discredited the party and, consequently, its vote buying practices had the effect of repelling voters. The jury is still out on whether this was a product of the opposition parties' advice, to 'take the gift, but vote as you please', or indicative of a positive change in voter attitudes. Nonetheless, what the results do seem to express is that there has been a change in political culture with implications for how voters perceive and relate to vote buying.²² The recent Mexican experience also serves to remind us of the factors that motivate and underpin vote buying. While a narrow focus on tackling vote buying, for instance through regulatory and institutional reforms, is helpful, the underlying problems, such as poverty, patronage and voter alienation, also need to be addressed.

Notes

1. Silke Pfeiffer is regional director for Latin America at Transparency International.
2. Bruno Wilhelm Speck and Claudio Weber Abramo, 'Transparência Brasil/ Ibope Survey – Summary Report', www.transparencia.org.br, 2001.
3. Wayne Cornelius and Luis Estrada, 'Mobilized Voting in the 2000 Elections: The Changing Efficacy of Vote Buying and Coercion in Mexican Electoral Politics', in Jorge I. Domínguez and Chappell Lawson, *Mexico's Pivotal Democratic Election* (Palo Alto: Stanford University Press, forthcoming).
4. Gallup Argentina 'Informe', www.worldbank.org/wbi/governance/capacitybuild/pdf/arg_report.pdf
5. *El Mercado del voto*, votebien.com, 25 January 2002, available at www.terra.com.co/elecciones_2002/cubrimiento_especial/financiacion/25-01-2002/nota47324.html. The existing empirical data on vote buying is still limited in quality and quantity. The variation in results may relate to the different methodological approaches, scopes of analysis and objectives of the various surveys.
6. Asociación Civil Transparencia, 'Una historia que no debe repetirse', www.transparencia.org.pe/publicaciones/2000
7. *El Mercado del voto*, votebien.com.

8. Cornelius and Estrada, 'Mobilized Voting in the 2000 Elections'.
9. Bruno Wilhelm Speck, 'Wahlen und Stimmenkauf in Brasilien', *Tópicos – Deutsch-Brasilianische Hefte*, 42. Jahrgang, Heft 4 2002 1 2003.
10. Valeria Brusco, Marcelo Nazareno and Susan C. Stokes, 'Clientelism and Democracy: Evidence from Argentina', presented at 'Political Parties and Legislative Organization in Parliamentary and Presidential Regimes Conference', Yale University, 2002.
11. Cornelius and Estrada suggest that the profile of voter most likely to be subject to vote buying is older than 50, male, medium educated, lower income and urban.
12. Brusco *et al.*, 'Clientelism and Democracy'.
13. This higher percentage could also be attributed to the fact that, in general, the ruling party has more access to resources that can be used to induce voters to vote a certain way than the opposition.
14. Cornelius and Estrada, 'Mobilized Voting in the 2000 Elections'.
15. Brusco *et al.*, 'Clientelism and Democracy'.
16. This practice has been well documented, for instance during the 2003 Armenian elections (see OSCE/ODIHR Election Observation Mission, 'Statement of Preliminary Findings and Conclusions, Yerevan: February 2003) and the 2000 Mexican elections (see US-based *Christian Science Monitor*, 26 June 2000).
17. Brusco *et al.*, 'Clientelism and Democracy'.
18. During the 2001 presidential elections in Peru, the chief of the electoral observation mission of the OAS maintained that the offering of T-shirts, calendars, tools and food shouldn't be judged negatively, or be considered as acts of vote buying. See www.peru.com/noticias/AutoNoticias/DetalleNoticia4170.asp
19. Speck, 'Wahlen und Stimmenkauf in Brasilien'.
20. Bruno Wilhelm Speck, 'A compra de votos – uma aproximação empírica', *Opinião Pública*, Revista do CESOP, Campinas, vol. 9, no. 1, 2003.
21. Frederic Charles Schaffer, 'What is Vote Buying?', presented at 'Trading Political Rights: The Comparative Politics of Vote Buying', International Conference, MIT, Cambridge, 2002.
22. Ibid.

Vote buying in East Asia

Frederic Charles Schaffer¹

Vote buying in East Asia abounds – from the quasi-democracy of Cambodia to the established democracy of Japan. This article focuses on three countries, Taiwan, Thailand and the Philippines, where data on vote buying is unusually rich.

A few statistics: in the Philippines, an estimated 3 million people nationwide were offered some form of payment in the 2002 *barangay* (community-level) elections – about 7 per cent of all voting-aged adults.² In Thailand, 30 per cent of household heads surveyed in a national sample said that they were offered money during the 1996 general election.³ In Taiwan's third-largest city, Taichung, and its surrounding county, 27 per cent of a random sample of eligible voters reported in 1999 that they had accepted cash during previous electoral campaigns.⁴ While these numbers – all derived from mass surveys – must be treated with caution, they provide a conservative, if rough, gauge of just how widespread the practice has been in recent years.⁵

The amount of money offered to voters varies greatly, depending on the competitiveness of the election and local levels of prosperity. At the low end, voters from one poor neighbourhood of Manila received only 30 pesos (US \$0.60) during a relatively non-competitive *barangay* race in 2002. By contrast, middle-class voters in the Taiwanese county of Hualien were given up to 2,000 Taiwanese dollars (US \$60) in a hotly contested 2003 magisterial by-election. In Thailand, the average offer per household in the 1996 general election was 678 baht (US \$27), though Bangkok residents were likely to be given twice as much as rural dwellers.⁶

The total sum of money spent by candidates on buying votes can be high. One congressional candidate in the Southern Luzon region of the Philippines admitted to doling out 4 million pesos (US \$160,000) to voters on the eve of the 1992 election.⁷ Prosecutors at the Taiwanese ministry of justice reckon that a typical legislative candidate in an urban area might easily distribute up to 100 million Taiwanese dollars (around US \$3 million).⁸ The Nakhon Ratchasima Rajabhat Institute, which monitors poll fraud in Thailand, estimates that candidates gave a total of 20 billion baht (US \$460 million) to voters in the 2001 legislative elections.⁹

Vote buying in all three countries has institutional causes. The weakness of parties in the Philippines and the existence of multi-member districts in Taiwan and, until recently, Thailand have made electoral systems in each country candidate-centred. As a result, candidates (and their factional or party backers) have strong incentives to build personalised networks of support. Key players in the construction of these networks are 'vote brokers', known as *tiau-a-ka* (pillars) in Taiwan, *huakhanaen* (voting chiefs) in Thailand and *lidars* (leaders) in the Philippines. Traditions of gift giving and benevolence make the distribution of money and goods a preferred method of building personal networks. As such, vote buying is often less an explicit contract (as 'buying' might erroneously imply) than a form of gift-giving intended to demonstrate a candidate's compassion, good will or respect.

Even if vote buying is culturally embedded, offers of money or goods in no way guarantee that voters will cast their ballots as candidates or vote brokers hope. Survey data from the Philippines shows that among the poor – who tend to be the target of vote buying – material offers decisively influenced the vote of only about 30 per cent of the people who accepted them in the 2001 elections.¹⁰ Using a finer-tuned method, the scholar Chin-Shou Wang compared the numbers of votes garnered by Kuomintang (KMT) candidates in one Taiwanese town to the number of voters who received money from KMT vote brokers, which he was able to determine by gaining access to the lists of names used by the vote brokers themselves.¹¹ He found that at least 45 per cent of the people who received money did not vote for KMT candidates in the 1993 elections.

Whatever the influence of money and goods on the electoral choices of voters, vote buying has ramifications that extend beyond the ballot box. To give but one example, vote buying candidates are often financially backed by drug syndicates, gambling lords and strong-arm godfathers who are happy to provide funds in exchange for protection and influence. Vote buying thus fuels organised crime.¹²

Reform efforts have limited success

Reformers in all three countries have tried to combat vote buying. Efforts to curb demand usually entail voter education. The Taiwanese government launched a massive advertising campaign leading up to the 2001 elections; schoolchildren were even sent home with information so that they might educate their parents. In the Philippines, public education campaigning has been an undertaking of civil society groups such as the National Citizens' Movement for Free Elections. In Thailand, a network of election monitoring organisations hosted educational forums prior to the 2000 elections.

Scattered evidence suggests these educational efforts have not been very effective. One survey of 56 poor voters in the Philippines found that only one was swayed by four sample ads in deciding whether to accept money.¹³ After interviewing some 1,700 attendees of five education forums in Chiang Mai province in Thailand, evaluators found that 'there was a slight increase after the forum in the number of participants who believed that it was wrong to sell their votes and not vote for the buyer'.¹⁴

Efforts to curb supply target the behaviour of candidates and their agents. In Taiwan, prosecutors investigated thousands of alleged vote buyers in the 1990s. Few investigations, however, resulted in conviction, often because of political interference. Of greater impact was the defeat of the KMT presidential candidate in the 2000 election by Chen Shui-bian, the Democratic Progressive Party (DPP) leader who rode to power partly on his pledge to root out political corruption. By many accounts the first post-KMT elections, held in 2001, saw some reduction in vote buying, partly because of the strenuous anti-vote buying campaign of the new DPP administration, and in part because the KMT's vote buying machine broke down in many locales. Nevertheless, many KMT – and DPP – candidates still found it possible and advantageous to engage in vote buying.

A comprehensive set of supply-side reforms was written into Thailand's 1997 constitution. Among its provisions are: strict controls on campaign finances; the centralisation of vote counting at the district level; the introduction of a party list system to encourage voters to choose their members of parliament based on party platforms rather than personalised ties; barring constituency members of parliament from becoming ministers (thus denying them access to ministerial funds); a switch from multi-member to single-member constituencies, which was intended to dry up the pool of second and third 'surplus' votes available for purchase; the introduction of compulsory voting to expand the electorate and thus make vote buying prohibitively expensive, and the creation of a new independent body to administer elections and disqualify candidates who break the law.

This panoply of measures met with only limited success in the post-reform elections of 2000 and 2001. In the judgement of one observer, 'vote buying by no means disappeared and candidates and parties exhibited impressive flexibility by adapting their vote buying to the new electoral environment'.¹⁵ To escape scrutiny and punishment, some vote brokers approached only relatives and close friends. Others began using more intensively a strategy already present in the early 1990s, that of 'indirect' vote buying – hiring people to work as canvassers in an effort to win their allegiance.

Brokers also paid inflated crop prices to farmers, distributed donations at bogus funerals and gave 'salaries' to voters who joined their political parties.

Reflecting on the overall sense of these post-reform adjustments, two scholars conclude that 'vote buying was rampant even though the new laws forced it to become more discreet'.¹⁶ Also noteworthy is that the amount paid out to individual voters is thought to have been higher in the 2000 and 2001 elections than in elections past. This increased payment may partially explain why, by one estimate, the cash flow generated in the 2001 general election was 25 per cent higher than in the last pre-reform election in 1996.¹⁷

Notes

1. Frederic Charles Schaffer is a member of the School of Social Science at the Institute for Advanced Study, Princeton, United States; and a research associate at the Center for International Studies, Massachusetts Institute of Technology, United States.
2. Social Weather Stations, 'National Survey', Quezon City, Philippines, 2002.
3. Phongpaichit Pasuk, Nualnoi Treerat, Yongyuth Chaiyapong and Chris Baker, 'Corruption in the Public Sector in Thailand: Perception and Experience of Household', Political Economy Center, Bangkok: Chulalongkorn University, 2000.
4. Kuen-Shan Cheng, Ye-Li Wang and Yun-Tsai Chen, 'Analysis of the Causes of Vote Buying, and the Study of How to Prevent It', Taipei: Ministry of Justice, 2000 [in Chinese].
5. The Philippines survey, conducted by Social Weather Stations from 24 August to 8 September 2002, gathered data through face-to-face interviews with 1,200 adult respondents nationwide, chosen using multi-stage probability sampling for a 3 per cent margin of error. The Thailand survey was conducted by ABAC-KSC Internet Poll Research Centre in October–December 1999; 4,013 face-to-face interviews were conducted with household heads across the country, chosen using multi-stage cluster sampling. The Taiwan survey was commissioned by the Ministry of Justice; 1,168 interviewees were randomly selected and interviewed by telephone in September 1999.
6. Pasuk *et al.*, 'Corruption in the Public Sector in Thailand'.
7. *Philippine Daily Inquirer* (Philippines), 8–9 May 1992.
8. Author's interview at the Department of Prosecutorial Affairs, Ministry of Justice, 12 August 2003.
9. *Newsweek* (US), 15 January 2001.
10. Frederic Charles Schaffer, 'Disciplinary Reactions: Alienation and the Reform of Vote Buying in the Philippines', prepared for the conference, 'Trading Political Rights: The Comparative Politics of Vote Buying', MIT, 2002. The figure cited was calculated from a survey conducted by Pulse Asia in June 2001, involving face-to-face interviews with 1,200 adult respondents nationwide chosen using multi-stage probability sampling for a 3 per cent margin of error.
11. Chin-Shou Wang, 'The Dilemmas of Clientelism: Electoral Mobilization of Clientelism in Taiwan, 1993', *Carolina Papers: Democracy and Human Rights*, no. 1, 2002, University of North Carolina Center for International Studies.
12. See Yung-mao Chao, *Change and Characteristics of Taiwan's Local Politics* (Taipei: Hanlu, 1997 [in Chinese]); Patrick I. Patiño, 'The Color of Money: Elections and Big Business', *Conjuncture* (Philippines: Institute for Popular Democracy, 1998); James Ockey, 'The Rise of Local Power in Thailand: Provincial Crime, Elections and the Bureaucracy', in

- Money and Power in Provincial Thailand*, edited by Ruth McVey (Honolulu: University of Hawaii Press, 2000); and *Philippine Star* (Philippines), 26 June 2003.
13. Schaffer, 'Disciplinary Reactions'.
 14. Laura Thornton, 'Combating Corruption at the Grassroots: The Thailand Experience, 1999–2000', National Democratic Institute for International Affairs, 2000.
 15. Allen D. Hicken, 'The Market for Votes in Thailand', conference paper, MIT, 2002.
 16. Aurel Croissant and Jörn Dosch, 'Parliamentary Elections in Thailand, March 2000 and January 2001', *Electoral Studies* 22, 2003.
 17. Thai Farmers Research Center, '2001 General Election Likely to Generate over Bt 25 billion Cash Flow', 28 December 2000.

Box 5.2: Vote buying at the International Whaling Commission

The Japanese government has been accused for years of using official development assistance (ODA) to recruit developing country members into the International Whaling Commission (IWC) in support of its whaling interests. Attention has been drawn particularly to fisheries grant aid and related technical cooperation administered primarily by Japan's Fisheries Agency.

In recent years, the number of developing countries joining the IWC and systematically backing Japan's position has increased to 16.¹ Among them are six eastern Caribbean islands, whose IWC voting records show a striking correlation between votes in support of Japan's interests and the flow of Japanese fisheries aid.² With this support, Japan can block the adoption by three-quarters majority of any binding measure not to its liking and it is close to having a simple (51 per cent) majority with which to revise the IWC's rules of procedures, including the introduction of secret ballot voting on any issue – voting is now by roll call – thus making it harder to hold individual governments accountable for their positions.

The IWC's US \$33,000 annual membership fees for developing countries were reduced in 2003 to US \$17,000, still more than most of these states pay in contributions to the UN and its agencies. These substantial fees continue to be paid regularly, which, when viewed in tandem with the positions taken by these states in support of Japan's whaling industry, raises questions about motivations.

There is clear evidence that Japan has used promises of aid and threats of its withdrawal to build a voting bloc that otherwise wouldn't exist. In July 2000, Dominica's minister for environment, planning, agriculture and fisheries, Atherton Martin, resigned in protest at his country's vote against a South Pacific whale sanctuary proposal, because the negative vote contravened a cabinet decision that Dominica should abstain. It was later revealed that Japanese officials had visited the island and threatened to withdraw aid if Dominica did not oppose the proposal.³

Although Japanese officials and their counterparts in recipient countries generally deny vote buying, statements in the media support the allegations. Japan's former vice minister of agriculture, forestry and fisheries, Hiraoki Kameya, said in June 1999 that it was 'essential to increase the number of nations supportive to Japan ... [and therefore] necessary to couple effectively the ODA and the promotion of IWC membership'.⁴ Antigua's prime minister Lester Bird was even more direct: 'I make no bones about it ... if we are able to support the Japanese and the *quid pro quo* is that they are going to give us some assistance ... that is part of why we do so.'⁵



Since 1987 when it began, Japan's grant aid to the eastern Caribbean IWC members has totalled US \$190 million in the fisheries sector alone, representing more than 96 per cent of Japan's overall grant aid to each of these six small island states; some 22 fisheries complexes have been built or promised as a result. This aid programme was analysed by economist Bernard Petitjean Roget in 2002. Noting that the fishing industry in these countries amounts to 1–2 per cent of GDP, he comments that with such sizeable contributions some tangible developments in the fishing sector should be expected, but he finds no evidence 'to suggest that this aid package is bringing any convincing results to bear on this economic sector'.⁶

He also judges that the construction budgets of some complexes were greater than could be justified by the actual facilities, raising questions about the final destination of any excess funds. Moreover, the complexes are commonly located in the constituencies of influential politicians. In Dominica, former minister Atherton Martin reported that 'there is a pattern here of aid ... for projects that move around, depending on the location of the prime minister's constituency and not according to any reasoned plan for the development of the fisheries sector'.⁷

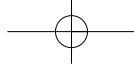
While this is a difficult issue for the IWC to confront, it did pass a resolution in 2001 proposed by New Zealand that endorsed 'the complete independence of sovereign countries to decide their own policies and freely participate in the IWC (and other international forums) without undue interference or coercion from other sovereign countries'.⁸

The real solution will come from within the countries concerned. In Japan, NGOs and others are placing the ODA system under increasing scrutiny; an independent inquiry into its use to support what Bernard Petitjean Roget calls 'institutionalised corruption' would be timely.

Leslie Busby (Third Millennium Foundation, Italy)

Notes

1. As of July 2003, these states are: Antigua and Barbuda, Belize, Benin, Commonwealth of Dominica, Gabon, Grenada, Republic of Guinea, Mongolia, Morocco, Nicaragua, Palau, Panama, St Kitts and Nevis, St Lucia, St Vincent and the Grenadines, Solomon Islands. Cape Verde and Ivory Coast were present as observers.
2. Aid figures compiled from Japan's ministry of foreign affairs statistics. See 'Briefing on Japan's Vote-Buying Strategy in the International Whaling Commission', Third Millennium Foundation, Paciano, Italy, May 2002, available from www.3mf.org
3. A full account of this episode, and an analysis of the issue and what it represents for Dominica, can be found in Atherton Martin's 'Statement on IWC 2001', published as one of a series of discussion papers by the Dominica Academy of Arts and Sciences. See www.dacademy.org/whaling.html
4. *Suisan Keizai Shimbun*, 24 June 1999 (translation), speech to the press club of Japan's ministry of agriculture, forestry and fisheries.
5. Interview with CANA news service, 14 July 2001.
6. Bernard Petitjean Roget, 'Socio-Economic and Political Aspects of the Aid Provided by Japan to the Fishing Industry in the Small Independent Islands in the East Caribbean', October 2002. Published by the Eastern Caribbean Coalition for Environmental Awareness, Martinique and the Swiss Coalition for the Protection of Whales, Wadeswil, Switzerland. The full report is available on the websites of both organisations: www.ececa.org and www.asms-swiss.org
7. Martin, 'Statement on IWC 2001'.
8. This resolution on 'Transparency within the IWC' was predicated on the 1970 'Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in Accordance with the United Nations Charter'.



6 Legal hurdles: immunity, extradition and the repatriation of stolen wealth

Numerous legal obstacles lie in the way of bringing corrupt politicians to justice and returning stolen wealth to its rightful owners. Véronique Pujas assesses the instruments of immunity and extradition, and Transparency International provides a table that reflects recent legal developments in immunity in a number of countries – not all for the better. Tim Daniel looks at the provisions of the United Nations Convention against Corruption, which offers some promise of enhancing international judicial cooperation.

Recent case material clarifies what is at stake: José Ugaz reflects on the campaign to extradite former Peruvian president Alberto Fujimori; Gherardo Colombo summarises the legal changes that extended immunity in Italy, while Donatella della Porta reflects on the way conflict of interest threatens media freedom in the country; and Jeremy Carver examines efforts to return to the people of Pakistan the substantial state assets allegedly stolen by Benazir Bhutto while she served as Pakistan's prime minister.

Immunity and extradition: obstacles to justice

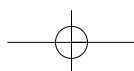
*Véronique Pujas*¹

The judicial fight against political corruption faces many obstacles, particularly the legal immunity that many politicians enjoy and the difficulty of prosecuting individuals who have fled their country to escape justice.

Immunity and extradition are two dimensions of a deeper problem: one of the main weaknesses of the legal and institutional structures created to fight corruption is the lack of control and accountability of politicians and civil servants at the highest level of decision-making, in both national governments and intergovernmental organisations. This lack of accountability is exacerbated by the increasing gap in legal protection between normal citizens, whose rights and freedoms are being progressively undermined by new legal tools in conventions to fight transnational crimes, and ruling elites who fall outside any jurisdiction.

Immunity and its limits

The first of these obstacles to justice, immunity, results from a historical principle that those in charge of public affairs should have legal protection. Politicians are generally granted immunity for actions they carry out and speeches they make in performance



of their duties, as a way of preventing politically motivated legal attacks. The rationale is to protect the office that the politician holds – not the politician – as a means of guaranteeing the continuity of the office and the separation of powers.

Even if such legal safeguards are necessary to guarantee democratic regimes, the rationale for immunity is undermined when illegitimate practices by the political elite are uncovered – or if the shield of immunity is used simply as a means to escape justice. For this reason limits are generally placed on immunity – for instance, there is often no immunity when a politician is caught in flagrante delicto – and there are typically procedures through which immunity can be lifted for serious crimes such as high treason, abuse of power or gross mismanagement in office. Corruption charges are a case in point.

However, politicians – and particularly heads of state – have in some cases much wider immunity. They are often granted immunity from all prosecution, not just in cases relating to their work as politicians. They are sometimes granted immunity extending back to before their term of office, and in some cases are given lifetime immunity. Even where immunity is not so extensive, the disclosure of corruption allegations is no guarantee that a politician will face trial. Members of parliament may be reluctant to vote to overturn immunity, possibly because of parliamentary and government solidarity, or in some cases because of collusion. Corrupt politicians may be reluctant to see a fellow politician sent to court for fear of setting a precedent that might result in their own subsequent impeachment.

Worryingly, the trend in many countries in the last few years has been for politicians to respond to increasingly active judiciaries by changing the law, strengthening immunity and further insulating themselves from prosecution. In June 2003 the Italian government pushed through legislation to expand immunity for a handful of senior political figures, including the prime minister, who was at the time facing trial for corruption (see Boxes 6.3 and 6.4 on Italy, pages 95 and 97). In Kazakhstan, a new constitutional law came into force in July 2000 that gave lifetime immunity – except for high treason – to the country's first president, Nursultan Nazarbaev (though not to future presidents). In Kyrgyzstan, a referendum in February 2003 strengthened the immunity of the president and all members of parliament, while a law in June 2003 granted lifelong immunity to President Askar Akayev and to two former Communist Party bosses who led the country during the Soviet era.

The French government also initiated parliamentary proceedings in mid-2003 to change the constitution on the political accountability of the president. In response to the controversy over President Jacques Chirac's immunity during his first term of office, following a series of corruption allegations relating to the time before he became president,² the government took steps to clarify the law on the issue. While introducing an impeachment procedure for 'non-respect of duties' (which is not clearly defined), the new legislation will clearly affirm the president's legal immunity while in office – during his time in office it will not be possible to prosecute the president for offences committed before he entered office.³ The proposal would replace the current impeachment proceedings, which are a mixture of judicial and political provisions, by a purely political procedure (with the two houses of parliament acting as a high court).

At the end of his term in office, however, the president will return to being an ordinary citizen before the law.

It is not only national politicians who enjoy a special legal status – political leaders of intergovernmental organisations may also possess immunity. What is more, the leaders of international bodies often do not face elections, which serve in many countries as the final ‘fuse wire mechanism’ for corrupt politicians. In the case of the European Commission (EC), however, the immunity of former commissioner Edith Cresson was lifted and in March 2003 she was charged with fraud, forgery and abuse of confidence. So far she is only facing legal procedures in Belgium, where the EC’s headquarters are located, but the EC is also investigating the case, which could result in a trial before the European Court of Justice. The need to strengthen political accountability, particularly in cases of abuse of power and misuse of public funds, applies as much to international as to national politicians.

Facilitating extradition

The anachronism of extensive immunity is reinforced by the difficulty of implementing the appropriate legal tools for transnational prosecution of senior politicians. In some cases the challenge of prosecuting a corrupt politician who has escaped from a country’s jurisdiction is next to impossible. Political asylum permitted corrupt former dictators, such as Mobutu Sese Seko of Zaire and ‘Baby Doc’ Duvalier of Haiti, to avoid justice. Bettino Craxi, the longest-serving head of a post-war government in Italy, escaped to Tunisia in 1994 after being convicted on multiple corruption charges. He died in 2000 in Tunisia, which has no extradition agreement with Italy. Peru’s former president, Alberto Fujimori, left for Japan in 2000 and still lives there, in spite of an ongoing campaign for his extradition, which Japan has rejected (see Box 6.2, ‘Campaigning for Fujimori’s extradition’, page 94). Most recently Madagascar’s former president Didier Ratsiraka went into exile in France, avoiding the 10 years of hard labour to which a Madagascar court sentenced him in August 2003 for theft of public funds.⁴ These cases, as well as the prominent attempt to prosecute Augusto Pinochet for human rights abuses, have revealed current extradition arrangements to be far too cumbersome.

There have been some recent improvements in the legal tools to prosecute transnational crime, even if their implementation remains in doubt.⁵ The European Arrest Warrant (EAW), on which political agreement by EU ministers was reached in December 2001, is the first concrete measure in criminal law that implements the principle of mutual recognition. For 32 specific criminal offences, including corruption, the EAW bypasses the need for bilateral extradition treaties, abolishing the role of political approval and traditional extradition procedures. EU member states have a deadline of December 2003 to pass the proposal into national laws, but there is likely to be a delay.⁶

However, it is unclear how the EAW will operate in practice. The EAW assumes mutual trust between countries in legal decisions, but there is no consensus on minimum standards of civil rights protection⁷ – and judicial determination of these issues is not allowed because of an EU intergovernmental rule that provides for a slow build-up of

European judicial cooperation. Moreover there are exceptions to the abolition of traditional extradition procedures. For instance, a national amnesty law covering crimes of corruption could allow a way out for a ruling elite. Above all, the definition of 'corruption' in some national laws remains so limited that other criminal offences (such as '*abus de biens sociaux*' in France) – which are outside the scope of the EAW – are usually used in corruption cases. Equally, the EAW will not be executed if the judicial authorities of the executing member state have already taken action in the case, either by prosecuting or deciding not to.

Ultimately, the EAW will not remove the need for EU countries to have bilateral extradition agreements with non-EU countries. Motivated officially by the campaign against terrorism, the US and others have pursued bilateral and multilateral agreements on extradition and legal assistance.⁸ However, the US administration has also been actively pursuing bilateral immunity agreements for US citizens from the International Criminal Court,⁹ which was established in 2002 and represented a major step forward for international justice. While the International Criminal Court has no jurisdiction over corruption, this latter trend nevertheless undermines the principle of global equality before the law.

The United Nations Convention against Corruption could offer a way forward.¹⁰ The convention addresses some of the weakest aspects of the fight against corruption, such as the need for a common definition of corruption, but some key issues – such as corruption among international public officials and immunity – have not yet been addressed and it will be difficult to reach a consensus among the 110 countries involved.

Notes

1. Véronique Pujas is research fellow at the Centre National de la Recherche Scientifique and teaches at the Institut d'Etudes Politiques, France.
2. Allegations have been made of Chirac's involvement in several apparent cases of corruption relating to his time as mayor of Paris (1977–95), including: vote-rigging; a fake job scam in which activists from his former RPR party were allegedly paid by the Paris town hall; illegal financing of the RPR through a system of illegal commissions paid by building companies involved in municipal contracts; luxury foreign trips for himself, his family and friends financed by used banknotes of unclear origin; and the reimbursement of more than US \$1 million of personal grocery bills during his time as mayor.
3. According to the proposed amendment to the constitution, 'During his mandate, the president cannot be required to give testimony before any jurisdiction or administrative authority, nor be the object of an inquiry, investigation or pursuit.'
4. *Le Monde* (France), 11 August 2003; CNN.com, 7 August 2003.
5. A number of key conventions have still not been ratified by all member countries, for example the 1995 and 1996 European Conventions on Extradition.
6. www.euobserver.com, 9 September 2003.
7. This concern applies to the right to multinational defence teams; the right to legal aid; the right to sufficient time and opportunity for the preparation of the defence and the due process of law; the right to access records; and undisturbed communication and correspondence with the defence attorney.

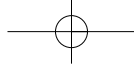
8. For example, in June 2003 an EU–US agreement was signed. Supplementing bilateral agreements, it covers mutual legal assistance, ranging from cooperation on exchange of banking information to joint investigative teams. See www.euobserver.com
9. Several dozen countries have apparently signed such agreements. See www.hrw.org/campaigns/icc/us.htm and www.iccnw.org/documents/otherissuesimpunityagreem.html
10. Final round of negotiations in Vienna, 21 July–1 August 2003.

Table 6.1: Recent developments on immunity^a

Transparency International

Country	Developments
Positive developments	
Nepal	The Impeachment Act was amended in September 2002 allowing the commission for investigation of abuse of authority to initiate proceedings against the prime minister and against members of parliament without first having to consult with the speaker.
Nicaragua	Former president Arnaldo Alemán's immunity was overturned by a vote in parliament in December 2002.
Zambia	The supreme court validated a parliamentary vote that stripped former president Frederick Chiluba of his immunity in February 2003.
Negative developments	
Azerbaijan	In December 2002 parliament gave partial approval to a legislative amendment that would allow former parliamentarians to retain their diplomatic passports, which guarantee immunity while the holder is abroad. The amendments still have to pass two more voting procedures.
France	The government proposed legislation on the president's immunity in mid-2003, setting out a procedure for impeachment in case of 'non-respect of duties'. However, the proposal would also affirm the president's immunity while in office, including for crimes committed before entering office.
Greece	Legislation approved in February 2003 stipulates that government officials cannot be prosecuted, investigated or imprisoned without the consent of parliament. The new law gives parliament power to halt investigations and imposes a strict statute of limitations on prosecutions.
Guatemala	Legislation approved in December 2002 gives the congressional commissions unlimited time to decide whether to lift the immunity of the accused, except in the cases of judges or magistrates, when a decision must be taken within two months.
Italy	June 2003 legislation grants immunity from trial to five key office-holders, including the prime minister, while in office. The immunity applies to all crimes, even those committed before their terms of office began.
Kyrgyz Republic	A law passed in June 2003 grants lifelong immunity from prosecution to the first (and current) president and two former Communist Party first secretaries who are now parliamentarians.

^a Developments from the period July 2002–June 2003, taken from the 34 country reports included in Chapter 8 of this volume.



Box 6.1: Sua Rimoni Ah Chong: TI Integrity Awards winner 2003

Sua Rimoni Ah Chong, the former controller and chief auditor of Samoa in the South Pacific, faced serious threats when he exposed financial crime at the highest levels of government.



From 1992 to 1995 Ah Chong refused to authorise illegal payments to cabinet ministers. When in 1994 his annual report to parliament implicated six out of 13 ministers over improper activities and payments, the cabinet appointed a commission of inquiry, not into the irregularities, but into the chief auditor. The committee's members included many of the people criticised in Ah Chong's report.

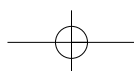
Ah Chong paid a high price for standing up to corrupt ministers. He was suspended in July 1995 and later, after the constitution was amended for that purpose, dismissed. He is still fighting a legal battle against his suspension and dismissal. Receiving the award, Chong said it would send a clear message to his government that 'there was no place for corruption in society' and encourage other Samoans to stand up against graft.

Box 6.2: Campaigning for Fujimori's extradition

After 10 years of increasingly authoritarian government, the regime of Peru's President Alberto Fujimori finally collapsed in November 2000 in the face of popular unrest, triggered by his use of fraud to win re-election and allegations of illegal arms dealing and the bribery of members of congress. On 13 November 2000, he left Peru to travel to a meeting in Brunei. But his ultimate destination was Japan, from where he faxed his resignation on the same day that the attorney general's office launched an investigation against him for drug trafficking.

Since then, evidence has mounted that during his last five years in power Fujimori and his principal adviser, Vladimiro Montesinos, formed a criminal organisation that violated human rights and indulged in economic corruption, money laundering and drug trafficking. The plunder of public funds appears to have been the rule.

Though Fujimori was born in Peru, which is a constitutional requirement for Peru's president, he was able to use his parents' origin to apply for Japanese nationality. In spite of the serious allegations against him, Japan granted him citizenship, effectively bestowing



international immunity on him as well, since Japanese law does not permit the extradition of its nationals. Fujimori had found a safe haven from the enormous charges against him. Despite numerous requests by the Peruvian government in the past three years, the Japanese government has shown no sign of a change of mind.

In April 2003 a campaign began to raise awareness of the need for Japan to surrender the fugitive former president to justice. The 'Fujimori Extraditable' campaign was initiated by the Peru Solidarity Network (which includes the National Coordinating Committee for Human Rights in Peru), Amnesty International and Peace Boat, and is supported by a number of Japanese and international organisations (including Transparency International). The campaign's spearhead is a website, with information in Spanish, English and Japanese: www.fujimoriextraditable.com.pe.

As the former special state attorney in charge of the Fujimori and Montesinos investigations, I visited Tokyo to explain in public presentations and meetings with the Japanese authorities precisely why the ex-president is wanted in Peru. The same demand was made in May 2003 to the general assembly of the 11th International Anti-corruption Conference which, in its conclusions, exhorted the government of Japan to hand Fujimori over for trial.

In July 2003 the Peruvian authorities presented the Japanese authorities with the first formal request for Fujimori's extradition, based on charges of human rights violations. In response, an official of the ministry of foreign affairs stated that Japan did not intend to overturn its policy of not extraditing Japanese citizens. Peru's foreign affairs minister responded with a protest note and a warning that if Japan continued to refuse its request, Peru would either appeal to the International Court of Justice in The Hague or open a criminal case against Fujimori in the Japanese courts.

The day the extradition request was made in Tokyo, Peruvian NGOs demonstrated in front of the Japanese Embassy in Lima. The 'Fujimori Extraditable' campaign will continue over the coming months. In the latest phase of the campaign, NGOs around the world are sending letters to the Japanese ministers of foreign affairs and justice, demanding Fujimori's extradition.

José Ugaz (president of Proética, Peru)

Box 6.3: New immunity law breaks with Italy's constitutional history

A law passed in June 2003, which prevents five of the most senior public office-holders in Italy – including the prime minister – from being charged with common crimes, runs counter to the principles that have underpinned immunity law since the Italian constitution was written.

Immunity in the 1948 constitution

The constitution that came into force in 1948 provided full immunity for the president and for members of parliament, but only a more limited immunity from trial for members of the government (the prime minister and ministers):

- *Members of parliament* were given full immunity from prosecution for votes given, and opinions expressed, during the performance of their duties as parliamentarians.



This provision is particularly comprehensible if one considers that the constitution was written shortly after the fall of fascism, when freedom of expression had been severely restricted.

- No *member of parliament* could undergo *any* criminal prosecution or trial without the authorisation of his chamber of parliament; nor could he be subject without similar authorisation to any restriction on personal freedom (with a small number of exceptions) or freedom to write or speak. The justification of this 'trial' immunity was to prevent criminal trials from being started as a means of limiting a parliamentarian's political freedom.
- The *president* was given full immunity *only* for actions carried out in performance of duties, except in cases of high treason or attacks on the constitution. The latter crimes are not referred to the ordinary judiciary, but to parliament acting as public prosecutor and to the constitutional court (extended to include a small number of citizens) acting as judge.
- The same trial immunity (with parliament acting as public prosecutor and the constitutional court acting as judge) was provided for *members of the government*, with regard to actions carried out in performance of duties. For any other crimes they might commit, they would instead be referred to the ordinary judiciary.

Subsequent modifications to the law on immunity

Over the years the rules on immunity have been modified in a number of ways. In 1989, the competence to prosecute, try and judge *members of the government* – including crimes committed in performance of their duties – was entrusted to the ordinary judiciary, with the judge chosen through a specific procedure to guarantee impartiality. As a counterbalance, authorisation by parliament was required for crimes committed in performance of duties, though parliament could only block prosecution if it judged that the individual in question had acted in order to safeguard a public interest with constitutional weight, or to pursue a political interest.¹ The effect was to make the prosecution of members of government easier and more frequent.

By 1993, it had become clear that the system of authorisation required for prosecuting *members of parliament* was having a negative outcome; parliament frequently rejected authorisation requests forwarded by magistrates, facilitating growing corruption. The requirement of parliamentary approval was therefore abolished in 1993. Since then parliamentarians have only had immunity from trial in relation to personal and correspondence freedoms (in addition to full immunity for votes cast and opinions expressed while performing their duty). By freeing prosecutors from the need for parliamentary approval, the reform facilitated the investigation of crimes committed by members of parliament, particularly corruption.

A law passed in June 2003, however, gives immunity from trial to *five key office-holders*: the president (apart from crimes of high treason and violations of the constitution), the speaker of the senate, the speaker of the chamber of deputies, the prime minister (apart from crimes committed while carrying out his duties) and the speaker of the constitutional court. This immunity applies to *all* crimes, even those committed before their term of office, and lasts until they leave office. It grants immunity with no certain end, since in Italy there are no limits to reappointment for the first four offices. The supposed rationale is to prevent office-holders from being hindered in the performance of their duties.



Until the most recent change in the law, the various modifications to the rules on immunity all reinforced two key principles implicit in the 1948 constitution:

- (a) Those who make laws (parliament), as well as those with the power to check if laws are constitutional (the constitutional court), and those who organise the judiciary (the superior council of magistrates), should generally not be accountable for their votes or opinions they express connected to their functions (though there are relevant differences between the institutions). The rationale is to ensure them substantial freedom to perform their duties. Apart from the members of the superior council of magistrates, parliamentary authorisation is required for the most invasive summons or orders (for example, arrest, phone interception or search and seizure).
- (b) In contrast, members of the government should not have immunity, although parliament should be able to deny authorisation for trials if it judges that an alleged crime was committed in performance of duties for 'reasons of state'. The rationale for this lack of immunity is clear: those who implement the nation's policies must be accountable for what they do.

The 2003 law, which expands the immunity of the highest constitutional offices to prevent them from being charged with common crimes, runs counter to these principles. Many doubts have been raised about the constitutionality of this new law, and recently the Milan court appealed to the constitutional court for a decision on the issue.²

Gherardo Colombo (deputy public prosecutor in Milan, Italy)

Notes

1. The Italian constitution calls for a strict separation of powers between legislature, executive and judiciary.
2. The constitution is paramount in Italian law, and it is the constitutional court's role to guarantee this. It is possible to modify the constitution, but only by constitutional bills submitted to parliament and to referendum.

Box 6.4: Controlling the media in Italy

On 14 September 2002, approximately half a million Italians took to the streets in Rome in the name of freedom of information and the independence of the judiciary. The target of their protest was Prime Minister Silvio Berlusconi, whom they accused of jeopardising the basic principles of liberal democracy. The protesters expressed their opposition to laws proposed, or passed, by the government on justice issues, which they believed were intended to save the prime minister in the ongoing proceedings against him on corruption charges. These laws depenalised some economic crimes and were expected to reduce the independence of the judiciary.

The protesters also claimed that freedom of information was under attack. The lack of an effective law on conflict of interest in Italy (and the failure of the previous centre-left government to pass one) had allowed Berlusconi to maintain control of his own media empire after he was elected prime minister. Not only did he continue to own the three main private television channels, controlled by Mediaset, but as head of government he also controlled the three public television channels. This situation would be deemed



unconstitutional in most democracies because of the distortion it introduces into the formation of opinion, whose freedom underpins democratic accountability. To make matters worse, in July 2003 the senate's public works commission approved a media bill that would make it possible for the prime minister to expand his media holdings even further: the law removes prohibitions on newspaper ownership and raises limits on advertising revenues.

The public protest about lack of media freedom was closely linked to concerns about judicial independence: protesters alleged that Berlusconi used his control of the media to reduce coverage of corruption and to attack the opposition and judges. In recent years, Berlusconi and others close to him have started judicial proceedings in civil courts (which could lead to high fines) against a number of journalists, scholars and judges who have accused them of being involved in corrupt deals. Moreover, under an immunity law pushed through parliament in early summer 2003, the prime minister will not have to appear in court while he remains in office.

That Berlusconi's control of a media empire threatens a main pillar of democracy – namely, freedom of information – is an opinion not only held by demonstrators. The Federazione Nazionale della Stampa, the union of Italian journalists, spoke of an 'unsustainable situation that prefigures a systematic repression of freedom of information'.¹ Usigrai, the union of public TV journalists, also denounced Berlusconi's media dominance as a serious attack on the freedom and autonomy of the press.² In June 2003, the journalists' union called for a national day of strikes in defence of freedom of information and journalistic independence, citing attempts by the government to delegitimise the role of the free press via alleged 'dangerous intimidation'. At risk were not only the independence of public radio and television, but also the very survival of a free and pluralistic press, they argued.³

International organisations have also expressed concern about Berlusconi's conflict of interest. As early as June 2001, the OSCE representative on media freedom raised the issue at the OSCE Permanent Council. He pointed to the risks involved when a democratically elected government controls the television media. In 2002, the OSCE representative wrote to Berlusconi asking for clarification about the removal from RAI, the public broadcaster, of two well-known and successful journalists, Michele Santoro and Enzo Biagi, both of whom had criticised the government. Critics accused Berlusconi of silencing them. In November 2002 and again in August 2003, the European Parliament, making specific reference to the Italian situation, expressed its concern about the negative effect of media concentration on fundamental democratic rights.⁴

Research into media content indicates that there is distortion in the Italian media. A study on political communication at the University of Pavia has revealed a repeated imbalance in the appearance of the various political parties, especially on the Mediaset channels, with far more coverage of Berlusconi's party Forza Italia and Berlusconi himself than of the opposition.⁵ Between June 2001 and January 2002, the length of coverage of Berlusconi was twice that of Francesco Rutelli, head of the centre-left coalition.⁶ In channels run by Mediaset, political communication takes place more during political spots and entertainment broadcasting than in political debates. The news itself emphasises issues such as crime or immigration, which may 'prime' the public for the political appeals of Berlusconi's centre-right coalition.

Critics argue that liberal democratic principles, particularly the free formation of public opinion, are endangered in Italy, and that Berlusconi's private holdings and public responsibilities create a conflict of government, media and business interests. The role of the media is becoming increasingly delicate, if not compromised, by its link to big business

in contemporary democracies. The case of Silvio Berlusconi – particularly its implications for the independence of the judiciary – makes this all too clear.

Donatella della Porta (European University Institute, Italy)

Notes

1. Federazione Nazionale della Stampa, Press release 8 May 2003.
2. Usigrai, Press release 8 May 2003.
3. Federazione Nazionale della Stampa, Press release 21 May 2003.
4. See www.europarl.eu.int/meetdocs/committees/cult/cult20030707/501707en.pdf and www.socialrights.org/en/news51.html
5. Giacomo Sani, *Mass media e elezioni* (Bologna: Il Mulino, 2001).
6. www.osservatorio.it/cares_visual1.php?pub=archives

Box 6.5: Abdelhai Beliardouh: posthumous TI Integrity Awards winner 2003

Abdelhai Beliardouh was local correspondent for the daily *El Watan* at Tébessa, 600 kilometres southeast of Algiers. On 20 July 2002, he was kidnapped by a gang of armed men. After beating him for several hours, the group finally released Beliardouh. *El Watan* had run an article that day in which the journalist reported the alleged arrest of the president of the local chamber of commerce and industry, an importer, ‘for having links with terrorist networks’. The importer was immediately suspected of heading the gang that attacked Beliardouh.



The incident enraged public opinion and drew condemnation from human rights organisations, political parties and the media at home and abroad. Though Beliardouh launched a legal action, the gang’s alleged ringleader was released. The only action taken by the authorities was to strip the importer of his functions as president of the chamber of commerce and industry.

Traumatized and discouraged, Beliardouh tried to take his life on 19 October by swallowing acid. He spent a month in agony before dying on 20 November 2002.

In the last few years before his death, Beliardouh had become famous for his investigative articles on the local criminal underworld, grand corruption practices in the import trade and links with terrorism. The Tébessa region, on the Tunisian border, is notorious for smuggling and persistent terrorism.

Repatriation of looted state assets: selected case studies and the UN Convention against Corruption

*Tim Daniel*¹

States and businesses have become increasingly aware of the damage corruption causes populations around the world. The dangerous combination of immunity from prosecution and unlimited personal power allows corrupt leaders to devastate their countries by systematic looting of their wealth. The drafting of the United Nations Convention against Corruption is therefore timely (see 'The UN Convention against Corruption', Chapter 7, page 111).² Of particular interest is the convention's chapter on asset recovery.

Before turning to the convention's salient provisions, it is worthwhile to examine three of the most notorious cases of looting by heads of state in the past decade – and the efforts made to repatriate the funds (see Box 1.1, 'Where did the money go?', page 13). All three share a common feature in that they concern assets deposited in Swiss banks. Strict banking secrecy once earned Switzerland notoriety as a safe haven for illicit funds: one-third of the world's illegal wealth was estimated, at one point, to have been secreted with Swiss banks. The watershed legal action taken on behalf of Holocaust victims in the late 1990s played a major role in opening up the Swiss banking sector. With the appointment of uncompromising examining judges such as Carla del Ponte and Bernard Bertossa, armed with powers to force disclosure and freeze assets, Switzerland quickly developed a legal climate that now leads the global fight against money laundering. While the transformation did not happen without complication or criticism, Switzerland's experience points the way forward for states that subscribe to the new UN convention. In this regard, Switzerland's admission to the UN in September 2002 was another positive step.

Mobutu Sese Seko

Estimates vary on the amount that Mobutu Sese Seko looted from the Democratic Republic of Congo, formerly Zaire. During the 32 years in which he held power, the country received more than US \$12 billion in aid, mainly from the World Bank. Much of that funding vanished, but Mobutu himself claimed to be worth less than US \$50 million.

The day before Mobutu was toppled in May 1997, the Swiss authorities ordered all 406 Swiss banks to undertake a systematic search for Mobutu's accounts. They found just US \$4 million. The authorities then wrote to the new government in Kinshasa asking for clarification of the ownership of the funds. By 1999 – two years later – there was still no reply from President Laurent Kabila. Why not? As one European politician put it: 'Kabila has simply replaced Mobutu with Mobutuism.'³ The relatively paltry sum of US \$4 million was not worth the trouble and expense of proving ownership. Yet even if the Kabila government had furnished proof of ownership, the Swiss probably would not have repatriated the money, as the following two cases show.

Ferdinand Marcos

Repatriation was a major issue in the case of former president Ferdinand Marcos of the Philippines, and his family. Only after protracted litigation did the Swiss authorities finally agree to assist the Presidential Commission on Good Governance (PCGG), a non-judicial authority investigating the Marcos family. The decision was taken though no charges had been brought against the Marcoses in the Philippines, where the authorities were awaiting evidence from the Swiss. After considering whether assets held in Swiss accounts would be returned to the Philippines, the Swiss supreme court ruled that the assets should indeed be returned, but subject to the following requirements:

- The government of the Philippines must file a criminal charge and/or bring forfeiture proceedings against the Marcoses within one year, failing which the assets would be unfrozen.
- A Philippine court with appropriate criminal jurisdiction must hand down final judgment confirming that the assets were stolen or illicit property to be confiscated and returned to their rightful owner, the government of the Philippines.
- Any criminal prosecution and forfeiture proceedings must comply with the procedural requirements of due process and rights of the accused under the Swiss constitution and the European Convention on Human Rights.

These stipulations prompted the PCGG's chairman to criticise the Swiss law on international legal assistance in criminal matters (EIMP) and to accuse the Swiss authorities of attempting to thwart countries' efforts to repatriate stolen funds. In the end, the PCGG signed an agreement with the Swiss under which the 'anticipatory restitution' provision of the EIMP was used to allow repatriation before final judgment was obtained in the Philippines.⁴ The UN Convention would permit a similar step if the requested state waives the requirement of a final judgment in the requesting state.⁵

There was, however, a further sting in the tail of the supreme court decision: the transfer of assets, which amounted to some US \$657 million, had to be made to an account in the Philippine National Bank, over which the Zurich district attorney retained control, including the choice of investments made. In this way, the Swiss authorities ensured that the funds remained under their control until they were satisfied with the conduct of the government of the Philippines. In August 2003, the Zurich attorney finally announced the release of Marcos' frozen assets to the government, five years after they were deposited and 14 years after his death in Hawaii in 1989. The announcement followed a ruling by the Philippine supreme court in July 2003 that the Marcos family had 'failed to justify the lawful nature of their acquisition' of the Swiss funds.⁶ This is a helpful ruling, the principle of which is incorporated in the UN Convention (see below).⁷

Sani Abacha

General Sani Abacha was military dictator of Nigeria from 1993 to 10 June 1998, when he died suddenly of a heart attack. Estimates of the amount he looted during five years

in office vary from US \$2 billion to US \$5 billion. The upper limit represents about 10 per cent of Nigeria's annual income from oil over five years.⁸ Abacha was replaced by another military ruler, General Abdulsalami Abubakar, who returned Nigeria to democratic rule. Elections were held in early 1999 and Olusegun Obasanjo was sworn in as president at the end of May of the same year.

Before Obasanjo took office, Abubakar's interim government delivered a clear message to the Abacha clan: Abacha had looted huge sums, and they had to be restored. The government recovered some US \$825 million and paid it into a special account at the Bank of International Settlements in Basle, Switzerland. Most of this sum was later spent on housing projects, education and allocations to Nigeria's 36 states.

While a large amount was 'voluntarily' returned, more remained frozen in other jurisdictions, including US \$1.3 billion in Switzerland, Luxembourg and Liechtenstein. Five years after Abacha's death, none of this money has been returned and the Obasanjo government is still trying to reach a settlement.

In April 2003, the Swiss supreme court handed down a judgment that rejected numerous appeals by the Abachas' lawyers, who had sought to prevent the transmission of incriminating documents and, ultimately, the repatriation of the remaining funds. The judgment stopped short of ordering their repatriation. As in the Marcos case, it was preoccupied with ensuring that the defendants receive a fair trial and that their human rights be observed. Following a meeting with the Swiss president in October 2003, however, Obasanjo announced that a mutual agreement had been reached whereby the Swiss would soon repatriate the US \$618 million frozen in Switzerland against assurances from Nigeria that the returned funds would be devoted to improving education, health, agriculture and infrastructure.

Box 6.6: The hunt for looted state assets: the case of Benazir Bhutto

Benazir Bhutto served twice as prime minister of Pakistan, and was twice removed for widespread abuse of public office. Pakistani authorities were fortunate to obtain early hard evidence implicating Bhutto and her family.

Key documents copied from the files of her lawyer in Switzerland revealed that significant commissions were paid by contractors in a series of deals between shell offshore companies and foreign corporations contracted by the government of Pakistan. In all cases, the beneficial owners of the various companies were Bhutto family members, usually Asif Ali Zardari, Bhutto's husband, commonly known as 'Mr Ten Per Cent' during his wife's first term – and 'Mr Forty Per Cent' after he assumed the post of minister of investment during her second.

In late 1997, Pakistan's attorney general promptly sent requests for assistance to his opposite numbers in Switzerland, Britain and the United States, three of the many countries identified as having some connection with these commission contracts. Only Switzerland provided swift and effective responses. The then Swiss attorney general, Carla del Ponte, instructed the federal police in Berne to cooperate with the Pakistani authorities and appointed judge Daniel Devaud in Geneva to take charge of judicial aspects of the investigation.

There were several strands to the initial evidence, implicating different companies in public contracts with Pakistan, each with a subset of offshore companies controlled by Jens Schlegelmilch, the Bhutto family lawyer in Geneva. One of the earliest steps taken was to identify Swiss bank accounts in the names of the Bhutto family, their front companies and known associates, and to freeze any balances in them. The order resulted in the freezing of no fewer than 500 separate accounts containing in excess of US \$80 million, funds that remain frozen to this day.

The gap between freezing funds and repatriating them to another country is formidable, as Pakistan was just starting to discover.

For Switzerland to transfer the blocked funds to Pakistan required a conviction in Pakistan against Bhutto, her husband and possibly others for an offence that would allow judge Devaud to order the transfer. Alternatively, Bhutto would have had to be convicted in Switzerland for an offence giving rise to similar powers.

In July 2003, after more than five years, Devaud convicted Bhutto and her husband of money laundering, sentencing them to six months' imprisonment suspended for three years, and ordered the transfer to Pakistan of some US \$12 million.¹ His decisions are now under appeal, and may take another year to resolve.

Examining why it took so long to arrive at this still-not-final result sheds light on what obstacles could be encountered in similar situations.

From the half a dozen offences disclosed by the initial documents, Devaud deliberately selected one in which those paying the commissions were Swiss companies. This tactic enabled him to investigate and seize within Switzerland documents covering all aspects of the offence, whether from the companies or from Bhutto's lawyer. In this way, he did not need to rely on assistance from other countries.

Corruption was not a criminal offence in Switzerland until 2001, long after the frozen accounts had been filled with cash. But money laundering was an offence. Provided that Bhutto and Zardari could be prosecuted in Pakistan, anyone dealing with the corrupt proceeds could be indicted in Switzerland. Accordingly, Devaud issued indictments against five parties: Bhutto and Zardari outside Switzerland, and Schlegelmilch and the responsible executives of two Swiss companies within his own jurisdiction. Backed with the indictments, he ordered the seizure of documents and sought to interrogate the accused as investigating magistrate.

At an early date, he ordered that Pakistan be a 'civil party' to the proceedings, as the victim of the alleged criminal activity. The commissions paid as bribes for the benefit of Bhutto, her husband and mother should have been accounted to the Republic of Pakistan, whose interests Bhutto had been bound to protect. As a civil party, the Pakistani authorities would have access to the entire file of the proceedings, and could be compensated for any losses established.

Devaud's judgments on what became known as the SGS-Cotecna case disclose that, during Bhutto's first term of office, the Swiss company Cotecna was awarded a contract by Pakistan's ministry of finance to take over pre-shipment inspection of goods entering Karachi port. Cotecna had agreed to pay a commission of 6 per cent of the contract receipts to Mariston Securities Inc., an offshore company formed by Schlegelmilch and beneficially owned by Bhutto's mother. Mariston received US \$1.2 million before the contract was terminated after Bhutto was first ejected from office.²

On her return in 1993, Bhutto appointed herself minister of finance. A contract with similar terms was awarded to SGS, a Swiss inspection company that owned much of Cotecna and had agreed to share both the revenue – and the obligation to pay bribes.

▷

Schlegelmilch created a new offshore company, Bomer Finance Inc., whose beneficial owner was Zardari, though Bhutto controlled its assets. Two other companies were involved: Mariston and Nassam Overseas Inc., a company beneficially owned by Bhutto's then brother-in-law. The commission between them rose to 9 per cent. Additionally, Schlegelmilch himself was to receive a commission of 1.25 per cent of contract receipts.

The SGS–Cotecna contract took effect from 1 January 1995, and large sums were paid to both companies over the next two years. Schlegelmilch made sure that the commissions were duly paid to the various Bhutto front companies, aggregating US \$12 million. All the payments – including date, amount, payer and payee – are set out in Devaud's decisions.

More than US \$5 million was transferred to another front company, Hospital of the Middle East Inc. With access to bank records, Devaud was able to freeze the accounts and trap nearly all the money paid by the Swiss companies. But the final nail in the Bhutto coffin was the purchase of a diamond necklace worth £117,000 (US \$195,000) from David Morris, a leading London jeweller. To pay for it, Bhutto had drawn £90,000 (US \$150,000) from Bomer Finance's bank account.³

The six-month suspended sentence against Bhutto and her husband may seem light for such serious offences, but they were the maximum Devaud could exact. With the appeals now filed, the superior court can impose much tougher sanctions.

Devaud also ordered Bhutto and her husband to pay Pakistan the aggregate of the bribes they had received. He further ordered forfeiture of all the remaining funds of the companies and the transfer of the diamond necklace to Pakistan. By his calculation, this left Pakistan short by US \$250,000, which the two were ordered to pay forthwith. When these funds reach Pakistan, they will constitute a first in terms of a state recovering directly sums paid by way of bribes to responsible politicians.

The bribes paid in the SGS–Cotecna case are large, but they pale into insignificance against the harm suffered by Pakistan as a direct result of these corrupt contracts. Pakistan is estimated to have lost more than US \$2 billion in tariff revenues as a consequence of the greed of Bhutto and her family.

Jeremy Carver (Clifford Chance law firm, Britain)

Notes

1. Devaud similarly convicted Schlegelmilch with a four-month term of imprisonment, but he was unable to forfeit the proceeds from the corrupt contracts because corruption was not then a criminal offence in Switzerland, as it was in Pakistan. An unofficial translation of Devaud's three decisions can be found on the website of Pakistan's National Accountability Bureau: www.nab.gov.pk
2. The Cotecna contract with Pakistan created a public scandal because of appalling performance by Cotecna. Tariff receipts by the ministry of finance dropped alarmingly. A public investigation blamed Cotecna for the loss of more than US \$1 billion of revenue.
3. Through her spokespeople, Bhutto has denied involvement in the purchased necklace, indeed in all the facts uncovered by Devaud. But she steadfastly refuses to participate in the proceedings, save through the press, claiming that Devaud is politically motivated.

Asset recovery and the UN Convention

The UN Convention chapter dedicated to asset recovery begins with the statement: 'The return of assets pursuant to this chapter is a fundamental principle of this convention and states parties shall afford one another the widest measure of cooperation and assistance in this regard.'⁹ The chapter goes on to set out a collection of measures that signatories are enjoined to take to facilitate asset recovery.

One set of provisions aims to get states to require domestic financial institutions to adopt stringent 'know your customer' procedures, particularly in regard to those 'entrusted with prominent public functions and their family members and close associates' to whom 'enhanced scrutiny' provisions should apply. The package addresses many of the core issues associated with abuse of office, lax banking controls and the use of offshore banks. If every country were to pass legislation giving effect to these measures – and ensure their proper enforcement – opportunities for looting would be radically reduced.¹⁰

The chapter also addresses the recovery of property under individual states' domestic laws and through international cooperation on confiscation. Again, the aim is to encourage states to ensure that domestic law permits courts to order those who have committed offences established under the convention to pay compensation or damages to states that have been harmed by those offences.¹¹

Further measures concern the freezing or seizure of property in a requested state, once competent authorities in a requesting state have issued orders.¹² These measures contain the important provision, referred to above, that such orders should enable the requested state to take action on the basis of 'reasonable belief' that there are sufficient grounds for the requesting state to take such actions and that the property will eventually be subject to an order of confiscation.¹³ In addition, the requested state can take action simply on the grounds of reasonable belief – without the competent authority in the requesting state having to issue a freezing or seizure order.¹⁴ This provision envisages a situation that approximates the procedure in Switzerland, where prosecuting magistrates can take action to freeze assets on the basis of reasonable belief, without court orders from requesting states. This situation contrasts sharply with the position in Britain, where the Home Office will not take action unless it is satisfied that criminal charges have been brought in the requesting country, and that those criminal charges are properly filed. Subsequent delays tend to favour the malefactor, who may use the time to move funds elsewhere.

The UN Convention also focuses on international cooperation for the purposes of confiscation. A number of its provisions deal with the submission of requests, but they place a positive obligation on the requested state to take measures to identify, trace and freeze or seize the proceeds of crime. Each signatory must furnish copies of all laws and regulations giving effect to this set of provisions and any subsequent changes to the UN secretary-general.¹⁵

Furthermore, each signatory of the convention is to take measures to permit it to forward information on illicitly acquired assets to another signatory without prior request, as long as it considers the disclosure of such information helpful to the initiation or carrying out of investigations that might lead to a request.¹⁶ The convention also tracks the setting up of financial intelligence units (FIUs) in countries belonging to the Egmont Group, whose members exchange information on money laundering.¹⁷ States that have not already done so are encouraged to set up FIUs.¹⁸

With respect to the return and disposition of assets, the convention sets out the requirement for requested signatories to return embezzled public funds to requesting signatories. The concept of repatriation has led to considerable difficulties, as highlighted

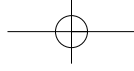
in the three cases cited above. A requested signatory can waive the requirement of a final judgment being given in the requesting signatory's courts and return property when the requesting signatory 'reasonably establishes its prior ownership of ... confiscated property to the requested state party; or when the requested state party recognises damage to the requesting state party as a basis for returning the confiscated property'.¹⁹ This provision resembles existing procedures in Switzerland that enable the criminal courts to confer 'damaged' status on a civil party (including countries) and order confiscation of assets and repatriation to the 'damaged' country.²⁰

Some of the provisions described above have undergone significant changes since they appeared in the earlier draft of the convention, and further changes may be adopted after this writing.

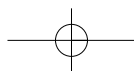
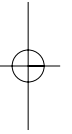
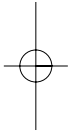
Regardless of these changes, however, the chapter on asset recovery clearly sets out to encourage countries to establish comprehensive regimes of mutual legal assistance that are designed to be as helpful as possible to requesting countries. It is only hoped that requested countries will take heed and observe the spirit as well as the letter of the aims of the chapter, making it increasingly difficult for rogue heads of state to pillage their citizens and get away with it.

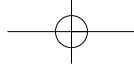
Notes

1. Tim Daniel founded the public international law group at the law firm Kendall Freeman in London and has represented the government of Nigeria in major litigation for 25 years.
2. During the latter half of 2003, the precise formulation of the draft UN Convention against Corruption was debated in Vienna. At this writing, the final document was to be open for signature in Mexico in December 2003.
3. See Michela Wrong, *In the Footsteps of Mr. Kurtz: Living on the Brink of Disaster in Mobutu's Congo* (New York: HarperCollins, 2002).
4. Article 74 of the EIMP.
5. Article 61.3 (a) and (b).
6. *Sunday Mail* (Australia), 6 August 2003. The article states that Imelda Marcos has appealed this decision, claiming that she and her three children were deprived of due process: this appeal does not appear to be delaying the handover of funds.
7. Article 67 *bis*, paragraph 2 (a).
8. This information is based on evidence presented to the International Development Committee, a British parliamentary select committee, which published its fourth report (on corruption) on 22 March 2001.
9. Articles of the chapter on asset recovery (chapter V) are discussed in the order in which they appear in the draft convention. The numbering is not sequential: 64, 65, 67, 67 *bis*, 60, 60 *bis*, 68, 61 and 66.
10. Article 65.
11. Article 67.
12. Article 67 *bis*.
13. Article 67 *bis*, paragraph 2 (a).
14. Article 67 *bis*, paragraph 2 (b).
15. Article 60.
16. Article 68.



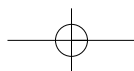
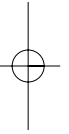
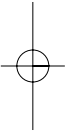
17. See www1.oecd.org/fatf/Ctry-orgpages/org-egmont_en.htm
18. Article 66.
19. Article 61.
20. The use of this procedure was dramatically illustrated in August 2003 when the Geneva examining magistrate ordered assets confiscated from Benazir Bhutto and her husband Asif Zardari to be returned to Pakistan (see Box 6.6, 'The hunt for looted state assets: the case of Benazir Bhutto', page 102).

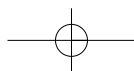
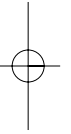
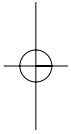
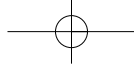


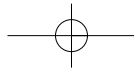


Part two

Global, regional and country reports







7 Global and regional reports

The major global issue to take shape in the period from July 2002 to June 2003 was the negotiation of the UN Convention against Corruption. Regionally, the African Union adopted a convention that promises to reduce bribery and the EU prepared for the accession of 10 Central and East European countries, with important implications for the ongoing fight against corruption. Debate continues on the possible amendment of the OECD Anti-Bribery Convention, even as it is being implemented. Finally, the US government presented proposals for the Millennium Challenge Account, which will place a country's corruption record centre stage in the decision-making on aid.

The UN Convention against Corruption

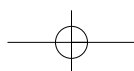
Peter Rooke¹

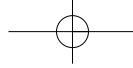
Two years of negotiations were coming to an end as this report went to press, with indications that a text would be agreed for the proposed UN Convention against Corruption in time for it to be signed in Mexico in December 2003.

Successful negotiation of the convention will create the first global instrument embracing a comprehensive range of anti-corruption measures to be taken at the national level. It will also enhance international cooperation regarding corruption prevention and enforcement.

In 1996, the UN General Assembly adopted the UN Declaration against Corruption and Bribery in International Commercial Transactions. It later negotiated the UN Convention on Transnational Organized Crime, which came into force in September 2003. Though both address corruption in a specific context, it was recognised that a comprehensive international instrument against corruption was still needed. In December 2000, the UN General Assembly decided to establish an ad hoc committee to negotiate a more general anti-corruption convention.

Delegates at the first negotiating session in January 2002 expressed the view that the convention should be binding, effective, efficient and universal, and that it should be a flexible and balanced instrument taking into account the legal, social, cultural, economic and political differences between countries, as well as their different levels of development. Whether the new UN convention will live up to these expectations remains to be seen – it is expected to enter into force at the end of 2005 at the earliest.





Problems of political corruption

The convention breaks new ground, particularly in relation to the provisions on cross-border recovery of assets, but more is needed if it is to have a significant impact on reducing corruption.

The United States' refusal to countenance any mandatory provision on transparency in political funding has led to a lukewarm and optional provision tucked away in an article entitled 'Public sector'. This was the most dramatic fault line to emerge in the negotiations. As the Russian delegation remarked, if the convention fails to deal adequately with this, 'one third of the subject matter of the convention is missing', a reference to the need to address equally corruption in the public sector, the private sector and politics.

Conversely, the convention represents a welcome breakthrough regarding international cooperation on the return of assets, an issue described in chapter V of the convention as 'a fundamental principle', and one on which state parties shall afford one another the widest possible measure of cooperation and assistance (see 'Repatriation of looted state assets: selected case studies and the UN Convention against Corruption', Chapter 6, page 100).

Preventive measures at the national level

While most articles in this chapter commence with a mandatory general principle, the manner in which it is implemented is left to the discretion of each state party. Nevertheless, the scope of the chapter is broad.

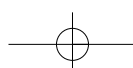
In relation to the public sector, it deals with preventive policies, practices and institutions; the need to promote participation by society; recruitment, training and other conditions applying to non-elected public officials; criteria for candidature and election to public office and transparency of funding of the political process; codes of conduct for public officials; transparency of public procurement and public finances; transparency in public administration; and measures to strengthen judicial integrity.

The need to prevent corruption involving the private sector is clearly stated and elaborated through a range of optional measures. Specifically highlighted are the needs for effective disclosure, improved accounting and auditing standards, and a mandatory provision to disallow the tax deductibility of bribes.

The participation of 'society' in the prevention of, and the fight against, corruption is recognised, as is the need to raise awareness about it, but specific measures are again left to the discretion of individual countries. The importance of encouraging public reporting of possible acts of corruption is emphasised. The chapter also flags the importance of effective measures to deter and detect money laundering.

Criminalisation and related matters

Criminalisation of the taking of bribes by public officials is optional in the convention on the basis that it is mainly the responsibility of the official's home country. This does



not adequately deal with cases involving officials of international public organisations, however, as there is no 'home government' to take responsibility. The General Assembly's draft resolution to adopt the convention text drew attention to this point and it seems likely that a protocol will be proposed to deal with it after consultations with international organisations, which some delegations perceived as too eager to claim immunity for their officials.

Mandatory criminal sanctions in the convention include embezzlement by public officials, liability of legal persons and laundering of proceeds of crime, as well as certain ancillary offences and remedies; the latter include obstruction of justice, participation and attempt, freezing, seizure and confiscation, waiver of bank secrecy and protection of witnesses and victims. Optional offences include trading in influence, concealment, abuse of functions, illicit enrichment and bribery, and embezzlement in the private sector. Unfortunately, the protection of reporting persons (or whistleblowers) is not mandatory.

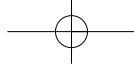
International cooperation in criminal matters

Enhanced international cooperation in extradition and mutual legal assistance, in relation to corruption offences and money laundering, will counter some of the disillusion about the role of Western institutions and laws in providing a safe haven for the billions of dollars allegedly looted by the likes of Abacha, Marcos and Mobutu. Many developed countries also insisted on dual criminality before such assistance is available – meaning that both requesting and requested country must have comparable offences in their criminal law.

From this stance and other evidence, it seems that many developed countries may prefer to continue to use their bilateral and multilateral agreements on extradition and mutual legal assistance, rather than rely on the provisions of the convention. This is particularly so for the United States, which has 110 such agreements. This does not accord with the spirit of the convention, however, which is 'to promote, facilitate and support international cooperation ... in the ... fight against corruption, including asset recovery'. On the one hand, developing countries are concerned that developed countries may not do their utmost to facilitate extradition and mutual assistance to developing countries. On the other, some developed countries suspect the legal systems and human rights norms in some developing countries may not be adequate to ensure a fair trial.

Technical assistance and information exchange

Given the extensive prevention and enforcement measures advocated by the convention, many countries will require considerable help to take the necessary steps to implement it. This part of the convention should send a strong signal to the aid community that assistance to curb corruption is a high priority. The need for enhanced information exchange about prevention and enforcement between countries at all levels of development is also flagged.



Mechanisms for implementation

Several delegations presented proposals to provide for effective monitoring of implementation by the signatory countries. Under the finally agreed wording, however, governments will have a large degree of leeway to decide whether, and how far, to incorporate the convention's many optional provisions into their national law. The need to ensure implementation of mandatory provisions, as well as to see how the convention is generally applied by governments, makes effective monitoring essential, including independent monitoring by civil society organisations at the national level. Procedures for this have largely been left for the Conference of States Parties to decide. Its first meeting will be held within a year of the convention coming into force, probably during 2006.

Final provisions

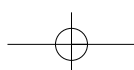
The most important of the final provisions is the threshold for entry into force of the convention. Opposing camps advocated 20 ratifications on the one hand, and 40 on the other. There are precedents for each in UN instruments, but the UN Convention on Transnational Organized Crime, which has influenced the new convention's wording in a number of respects, had a threshold of 40, which took more than two years to achieve. Delegations finally reached a compromise of 30 for the UN Convention on Corruption.

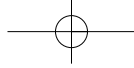
An overview

Throughout two years of negotiations, TI has stressed the importance of making adequate provisions in relation to the private sector, where the Enron scandal, and others that followed, seriously eroded confidence in financial markets; and in the political sphere, where confidence has been dissipated by the impunity of leaders such as former Peruvian president Alberto Fujimori and Prime Minister Silvio Berlusconi of Italy, and by suspicions of influence-buying in the energy and arms sectors.

For the first time a convention provides a framework – albeit not mandatory – for criminalising bribery in the private sector and for measures to improve business integrity. But as mentioned earlier, the convention fails to adequately address the issue of political corruption. It also relies too heavily on non-mandatory wording and, in relation to international cooperation, has tended to replicate the corresponding provisions in the UN Convention on Transnational Organized Crime, rather than to improve on them. Of most concern, however, is that the new convention gives too little guidance to the Conference of States Parties on what forms of monitoring should be adopted.

More positively, the decision of the UN Office of Drugs and Crime – under whose auspices the convention was negotiated – to promote a global campaign of public service announcements on television to raise awareness of corruption, is most welcome. If the convention spurs national governments to do more in this direction, public support for greater efforts to curb corruption will be enhanced, improving the chances for the convention's implementation.





The relationship between the UN Convention and other anti-corruption conventions, such as the OECD convention and regional conventions, is specifically addressed and will no doubt become clearer with experience. It is already apparent, however, that the UN Convention does not supplant these other instruments and there is hope that they will be mutually reinforcing.

Note

1. Peter Rooke is a member of the board of directors for Transparency International and director of projects at Transparency International Australia.

Box 7.1: The UN Global Compact: an opportunity for tackling corruption

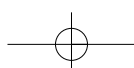
The UN Global Compact, which challenges business leaders to uphold nine universally agreed principles on human rights, labour rights and respect for the environment, has an increasingly important role to play in a world where globalisation blurs borders in international relations and commerce. From its foundation in January 1999, the compact is supported by more than 1,000 companies worldwide, representing a powerful force for improving corporate responsibility.

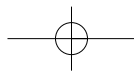
The compact has highlighted the influence business can have in bringing about a more sustainable and inclusive global economy where the rule of law is paramount. To ensure that this important objective is realised, the issue of transparency in the way business is conducted is crucial.

The Global Compact pursues transparency by asking participating companies to publish annual reports on their activities in support of the nine principles. This is important given the lack of robust monitoring and enforcement mechanisms of the principles, which are not legally enforceable standards. Many NGOs are critical of the Global Compact for this reason; they argue that it allows companies to appear committed to sound corporate governance, but does nothing to ensure there are real improvements in business behaviour.

In the absence of an explicit principle on corruption, however, companies do not have to report on how they are working to eliminate the scourge of corruption from their business practices. This major loophole is why the biggest possibilities within the compact still lie ahead. The UN Convention against Corruption, at this writing due for completion in December 2003, gives the issue of corruption more prominence within the UN system and raises the possibility of an explicit principle on corruption and transparency being incorporated within the Global Compact. UN Secretary-General Kofi Annan has indicated that the signing of the convention in Mexico in late 2003 provides an opportunity for a 10th principle to be incorporated into the compact.

The Global Compact office has already started to prepare the ground for a 10th principle on transparency and against corruption, making it the subject of discussion with stakeholders in December 2002, and of its advisory council in July 2003. An evaluation of the possibility of a 10th principle was conducted at the Global Compact Learning Forum meeting in December 2002 in Berlin. Reactions from businesses, unions and governments were mixed: some argued that realisation of all of the principles involved an element of transparency and that a 10th principle was therefore not necessary.





But the fact that corruption hinders the realisation of the rights enshrined in all of the other principles lends more, not less, weight to the claim that an explicit principle on transparency is needed.

The Global Compact is already working on substantive projects related to corruption and transparency. The working group on transparency and corruption has been tackling bribery, antitrust, publishing data and related public policies, issues that are all addressed in the UN Convention against Corruption.

A policy dialogue in 2001 on the 'The role of the private sector in zones of conflict', for instance, produced a set of guidelines with detailed recommendations for civil society, governments, businesses and multilateral institutions, aimed at eliminating corruption in the arms trade.

By centring the issue of transparency and corruption as the focus of a 10th principle, these and similar important efforts can only be strengthened.

Jermyn Brooks (Transparency International)

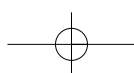
The African Union Convention against Corruption

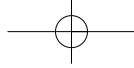
Akere Muna¹

The Organisation of African Unity (OAU) was born out of the struggle for independence of the 1950s and the early 1960s. Its short-term goals included abolishing apartheid and assisting African countries in gaining full independence from their colonial rulers. Under the spur of the pan-Africanists, the OAU also sought to realise the dream of a united Africa.

In the post-World War II atmosphere of ideological bipolarisation between East and West, some African leaders took sides while others opted for non-alignment. As African countries were wooed by the superpowers, issues such as human rights, the rule of law and public participation in decision-making were downgraded on the political agenda. The leaders who had been a strong force in the struggle for independence (Kwame Nkrumah in Ghana and Tanzania's Julius Nyerere), the powerful trade unions and the successful multiparty systems were gradually replaced with one-party states and dictatorships. These regimes were mostly tolerated by cold war superpowers that regularly fought wars by proxy throughout the continent, and in southern Africa in particular. Mobutu Sese Seko was one such dictator who plundered the resource-rich Zaire (now Democratic Republic of Congo) for more than 30 years with the tacit approval of some of his backers in Western capitals. Anti-corruption initiatives were on no one's agenda. Moreover, the word 'corruption' was taboo, even within the international financial institutions (IFIs).

With the collapse of the Berlin Wall, the leadership vacuum in many countries became exposed to populations that increasingly demanded democracy, human rights and public participation. Corrupt leaders could no longer hide behind the coat-tails of their foreign sponsors, for whom most of the African continent had become less strategically important. As IFIs and bilateral donors began applying pressure for good





governance and democratisation, African states recognised the need to strike a balance between the state, private sector, civil society and the media.

Together with local pressure groups, international organisations like Amnesty International mounted a continuous campaign against human right violations, but the OAU only reacted in the early 1980s. Indeed, the African Charter on Human and Peoples' Rights came into force in 1986.

The 1990s saw a return to the multiparty system. Pressure from civil society, the media and political parties quickly pushed corruption and governance issues to the fore. The IFIs adopted a good governance agenda as part of structural adjustment programmes (SAPs). This trend produced ambiguous results, since it not only entrenched calls for more accountable governance, but also created mistrust of the good governance agenda among those critical of the ravaging effects of SAPs. It was against this backdrop that the OAU, predecessor of the new African Union (AU), was to seek a continental approach to a problem that had taken on a magnitude similar to that of the human rights issue in the 1980s.

The roots of the African Union convention

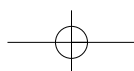
The African Union Convention on Preventing and Combating Corruption and Related Offences is inspired by the African Charter on Human and Peoples' Rights and other declarations, none of which explicitly mentions corruption.²

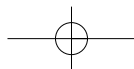
Indeed, the fight against corruption was not specifically introduced at the regional level until June 1998, at a session of the assembly of heads of state and government in Ouagadougou, Burkina Faso. The assembly passed a resolution calling on the secretary general to convene a high-level meeting of experts in cooperation with the African Commission on Human and Peoples' Rights. These experts were to consider ways of removing obstacles to the enjoyment of economic, social and cultural rights – such as through the fight against corruption and impunity – and propose appropriate legislative and other measures for reform. The scene was set for the drafting of a historic convention.

Civil society groups, including Transparency International, actively participated in the writing of the first draft of the AU convention at expert meetings in Addis Ababa in November 2001 and September 2002. Throughout the drafting process, they lobbied for the inclusion of provisions on asset recovery, political party financing, access to information and whistleblower protection.

The 28-article AU document started out as the Convention on Preventing and Combating Corruption, but definitional problems and discrepancies in legal systems led the drafting committee to add the words 'and Related Offences'. The document was designed to be easily applied as a framework for any national anti-corruption strategy.

The convention was adopted in July 2003 at the AU summit in Maputo, Mozambique, and now awaits 15 ratifications before entering into force.³ Countries that have adopted, but not ratified, the document may spontaneously decide to enact selected provisions of the convention into national law, instead of proceeding with the ratification process (whereby the entire treaty becomes applicable as national law).





Objectives, principles and features

The objectives of the convention emphasise cooperation between signatories, encouraging them to 'promote and strengthen the development ... of mechanisms required to prevent, detect, punish and eradicate corruption and related offences in Africa' and to ensure the effectiveness of these measures.⁴ Issues of good governance are also highlighted.

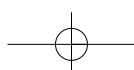
The convention concentrates on four main approaches to combating corruption: prevention, punishment, cooperation and education. In particular, it strengthens the laws on corruption by listing offences that should be punishable by domestic legislation; it outlines measures to be undertaken to enable the detection and investigation of corruption offences; it indicates mechanisms for the confiscation and forfeiture of the proceeds of corruption and related offences; it determines the jurisdiction of state parties; it organises mutual assistance in relation to corruption and related offences; it encourages the education and promotion of public awareness on the evils of corruption; and it establishes a framework for the monitoring and supervision of enforcement of the convention. Provisions for this monitoring process also make reference to the involvement of civil society. Significantly, the convention focuses on both public and private sector corruption and calls for the implementation of specific anti-corruption laws in both sectors.

The convention's scope of application

The convention clearly defines corruption, adopting a now common approach: corruption is no longer an offence in which only the public official can be the principal offender. Although the role of the public official remains central, the convention also includes a requirement to 'adopt legislative and other measures to prevent and combat acts of corruption and related offences committed in and by agents of the private sector'. It also calls for the establishment of 'mechanisms to encourage participation by the private sector in the fight against unfair competition, respect of the tender procedures and property rights'.⁵

Furthermore, the convention defines corruption broadly enough to pre-empt conflicts of interpretation involving civil law and common law jurisdictions.⁶ Civil law jurisdictions normally distinguish between embezzlement and corruption, partly because the penal code considers them distinct offences and because corruption is construed to mean bribery (as opposed to embezzlement). Furthermore, civil law countries consider embezzlement and corruption offences to involve public officials or public funds. As it reads now, the AU convention – especially with the addition 'and related offences' – captures both civil and common law systems.

Critics of the AU convention see the provision on illicit enrichment as an erosion of the principle of the presumption of innocence in criminal law. In a criminal case of illicit enrichment, which involves unjustified wealth, the prosecution carries the burden of proof and must therefore show beyond reasonable doubt that acquired wealth is not justified by the earnings. Under the convention, the prosecution is not legally obligated



to show beyond a reasonable doubt that wealth exceeds income. Nor does the prosecution necessarily have to show that unjustified earnings are the result of corruption, as it is automatically presumed that unjustified earnings derive from a corrupt source. If implemented, such provisions are likely to face legal challenges, particularly in countries where the presumption of innocence is constitutionally enshrined.

The convention also addresses the confiscation and forfeiture of corrupt proceeds, bank secrecy, cooperation and mutual legal assistance. It calls on signatories to introduce legislation on money laundering and commits them to require designated public officials to declare their assets at the time of assumption of office, as well as during and after their term.⁷ A last-minute inclusion in the convention, the provision on political party funding states that each signatory is to 'adopt legislative and other measures to proscribe the use of funds acquired through illegal and corrupt practices to finance political parties' and to 'incorporate the principle of transparency into funding of political parties'.⁸

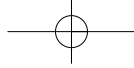
Monitoring and enforcement of the convention

Modelled on the African Commission on Human and Peoples' Rights, the advisory board is the AU's only formal monitoring measure at the international level and at the level of the AU commission. It is to submit regular reports to the executive council on the progress made by each signatory in compliance with the provisions of the convention.

The board lacks powers of investigation and cannot denounce acts of corruption. The convention provides that its 11 members be elected for two-year terms by the executive council 'from among a list of experts of the highest integrity and recognised competence in matters relating to preventing and combating corruption and related offences'. The document also calls on the executive council to ensure that the board have 'adequate gender representation, and equitable geographical representation'. Board members are to 'serve in their personal capacity', but the fact that they are proposed by signatories does not help to guarantee their independence.

As part of the monitoring process, national anti-corruption authorities are expected to send reports to the advisory board at least once a year, before the regular AU sessions. A drawback of this system is that the AU has no means of sanctioning countries that fail to report, unlike in the reporting process for the African Charter on Human and Peoples' Rights. Within the convention's monitoring framework, national authorities are designated for the purposes of 'cooperation and mutual legal assistance', which foresees that they will communicate with each other directly. In addition, the convention advocates 'necessary independence and autonomy' for the national authorities.

Defining the role of national authorities is an important element of the convention since many African countries do not have an authority dealing exclusively with issues of corruption. In its present form, the convention does not prevent countries from simply establishing complacent national commissions. An amendment to the convention would need to be passed in order to introduce an outline of a desirable structure and operation of such bodies.⁹



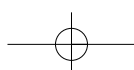
With respect to enforcement, the convention shall operate like an extradition treaty among countries not already bound by them. Until it enters into force, however, extradition is only possible between states that have bilateral or multilateral treaty arrangements.

The convention also lays the groundwork for recognition by signatories of civil society and the media, committing signatories to 'fully engage in the fight against corruption and related offences and the popularisation of this convention with the full participation of the media and civil society at large'. States are to draw up individual legal frameworks that would permit civil society and the media to be integrated into this process. These statutes should take into consideration the role defined for civil society in article 12, namely that civil society and the media should be encouraged to hold governments to the highest levels of transparency and accountability; to participate in the monitoring process and be consulted in the implementation of the AU convention; and to be given access to information in cases of corruption and related offences on condition that the dissemination of such information does not adversely affect the investigation process and the right to a fair trial. Despite these guidelines, and in view of the fact that the present climate tends to brand civil society and the media as opposition groups in many countries, it may be some time before their role becomes entrenched in the statute books. Similar provisions in the sub-regional Southern African Development Community Protocol against Corruption have also proven too 'loose' to provide for a clearly defined oversight function for civil society.

Whistleblowers are also addressed in the convention, which requires signatories to 'adopt legislative and other measures to protect informants and witnesses in corruption and related offences, including protection of their identities' and to 'adopt measures that ensure citizens report instances of corruption without fear of consequent reprisals'. Nonetheless, these efforts to ensure whistleblower protection may be undermined by a provision calling on signatories to 'adopt national legislative measures in order to punish those who make false and malicious reports against innocent persons in corruption and related offences'. Other forms of redress, such as civil action, normally suffice in such situations.

It should be noted that the convention's procedure permits any signatory to opt out of some or all issues. Under article 24, states may announce reservations (based on article 15) on one or more provisions deemed incompatible with the object and purposes of the convention. A state may maintain this reservation until circumstances permit its withdrawal. Under article 26, states are also entitled to denounce the convention in its entirety, by notifying the chairperson of the commission with six months' notice.

Regardless of its apparent imperfections, the convention represents the first universal framework for the fight against corruption for member states of the AU. The challenge now is for African governments to show political will to implement – and enforce – the AU convention against corruption. Active lobbying by African media and civil society organisations can positively influence this process. Additional pressure from international actors could contribute to the impact of what amounts to Africa's first continental structure for combating corruption within each state's sovereign borders.



In addition, the AU convention is likely to benefit from growing national pressure to prevent and punish bribe paying.

For the AU convention to have a measurable impact on corruption, civil society and other pressure groups will have to claim possession of the monitoring process. By joining forces as coalitions, they can help ensure that its signatories successfully implement this new treaty.

Notes

1. Akere Muna is chairman of TI Cameroon.
2. Other sources of inspiration for the drafting of the AU convention are the 1990 Declaration on the Fundamental Changes Taking Place in the World and Their Implications for Africa; the 1994 Cairo Agenda for Action Re-launching Africa's Socio-economic Transformation; and the Plan of Action against Impunity adopted by the 19th ordinary session of the African Commission on Human and Peoples' Rights in 1996 and subsequently endorsed by the 64th ordinary session of the Council of Ministers held in Yaoundé, Cameroon. The most recent impetus for the convention came from the 37th ordinary session of the Assembly of Heads of State and Government of the OAU held in Lusaka, Zambia, in July 2001, as well as the declaration adopted by the first session of the Assembly of the Union held in Durban, South Africa, in July 2002, relating to the New Partnership for Africa's Development, or NEPAD, which calls for the setting up of a coordinated mechanism to combat corruption effectively.
3. The convention was initially approved by the AU's ministerial conference in Addis Ababa on 18–19 September 2002. It was later approved by the executive council in N'djamena, Chad, on 5–6 March 2003.
4. Article 2.
5. Article 11.
6. Article 4 (d).
7. Articles 6 and 7.
8. Article 10 (a) and (b).
9. The procedure for amending the convention is a three-stage process: (1) a signatory must submit a written request to the chairperson of AU commission; (2) the chairperson must circulate the proposed amendment to signatories, granting reviewers a period of at least six months from the circulation date; (3) a two-thirds majority is required for the amendment to enter into force.

Corruption and the EU accession process: who is better prepared?

*Quentin Reed*¹

As the day approaches when 10 East European states join the European Union (EU), the question that continues to be asked – by existing members as well as the candidate states themselves – is: 'Are they ready?'²

The question is no longer so concerned with technical details of harmonisation with the *acquis communautaire*. From the candidates' point of view, doubts over their ability to compete in a single market are coming to the fore. For the European Commission, corruption represents one of the most urgent items on the agenda. Yet a

closer look reveals that, with respect to corruption, the question of preparedness involves an urgent need for reform within the EU itself.

The Commission has repeatedly identified corruption as a serious problem in at least half of the candidate states of Central and Eastern Europe (CEE). In a speech marking the release of the 2002 Regular Reports on candidates' preparedness for accession, Commission President Romano Prodi labelled corruption an 'extremely serious' problem that must be tackled before accession.³

The Commission's unease about corruption in prospective new member states can be traced to two main sources. First, corruption undermines fulfilment by candidate states of the Copenhagen criteria, which were laid down in 1993 by the European Council as the basic conditions for EU membership. The Copenhagen criteria comprise three main categories: political criteria (stable, functioning democratic institutions), economic criteria (a functioning market economy) and the ability of the candidate state to fulfil the obligations of membership (in other words, the capacity to implement the *acquis*).

Second, the Commission is influenced by the perception that corruption is more widespread in candidate countries than in existing member states. This perception is underpinned by arguments explaining why countries in post-communist transition suffer from high levels of corruption; it is also supported by data such as Transparency International's Corruption Perceptions Index, which indicates that these countries do indeed experience higher levels of corruption. Nonetheless, the amount of incontrovertible research that might substantiate these fears is very small.

Irrespective of how post-communist countries compare to Western Europe, a recent report by the EU Accession Monitoring Program of the Open Society Institute (OSI) underlines the serious extent of corruption in most candidate states.⁴ According to OSI, corruption flourishes in the majority of the future member states of Central and Eastern Europe. Moreover, in addition to sharing the European Commission's worries about corruption in areas such as public administration, the OSI report emphasises the critical problem of corruption in areas on which the Commission has not often focused.

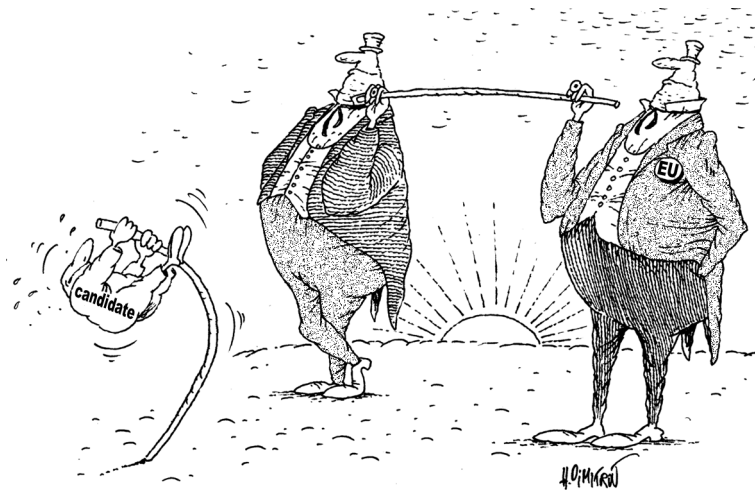
In particular, OSI finds that corruption in the creation of laws and rules – or 'state capture' – is widespread; the European Commission has paid more attention to the speed of legislative processes than to the quality of such processes. OSI points to public procurement, political party financing, patronage networks and conflicts of interest as areas where problems are more serious than the Commission acknowledges.

Further complications stem from a public culture that – although it often condemns corruption and exhibits strong perceptions of corruption – regularly tolerates corrupt behaviour in the pursuit of political or individual interests. A lack of media independence in most countries of the region – and the failure of regulators to regulate TV broadcasting properly – combined with a lack of professionalism and resources in investigative journalism across the region have led the dominant media to provide citizens with inadequate information on the subject of corruption.

Although informed by the above considerations, the Commission has not adopted a clear approach to corruption in candidate countries or formulated a set of assumptions about the roots of corruption or the policies needed to deal with it. Nor has the

Commission provided any indication of what level of corruption might disqualify a country from being eligible for EU membership. For example, though the Commission has repeatedly judged corruption to be 'systemic' in Romania, the Regular Reports find that the country has continued to fulfil the political criteria – rather than the economic or administrative ones – set in Copenhagen.

In fact, in the eyes of the Commission, no candidate country has been found unable to fulfil the Copenhagen criteria as a result of corruption, despite the extensive coverage given to the issue in the Regular Reports, a clear indication that corruption represents a serious caveat to the candidates' fulfilment of the political criteria. Fighting corruption is a 'long-distance run'; moreover, history – whether in Germany after Hitler or Spain after Franco – shows that corruption flourishes in transition situations, and that the fight to bring it under control is better measured in decades than electoral cycles. Such is particularly the case in post-communist countries, which are still in the process of completing massive transfers of assets from the state to the private sector.



Alex Dimitrov, Moldova

The impact of the accession process on policy

As corruption cannot be expected to fade away within the accession timetable, the Commission has resorted to anti-corruption policy as the main accession criterion applied to candidate countries. Eight have developed national anti-corruption strategies, while such strategies are now under preparation in Estonia and Slovenia.

Pressure from the Commission has had a major impact on areas such as the ratification of the main international anti-corruption conventions. Candidate countries have also implemented extensive reforms of the rules and institutions that enforce criminal law, and they are obliged to reform public procurement procedures to fulfil the requirements of the EU procurement directives. Civil service reform – one of the most important

instruments for tackling corruption among public officials – has been an EU priority in candidate countries, as has reform of systems of financial control and audit.

For several reasons, however, the real impact of the EU on anti-corruption policy in the future member states has been less convincing.

First, the Commission has tended to focus on issues of criminal law and enforcement, which elicits the criticism that bribery provisions and post hoc solutions to corruption are only marginally effective and that priority should be given to prevention rather than punishment. This is especially the case in countries with a recent history of one-party control, where establishing the independence of enforcement institutions (the police, investigation offices and courts) is a long-term and difficult process vulnerable to abuse for political ends.

Second, although the Commission has made national anti-corruption strategies a condition for accession, it has provided little guidance as to their contents. In recognition of this shortfall, Brussels recently produced an unofficial list of principles to serve as a model for countries seeking EU assistance in developing anti-corruption strategies, which formed the basis for a recent 'Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee on a Comprehensive EU Policy against Corruption'.⁵

Third, even in areas where EU regulations and requirements appear to have a clear anti-corruption component, the impact of these instruments is doubtful. For example, though the requirements of EU public procurement directives clearly have anti-corruption implications, their primary objective is to ensure a single market – not to fight corruption.

In the area of financial control and audit, the experience of EU member states clearly demonstrates that EU instruments cannot be relied on to ensure an effective system of control in member countries. A recent report by the British National Audit Office noted a 75 per cent rise in detected fraud involving EU funds from 1999 to 2000.⁶ More worrying, most of the increase was accounted for by better detection in the UK, and in a number of countries no cases of fraud were detected at all. The EU's own anti-fraud convention, approved in 1995, was only ratified by the 15 member states in time to come into effect in late 2002. While it provides the EU's first common definition of fraud, the convention imposes minimal requirements.

What these comments reflect is the fact that the EU itself lacks any clear framework for dealing with corruption. Individual member states do not even provide information on corruption in any systematic way. Recent reports by the Council of Europe's Group of States against Corruption (GRECO) – the only organisation monitoring the majority of European states according to broad principles of anti-corruption policy – noted that no overall statistics are available on corruption in Greece or Spain.⁷

The EU has been unable to persuade member states to adopt existing instruments. For example, only three member states had ratified the Council of Europe's Criminal Law Convention on Corruption by the time it came into effect in July 2002.⁸ By contrast, all but two of the CEE candidate states had done so by the same date.

There are several reasons why the EU lacks an anti-corruption framework. One is that corruption has not been perceived as a phenomenon that significantly undermines implementation of the *acquis* in existing member states. Even if it were, Brussels would

be unlikely to take the initiative in confronting corruption, which generally falls under the purview of sovereign ministries such as justice and home affairs. As elsewhere, anti-corruption developments in the EU do not come to fruition as speedily as hoped, mostly due to the sensitivity of corruption as an issue, the interest political elites often have in sustaining elements of corruption and the national resistance to external efforts to introduce any legislation or reform. Importantly, unlike the accession candidates, EU members lack incentives for adopting such frameworks.

The interest of political elites should not be regarded as hypothetical. There is substantial evidence that numerous EU members are troubled by entrenched levels of corruption, including the Elf Aquitaine affair and an alleged tradition of corruption in public procurement in France; a spate of party financing scandals in Germany; and recent revelations in Ireland and the Netherlands. Neither Italy, whose corruption problems are well known, nor Austria is a member of GRECO, though all candidate states are. In perception surveys, Greece and Italy are ranked as slightly more corrupt than the least corrupt candidate states, Estonia and Slovenia.⁹ The GRECO report on Greece indicates that the most corruption-plagued area is the allocation of EU funds.

The situation so far described involves important risks for the process of EU enlargement. If the findings on post-communist countries cited earlier are reliable, then 2004 will see a large number of countries with serious corruption problems join a Union that lacks any real framework for tackling the problem. Since the Copenhagen mandate ceases to apply to countries once they are admitted into the EU, the Commission will no longer be able to require of the 10 accession states what it could never demand of existing members.

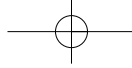
Under these circumstances, the Commission is likely to cease applying the double standards that have required anti-corruption policies of new members that were never required of older members. The result will be an inability to pursue effective anti-corruption policy across the entire enlarged Union. This is a serious cause for concern, especially given the large increase in EU funds that new member states will be required to distribute after 2004.

Policy implications

These worrying developments raise two major policy issues. One applies to the content of anti-corruption policies in candidate countries; the other concerns the EU as a whole and the need to establish a Union-wide approach to corruption.

To ensure effective anti-corruption policy in the CEE future member states, a degree of cross-party consensus needs to be achieved. This process would be facilitated by steps aimed at depoliticising anti-corruption policy as much as possible, for example by restricting the application of the phrase 'anti-corruption policy' to policies whose primary aim is to reduce corruption.

A second and absolutely vital precondition for creating more effective policies is the conduct of more detailed research on corruption. One of the main lessons of the rush of anti-corruption activity over the past 10 years is that anti-corruption policy needs to be based on fact, rather than assumption or imported solutions. Effective anti-



corruption policies are unlikely to emerge without a detailed analysis of what the real roots of corruption are in specific areas: for example, whether corruption is initiated by officials or citizens, and whether it reflects an overall corrupt organisation culture or individual actions of opportunism. Such research needs to go beyond standard surveys to more detailed focus-group studies that incorporate various analytical approaches.

In designing anti-corruption policy, countries should concentrate on making standard institutions and mechanisms work rather than creating new ones, unless there is a very specific rationale for doing so. For instance, a decent internal audit may be far more effective in preventing corruption in public administration than a special anti-corruption body.

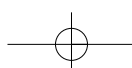
Regarding specific policy areas, future member states should pay particular attention to the reform of legislative processes to make them less vulnerable to corruption. Such reform can range from proper transparent consultation to parliamentary procedures that ensure that each proposed amendment is adequately evaluated, and that voting patterns are subject to public scrutiny.

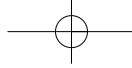
In addition, public administration reform should be buttressed by two important aspects that have not received sufficient attention in CEE countries. First, it is vital to create a functioning system of redress in public administration, both to facilitate whistleblowing and to allow citizens a means of appealing effectively against administrative decisions and actions. Second, reform of public administration should be based on consensus rather than top-down imposition; for example, a number of countries have imposed codes of ethics on the civil service (one of the criteria by which the Commission assesses anti-corruption policy), though such codes will be ineffective unless they are prepared through an extensive consultation process that allows officials to feel ownership of them.

One area in which CEE countries have often pursued ineffective policies is conflict of interest regulation. Their approach is often based only, or primarily, on declaring certain combinations of functions illegal; however, an equally (if not more) important aspect of such regulation is the duty to disclose potential conflicts of interest and exclude oneself from decision-making in such cases. Such disclosure processes have been developed only to a very limited extent, while enforcement of disclosure requirements is poor across the entire region.

If corruption is to be tackled effectively in the area of public procurement, the region must develop a more holistic approach to reform, one that goes beyond the technical rules for running tenders and allocating bids. Such an approach needs to include much more professional budget planning to ensure that needs are well defined; integrity training for procurement officers on specific codes of conduct; and wider participation in tender proceedings by external professional observers. Moreover, regulatory bodies must be better equipped – with sufficient powers and sanctions – to supervise not only the activities of public administration in procurement, but also the thorny issue of private sector collusion.

Greater attention needs to be paid to creating systems of political party funding that are less vulnerable to corruption. State funding to mitigate reliance of parties on business





for finance should be combined with maximum transparency of party funding and regulation by an independent institution such as an electoral commission.

Last but not least, there is a clear need in many countries of the region to reform the system of broadcasting regulation to increase the objectivity and independence of television news and editorial activities. Such reforms need to be directed at completing the transition from state-controlled to public service broadcasting, with regulators designed to ensure minimum political influence on broadcasting and the maximum enforcement of transparent broadcasting rules.

The European level: the role of GRECO

One of the main problems of the accession process in the area of anti-corruption policy is that the EU itself lacks a coherent anti-corruption framework. In assessing candidate preparedness for accession from the point of view of anti-corruption policy, the Commission has therefore relied to a significant extent on existing international instruments, such as the ratification of conventions. The Commission has been able to insist on such measures due to the Copenhagen criteria, whereas it has no such leverage with respect to member states.

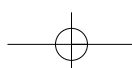
A Europe-based, anti-corruption framework does exist in the form of the Council of Europe's GRECO, however. Founded in 1999, GRECO is based on a set of Twenty Guiding Principles for the Fight against Corruption, covering a wide range of anti-corruption instruments from restriction of immunity provisions to freedom of the media. GRECO also put in place a functioning mechanism for peer evaluation of its member states on the basis of the Guiding Principles and, by the end of 2002, had completed an entire first round of evaluations. The group has been responsible for monitoring member states' fulfilment of the requirements of the Council of Europe Criminal Law Convention since it came into effect in July 2002.

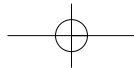
Given the lack of an EU anti-corruption framework, there are strong reasons for advocating that the EU establish much closer ties with GRECO, beginning with the Commission joining the organisation. Since neither the EU nor the Commission can force member states to adopt anti-corruption policies beyond certain narrow provisions, GRECO's voluntary basis combined with the strong moral authority of the Council of Europe is a promising way forward for Europe. A first benefit from the Commission's membership in GRECO might be that Italy and Austria – which have shown a reluctance to join GRECO, unlike the EU candidate states – decide to become members.

Unless such developments are accompanied by genuine political will among member states to fight high-level corruption, however, the risk is that they will remain formal, rather than substantive.

Notes

1. Quentin Reed is a consultant for OSI's EU Accession Monitoring Program.
2. This study focuses on the 10 EU candidates of the former communist bloc. The acceding states of the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, the Slovak





- Republic and Slovenia are set to join the EU in May 2004; Bulgaria and Romania do not have fixed dates, although the Commission has announced 2007 as the likely year of accession. The three other candidates are Cyprus, Malta and Turkey.
3. 'Enlargement – the final lap', speech by Romano Prodi to the European Parliament, Brussels, 9 October 2002; europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.gettxt=gt&doc=SPEECH/02/46310|AGED&lg=EN&display=
 4. OSI/EU Accession Monitoring Program, *Monitoring the EU Accession Process: Corruption and Anti-corruption Policy*, Budapest, 2002, www.eumap.org/reports/2002/content/50. The OSI website is www.eumap.org
 5. Commission of the European Communities, 'Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee on a Comprehensive EU Policy against Corruption', COM (2003) 317 final, Brussels, 28 May 2003. See europa.eu.int/eur-lex/en/com/cnc/2003/com2003_0317en01.pdf
 6. UK National Audit Office, Annual Report of the Court of Auditors for the Year 2000, Report by the Comptroller and Auditor General, HC 859 Session 2001–2002, 8 May 2002.
 7. GRECO, First Evaluation Round Evaluation Report on Greece adopted by GRECO at its 9th Plenary Meeting (Strasbourg, 13–17 May 2002); Report on Spain Adopted by the GRECO at its 5th Plenary Meeting (Strasbourg, 11–15 June 2001). See www.greco.coe.int
 8. Denmark, the Netherlands and Portugal had ratified the convention by July 2002. Finland is the only other EU country to have ratified it since then, in October 2002.
 9. See for example Transparency International's Corruption Perceptions Index 2003 (page 282); www.transparency.org/cpi/2002/cpi2002.en.html

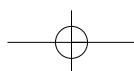
Will the OECD convention stop foreign bribery?

Fritz Heimann¹

The adoption in December 1997 of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (hereafter, 'the convention') was widely hailed as the most promising development in the fight against international corruption. Because most major international companies are based in OECD states, the convention raised the hope that the supply side of international bribery would be sharply reduced. However, that promise remains unfulfilled.

While all 35 signatories have passed laws making foreign bribery a crime, there has been little enforcement of the new laws by national governments, other than by the United States. OECD monitoring of enforcement started more slowly than planned. There is insufficient awareness in the business community that foreign bribery has become a crime, and relatively few non-US companies have adopted anti-bribery compliance programmes.

Action is needed on several fronts: governments must prosecute bribe payers; the OECD must accelerate monitoring of enforcement and close loopholes in the convention; public awareness of the convention must be increased; companies must adopt effective compliance programmes; and civil society groups must exert pressure to assure that all these steps are taken.



Overcoming obstacles to enforcement

Active enforcement by national prosecutors is the key to achieving the promise of the convention. It would quickly overcome lack of awareness of the convention in the business community and trigger the wider adoption of corporate compliance programmes.

Most national laws prohibiting foreign bribery were enacted in 1999 and 2000. Enough time to bring cases has now elapsed. The most common explanation for the paucity of prosecutions is that foreign bribery cases are difficult to prepare. Bribe payers go to great lengths to cover their tracks. Investigations must be conducted in the home country of the bribe payer, the country whose officials were bribed and third countries where the bribe money may have been deposited, or through whose banks the funds may have been laundered.

If the lead-time needed to prepare cases were the sole reason for lack of prosecutions, it would only be necessary to wait for investigations to be completed before cases are brought. But it seems likely there are other obstacles to enforcement, and that waiting patiently is not enough.

Prosecutors may be reluctant to bring foreign bribery cases because they lack the professional resources to pursue complex international cases. Procedures for obtaining evidence from abroad are cumbersome and often unproductive. While the OECD convention provides for mutual legal assistance from countries that have signed, it does not provide for assistance for countries in the developing world where foreign bribery is most prevalent.

Responsibility for criminal enforcement is at the state or provincial level in a number of countries, including Germany and Canada, and not the national level. Prosecutors at such levels may have less interest in pursuing foreign bribery cases. In other countries, including Britain, responsibility for conducting investigations is not at the national level and prosecutors cannot proceed until local investigators – over whom they have little control – complete their work.

Political opposition to prosecuting companies that create jobs from exports may be a further obstacle. There have been allegations in some countries that prosecutors are discouraged from bringing foreign bribery cases.

Prosecutors may not be receiving complaints about foreign bribery. That may be explained by a lack of public awareness that foreign bribery has, in fact, become a crime. Companies that lose orders to bribe-paying competitors may be reluctant to complain to prosecutors through fear of losing future orders, lack of hard evidence that bribery actually did take place or concern about defamation suits.

The OECD Working Group on Bribery should conduct a systematic assessment of the obstacles to bringing cases and what can be done to overcome them. Among the issues to be considered are:

- Should governments set up specialised offices to handle foreign bribery cases? Such offices could develop experienced staff capable of investigating and prosecuting complex international cases.

- What steps can be taken to improve mutual legal assistance, particularly with developing countries?
- Can procedures be developed to encourage the bringing of complaints by companies that have lost orders to bribe-paying competitors or by other groups or individuals interested in curbing corruption?
- What can be done to increase public awareness in both OECD countries and in developing countries that foreign bribery is a crime?

Action to identify and overcome obstacles to enforcement should not wait for the completion of the OECD's Phase II reviews. Better understanding of the obstacles would provide useful guidance for those reviews.

Monitoring enforcement

When the convention was adopted it was recognised that follow-up monitoring was necessary, and that governments would be reluctant to prosecute their own companies for foreign bribery unless they were assured that other governments would prosecute their competitors. Peer-group monitoring provides the mutual discipline necessary to ensure enforcement.

The first phase of OECD monitoring – reviewing the adequacy of national laws passed to implement the convention – was successfully conducted between 1999 and 2001. The Working Group on Bribery identified deficiencies in the laws of many countries, notably Japan and the UK. Governments had to return to their legislatures, but most of the deficiencies have been corrected.

Phase II – monitoring national enforcement – began in 2001 with the goal of reviewing all 35 signatories in five years. Because of inadequate funding, only four countries were reviewed by the end of 2002. Increased funds were forthcoming for 2003–04 and 10 more countries are expected to be reviewed by the end of 2004.

TI and its national chapters played an active role in pressing the OECD and its member governments to provide adequate funds for the monitoring process. Because enforcement programmes require continuing political commitment, monitoring enforcement must be organised as a long-term OECD project, with dependable funding. The entire first round of reviews should be completed in 2006.

The first four reviews identified serious shortcomings, even in the United States, which has more than two decades of enforcement expertise. To make up for the slow start, the monitoring programme should focus first on the largest exporting countries. Follow-up reviews are needed to ensure that identified deficiencies are corrected. Governments must not be permitted to think that they will escape further scrutiny after the first round of reviews.

Adequate staffing and preparation are key requirements for conducting effective reviews. The review teams, made up of two countries acting as lead reviewers and of the staff of the OECD Secretariat, must have experience with criminal law enforcement and the capability to evaluate the effectiveness of corporate compliance programmes.

It is essential that OECD review teams meet with representatives of the private sector and civil society – without the presence of representatives from the government under review – in order to facilitate candid exchange. This is particularly important in countries with inadequate enforcement programmes. Sound precedents for participation by NGOs were established during the first four Phase II reviews, in Finland, the United States, Germany and Canada.

Because public opinion is needed to improve inadequate government enforcement, the monitoring process should be as transparent as possible. In particular, government responses to the OECD questionnaire should be publicly disclosed. Reports on country reviews should be published without the lengthy delays that followed the US and German reviews. Deficiencies in national enforcement should be clearly identified, without diplomatic fudging.

Follow-up by civil society, private sector and media is essential. It is not enough to publish the reports on an OECD website. Shortcomings identified in OECD reviews are much more likely to be remedied if TI national chapters and other interested groups take an active role in publicising the results of the review and press for corrective action.

Closing loopholes in the convention

When the convention was adopted, the OECD Council identified a list of unresolved issues for future action. These issues were considered important because they left serious loopholes in the coverage of the convention, but there was insufficient consensus to deal with them in 1997. More than five years have passed and still none has been resolved.

Some influential governments have argued that work on changing the convention would divert attention from the need to achieve effective enforcement. Transparency International believes that enforcement should be the top priority, but it should not be the only one. Bribe payers are resourceful and persistent, and they employ sophisticated lawyers to exploit existing loopholes. Developing solutions will take time because the unresolved issues are still controversial.

Coverage of foreign subsidiaries

There have been widespread allegations that multinational enterprises (MNEs) use their foreign subsidiaries to pay bribes. Such concerns seriously undermine confidence in the convention and must be addressed without further delay.

Objections have been raised, on jurisdictional grounds, to including subsidiaries based in non-OECD states under the convention. There is a simpler solution: parent companies in OECD countries can be required to assure that their controlled foreign subsidiaries adopt anti-bribery compliance policies. MNEs generally have majority ownership in most of their subsidiaries. Therefore, most foreign subsidiaries can be covered by such a requirement without presenting jurisdictional concerns.

Traditional defences against parent company liability, based on the ‘corporate separateness’ of subsidiaries, have largely been eroded in an age when all components

of MNEs are electronically interconnected and in constant communication with headquarters. This makes it unlikely that subsidiaries can pay substantial bribes without leaving an electronic trail showing sufficient knowledge to implicate the parent company.

Most corporate lawyers recognise that 'corporate separateness' defences are obsolete. However, defence lawyers are reluctant to give up any defence that might be useful.

The foreign subsidiary problem should be at the top of the OECD's loophole-closing agenda, not only because of its importance, but because it can be addressed without amending the convention. The simplest approach would be to adopt a Commentary to the Convention, requiring parent companies based in OECD countries to take steps to assure compliance by their controlled subsidiaries.

Bribery of political party officials

There is worldwide concern about bribes to political parties, party officials and candidates for office. In this important area, unfortunately, the coverage of the convention is a confusing and inadequate patchwork. The convention does not adequately address the bribery of foreign political party officials who are not 'public officials'. In particular, paying a party official to influence government action is not covered at all. Some forms of payment to party officials are covered, for example, when a party official is also a public official, or when a public official directs that a payment should be made to a political party or party official.

That some forms of political bribery may be prohibited is not enough, however, because bribe payers and their lawyers can take advantage of the loopholes to avoid the prohibition. Political party bribery is simply too important a subject to continue with the current inadequate coverage. Because there is widespread concern about political party corruption, there should be broad support for closing this loophole in the convention.

In spring 2001, Transparency International submitted to the OECD the La Pietra Recommendations calling for action prohibiting bribe payments to foreign political parties. They proposed that bribery of political parties and party officials should be covered in the same way that bribery of public officials is covered, that is, by prohibiting payments 'to obtain or retain business or other improper advantage'.

By prohibiting quid pro quo bribery, the convention would focus directly on distortions of international competition without becoming involved with regulation of political campaign financing.

While not on the OECD Council's list of unresolved issues, the following issues also need to be addressed.

Private sector bribery

Four considerations make clear why the convention should cover bribery in the private sector:

- Bribery within the private sector has become transnational, as has bribery of public officials. National laws covering commercial bribery usually do not cover cross-border bribery.
- Privatisation has blurred the dividing line between the public and private sectors, thereby providing opportunities for evading prohibitions that apply only to the bribery of public officials.
- The private sector is substantially larger than the public sector in most countries. By dealing only with bribery of public officials, the convention leaves large areas of foreign bribery uncovered.
- Corruption in the private sector weakens support for privatisation and provides a weapon for opponents of globalisation.

In April 2002, the International Chamber of Commerce (ICC) presented to the OECD Working Group on Bribery a detailed study demonstrating the shortcomings of existing laws dealing with private sector bribery in more than a dozen OECD countries.²

Dealing with private sector bribery is likely to require a combination of actions by the OECD to address the transnational aspects; by national governments, to strengthen existing laws against commercial bribery, unfair competition and breach of trust; and by the business community, through improved compliance programmes. The transnational aspects should be addressed by amending the convention. Actions by governments and the business community could be addressed through an OECD Recommendation.

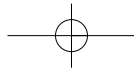
Promoting accounting and auditing reforms

Accurate financial records are a critical requirement for preventing corruption. This was recognised by article 8 of the convention. A detailed review of accounting and auditing requirements in 15 OECD countries, presented by Transparency International to the OECD Working Group on Bribery in April 2001, revealed serious deficiencies and inconsistencies. The adequacy of accounting and auditing requirements forms part of the OECD's Phase II monitoring process.

Recent corporate scandals in the United States and elsewhere make it abundantly clear that major reforms are needed even in countries with extensive regulations. They also provided an opportunity not only for national reforms, such as the Sarbanes-Oxley Act passed in the United States in 2002, but also for the development of stronger international standards. The OECD is well placed to play a major role in promoting the development of consistent international standards. Such standards would benefit the fight against international corruption, as well as addressing other concerns.

Helping companies resist extortion

The convention's principal focus is on the supply side of corruption. However, success in combating corruption will be difficult to achieve without addressing the demand side – extortion by government officials. The OECD and its member governments can take useful steps to help companies to resist extortion. The United States has established



help lines that US companies can use to obtain diplomatic support in dealing with extortion by foreign officials. The OECD Working Group on Bribery should encourage other signatories to establish similar help lines. When they are in place, the OECD should promote the organisation of a network of help lines that can undertake multilateral interventions with governments whose officials engage in extortion. Such multilateral interventions are likely to be more effective than unilateral interventions and should be especially beneficial to companies from smaller countries whose diplomats, acting alone, may not be able to do much to help their companies.

Promoting corporate compliance programmes

Enforcement of anti-bribery laws and corporate compliance programmes play an interdependent and mutually reinforcing role. Law enforcement alone will not change business behaviour. Voluntary compliance by companies is needed to establish the moral framework that makes law enforcement effective. More widespread adoption of corporate compliance programmes will not occur until there is more active enforcement of anti-bribery laws. Corporate compliance programmes have a large multiplier effect on law enforcement: for every government prosecutor investigating foreign bribery, there will be hundreds of corporate lawyers and auditors enforcing it.

Linking anti-corruption to corporate governance reforms

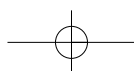
There are clear common interests between combating corruption and strengthening corporate governance. These include the need for independent audit committees, more transparent accounting, increased disclosure, conflict of interest rules and whistleblower protection. Increased collaboration should take place between groups promoting corporate governance reforms and those concerned with corruption.

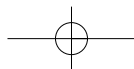
Creating greater awareness of the convention

The OECD, working with its member governments and with private sector and civil society groups, including the ICC, TI, OECD's Business and Industry Advisory Committee and its Trade Union Advisory Committee, should actively promote greater awareness of the convention's prohibition on foreign bribery among government officials, the business community and the media in OECD countries, as well as the rest of the world.

Civil society pressure as a means to make the convention work

Corrupt companies and corrupt officials are determined to continue doing business as usual. Government and corporate officials supporting reforms must deal with other priorities for their attention. To make progress Transparency International and other civil society groups must play an active advocacy role. Their chief tasks will be to:





- Increase public awareness of the convention and of national laws criminalising foreign bribery.
- Participate in the OECD monitoring process to provide assessment of government enforcement and corporate compliance, publicise results of OECD reviews and press for action to overcome deficiencies in enforcement programmes.
- Publish annual scorecards of national enforcement based on surveys conducted by TI national chapters.
- Build bridges between prosecutors in developing countries and in OECD countries to promote mutual legal assistance.
- Encourage development of accessible complaint channels for companies that have lost orders and others who have been injured by bribery.
- Work with companies and ICC to encourage the adoption of effective corporate compliance programmes.
- Build support by national governments for closing loopholes in the OECD convention, and press for realistic priorities and timetables.
- Promote cooperative interaction between the OECD convention, the Inter-American convention, the Council of Europe and other regional conventions, and the UN Convention against Corruption.
- Act as catalyst for support from World Bank, IMF and WTO programmes.

Conclusion

The adoption of the OECD convention and the passage of laws prohibiting foreign bribery by all 35 signatories have put in place a legal structure capable of stopping foreign bribery. The challenge now is to put that structure into operation. Because of the high expectations raised by the OECD convention, its future is of transcendent importance. Success in stopping foreign bribery will reinforce support for other anti-corruption initiatives; lack of progress will enable sceptics to argue that international corruption is an insoluble problem.

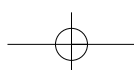
Notes

1. Fritz Heimann is a founding member of Transparency International and has led TI's work on the OECD Anti-Bribery Convention.
2. Günter Heine, Barbara Huber and Thomas O. Rose (eds), *Private Commercial Bribery: A Comparison of National and Supranational Legal Structures* (Freiburg: ICC Press and the Max Planck Institute, 2003).

Governance, corruption and the Millennium Challenge Account

Steve Radelet¹

The Millennium Challenge Account (MCA) is a new US foreign assistance programme aimed at providing substantial amounts of additional aid to a select group of countries that are, in the words of President George Bush, 'ruling justly, investing in their people



and encouraging economic freedom'.² The programme is striking because of its size: the proposed US \$5 billion annual budget (ramped up over three years) would increase the US foreign assistance budget by nearly 50 per cent, and would be equivalent to about 9 per cent of global overseas development assistance. Perhaps more importantly, the programme's design could bring about the most fundamental change to US foreign assistance policy in 40 years.

The basic idea of the MCA is to select a relatively small number of recipient countries based on their demonstrated commitment to sound policies, provide them with large sums of money, give them more say in designing aid-funded programmes and hold them accountable for achieving results. If implemented carefully and effectively, the MCA could fundamentally improve the effectiveness of US foreign assistance.³

The administration has proposed creating a new government corporation, called the Millennium Challenge Corporation, to run the programme. The administration envisions funding broad programmes designed by groups in qualifying countries, including the government, NGOs and the private sector. The recipients would set priorities, propose specific activities and establish benchmarks to be used to measure progress. This approach would place responsibility for development programmes where it belongs – with the recipient country. It aims to engender greater commitment and ownership of the proposed activities and stronger results. In return for this flexibility, the administration plans to demand greater accountability. Successful programmes would continue to receive generous funding, while those that fail would lose their funding.

The country selection process

One of the distinguishing characteristics of the MCA is that it will be focused on a small number of countries where the US government believes that aid can be most effective. The programme builds on the theory that aid works best in countries with governments that are committed to implementing sound development policies and building strong institutions. This idea makes intuitive sense: foreign aid should go much further in countries where governments are dedicated to building better schools, creating jobs and rooting out corruption than in countries with dishonest or incompetent governments. Research by Craig Burnside, David Dollar and Paul Collier of the World Bank has provided empirical support for this notion, although other research has questioned the strength of the original results.⁴ In any case, this line of research has strongly influenced donors in recent years, including the designers of the MCA.

The first step in the selection process is to determine the group of low-income countries eligible to compete to qualify for the MCA. The administration plans to gradually enlarge the pool of eligible countries over three years. In the first year, all countries with per capita income of less than US \$1,435 and that also are eligible for concessional finance from the World Bank's International Development Association (IDA) will be eligible. Seventy-four countries fit these criteria. In the second year the IDA-eligibility criterion will be dropped, expanding the pool to 87 countries. In the third year eligibility will be expanded to include the 28 countries in the world with per capita incomes between US \$1,435 and US \$2,975.

The administration will select qualifying countries from these groups on the basis of 16 specific quantitative indicators aimed at measuring the extent to which countries are 'ruling justly' (six indicators), 'investing in their people' (four indicators) and 'promoting economic freedom' (six indicators). These 16 indicators and their sources are shown in Table 7.1. To qualify, a country must score in the top half (that is, above the median) of the pool of broadly eligible countries on at least half the indicators in each of the three categories. The corruption indicator is given special significance: a country *must* score above the median on corruption as one of the three 'ruling justly' indicators in order to qualify. None of the other indicators are given this special 'do or die' status. One implication is that, in the extreme, a country that passes 15 of the 16 indicators but fails to score above the median on corruption will not qualify for the MCA.

Table 7.1: Eligibility criteria for the MCA^a

Indicator	Source
I. Ruling justly	
1. Control of corruption	World Bank Institute
2. Rule of law	World Bank Institute
3. Voice and accountability	World Bank Institute
4. Government effectiveness	World Bank Institute
5. Civil liberties	Freedom House
6. Political rights	Freedom House
II. Investing in people	
7. Immunisation rate: DPT and measles	WHO/World Bank
8. Primary education completion rate	World Bank
9. Public primary education spending/GDP	World Bank
10. Public expenditure on health/GDP	World Bank
III. Economic freedom	
11. Country credit rating	Institutional Investor
12. Inflation	IMF
13. Regulatory quality	World Bank Institute
14. Budget deficit/GDP	IMF/World Bank
15. Trade policy	Heritage Foundation
16. Days to start a business	World Bank

^a To qualify, countries must be above the median on half of the indicators in each of the three sub-groups. They must also score above the median on the control of corruption indicator.

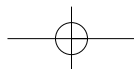
Source: 'Fact Sheet: Millennium Challenge Account', distributed by the US administration on 25 November 2002, available at www.cgdev.org

The administration has not yet announced the qualifying countries for FY 2004, but Table 7.2 contains a list of possible qualifiers, constructed using a strict interpretation of the administration's procedure. According to this illustrative list, which will change as data are updated before the programme begins, 11 countries would qualify in the first year. In the second year the number of qualifying countries increases slightly to 12, and in the third year perhaps six more would qualify. The table lists nine other countries that fail to qualify during the three years because they fall below the median on corruption, even though they pass sufficient hurdles in other areas.

Table 7.2: Possible qualifying countries using the US administration's criteria

	Year 1: IDA-eligible countries with per capita incomes less than US \$1,435	Year 2: All countries with per capita incomes less than US \$1,435	Year 3: Countries with per capita incomes between US \$1,435 and US \$2,975
Qualifying countries			
1.	Armenia	Armenia	Belize
2.	Bhutan	Bhutan	Bulgaria
3.	Bolivia	Bolivia	Jordan
4.	Ghana	Honduras	Namibia
5.	Honduras	Lesotho	South Africa
6.	Lesotho	Mongolia	St Vincent & Gren.
7.	Mongolia	Nicaragua	
8.	Nicaragua	Philippines	
9.	Senegal	Senegal	
10.	Sri Lanka	Sri Lanka	
11.	Vietnam	Swaziland	
12.		Vietnam	
Eliminated by corruption			
1.	Albania	Bangladesh	Romania
2.	Bangladesh	Ecuador	
3.	Malawi	Malawi	
4.	Moldova	Moldova	
5.	Mozambique	Paraguay	
6.		Ukraine	
Missed by one indicator			
1.	Benin	Benin	Maldives
2.	Burkina Faso	Burkina Faso	Thailand
3.	Cape Verde	Cape Verde	Tunisia
4.	Georgia	The Gambia	
5.	Guyana	Ghana	
6.	India	Guyana	
7.	Mali	India	
8.	Mauritania	Mali	
9.	Nepal	Mauritania	
10.	São Tomé and Príncipe	Morocco	
11.	Togo	São Tomé and Príncipe	
Eliminated for statutory reasons			
1.		China	
2.		Syria	

Source: Steven Radelet, *Challenging Foreign Aid: A Policymaker's Guide to the Millennium Challenge Account* (Washington, D.C.: Center for Global Development, 2003).



Bear in mind that these lists are unofficial best estimates and are especially tenuous in the second and third years, since the data will be significantly revised between now and then. The two key points to bear in mind about the selection process are as follows. First, by announcing the precise methodology and using publicly available data, the administration is attempting to depoliticise the selection process to a remarkable extent. Instead of allocating aid to its strongest political allies as in most programmes, the MCA will focus aid on countries with good policies. Second, and related, the number of qualifying countries is small. This is consistent with the administration's intention to keep the programme selective, and its plan to give recipients much more latitude than they have had in the past in how they will use the funds.⁵

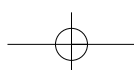
The focus on corruption

There has been extensive debate about the administration's strong focus on corruption as one of the indicators used to select countries. No one is objecting – at least vocally – either to the idea that aid is more effective in countries with less corrupt governments or the notion that the United States should allocate more aid to countries with a demonstrable record of fighting corruption. Rather, the debate has centred around the accuracy of current measures of corruption and the implications for the administration's decision to eliminate all countries with corruption scores below the median, regardless of their scores on other indicators.

The administration draws its 'control of corruption' indicator (and four other indicators) from the governance database compiled by Daniel Kaufmann (World Bank Institute) and Aart Kraay (World Bank). The database has excellent coverage: the 2002 version covers 199 countries, including all the countries potentially eligible for the MCA.

The key issue is that this measure of corruption – like all measures of corruption or of governance more broadly – is measured with significant margins of error. Kaufmann and Kraay explore this issue in two recent papers (see also Chapter 16, 'Governance Matters III: new indicators for 1996–2002 and methodological challenges', page 302).⁶ These margins of error are inherent in all survey-based measures, both because respondents provide a range of answers to any particular question and because the survey samples may not be indicative of the broader population. As a result, it is difficult to assign with a high degree of confidence a precise score to a country. That is, for a country with an *observed* score just below the median, we cannot have a high degree of confidence that the *true* level is below the median. Margins of error in the estimation could be the difference between passing the corruption hurdle or not. By contrast, some countries that have an *observed* score above the median may have a *true* level below the median, and thus receive a passing grade when it is not warranted. To be precise, for example, we simply cannot conclude with any degree of confidence that a country with a score in the 51st percentile has better control over corruption than a country in the 49th percentile, although the latter would be immediately eliminated from the MCA.

Corruption indices also may fail to accurately measure the *dynamics* of anti-corruption measures. For example, a strong anti-corruption campaign initially could lead to a



deterioration in perceptions of the level of corruption as transgressions are publicised and punished. The public could respond to a corruption crackdown by first believing that control of corruption was worse than they thought, and only later begin to believe it is improving. Thus, a country that tries to crack down on corruption could find its MCA ranking gets worse before it gets better. Similarly, perceptions of corruption take time to change, so surveys of corruption may track more accurately past, rather than current, levels of corruption. This could be a particular issue when a government is replaced and the new administration is penalised in its potential MCA eligibility because of its predecessor's poor record on corruption.

It is important to note that these kinds of measurement errors are not limited to corruption or even governance indicators. Most economic and social indicators are measured with errors, and even more objective indicators, such as immunisation, enrolment or inflation rates. In other words, all 16 of the MCA indicators are subject to measurement errors. The issue becomes most acute with the corruption indicator since the administration has drawn a clear line at the median – countries above will qualify, those below will not.

The margins of error in the Kaufmann-Kraay indicators are actually smaller than for many other indicators, since they draw on more sources and their aggregation methodology gives more weight to sources with smaller errors. But they are still important for borderline cases. Kaufmann, Kraay and Mastruzzi in their 2003 report examine the 2002 corruption scores for the 74 countries that will compete for the MCA in the first year. For 28 of these countries, there is a 75 per cent or greater probability that the true control of corruption score is above the median, so we can have a high level of confidence that these countries are among the better performers. For 22 countries, there is a 75 per cent or greater probability that the true score is below the median, providing reasonable confidence that these countries are amongst the poorest performers. However, there are 24 intermediate countries that are much more difficult to assign as either above or below the median with any degree of confidence. Fifteen of these countries have estimated scores that fall below the observed median and are therefore eliminated from the MCA, despite this uncertainty.

Possible steps towards improvement

While the focus on corruption in the MCA is welcome, the firm make-or-break requirement is asking a great deal from the data, and may unnecessarily eliminate some countries. There are several ways in which the corruption criteria could be modified slightly to reduce this risk while retaining the clear signal to potential recipients about the importance of fighting corruption.

One alternative would be to fully eliminate only the countries that fall in the bottom quartile of corruption scores, rather than all those in the bottom half. Countries above the 25th percentile would remain eligible for the MCA competition, following the other rules set out by the administration. Thus, if a country were above the 25th percentile but below the median on corruption, it would not get credit for the corruption

hurdle, but could qualify for the MCA so long as it passed half the hurdles in each of the three categories.

A second alternative would be to retain something like the current system, but not automatically eliminate those countries that score below the median on corruption. For those countries that qualify except on this criterion, the administration and host country could initiate a deeper investigation about both the extent and characteristics of corruption. This would involve, as a first step, more in-depth diagnostic surveys of thousands of public servants, business leaders and citizens as described by Kaufmann and Kraay in the 2002 report and currently carried out in some countries. In cases where the in-depth diagnostics revealed that control of corruption was better than the country's original score indicated, the country could be elevated to full MCA qualification status. This could be a particularly important step when governments change, as noted above. For other countries in which the diagnostics confirmed the initial finding that corruption is an important issue, the country could design a specific programme aimed at redressing the key problems as quickly as possible. The US government could help fund the anti-corruption programme with the aim of helping the country to gain full MCA eligibility within one to three years.

Other key issues in the MCA debate

At this writing, the final legislation authorising the MCA has not yet passed the US Congress, so some items are still very much under debate. For example, some legislators would like to modify the selection procedure described above by either adding or deleting particular indicators, or by modifying the passing grades on each indicator. Some members would like the legislation to be very specific about the qualification process, whereas others are willing to provide more discretion to the administration. In the end, the final legislation is unlikely to specify the precise qualification process in detail, but rather leave it to the new Millennium Challenge Corporation to make final decisions and then report regularly to Congress. As a result, the qualification process in the first year should be similar to the procedure announced by the administration and outlined above.

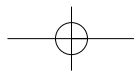
Of course, the debate in Congress about the details of the qualification process is just one part of a larger public debate about the philosophy underlying the MCA. Some critics have decried the entire approach, seeing it as but one more manifestation of the types of conditions placed on aid by the World Bank, the IMF and other donors with only mixed success. Others are more accepting of the broad approach, but question the inclusion of specific indicators that they do not see as necessarily conducive to development, such as trade openness. Still others have argued that the economic indicators should be given primacy, as they see improved health, education and governance as outcomes of the process of economic growth, rather than inputs to growth and development. In the end, however, these voices have been in the minority, and there has been broad support for the notion of aid allocation based on the recipient country's commitment to good development policy.

Not surprisingly, there also has been significant debate about funding levels for the MCA. The administration proposed ramping up the funding over three years to US \$5 billion per year. The administration actually requested US \$1.3 billion for the first year (October 2003 to September 2004). However, the final budgeted amount is likely to be smaller, both because of budget deficit pressures and because the administration has been slow to design some key aspects of the programme (such as precisely how MCA aid will be delivered once countries are selected). Over the longer run, the growing US budget deficit may mean that the MCA never reaches its proposed US \$5 billion annual budget. However, even with a more likely ultimate annual budget of US \$3–4 billion, the MCA will still represent a significant increase in US foreign aid.

The MCA signals a significant shift on the part of the US government towards allocating at least some of its aid to countries with a stronger commitment to better governance and fighting corruption. Other donors are likely to follow in different ways, which could bring about one of the most significant shifts in donor and recipient country behaviour in decades. This shift is welcome and long overdue. The system to choose qualifying countries, while a good step forward, could be improved. The modest changes outlined here could help strengthen the system, especially by using in-depth diagnostics to help countries with weak corruption scores to address the key problems. This strategy would build in appropriate incentives for countries to reduce corruption while giving them the support (both technical and financial) needed to implement a programme that can actually help them do it.

Notes

1. Steve Radelet is senior fellow, Center for Global Development, and formerly deputy assistant secretary of the US Treasury from January 2000 to June 2002.
2. See www.mca.gov/iab_speech.html
3. For a more thorough analysis of the MCA see Steve Radelet, *Challenging Foreign Aid: A Policymaker's Guide to the Millennium Challenge Account* (Washington, D.C.: Center for Global Development, 2003).
4. See Craig Burnside and David Dollar, 'Aid, Policies and Growth', *American Economic Review* 90 (4), September 2000; and Paul Collier and David Dollar, 'Aid Allocation and Poverty Reduction', *European Economic Review* 46 (8), 2002. For a critique that questions the earlier empirical results, see William Easterly, Ross Levine and David Roodman, 'New Data, New Doubts: Revisiting "Aid, Policies and Growth"', Center for Global Development Working Paper #26 (February 2003), at www.cgdev.org/wp/cgd_wp026.pdf
5. These characteristics of the MCA open a range of questions on US government aid operations in countries that do not qualify for the MCA, a topic that is addressed at length in Radelet, *Challenging Foreign Aid*.
6. Daniel Kaufmann and Aart Kraay (2002), 'Governance Indicators, Aid Allocation, and the Millennium Challenge Account', www.worldbank.org/wbi/governance/mca.htm; Daniel Kaufmann, Aart Kraay and Massimo Mastruzzi (2003), 'Governance Matters III: Governance Indicators for 1996–2002', www.worldbank.org/wbi/governance/pdf/govmatters3.pdf



8 Country reports

In this section, 34 country reports offer a more detailed look at key national corruption-related developments of the period from July 2002 to June 2003. Most contributors are members of TI's more than 100 national chapters and contacts. Each report begins with a country's ranking on TI's Corruption Perceptions Index and Bribe Payers Index and a list of applicable anti-corruption conventions. Authors then identify and assess recent legislation and institutional reform, discuss selected issues of particular importance in depth and finally recommend resources for further reading. In choosing countries to feature, we sought to ensure a regional balance as well as a diversity in economies and government systems. The result is a group of reports that vary in terms of topics and approach, reflecting the wealth of knowledge within TI's worldwide movement.

Algeria

Corruption Perceptions Index 2003 score: 2.6 (88th out of 133 countries)

Bribe Payers Index 2002 score: not surveyed

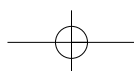
Conventions:

AU Convention on the Prevention and Combating of Corruption (adopted July 2003; not yet signed)

UN Convention against Transnational Organized Crime (ratified October 2002)

Legal and institutional changes

- A presidential decree relating to **public contracts** was signed in July 2002 after two years of preparation by the government. This law, which replaces the public contract law of 1991, requires provisional awards of contracts to be published in order to enable unsuccessful bidders to appeal. It also facilitates the operation of contracts by mutual agreement.
- In February 2003 the president signed a decree to regulate the **international movement of capital** and the control of foreign exchange. The decree was submitted for adoption by parliament, but has not yet been debated. It modifies a regulation that has been in force since 1996, defining offences and specifying penalties, fines and bans for offenders.



- Although not yet on the parliamentary agenda, a government statement released in March 2003 referred to a draft bill relating to **patents**, calling it 'a measure that promotes anti-counterfeit measures and consumer protection and that guarantees rectitude in commercial transactions'.
- On 12 April 2003, the justice minister set up an inter-ministerial commission for combating **money laundering**. Although it lacks regulatory powers, the commission is expected to enhance transparency in the banking system and combat secret sources of wealth acquisition.

The Khalifa affair

No case in recent years has revealed the scale of corruption as clearly as the Khalifa Group affair, which in late 2002 exposed the laxness of authorities and an alarming degree of powerlessness in the state.¹

Rafik Khalifa was owner of a private commercial and financial group that evolved from virtual obscurity into a budding empire in little more than three years. The Khalifa Group started by importing medicines in the early 1990s, after the state monopoly was removed on external trade, and went on to establish El Khalifa Bank when the banking and insurance sectors were liberalised. The group continued to diversify, launching an international airline, a construction business and an array of service companies, including car rental agencies, restaurants and TV stations in London and Paris. Its dazzling growth, the lack of transparency with respect to the group's sources of finance and its failure to publish group accounts or information about shareholders and sponsorship – particularly about the sports clubs it had opened – aroused media curiosity in Algeria and France.

In November 2002, the Banque d'Algérie and the finance minister launched an inquiry. Another official commission had flagged management failures in El Khalifa Bank on several occasions since October 2001, but it was only in 2002 that the French press called into question the soundness of the group's structure. French deputy Noël Mamère requested in vain that a parliamentary inquiry committee investigate

Khalifa's activities in France (air travel, sponsorship and broadcasting).

In February 2003, three of the group's senior managers were detained at Algiers airport for possession of more than US \$2 million in undeclared currency. One month later, after the discovery at El Khalifa Bank of a 'resource gap' of more than US \$1 billion – much of which had been moved out of the country – Algeria's banking commission appointed an administrator, spreading panic among fund trustees and the bank's clients. The heavily indebted airline ceased operating entirely in June 2003 and, the following month, the French courts pronounced the Paris-based Khalifa TV bankrupt and the Algerian courts issued a warrant for its owner's arrest.

Then the banking commission withdrew El Khalifa Bank's licence to operate and appointed a liquidator. In its statement, it referred to 'significant resource deficits that are disguised by false declarations', a situation created by 'the flight of capital and the accumulation of securities of no value, represented by debt among affiliated companies and a misappropriation of resources'.²

A few days later, Prime Minister Ahmed Ouyahia told the chamber of deputies that the Khalifa Group would cost the state 100 billion dinars (US \$1.3 billion) and that there was 'no place for charlatans in the economy'.³ He announced that the state would reimburse the 250,000 investors, who had deposited amounts of up to 600,000 dinars (US \$8,000) each, through a recently created deposit security fund.⁴

All Khalifa Group activities have since halted, putting some 10,000 employees out of work, while the banking commission, the temporary administrator and the courts continue their inquiries. The domestic press – even so-called independent titles – failed to publish any investigation on the affair as the case first unravelled. This omission was in all likelihood connected to Khalifa's previous strategy of ingratiating: he had allegedly distributed gifts to many publishers and journalists, and the Khalifa Group had been one of the sector's largest advertisers. Rafik Khalifa, meanwhile, remains at large. With a presidential election scheduled for April 2004, unofficial campaigning has already begun. Candidates have not so far tackled the Khalifa affair, but analysts do not expect them to: doing so might unlock a Pandora's box too explosive for any side to exploit profitably. None of the inquiries has unearthed the degree of facilitation provided to Khalifa by Algeria's political, economic and financial elite, or analysed the factors that drove the authorities to ignore the warning signs until it was too late.

The earthquake of 21 May 2003

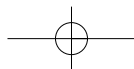
On 21 May 2003, an earthquake measuring 6.8 on the Richter scale hit northeastern Algeria with an epicentre close to the coastal town of Boumerdès. The number of victims was high: 2,300 dead, 10,000 injured and more than 100,000 made homeless. Though long recognised as a seismic zone, the region was the site of hundreds of buildings – old and new – that simply folded in on themselves, indicating that no anti-earthquake measures were incorporated in their construction. The impact of such laxity was underlined a few days later, when an earthquake of even greater intensity struck Japan, causing only slight injuries to the inhabitants.⁵

Algerians attributed the terrible death toll to corruption in the housing and construction sector, and the lack of effective state inspection. The domestic and foreign media ran countless stories on the high casualty figure and its link with poor building practices, pushing President Abdelaziz Bouteflika into pledging that a disaster of such dimensions would never happen again. While the authorities called on foreign agencies to conduct site investigations and identify structural and systemic weaknesses, some Algerians accused the government of deliberately demolishing buildings in the earthquake zone to prevent an accurate assessment of the causes of the damage.⁶

The government did make disaster relief available for reconstruction in the most damaged areas and stiffened building codes in response to the protests. Experts pointed out, however, that the rules have been consistently bent or ignored by developers, who also make use of sub-standard materials and methods. Amar Tinicha, head of the national union of construction engineers, claims the construction industry is riddled with corruption, and public officials repeatedly fail to implement housing regulations. The head of an Algerian architects association, Ahmed Boudaoud, also stressed that the laws were not the problem, but rather their enforcement.⁷

The new prime minister, Ahmed Ouyahia, acknowledged that corruption may have played a role in the destruction of housing and promised to request technical studies and take legal action. But now – in defiance of the national mood – the government is considering relaxing contract regulations 'with the aim of reducing the time involved in the tendering process', a move more likely to encourage corrupt practices than prevent them.

*Djilali Hadjadj (Association Algérienne de lutte contre la corruption,
Centre familial de Ben Aknoun, Algeria)*



Further reading

Weekly corruption column in the daily *Le Soir d'Algérie* (every Monday, except August), www.lesoirdalgerie.com

Notes

1. *Le Figaro* (France), 8 March 2003; www.algeria-watch.de/farticle/economie/empire_khalifa.htm; *Le Monde* (France), 9 April 2003.
2. Algérie Presse Service (Algeria), 29 May 2003.
3. *El Moudjahid* (Algeria), 4 June 2003.
4. *Le Monde* (France), 20 March 2003; *Libération* (France), 7 June 2003.
5. *Le Nouvel Observateur* (France), 29 May 2003; *Lutte Ouvrière* (France), 30 May 2003; Agence France-Presse (France), 23 May 2003.
6. Algeria Interface, 5 June 2003, www.algeria-interface.com/new/article.php?lng=e&rub=3
7. Agence France-Presse (France), 25 May 2003.

Argentina

Corruption Perceptions Index 2003 score: 2.5 (92nd out of 133 countries)

Bribe Payers Index 2002 score: not surveyed

Conventions:

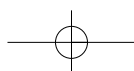
OAS Inter-American Convention against Corruption (ratified October 1997)

OECD Anti-Bribery Convention (ratified February 2001)

UN Convention against Transnational Organized Crime (ratified November 2002)

Legal and institutional changes

- In June 2002, congress passed a **law on party financing** that provides the first regulatory framework for donors, donations and campaign expenditure. Those who violate limits could lose the right to public campaign funding for one or two subsequent elections.¹ Congress also reformed the electoral code by restricting presidential campaigns to 90 days, congressional campaigns to 60 days and regulating election advertising. Former president Eduardo Duhalde vetoed a section of the law that called for details of party and electoral finance to be officially gazetted, though these will now appear on the Internet, which is a significant advance. He also vetoed a measure that would have given the general audit office, rather than the national electoral chamber, control of campaign financing.
- On 8 May 2003 the lower chamber approved a bill on **access to information**. At this writing senate approval is still pending. Civil society organisations and the anti-corruption office wrote the original draft of the bill in 2001. Free access to information is enshrined as a right in the constitution.



- Twenty-three bills to regulate **lobbying** have been submitted to congress since 1992. At this writing, two are under debate in the senate. One, proposed by the anti-corruption office, would require the president, ministers, legislators and directors of state-owned banks and social services to make publicly available the details of all contact with lobbyists.

Press freedoms called into question after reporter alleges bribery in the senate

In an article on 22 August 2002, *Financial Times* correspondent Thomas Catan alleged that senators had petitioned foreign bankers in Argentina for bribes as a condition for halting legislation that would reinstate a 2 per cent tax on banks to create a fund for dismissed bank employees. But rather than leading to a thorough investigation of the allegations, the case was notable because established press freedoms, such as the right to sources' confidentiality, were threatened during the course of legal proceedings.

According to Catan, a person close to the senator who allegedly solicited the bribe contacted the Argentine Bankers' Association (ABA), which represents foreign banks. ABA representatives reported the request to the US and British embassies, according to the article. Lobbyist Carlos Bercun, a former employee of Citibank, the central bank and the economy ministry, was alleged to have acted as broker of the deal.

The article prompted a judicial investigation by federal judge Claudio Bonadio, who ordered a number of senators, bankers, trade unionists, Catan and Bercun to testify. The ABA president, Mario Vicens, denied receiving any requests for bribes or knowing anyone in the banking world who had heard of any such requests. Senators gave different opinions. Carlos Maestro, senate leader for the opposition Radical Civic Union (UCR), dismissed the story and threatened Catan with a judicial complaint if he did not back up his allegations. Senate president Juan Carlos Maqueda, from the ruling Justicialista Party (PJ), said that he thought

'something must have happened', though he gave no further details.

Catan swore before Judge Bonadio that the published information was true, but he refused to reveal his sources. In a controversial request, Judge Bonadio asked the state intelligence office for a detailed list of Catan's telephone calls, violating the constitutional guarantee of anonymity for a journalist's sources.

Catan's life in Buenos Aires subsequently turned into a nightmare. Rather than prompting thorough investigation of corruption with his article, he became the focus of investigations himself. When Catan heard of Judge Bonadio's request to the intelligence services, his legal advisers applied to the federal courts for an injunction to safeguard his rights under article 43 of the constitution, which protects the secrecy of journalists' sources, and article 18, which guarantees the privacy of addresses, correspondence and private papers. The courts found in favour of the reporter and forced the judge to destroy the lists. The senate launched an investigation in late 2002, but the recess intervened and the case had not been resumed by mid-2003.

This was the second case of suspected bribery in the senate in two years. In 2000, a local journalist published allegations that the executive paid a group of senators to vote in favour of labour reforms. The then vice-president, Carlos Alvarez, tried to deepen the investigations, but resigned 10 months into his term of office.

Overstepping the division of powers: judges penalised for tackling corruption

The division of powers of government is little more than a theory in parts of Argentina. In

Salta, for example, the provincial constitution was amended in June 1986 and April 1998 to eliminate tenure for judges, which is a condition of an independent judiciary. They now serve only six years with further terms dependent on the governor and the provincial senate. Moreover, as the removal of Judge Roberto Gareca in late 2002 demonstrated, even this restricted protection of judges is sometimes violated.

Gareca was removed by the Salta jury of indictment in December 2002 on the grounds that he had delayed hearing a case and had disclosed privileged information about a second case in a radio interview. Gareca refuted the allegations and said his removal was motivated by political considerations arising from his record of issuing independent judgments.

During his four years in office, Gareca investigated and filed charges of corruption against more than 15 officials and former officials from Governor Juan Carlos Romero's administration.² When the jury of indictment began proceedings against Gareca, he was investigating former production and labour minister Gilberto Oviedo and former secretary of public works Luis Siegrist for alleged irregularities in awarding contracts worth more than US \$40 million.

Despite demonstrations in Salta supporting Gareca and protesting the violations of his right to due process, the judge was removed – a comparatively easy task since many members of the jury of indictment are directly or indirectly related to the governor.³

In February 2003, Gareca presented an extraordinary appeal to the Salta supreme court claiming that his removal was unconstitutional and requesting reinstatement. He foresees taking the case to Argentina's highest court, the supreme court of justice, and, if necessary, the Inter-American Court of Human Rights.

The NGO Fundación Poder Ciudadano nominated Roberto Gareca for Transparency International's Integrity Awards in 2003 and a Salta newspaper honoured him as its 'person of the year'. Gareca has set up a law

practice to support his family while waiting for the court's decision.

This is not an isolated incident. In October 2002, José Manuel de la Sota, governor of Córdoba province, ordered the removal of anti-corruption prosecutor Luis Juez on charges of 'qualified fraud against the public administration'. Juez claimed the allegations were spurious – he had been investigating members of de la Sota's administration at the time, including Sota's wife, Olga Riutort, who also held a senior public position.

Opaque appointments at the supreme court are challenged

The independence of the courts has been a point of controversy since former president Carlos Menem repeatedly tried to stack the supreme court with party loyalists in 1989, his first year in office. When that failed, he proposed a bill expanding the number of sitting justices from five to nine, which congress approved. Menem had achieved the automatic majority he sought. Since then, successive presidents have tried to unseat those loyal to Menem, often by less than transparent means.

Efforts to rid the court of those loyal to Menem resonate with public attitudes towards the judiciary. Protesters gathered weekly outside the supreme court in Buenos Aires at the height of Argentina's economic and political crisis in 2002, to denounce corruption in the country's judiciary. They accused the courts of rubber-stamping crucial decisions, such as the privatisation of the national airline in the face of widespread suspicion of corruption and other irregularities.⁴

In December 2002, interim president Eduardo Duhalde nominated Senator Juan Carlos Maqueda to the post of supreme court justice, sending the necessary documents to the senate for ratification. When the local press reported the appointment as a *fait accompli*, days before the decision was due, civil society organisations canvassed the responsible senate authorities asking them

to ensure that a proper debate was held in the senate and that representatives of civil society would be able to air their views about the nomination. Their suggestions were ignored and Maqueda was appointed within five days of being nominated.

When President Néstor Kirchner came to office in May 2003, the debate was reopened. During a nationwide TV and radio address 10 days after his inauguration, Kirchner called on legislators to sack one or more of the 'sad and famous automatic majority' from the Menem era. At the sharp end of his criticism was Julio Nazareno, a former partner in Menem's own law firm, who had held the court presidency for more than a decade. Nazareno's performance as judge, Kirchner said, was 'emblematic' of the court's failings; namely corruption and political bias.

The following day, civil society organisations met Justice Minister Gustavo Béliz to demand that the president abstain from intervening in the selection of supreme court judges. In response, on 19 June 2003 Kirchner issued a decree based on their proposals, affirming that his government would respect judicial independence. In the meantime, Julio Nazareno resigned under the threat of a revived congressional probe into allegations of fraud and other charges. Wide-ranging public debates, including a hearing in the senate, were held over who should replace Nazareno. At this writing,

Eugenio Zaffaroni, a respected practitioner and academic, is expected to be appointed.

Kirchner has not broken entirely with past appointment practices, however, as the nomination of Alessandra Minnicelli to the post of auditor of the national general auditing agency (Sindicatura General de la Nación, SIGEN) shows. Because she is married to Julio De Vido, the minister of federal planning, public investment and services – the ministry SIGEN is primarily intended to monitor – there was a clear conflict of interest. Poder Ciudadano asked President Kirchner to revoke her nomination, citing the regulation that 'close familial relationships' are an impediment to employment with SIGEN. Despite complaints, Minnicelli's nomination was confirmed in June 2003.

The anti-corruption office defended the government's position, saying there is 'no legal impediment' to Minnicelli's appointment because she 'can excuse herself from dealing with matters relating to the ministry [that her husband is responsible for]'. But the portfolio in question embraces a wide range of issues with scope for abuse, notably the allocation of state resources for contracts, the renegotiation of rates for utilities and other public services now in private hands, and the government's ambitious infrastructure plan, involving the construction of new housing, water and sewage works, transport links and port services.

Laura Alonso (Fundación Poder Ciudadano, Argentina)

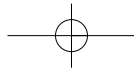
Further reading

Fundación Poder Ciudadano, 'Banco de Datos de Políticos Argentinos' (Database of Argentine politicians), Buenos Aires, 2003, www.poderciudadano.org/elecciones2003/index.asp

Fundación Poder Ciudadano, 'Contrataciones Transparentes' (Transparent contracting), Buenos Aires, 2003, www.accioncolectiva.net

Fundación Poder Ciudadano, 'Primer diagnóstico sobre la independencia judicial' (First analysis of judicial independence), Buenos Aires, 2003, www.poderciudadano.org/relaciones/210_justicia.doc

Organization of American States, 'Informe del Comité de Expertos del Mecanismo de Seguimiento de la Implementación de la Convención Interamericana contra la



Corrupción' (Report of the Committee of Experts of the Follow-up and Implementation Mechanism of the Inter-American Convention against Corruption), Washington, D.C., February 2003

Daniel Santoro, *Venta de Armas – Hombres de Menem* (Arms sales: Menem's men) (Buenos Aires: Planeta Arg, 2003)

Miguel Trotta, *La metamorfosis del clientelismo político: contribución para el análisis institucional* (The metamorphosis of political clientelism: a contribution to institutional analysis) (Buenos Aires: Espacio Editorial, 2003)

Fundación Poder Ciudadano: www.poderciudadano.org

Notes

1. The law was applied for the first time in the April 2003 presidential election. A survey of campaign costs carried out by Fundación Poder Ciudadano shows that the 18 presidential candidates only disclosed the origin of 20 per cent of funds from private sources. The winner, Néstor Kirchner, disclosed just 0.2 per cent while runner-up Carlos Menem disclosed 6 per cent.
2. Governor Romero was elected for a second consecutive four-year term in 1999. He ran as a vice-presidential candidate in the elections of April 2003, alongside former president Carlos Menem. Romero's father, Roberto Romero, governed Salta from 1983 to 1987.
3. For more information on the lack of judicial independence in Salta see Fundación Poder Ciudadano, 'Primer diagnóstico sobre la independencia judicial', 2003, www.poderciudadano.org/relaciones/210_justicia.doc
4. In 1990, the supreme court took the unprecedented move of declaring a '*per saltum*' – which wipes out all lower court rulings and gives the supreme court itself jurisdiction over a case – after a trial court judge blocked the sale of Aerolíneas Argentinas on the grounds of irregularities alleged by a commission of experts. In a single day, 21 November 1990, the case was reviewed by the supreme court and it decided that the sale to Spain's Iberia had been carried out lawfully.

Armenia

Corruption Perceptions Index 2003 score: 3.0 (78th out of 133 countries)

Bribe Payers Index 2002 score: not surveyed

Conventions:

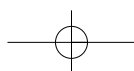
Council of Europe Civil Law Convention on Corruption (not yet signed)

Council of Europe Criminal Law Convention on Corruption (signed May 2003; not yet ratified)

UN Convention against Transnational Organized Crime (ratified July 2003)

Legal and institutional changes

- The law on **parties**, passed in July 2002, regulates issues related to the formation, reformation and liquidation of parties, as well as their activities and legal status. It



prohibits party members who work in the state and local government from using their positions for the benefit of the party.

- The laws on the tax service and customs service, both passed in July 2002, are designed to ensure that government posts are filled through **open competition** and to prevent employees from working with immediate relatives.
- The new criminal code, passed in April 2003, binds government officials to **conflict of interest regulations** and enlarges the definition of corruption to include the illegal involvement of public officials in business activities. Yet it also sets milder penalties for corruption-related crimes, such as the abuse of power and position by public officials and the giving and taking of bribes. Punishment for abuse of power can vary from a fine of 200 times the defined minimum monthly salary to imprisonment for two to six years.¹
- The bill on **freedom of information** regulates the rights of those who possess information and defines the rules, procedures and conditions for receiving information from government institutions. The law ensures access to information as well as its dissemination and transparency. It also provides that requested information be delivered within a five-day period, unless it requires additional work, in which case it must be provided within 30 days. At this writing, the bill was expected to pass into law.
- The **ombudsman** law aims to regulate the appointment and dismissal of the ombudsman, as well as related rights and obligations. It provides that the ombudsman be appointed by the president and approved by the national assembly for a five-year term. The ombudsman is to be independent, adhere to the constitution and enjoy immunity during the term of office. The law has passed the second reading, but has not yet been promulgated.
- A controversial law on **mass media**, allowing for increased state control of the media, is in draft form. Protests prompted the justice ministry to submit a revised draft in 2003, but critics are still not appeased.

The unclear status of Armenia's anti-corruption programme

Since Prime Minister Andranik Margaryan established the state anti-corruption commission in 2001, progress on the development of a national anti-corruption programme has been slow and less than transparent.² The final proposal for the programme is currently pending approval, yet its complete contents have not been shared openly.

In early 2002, at the request of the government, the World Bank allocated US

\$300,000 to draft the anti-corruption strategy programme.³ An expert group, comprised of two international and six local experts, was formed to work on proposals for legislative, institutional and public-involvement measures, as well as a detailed implementation plan. Their proposals had to include mechanisms for monitoring and evaluating anti-corruption activities.

Since one of the World Bank's requirements was the active involvement of civil society in a transparent drafting of the anti-corruption strategy programme, members of the National Anti-corruption

NGO Coalition were invited to attend one of the expert group meetings.⁴

At the international level, the OSCE took the lead in coordinating donor assistance in combating corruption through the international Joint Task Force (JTF), which included all the key international organisations and diplomatic missions. Following discussions with the president and prime minister, an agreement was reached on maintaining regular contacts between the JTF and the government during the strategy's development.

Initially, the expert group prepared a broad strategy outline of more than 200 pages, which had to be discussed in detail with the JTF and civil society. The group also prepared a detailed plan for implementation. By July 2002, two workshops were organised to present and discuss the draft strategy. Its main elements included issues such as the economic transition and shadow economy; energy, infrastructure and natural resources; oversight and regulation; the legislative and regulatory environment; the political system and elections; civil society participation in anti-corruption initiatives; e-governance and access to information; and international cooperation.

The expert group completed the first version of the programme later than expected, in August 2002, and circulated it to ministries, agencies and the JTF. The delay may be explained by the fact that the presidential and parliamentary elections were due to take place in 2003. The public sector reform commission, which serves as the secretariat for the anti-corruption commission, then announced that the ministries and agencies had reviewed the programme and that the final version had been submitted to the prime minister for approval in March 2003. At 23 pages, however, the revised action plan is a fraction of the length of the original plan, eliciting heavy criticism from the JTF.

The revised plan has not been reviewed by civil society, which is still concerned about several issues. One particular area of concern

relates to the establishment of an independent body that would be responsible for implementing and monitoring the anti-corruption strategy programme. One model suggested by the expert group was that the current anti-corruption commission itself take on this role. In this case, a secretariat that could coordinate everyday work and implement decisions would have to be formed to serve the commission.

An alternate suggestion called for the creation of an anti-corruption agency with full investigative and law enforcement powers. Critics of this model argue that, instead of creating a new enforcement body, the capacity of institutions that already have such powers should be strengthened.

A third option envisions the establishment of an anti-corruption council responsible to the prime minister or the justice minister. This council would consist of the representatives of the president's office, national assembly, constitutional court, as well as the chief of staff of the government, key ministers, the prime minister's adviser on anti-corruption and the general prosecutor. The council would also include five representatives of civil society, appointed by the president.

Regardless of which model is accepted, the anti-corruption body must secure the trust of the people, most of whom are unaware that the government has even developed anti-corruption initiatives. Those who are aware have little confidence that the initiatives are effective, because they view government officials as the main initiators of corruption. They do not believe that those who are corrupt can be truly committed to fighting corruption.⁵

Armenia's 2003 elections: a case for reform in political party financing

A civil society monitoring project, undertaken during parliamentary elections in May 2003, revealed troubling inadequacies in the regulation and monitoring of political party financing.⁶

Using the project's findings, the opposition Ardarutyun (Justice) alliance appealed to the constitutional court to nullify the election results. The alliance pointed to violations of election procedures and voting irregularities, alleging that tens of thousands of ballots cast for Ardarutyun were allocated to other parties. The official result was that Ardarutyun won 14 per cent, rather than the 50 per cent or more that it claimed. The opposition also contested the election results in 19 single-mandate constituencies.

Although Ardarutyun's appeal was dismissed due to insufficient evidence, the court admitted that the issue required attention and proposed to promote greater transparency and accountability in the management of political party financing.

Armenia's election process is regulated by an electoral code that needs considerable revision. The provisions that cause most concern relate to the opaque system of party financing and the lack of enforcement mechanisms.⁷

According to article 25 of the code, the parties' declaration forms must be published by the Central Electoral Commission (CEC) in the format determined by the CEC. During the recent elections, the sources of the parties' pre-election income were never published though the issue drew strong public interest and was regularly discussed in the media.⁸ Although required by law to present this information to the CEC, the parties and blocs were willing to publicise only the number of contributors to pre-election funds. In some cases, parties did not reveal any information at all.

Reasons for concealing the revenue sources vary. Some parties may be involved in money laundering or using foreign funding, which is prohibited by law. Furthermore, as Armenia's business sector is not well regulated and many businesses tend to hide their real turnover, they may wish to prevent the tax authorities from learning of their donations to party pre-election funds. Finally, rivalry between the opposition and government does not encourage businesses

to publicise their contributions to pre-election funds.

After two rounds of presidential elections in February and March 2003, only the candidates' total campaign revenues and expenditures were published. When queried about the rationale behind not publishing more detailed information, the CEC head, Artak Sahradyan, replied that the commission had not published itemised accounts because it had not identified any violations of party finance regulations.

The monitoring team found that two of the 11 parties and blocs that agreed to provide campaign finance information had exceeded the limit of the pre-election fund.⁹ An analysis of the figures showed discrepancies for all other parties except one, whose reported data was consistent with that of the project's findings. Indeed, the overall tendency observed was that almost all the parties avoided registering their campaign expenses in the pre-election fund and that they spent most of their money 'outside the fund'.

Further results showed that violations of party finance regulations fell into two major categories. First, large sums were not properly accounted with respect to political advertising on television. TV companies either offered certain parties discounts, or provided more airtime to selected parties than was officially declared.¹⁰ Second, the code requires all party publications to mention the number of copies printed and the name of the publisher. Several parties and some experts revealed that parties often printed more copies than officially declared. In some cases, campaign materials were ordered before the campaign period and paid for from the party account. Moreover, a number of parties conducted transactions with service providers without a contract; money for these services was paid in cash, which is prohibited by law.¹¹

These types of violations are motivated by several factors. By paying cash, parties avoid the 20 per cent VAT and service providers evade taxes. For parties, especially those exceeding fund limitations, such

dealings represent a way around the pre-election fund.

Another concern is that the law is vague about what expenses should be covered by the pre-election fund, as opposed to the party account. During the campaign period, for example, parties continued to pay expenses related to their permanent office(s) through the party accounts, while expenses related to temporary sub-offices were covered by the fund. In general, parties hid the cost of temporary offices, stating that party members or relatives provided office space free of charge.

Salaries were another issue of concern, since parties concealed their true expenses to avoid paying taxes. Violations related to

travel expenses and administrative costs were also apparent but difficult to monitor systematically.

The Control and Review Service (CRS) – established ad hoc under the CEC – is responsible for regulating such violations and taking the necessary action. Despite substantial media coverage and the results of the monitoring project, the CRS filed no reports of party finance violations by the review deadline. While the law itself provides too much flexibility to parties and does not allow for easy monitoring, the reluctance of Armenia's state institutions to enforce the law is at the root of ongoing abuses in political party financing.

Arevik Saribekyan (Center for Regional Development/TI Armenia)

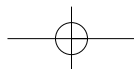
Further reading

Armenian Democratic Forum, 'Sociological Survey on Public Sector Reforms', for enterprises and households, 2001; see inweb18.worldbank.org/ECA/ecspeExt.nsf/0/1B062B0DC8A543B485256C63005D49FD?Opendocument&Start=1&Count=1000&ExpandView

CRD/TI Armenia: www.transparency.am

Notes

1. The minimum monthly salary is 1,000 drams (around US \$2), so the fine would be equivalent to US \$355.
2. Decision No. 4, adopted on 22 January 2001. The commission is headed by the prime minister and includes the vice speaker of the national assembly (as deputy head), heads of key ministries and the chief of staff of the president.
3. The grant was provided through the World Bank Institutional Development Fund.
4. The National Anti-corruption NGO Coalition was established in March 2001 under the CRD/TI Armenia. Currently the Coalition has 26 members representing different fields, including journalism, business development, human rights, environment, local government, the army, tourism and education.
5. See the 'Country Corruption Assessment: Public Opinion Survey', carried out by CRD/TI Armenia in March–April 2002. The sample of the survey included 1,000 households, 200 entrepreneurs and 200 public officials. In answering the question, 'Who mainly initiates corruption in Armenia?', all three groups of respondents identified government officials as the most corrupt.
6. Implemented in March–June 2003, the CRD/TI Armenia project, 'Monitoring of the Political Parties' Finances during the 2003 Parliamentary Elections', was funded by the



- Open Society Institute, Assistance Foundation – Armenia. The report is available online at www.transparency.am
7. The amended electoral code was adopted and ratified in July 2002; it entered into force in August 2002. See par03.elections.am/?lan=eng&go=code
 8. Legislation requires that participating parties and blocs open a pre-election fund during the election campaign period.
 9. Actually, three parties exceeded the limit of the pre-election fund, two of which provided information within the framework of the monitoring project. The pre-election fund limit is 60,000 times the minimum defined monthly salary, which for this year was 60,000,000 drams (US \$110,000). Independent monitoring was conducted for all 21 parties and blocs.
 10. Article 18.3 of the electoral code requires the mass media to provide equal airtime at the same price to all parties. Article 11 of the Law on TV and Radio states that all the TV and radio agencies must announce their rates for political advertising before the pre-election campaign.
 11. Article 25.7 notes that if during the pre-election campaign the candidate or party uses financial means other than the pre-election fund, the court may consider the candidate or party registration invalid.

Australia

Corruption Perceptions Index 2003 score: 8.8 (8th out of 133 countries)

Bribe Payers Index 2002 score: 8.5 (1st out of 21 countries)

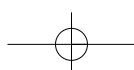
Conventions:

OECD Convention on Combating Bribery of Foreign Public Officials (ratified October 1999)

UN Convention against Transnational Organized Crime (signed December 2000; not yet ratified)

Legal and institutional changes

- Federal: a September 2002 senate report into the 2001 Public Interest Disclosure Bill recognised the need for comprehensive legislation to protect public sector **whistleblowers** but recommended that the bill as drafted should not proceed as it had deficiencies. After nearly 10 years of debate, as a result, there is still no whistleblower protection legislation at the federal level, though all states and territories (except the Northern Territory) have introduced laws.
- The federal treasury issued proposals in September 2002 under its **Corporate Law Economic Reform Program (CLERP)**, which included only limited **whistleblower protection** for disclosures to the Australian Securities and Investments Commission. Draft implementing legislation was equally insufficient in this regard. TI Australia made a submission in November 2002 that argued for much broader protection for corporate whistleblowers.¹



- New South Wales (NSW): the **Statute Law (Miscellaneous Provisions) Act** of December 2002 amended the Protected Disclosures Act 1994. The general view is that the legislation will still not be sufficient to overcome entrenched negative attitudes to **whistleblowing**. A survey by NSW's Independent Commission against Corruption (ICAC) showed that nearly 70 per cent of state officials expect whistleblowers to suffer retribution.²
- Western Australia: the ongoing Royal Commission into Police Corruption issued an interim report in December 2002. The government accepted its recommendation to replace the Anti-Corruption Commission (generally considered to have inadequate powers) with a new external oversight agency, the **Corruption and Crime Commission**, with extended investigation and enforcement powers and the power to conduct public hearings, like NSW's ICAC and Police Integrity Commission.
- The **Australian Crime Commission (ACC)** commenced operations on 1 January 2003, replacing the functions of the National Crime Authority, the Australian Bureau of Criminal Intelligence and the Office of Strategic Crime Assessments. The ACC's functions include criminal intelligence collection and analysis, setting national criminal intelligence priorities, conducting intelligence-led investigations of criminal activity of national significance, including organised crime and corruption, and the exercise of coercive powers to assist in intelligence operations and investigations.³
- Victoria: Public calls for a royal commission into **police corruption** were rejected, although more than 50 police officers are facing charges and the state's most senior detective is being prosecuted for drug trafficking and making death threats. In May 2003, the Ombudsman of Victoria issued an interim report on **Operation Ceja**,⁴ an ongoing Police Ethical Standards Division investigation into allegations of corruption at the former drug squad. The investigation has led to several criminal prosecutions and disciplinary actions, as well as a recommendation that officers working in areas at high risk of corruption should be rotated and drug investigators limited to three-year postings.
- In July 2003, the national standards organisation launched a set of five standards for effective **corporate governance**, including fraud and corruption and whistleblower protection programmes.⁵

Media concentration and ministerial discretion

The government's proposed relaxation of media ownership restrictions, as provided under the Broadcasting Services Amendment (Media Ownership) Bill 2002, has been a burning topic. Existing rules prevented the ownership of a newspaper and television station in the same metropolitan market and

restricted foreign ownership in any media asset to 25 per cent. The government has come under considerable pressure from large media organisations to remove one or both of these restrictions – as a lifting of restrictions would allow the purchase of media assets that were off limits, or would increase the price for which they could be sold.

The more positive aspects of the bill included: (1) the lessening of restrictions

that govern Australian media ownership and diversity of that ownership, and (2) the stipulation that media companies seeking takeover authorisation must outline their plans, rules and structures, avoiding a mischief to which 'diversity of ownership' provisions in the old legislation were directed. The requirements for the latter were very weak, however.

In addition, the bill did not propose the removal of restrictions on cross-media and foreign ownership, but it granted discretion to the relevant minister to waive these rules. Although the Foreign Investment Review Board (FIRB) vets foreign investments and recommendations are made to the minister, the FIRB is not privy to the discussions between media companies and ministers. This might seem a recipe for corruption in the deal-making that goes on between politicians and media owners to support governments at re-election time, or when government is about to pursue a controversial course of action.

These proposals raised the concern that politicians might back legislation that supports the interests of media owners in order to secure favourable coverage. This is not merely a theoretical risk. Media mogul Conrad Black claimed before a parliamentary committee that then prime minister Paul Keating once reneged on a deal to increase the ceiling on media ownership to 35 per cent in exchange for even-handed coverage in the 1993 elections. Paul Keating denied the claim. The issue is not whether this claim was true,⁶ but how the risk is managed within democracies.

The bill proposes an 'editorial separation' system as the key mechanism to preserve diversity. However, it ignores one of the long-standing reasons for media diversity (once championed by Rupert Murdoch) – that different owners would have different views. It does nothing to prevent those with expanded media ownership from exercising it to influence or even direct their expanded media empires. The requirement of providing basic information on editorial policy cannot fulfil that function and is not designed to do so.

The senate eventually rejected the Broadcasting Services Amendment Bill twice, but it was still on the government's agenda at the time of writing. It could be put to a joint sitting of both houses, if the government were to seek a double dissolution of both houses of parliament in the next election.

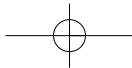
Ministerial discretion in areas where media proprietors have huge financial interests must be identified as constituting a clear risk of corruption. The temptation to do what a media owner wants in return for improved media treatment during an election or a controversial war is great. Even if media owners never influence the content of their newspapers, the belief is that they might continue to affect a minister's decision. One possible reform is that communications between media owners and either ministers or ministerial staff should be recorded by independent civil servants and filed with a relevant integrity agency. Another is to develop a systematic regulatory framework or a media integrity regime.⁷

Peter Rooke with TI Australia

Further reading

Auditor-General of Australian Capital Territory, 'Fraud and Corruption Prevention in the ACT Public Sector', Canberra, May 2003, www.audit.act.gov.au/auditreports/reports2003/Rpt4_2003.pdf

Australian Institute of Criminology Research and Public Policy Series no. 48, 'Serious Fraud in Australia and New Zealand' (Canberra/Melbourne: 2003). See www.aic.gov.au/publications/rpp/48



NSW Audit Office Report no. 114, 'Freedom of Information', Sydney, August 2003, www.audit.nsw.gov.au/perfaud-rep/Year-2003-2004/FOI-August2003/foi-contents.html

NSW Independent Commission Against Corruption, 'The NSW Public Sector: Functions, Risks and Corruption Prevention Strategies', Sydney, January 2003, www.icac.nsw.gov.au

Queensland Crime and Misconduct Commission, 'Public Perceptions of the Queensland Police Service: Findings from the 2002 Public Attitudes Survey', Brisbane, February 2003, www.cmc.qld.gov.au/library/CMCWEBSITE/PublicPerceptionsOfTheQPS.pdf

TI Australia, Whistleblower Conference, Sydney, August 2002; Business Integrity Systems in Australia, November 2001; Australian National Integrity Systems Assessment, Queensland Handbook, July 2001, www.transparency.org.au

TI Australia: www.transparency.org.au

Notes

1. See www.transparency.org.au/documents/clerp9sub.pdf
2. See section 5.3 of 'Unravelling Corruption II', ICAC, Sydney 2001 ISBN 0731072871 at: www.icac.nsw.gov.au/pub/summary_pub.cfm?ID=248
3. See www.crimecommission.gov.au
4. See www.ombudsman.vic.gov.au/downloads/ceja.pdf
5. Copies of the standards can be downloaded from Standards Australia's website www.standards.com.au
6. Black had originally gained 15 per cent at a time when that was considered not to constitute 'control'; he then demanded the right to own more than 15 per cent on the basis that he should have a greater share of the extra value generated by his control of the assets.
7. The general issue of integrity systems for the media is covered in C. Sampford and R. Lui, 'Media Ethics Regime and Ethical Risk Management in Australia', paper delivered to Media Ethics Conference, Parliament House, Canberra, 3 July 2002.

Azerbaijan

Corruption Perceptions Index 2003 score: 1.8 (124th out of 133 countries)

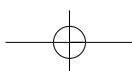
Bribe Payers Index 2002 score: not surveyed

Conventions:

Council of Europe Civil Law Convention on Corruption (signed May 2003; not yet ratified)

Council of Europe Criminal Law Convention on Corruption (signed May 2003; not yet ratified)

UN Convention against Transnational Organized Crime (signed December 2000; not yet ratified)



Legal and institutional changes

- A few amendments to the constitution that were adopted by referendum in August 2002 may contribute to an increase in political corruption. One allows ordinary courts to close down **political parties**; formerly, only higher-level courts could ban parties. Another increases the term for official confirmation of **election results** from seven to 14 post-election days, which gives incumbents a better opportunity to falsify official precinct protocols. Sections of the Azeri opposition claimed that one amendment was designed to make it easier for President Heydar Aliyev, who turned 80 in May 2003, to name his successor – as appears to have happened in August, when parliament elected his son, Ilham, as prime minister.¹
- In August 2002, the ministry of taxes closed down audit sections in its district branches and passed its **audit authority** to a centralised body within the ministry. One positive aspect of the change is that it led to a significant reduction in the number of unjustified inspections of small and medium-size enterprises (SMEs).
- President Aliyev signed a decree on state support to **business development** in September 2002. The measures contain several anti-corruption regulations.
- Following the enactment of the law on public procurement, the president proposed and parliament adopted amendments to the laws on investment activities, on the electric energy industry and architectural activity in December 2002. In all three laws, the amendments replaced the term ‘tender’ with the term ‘**competition**’. Critics of the amendments described ‘tender’ as a legal term with a precise formal meaning, while ‘competition’ was open to interpretation and thus seen as facilitating corrupt procurement.
- In January 2003, a presidential decree ratified amendments to the law on **public service**, allowing interviews as a tool of recruitment. Earlier versions of the law envisaged only open formal competition, leading some opposition critics to warn that the amendment would encourage corruption in the access to public jobs.
- A presidential decree on **preventing interference in business** closed down the Department of Struggle against Economic Crimes of the ministry of the interior in September 2002. The decree also instructed the ministry of the interior to reduce traffic police by 15 per cent. This cut may serve to decrease corruption after the president had recognised that the excessive number of police checkpoints was an obvious example of corruption. The ministry of taxes was instructed to decrease the number of auditors by 40 per cent. The decree also called on all city and district authorities to close down departments engaged in the audit of businesses and enterprises. The decrease in the number of inspecting agencies has led to a slight improvement in the corruption rate among SMEs, as demonstrated by recent research data.²

Official state registration

Extortion of bribes by civil servants who control the obligatory state registration process is not uncommon in Azerbaijan. In view of the growing number of private enterprises and civil society organisations, which must register with the state, however, the need to improve relevant legislation and standards has grown more urgent.

The problem attracted particular attention after the representative of the American Chamber of Commerce in Azerbaijan, Jonelle Glosch, cited official registration and taxes as the most difficult obstacles to investing in the country in a television interview. 'Four companies were supposed to receive licences in April 2002. This was very difficult. We, together with representatives of the British and US embassies, went to the Presidential Executive Staff office and met [the president]. After getting his instruction, the companies were registered', she said.³

Meanwhile, the new re-registration process drew criticism from religious associations as well as human rights observers. In 2002, all religious associations that had previously registered with the ministry of justice were required to re-register with the state committee. The authorities have stated that all care has been taken to make religious associations aware of the need to re-register and to ensure transparency in the documentation process. Nevertheless, reports indicate that some religious associations have not been properly informed about the need to re-register or what documentation they must submit.⁴

Besides having to register with the ministry of justice, NGOs are now obliged to register all grants with the justice ministry as well. Most NGOs protested against this decision, pointing to a high likelihood that extortion would rise as a result. In turn, they argued, international donors would be discouraged from funding civil society and other projects in Azerbaijan.⁵

Political parties also face discretionary, inequitable registration scenarios. Election

laws – be they presidential, parliamentary or municipal – as well as judicial practice create a number of opportunities for arbitrary and illegal denial of registration to candidates and their political parties. This trend can be traced back at least to the parliamentary elections of November 2000, when several leading opposition parties were denied registration for 'proportional' seats. They were finally included on the ballot after intense international pressure – though this pressure failed to assist other candidates in the constituencies registering for 'majority' seats. This problem was still in evidence during the by-elections of 2002 and 2003. Some key political parties, such as former president Ayaz Mutallibov's Civic Unity Party, still work without official state registration.⁶

A centralised and simplified official registration system for legal entities would be the most effective way of addressing the problem. A few initial steps have been taken in this direction, including the launching of a state programme for SMEs, which aims to simplify registration and licensing procedures for SMEs and ensure protection of their rights.⁷

Local excesses, central responsibility: an accountability update

Accountable only to the president, local executive authorities remain the most influential organ of governance throughout the country. The lack of formal popular control over their activities renders them one of the major sources of corruption.

In April 2003 President Aliyev replaced the heads of executive authorities in Sumqayit, Ganja and Lenkaran, the three largest cities after Baku. The move followed a televised speech in which he levelled corruption allegations against high-ranking city managers and the local business community.⁸ The president also demanded financial involvement from a local businessman who had not been 'very active' in assisting the city of Sumqayit with its

social programmes. The president's speech seemed to imply that heads of the executive authority are empowered to force local businessmen to finance public services and reconstruction.

In May 2003 the parliament passed a law on administrative control over activities of municipalities, which empowers 'an appropriate organ of executive authority' to conduct audits and general assessments of the municipalities. This measure further reduced the independence of municipalities compared to that of the local executive authority.

Despite such setbacks, which have increased the power of the local executive authority throughout the country, a marked improvement in the accountability of political leaders to the legislature is in evidence. In June 2002, parliament adopted the constitutional law on additional rights of parliament concerning confidence in the cabinet of ministers. The law obliges the cabinet to report to parliament on an annual basis and requires cabinet executives (with consent of the government) to respond to verbal and written questions at parliamentary sessions. The first such exercise took place on 18 March 2003, when First Deputy Prime Minister Yaqub Eyyubov made a presentation and answered questions. This development is a move in the right direction, as Azerbaijan has thus far lacked a tradition of government reporting to the elected legislature.

Similarly, positive steps were taken to improve accountability in the newly created independent State Oil Fund (SOFAF), which accumulates all oil proceeds besides taxes, which are funnelled directly to the state budget. SOFAF is to ensure transparency of oil revenues earned by the State Oil Company of the Republic of Azerbaijan (SOCAR).⁹ On 13 May 2003, parliament amended the law on budget systems to include SOFAF in the country's consolidated budget, a first significant step towards making the oil fund accountable to legislative authority.

Yet domestic critics and the International Monetary Fund have demanded full subordination of SOFAF to the legislative authority to ensure its transparency and prevent the diversion of funds. SOFAF was created by presidential decree, its expenditures are largely controlled by the presidential administration and its low levels of oversight render it vulnerable to political manipulation.

A panel discussion organised by Eurasianet in June 2003 concluded that Azerbaijan, along with Kazakhstan, may see poverty worsen as oil exports grow. The discussion focused on the 'resource curse', a term that describes the pattern through which poor countries become poorer when they begin to sell lucrative oil exploration rights. Experts stressed the need to encourage corporate best practices in order to reduce the scope for corruption in the oil industry. In particular, they argued for foreign companies to disclose how much they pay to specific state ministries for the right to drill, a practice encouraged by the 'Publish What You Pay' initiative.¹⁰

Corruption persists in the military

Corruption and a lack of accountability in the military remain burning issues of public concern. Reports by local and international human rights activists have found that conscripts are targets of economic exploitation in the army and that officials from the ministry of defence have extorted informal fees – mostly in cash – for draft exemptions, deferrals and deployments to units in the least risky areas. In some units officers have siphoned off supplies or surreptitiously used conscripts as unpaid labourers. Eight conscripts died of sunstroke while working on a construction project in July 2002.¹¹

As can be expected, conscripts who cannot bribe their way out of military service or into easier service tend to be poor. Since they frequently suffer from malnourishment or tuberculosis, they are prone to accidents and

are often not fit enough to perform the tasks assigned to them.¹²

On occasion, corruption in the army feeds into major political scandals. In February 2003, military journalist Uzeir Jafarov, who had been convicted of fraud and abuse of power, held a press conference and charged that his conviction had been 'inspired' by the newly dismissed deputy minister of defence, Mammad Beydullayev. Jafarov presented a list of facilities formerly owned by the ministry of defence and implied that they had been illegally privatised. No action has been taken.¹³ Alekper Mammadov, a former high-ranking military officer, also accused the ministry of defence of systemic corruption.¹⁴

In early September 2002, an uprising at a military college in Baku led to hundreds of cadets leaving the campus illegally to march in protest against corruption in school. Speaking in Ganja a few days after the incident, President Aliyev admitted that there had been 'violations of law, bribery by commanders and abuse of power for covetous aims'.¹⁵ Nevertheless, he stressed that the cadets' reaction had not been

justified. By spring 2003 all command staff at the college had been replaced, but the leaders of the cadet protest were sent to serve as privates on the Armenian or Karabakh borders.

Further areas of concern involve the 'military commissariats', or conscription agencies, which enjoy a great deal of arbitrary authority, which is sometimes employed as a political tool against opponents. A case in point concerns Mahammad Ersoy, editor-in-chief of the newspaper *Bizim Yol*. Immediately after publishing a series of articles criticising the government, Ersoy was called to military service and the newspaper was partially confiscated from newsstands.¹⁶

While such developments are discouraging, criticism of secrecy in the military was heard in August 2002 when President Aliyev ordered the creation of a special fund to collect donations from citizens and companies willing to support the national army. In an apparent bid to silence critics of the lack of transparency in military accounting, the president ordered that the fund be audited once a year.¹⁷

Rena Safaralievna (TI Azerbaijan) and Ilgar Mammadov (Demokr-IT, Azerbaijan)

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3. Interview with ANS TV, 16 February 2003.
4. ECRI Report on Azerbaijan, Council of Europe, 15 April 2003, www.reliefweb.int/w/rwb.nsf/6686f45896f15dbc852567ae00530132/a2b221ae7a267396c1256d09002fcf5f?OpenDocument
5. The presidential decree of January 2003 enacted amendments to the law on grants of 1998, which is actually dated April 2002.

6. www.vbp-az.org/english/press1.html
7. The programme was launched by presidential decree in mid-August 2003.
8. *Novoye Vremya* (Azerbaijan), 4 April 2003.
9. Complicating matters further, Azerbaijan became the target of high-level allegations in November 2002, when Czech businessman Viktor Kozeny accused the Azeri government of defrauding him in connection with the privatisation of SOCAR; see www.eurasianet.org/departments/business/articles/eav111802.shtml
10. Eurasianet Organisation, 'Will a "Resource Curse" Befall Azerbaijan and Kazakhstan?', 27 June 2003. See also, Svetlana Tsalik, *Caspian Oil Windfalls: Who Will Benefit?*, OSI Caspian Revenue Watch, Central Eurasia Project, 2003, www.soros.org/publications/caspian/index.html
11. Human Rights Watch, *World Report 2003*, www.hrw.org/wr2k3/europe3.html
12. Agence France-Presse (France), 31 July 2002.
13. *Echo* (Azerbaijan), 5 April 2003.
14. Interview with Alekper Mammadov, *Echo* (Azerbaijan), 25 January 2003.
15. Turan news agency, 12 September 2002.
16. Turan news agency, press review, 29 April 2003.
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Brazil

Corruption Perceptions Index 2003 score: 3.9 (54th out of 133 countries)

Bribe Payers Index 2002 score: not surveyed

Conventions:

OAS Inter-American Convention against Corruption (ratified July 2002)

OECD Anti-Bribery Convention (ratified August 2000)

UN Convention against Transnational Organized Crime (signed December 2000; not yet ratified)

Legal and institutional changes

- The impact of a ruling from February 2002 requiring candidates to present their **campaign expenditure statements electronically** was first felt in the October 2002 general elections. The superior electoral court issued the ruling. Previously, such statements were presented on paper, making it virtually impossible to aggregate the data and cross-reference information on candidates and their donors.
- A law passed in December 2002 modified the sections of the criminal procedural code that relate to **improbity**. Prior to its introduction, prosecutors could initiate legal actions in first instance courts. Under the new law, elected and career officials can only be judged by superior courts of justice, either state or federal, and not by first instance courts. This could make it more difficult to bring corruption cases to trial.
- A **Council for Public Transparency and the Fight against Corruption** was established within the inspector general's office (Controladoria Geral da União, CGU) in May 2003. Civil society organisations were involved in its creation.

- The CGU, created during the previous administration, shows signs of reinvigoration under the new government of President Luis Inácio Lula da Silva. The new inspector general, Waldir Pires, has declared the fight against corruption a major concern and has introduced some innovations. In May 2003 the CGU introduced a programme to **verify the use of federal resources** in cities with populations of up to 20,000 inhabitants. The cities are selected at random each month.
- The minister of justice and the president of the central bank announced a series of new measures to combat money laundering in June 2003 (see below).

Government fails to curb tax evasion and money laundering

Tax evasion and money laundering have been routine in Brazil for years. Money from illegal transactions such as bribery, political corruption and drug dealing is easily sent abroad or diverted to fiscal havens. There is strong evidence that vast amounts of undeclared assets owned by Brazilians are held abroad, mostly by businessmen and the affluent seeking to avoid foreign exchange risk. So far the government has proved unable to curb this capital flight.

Measures to stimulate the declaration of assets maintained abroad have had little impact. The previous administration introduced the voluntary declaration before the central bank of all transactions exceeding US \$10,000, including purchases of foreign currency or money sent abroad. The measure depended on far more good will than was available. It was hard to conceive that corrupt politicians, public officials, drug dealers and unethical businessmen would spontaneously declare to the authorities the fruits of bribery, tax evasion and other illegal transactions.

Two recent cases are emblematic of the levels of tax evasion and money laundering in Brazil. In January 2003, the Swiss courts announced that they had frozen US \$36 million laundered by Brazilian account holders and kept in Swiss banks, following a request by the Brazilian authorities. The accounts were in the name of tax inspectors from the Rio de Janeiro state government whom companies had allegedly bribed to

overlook their tax evasion activities. One of them, Rodrigo Silveirinha, was a deputy head of the state tax-collection office, nominated during the administration of former governor, Anthony Garotinho. A state parliamentary inquiry commission was established to investigate the case. By mid-2003, 12 tax inspectors had been arrested. The case emerged 10 days after Garotinho's wife was sworn in as the new governor of Rio and shortly after Garotinho – who stood in the October 2002 presidential elections – became the state's secretary of public security. The direct participation of Garotinho and his wife in the fraud is under investigation, but has not been proven.

Another financial scandal, involving Paraná state-owned bank Banestado, came to light in February 2003, in response to accusations made by the newly elected senator for the neighbouring state of Santa Catarina, Ideli Salvati of the Workers' Party. Federal investigations revealed the existence of a tax evasion and money laundering scheme amounting to US \$30 billion between 1996 and 1999. The money was transferred from a Banestado branch in Foz do Iguaçu, near the borders with Argentina and Paraguay, to 130 accounts in the bank's New York branch through a special form of account reserved for non-residents. The names of several politicians and well-known businessmen were included in the list of beneficiaries. The senate rejected a request for an investigation, but in June 2003 the lower chamber of congress agreed to establish a parliamentary commission of inquiry.

The parliamentary commission, since transformed into a joint commission, began its work in mid-2003 and its findings were due by the end of the same year.

In June 2003, the attorney general and the president of the central bank introduced a new set of measures aimed at tackling money laundering. Banks must now notify the central bank of all deposits or withdrawals of more than 100,000 reais (US \$30,000). The measures also included the creation of a general registry of bank accounts; the formation of a new department of recuperation of illicit profits to coordinate investigations between different ministries and departments; and the restructuring of the council for financial activities control (COAF, a part of the finance ministry).

The new government has yet to fulfil anti-corruption promises

In September 2002, before the first round of the most recent presidential election, Lula da Silva of the Workers' Party signed an anti-corruption pledge prepared by *Transparência Brasil*. The document set out eight measures to curb corruption and redress the lack of adequate state control mechanisms. The most important measure was the establishment of an anti-corruption agency. Within six months of the new government taking office, the agency would draw up an anti-corruption plan with the participation of the legislature, judiciary, public prosecutor's office, supreme audit court and, as observers, civil society organisations.

The pledge contained initiatives concerning public procurement; the estab-

lishment of a network of ombudsmen in federal government; the prohibition of public officials hiring relatives; the strengthening of investigative bodies; the implementation of international anti-corruption conventions already ratified by Brazil; and the consolidation of initiatives taken by the former government in the areas of corruption control and conflict of interest.

After several unsuccessful campaigns, da Silva beat his rival, José Serra, winning 61 per cent of the vote with a pledge to reconcile the government's relations with the Brazilian people. His victory reflected Brazil's disillusionment with the free market policies of the outgoing government, which had a record of poor administration of public funds, administrative inefficiency, corruption, inadequate income redistribution and high unemployment.

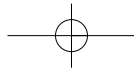
President da Silva's emphasis on the need for a smooth transition allayed international fears about what Brazil's first Workers' Party administration might portend, and Brazilians are optimistic at the prospect of change. Firm action to punish corruption – from nepotism to bribery and embezzlement – would satisfy many Brazilian expectations. Many consider a reduction in corruption not only a moral necessity, but a practical concern if Brazil is ever to compete fairly in the global economy.

Although the fight against corruption has traditionally been a theme in Workers' Party election campaigns and was cited as a policy initiative in President da Silva's inaugural address in January 2003, the new government has implemented few concrete measures to tackle the problem. At this writing, no steps have been taken to create an anti-corruption agency.

Ana Luiza Fleck Saibro (Transparência Brasil)

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Bulgaria

Corruption Perceptions Index 2003 score: 3.9 (54th out of 133 countries)

Bribe Payers Index 2002 score: not surveyed

Conventions:

Council of Europe Civil Law Convention on Corruption (ratified June 2000)

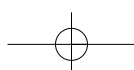
Council of Europe Criminal Law Convention on Corruption (ratified November 2001)

OECD Anti-Bribery Convention (ratified December 1998)

UN Convention against Transnational Organized Crime (ratified December 2001)

Legal and institutional changes

- Adopted in July 2002, amendments to the **judicial system act** provide for the establishment of a system of accountability to the Supreme Judicial Council (SJC) for courts, prosecution offices and investigation services; various anti-corruption checks on the judiciary, notably property and income declarations; adoption by the SJC of ethics codes for magistrates and administrative staff; competitive recruitment for magistrates and promotion according to objective criteria; and the creation of a public institution – the National Institute of Justice – to train members of the judiciary. The act also modifies procedures for adoption of the judiciary budget.
- After a first reading in July 2002, the legislature passed controversial amendments to the civic procedure code granting prosecutors the right to **discretionary interference in private contracts**. Though still pending, a second hearing was delayed in view of criticism from civil society organisations.
- In September 2002, amendments to the **criminal code** introduced more precise provisions on organised crime and corruption, including trading in influence, private sector corruption and the bribing of magistrates, juries and foreign public officials. The definition of 'foreign public official' was extended to reduce the scope of protection providing for acquittal in some cases of bribe paying. The amendments also introduce fines as a penalty for bribery and more severe punishments for bribe taking by judges,



jury members, prosecutors and investigators. Finally, non-material benefits were included as a further definition of bribery.

- A **parliamentary commission against corruption** was established in September 2002 with responsibility for monitoring draft laws for compliance with existing anti-corruption legislation prior to their adoption by parliament. The body will propose amendments to existing laws as well as new legislation; assist in the elaboration of common criteria and a strategy for curbing corruption; and provide related reports, statements and legislative proposals (see below).

When anti-corruption bodies are powerless

Despite creating two specific anti-corruption bodies in the past two years, Bulgaria still lacks an effective institution to tackle and prevent corruption. Neither the inter-ministerial commission against corruption, known as the White Commission, nor the parliamentary commission against corruption has investigative powers.

Established in December 2001 and chaired by Minister of Justice Anton Stankov, the White Commission is composed of representatives from the justice, interior, finance and other ministries and is tasked with monitoring the government's anti-corruption measures. It coordinates the implementation of the national strategy against corruption, on whose progress it reports, and suggests measures to increase its effectiveness.

While the White Commission has no investigative powers and is unable to intervene in corruption cases, it functions as a clearing house through which cases are transferred to the appropriate investigative authorities. To ensure that the accused are presumed innocent unless proven guilty, the commission does not release its findings to the public. Claiming that less sensitive information must also remain confidential, it has made no effort to cooperate with civil society. Furthermore, the body is weakened by the members' inability to work full time, as the chairman and other members have full-time ministerial roles.

In September 2002, the government sought to compensate for some of these weaknesses by creating the Parliamentary Commission against Corruption (PCC), comprised of 24 deputies from all parliamentary groups. The PCC can propose amendments, monitor existing laws and identify gaps in enforcement practices, but it still does not address the central problem in Bulgaria's anti-corruption strategy – the absence of investigative powers.

In his annual report on 23 January 2003, President Georgi Parvanov launched a public debate on the prospects of creating an independent anti-corruption agency with investigative powers. He cited deteriorating public confidence in state institutions and foreign pressure to improve anti-corruption measures as motives. The president identified several advantages that a new agency could bring to the fight against corruption: increased effectiveness against corruption by senior government officials and politicians, the detection of officials' crimes by an independent authority not subject to political influence, improved public confidence in state institutions, and a strong preventive effect on senior government officials.

The proposed plan of action is to pass a special law setting up an independent agency headed by a single individual. The appointment would not coincide with the term of the national assembly so as to avoid the director's replacement by an incoming government. The agency would be assigned the same scope of investigative functions as the ministry of the interior and it would

focus on crimes committed by a comparatively small circle of senior officials. The data collected would be sent to the prosecutor's office for a decision on whether to commence proceedings.

Government and NGO representatives generally welcome the initiative, but critics observed that the government should focus on strengthening existing institutions, rather than creating a new body with similar functions. Some argue instead for the introduction of the post of ombudsman.¹

Promoting transparency in public procurement

In autumn 2002 the government drafted a new public procurement law to comply with the European Commission's Regular Report for the Accession of Bulgaria to the EU. The draft is pending in parliament.

The current public procurement law was enacted in 2000. Following recommendations of the World Bank's procurement review, it was amended in 2002 to include a judicial appeal procedure and facilitate direct negotiations between the contracting authority and the bidder. Despite these changes, however, procedures still need revision.

The business community is nearly unanimous in citing the procurement appeals procedures as the biggest problem in the field. Legally and in practice, filing an appeal stops the procurement process in its tracks until the courts rule on the case. Since no disincentives were established to discourage bidders from filing an appeal, no matter how baseless, they occur frequently.

Another problem relates to the linkage between public procurement and the budget planning and allocation processes. Uncertainties about the availability of funds delay the initiation of essential procurement, while the need to commit funds before the end of a fiscal year – or lose them – gives rise to hasty decisions and procedural violations. Budgetary uncertainty also leads to delayed payment or non-payment of suppliers,

discouraging bidders from competing for government contracts.

But the greatest shortcoming of the existing legislation is the vague assignment of responsibilities for regulatory functions within procurement. One or more organisations must still be given clear mandates for updating primary legislation and providing secondary legislation covering operating procedures. The regulatory function should also include the preparation and dissemination of standard documents, monitoring and quality control, and supervision of professional training of procurement staff. Further, it should include a review of procurement appeals outside the court system, thereby eliminating one of the main sources of disruption in the process.

Some other procurement problems pertain to deficiencies in the law and to the way it is presently implemented, including the absence of arbitration procedures and the need for more clarity about the applicability of the law. Excessive requirements for documentation of bidder qualification remain to be adjusted and specifications favouring one bidder should be eliminated. There is also a need for a review of contract value thresholds, insurance requirements, bid commission procedures and the need for sanctions for improper procedures.

Glaring inadequacies define new political finance legislation

The year 2002 was the first year in which new rules for political party financing were expected to show results. Yet the new legislation – the act on elections, as well as amendments to the act on local elections – failed to rectify problems that still mar the credibility of Bulgaria's political system. Opinion polls indicate that the new leadership has not fully convinced voters that it has kept its anti-corruption promises.²

Indeed, political corruption is perceived as Bulgaria's most serious problem by a large part of the population, which has singled out political parties as one of the most

corrupt institutions in recent years. There are two major concerns: one relates to sources of party funding, the other involves transparency, control and sanctions for offenders.

The act on political parties of March 2001 confers the supervision of political party expenses and income to the National Audit Office (NAO), whose reports evaluate the integrity of political party financing (see Chapter 14, 'Measuring the transparency of political party financing in Bulgaria', page 298). The act requires parties to present their annual reports to the NAO by 15 March, or lose their state subsidy for the relevant year. Within six months of receiving annual reports, the NAO must announce whether these comply with the relevant legislation. Parties are also required to file reports within one month of elections.

Despite this new legislation, the NAO has identified several aspects of party financing as ongoing problems. Anonymous donations allow parties to dodge naming donors or declaring their gifts to the NAO. Secondly, parties are not equally sanctioned for failing to submit their reports within the time prescribed by law. The act on political parties guarantees state subsidies only to parties that obtain 1 per cent of the vote during parliamentary elections; parties that do not reach that threshold are not punished for failing to submit their statements.

Numerous parties have failed to submit financial information in their annual reports and some are registered under incorrect addresses, leading observers to assume they are not truly engaged in political activity.

One way to address this problem is to re-register parties according to the provisions of the act on political parties.

Local election campaign financing also needs tighter controls. The act on local elections, passed in 1995 and last amended in mid-2003, provides for elections of municipal councillors and mayors. Campaigns can be financed through funds of political parties and coalitions, as well as by individual donations and corporate bodies, as long as their shares are not owned by public or foreign entities.³

The lack of effective controls and the failure to sanction offenders continue to thwart transparency in the political landscape. Spending limits are now determined based on population figures, but the amended act still does not provide for the control of candidates' income and expenses, or for the application of sanctions. The problem is exacerbated by the lack of accounting requirements related to fundraising, as is the case for candidates for municipal councillor who have access to double funding if they set up personal bank accounts while also taking advantage of political party funding.

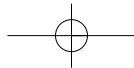
The poor control of local election financing stems from the lack of legally binding reporting requirements for candidates and political parties after elections are held. Moreover, no body is legally authorised to oversee electoral campaign financing. Control can only be exercised when parties or coalitions request a review of their adversaries' financing.

Katia Hristova and Diana Kovatcheva (TI Bulgaria)

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Open Society Institute, 'Corruption and Anti-Corruption Policy in Bulgaria', 2002; ftp.osi.hu/euaccession/2002_c_bulgaria.pdf

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TI Bulgaria: www.transparency-bg.org

Notes

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2. See the annual report on Bulgaria for 2002 of the Access to Information Programme, www.aip-bg.org/pdf/an_rep02.pdf
3. Local Elections Act, article 68.

Burundi

Corruption Perceptions Index 2003 score: not surveyed

Bribe Payers Index 2002 score: not surveyed

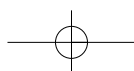
Conventions:

AU Convention on the Prevention and Combating of Corruption (adopted July 2003; not yet signed)

UN Convention against Transnational Organized Crime (signed December 2000; not yet ratified)

Legal and institutional changes

- A September 2002 amendment to a 1996 law on **privatisation** was spurred by the creation of a dedicated ministry. One provision, preventing senior officials and their families from bidding for shares in public organisations, applies to members of the Interministerial Privatisation Committee (Comité Interministériel de Privatisation), experts in the department responsible for public organisations (Service Chargé des Entreprises Publiques), consultants, independent agents as well as any head of a public organisation who has been convicted of fraudulent management of an organisation under privatisation. The prohibition applies for five years from the conviction.
- In the second half of 2003 a parliamentary commission considered a bill on the creation of an **audit court**, with the national assembly due to examine the matter thereafter. The Arusha Peace and Reconciliation Agreement in Burundi provides for the creation of an audit court that would be 'responsible for examining and certifying



the accounts of all public organisations. This court will present a report on the propriety of the state accounts to the national assembly. This report will establish whether funds have been used in accordance with established procedures, and in accordance with the budget approved by the above-mentioned assembly.' The court is also a requirement of the transitional constitution and the International Monetary Fund made its creation a condition for the release of the second instalment of credit to the government.

- The assembly adopted a law on the **media** in early August 2003 (see below).

The devastating impact of war on corruption

Although it is difficult to measure the impact of war on corruption in Burundi and little information is available on the subject, the role of the hostilities cannot be underestimated. For almost 10 years, the country has been immersed in a civil war that has had disastrous consequences. The proportion of the population living below the poverty level has risen from 30 per cent in 1989 to 60 per cent in 2000. The mortality rate has risen to 114 per 1,000, and life expectancy dropped dramatically from 54 years in 1992 to 41 years in 2000. Burundi is one of the world's eight poorest countries.¹

Coexistent with the war are regular massacres of innocent victims, mass displacement and restrictions on civil and human rights, such as the freedoms to travel, hold demonstrations and express oneself openly. The democratic process barely functions in such an environment, which is aggravated by the virtual political impunity that produces conditions favourable to the spread of corruption.

Despite the Arusha peace treaty of August 2000 and various ceasefire agreements since, the situation in Burundi is deteriorating. Corruption, which used to be comparatively inconspicuous, has adopted more public dimensions, spreading into every aspect of the public and private sectors and affecting procurement, the granting of land use concessions, customs, public health, the application for driver's licences and even the assignment of school grades.

The presence of military personnel throughout the countryside has contributed to the increase in petty corruption. Soldiers commonly stop people under the pretext of making identity checks, only to extort a bribe before releasing them. In rural areas, a fee is levied on farmers for harvesting after the curfew, while on the main roads, soldiers use the curfew as an excuse to exact money from drivers.

Analysts note that the military elite, already enriched by the diversion of public funds, has more to gain from letting Burundi sink deeper into debt than from pursuing the peace process, which might lay the basis for a return to democratic governance and lead to reform in the army.² At a government level, a 2003 report by financial inspectors drew attention to the misappropriation of more than 20 million Burundi francs (about US \$20,000) in public funds at city hall in Bujumbura. The report of the general inspection of the ministry of finances found that more than 6 billion Burundi francs (about US \$6 million) had been diverted since 1993. Inspectors point to regular corruption in the departments of taxation, customs, procurement, as well as in many state-owned companies.³

In the absence of peace and security, and in circumstances where the authority and the very institutions of the state are challenged or rejected by warring groups, the fight against corruption is not likely to become a priority, even if the political will were strong. This situation may explain why corruption has taken on more public dimensions. Christophe Sebudandi,

president of the Governmental Action Observatory (OAG), an umbrella association of 18 media and civil society organisations, finds that 'corruption has spread, openly and publicly, to such an extent that those who practice it have become stronger than those who are fighting against it. This has resulted in a kind of reversal of values.'⁴ In the view of Julien Nimubona, a political science professor at the University of Burundi, the civil war has produced 'a mafia-like tendency at the heart of the state. Corruption is an ever growing blight on public services that relegates fundamental social values to a secondary role.'⁵

Freedom of the press legislation: revisions needed despite progress

The national assembly adopted a long-awaited media law in early August 2003 that revises the measures laid out in legislation from 1997. While it secures certain rights for the media, the law fails to address crucial aspects related to freedom of information.

Debates on the media law began in December 2001, following completion of a government-initiated study on the legal framework for media and communications that was partly funded by a UNDP project to support democratic government. The assembly considered the proposed new legislation during its June 2003 session.

The new law makes some noteworthy improvements to the previous legislative regime. It removes the need for authorisation prior to publication: the 1997 law required that the national communication council approve the content of all newspapers and periodicals before they could be published.

The new law also dispenses with a previous requirement that compelled publications to reveal their sources, which constituted a serious constraint on journalistic freedom and was compounded by the fact that sources could not be prosecuted for violating media laws. Since only the heads of media outlets could be prosecuted for offences arising from published or broadcast

information, dishonest journalists could safely denounce persons who never actually provided them with any information.

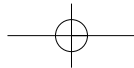
One element of the new law that may be useful in combating corruption relates to the prevention of conflicts of conscience. Journalists are now granted the right to call on a 'conscience clause' that allows them to 'break the contract that binds them to a publishing organisation if a new orientation of the said organisation conflicts with the terms of their contract'. If editors should decide to serve the interests of a political party in exchange for a bribe, for example, a journalist may refuse to be involved by invoking this clause.

Despite including these valuable reforms, however, the new law also sets stringent limits to media freedom, along with related penalties. Under the law, the media may no longer invoke the right to broadcast or publish information in certain cases that relate to such matters as national defence, state security and secret judicial inquiries.

The law assigns fines and penalties of six months' to five years' imprisonment for the publication of insults directed at the head of state, as well as writings that are defamatory, injurious or offensive to public or private individuals.

Though some exceptions to freedom of information rights may be justified, prohibitions regarding official secrets could act as a shield for government, enabling wrongdoers to carry out secret or corrupt activities. Restrictions on publishing information on alleged corrupt activities of public figures could be used to intimidate or censor the media. The rules of conduct in this area must therefore be given more precision, and the courts must show objectivity in examining the grounds for this type of argument.

At the same time, journalists and editors must be trained to respect journalistic standards and sharpen their investigative skills – admittedly difficult in an environment of war that does not favour freedom of the press.⁶ To facilitate progress,



the national communication council itself recommended in July 2003 that freedom must be the rule and preventive detention an exception. Without seeking to justify violations of media laws, for instance, the council argued that professional errors should only be a reason for detention if there is a possibility the perpetrator will flee.

The government withdrew the bill in February 2003 after the introduction of a

last-minute amendment on financial support for the press, but it was reconsidered in the June session. The assembly approved the bill with the amendment in early August 2003, with provisions to grant the press tax exemptions on imported supplies and to secure funds for media support.

Nestor Bikorimana (TI contact group, Burundi)

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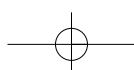
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2. *Économie* (Burundi), 13 November 2002.
3. RTNB (Radio Télévision Nationale du Burundi), 23 August 2003.
4. Atelier de lutte contre la corruption (Workshop for fighting corruption), Association burundaise des consommateurs (ABUCO, Burundi Consumers Association) and Observatoire de l'action gouvernementale (OAG, Governmental Action Observatory), 12–13 September 2003, www.ligue-iteka.bi/d180902.htm
5. Julien Nimubona, 'L'analyse critique de l'Accord d'Arusha' (A critical analysis of the Arusha treaty), OAG, May 2002, see www.ligue-iteka.bi/n121101b.htm
6. For more information, see 'Rapport de la table ronde sur le projet de loi sur la presse au Burundi' (Report on the roundtable about the media bill in Burundi), Maison de la Presse, Association burundaise des journalistes and Institut Panos, Bujumbura, 3 May 2003, www.panosparis.org/fichierProj/fichierProj94.doc

Chile

Corruption Perceptions Index 2003 score: 7.4 (20th out of 133 countries)

Bribe Payers Index 2002 score: not surveyed



Conventions:

OAS Inter-American Convention against Corruption (ratified October 1998)

OECD Anti-Bribery Convention (ratified April 2001)

UN Convention against Transnational Organized Crime (signed December 2000; not yet ratified)

Legal and institutional changes

- In February 2003 a new law on **government remuneration** and spending, which regulates salaries for high-level officials and caps their discretionary budgets, came into force. All discretionary ministerial funds must now be disaggregated and submitted to the auditor general.
 - The requirement to maintain a **register** of all individuals, institutions and companies who receive public funds became law in February 2003.
 - In June 2003 a new **public administration** law came into effect. The most significant change concerns recruitment processes; jobs must be open to competition and promotion must be based on merit, and the number of political appointments has been reduced. It also regulates payment structure, probation processes, and bonus and pensions arrangements.
 - In July 2003 a new **law on public supplies and services contracts** came into effect. The law makes the contracting process more transparent and stipulates that Internet-based selection mechanisms should be used for contracts above a certain threshold.
 - In July 2003 a new **law on political party financing** was adopted. The law introduces direct public funding for political parties (Chile had been, along with Peru, one of two countries in the region with no direct public funding for political parties). It establishes ceilings on spending and calls for sources and amounts of donations to be disclosed (see below).
 - In July 2003, congress began to debate a proposal to regulate **lobbying** in the legislature. The aim is to make the practice more transparent and provide a framework for sanctioning unlawful acts.
 - Congress is reviewing amendments to the **immunity law** and considering a bill that would increase transparency of parliamentary funds.
 - The government has continued to advance its wide-ranging **electronic government** programme, originally introduced in 1998. In 2002 and 2003, services made available online included customs processes, loan applications from micro- and small businesses, tax payments, agricultural-export certificates and patents registration. The government's system of purchases and public contracts was further developed after the electronic signature bill was passed in April 2002.
-

Chile's clean image tarnished by scandals

In October 2002, the weekly news magazine *Qué Pasa* ran an article alleging that government officials had received bribes from a businessman seeking a contract to build a new vehicle-licensing plant. Corruption scandals have emerged several times in President Ricardo Lagos' administration (most notably, involving contracting and trading patterns at the state-owned copper company, Codelco).¹ But the October case was different in that it triggered a series of further revelations implicating high officials and strengthened public perceptions that the entire machinery of government was tainted.

The impact was felt deeply. According to Thomson Financial Brasil, Chile suffered net outflows of US \$1.1 billion in the first half of 2003, which was widely attributed to the scandals. The government moved to allay concerns, hurriedly adopting a series of legal and institutional measures, some of which had been languishing in the legislative pipeline for years (see below).

The scandals were striking in view of Chile's relative complacency about its reputation as a clean destination for investors' funds. Chile has ranked favourably against other Latin American countries in indices measuring corruption, but perceptions were at variance with the underlying reality and many necessary reforms were not seen through to their conclusion.

The need for reform in two specific areas was emphasised by the series of scandals. The October case, known as *Caso Coimas* (the 'bribes case'), and a second scandal in March 2003 that involved the central bank, a state development agency and a private holding company, highlighted the need to clean up the interface between the public and private sectors. The Inverlink holding company allegedly used US \$100 million in deposit certificates, stolen from the state development agency Corfo, as security for

positions it took in the fixed-interest market, based on insider information supplied by the secretary of the former central bank president, Carlos Massad. Both Massad and Corfo's vice-president, Gonzalo Rivas, were forced to resign. The investigation continues.

The second area for reform – public sector conditions and performance – was underscored by two further scandals. In April 2003 charges were filed against 22 officials, including former transport and public works minister Carlos Cruz, for circumventing official pay scales by routing ministry funds to staff through an outsourcing company called Gate that had ostensibly hired them as consultants. In the other case, the ministry of public works (MOP) paid top-up salaries to consultants and experts at the Centre for Applied Business Research of the University of Chile. Thirteen MOP officials were charged with unlawfully paying extra fees for a job that the trial judge deemed was never properly realised: high fees were paid for merely filling in a questionnaire, when the consultants were supposed to have designed and implemented a system for evaluating public proposals and contracts by the MOP's regional divisions.

These last two cases should be viewed in the light of Chile's low public sector salaries. For decades governments have paid top-up fees to professionals, division heads and even ministers to attract well-trained staff. In many cases employees were given multiple contracts with the same institution for work that was never done. The additional salaries are often paid out of reserved funds, which are not subject to any detailed accountability mechanisms.

While there was no direct connection between the Corfo–Inverlink case and the later scandals, they merged in the eyes of the press and public opinion into a single governance malady. Media outlets failed to make any clear distinction between corruption, administrative error, accusations and facts, all of which contributed to a strong public sense that corruption stalks the corridors of government.

Scandals provide new impetus for reforms

In reaction to this spate of revelations (see above), the Lagos government created a transparency commission, composed of representatives from government, the opposition and two civil society organisations, with the task of drafting proposals to remedy the systems that had failed to detect corrupt practices.

Cross-party working groups were established in March 2003 to draft new legislation and propose amendments to laws that were currently being debated. Many of the anti-corruption measures that were debated were based on proposals by civil society organisations such as Corporación Chile Transparente, Transparency International's national chapter. An all-party anti-corruption pact, called the 'Agreement for the modernisation of the state, transparency and promotion of growth', was launched.

The opposition lent its support to the governing coalition to help speed through congress a dozen anti-corruption initiatives that have since passed into law. These were part of the 'short reform agenda'. Thirty-seven other reforms, the 'long reform agenda', are still being debated.

Among other areas, the new legislation raised government salaries across the board to reduce the temptation to seek bribes, and abolished the opaque system of bonuses. The number of civil service posts the president is entitled to fill was reduced from 3,000 to about 700 and new campaign-finance regulations were passed. The new measures also included regulating the use of discretionary government expenses and political

financing, and introducing a formal, non-party national integrity commitment between government, political leaders, businesses and civil society that would establish more robust monitoring mechanisms.

But typical of reforms that have been enacted hastily, not all the changes were well thought out. The campaign finance law, for example, makes a contribution to greater transparency in elections and introduces public funding for the first time, but it is undermined by a number of loopholes. It establishes spending limits, but does not provide sanctions for those who exceed them.² It allows as much as 30 per cent of donations to remain anonymous.³ It also fails to restrict donations from private companies and congress is discussing new bills that would even exempt these donations from taxes. Another problem is that the law does not provide strict enough safeguards against candidates violating the financing ceilings by creating their own campaign funds, parallel to party funds. A further criticism is that there is no regulation of donations and spending outside of the electoral campaign period.

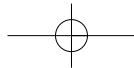
In other areas, reform proposals ran into opposition. One proposal, aimed at avoiding future Inverlink-style scandals by giving regulators more control over banking and insurance licences, was derailed because of perceived constraints to Chilean markets.

By late 2003 the fate of the 'long reform agenda' looked uncertain. There was growing concern that the ruling coalition might lose opposition support for the remaining reforms as parties seek to position themselves for the 2005 elections.

Andrea Fernández (Corporación Chile Transparente)

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Luis Bates Hidalgo, 'La legislación chilena y la Convención Interamericana contra la Corrupción' (Chilean legislation and the Inter-American Convention against Corruption), 2000, probidad.org/regional/legislacion/2001/022.html

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1. Codelco was the focus of Chile's biggest financial scandal in 1994, when it emerged that futures trader Juan Pablo Davila had cost the company US \$200 million by inflating the size of trades in order to generate higher commissions for his preferred brokers. More recently, the company has come under fire for failing to be transparent in adjudicating contracts. See *Qué Pasa* (Chile), 28 March 2003.
2. The first draft of the law was passed by the senate, but later challenged by the constitutional court on the ground that it did not provide channels for the accused to seek legal redress. Rather than develop the necessary dispute-resolution mechanisms (an electoral tribunal), the government opted to erase sanctions from the bill and resubmit it for approval.
3. As much as 20 per cent of the candidate's total campaign expenditure can be made up of anonymous donations as long as these do not exceed 340,000 pesos (US \$484). A further 10 per cent can come from donations as large as 10 million pesos (US \$14,500), which do not need to be disclosed to anyone other than the candidate.

China

Corruption Perceptions Index 2003 score: 3.4 (66th out of 133 countries)

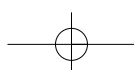
Bribe Payers Index 2002 score: 3.5 (20th out of 21 countries)

Conventions:

UN Convention against Transnational Organized Crime (ratified September 2003)

Legal and institutional changes

- In June 2002 the Standing Committee of China's National People's Congress (NPC) passed the Government Procurement Act, which came into force in January 2003. The law regulates **public procurement** and includes guidelines for preventing corruption (see below).



- In December 2002 amendments to the criminal code were ratified. One of the provisions stipulates that abuse of authority and dereliction of duty by **judicial officials** are subject to a criminal penalty of up to 10 years' imprisonment (see below).
- In 2002–03 a pilot scheme for political reform began in **Shenzhen** municipality, involving the separation of the powers of policymaking, enforcement and supervision – a radical departure from the current political model (see below).
- China's new leadership, which came to office in March 2003 under President Hu Jintao, called for an acceleration of the country's anti-corruption drive. One of its first measures was a new focus on **monitoring provincial-level officials** through the dispatch by the Communist Party's Central Commission of Discipline Inspection (CCDI) of 45 inspectors to visit all the country's provinces. The inspectors are expected to finish their monitoring programme within four years. The decision should be viewed in the context of criticisms made of the CCDI for failures to tackle corruption effectively.
- In August 2003 a law on **administrative licensing** was passed by the NPC standing committee. The new law, which takes effect from July 2004, will streamline and introduce transparency into the system of administrative permits. Until now official authority to issue licences for everything from marriage to establishing a business has provided a lucrative source of corruption to supplement meagre wages. Those seeking licences have often paid serial bribes to obtain approval from different authorities. The new law seeks to tackle the problem by introducing one-stop application procedures. The new rules also require licence applications to be filed in writing in order to avoid face-to-face contact with officials, hopefully lessening the incidence of 'improper fee collection'.

Reforms to combat widespread judicial corruption

Many of China's most senior leaders admit that corruption is rife in the country's judicial and law enforcement systems, in spite of a major crackdown on illegal practices and a series of recent reforms. In November 2002, Liu Liying, former deputy secretary general of the CCDI, highlighted judicial corruption as one of the key concerns.¹ Offences by judges and court officials include abuse of power in lawsuit proceedings, intentional errors of judgment, forging court papers and accepting bribes.

In an effort to improve practices, recent reforms have included the introduction of open trials; more restrictive requirements on

evidence; the separation of trials from enforcement and monitoring; and the monitoring and evaluation of judges. The reform programme includes harsher responses to judicial corruption. In December 2002 the NPC standing committee passed amendments to the Criminal Code (IV), which will punish the abuse of authority by court officials with up to 10 years' imprisonment.

As a consequence of the crackdown, 24,886 court employees were arraigned or prosecuted in 2002, or 2 per cent of the country's judicial staff.² Those investigated for allegations of corruption included two provincial chief justices. In the last two years a number of prominent officials in the legal system have been found guilty of taking

bribes, including Li Jizhou, former deputy minister of public security.

The government is also trying to improve judges' professionalism. Previously, there were no specific requirements for members of the judiciary, who typically hold prominent political positions since the institution is not independent. In March 2002 – for the first time – lawyers, judges and procurators faced a professional examination. Training is also being strengthened. In July 2002 the supreme people's procuratorate cooperated with the World Bank and Tsinghua University to run anti-corruption courses for procurators.

New experiments with political reform in Shenzhen

Shenzhen, a 'special economic zone' close to Hong Kong, has pioneered national experiments in economic reform for over 20 years, becoming one of China's wealthiest cities in the process. Recently it has been the scene of a number of administrative experiments designed to reduce corruption. In 1997–98 Shenzhen introduced a pilot reform, creating a 'one-stop service' for more than 1,000 items requiring the approval of the municipal administration. By early 2003, the number had been reduced to around 300.³ Since 2000, similar reforms have been extended to other cities.

In January 2002 the CCDI approved a corruption prevention strategy for Shenzhen and the city again took the lead in experimenting with systemic reform in 2002–03. The latest reforms are intended to create a transparent, accountable and law-abiding government, both to fulfil China's commitments to WTO principles and to build the kind of market environment demanded by the multinationals whose investments have propelled the city's development.

The central element of the reforms is the separation of policy-making, implementation and supervision, a measure that involves limiting the powers of the Communist Party

and, in a conscious imitation of the separation of powers that underpins democratic systems, separating the party from the government. What makes these proposed reforms qualitatively different from previous administrative reforms is that the role of the party will henceforth be restricted to 'drawing up the overall economic development strategy for an area, and for setting some other important policies', according to Shenzhen's mayor.⁴ The party will be forbidden from involvement in the executive side of government. The local people's congress will be responsible only for reviewing and approving the party's development strategies and large-scale spending plans.

The reform also involves placing supervision and audit bureaus directly under control of the mayor. The city has already created a new Bureau of Supervision, with powers of prosecution. In addition there will be a 'non-governmental' consultative institution, intended to increase government accountability. The Shenzhen government also plans to accelerate the sale of government stakes in local enterprises, to create a clearer separation between the state and business.

If successful, the Shenzhen experiment could be rapidly copied elsewhere in China. But the limitations must be kept in mind: they remain reforms at the level of administration, not of democratic accountability.

More open public procurement, under international pressure

Preparations for the 2008 Olympic games in Beijing and Expo 2010 in Shanghai – as well as major development programmes such as 'Developing Western China' – have focused attention on the widespread corruption in public procurement and have motivated a series of reform measures. According to a survey by the anti-corruption authorities of Licheng district in Jinan (Shandong province) in 2002, more than 70 per cent of cases involved bribery, 44 per cent of them

in public procurement. The highest occurrence was in construction, which accounted for 63 per cent of all bribery cases.

In recent years the authorities have taken steps to reform contracting procedures in order to improve efficiency and curb corruption. Experiments with open bidding began in Shanghai in 1996 and spread rapidly to other cities, with a growing proportion of bidding carried out by Internet. In 2000 open bidding was introduced into state-funded engineering projects, when the Invitation and Submission of Bids Law came into effect. Most notably, the NPC passed a government procurement act in June 2002, along with a series of other new regulations. The new law standardises rules across the country and at all levels of government, and aims to increase transparency in public contracting.

So-called 'construction markets' (*Jianzhu Youxing Shichang*) have been introduced in most big cities with the aim of regulating bidding in construction projects and curbing under-the-table deals. Under the new system, contractors have to win contracts through transparent and fair competition conducted at such trading centres. All procedures are computerised.

However, China's rapid transition has resulted in huge investment in construction, breeding widespread corruption. The volume of government expenditure in public procurement jumped from 3.1 billion yuan

(US \$0.4 billion) in 1998 to 65.3 billion yuan (US \$8.2 billion) in 2001, and is expected to rise to 150 billion yuan (US \$18.7 billion) in 2003. Since all levels of administration enjoy overwhelming and barely checked power – and transparency and effective monitoring are generally low – the opportunities for corruption are high, and the task of curbing it Herculean.

International commitments and perceptions play an important role in motivating the reform of public contracting. China has been a member of the World Trade Organization (WTO) since 2001. Though it has not signed the WTO Agreement on Government Procurement, which requires opening public procurement to foreign suppliers on an equal basis, it is an observer to the agreement and is negotiating to sign. In addition the overseas involvement of Chinese companies is having a strong domestic impact.

Two weeks after the passage of the government procurement act, the Beijing municipal government and the Olympic Organising Committee issued an action plan for the Olympics, which embraces a wide range of associated construction projects. The organising committee is cooperating with the Anti-Corruption Research Centre at Tsinghua University, and other institutions, to introduce transparency into all procurement projects for the 2008 games.

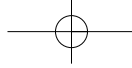
*Guo Yong (Tsinghua University, China) and
Liao Ran (Transparency International)*

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2. Chinese Chief Justice and Prosecutor's Working Reports to the National People's Congress, 2003.
3. *Nanfang Metropolis* (China), 18 January 2003.
4. *Financial Times* (Britain), 11 January 2003.

Costa Rica

Corruption Perceptions Index 2003 score: 4.3 (50th out of 133 countries)

Bribe Payers Index 2002 score: not ranked

Conventions:

OAS Inter-American Convention against Corruption (ratified June 1997)

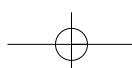
UN Convention against Transnational Organized Crime (ratified July 2003)

Legal and institutional changes

- Amendments to the 1983 **Law against Illicit Enrichment by Public Officials** have been proposed. The existing law obligates public servants to declare property ownership each year and threatens them with removal from office if they fail to do so. But not a single government employee has been prosecuted as a result of the contents of his or her statement. The proposed bill would allow the auditor general's office to examine the bank accounts of public servants and establish a broader range of sanctions for wrongdoers. Some legislators oppose the bill on the grounds that it would violate their right to privacy, as well as existing bank secrecy norms.
- Two specialised divisions within the attorney general's office were established by the law on the **creation of the prosecutor's office for public ethics**, which was promulgated in April 2002 and came into force three months later. One is for illicit acts and falls under the treasury and public service jurisdiction (a new jurisdiction established in May 2002 to deal with cases of corruption involving public servants) and the other is for acts related to drug trafficking.

The same law obligates the attorney general's office to carry out the administrative activities necessary to prevent, detect and eradicate corruption and to increase ethics and transparency in public service. It also states that the attorney general's office can denounce and accuse individuals before the courts of justice – a function normally reserved for the public prosecutions service – for abuse of authority in matters that fall within the treasury and public service jurisdiction.

In the case of **non-government employees**, the attorney general's office will only act when these persons have been involved in the administration of public property or funds, have received benefits arising from subsidies or payments with public funds, or have participated in a criminal offence committed by public servants. The



expanded functions of the attorney general's office do not preclude criminal acts from having to be processed additionally through existing administrative control and supervision channels, and do not impinge on the powers of the auditor general.

- The General Law of Internal Control entered into force on 4 September 2002 and establishes the minimum standards that must be followed by the national **auditor general's office** and the bodies under its supervision when setting up, improving, evaluating and maintaining their internal control systems.

Court ruling highlights need to close political financing loopholes

Investigations into the source of financing for the two main political parties, the National Liberation Party (PLN) and Social Christian Unity Party (PUSC), during the 2002 presidential election campaigns, uncovered a myriad of irregular funding tools – currently the subject of a congressional probe – and highlighted the need to tighten political finance legislation.

Political parties have a substantial amount of their campaign costs reimbursed by the state, according to the number of votes each party obtains and with the authorisation of the supreme elections tribunal (TSE). Parties first have to find the funds to pay for their campaigns. This sum is known locally as 'political debt' and the right to have it repaid by the state is enshrined in the constitution.

The nature of 'political debt' was called into question in May 2003 when the TSE ruled that it was lawful for the PLN to violate the ceiling on campaign contributions and the requirement to report the names of contributors, because contributions by individuals to a bank trust fund represented an 'investment in politics', rather than a donation – which would come under the category of 'political debt'. The fund was set up in September 2001 and party contributions were deposited on the basis that the money would be repaid after the elections with the funds the state traditionally reimburses.

The TSE ruling was criticised by NGOs and the press, who argued that parties and their funders should not resort to their role as

'private investors' in an effort to evade the controls and limitations set by law, especially when the funds used to guarantee their investments are public. A trust fund set up for purely commercial purposes is different from a trust fund established to handle political donations, which are subject to the controls established by the electoral code, as well as laws concerning the use and administration of public funds.

These obligations are set out in the law for the financial administration of the republic and public budgets, which stipulates how and when public funds can be authorised. It applies to all public bodies and also to 'private entities, in relation to the resources of the public treasury that they administer or dispose of'. The same law expressly prohibits the constitution of trust funds using public money (unless there is a special law authorising them), while the electoral code expressly forbids donations and contributions in the name of third parties – which is a specific characteristic of a trust fund.

At this writing, the congressional committee created to investigate the irregularities in the financing of the last presidential campaign is debating whether permitting the existence of trust funds of this kind would entail distorting the sense of electoral law and violate therefore the limits and prohibitions that have been set for political donations.

The committee is also investigating other sources of irregular funding, particularly the use of parallel fundraising systems by both the PUSC and the PLN to collect donations that were not reported to the TSE.¹

The findings of the committee include donations that exceeded the legal ceiling several times, as well as donations from foreign nationals, who are banned by law from contributing to political parties. Among the transactions, according to the *La Nación* newspaper, were unrecorded cheques totalling US \$500,000 from Taiwan's International Bank of China that were channelled to a secret PUSC account held at Banco Internacional de Costa Rica (BICSA), an offshore Costa Rican bank registered in Panama.²

The scandals have prompted a wide-ranging discussion on the adequacy of campaign-finance laws, and an agreement on the need to revise them.

Court decision revives debate on access to information law

In response to the PUSC and PLN financing scandals, the constitutional court ruled in May 2003 that the assets of political parties are subject to the principles of 'publicity and transparency', pursuant to article 96 of the constitution. The lack of access to party accounts made it difficult to follow the money trail and establish whether illegal donations had been made. Since the ruling, the movements and balances of current accounts held by political parties in state or private commercial banks or in any other non-banking financial entity can, in principle, be accessed by anybody.

The court declared that 'banking secrecy cannot be maintained in opposition to the

constitutional norm of the public nature of the political parties' private contributions, since the former institution does not have constitutional, but legal status'. It stressed that banking secrecy and the right to privacy are still in force for every bank account not connected with political parties. The decision reaffirms the right of an individual to ask for and receive information about the bank accounts of the political parties, or of limited companies that handle resources linked to political groups.

Many politicians were unhappy about the decision, claiming it compromised the independence of the legislature, might worry investors and violated the rights to privacy. Bank officials also voiced complaints on the grounds that the ruling violated customer privacy.

This ruling also helped to revitalise the debate over the bill to regulate access to information, which had become stuck in parliament. Progress in establishing the new legislation can be expected in the near future.

The party funding issue clearly has an international dimension as well. The local press reported that the Panama branch of Banco Internacional Costa Rica refused to open for inspection a current account registered in the name of Bayamo S.A., which allegedly acted as a channel for funds from overseas contributors to the electoral campaign of President Abel Pacheco. The branch defended its refusal by appealing to Panamanian law.

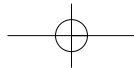
Roxana Salazar and Mario Carazo (Transparencia Internacional Costa Rica)

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Transparencia Costa Rica: www.transparenciacr.org

Notes

1. In its evaluation of campaign expenditure for the 2002 elections (which is used to calculate the level of government reimbursements to parties for funding), the general auditor's office found serious omissions in the information provided by parties, including unauthorised spending and undocumented claims.
2. *La Nación* (Costa Rica), 12 September 2003.

Egypt

Corruption Perceptions Index 2003 score: 3.3 (70th out of 133 countries)

Bribe Payers Index 2002 score: not surveyed

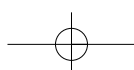
Conventions:

AU Convention on the Prevention and Combating of Corruption (adopted July 2003; not yet signed)

UN Convention against Transnational Organized Crime (signed December 2000; not yet ratified)

Legal and institutional changes

- To reduce red tape and petty corruption and 'streamline transactions', in August 2002 the ministry of administrative development created **citizen service centres** where citizens and investors can do their government business without going to the relevant ministries. The ministry publishes a guide of the 450 most requested services (out of a total of 728) and posts it on the Internet, specifying the documents and official fees associated with each.¹
- In an effort to confront widespread corruption among its members, the ruling National Democratic Party (NDP) announced in September 2002 the creation of a new **secretariat for ethics**, headed by a retired judge. New rules calling for more regular elections of urban and provincial party leaders were adopted.²
- In November 2002, the government appointed new chief executives to the four major **public sector banks** and required the establishment of an audit committee within each, comprising three non-executive board members.³



- In May 2003 parliament passed the **Unified Banking Law**, which governs the Central Bank of Egypt (CBE), the banking system and foreign exchange bureaus. The government claims that the law will grant the CBE greater oversight powers by entitling its governor to appoint senior banking officials. The change comes in response to a recent spate of bad loans by public sector banks to tycoons who default and often flee the country. Prime Minister Atef Ebeid claimed the law places a premium on transparency and disclosure, but critics say it does nothing to change the CBE's supervision by the presidency.⁴ The CBE will be required to submit comprehensive reports regarding monetary conditions in Egypt to the president and the assembly at the end of every fiscal year.
- In June 2003 parliament passed a package of reforms introduced by the NDP's Policy Secretariat, headed by President Hosni Mubarak's son, Gamal. The package included a law abolishing the **state security courts**. These exceptional courts, created in 1980, were ostensibly designed to mete out swift justice on national security issues, but have been used to try everyone from corrupt ex-ministers and businessmen to democracy advocates, such as Egyptian-American sociologist Saad Eddin Ibrahim. An NDP official asserted that abolishing the courts will facilitate the extradition of corrupt businessmen who flee Egypt after defaulting on loans.⁵ Lawyers and human rights activists point out that the new law leaves intact emergency state security courts, whose verdicts are final and subject only to presidential review.⁶

Assessing the Mubarak government's campaign against corruption

'Our battle against corruption is serious and genuine', Prime Minister Atef Ebeid has said. 'Our slogan is that no one is above the law.'⁷ Indeed, the government pursued several high-profile corruption cases in 2002–03 with prosecutorial zeal, partly to woo foreign investors and partly to show the public that it is serious about purging the bad apples from its ranks. But details of the anti-corruption campaign reveal a more chequered picture, with political considerations superseding genuine efforts at institutional reform.

The timing of the well-choreographed anti-corruption campaign is paramount. In the last 12 months, the nature of the campaign and its near-exclusive focus on senior officials in President Mubarak's NDP, concurrent with the political rise of his son Gamal, has led to speculation that the

crackdown is simply a prelude to his son's increasingly public role.⁸

The most striking feature of the campaign is that it is completely government-run and managed, lacking any input from NGOs and other civil society groups. Despite the administration's rhetoric about forging coalitions to combat graft, the 'no to corruption' slogan is a government monopoly. Draconian press and NGO legislation strips civil society of the requisite autonomy and resources to expose corrupt officials.

The Egyptian media have been relegated to the role of broadsheets for publishing the salacious details of corruption cases revealed by the government. A press law of 1996 imposed hefty fines and prison terms for journalists convicted of slander. It was put on the books after the muckraking opposition newspaper *Al-Shaab* ran campaigns against sitting ministers and threatened to get uncomfortably close to the alleged shady business practices of Mubarak's sons (Gamal and especially Alaa'). The

newspaper was eventually closed in 2000. In June 2003, journalist Moustafa Bakri and his brother, editors of the independent *Al-Usbu* newspaper, were put in prison for a year on charges of slandering editor Muhammad Abdel Aal, though their allegations of his extortionist practices proved true and he is now in prison.⁹ The Bakris were later released after the public prosecutor ordered a stay of implementation and review of the court ruling against them.¹⁰ Journalists have long called for the reform of the 1996 law to empower them to investigate corruption free from the threat of imprisonment under the pretext of libel and slander. A reform bill presented by an opposition member of parliament two years ago has not made it out of parliament's Proposals and Complaints Committee.

NGOs are even more crippled, hemmed in by new legislation that imposes more restrictions than the 1964 law it replaced. Ratified in June 2002, the law gives the administration the right to veto candidates for NGO boards; prohibits NGOs from 'engaging in politics'; enables the government to dissolve them without a court order; and requires that the government approve funding from foreign sources before NGOs can access it. The no-politics clause effectively rules out citizen participation in the fight against corruption and is designed to limit the monitoring capability of advocacy NGOs, especially human rights groups.

Parliament, another potential check on corruption, has historically been dwarfed by the overwhelming powers of the executive. It has neither financial powers, requiring presidential approval before changing items in the budget, nor oversight of the defence budget. Moreover, the 1971 constitution empowers the president to hold referenda by which parliament can be bypassed altogether.

The executive branch has four capable monitoring and auditing agencies that would go a long way towards uncovering and pursuing corruption, but they are not insti-

tutionally empowered to pursue wrongdoers. The Central Auditing Agency (*Al-Jihaz al-Markazi li al-Muhasabat*) can only make recommendations and issue reports. The elite anti-corruption Administrative Control Authority (*Al-Riqaba al-Idariya*) is a powerful monitoring agency and a corrupt official's nightmare, but it is tied to the presidency. The Administrative Prosecution Authority (*Al-niyaba al-Idariya*) and Public Funds Prosecution (*Niyabat al-Amwal al-Aama*) are competent investigative agencies but dependent on the prosecutor general, who is appointed by the president.

Since the presidency stands at the centre of Egypt's institutional structure, it controls the pace and direction of any corruption campaign – which is why observers discount the efficacy of the current one. They interpret it as essentially a political project, a cover for shoving aside the old guard and paving the way for a new team of technocrats, headed by Mubarak's son Gamal. At least one of the new appointments to head the corruption-ridden, public sector banks is a friend of the president's son, himself a banker.¹¹

The issue of political succession has come to the fore recently because President Mubarak has yet to select a vice-president. Both father and son deny that Gamal is being groomed to succeed, but the younger Mubarak's promotion to head the Policies Secretariat (a completely new body) at the NDP congress in September 2002, combined with the demotion of powerful agriculture minister Youssef Wali and the targeting of cronies of Kamal al-Shazli, minister of state for parliamentary affairs and *the* top old-guard NDP politician, reinforced suspicions of the anti-corruption campaign's political motivations.¹²

Any serious crackdown on corruption must begin with effective institutional reform. Government auditing bodies must be empowered to initiate and carry out independent investigations and delve into no-go zones, such as the interior, defence and justice ministries. They should answer

to parliament, not the presidency, and the legislature needs to regain its oversight powers over the executive.

The last refuge: the Egyptian judiciary

Former court of appeal judge Yahya al-Refai dropped a bombshell in early 2003 when he told the Judges Club and the Bar Association that he was leaving the profession and aired startling revelations about government corruption of judges via the ministry of justice. Almost as startling was the silence that greeted Refai's allegations. No government or ministerial spokesman either addressed or denied the charges; only the opposition, Nasserist weekly *Al-Arabi* printed Refai's statement in its 5 January edition.¹³

The incident illustrated the effectiveness of the government's gag on any discussion of corruption that it does not design and choreograph itself. The issue of judicial corruption is a particularly sensitive subject, constituting a central taboo in Egypt's public discourse. While legal activists have been worried by trends in judicial politics over the last 10 years, Refai was the first to articulate the details and practices. An unimpeachable career and his long activism on behalf of judicial autonomy lent even more credibility to Refai's whistleblowing.¹⁴

The justice ministry, headed by a former chief justice of the Supreme Constitutional Court (SCC), has worked overtime to take full control of the nation's judges, Refai alleged. The minister appoints justices to courts for as long as he wants and has powers to discipline and transfer judges. Refai also touched on the issue of judges' income, describing how a freeze on their notoriously meagre salaries was complemented by a system of selective bonuses to identify pliant judges – and punish upstanding ones.¹⁵ For the first time since the British occupation in the nineteenth century, Refai continued, the ministry has required judges to provide it with copies of civil and criminal suits against important officials, and adopted other measures to influence the outcome of high-profile cases.

The Egyptian judiciary, particularly the high court of appeal, the SCC and the administrative courts, are virtually the only remaining institutions to retain public confidence, despite fears of corruption among lower-ranking justices and those in the exceptional judiciary. But it has become an open secret in the legal community that the executive has made dangerous inroads into judicial independence.

Despite the hoopla surrounding President Mubarak's appointment of the first woman judge to the SCC, there have been worrying developments. For the first time in the SCC's history, and contrary to its tradition of self-selecting its chief justices, Mubarak appointed a chief justice and five judges to the court from outside its own ranks in August 2001. The newly minted judges all worked earlier in the ministry of justice, designing restrictive press and NGO legislation.¹⁶

Yet the judiciary retains signs of vibrant life in its upper echelons, despite attempts to rein it in. In December 2002, the highest court of appeal accepted the appeal of former finance minister Mohieddin El-Gharib, sentenced to eight years in prison in February for accepting bribes from a businessman in exchange for helping him evade customs duties. The court overturned the supreme state security court verdict, released El-Gharib and ordered a retrial. On 18 March 2003, the same high appeals court ended the three-year saga of Egyptian-American sociologist Saad Eddin Ibrahim, finally exonerating him after two state security courts found him guilty of vague charges and sentenced him to seven years in prison.¹⁷

Both cases show that the judiciary remains a viable refuge for those who fall foul of the government, and that it refuses to participate in government-sponsored smear campaigns. The high courts retain a significant degree of autonomy from executive dictates. In April 2003, an administrative court dealt a further blow to the government, issuing a precedent-setting decision allowing public demonstrations

and criticising the government for its unconstitutional ban on such gatherings.¹⁸

The fundamental problem is the lack of institutional guarantees for the independence of the judiciary. The absence of lifetime tenure is the main way the executive controls the judiciary, dangling in front of retiring judges lucrative offers of governor-

ships, consultancy work or appointment to government posts, a fact stressed by Refai in his statement. That judges do not have control over their budgetary or disciplinary matters is a further crippling feature. As with parliament and civil society, the executive must loosen its stranglehold on the judiciary and allow it to manage its own affairs.

Mona El-Ghobashy (Columbia University, United States)

Further reading

Administrative Control Authority (Cairo), Annual Report 2002 [Arabic]

Abdel Meguid, ed., *Democratic Development in Egypt* (Al-Ahram Centre for Political and Strategic Studies, 2002) [Arabic]

Hanan Salem, *The Culture of Corruption in Egypt: A Comparative Study of Developing Countries* (Cairo: Dar Misr al-Mahrousa, 2003) [Arabic]

Notes

1. *Al-Ahram* (Egypt), 1 August 2002.
2. *New York Times* (US), 3 October 2002.
3. *Al-Ahram Weekly* (Egypt), 19 June 2003; *Business Today* (Egypt), 1 November 2002; *Financial Times* (Britain), 1 February 2003.
4. *Cairo Times* (Egypt), 24–30 April 2003; *Al-Ahram Weekly* (Egypt), 10–16 April 2003.
5. *Al-Ahram Weekly* (Egypt), 13–19 March 2003.
6. *Cairo Times* (Egypt), 26 June–2 July 2003.
7. *Al-Ahram Weekly* (Egypt), 6–12 February 2003.
8. Gamal's proposal to do away with the state security courts (see above), and other reform initiatives that passed into law in June, led some analysts to conclude that a campaign was underway to legitimise his unelected entry into politics by portraying the president's son as the 'saviour from corruption'. See *Al-Ahram Weekly* (Egypt), 5–11 June 2003; *Al-Arabi* (Egypt), 18 May 2003, p. 5; and *Middle East Quarterly* (US), Spring 2001.
9. *Cairo Times* (Egypt), 5–11 June 2003.
10. *Cairo Times* (Egypt), 26 June–2 July 2003.
11. *Al-Arabi*, 11 May 2003. As Eberhard Kienle, a Middle East expert at London's School of Oriental and African Studies, points out, the anti-corruption fervour 'is always very selective, so I wouldn't conclude that it's a general campaign to end corruption. It has to be understood as power games between various groups'; Reuters, 23 September 2002.
12. Wali was demoted after his deputy, Youssef Abdel Rahman, was charged with receiving bribes from a French pesticide company in exchange for allowing their carcinogenic products to enter Egypt.
13. *Cairo Times* (Egypt), 10–16 July 2003.
14. Refai's name came to national prominence in 1969 when he and 188 other respected judges were dismissed or transferred to administrative positions as part of a purge by the Nasser regime. The purge was in response to a 1968 statement the judges had authored blaming Egypt's 1967 defeat by Israel on the lack of democracy and political

accountability. After being reinstated by President Anwar Sadat, Refai went on to head a circuit of the Court of Cassation (high court of appeal), Egypt's most independent judicial institution. Since no judges have lifetime tenure, Refai left the profession upon reaching the mandatory retirement age. He opened a private legal practice and continued to campaign for constitutional and legal reforms that would free judges from the ministry of justice, and was one of the first to raise the issue of full judicial supervision of parliamentary elections.

15. *Cairo Times* (Egypt), 30 January–5 February 2003.
16. *Cairo Times* (Egypt), 27 June–3 July 2002.
17. The state security courts were abolished when law 105 was repealed in June 2003.
18. The ruling came in response to a suit filed by activist Abdel Mohsen Hammouda to hold a demonstration against the US invasion of Iraq. See *Cairo Times* (Egypt), 5–11 June 2003.

France

Corruption Perceptions Index 2003 score: 6.9 (23rd out of 133 countries)

Bribe Payers Index 2002 score: 5.5 (12th out of 21 countries)

Conventions:

Council of Europe Civil Law Convention on Corruption (signed November 1999; not yet ratified)

Council of Europe Criminal Law Convention on Corruption (signed September 1999; not yet ratified)

EU Convention on the Fight against Corruption (ratified August 2000)

OECD Anti-Bribery Convention (ratified July 2000)

UN Convention against Transnational Organized Crime (ratified October 2002)

Legal and institutional changes

- A law passed in September 2002 introduced a number of changes in the **criminal justice process** and its organisation. By specifying statutes of limitations for certain types of offences, and allowing for court appearances and anonymous testimony in cases involving some lesser offences, the new provisions help pre-empt opportunities for corruption (see below).
- In March 2003, the legislature modified the constitution to reflect a 2002 ruling related to **arrest warrant and extradition** procedures between EU member states. In effect, the arrest warrant allows for extradition without applying the principle of double jeopardy, according to which the alleged crimes must be offences in both the member state issuing the warrant, as well as in the member executing it. The ruling identifies corruption as an offence.
- The long-awaited **financial security law** came into force in August 2003. It is designed to strengthen the regulatory system's powers of control and penalisation by creating a single authority for financial markets. Auditors will assume increased responsibility

ities and be prohibited from providing an audit and advice for the same client, unless both services are part of the audit process. The law more clearly specifies what types of conflict of interest preclude auditors from working on accounts. An independent authority linked to the ministry of justice – the high council of the audit office – will be responsible for regulating auditors. The law also calls for auditors' remuneration to be made public; for the annual general meeting to receive information on a board's work and on issues of internal control; and for all organisations making a public share offer to publish all transactions carried out by their managing agent, or by the latter's associates.

- At this writing, parliament was reviewing a bill that would alter the **justice system** to reflect recent developments in crime and that would overturn French criminal law procedures. The bill introduces the concept of pleading guilty and contains rules dealing with international legal cooperation that promote the effectiveness of anti-corruption activities. In particular, it seeks to amend the criminal code to reflect the May 2000 Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, as well as the 2002 ruling to institute Eurojust, the EU body dedicated to fighting serious cross-border or transnational crime.¹

The misuse of company property

Judges investigating corruption cases often pursue suspects for the offence of misuse of company property. The statute of limitations and types of punishment for the crime are now likely to change.

Until recently, the statute of limitations in cases of misuse of company property began not from the date of the offence but from its discovery; in contrast, the statute of limitations for corruption offences is applied from the date of the offence but runs only for three years. Consequently, investigating judges have tended to prosecute for the misuse of property rather than for corruption, which is usually more difficult to prove. In June 2001, however, the court of cassation ruled that the date the statute of limitations begins must coincide with the date on which a company publishes its annual financial statements, unless there is non-disclosure.²

Yet the definition of non-disclosure is actually at the heart of this debate. Opinions would be divided, for example, in a suit involving the appearance of a fictitious

employee listed in an annual report: would this case constitute non-disclosure? In its annual report of 25 April 2003, the court of cassation requested that the legislature settle this debate. Until now, parliament, fearing controversy among political groups, had refrained from becoming involved in associated legislative initiatives.

In a related matter, punishment for the misuse of company property may now be affected by the 2002 law modifying the justice system (see below). New procedures allow, for example, a public prosecutor to terminate a criminal prosecution and propose a fine or a restraining order on someone who pleads guilty and accepts the offer. All offences punishable by five years' imprisonment – including the misuse of company property – are subject to the new procedures.

The diminishing role of the investigating judge

The 2002 law on modifying the justice system met strong opposition from investigating magistrates, whose authority it

promises to reduce. Politicians, by contrast, have not commented openly on the legislation, though they widely support a reduction in the power of the judges, based largely on three aspects of judicial authority.

First, to date French criminal procedure has been based on a system of inquiry that favours a very active role on the part of the investigating judge. The public prosecutor presents complex criminal cases to investigating judges, who are responsible for impartially expediting the inquiry with a view to establishing the facts in a case. Napoleon called the investigating judge the most powerful man in France because of his right at the time to send the accused back to custody; since then, another special judge has been assigned that role, after a law passed in June 2000.

Secondly, politicians on all sides have frequently called into question the role played by investigating judges in very sensitive cases, in particular because several trials have been annulled after the discovery of procedural errors.³ To the further dismay of many, important cases have ended in acquittal, notably those involving Roland Dumas, François Mitterrand's foreign affairs minister, Dominique Strauss-Kahn, the former minister for economy and finance, and Robert Hue, former secretary general of the French Communist Party.

Thirdly, even the attorney general of the court of appeal of Paris has spoken in favour of the abolition of investigating judges to better protect the rights of the accused.

Unsurprisingly, the new law confers additional powers on the public prosecutor at the expense of the investigating judge. The attorney general – accountable to the minister of justice – may now employ coercive means, such as searches and telephone tapping, hitherto only possible once a case had been referred to an investigating judge. The attorney general may also determine which cases are related to organised crime and plea bargain with a defendant who has admitted to committing an offence. Strengthening the judge's role as arbiter represents an important step

towards an accusatory procedure, while empowering the public prosecutor is equivalent to sidestepping the investigating judge. In her recent book, Eva Joly observes that if this reform had applied to the Elf case, the Elf scandal could have been avoided as a settlement would have been reached at the beginning of the proceedings.⁴

The proposed reform of public contracts: too liberal?

A symptom of France's current tendency towards loosening procedures, the controversial regulation for the reform of public contracts has been the subject of lively debate. Opposition critics argue that this regulation creates new opportunities for corruption, and professional groups are concerned because they consider stricter procedures and safeguards to be guarantees of transparency and greater accountability. The government responded to these reactions by introducing major alterations to the regulation, with particular attention paid to spending limits.

This rule, which could be passed as early as the end of 2003, proposes a major reorganisation of France's procurement system. Through a development of partnerships between the public and private sectors, the government would grant businesses responsibility for the design, construction and operation of public amenities such as hospitals. The removal of all government oversight and management of the funding and performance of such facilities was condemned by the public finance courts 10 years ago and the process was abandoned because of its openness to financial abuse. Concerns are fuelled by issues such as the fact that political parties were estimated to have received around US \$100 million of procurement monies from 1989 to 1995, funds that were supposed to be used for the renovation of high schools in the Ile de France region.

The original text would permit a local elected officer to sign a public works contract

for €6.2 million (US \$7.1 million) with the organisation of his choice without needing to refer to a tender commission or discussing the contract with a council. When asked about the opportunities for corruption these reforms might create, the minister of economy and finance responded that corruption would not be eliminated through restrictive procedures since it was a 'question of the condition of the spirit'.⁵

Initial criticism of the first draft of the reform prompted the government to introduce major alterations to the text and, in July 2003, to create a cross-party commission of deputies to re-evaluate the more restrictive procedures set forth in the regulations.

The ministry of economy and finances subsequently announced that the new competitive threshold would be €240,000 (US \$275,000) for all public tenders. For construction contracts between €240,000 and €6.2 million (US \$7.1 million), the state and the local communities will be able to choose one of three formulas: the traditional

bidding process, recommended when competition between companies is strong; a publicised negotiation process, which allows communities to raise questions and call for improvements in the bids; and competitive dialogue, in which the public procurer defines needs to the company. For contracts involving more than €6.2 million (US \$7.1 million), only the traditional bidding process will be authorised. Further, public procurers must regularly publish a list of all significant transactions and vendors. The finance ministry has decided to continue monitoring transactions with an eye to enforcing the regulations.

The reform was put forth in a climate that broadly favours decentralisation, with central government seeking to devolve increased responsibilities to regional, departmental and municipal authorities. In particular, authority for road construction is soon to be hived off to local authorities while occupational and professional training, and non-national infrastructure projects, will be regional responsibilities.

Yves-Marie Doublet (Ecole Nationale d'Administration, France)

Further reading

Thierry Beaugé, 'Vers une nouvelle réforme du code des marchés publics' (Towards a reform of the code for public contracts), TI France, newsletter no. 17, April 2003

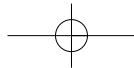
Yves-Marie Doublet, 'Quel financement futur pour les partis politiques européens?' (Questions of future financing for European political parties), TI France, newsletter no. 17, April 2003

'A propos de la réforme en cours du code des marchés publics, il est possible de concilier simplification et transparence' (The current reform process for public procurement can reconcile simplification and transparency), TI France, newsletter no. 18, July 2003

'La délinquance financière devant les tribunaux français' (Financial criminality before French courts), TI France, newsletter no. 15, October 2002

Service central de prévention de la corruption (Central service for the prevention of corruption), 2001 report, Editions des journaux officiels, no. 4433 [in French]

'En finir avec la criminalité économique et financière' (Putting an end to economic and financial criminal activity), Syndicat de la magistrature et ATTC, Editions mille et une nuits, no. 46, November 2002



Notes

1. For more on the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, see europa.eu.int/scadplus/leg/en/lvb/l33108.htm and www.justice.ie/802569B20047F907/vWeb/pcSBHN548FKE
2. The court of cassation is the supreme court of the judiciary, which is the final court of appeal against the judgments of the lower courts.
3. In France, judges and prosecutors form part of the same single body of magistrates. They may be sitting magistrates or standing magistrates. Sitting magistrates are akin to judges on the bench in the United States; they can issue ordinances, judgments and arrests. Standing magistrates are public prosecutors who work for the government in the criminal jurisdiction.
The principle of security of office applies to judges but not to prosecutors, the latter being under the direction and supervision of their hierarchical superiors and the authority of the minister of justice. French criminal procedure involves discretionary prosecution by the public prosecutor's office and so far has granted judges a greater role than parties in the conduct of proceedings.
4. Eva Joly, *Est-ce dans ce monde-là que nous voulons vivre?* (Paris: Les Arènes, 2003).
5. *La Tribune* (France), 30 April 2003.

Greece

Corruption Perceptions Index 2003 score: 4.3 (50th out of 133 countries)

Bribe Payers Index 2002 score: not surveyed

Conventions:

Council of Europe Civil Law Convention on Corruption (ratified February 2002)

Council of Europe Criminal Law Convention on Corruption (signed January 1999; not yet ratified)

EU Convention on the Fight against Corruption (ratified April 2001)

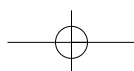
OECD Anti-Bribery Convention (ratified February 1999)

UN Convention against Transnational Organized Crime (signed December 2000; not yet ratified)

Legal and institutional changes

- In November 2002 the government established the post of **General Inspector of Public Administration** (GIPA) with the aim of improving the performance of monitoring agencies and exposing corruption. The GIPA can order inspections into government departments, public firms or public officials, and examine the private assets of civil servants engaged in any monitoring role. It will publish an annual report listing the most significant examples of corruption, misgovernance or lack of transparency in the public administration.

While the post may yet have a positive impact on corruption, critics have dismissed it as just the latest example of a habit of responding to problems by simply creating



new institutions, rather than examining why the existing ones do not function properly. The GIPA's remit overlaps with several other agencies', including the economic fraud squad and the Inspectors–Controllers Body for Public Administration, created in 1997.

- In January 2003, a new act extended the responsibilities of the **ombudsman** to include investigating corruption allegations in public service departments as well as addressing human rights and children's rights. The current ombudsman is assisted by five deputies and several investigators.
- In February 2003 parliament reformed the law on **immunity** for members of government. Under the reformed law, members of the government may not be prosecuted, arrested or imprisoned without the approval of parliament. Parliamentary consent is also required before an investigation into government behaviour can be launched or ended. Elected deputies enjoy immunity under article 62 of the constitution and parliament tends to protect its members against prosecution.

Construction for the Olympic Games multiplies opportunities for corruption

Greece has been pursuing an accelerated economic development programme over the past few years, due to approval of a third EU funding package and its hosting of the Olympic Games in 2004, which has increased the need for public works. The two programmes have multiplied opportunities for bribe taking and raised concerns about the authorities' ability to monitor such large procurements for maximum transparency and optimal growth.

EU development funds for 2000–06 amount to around €50 billion (US \$57 billion), much of which will be spent improving the competitiveness of the economy by modernising infrastructure.¹ The cost of preparing for the Olympic Games is over €4.4 billion (US \$5 billion).²

Three ministries supervise the awarding of contracts: the ministry of finance (service provision); the ministry of environment, planning and public procurement (construction and real estate); and the ministry of development (state supplies). The Audit Court plays an important monitoring role. It exercises prior control when the value of the contract exceeds €1.5

million (US \$1.7 million) in the case of supplies and services, or twice that amount in the case of construction schemes, and can conduct an *ex post* review of the selection procedure if it is challenged. The Greek Olympic Committee, in collaboration with the government, also supervises infrastructure projects associated with the games.

To increase transparency, parliament ratified an act in June 2002 that prevents media firms from participating in public works contracts because of their influence on public opinion and politicians. It was feared they might enjoy beneficial treatment as candidates to implement public works, or that they might engage in influence peddling.

More robust legislation on monitoring public procurement was proposed in October 2002, but not passed. The main points included: the establishment of an independent committee to supervise the selection process for awarding contracts, guarantees to ensure that the cost and quality of public works are measured objectively, and stricter penalties for corrupt officials and firms that distort procedures. Both GRECO and TI-Greece, among other organisations, have proposed further detailed measures to combat corruption.

The need for more effective mechanisms is underscored by indications of bribery, corruption and favouritism in the award of public contracts. An Audit Court examination of preliminary contracts in 2000 found 43 out of 182 were illegal, and 34 out of 164 in the following year.³ An opinion poll conducted in February 2001 revealed that 72 per cent of respondents believed that public administration bodies were responsible for most corruption in Greece and needed to be substantially reformed, while 86 per cent were dissatisfied with the way they operate.⁴ Floods seriously damaged many public works in summer and autumn 2002, raising further questions about quality and the effectiveness of the monitoring authorities. Some 2,140 cases of corruption, mostly concerning public officials, are currently under investigation by the authorities.⁵

Financing of political parties during the elections

Many candidates and parties in the 2000 elections were criticised for their lack of transparency concerning donors and the true amount of funding they received. Prompted to act by such dissatisfaction, parliament ratified a new law on political financing in June 2002 that provides stricter penalties for candidates who do not comply with campaign financing rules during elections.

The new law set the level of public funding for parties at 0.022 per cent of the national

budget. Its proportional distribution depends on the number of a party's parliamentary members and votes it received. The total amount spent by a party in the election season should not exceed 20 per cent of the previous public funding package. The new law also set regulations on private contributions. Greek nationals are permitted a maximum annual contribution of €15,000 (US \$17,000) to a party and €3,000 to a candidate. Foreigners and Greek owners of media firms are not allowed to donate to political parties.

The new law is also more exacting about how parties report their income. Accounts that record expenses, revenues and the names of donors are required annually. Monitoring them is the responsibility of a committee composed of members of parliament and judges. Those who violate the new rules face fines or, in serious cases, dismissal. The ministry of internal affairs, public administration and decentralisation is to set up a special elections committee before elections with responsibility for implementing the act effectively.

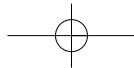
The concern, however, is not with the details of the new law, but whether political parties actually follow them. After the 2000 elections, TI Greece reported several instances where candidates had not followed the existing rules on promotional strategies, but nothing was done to punish the offenders.⁶ Rather than pass more legislation, the priority should be ensuring compliance with existing laws.

Vassilios Ntouvelis (Transparency International Greece/Diethmis and Athens University of Economics and Business)

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Notes

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2. TI Greece.
3. 'GRECO: Evaluation Report on Greece'.
4. Opinion poll on transparency, conducted by TI Greece in collaboration with Prognosis.S.A. The sample was 920 people from the region of Athens and Pireus, aged 16–69 in February 2001.
5. www.in.gr, 13 February 2003.
6. Although nothing was proven, TI Greece sent a report to the committee responsible for the monitoring of the election process detailing several cases of candidates who had failed to follow regulations concerning spending on publicity. But it faced resistance and bureaucratic difficulties in getting the report to the committee. It is not known whether the report actually reached the committee.

Guatemala

Corruption Perceptions Index 2003 score: 2.4 (100th out of 133 countries)

Bribe Payers Index 2002 score: not surveyed

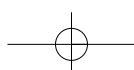
Conventions:

OAS Inter-American Convention against Corruption (ratified July 2001)

UN Convention against Transnational Organized Crime (ratified September 2003)

Legal and institutional changes

- In October 2002, the Anti-Narcotics Operations Department (DOAN) was dissolved and the **Anti-Narcotic Information and Analysis Service (SAIA)** created in its place. The SAIA has responsibility for investigating money laundering. DOAN had been embroiled in a series of scandals – 320 of its staff were arrested for corruption in 2002 – and the level of drug seizures fell under its steerage. The US Bureau for International Narcotics and Law Enforcement Affairs trained 400 new SAIA agents in the year 2002–03.
- A law on pre-trial hearings was approved by congress in December 2002 and entered into force in February 2003. It extends to a greater number of public officials the right to have cases heard by congress before they can be tried in court.¹ It also gives the congressional commissions unlimited time to decide whether or not to lift the **immunity** of the accused, except in the cases of judges or magistrates when the decision must be taken within two months.



- A **Law on Probity and Responsibilities** was approved by congress in December 2002 and entered into force in February 2003. Containing rules and processes for opening administrative procedures against public officials, it specifies the imposition of monetary sanctions when found guilty. The sanctions, however, are mild and the procedures it establishes cumbersome. Also problematic is the fact that the text refers to the offence of 'illicit enrichment', which has not been defined in this or any other law.
- In December 2002, President Alfonso Portillo created the **National Commission for Transparency and against Corruption** to coordinate anti-corruption activities and encourage transparency through implementing institutional policies to 'prevent, sanction and eradicate corruption in the public, private sector and civil sectors'. Set up as an autonomous, impartial body, composed of equal numbers of representatives from civil society and government, by late 2003 the commission was facing allegations that it was not transparent and its future looked uncertain.
- In December 2002, congress approved a decree that gives the attorney general's office responsibility to defend, both legally and extrajudicially, the interests of the state both in Guatemala and abroad. This latter point has positive implications for the **repatriation of assets**.
- A number of bills that would enhance **transparency** were presented to congress, but there was little interest in discussing, let alone passing them. They included: a law to regulate **social funds**, which are currently administered in an entirely discretionary way; a law on **access to information** (though this bill has been neutered by the addition of 40 amendments in the legislature); definitions of the offences of **transnational bribery**, illicit enrichment and influence peddling; and a law for the **protection of witnesses** who denounce corruption.

Most worrying for civil society organisations and the media is the proposal to reform the penal code to criminalise the '**improper use of privileged information**', which would encourage the denial of public information, limit freedom of expression and reverse progress on making information public. What is understood by 'privileged information' is not defined. There is little chance of the law being passed, however, due to its unpopularity and the fact that 2003 is an election year.

Culture of impunity serves grand corruption

Recent years have seen several cases of grand corruption involving officials at the highest level. Many have not been resolved, reflecting a culture of impunity deeply entrenched in the Guatemalan state. The scandals were exposed by an increasingly vigilant local press.

One of the biggest cases was the alleged embezzlement of 4.5 million quetzals (US \$600,000) of public funds by President Portillo, Vice-President Juan Francisco Reyes and his private secretary, Julio Girón. They were accused of setting up 13 bank accounts and four ghost companies in Panama to launder the money. The so-called 'Panama connection' came to light in a report published by the newspaper *Siglo XXI* on 5 March 2002.

In August 2002, anti-corruption prosecutor Karen Fischer Pivaral abandoned the investigation due to lack of evidence. But the accusations continued to rain down and, in December, she asked the Panamanian authorities to take up the investigation. Fischer resigned in March 2003 under pressure, she alleges, from Chief State Prosecutor Carlos de León to terminate the investigation. She later fled Guatemala after claiming to have received death threats.

Fischer's successor, Tatiana Morales, presented her letter of resignation in July 2003 alleging similar pressures. She referred in her letter to frustration that other branches of the public prosecutions service were undermining her work. A special advisory commission created to review the case, in parallel to the anti-corruption prosecutor's investigations, advised against continuing the investigation on the basis of information from the Panamanian bank supervisory body that Portillo had no bank accounts in Panama and, furthermore, that the supreme court should first lift his immunity. Panama's supreme court in mid-July ordered the attorney general's office to open investigations based on a request filed by Morales.

Another case that has still not been properly investigated is corruption at Guatel, the state-owned telecommunications company. It first came to public attention in August 2002, when the newspaper *El Periódico* published a series of investigative reports alleging that Guatel manager, Guillermo Estuardo Del Pinal, and people close to him had misused public funds.²

Del Pinal allegedly authorised several large payments that had already been paid and accounted for under the previous Guatel

management. In late 2001 a transfer of 70 million quetzals (US \$9 million) was reportedly made to cover a debt to the US Eximbank, but Guatel accounts show that this sum had already been paid in 1998–99. He is also accused of providing jobs in Guatel to the friends and family of high-level officials, as well as for members of congress.

Although Finance Minister Eduardo Weymann said that the transactions were illegal – as did the auditor general – he saw no significant obstacles to authorising Guatel's budget for 2000 and 2001. Neither were the allegations an obstacle to Oscar Dubón Palma's election to his current post of auditor general. Dubón had allegedly signed the duplicate when he was financial director and deputy manager of operations of Guatel. He then resigned from his post to run for auditor general, a post he was seeking at the time the allegations emerged.³

The cases are indicative of a generalised practice in Guatemala: the abuse of public office for personal enrichment, or as a source of jobs and wealth for family and friends. They raise questions about the lack of autonomy of the various branches and bodies of government – which are frequently headed by people close to the party or officials in government, as the Guatel case demonstrated. Fischer's resignation from the post of anti-corruption prosecutor gives particular cause for concern about the ability of public prosecutors to act in cases involving high-level public officials – the chief state prosecutor has total discretion to remove and name prosecutors. This lack of independence contributes to the prevailing impunity for perpetrators of corruption.

Violeta María Mazariegos Zetina (Acción Ciudadana, Guatemala)

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- Acción Ciudadana, 'Manual ciudadano de monitoreo del gasto público' (Citizens' manual on monitoring public spending), Guatemala, 2003
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- Acción Ciudadana: www.quik.guate.com/acciongt

Notes

1. This portion of the law was declared unconstitutional and suspended on 2 September 2003.
2. All of the details from this case were reported in a special investigation by *El Periódico* (Guatemala), 21–26 August 2002.
3. Congress elects the auditor general for a four-year term. The post holder can only be removed by congress, in cases of negligence.

Japan

Corruption Perceptions Index 2003 score: 7.0 (21st out of 133 countries)

Bribe Payers Index 2002 score: 5.3 (13th out of 21 countries)

Conventions:

OECD Anti-Bribery Convention (ratified October 1998)

UN Convention against Transnational Organized Crime (signed December 2000; not yet ratified)

Legal and institutional changes

- The Act Concerning Elimination and Prevention of Involvement in Bid Rigging, approved in July 2002, came into effect in January 2003. The law introduces mechanisms to prevent public servants, at national and local level, from involvement in **bid rigging in public procurement**. Bid rigging is pervasive in Japan, especially in the construction sector. It was already criminalised under the penal code and regulated under the fair trade law: the new law empowers the Fair Trade Commission (FTC) to require the head of a ministry or local government to take steps to eliminate suspected bid rigging by public servants. When the FTC requires, a minister or head

of local government is now obliged to conduct investigations, punish and demand compensation from the officials involved.

- The **Fair Trade Commission** was relocated in April 2003 and now comes under the direct control of the cabinet office. Since 2001 it had been a semi-autonomous agency within the ministry of public management, home affairs, post and telecommunications. The FTC's previous location raised doubts about its independence since its remit included oversight of the post and telecommunications industries, which were governed by another bureau in the same ministry.

Failure to extradite Fujimori

Responding to Peru's formal request in July 2003 for the extradition of former Peruvian president Alberto Fujimori to face charges of human rights abuse and corruption, an official said the Japanese government had no intention of overturning its principle of not extraditing Japanese nationals. A bilateral extradition treaty could override this principle, but no extradition treaty exists between Japan and Peru. Fujimori was granted citizenship when he fled Peru in November 2000. While a campaign has been launched in Peru and worldwide to lobby for Fujimori's extradition, it has received only limited support in Japan. (See Box 6.2, 'Campaigning for Fujimori's extradition', page 94.)

Little action yet against foreign bribery

Although there have been several reports of Japanese companies making illicit payments to win business in international markets, none has yet been charged. The bribery of foreign public officials was made illegal in Japan in February 1999 through an amendment to the Unfair Competition Prevention Law (UCPL), which followed Japan's signature of the OECD Anti-Bribery Convention.

The most prominent case in 2002–03 involved allegations that an employee of Mitsui & Co. gave 1.3 million yen (US \$11,000) in bribes to a senior official in Mongolia's ministry of infrastructure

between June 2001 and April 2002. The purpose was allegedly to win bids on construction projects for the Mongolian government, funded through Japanese official development assistance. In September 2002 the Japanese prosecuting authorities decided not to file a case against the company or the employee, although the public scandal led to the resignation of Mitsui's chairperson and president. Reportedly, the supreme public prosecutor's office determined that there was insufficient evidence to prove that money had been specifically given to obtain an illicit profit – an important requirement before the UCPL's anti-bribery provisions can be applied. The small amount of money allegedly involved and its timing – long before Mitsui won the tender – were also cited as reasons for dropping the case. However, dropping the case may have sent the message to Japanese companies that small bribes are permissible.

Japan also faced criticism from the OECD Working Group on the Anti-Bribery Convention about loopholes in existing legislation. The UCPL does not apply to cases where an overseas subsidiary of a Japanese company pays bribes to foreign officials. In an apparent attempt to fend off criticism, the ministry of economy, trade and industry announced in January 2003 that the government intended to enact a new law on bribing foreign officials within two years. The law is expected to replace the anti-bribery provisions of the UCPL and expand the law's jurisdiction.

A year of scandal in the Diet

In March 2003 Takanori Sakai, a member of Japan's lower house of parliament, the Diet, was arrested on suspicion of violating the political funds control law. Prosecutors said that Takanori Sakai violated the law by ordering his secretaries not to report some 120 million yen (US \$1 million) in donations he had received from businesses from 1997 to 2001. Sakai pleaded not guilty, and at this writing the case is still being heard in court. In the same month, agriculture minister Tadamori Oshima stepped down after his secretaries faced a series of allegations that they had failed to report receiving money from businesses.

The cases were the latest of a string of corruption allegations that led to the arrest or resignation of numerous Diet members over the past 12 months. In November 2002 Muneo Suzuki was charged on several counts, including receiving a bribe worth 5 million yen (US \$42,000) in 1998 from a Hokkaido company in return for using his influence to obtain business related to a national park. At this writing the case is being heard in a district court.

In August 2002, former foreign minister Makiko Tanaka resigned from the Diet, apparently due to increasing suspicion that she had embezzled part of the official salaries

paid to her secretaries. The first half of the year also saw the resignations of Social Democrat legislator Kiyomi Tsujimoto, Koichi Kato (former secretary general of the ruling Liberal Democratic Party) and Yutaka Inoue, president of the upper house. Tsujimoto resigned after allegations that she misused funds provided for her secretary's salary. The other two resigned following allegations that businesses had channelled illicit funds to their secretaries. None of the three was charged.

There are a number of reasons behind the high rate of political resignations during the year. While there is no evidence of increased levels of corruption in the Diet, the rate of detection has certainly shot up. Some cases were revealed by whistleblowers, and their actions have led to a growing demand for the introduction of laws to protect them. The media has also played an important role in stoking public impatience with the actions of politicians and their secretaries.

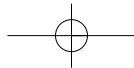
The case of Takanori Sakai may also be evidence of a more rigorous approach by the prosecuting authorities in applying existing legislation on political funding. Prosecutors regarded Sakai's alleged persistent demands for political donations as tantamount to extortion. It was the first time that a Diet member has been arrested under the political funds control law.

TI Japan

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Kazakhstan

Corruption Perceptions Index 2003 score: 2.4 (100th out of 133 countries)

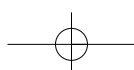
Bribe Payers Index 2002 score: not surveyed

Conventions:

UN Convention against Transnational Organized Crime (signed December 2000; not yet ratified)

Legal and institutional changes

- A **law on political parties** was adopted by parliament in June 2002 and came into force the following month (see below).
- A new **customs agency** was established in August 2002. Previously, it had been part of the ministry of public revenues and so lacked independence. This had resulted in clashes between the minister of public revenues and the chair of the customs committee, which the new structure seeks to avoid.
- The post of **ombudsman** was created by presidential decree in September 2002 to monitor respect for human rights and individual freedoms, including cases where rights have been violated as a result of corruption. The office received 226 enquiries in its first six months, many of them related to complaints about law enforcement agencies, or failures to comply with court decisions. In December 2002 the National Centre for Human Rights was established by presidential decree to support the ombudsman.
- The status of the **disciplinary boards** (DBs) of regions and of the cities of Astana and Almaty was altered and their powers increased by a resolution in December 2002. The DBs are consultative bodies, set up in March 1999 to monitor the activities of the *akim* (mayors) and the heads of other administrative and territorial agencies, including law enforcement bodies that are financed from the local budget. They issue recommendations about disciplinary action for public servants. The impact of the DBs on curbing corruption is not likely to be great, however. They lack autonomy because they depend on the *akim* for administrative personnel and resources. They are also subordinate to a presidential commission on corruption and public service ethics.
- The **Commission for Prevention and Suppression of Corruption** was established within the ministry of justice pursuant to an order from the justice minister in January 2003. There are plans to set up similar commissions in the regional departments of justice. This commission has the status of an interdepartmental body. Its main goals are to prevent and suppress corruption, abuse of office and the misuse of budgetary funds by employees of judicial authorities, though little has been achieved so far.



- The code on **privatisation of land** was approved in June 2003. It introduces private ownership of agricultural land, regulates property rights (ownership and rental), asserts the competence of the state and its bodies to oversee land disputes, and introduces mechanisms to protect and regulate use of the land. The process of privatising land has enormous potential to increase corruption if not properly monitored.
- An **amnesty for registering property** was proposed in June 2003 to legalise property acquired in the so-called 'shadow economy'. It aims to incorporate small businesses into the regulated economy and register property owned by rural immigrants in the cities. This one-off process of registration also has potential for corruption since information will not be disclosed and registration is voluntary. The draft law does, however, stipulate that rights to property that have been challenged legally, or were acquired through corrupt means, will not be granted.

Restrictive political party financing law threatens democratic principles

Kazakhstan's new law on political parties introduces fundamental changes relating to the financial activities of political parties, including their sources of funding. Any beneficial outcomes that this might represent in terms of more transparent and accountable funding are, however, undermined by clauses in the law that constrain the formation and operation of new parties.

The new law allows political parties to seek funds through entrance and membership fees, donations by Kazakh citizens and Kazakh NGOs, and from local businesses. It stipulates that taxes on donations must be paid and that documentary evidence of donations must be provided.

A number of sources of financing for parties that had been included in the former law of July 1996 are excluded in the new law, such as the proceeds of lectures, exhibitions, sports, lotteries and publications. Also worth noting is that the new law only calls for information from parties about money held in accounts in banks registered under Kazakh legislation. The new law does not consider money held in foreign banks.

The official explanation for the new law is that it strengthens the role of political parties and makes their financing more transparent. By mid-2003 no political party had been charged with violating the sections of the new law relating to party funding.

Where the new law began to take its toll, however, was on party registration. The law increases the number of members a party needs to qualify for registration from 3,000 to 50,000, and requires that branches with no less than 700 members be established in every region in the republic. It also introduces rigid mechanisms for the state to regulate political party activity and increases opportunities for the state and its bodies to interfere in parties' internal affairs.

There were 19 registered parties before the new law was passed: now there are seven. Many of the others were unable to collect the required number of members to qualify for re-registration.¹ As a result, the only remaining opposition party in Kazakhstan is the Communist Party.

Some opposition groups, including the Republican People's Party of Kazakhstan and Azamat, have refused to abide by the law, arguing that some of its clauses directly contradict the constitution and other legislation. For instance, the new membership requirements for the formation of political parties contradict the 1996 Law on

Public Organisations that stipulates that only 10 people are needed to create a public organisation.

The effects of the law in its first year suggest that its benefits in terms of transparency may well be outweighed by the setback in democratic rights. In addition to clauses that debar parties from running if they fail to surpass the membership threshold, restrictions to opportunities for financing parties could force parties to resort to illegal means of financing their activities.

Civil society and opposition parties mobilise to stem flow of oil dollars into private accounts

A lack of accountability, transparency and public oversight has led to the sad reality that some of the proceeds of Kazakhstan's oil boom have been siphoned into private bank accounts rather than fueling long-term economic development. The following case, referred to as 'Kazakhgate', illustrates how oil revenues are misused and is striking because of the huge sums involved, the senior officials implicated and the array of multinational corporations and banks involved. Almost as important, it demonstrates civil society's intolerance of such institutional failings.

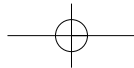
The case gained prominence in March 2003 when US businessman James Giffen was arrested in New York and charged with paying more than US \$20 million in bribes to senior Kazakh officials to secure lucrative contracts for his consulting firm, Mercator Corporation.² Giffen had been paid to advise President Nursultan Nazarbaev on attracting foreign, primarily US, capital to the oil and gas sector since 1992. His main task was to act as intermediary between oil companies and the Kazakh government, under an agreement dated 21 December 1994 between Mercator and the ministry of oil and gas. Mercator was paid 'success fees' for every deal it brokered.

From 1995 to 2000, Mercator received approximately US \$67 million in 'success

fees' for its work in Kazakhstan. Giffen also asked oil companies to pay about US \$70 million into conditional deposit accounts in Banque Indosuez and its receiver, Credit Agricole Indosuez, in connection with the purchase of oil and gas rights so that this money could then be transferred to confidential Swiss accounts under his control. From the 'success fees' paid to Mercator and the money transferred to confidential Swiss accounts, Giffen allegedly made illegal payments totalling more than US \$78 million to two of the most high-ranking officials of the Kazakhstan government, referred to in the case file as 'KO-1' and 'KO-2'. The *Wall Street Journal* of 23 April 2003 identified them as President Nazarbaev and former prime minister Nurlan Balgimbaev.

Opposition parties in Kazakhstan were aware of the fraud investigation long before the case erupted in the international press. In January 2003 the Democratic Party of Kazakhstan, Ak Zhol, launched a campaign on 'transparency of raw materials contracts' to alert the population to how the nation's wealth was being squandered. Activities included collecting signatures in support of greater transparency in awarding contracts for raw materials and, by 4 June 2003, the party said it had collected over 650,000. Ak Zhol also worked on draft amendments to legislation relating to transparency of contracts between the government and energy companies with the aim of making all contracts public. The party co-chairman requested that legislators from the *Majilis* (the board of parliament) support and begin work on the law. Lastly, party leaders appealed to all leading foreign companies working in the raw materials sector to remove confidentiality from oil contracts signed with the government.

The Communist Party also tried to obtain more information about Kazakhgate. In October 2002, the party's first secretary, Serikbolsyn Abdildin, repeatedly requested Prime Minister Imanghaliy Tasmagambetov to furnish details of the persons and sums of



money involved in the scandal – with no results. A request to include the issue on the parliament's agenda was turned down by the speaker, Zharmakhan Tuyaqbaev.

Civil society has played an equally prominent role in the struggle to ensure that oil revenues are not stolen or spent on pet projects or inefficient enterprises. The Caspian Revenue Watch project, coordinated by the Open Society Institute with input from local NGOs, is pushing for the government to implement systemic reforms in the management of oil revenues. It has

called on foreign oil and gas companies to disclose their payments so the use of these revenues can be monitored. Without disclosure, the organisations insist, companies expose themselves to accusations that they have underpaid the government and are contributing to continued poverty.

Such opposition efforts, plus pressure from civil society, are vital because the government has so far made little attempt either to remedy the problem or cooperate with international investigators, pleading 'sovereign immunity'.

*Andrey Chebotarev, Nurgul Kuspanova and Sergey Zlotnikov
(Transparency Kazakhstan)*

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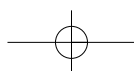
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Notes

1. In four cases, the reason given by the justice ministry for debarring registration was infringement of the new law's prohibition on gender- or ethnic-based parties.
2. See www.kub.kz material of 30 April 2003 for the bill of indictment on the Giffen case issued by the court of the Southern District of New York.



Kyrgyz Republic

Corruption Perceptions Index 2003 score: 2.1 (118th out of 133 countries)

Bribe Payers Index 2002 score: not surveyed

Conventions:

UN Convention against Transnational Organized Crime (signed December 2000; not yet ratified)

Legal and institutional changes

- The **ombudsman** law, signed into law in July 2002, provides the legal basis for the ombudsman to ensure official compliance with constitutional rights. It specifies procedures for appointment to – and removal from – the post, as well as its responsibilities and investigative procedures (see below).
- A commission on legalising the **illegal economy**, appointed by Prime Minister Nikolai Tanaev in August 2002, was tasked with drafting a programme of work under the chairmanship of Deputy Premier Djoomart Otorbaev and Finance Minister Bolot Abdildaev. The plan envisions four principal projects: economic analysis of the shadow economy; identification of fiscal policy measures; labour force policy; and accounting and registration policy. The goal of all four measures is to bring illegal businesses in all economic sectors into legal conformity. The National Statistics Committee has reported that the shadow economy accounts for at least 13 per cent and as much as 40 per cent of GDP.
- A nationwide **constitutional referendum** approved in February 2003 introduced reforms that included the extension of immunity from prosecution for the first president (see below).
- President Askar Akaev signed a decree in February 2003 raising **judicial salaries** by 50 per cent. He called the decision a move to reduce corruption in the court system.
- An **anti-corruption law** was adopted in March 2003 to highlight and prevent corruption, call offenders to account and create a legal and organisational framework for anti-corruption operations. The law – which has no implementation mechanisms – calls on the **media** to investigate and report corruption cases, and to insist that relevant state institutions provide information about such wrongdoing (see below).
- President Akaev issued a decree in April 2003 that provides for the establishment of a **National Council on Conscientious Government (NCCG)** to facilitate transparent administration as part of the government's anti-corruption strategy. The NCCG is expected to eliminate government interference in the economy; provide openness and accessibility of public services; and enhance the responsibility of officials and supervisors to civil society and the state. Although the 25-member council is working, provisions concerning its operation have yet to be approved by the president.¹

- Together with the finance ministry, the interior ministry and the national security service, the National Bank of Kyrgyzstan drafted a law against **money laundering**, which was presented to the lower house of parliament in early 2003 and is expected to be adopted before the end of 2003. The bill sets the maximum sum of money whose origin does not have to be indicated at 1 million soms (US \$23,000). The bank's director, Ulan Sarbanov, said the law would serve to establish a lawful foundation to combat money laundering and the financing of terrorism.²
- In June 2003, the lower house of parliament adopted laws granting lifelong **immunity** from prosecution to President Akaev and two former Communist Party first secretaries who are now parliamentarians. The law applies to all actions taken during their periods in office and also guarantees Akaev and his family lifelong privileges, such as the retention of housing and the use of a car and driver. Proposed as a gesture of respect for the country's first president by parliamentarian Kubatbek Baibolov, the benefits are not intended to apply to future heads of state. An opposition movement that is calling for Akaev's resignation and is comprised of parliamentarians, human rights activists and opposition political figures issued a statement denouncing the law as unconstitutional and anti-democratic.
- On the president's orders, Prime Minister Tanaev, who also heads the NCCG, set up an independent structure committed to the fight against corruption in July 2003. The agency will work with officials to fight **bribery, embezzlement and cronyism**, but it has no enforcement powers or police functions.³

Establishing the ombudsman office

In an important step towards defending human rights, the ombudsman law was adopted in July 2002. The new ombudsman is a human rights activist, Tursunbai Bakir-uulu, who took up his duties in December 2002.⁴

Bakir-uulu has called for an extension of the moratorium on the death penalty for 2003 and its complete abolition in future. He also appealed to the president to reform the prison system by establishing the post of psychiatrist in correctional institutions. After one month in office, Bakir-uulu announced that 60 people – foreigners as well as citizens inside the republic and abroad – had appealed for legal protection and advice.

The ombudsman has at his disposal 12 inspection bodies, qualified to investigate cases involving civil law and family law as well as laws protecting the rights of women, children, ethnic minorities, religious groups,

veterans, disabled persons and access to education and health.

The UN Development Programme (UNDP) approved a nine-month project for US \$140,000 on 11 March 2003 to strengthen the ombudsman's office through human rights libraries and the training of staff.⁵ UNDP is providing similar assistance in Azerbaijan, Kazakhstan and Slovakia, all of which created ombudsman institutions from March to November 2002.⁶

While the international community and civil rights groups welcomed the decision, few people in Kyrgyzstan are aware of an ombudsman's functions. A poll conducted in March 2003 by the Center for the Study of Public Opinion and Forecasts showed that 53 per cent of the respondents did not understand the word 'ombudsman' and only 23 per cent had heard about the position.

By June 2003 the ombudsman had received some 800 complaints – mostly regarding the law enforcement agencies.

Bakir-uulu has given leading positions in his office to members of the opposition: Omurbek Subanaliev, a member of Feliks Kulov's Ar-Namys party, is responsible for relations with the executive and enforcement agencies and Zuura Umetalieva, a well-known human rights campaigner and civil society advocate, represents the ombudsman in the northern Naryn province.⁷

But the future of the ombudsman's office is uncertain. In June 2003, Bakir-uulu announced that the office might have to close due to lack of funding and several judges accused him of interfering in the legal process. UNDP made its grant the following month and subsequently the government approved an allocation of 15 million Kyrgyz soms (US \$350,000).⁸ Nevertheless, international organisations are concerned about the ombudsman's lack of independence.

Irregularities mar constitutional referendum

Despite intense opposition, a controversial referendum on alterations to the constitution was held and approved on 2 February 2003. The results were contested by the opposition and civil society groups who levelled allegations of vote rigging. State control of television meant the president was able to control the level of debate and few Kyrgyz had access to opposition newspapers or alternative views.

The amendments guarantee President Akaev the right to remain in office until the end of his term in December 2005 and strengthen his powers at the expense of parliament. It will be much more difficult to impeach the president: four-fifths of the vote is required, instead of the two-thirds needed before the amendment. In addition, parliamentary deputies had their immunity restored, and the president's was enlarged (see above).⁹

Critics accused the president of rushing the process and not allowing sufficient parliamentary time for consideration of the provisions. On 15 January, 22 NGO leaders

urged the government to postpone the referendum, calling it 'a premature and hasty action'. They warned that citizens were 'not ready to answer the question "Do you agree with changes and additions to the constitution?"' Meanwhile, the OSCE declined to send an observer mission on the grounds that it needed at least two months to prepare.¹⁰

Even the president's hand-picked expert commission – which effectively replaced the constitutional assembly – called for a controversial amendment granting the president broad veto powers to be withdrawn. Nevertheless, in mid-January, opposition members warned that with the help of the expert group, 'the president has put a new edition of the text ... up for referendum'.¹¹

Despite the opposition, the referendum took place as planned. The Central Election Commission (CEC) announced that more than three-quarters of voters had approved the amendments. The CEC claimed that more than 2 million people, or 86 per cent of all registered voters, had cast their ballots with 76 per cent voting in favour. A spokesman for the opposition Public Headquarters for Monitoring the Referendum claimed the official turnout figures were exaggerated, estimating as few as 30–40 per cent of voters had actually gone to the polls. The Washington-based National Democratic Institute (NDI), which had also called for a postponement, reported that 'polling officials stuffed ballot boxes and pressured voters into saying "yes" to questions'.¹²

NDI referred to the inappropriate involvement of state employees, harassment of those calling for postponement and official demands that villages supply 'turnout quotas'. The institute also reported that abuses involved 'local government officials telling voters how to cast their ballots' as well as 'ballot box stuffing, repeated voting by a single person and so-called "family voting"'.¹³ The head of the CEC denied receiving any such complaints about the voting process and dismissed the critics' claims.

Corruption and the media

The law on the struggle against corruption defined a clear role for the media: they are to investigate corruption cases and have access to relevant information from government institutions. It was passed less than a year after Human Rights Watch called on the European Union to encourage the Kyrgyz authorities to decriminalise libel to prevent it from being used to block investigations of corruption charges. Since the law was passed, the newspaper *Obshchestvennyi Reiting* has been taken to court for slander by Minister of Foreign Affairs Askar Aitmatov. An anonymous article printed in the paper had alleged that the ministry was riddled with corruption and cronyism. The Lenin district court in Bishkek ordered the paper to pay 50,000 soms (US \$1,200) to Aitmatov and 25,000 soms (US \$600) each to two of his employees. The first deputy minister of foreign affairs has since filed a similar suit against the paper.

In addition, the newspaper *Kyrgyz Ordo* ceased publication in January 2003 after its assets were seized for non-payment of libel fines. Other independent outlets faced similar harassment. Alexander Kim, editor of Kyrgyzstan's flagship independent newspaper, *Moya Stolitsa-Novosti (MSN)*, announced in June 2003 that the paper was bankrupt due to more than 30 lawsuits filed

against it. *MSN* was ordered to pay 4 million soms (US \$95,000) in fines, with further 500,000 soms (US \$12,000) in damages to Prime Minister Tanaev. Kim links these cases to articles on corruption in the government.¹⁴

Harassment of independent outlets increased steadily over the year, and the number of information sources controlled by the authorities has similarly grown in what may be an orchestrated campaign to regain control of the media by buying some outlets and ruining others through libel judgments. Freedom House notes that press freedom has declined 'as a result of the government's attempts to introduce new restrictions on independent media', and classifies Kyrgyzstan's press as 'not free'.¹⁵

Like much of the business sector in Kyrgyzstan, the media is dominated by President Akaev's family. His son-in-law, Adil Toygonbaev, owns nearly all the cable TV and several publications.¹⁶ Prior to the constitutional referendum – and in the months after it – the authorities launched a crackdown against the media that included libel suits, the introduction of state bidding for TV and radio frequencies, replacement of valid licences with temporary licences and a proposal to form a media council to fight 'political extremism' in the press. Journalists fear the media council's true purpose is to further intimidate them and restrict their freedom of expression.

Aigul Akmatjanova (TI Kyrgyz Republic)

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Notes

1. The government published provisions for this council's operation in the 29 July 2003 issue of *Slovo Kyrgyzstana*, a pro-government newspaper.

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3. *DeutscheWelle* (Germany), 27 July 2003; www.dw-world.de/russian/0,3367,2226_A_935021_1_A,00.html
4. Prima News Agency (Kyrgyzstan), 23 December 2002.
5. Eurasianet, 11 March 2003, www.eurasianet.org/resource/kyrgyzstan/hypermail/200303/0034.shtml
6. 'Regional Ombudsmen Gathered in Bishkek', UNDP, 15 April 2003, www.undp.kg/english/news.phtml?l=0&id=148
7. RFE/RL *Newsline*, 17 June 2003, 11 March 2003 and 8 April 2003.
8. RFE/RL *Newsline*, 17 June 2003.
9. The amendments also introduce the abolition of the two-chamber legislature and the creation of a unicameral one, as well as the abolition of party-list voting for parliamentary deputies.
10. While the OSCE Office for Democratic Institutions and Human Rights declined to monitor the referendum vote, it issued an assessment with recommendations; see www.osce.org/odihr/documents/reports/election_reports/kg/kg_constreffeb2003_asmreport.php3
11. Eurasianet, 22 January 2003, www.eurasianet.org/departments/rights/articles/eav012203.shtml. The opposition statement was published on the AKI website, www.akipress.org
12. NDI Statement following the constitutional referendum on 2 February 2003. www.ndi.org/worldwide/eurasia/kyrgyzstan/kyrgyzstan_statement_020403.asp
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14. www.prima-news.ru/eng/news/news/2003/6/20/25004.html
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Lebanon

Corruption Perceptions Index 2003 score: 3.0 (78th out of 133 countries)

Bribe Payers Index 2002 score: not surveyed

Conventions:

UN Convention against Transnational Organized Crime (signed December 2001; not yet ratified)

Legal and institutional changes

- A framework bill on **privatisation**, passed in 2001, was riddled with legal loopholes. A telecom privatisation bill, introduced in July 2002, had to be repeatedly amended amidst disagreements in government on the form and extent of privatisation, and its approval is still being held up.
- During the November 2002 parliamentary discussion of a bill on the incorporation of Beirut International Airport, deputy Ghassan Moukheiber proposed that a percentage

of its shares should be listed on the **Beirut Stock Exchange** to ensure better corporate governance, accountability and transparency. His suggestion was adopted.

- A **consumer protection law** was drafted in August 2003 as a precursor to the abolition of Lebanon's 'exclusive agencies', companies that have exclusive rights to import specific products. This law would improve transparency in competition and is especially relevant for the pharmaceutical industry: social programmes reportedly pay exorbitant prices for medicines due to the existence of a pharmaceutical monopoly that uses its political influence to keep prices artificially high.¹

Cooperating with international institutions to stop bribery

In June 2002 the EU and the government of President Emile Lahoud moved towards closer cooperation by signing an association agreement in the context of the Euromed Partnership. An interim agreement on trade and commercial issues – in anticipation of the association agreement coming into force – was signed, ratified by the parliament and entered into force on 1 March 2003.

These two agreements cover political, economic, social and cultural relations between the EU and Lebanon. They envisage the emergence of a free trade area after a 12-year transitional period during which the government will introduce the relevant administrative and economic reforms associated with liberalisation and democratisation, as well as provisions for more transparent accounting.

The association agreement goes further than the interim agreement in that it includes cooperation in fighting money laundering, organised crime and corruption. It also contains conditionality clauses that provide for its suspension in case of violation of the principles underpinning the agreement, specifically democracy, rule of law, human rights and the respect of fundamental freedoms.²

In November 2002, delegates from 18 states and eight financial institutions met in Paris to discuss how to alleviate Lebanon's soaring public debt, which hovers around US \$33 billion. During the donor conference, known as Paris II, Lebanon secured around

US \$4.4 billion in soft loans from creditor nations. In return, the government promised to pursue a programme of political and economic reform, focusing on banking and fiscal reforms.³ The government explained its failure to implement previously promised reforms as a result of regional instability. The Paris agreement postponed the need for further urgent administrative reforms.

Lebanon began cooperating with the Financial Action Task Force (FATF) in April 2001 with a decree creating a special investigative committee (SIC) within the central bank with responsibility for pursuing money-laundering cases. Two major cases were identified – though the details were not made public. In June 2002, Lebanon was removed from FATF's list of Non-Cooperative Countries and Territories in the fight against money laundering.⁴ The SIC remained active in the period under review, but its effectiveness was limited by its secretive approach.

The SIC's first major challenge was the Al-Madina Bank scandal in early 2003. A number of the bank's managers were accused of misappropriation, fraudulent practices and failing to apply proper accounting procedures,⁵ with losses in the region of US \$350 million.⁶ Al-Madina Bank had long been suspected of facilitating money laundering. The case was transferred back and forth between the SIC and the public prosecutor's office, until it was eventually returned to the SIC with instructions to prioritise the recovery of funds. After recovering a substantial portion of the funds in September 2003, neither the SIC nor the judicial authorities pressed charges against the bank's owners. This outcome suggested

to many critics that sizable bribes were paid to powerful politicians in exchange for protection from the law.

Agricultural aid: squandering of public funds?

The former agriculture minister, Ali Abdullah, and 10 senior members of his ministry were charged with embezzlement and squandering public funds in September 2003. He had allegedly allocated funds from the US Agency for International Development and the International Fund for Agricultural Development to cooperatives owned by his own relatives.

Despite plenty of documentary evidence available as early as June 2002 implicating Abdullah, no judicial action was taken, nor was there any official reaction to the allegations. At a later stage the former minister was expelled, for separate reasons, from the Amal Movement Party, effectively stripping him of political protection. After he was dropped from the cabinet in the new government announced in April 2003, his successor personally undertook to press for charges of corruption, embezzlement and squandering of public funds against Abdullah.

Profiling political corruption: the Mount Lebanon by-elections

A by-election in the Metn region in June 2002, triggered by the death of parliamentarian Albert Moukheiber, was the focus of heated political debate for months, and led to the closure of two media outlets in September of that year.

The elections were a case study in Lebanese political corruption, featuring incidents of conflict of interest, abuse of power, inconsistent application of electoral law, vote buying, political pressure to influence voters, excessive campaign expenditures, unlawful use of media airtime and attacks on the freedom of the press.

The three leading candidates were Gabriel Murr, his niece Myrna Murr and Ghassan Moukheiber, nephew of the dead parliamen-

tarian. Politically the two Murrs are at opposite ends of a wealthy and influential family that provided one former interior minister, Michel Murr, as well as current Interior Minister Elias Murr, who is Myrna Murr's brother. Myrna Murr received extensive support from her relatives in government, while both Gabriel Murr and Ghassan Moukheiber, a longstanding activist for civil society, democracy and human rights causes, ran on opposition tickets.

Though electoral financing is not regulated in Lebanon, many considered that the large amount expended by the two leading candidates was tantamount to indirect vote buying. As a proprietor of television and radio stations, Gabriel Murr benefited from unlimited access to free electoral publicity, in breach of electoral law, while Myrna Murr enjoyed the personal support of her brother, the interior minister, in what was demonstrably a conflict of interest.

Gabriel Murr was later prosecuted and convicted for using Murr Television (MTV) as a political platform, leading to the closure of his station. While there had been a clear breach of electoral law, it was a controversial decision, which raised questions about judicial independence. Most Lebanese television stations are owned by prominent politicians who exploit them at election time, without incurring judicial action (see below).

On the eve of elections, the interior minister announced a spontaneous reinterpretation of the electoral law to the effect that voting behind closed curtains was now optional, rather than compulsory, thus jeopardising the secrecy of the ballot.⁷ The opposition accused the minister of attempting to influence the elections by intimidating voters. There were also allegations that the government monitored voting patterns, particularly where votes were allegedly bought, and that security forces affiliated to the interior ministry pressured voters and intimidated the opposition.⁸

The tabulation process was similarly marred.⁹ Senior politicians allegedly contacted the agency responsible for vote counting, the higher vote tabulation

committee (HVTC), with a view to manipulating the outcome. The HVTC issued three reports, all of which leaked to the press.¹⁰ By the time the interior ministry finally announced a winner – the minister's sister – Myrna Murr had already decided to withdraw, adding to the general confusion.

Following a controversial re-count, Interior Minister Elias Murr finally declared his estranged uncle, Gabriel Murr, the winner by 17 votes, triggering further protests from an opposition suspicious of his motives.¹¹ Gabriel Murr's tenure in office proved short-lived. Six months later, the Constitutional Council stripped him of his seat for illegal electioneering through his television station. The candidate with the next-highest number of votes was Myrna Murr, who was also disqualified for irregularities in vote counting and other offences against the electoral code.

Faced with having either to call for new elections or declare the candidate with the next-highest number of votes the winner, the Constitutional Council announced that Ghassan Moukheiber had won the Metn seat. The decision pleased almost nobody, for both Murrs had received 35,000 votes each, while Moukheiber took a mere 1,700.

Clamping down on broadcast freedoms

A separate effort to disqualify Gabriel Murr's election victory was made over his failure to submit a declaration of assets within three

months of the elections, as stipulated by the 1999 Illicit Wealth Bill. Murr's defence – almost incredible, but true – was that the declaration had indeed been ready on time, but it was locked in his office at MTV headquarters.

MTV had been shut down and sealed by the security forces on 4 September 2002 after the Publications Court ruled that Murr's use of it as a campaign 'propaganda platform' was in contravention of article 68 of the electoral law.¹² Critics pointed out that article 68 is applied selectively in Lebanon, an impression reinforced by the fact that MTV had been charged one year earlier with slandering the president, abusing military intelligence and endangering relations with Syria. Earlier in 2002, the government accused the Lebanese Broadcasting Corporation International (LBCI) of 'sectarian agitation'. Both MTV and LBCI frequently air talk shows featuring critics of the government.

The closure of MTV caused public outrage and led to demonstrations that were violently suppressed. Despite the irregularities, the ruling against MTV was upheld early in 2003 and declared permanent.

The process of curbing media freedom is now well underway and will continue as long as the judiciary remains subject to interference from the executive. This is an ominous sign for the future of free speech in Lebanon – and for the presence on television of the voice of the democratic opposition.¹³

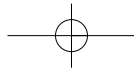
Charles D. Adwan and Mina Zapatero (Lebanese Transparency Association)

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Notes

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2. The agreement and the country strategy paper for Lebanon can be found at: europa.eu.int/comm/external_relations/lebanon/intro/ag.htm. It is noteworthy that suspension has never been implemented based on the human rights or governance violations of signatory countries.
3. The report presented by the government can be found at: www.lebanonwire.com/paris2/index.htm
4. See www.fatgafi.org/NCCT_en.htm
5. *Daily Star* (Lebanon), 14 July 2003.
6. *Daily Star* (Lebanon), 16 July 2003.
7. *Daily Star* (Lebanon), 4 June 2002.
8. *Daily Star* (Lebanon), 8 June 2002.
9. *Daily Star* (Lebanon), 4 June 2002.
10. *Daily Star* (Lebanon), 4 June 2002.
11. *Daily Star* (Lebanon), 8 June 2002.
12. *Al-Ahram Weekly Online*, Issue 603, 12–18 September 2002.
13. *The Executive*, 'Losing our Voice. Freedom of Speech takes on new meaning with the recent media oppression', Beirut, October 2002.

Mali

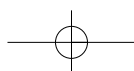
Corruption Perceptions Index 2003 score: 3.0 (78th out of 133 countries)

Bribe Payers Index 2002 score: not surveyed

Conventions:

AU Convention on the Prevention and Combating of Corruption (adopted July 2003; not yet signed)

UN Convention against Transnational Organized Crime (ratified April 2002)



Legal and institutional changes

- An ad hoc committee for the **evaluation of World Bank recommendations** on Mali's anti-corruption programme was established in August 2002.¹
- A decree of January 2003 provided for the creation within the *Contrôle Général des Services Publics* (general public service control agency) of a commission for **monitoring internal control systems**. Only an advisory body, the commission will approve procedural manuals and training modules drafted by public organisations. It is also responsible for follow-up evaluations.
- In 2003, the government adopted a decree establishing the **auditor general** as an independent authority with responsibility for evaluating the performance and impact of the public administration. The auditor general will evaluate the policies guiding development programmes, expenditure and revenue operations and the use of credits and funds. Appointed for a non-renewable period of seven years, the auditor general is joined by an assistant commissioner. The office will produce an annual report and disseminate it to the government and the media.²

Parliamentary immunity as a shield against justice

The national assembly's refusal to revoke the immunity of one of its members despite calls from the judiciary to do so sparked heated debates in late 2002. Legal professionals in particular attacked the government for obstructing justice.

The controversy dates from November 2000 when the attorney general at the district court of the capital, Bamako, formally requested the minister of justice to revoke the parliamentary immunity of deputy Mamadou Diawara. A member of the ruling party and former head of the supplies department of the Mali Company for Textile Development (CMDT), Diawara allegedly failed to observe public contract regulations by approving bids that were previously rejected by CMDT's internal controllers and judicial police investigators.

A parliamentary committee responsible for investigating the case was created in April 2001 and reported more than one year later.³ The committee members – whose independence critics have called into question – concluded that there was not

enough evidence to justify calling the deputy before the court and that he had not violated any CMDT regulations. The committee advised against lifting Diawara's immunity, a recommendation the national assembly confirmed with a unanimous vote.

A group of magistrates released a declaration condemning the assembly's position for judging that assumptions could not constitute the basis of legal proceedings.⁴ They argued that all criminal proceedings are undertaken on the basis of assumptions, and that it is up to a judge to prove or dismiss them. They contended that the national assembly decision had shielded the deputy from legal proceedings and was therefore a violation of the principle of the separation of powers.

Although his term of office then expired, Diawara did not run for office in 2002, claiming that he intended to clear his name in court. He was arrested on 3 September 2002 and placed in temporary detention for 28 days before being provisionally released on 1 October 2002.

At this writing, the case was still pending before the district court in Bamako.

Mali's anti-corruption roadblock: government inertia

Since Mali first made efforts to develop its anti-corruption infrastructure several years ago, it has taken numerous steps in the right direction. But the government has yet to muster the political will to implement a series of approved anti-corruption measures that were categorised as urgent in mid-2002.

Mali's anti-corruption strategy saw initial government enthusiasm when former president Alpha Oumar Konaré requested interdisciplinary technical missions from the World Bank in March and April 1999. The aim was to evaluate the government's anti-corruption programme and make appropriate recommendations.⁵

The recommendations focused on three major areas: limiting opportunities for corruption, applying penalties and ensuring the transparency of public transactions. President Amadou Toumani Touré instructed the prime minister to establish a committee charged with evaluating anti-corruption directives, as well as measures against financial crime. Most of its 30 members represent the public sector, but three or four are from civil society.⁶

The body met as five specialised sub-committees in mid-August 2002. Among other points, the sub-committee on the political economics of corruption recommended a reduction in the number of political appointments and an adoption of disclosure requirements. The group also called for the creation of an independent and responsible commission for monitoring the effectiveness of the mechanism for financing political parties.

One of the recommendations of the sub-committee on public contracts was a reduction of the threshold for public contracts. They proposed that the figure above which procedures should apply should be lowered from CFA 250 million francs (US

\$440,000) to CFA 50 million francs (US \$90,000) for state-owned companies and public works.⁷

Among its recommendations, the sub-committee on management and control of public finances suggested the creation of a supreme regulatory body to provide supervision and coordination of all control and inspection structures.

With respect to civil service reform, recommendations included the introduction of a social security system as well as the creation of a plan for the protection of staff against abuse by political and administrative authorities. The introduction of competition in the nomination and recruitment of civil servants was also proposed.

The fifth sub-committee, which concentrated on legal services and the judicial system, recommended that the president and the members of the government declare assets and that there be a review of the criminal code and the code for criminal law procedure.

Upon assessing the committee's report on 23 August 2002, the government rejected a number of its recommendations. Measures that were approved and presented as urgent have yet to be implemented, such as the establishment of internal control systems in all public services, the reduction of the public contracts budget threshold, and the establishment of an effective internal control system in all public services. Nevertheless, the production of procedural manuals relating to existing internal control measures was underway at this writing.

The government's rejection of certain recommendations and its failure to carry out urgent actions that have already been approved are poor indications of the political will behind the anti-corruption agenda. The fate of the recommendations of the committee will depend on the true commitment of the authorities to fight corruption and financial crime in Mali.

Brahima Fomba (Transparence-Mali)

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2. In August 2003, the national assembly passed a law creating the auditor general's office by a large majority (126 to six with seven abstentions).
3. 'Report of the Ad Hoc Committee Charged with Investigating the Lifting of Parliamentary Immunity from Deputy Mamadou Diawara', 7 June 2002, National Assembly.
4. The body of magistrates is the Syndicat Autonome de la Magistrature.
5. 'Rapport du Comité ad hoc de Réflexion sur les Recommandations de la Banque Mondiale relatives au Renforcement du Programme Anti-Corruption au Mali' (Report of the ad hoc investigative committee on World Bank recommendations relating to strengthening Mali's anti-corruption programme), August 2002.
6. The committee is the Comité ad hoc de Réflexion sur les Recommandations de la Banque Mondiale relatives au Renforcement du Programme Anti-corruption au Mali (the ad hoc investigative committee on World Bank recommendations relating to the strengthening of the anti-corruption programme in Mali). See www.justicemali.org/divers197.htm
7. The current budget limit was established by order No. 97-1898/MF-SG on 19 November 1997.

Nepal

Corruption Perceptions Index 2003 score: not surveyed

Bribe Payers Index 2002 score: not surveyed

Conventions:

UN Convention against Transnational Organized Crime (signed December 2002; not yet ratified)

Legal and institutional changes

- The Commission for Investigation of Abuse of Authority (CIAA) Second Amendment Bill, signed into law in August 2002, and a CIAA regulation introduced in September 2002, give the CIAA full legal authority to undertake **investigations**. It can order the seizure of passports, arrest suspects, investigate and freeze bank accounts, confiscate property and search offices and residences in corruption cases. Critics say the CIAA

could be used to target political opponents, though a number of local observers say it has helped to foster an environment of intolerance of corruption.

- An act related to **political organisations and political parties**, approved in September 2002, regulates their financing, development and operation. It specifies that they should not accept donations from international organisations or foreign governments, individuals or associations. Each party must include detailed election expenses in the annual reports that they must present to the election commission within six months of the close of a financial year. Auditors must be authorised by the auditor general's office. The names, addresses and occupations of individuals or organisations donating more than 25,000 rupees (US \$300) must be included.
- An **impeachment** act was introduced in September 2002 to remove the **immunity** that some public officials had enjoyed in the past. The provision that the CIAA can initiate an investigation into corruption allegations against any public official is the most significant new addition. Previously, the CIAA could not take action against the prime minister and needed approval from the speaker before it could begin investigating members of parliament. The CIAA still can't take action against judges.
- In January 2003, the CIAA created a planning division to expedite cases. A month later it boosted its staff from 128 to 205 and extended CIAA branches to all five regional development centres and the 10 districts considered most corrupt. In March 2003, the CIAA launched a five-year scheme to control corruption.
- The government-funded **National Vigilance Centre** was established in January 2003 to undertake preventive and awareness measures against corruption, administrative irregularities and excessive red tape. It has authority to look into affairs of government ministries, departments, offices and public officials.

Anti-corruption laws adopted, but compliance remains problematic

A ream of recent legislation and measures enacted by the executive aims to tackle the scourge of corruption by granting investigation and enforcement agencies greater powers and by raising awareness of the problem. But as important as the letter of the law and the intentions behind the legal and institutional changes, is whether they are actually enforced. Political instability and the fact that the state apparatus is focusing on fighting an insurgent movement, makes compliance difficult.

The first significant new piece of legislation was the amendment of the Corruption Prevention Act in June 2002,

which strengthened the powers of the CIAA by providing clearer definitions of corruption and the penalties for wrongdoers, even for those found guilty after leaving their posts. A special court was created the following month to look into corruption cases, previously the jurisdiction of the appeals court. This was followed by the impeachment act, which makes it easier to take legal action against senior elected members of government, and a political parties act, aimed at making funding more transparent.

A second important change was the creation in March 2002 of a high-level Judicial Inquiry Commission on Property to investigate property held by officials and politicians appointed after 1990. This is an

important area to tackle as one of the reasons for the popular perception that the level of corruption in government is high is that several politicians and officials had been seen to buy houses and amass wealth shortly after taking office (see below).

Finally, the government took steps to raise awareness of corruption. The public services ordinance of November 2002 led to teams being deployed to regional development centres to supervise all public services, their distribution, operation and management for six months from January 2003. The teams looked into public grievances related to irregularities and corruption. The aim of the exercise was to make officials aware that they are accountable. The National Vigilance Centre, established in January 2003, shares the same aim.

It is too early to evaluate the impact of the changes. Implementation of some of them has been hampered by the institutional and political context. For instance the CIAA and other monitoring agencies faced difficulties making their reports public in 2002 and 2003.¹ The procedure for doing so is to submit them to the king, who then sends them to parliament; parliament has been vacant since being dissolved in May 2002, however, and so the reporting process could not be carried out.

Notwithstanding these difficulties, there have been some high-profile successes. Shortly after the new laws were enacted, the CIAA prosecuted three former ministers, Chiranjibi Wagle, Khum Bahadur Khadka and Jayaprakash Prasad Gupta, for alleged corruption, the first time senior Nepalese politicians have been indicted for the crime. Wagle faces charges of misappropriating more than 30 million rupees (US \$400,000) by using his political influence to bolster his son's travel and trekking business, and of declaring property falsely. Khadka was accused of taking a bribe from a contractor worth more than 110 million rupees (US \$1.5 million) in exchange for using his authority to provide a contract without tender for construction work near the river Bakraha. Gupta allegedly made more than 30

million rupees (US \$400,000) through illegal telecommunication deals, unlawful procurement of mobile phone sets and wrongful renewing of cinema licences.

Wagle was once acting prime minister and deputy chairman of the Nepali Congress (Democratic) Party, while Khadka was secretary general of the same party. They were in power for most of the last decade until September 2002, when anti-corruption agencies took action against them. The three, who argue that they are being framed in a political vendetta, were released on bail pending the verdicts, which may take a long time being handed down.

Local analysts are confident the trials are serving to give a badly needed warning to other public officials, though some observers have cautioned of the danger that the CIAA could, indeed, be used to target political opponents as it lacks cross-party representation. In addition to investigating allegations of corruption by elected politicians, the CIAA is scrutinising possible acts of corruption by senior government employees, heads of state-owned companies and police officials.

Judicial property inquiry provides a much-needed check on corruption by politicians

In March 2003, the Judicial Inquiry Commission on Property (JICP) presented a 600-page report to King Gyanendra Bir Bikram Shah Dev to demonstrate that the earnings of public officials will no longer remain beyond 'judicial audit' in the name of private property or under considerations of individual privacy.

The JICP was headed by Supreme Court Justice Bhairab Prasad Lamsal, with two former justices sitting as members. It was constituted in March 2002 during the administration of former prime minister Sher Bahadur Deuba to examine whether property owned by politicians and officials appointed after 1990 had been obtained legally. The JICP required 41,900 politicians and officials

to declare their property in writing – of whom 11,300 did not complete the forms. The final report contained an inventory of the property of the 30,500 people examined.

Several former ministers and government officials who served under Sher Bahadur Deuba were subsequently summoned to explain their wealth, which exceeded their lawful income.

The report was passed to the CIAA, which took immediate action against 40 politicians and bureaucrats. The commission summonsed a number of former ministers and officials to furnish details about their property, including former prime minister Girija Prasad Koirala, who is also president of the Nepali congress. Koirala filed for an injunction before the supreme court a few days later, arguing that the CIAA has no justification for summonsing him. At this writing, the case was under the procedural jurisdiction of the supreme court.

Many others who were summonsed did not show up, deeming the commission's

actions politically motivated since they coincided with a cross-party protest against the king's assumption of direct rule.² Politicians pressed the CIAA to make the JICP report public in order to allay fears of a witch-hunt along political-party lines. The CIAA has indicated that it will not make the report public.

Unlike past efforts to ensure that politicians account for their wealth, there are expectations that the JICP report will not be forgotten, and might actually reinvigorate some of the underperforming existing mechanisms for holding officials to account. The government has since ordered the department of civil service record keepers (Kitab Khana) to update the register of all the property records of public servants, which has been kept since the 1960s but whose requirement that property be declared periodically has been allowed to lapse. The interior ministry has been ordered to publicise the names of all politicians and public officials who failed to declare property.

Rama Krishna Regmee (Researcher, Nepal)

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CIAA, 'Quarterly Bulletin', Kathmandu, www.akhtiyar.org.np [Nepali]

Hari Bahadur Thapa, *Anatomy of Corruption* (Katmandu: ESP, 2002)

TI Nepal, 'A Household Survey on Corruption', South Asian Report, August 2002, www.tinopal.org

TI Nepal: www.tinopal.org

Notes

1. TI Nepal, 'Newsletter', April 2003.
2. The king dismissed the prime minister and his cabinet in October 2002 for 'incompetence' after they dissolved the parliament and were subsequently unable to hold elections because of the ongoing insurgency. The country is now governed by the king and his appointed cabinet until elections can be held at some unspecified future date.

Nicaragua

Corruption Perceptions Index 2003 score: 2.6 (88th out of 133 countries)

Bribe Payers Index 2002 score: not surveyed

Conventions:

OAS Inter-American Convention against Corruption (ratified May 1999)

UN Convention against Transnational Organized Crime (ratified September 2002)

Legal and institutional changes

- The **Public Ethics Office** was established by presidential decree in July 2002, and aims to promote transparency and the effective use of public resources through education, dissemination and awareness raising among public officials. The office has responsibility for a special 'programme of efficiency and transparency in state procurement and contracting'.
- The **Probity Law for Public Servants** came into force in August 2002 and regulates matters related to conflicts of interest. Probity declarations are given at the start and the end of the period in public office. They are not made public, although they are used in some cases of illicit enrichment, notably the case of former president Arnaldo Alemán (see below).

Prosecution of former president Arnaldo Alemán shreds cloak of immunity

In a region characterised by impunity, it may be difficult to conceive how it was possible to bring to trial for flagrant and widespread abuse of office a man who barely eight months earlier had been president, who was still president of the national assembly days before his arrest and who continues to influence the party with the majority of seats in parliament. Yet, after eight months under house arrest, Arnaldo Alemán, who occupied Nicaragua's highest office from 1997 to 2002 and counted the heads of a majority of municipal governments and several key law enforcement bodies as his close supporters, was jailed in August 2003 for money laundering, fraud and embezzlement.

His prosecution was all the more surprising because President Enrique Bolaños, the candidate Alemán selected to

follow him (the constitution prevents an incumbent from standing for consecutive elections) seemed a safe pair of hands. During his time as Alemán's vice-president, Bolaños had remained silent in the face of indications that his boss was illegally amassing wealth and, with the acquiescence of the leader of the opposition, seeking to concentrate further power in the executive to the detriment of the country's institutions.

Once in office, however, President Bolaños was quick to investigate Alemán's misdeeds. From the outset he was able to rely on the unequivocal support of the media, of a population tired of corruption and of the donor countries who contributed more than one-third of the country's income in grants and aid. He was supported in the venture by the party he defeated in the elections, the Sandinista National Liberation Front (FSLN), which had a vested interest in seeing the *caudillo* fall and his party fragment. Legislators from Bolaños' former party provided further support.

In tandem with Alemán's prosecution, the new government paid some attention to tightening the legal framework for tackling corruption. The Law of Reform and Addition to the Penal Code came into force in June 2002 and defined offences linked with public corruption, such as influence peddling and illicit enrichment, and established special sanctions for acts of corruption, contributing to bank failures and other offences falling in the public sphere. In the main though, anti-corruption efforts were focussed narrowly on prosecuting Alemán and were driven by the executive.

Alemán's alleged crimes were not unique to the region, either in terms of the amounts involved or the methods used. We are talking of allegations of some US \$100 million in public funds obtained through fraud, embezzlement and misappropriation, though congressman Leonel Teller estimates that the figure is closer to US \$250 million. It was the further accusation of asset laundering that first led to Alemán's arrest, for it triggered international conventions and led to the United States providing political support for prosecution. The misappropriated funds were allegedly channelled through US banks to private accounts controlled by Alemán shortly after new US legislation on money laundering entered into force after the attacks of 11 September 2001.

Accounts and properties belonging to Alemán and his associates were sequestered in Panama and the United States but have not been repatriated, partly because Panamanian legislation stipulates such funds must be used within the country. A judge was recently named intervener and custodian of Alemán's known properties: not all of his wealth has been located since some is thought to be registered under other names.

The process of stripping Alemán of parliamentary immunity and bringing him to trial lasted from April to December 2002 and was hindered by his continued support in the national assembly. Some legislators who defended him against the charges have since come under investigation. Civil society organisations were highly active during the

eight-month dispute, collecting over 1 million signatures calling for Alemán's immunity to be lifted.

One of the most interesting aspects of the case is that it appears to reflect a shifting legal and socio-political environment in Nicaragua. Corrupt governors are less able to hide behind the cloak of immunity. Corruption has become an issue of utmost importance to national opinion and independent journalists are increasingly vigilant of wrongdoers.

Of course, the problem of corruption in Nicaragua is broader than any single case. Work has begun at a structural and legal level to tackle the taproots of corruption, but there is much ground still to cover to ensure that Alemán's prosecution is not the only bright spot in an otherwise murky sea of impunity. Many figures in governments past and present continue to evade investigation, let alone a trial, on corruption charges.

Laundered money flows into bottomless election campaign coffers

One aspect to emerge in one of the many cases against Arnaldo Alemán and his key ally, Byron Jerez, the former chief tax collector, was the latter's revelation under interrogation that funds taken illicitly from the state were used for purposes of bribery, in addition to the direct enrichment of the defendants. Officials from all branches of the state and its supervisory bodies allegedly received money in exchange for complicity in the frauds. Jerez alleged that stolen funds were also used to underwrite the governing party's political campaigns in the municipal elections of 2000 and the general elections of 2001. On 5 June 2003, Jerez was sentenced to eight years in prison in one of several cases against him.

In April 2002, Jerez declared that part of the funds were laundered through accounts within Nicaragua or abroad and used to pay a second list of senior officials, including the president of the auditor general's office, the head of the public prosecutor's office, the

former vice-president – now President Bolaños – Vice-President José Rizo Castellón and various ministers. According to Jerez, in addition to their official pay, each received from US \$500 to US \$5,000 per month directly from the presidential palace. None of those identified in the transactions denies the accusations: indeed, under the law, receipt of the funds is not strictly illegal if the beneficiaries were unaware of their origin and did not evade income tax. Since the national budget included an item for presidential discretionary expenses until 2002, criminal intent might be harder to prove. By mid-2003, Jerez's disclosures had not led to any further judicial investigation into the alleged kickbacks.

Linked with the case against Alemán is the issue of alleged deviation of state funds for election campaign expenditure. If proven, the offence carries penalties of up to two years' imprisonment, termination of public office and prohibition from holding elected posts for up to six years. The case was filed in December 2002 against 34 officials and leaders of the governing Liberal Constitutionalist Party (PLC), including Alemán and the current president and vice-president. The day after the investigation was launched, all 34 defendants announced their intention to renounce their immunity in order to stand trial. By mid-2003, they had still not done so and the request for their privileges to be removed was still languishing in a national assembly committee. The search for evidence in state banks and other institutions continued and proceedings went ahead against suspects who did not enjoy immunity; the defence offered by several

defendants linked to the current president was that the PLC's congressional campaign was funded through separate accounts to those of the presidential campaign and that, when they received funds from party headquarters, they neither knew their origin nor had reason to question it. A provisional sentence is expected by late 2003.

The case highlighted some of the shortcomings of the electoral law, which came into force in January 2000. Widely criticised by national and international electoral observers for its weak control mechanisms, the law sets no funding limits on either parties or donors and allows unlimited campaign contributions from abroad. Nor are there any disclosure rules. Parties are not even required to keep single accounts of funds received and the accounting of political funding is left almost entirely at their discretion.

One change introduced by the 2000 electoral law is the allocation of a fixed percentage of the national budget for party funding in election years. The share is set at 1 per cent in general election years and 0.5 per cent in municipal ones, with the total distributed among the parties according to votes cast. As a result, the cost of elections in Nicaragua is equivalent to half of the national budget for education – US \$28 per voter, against a regional mean of US \$7 – with 25 per cent of the allocation going to the parties.

In terms of public expense per voter, therefore, the second-poorest nation in the hemisphere has its most costly elections, even before the unlimited funding from private sources or abroad is taken into account.

Roberto Courtney (Etica y Transparencia, Nicaragua)

Further reading

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Reinaldo Antonio Téfel, *El huracán que desnudó a Nicaragua* (The hurricane that stripped Nicaragua bare) (Managua: Foro Democrático, 1999)

Vice-Presidency of Nicaragua, 'Plan nacional de anti-corrupción de Nicaragua', www.respondanet.com/espanyo1/anticorrupcion/Nicaragua1.htm

Nigeria

Corruption Perceptions Index 2003 score: 1.4 (132nd out of 133 countries)

Bribe Payers Index 2002 score: not surveyed

Conventions:

AU Convention on the Prevention and Combating of Corruption (adopted July 2003; not yet signed)

UN Convention against Transnational Organized Crime (ratified June 2001)

Legal and institutional changes

- In December 2002 the National Assembly passed the Economic and Financial Crimes Act 2002, which established the Economic and Financial Crimes Commission (EFCC), mandated to investigate all financial crimes, including **money laundering**, advanced fee fraud, counterfeiting, illegal charges transfers and futures market fraud. It is also responsible for enforcing the money laundering legislation of 1995, as amended in 2002. The president signed the new law on 14 December, one day ahead of the deadline set by the Financial Action Task Force (FATF), the intergovernmental body concerned with money laundering. FATF had threatened to recommend sanctions if Nigeria failed to strengthen financial crimes legislation by that date. FATF acknowledged that the new law marked significant progress, but at its February 2003 review it did not remove Nigeria from the list of Non-Cooperative Countries and Territories.
 - In February 2003 the Senate passed the **Corrupt Practices and Other Related Offences Commission Act 2003**, to replace and purportedly 'strengthen' the similarly named act from 2000. However, the act was widely perceived to be a deliberate weakening of existing legislation. The law was eventually blocked by the federal high court (see below).
 - In April 2002 the assembly passed the Electoral Act 2002, which replaced the Electoral Act 2001. The law, which governed the conduct of the April 2003 general elections, faced several constitutional challenges during 2002–03. Among other provisions, the law empowered the Independent National Electoral Commission (INEC) to place a limit on **donations to political parties** by individuals or corporate bodies. The apparent scale of expenditure and donations during the election period suggests, however, that limits were not followed, although the INEC issued no complaints against any party or candidate.
-

Senate's motives questioned in attempt to reform ICPC

In February 2003 the Senate voted unanimously in favour of replacing the legislation that governs Nigeria's primary anti-corruption body – the Independent Corrupt Practices and Other Related Offences Commission (ICPC) – which was first passed in 2000. The Senate, which rushed the legislation through, argued that it was strengthening the law to enhance the ICPC's performance. Their act sparked a major public controversy, both over the ICPC and also the Senate's true motives.

The new legislation would have weakened the ICPC in several ways. It would have removed most of the ICPC's powers of investigation, which would have been transferred to the attorney general. In addition, the new act omitted two core provisions of the original that made liable to prosecution public officers who grant contracts without appropriate approval or who transfer funds allocated for one purpose to another purpose. Under the new law, the ICPC would only have been able to recommend such cases for an internal, administrative inquiry. Significantly, at the time the new legislation was being pushed through, the leadership of both the Senate and the House of Representatives were under investigation for offences closely related to the two expunged sections of the 2000 Act.

There was an immediate and large public outcry against the legislature's conduct, both within Nigeria and internationally. On 3 March 2003 President Olusegun Obasanjo and some members of the House of Representatives condemned the Senate's action and declared that the proposed legislation was intended to protect individuals from prosecution. Nevertheless, the bill sailed through its first reading three days later. When it was subsequently sent to the president for his assent, he refused to sign. Within days the Senate overturned the president's veto, and the law was passed in both the Senate and the House of Represen-

tatives. Subsequently, however, a federal high court declared the law null and void.

While the prevailing view was that the assembly had acted in self-interest, the controversy did provide an opportunity for those on both sides of the debate to review the existing legislation, as well as the performance of the ICPC, which was considered to have performed below expectations. In early 2003, the ICPC reported that it had charged 38 suspects and investigated no less than 160 cases. However, nobody had yet been imprisoned as a result of its investigations.

One complaint was the ICPC's lack of independence. Legislators argued that the executive, especially the presidency, had turned the ICPC into an instrument of political vendetta. Equally the ICPC was at the centre of a political crisis in late 2002 when an attempt was made to impeach President Obasanjo. Senator Arthur Nzeribe claimed in public in August 2002 that he had offered bribes to fellow senators to encourage them not to impeach the president. Many had expected the ICPC to act on such an open confession of corruption, but it did not.

A related critique was of a lack of political will. Critics argued that several prominent government officials ought to have been investigated and, if found guilty, punished. There was widespread criticism of the manner in which the acting auditor general, Vincent Azie, was put out of office after submitting a report in January 2003 that accused the presidency and 10 federal ministries of financial malpractice. The government defended itself by saying that the auditor general was due to retire, but the action led to a public outcry that the authorities lacked the will to fight corruption.

A second criticism of the ICPC concerned its lack of financial independence. While defending its budget before the National Assembly in 2003, the ICPC's representative argued that the allocations it had received since being established were grossly inadequate and that shortage of funds had affected its performance. The allocations, he

said, were less than 50 per cent of what was budgeted.¹ According to ICPC Chairman Justice Mustapha Akanbi, the lack of funds meant that the ICPC had not been able to expand beyond the capital city, Abuja.²

The ICPC's limited capacity across the country is rendered more problematic by the fact that, although Nigeria is a federation of states, there has been virtually no independent, anti-corruption effort by any of the states, or by local government. The introduction of Islamic *shari'a* law in 12 of the 36 states had brought expectations of stronger anti-corruption efforts in them, but in practice the principal target has been petty theft. The government recently embarked on administrative reforms that are likely to enhance the supervisory role of state governments over local councils. Because they rely on the will and capacity of state governors themselves to maintain financial integrity, however, an effective ICPC will be even more important.

Some kind of reform of the ICPC is inevitable. Indeed, the ICPC has itself initiated the process by pushing for reforms that, if successful, would include: reducing the size of the ICPC's management; giving it powers to initiate investigations; removing some of the judicial obstacles to prosecution; and enhancing its accountability. The ICPC is also expected to strengthen links with civil society institutions, to enhance its preventive capacity. One reform that could significantly strengthen the ICPC would be giving it the power to prosecute – under the 2000 legislation, it can only recommend prosecution.

What hope for the freedom of information bill?

Nigeria still does not have freedom of information legislation, despite years of campaigning. With a new leadership in the legislature since April 2003, there is now hope that legislation may be introduced, but political will is needed. The battle for freedom of information legislation predates

Nigeria's return to civilian rule in 1999. Obasanjo's high-profile anti-corruption campaign led many to expect that the president would push for freedom of information legislation – essential in the fight against corruption – but he did not.

Since then the campaign has been driven by a coalition of civil society groups, including the NGO Media Rights Agenda. A group of legislators did introduce a bill into the National Assembly in July 1999, but after initial progress it stalled. The bill's third reading did not take place until May 2001, by which time the political terrain had grown more volatile. There was a widespread public perception that the National Assembly was morally compromised, especially over corruption. In this climate, members of the legislature feared that journalists would use freedom of information legislation as a weapon against them. By the time the assembly's tenure expired in April 2003, the bill had made no further progress.

The general elections of April 2003 brought in a new leadership in both houses of the National Assembly, renewing hope among civil society groups that the bill might eventually be passed. International groups, such as the Committee to Protect Journalists, have supported their case, urging the new lawmakers to pass the bill. The optimism may, however, be misplaced.

The newfound optimism assumes that the old leadership of the legislature was the problem. But the executive, led by the president, appears to have done little to help the bill's cause. Secondly, the honeymoon period of the new legislature may not last long. If members of the new legislature, like the old, become the targets of anti-corruption legislation, the new legislature may become just as reluctant to pass laws that strengthen the hand of their 'opponents'. However, if the campaign is intensified early enough, the good relationship that currently exists between the executive and the legislature may yet ensure success.

Finally, the campaign for freedom of information has not received sufficient

support from the media itself. The campaign has instead been sustained largely by the effort of civil society groups. The freedom of information bill would surely have been more successful if it had been highlighted by Nigeria's vocal media.

First steps to strengthen judicial integrity

Worried by the rising incidence of corruption in the judiciary, Chief Justice Muhammed Uwais, in conjunction with the UN Centre for International Crime Prevention and the ICPC, initiated a project in 2001 to strengthen judicial integrity. Four key concerns were identified: the quality and timeliness of the trial process, access to courts, public confidence in the judiciary, and efficiency in dealing with public complaints. The Nigerian Institute of Advanced Legal Studies was contracted to conduct a comprehensive assessment of judicial integrity and capacity in the states of Lagos, Delta and Borno.

During 2002–03 efforts were made to improve judicial integrity in the pilot states through ICPC monitoring of judges and court staff; ethics training for judges and court staff; the creation of a transparent complaints systems, involving 'court user committees'; and increased coordination within the criminal justice system.

The measures pointed to a determined effort by the National Judicial Council and

the chief justice to clean up Nigeria's justice system. Since 1999 dozens of cases of corrupt practices involving judges have been resolved, and the National Judicial Council has forcibly retired more than 20 judges. While this is definite progress, there is still a long way to go, especially in rebuilding public confidence in the judiciary.

Indeed the judiciary has repeatedly hindered the ICPC's anti-corruption work since it began operating in 2000. In its early days, the agency was mired in controversy over the constitutionality of the act that established it. Although this appeared to have been settled by supreme court judgment in June 2002, the issue of the ICPC's constitutionality continues to resurface at every turn – actively abetted by a number of judges.

Despite repeated warnings from the chief justice, judges continue to grant *ex parte* applications that have stalled corruption trials. Individuals who fall under ICPC scrutiny seek and obtain injunctions challenging the constitutionality of one section of the act or other, even in courts that are not officially designated to hear corruption cases. Almost all the cases the ICPC has filed in court have been blocked by such injunctions. If the ICPC's attempts to combat corruption are to succeed, the efforts to improve judicial integrity must be stepped up.

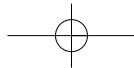
Bolaji Abdullahi (ThisDay, Nigeria)

Further reading:

- Karl Meier, *This House Has Fallen: Nigeria in Crisis* (London: Penguin Books, 2001)
 Nigerian Institute of Advanced Legal Studies, survey report on judicial integrity (forthcoming)
 World Bank, *Nigeria Governance and Service Delivery Survey* (forthcoming)

Notes

1. *ThisDay* (Nigeria), 23 January 2003.
2. M.A. Akanbi, 'Current Policy Initiatives and Frameworks for Combating Corruption', unpublished conference paper delivered in Abuja, February 2003.



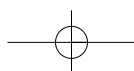
Palestinian Authority

Corruption Perceptions Index 2003 score: 3.0 (78th out of 133 countries)

Bribe Payers Index 2002 score: not surveyed

Legal and institutional changes

- A new **electoral law** aimed at regulating funding from public sources and introducing disclosure requirements went to a general reading in January 2003. Under the law, the Central Elections Committee (CEC) would regulate the criteria for allocating public funds to parties and monitor private donations. In October 2002, the CEC was recognised as an independent body. Although the head and members of the CEC were directly appointed by President Yasser Arafat, the committee later approached the legislative council for its approval.
- Legislation for a new **administrative and financial monitoring office** was proposed in March 2003. The office would replace the general monitoring authority established in 1996. The president, his aides and advisers, as well as police and security officials, would come under the new office's scrutiny. The president would no longer have the authority to appoint and depose the chairman of the monitoring office and the office would have a special budget allocated from within the general budget.
- In March 2003 amendments were made to the Basic Law, which came into effect in 2002 and provides the legal foundation for the Palestinian Authority (PA) in the transitional period. One amendment introduced the post of **prime minister**, with responsibility for forming and modifying the council of ministers and overseeing government institutions. The president was given authority to refer the prime minister for investigation – and the prime minister the right to refer ministers to investigation – when accused of crimes. The amended law also allows 10 members of the 88-member legislative council to submit a request to hold a special session to withdraw confidence from the government, or from any of its ministers, after investigation.
- The amendments also introduced the PA's first **disclosure requirements**. All ministers, including the prime minister, must now submit a financial report on themselves, their spouses and dependant minors detailing the ownership of assets. Conflicts of interest are prohibited.
- Under discussion is a law dealing with infractions of public employment duties (its first reading was in April 2003). It would establish **penalties** of up to 10 years' imprisonment for **embezzlement of public funds**, up to 15 years for bribery and life imprisonment for destroying evidence to facilitate, or cover up, embezzlement. Funds would be recovered and fines imposed equal to the amount of embezzled funds or damages incurred.



The 100-day plan and implications for corruption

Israel's reoccupation of the West Bank in the spring and summer of 2002 led to increased Palestinian popular demands for reform after the PA institutions proved incapable of organising adequate civil or military defence or meeting the needs of people under occupation. Amongst the demands were calls for the government to clean up its institutions, as corruption was seen as one of the reasons for their failings.

In an opinion poll conducted by the Palestinian Center for Policy and Survey Research in April 2003,¹ for instance, 57 per cent of respondents said they thought corruption affected their personal and family life very significantly and 68 per cent said they thought corruption affected political life very significantly.

But demands for reform were not only domestic. Progress in the implementation of the Road Map to Peace, a performance-related agreement signed in April 2003 that seeks a final and comprehensive settlement of the Israeli-Palestinian conflict by 2005, was made conditional on the adoption of certain reform elements. Also, the release of tax revenues collected by the Israeli government was made contingent upon the Palestinian finance minister's ability to unify revenues under a single treasury account in order to facilitate oversight of the budget by the legislative council.

The blueprint for reform was largely the work of a ministerial reform committee established after the new government was created in June 2002. The committee drafted what is known as the '100-day plan'. Meetings between the committee and the 'Quartet plus Four'² led to the creation of task forces on economic policy-making, civil service reform, strengthening local governments and private sector development. A steering committee was set up to provide support for presidential, legislative and municipal elections and reform of the security system was to be pursued on a bilateral basis.

Several anti-corruption control elements were included in the plan in line with the recommendations of the 1999 US Council on Foreign Relations report, known as the 'Rocard Report on Strengthening the Palestinian Public Institutions'.

They included the establishment of comprehensive registers of public sector job titles and personnel, bringing governmental and public institutions under the jurisdiction of ministries, developing internal and external auditing processes, and establishing e-government systems.

The plan calls for a greater separation of government powers and for the decentralisation of power from the executive so that the legislative council and the judiciary can play their full role. It also calls for elections to be prepared at municipal, legislative and presidential level as well as within unions and civil society organisations.

While it is too early to evaluate the progress of democratic reforms, it is clear that the ongoing occupation poses serious limitations; it impeded the general and legislative elections, scheduled for early 2003. Nevertheless, the legislative council members, particularly the Fatah party members, have taken steps to exert their influence on government decisions. They questioned the composition of the cabinet proposed by President Arafat in March 2003, threatening to bring a motion of no confidence against the proposed cabinet. Although they did not achieve substantial changes to the cabinet's composition, they did secure the president's approval for the creation of the post of prime minister, which marks an important step in the direction of decentralisation of power, as does the fact that the prime minister and other ministers can be dismissed after a vote of no confidence. There have been setbacks subsequently. In September 2003, Mahmoud Abbas, the first appointed prime minister, resigned after four months.

Fewer reform targets have been met in the judicial domain. The 100-day plan called for greater resources for the judiciary and for work to be done on the preparation of the

draft laws, decrees and decisions that will be required once the Basic Law comes into force. President Arafat appointed a supreme judicial council, which was supposed to be reformulated according to the law regulating judicial authorities, but it did little to improve the structure of the courts and the process of nomination and promotion of judges or the appointment of new staff. Lawyers, civil society actors and the international community pressured the president to change the council's composition and a new one was formed in June 2003. A new prosecutor general was also nominated and the state security court was annulled in August 2003.

Part of the blame for the failure to fully implement reform plans lies with the Israeli occupation, which has hindered advocates of reform by providing resisting parties with pretexts for the avoidance of decision-making. But a lack of political will is also in evidence. No high-ranking government official has been prosecuted for corruption which, as well as blocking reform, negatively affects public perceptions of the process. The reform of the judicial system and preparations for general and local government elections are all steps that can be achieved despite the political implications of the occupation.

The finance ministry takes steps to increase transparency

The finance ministry has taken steps to improve transparency of its operations. The annual budget and detailed monthly reports of budget expenditures are available to the general public on the Internet and for the first time the investments of the PA have been subjected to independent scrutiny.

The 2003 budget was presented for discussion to the legislative council in December 2002 and published on the finance ministry's new website. It included expected revenues from the investments managed by the recently established Palestine Investment Fund. These were

previously excluded from the budget, which exposed the PA to serious allegations of corruption and mismanagement.

Work is being done to unify accounting systems in the West Bank and Gaza in order to fully integrate financial operations. The development of a continuous online communication system between the two areas and the creation of a budget-monitoring unit to guarantee that all expenses are in line with the approved budget and audited periodically will help the integration process.

Also positive was a decision by the cabinet in June 2003 to cease all illegal deductions from civil service salaries. Often amounting to 5–10 per cent of the total, some of these deductions were started in 1996 to contribute to the unemployment fund. Investigations are currently in place to uncover precisely what happened to the funds.

In presenting the 2003 budget, Finance Minister Salam Fayyad spoke of the need for more stringent compliance with the procurement law, which calls for all public procurement processes to be put out to tender. He threatened to use his authority to halt funds to non-compliant parties. The integration of the petrol, tobacco and investment agencies with the finance ministry in May 2003 was a further step forward.

There is still plenty of scope for improvement. The presentation of the budget occurred two months after the date prescribed by law and not all of the revenues from state agencies were consolidated in the budget: the insurance and pensions fund accounts were missing. Some initiatives have been applied with little rigour. The payrolls of security personnel were supposed to be distributed through the banking system, replacing the habit of disbursing lump sums in cash to the heads of each service, but two months after the decision was announced in April 2003, only two security agencies had implemented the change. While Fayyad has started challenging the more powerful figures in his ministry, dismissing some (including directors from the finance ministry and from

the petrol bureau), suspending others, no attempts have been made to bring those tainted with corruption allegations to book.

One of the most significant developments was the decision to create the Palestinian Investment Fund (PIF) to manage commercial assets. The PIF was established by presidential decree in October 2000, though it was not actually constituted as a separate legal entity until August 2002.

Prior to the creation of the PIF little was known about where and how PA funds were invested. Suspicions abounded that officials were using investments to buy favour with economic elites or abusing their positions to seek partnerships in the private sector. The PIF aims to ensure that commercial acquisitions and portfolio investments promote economic growth and infrastructure development in Palestine, and are not used for political or private gain.

The international ratings agency Standard & Poor's and the US NGO Democracy Council evaluated the results of the PIF's first 10 major investments to assess the fair market value of the investments and the transparency of their transactions. Results

were posted on the finance ministry website in March 2003.³

The report discusses the availability and reliability of financial and other data, as well as how each asset is owned, organised and administered, and whether each could be judged to be both transparent and respectable according to international standards. According to the report, out of the US \$630 million the PA had invested in 79 commercial ventures worldwide, ownership details of about one-third of the equity were lacking. Fifteen of the companies involved ceased operating during the Israeli reoccupation.

Much remains to be done to ensure that the PIF is an effective agency. Of particular concern is the lack of mechanisms in place to regulate conflicts of interest. The articles of association, which form PIF's legal basis, provide for a conflict of interest committee to monitor investments, but lack details about how the committee should be constituted. Also worrying is the lack of legislative oversight of the investments and a coherent national investment policy to guide the PIF.

Hada El-Aryan (AMAN, Palestinian coalition for accountability and integrity, Palestine)

Further reading

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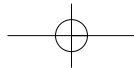
Jamil Hilal Jamil, 'Reform and Resistance', May 2002, www.palestinecampaign.org/archives.asp?xid=878

Palestine Investment Fund, 'Initial Report on Valuation and Transparency', January 2003, www.pa-inv-fund.com/lasse.asp

Palestinian Center for Policy and Survey Research, Opinion polls 5, 6 and 7, www.pcpsr.org/survey/index.html; Development Studies Programme at Birzeit University, Opinion polls 9, 10 and 11, home.birzeit.edu/dsp/DSPNEW/polls/opinion_polls.htm

Michel Rocard, 'Reforming the Palestinian Authority: An Update', Council on Foreign Relations, January 2003, www.cfr.org/pubs/5536_english.pdf

Coalition for Accountability and Integrity: www.aman-palestine.org



Notes

1. The poll was carried out by the Palestinian Center for Policy and Survey Research in April 2003 with a sample of 1,315 adults, and a sample error of 3 per cent. See www.aman-palestine.org/opinion_polls.htm
2. The 'Quartet' of Middle East mediators comprises the European Union, Russian Federation, United Nations and United States; four other bodies involved in negotiations are Japan, Norway, the World Bank and the IMF.
3. 'The Palestine Investment Fund, Initial Report on Valuation and Transparency' at: www.pa-inv-fund.com

Peru

Corruption Perceptions Index 2003 score: 3.7 (59th out of 133 countries)

Bribe Payers Index 2002 score: not surveyed

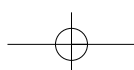
Conventions:

OAS Inter-American Convention against Corruption (ratified June 1997)

UN Convention against Transnational Organized Crime (ratified January 2002)

Legal and institutional changes

- A new law on **money laundering** came into force in June 2002. It increases penalties and shifts the burden of proof for demonstrating the origins of money onto the accused. Previous laws dealt only with money from drugs trafficking and terrorism; the new one extends to all illicitly obtained money.
- The law on transparency and **access to public information** came into force in August 2002. It stipulates that information relating to state institutions should be made public and obligates public bodies to create Internet portals and keep them updated. It is the first law to give the press and public effective tools to demand information. An initial limitation was the broad exception granted for military purchases, but secondary legislation adopted in February 2003 closed the gap substantially. Now the main limitation is not legal, but practical: it is hard to process information on government spending because the system is complex and monitoring is costly.
- A law regulating the transparency of **party financing** was approved in October 2002, but it is unlikely to have much impact on corruption. It requires candidates to provide sources and amounts of funding 60 days after the elections, rather than 60 days prior. The most important issue – disclosure of sources of financing (business and individuals) – was not discussed and the law establishes no sanctions for infractions.
- A commission was created in October 2002 to tackle **contraband and corruption in customs offices**. Members of government, civil society organisations and the business sector participate in the commission.



- The process of restructuring the **judiciary** got underway in January 2003 in response to a series of scandals in which the executive was alleged to have exerted undue influence – including through bribery – over a number of judges. By mid-2003 the process was still in its early phase. Five working groups, including one on anti-corruption and judicial ethics, were set up under the auspices of the restructuring commission. One proposal was to create a national council for the promotion of judicial ethics, but this is likely to be superseded by a second, which is to strengthen the existing internal control body (the office of control of magistrates), rather than opt for an autonomous external control mechanism.¹
- A law to regulate **lobbying** was approved in July 2003. It establishes that all lobbying activity aimed at influencing the decisions of public officials and congressmen must be made available to the public.
- The **National Anti-Corruption Commission** has faltered: its president stepped down in February 2003 to take up a diplomatic post and had not been replaced by August 2003. If it is to play a meaningful role in coordinating the activities of existing auditing and monitoring institutions, it needs greater independence and more powers and resources. The commission's president should be selected by parliament – not by the president.

Legislators with ties to Fujimori continue to stymie anti-corruption efforts

Efforts to curb corruption in Peru are threatened both at the level of investigation and prosecution, and at the level of prevention. When the scale of corruption under the regime of former president Alberto Fujimori was exposed, the new government prioritised efforts to prosecute those responsible, rather than introduce preventative measures. Not surprisingly, the corruption racket that developed under Fujimori did its best to protect those targeted by prosecutors. As the dust now settles after the successful prosecution of some of the key players of the *Fujimorato*, as it is called, members of government with ties to the former regime have been vocally opposed to preventative measures aimed at curbing corruption in future.

The transitional government that took office after Fujimori fled to Japan in November 2000 was forced to devise an ad

hoc system of fighting corruption because Peru's institutional framework was not robust enough to deal with the scale of the problem. This system was made up of anti-corruption judges, prosecutors and the police force, as well as an ad hoc investigative office for the Montesinos case, headed by José Ugaz, who was named special state attorney during Fujimori's last days in office. Ugaz's achievements were impressive, especially in the first year: most of the 'big fish' were captured and the process began of repatriating the enormous sums stolen by the racketeers at the heart of Fujimori's government.

Such successes were not without detractors. Several of Fujimori's top officials continue to hold office under the new administration of President Alejandro Toledo. One person especially proactive in his efforts to discredit the anti-corruption campaign is Jorge Mufarech, a congressman and former labour minister under Fujimori, who made a series of allegations against Ugaz in early 2003, including that of tampering with the evidence in cases he was prosecuting.

A member of the congressional auditing commission,² Mufarech is suspected of contributing large sums to President Toledo's election campaign. He is not the only congressman to have accused journalists, businessmen and public officials of being 'opponents of the government', but he has been one of the most outspoken. For example, he criticised the interior ministry's decision to invite Proética, an NGO headed by Ugaz, to observe the 2001 public tender of a contract to provide uniforms for the police. Mufarech, who owns a textile company that failed to win the uniforms contract, denounced the process though it resulted in considerable savings for the government.

The outburst was illustrative of the multifaceted nature of corruption in Peru. On the one hand, resistance to preventative measures comes from those with ties to the *Fujimorato* who are keen to dent prosecutorial efforts. But there are many others – sometimes these same people with links to the *Fujimorato* – who have strong personal and commercial motives for perpetuating a climate that allows corruption to thrive. The situation is not assisted by the absence of a national anti-corruption strategy coordinated by a strong organisation. The body that should play that role, the National Anti-Corruption Commission, is hampered by its dependence on the executive.

New allegations of government interference highlight the need for better regulation of the media

The Fujimori regime stayed in power for 10 years with high approval ratings thanks to its control of information and the mass media, both economically (through official advertising and direct payments in exchange for political support) and judicially (through favourable court decisions in exchange for political support). Though such practices were widely condemned after the regime

collapsed, little was done to safeguard against them and allegations of government interference have resurfaced.

With the transition to democracy, relations between state and media were the focus of recommendations by the National Anti-Corruption Initiative (INA),³ and later of a bill submitted by opposition deputy Natale Amprimo. Both spoke of the need to control transmission licences, create a civil society organisation to monitor advertising and to regulate state advertising.⁴

The INA recommendations were adopted in a haphazard and inadequate manner. Amprimo's bill sparked intense public debate, but the media's hostility to the new regulatory proposals eventually prevailed and the bill was dropped.

Against this backdrop of heightened sensitivity toward government incursions into the media, a new series of scandals has emerged to dog the Toledo government. The most serious concerned efforts by César Almeyda, former head of the National Intelligence Council, and Rodolfo Pereyra, former government press secretary, to pressure the board of Panamericana Televisión (Pantel) to refrain from 'attacking' the government.

Federico Anchorena, Pantel's former managing director, and Fernando Viaña, its head of press, made the allegations in February 2003. Pereyra resigned in the wake of the scandal. The congressional auditing commission, which is dominated by the ruling coalition, launched an investigation but shelved it in April 2003, citing insufficient evidence of executive interference.

In a related development, the press published transcribed recordings of conversations between Salomón Lerner Ghitis, a friend of Toledo and former president of the Financial Corporation for Development, and the brothers Moisés and Alex Wolfenson, owners of the newspapers *El Chino* and *La Razón*.⁵ The conversations were aimed at persuading the two newspapers to portray

the government in a more favourable light. *El Chino* and *La Razón* are currently being investigated for links to the Fujimori regime and frequently publish articles repudiating allegations pertaining to corruption during that era.

It is no secret that the president blames the media for his slump in popularity, particularly their frequent references to his private life. When his approval ratings fell below 20 per cent in September 2002, there were fears he might not see out his first year in office. The government interpretation is that remnants of the Fujimori network are using the media to weaken the anti-corruption effort, destabilise the Toledo administration and, ultimately, return the exiled Fujimori to power. Certainly, the Peruvian media are far from paragons. Panamericana was steeped in corruption in the Fujimori years; former owner Ernesto Shultz fled the country when a videotape was discovered that showed him taking US \$350,000 from Montesinos. From this perspective, however, it is but a short step to interpreting jibes at the presidential image as attacks against the democratic process, with media groups cast as the tentacles of the previous Mafia state.

Whatever reading is correct, the temptation for successive Peruvian governments to seek to control the media is helped by the lack of any regulating body. Self-regulation is not the answer, since few outlets are sufficiently responsible, but nor is state control, which runs the risk of institutionalising the government's already strong tendencies to control. Regulation, or scrutiny of contents, must fall to those who are most interested in quality: consumers. The institution charged with the task must include representatives of civil society, alongside those from government and the media. It is also critical to regulate state advertising to prevent public revenues being used for political purposes. A media law that takes some, if not all, of these factors into account is badly needed in Peru.

Patronage, nepotism and political interference in public administration

Many public bodies are legally bound by private, rather than public sector, labour laws. These are more flexible and, as a result, many job vacancies are filled and contracts awarded without public advertisement. The beneficiaries are often government officials, legislators or their relations.

Recent reported cases involved the ministry for women (formerly Promudeh), the national food distribution programme, Pronaa, the state-owned oil company Petroperú and the airport administrator, Corpac.

Allegations of nepotism were also levelled at more widely respected state agencies, such as Indecopi, whose remit encompasses the anti-monopoly and intellectual property commissions. Indecopi has quasi-judicial powers: it can arbitrate in the case of two individuals, or businesses, and between state and non-state parties (its decisions can be revised by the courts, but only at the request of one of the parties). Indecopi's independence from government was, therefore, a local benchmark. In 2002, however, César Almeyda, a close friend of the president, became Indecopi's new president.⁶

While the Indecopi president has authority over the agency's administrative functions, he has no influence over its tribunal and commissions. There is evidence that Almeyda tried to influence these bodies' decisions in the case of América TV, which was formerly owned by the Crousillat family who received money to support Fujimori's bid for re-election in 2000. By suspending a meeting of América TV's creditors, controlled by Grupo Plural TV, which owns two of Peru's leading papers, *El Comercio* and *La República*, Almeyda effectively thwarted attempts to restructure the broadcaster.

Almeyda resigned in the ensuing scandal but he was not prosecuted. Local NGOs and media outlets allege that he continues to exert influence from behind the scenes. Several key members of Indecopi commissions have been replaced, including the

technical secretary of the anti-monopolies commission, Jocelyn Olaechea, who had a reputation for competence in the post. Their replacements have tended to be pro-government in view.

Again, part of the problem is the lack of robust anti-corruption mechanisms. The

council of ministers has failed to design and implement a personnel policy for the public sector. The result is nepotism, favouritism and patronage.

Samuel Rotta Castilla (Proética, Peru)

Further reading

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Instituto APOYO, 'Estrategias Anticorrupción en el Perú' (Anti-corruption strategies in Peru), www.apoyo-inst.org/Agenda/Anticorrupcion/anticorrupcion.htm

Santiago Pedraglio, *Diagnóstico del Estado de la Lucha contra la Corrupción 2000–02* (Diagnosis of the fight against corruption 2000–02) (Lima: Proética, 2002), www.proetica.org.pe/diagnostico/frameset.htm

Proética: www.proetica.org.pe

Notes

1. The need to review the judicial system was highlighted in July 2003 when two separate courts gave contradictory rulings in the battle for control of Panamericana TV, one of Peru's most important broadcasters. Each armed with favourable rulings, the two competing companies, owned by Genaro Delgado Parker and Ernesto Schutz, respectively, entered the Panamericana TV buildings on 11 July and broadcast conflicting programmes from different corners of the same facility.
2. At this writing, Jorge Yamil Mufarech Nemy held a congressional seat for Perú Posible.
3. The INA was created by the transition government and includes members of government and civil society. It was asked to produce a study on the state of corruption in Peru and propose anti-corruption policies, but its recommendations have not been adopted by Toledo's government in any substantive way.
4. Proética, *Diagnóstico del Estado de la Lucha contra la Corrupción en el Perú 2000–02* (Analysis of the fight against corruption in Peru 2000–02) (Lima: Proética, 2002).
5. The meeting took place on 14 May 2002 and the recordings were released in batches. The entire conversation was reproduced in May 2003 at www.agenciaperu.com/investigacion/2003/may/audio_wolfenson.htm

6. Almeyda stepped down from the presidency of Indecopi in January 2003 to take up the post of president of the National Intelligence Council (NIC). He resigned as head of the NIC in April 2003, partly over allegations that he pressured Panamericana Televisión to change its editorial line (see above).

Philippines

Corruption Perceptions Index 2003 score: 2.5 (92nd out of 133 countries)

Bribe Payers Index 2002 score: not surveyed

Conventions:

UN Convention against Transnational Organized Crime (ratified May 2002)

Legal and institutional changes

- In July 2002 the government introduced an **e-procurement** programme covering all state departments in an attempt to reduce corruption in public procurement. According to a July 2003 report from the Presidential Legislative Liaison Office, 57 per cent of sub-department offices, 91 per cent of government-owned and -controlled corporations, and 72 per cent of state universities and colleges were linked to the programme within 12 months of its introduction.
- In December 2002 a performance evaluation system for **corporate governance** practice was introduced within government-owned and -controlled corporations and their subsidiaries.
- Three bills on **political financing** were introduced into the Senate in December 2002. One aimed to strengthen the political party system by providing funds. The second provided for the institutionalisation of campaign finance reforms. The third provided for the establishment of a presidential campaign fund to cover allowed expenditures in presidential and vice-presidential elections. At this writing, all three bills are pending in the Senate.
- In January 2003 the president signed a **Government Procurement Reform Act**, which provides for the modernisation, standardisation and regulation of public procurement. It involves measures to increase transparency, competitiveness, efficiency, accountability and public monitoring of both the procurement process and the implementation of awarded contracts. The implementing rules and regulations were formulated with contributions from NGOs, and were approved in September 2003.
- Under pressure from the Financial Action Task Force (FATF), the legislature passed an **Anti-Money Laundering Act** in March 2003, amending legislation that dated from 2001. The new legislation lowers the threshold for reporting transactions to regulators from 4 million pesos (US \$75,000) to 500,000 pesos (US \$9,000); expands the range of unlawful activities covered; and grants the Philippine central bank

regulatory powers to monitor deposits. Legislators, however, retained a provision from the 2001 law that judicial permission is required before authorities can freeze suspect accounts. The FATF warned that this provision would hamper anti-money laundering activities as electronic fund transfers could take place before a court order could be secured. As of June 2003, the Philippines remained on the FATF's list of Non-Cooperative Countries and Territories.

- In June 2003 a bill was proposed that would create **local government control** over the local police: an Act Expanding the Powers of Local Chief Executives Over Local Philippine National Police Forces. If passed, there is a risk that the act will simply serve to underpin the coercive powers of corrupt local administrations.
- During 2002–03 the **Presidential Anti-Graft Commission (PAGC)** adopted a more proactive approach and began promoting preventive measures against government corruption. Previously it had only heard and investigated complaints against erring presidential appointees (see below).

The PAGC's lifestyle check initiative

'Lifestyle check' is the most recent anti-corruption reform initiative proposed by the administration of President Gloria Macapagal Arroyo. In October 2002 she ordered lifestyle checks on all government officials including the police and military. Lifestyle checks provide a means by which corruption may be detected through disparities between earned income and apparent lifestyle. They are to be based on four 'probe areas': behavioural, such as leisure habits; asset value or net worth; kin checks, looking at relatives who could have gained employment through the official's influence; and conflicts of interest. The Presidential Anti-Graft Commission (PAGC) is the initiative's primary agency, with the office of the ombudsman as enforcer. Heads of government agencies notorious for high levels of corruption, such as the Philippine National Police, the Department of Public Works and Highways, and the Bureau of Internal Revenue (BIR), immediately announced they would take part in the initiative.

In March 2003 a Lifestyle Check Coalition, bringing together government and civil society bodies, signed a memorandum of

understanding (MoU). The coalition includes the six member agencies of the Inter-Agency Anti-Graft Coordinating Council: the PAGC, the ombudsman, the department of justice, the National Bureau of Investigation, the Commission on Audit, and the Civil Service Commission. The coalition also includes the National Youth Commission, as well as several anti-corruption NGOs and the Catholic Bishops Conference of the Philippines. The MoU formed task forces to sift through information on officials' lifestyles that is gathered and submitted by civil society groups. Law enforcement agencies then assess the information and follow up with investigations as appropriate. The PAGC has disseminated its Lifestyle Check Investigation Primer and is organising capability-building seminars and workshops for their personnel and the civil society groups involved.

To date, mainly low-profile, middle-ranking officials have been exposed. The reform initiative has so far proved largely ineffective against high-level officials. In part this is because it is easier to detect the ill-gotten gains of lower-ranking officials due to the local spending behaviour of this group. The PAGC also faces problems of jurisdiction and resources, however. Its most prominent

investigation so far, concerning BIR personnel, was blocked by the supreme court on the grounds that the case was beyond the PAGC's jurisdiction – only a minority of cases so far have fallen under the PAGC's mandate. In addition, most cases are filed anonymously with non-verifiable leads, and a small team of investigators faces a large caseload.

A number of question marks have also arisen over the methods used and the possible impact. Firstly, there is a risk that lifestyle checks may develop into witch-hunts by department heads against their personnel, possibly as foils to throw investigators off their own scents, or by lower-ranking personnel as weapons against their superiors. Rivalries may become motives for accusations, with the risk of harassment. Secondly, lifestyle checks sometimes conflict with confidentiality and privacy concerns, and civil rights problems may arise over the 'entrapment procedures' recently proposed by the ombudsman's Special Prosecutor's Office. Thirdly, though lifestyle checks are certainly useful against small-time offenders, they may intensify capital flight and money laundering abroad, making the exposure of high-ranking officials more difficult. Already the future is uncertain for an anti-corruption strategy that commenced with great potential, but which raises ethical concerns and faces difficulties in implementation.

PIATCo raises questions over public sector anti-corruption reforms

The PIATCo controversy, which became a high-profile media case after surfacing in newspaper reports in August 2002, highlighted both weaknesses and strengths in the government's anti-corruption drive. On the one hand, it emphasised incoherence within anti-corruption policy and, on the other, it emerged as an example of the Arroyo administration's political will to free the state and its people from 'onerous contracts' and 'vested interests'.

In 1996, under the Build-Operate-Transfer (BOT) scheme, PIATCo (Philippine International Air Terminals Company) won a bid to construct Terminal 3 at the Ninoy Aquino International Airport (NAIA). Three months before the new terminal's scheduled launch in November 2002, a dispute arose between the German and Filipino partners within PIATCo. In addition both factions had to contend with ballooning costs. With this dispute persisting, Gloria Climaco, Presidential Adviser for Strategic Projects, announced a government takeover of NAIA Terminal 3 during a third congressional probe. This sudden announcement of a government takeover of a private sector firm shocked members of congress and the business community equally.

The takeover announcement also impacted on the government's anti-corruption strategy. First, it jeopardised certain policy directives. In reaction to excessive state intervention and regulation under martial law, post-Marcos administrations have made privatisation a cornerstone of economic reform in the hope that private sector management would both reduce corruption and increase profitability. Though the government takeover of the NAIA terminal was on the basis of no budgetary support, it nevertheless went against the principle of privatisation. In addition, newspapers reported allegations that Climaco had a potential conflict of interest in the case, though the government denied this.

The PIATCo case also revealed both strengths and weaknesses in the role of the legislature. It highlighted, on the one hand, the legislature's success in unearthing specific contractual irregularities and, on the other, its inadequacy as a cohesive force to fight corruption. Following the controversy, a series of investigations was set in motion to probe the contract. Investigations by the Senate Blue Ribbon Committee unearthed a number of findings, starting with the discovery of dubious individuals set up to receive excessive payments in relation to their positions, the intended monopolisation of all Terminal 3

operations, overshooting of contract costs with overruns of US \$156 million by September 2002; and major deviations from the original bid and terms of reference. These discoveries, unfortunately, were neutralised by other committees in the legislature which had presented conflicting and inconclusive findings.

At the end of November 2002 President Arroyo finally exhibited strong political will by declaring all five government contracts with PIATCo null and void, a pronouncement that later received supreme court confirmation. Furthermore, she instructed two anti-corruption bodies – the Department of Justice and the PAGC – to investigate the contracts and prosecute those found culpable.

The administration has stated its commitment to fight corruption, but, if anti-corruption policy is to be coherent, government action must be matched with policy directives and the executive must not be linked in any way to business lobbies. Furthermore, the legislature must improve its ability to present a consistent investigative policy, which in turn will increase its credibility as a check-and-balance mechanism.

The need for a whistleblower scheme

Laws to protect whistleblowers and schemes to encourage disclosures of official misconduct are patchy in the Philippines. There is no clear programme to protect either those who disclose official misconduct or those who may be wrongly accused. So far only the Witness Protection, Security and Benefit Act of 1991 comes anywhere near providing protection for whistleblowers or witnesses. However, the law is skewed towards criminal cases; legislation for civil or administrative cases is still lacking. In addition, the witness protection programme established under the act lacks resources, coordination and security.

A number of proposals have recently been made in the Senate that would improve the

protection of whistleblowers: a 2001 bill pending before the Committee on Justice and Human Rights that would prohibit discrimination against whistleblowers in the construction industry; a February 2002 bill that would prohibit display in the media of those arrested, prior to the determination of a case against them; and an August 2002 bill that would prohibit the display of accused persons in a degrading and humiliating manner. So far, however, there have been no tangible results.

In May 2002 the Civil Service Commission – the lead agency for professionalising the civil service and promoting public accountability – did establish a whistleblower protection programme upon passage of the Civil Service Code. Shortly after, however, the programme was seen to be ineffective when whistleblowers exposed two corruption scandals that were widely publicised in the media.

Reports stated that the whistleblower in a tax diversion scam, in which a syndicate of officials from the Land Bank and the Bureau of Internal Revenue were alleged to have diverted 203 million pesos (US \$3.8 million) of tax payments to fictitious accounts, was a bank cashier called Acsa Ramirez. Ramirez had reported suspicious payments over the legal threshold to her superiors, who in turn reported the irregularities to the National Bureau of Investigation (NBI). During Ramirez's interview with the NBI, she was paraded in front of the media along with the suspects. Devastated that she had been presented as a criminal, she refused to meet with the NBI for any further disclosures. In August 2002, Ramirez was grouped with the rest of the perpetrators and charged with 11 counts of violating the Anti-Money Laundering Law, facing a possible 44 years in jail.

The other whistleblower was Sulficio Tagud Jr, a board member of the Public Estates Authority (PEA), recently appointed by the government. Tagud blew the whistle on his board colleagues, PEA managers and auditors from the Commission on Audit, whom he alleged had acquiesced to 'illegal'

price adjustments and ‘unsanctioned price escalations’ totalling 600 million pesos (US \$11 million) for the construction of a five-kilometre, eight-lane highway in the Manila Bay area. Ironically, the new road – the President Diosdado Macapagal Boulevard – was named after the president’s father, with the president offering it as a ‘gift to the people’. Tagud, supported by 15 civil service societies, went directly to the media with his allegations, claiming he had received death threats. The case snowballed into a trial by media, resulting in the president sacking all the officials involved.

In November 2002, only two days after receiving a voluminous PEA report, the PAGC reached a verdict that prima facie evidence of corruption existed. Backed by the PAGC verdict, the president dismissed the board of the PEA, barring its members – including the whistleblower Tagud – ‘perpetually’ from government employment and finally ordered its disbandment. At the time of writing, however, newspapers report that PEA officials have defied the president’s order and continue to hold office. Tagud’s

disqualification from future service prompted him to comment that his case should be ‘a warning to those who want to expose corruption in government – shut up or suffer this fate’.¹

The two cases underscore the importance of passing legislation and establishing programmes that protect whistleblowers. A range of measures are needed: to protect whistleblowers against reprisals and against civil or criminal liability where they make a public interest disclosure; to ensure that a public interest disclosure be made to a public sector entity and not to the media; to ensure that the inappropriate publication of unsubstantiated disclosures does not damage the reputation of those accused; to ensure that proper records are kept concerning disclosures; and to prevent disclosures adversely affecting the independence of the judiciary and other investigative bodies. If such measures are not introduced, trial by media will continue in the Philippines, and innocent victims will continue to be tarnished with fake disclosures while the true culprits remain at large.

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University of Queensland, Australia)*

Further reading

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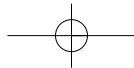
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Note

1. *Philippine Daily Inquirer* (Philippines), 19 December 2002.



Poland

Corruption Perceptions Index 2003 score: 3.6 (64th out of 133 countries)

Bribe Payers Index 2002 score: not surveyed

Conventions:

Council of Europe Civil Law Convention on Corruption (not yet signed)

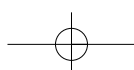
Council of Europe Criminal Law Convention on Corruption (ratified July 2002)

OECD Anti-Bribery Convention (ratified September 2000)

UN Convention against Transnational Organized Crime (ratified November 2001)

Legal and institutional changes

- In September 2002, the council of ministers adopted an **anti-corruption strategy** prepared by an inter-ministerial anti-corruption team. The plan defines areas of public service that are vulnerable to corruption and lists institutions that must function properly to combat it. The strategy includes a timetable of planned changes and improvements in legislation (amendments, ethics codes), organisation (cooperation among offices, regulation), as well as education and information practices.
- The Constitutional Tribunal passed a judgment on the 1998 law on the **civil service** in December 2002, effectively enhancing the political neutrality of civil servants, as top positions can only be filled through a public and transparent recruitment procedure.
- The minister of finance issued a decree on accounting for **political parties** in January 2003. It lays down standardised principles for preparing financial reports and submitting them to the state election commission (see below).
- In February 2003 the Sejm amended the 2001 law on the prevention of **money laundering** and of **financing of terrorism**. The amendment requires financial institutions to report transactions exceeding €15,000 (US \$17,000) in value starting in December 2003.
- Amendments to the 2000 law on preventing the **circulation of financial assets** from illegal or undisclosed sources and on counteracting the **financing of terrorism** were introduced in March 2003. The new regulations require institutions to inform the general inspector of financial information whenever they suspect their employees of engaging in such transactions. The general inspector may then request that the treasury or the audit office verify the origin of assets.
- In June 2003 President Aleksander Kwasniewski signed into law amendments to the penal code that increase **penalties for corruption** from three to eight years' and from five to 12 years' imprisonment. The amendments facilitate combating corruption in sports: organisers of, and participants in, competitions may be prosecuted for accepting



benefits. The new legislation, which is part of the anti-corruption strategy adopted by the government in September 2002, also allows for the use of main witnesses in combating corruption. Under the amendments, people who bribe civil servants will not be penalised if they report their activities to the police or public prosecutors.

Rywingate

One of Poland's biggest recent corruption scandals was the Rywin affair, which embroiled one of the country's most celebrated film producers. Rywingate, as the media have dubbed the affair, probably attracted more local public attention than the war in Iraq or the referendum on Poland's accession to the EU.

The government of Prime Minister Leszek Miller drafted a bill in early 2002 that would have prevented any one consortium from owning a national newspaper and a national television channel at the same time. The legislation represented a threat to the Polish media consortium Agora, which owns Poland's most widely read daily newspaper, *Gazeta Wyborcza*, together with the US company, Cox Enterprises. The bill stood to thwart their plans to purchase a private television station, Polsat.

Adam Michnik, editor-in-chief of *Gazeta Wyborcza*, alleged that Agora sought to block passage of the bill with the help of Lew Rywin, famous for co-producing such blockbusters as Steven Spielberg's *Schindler's List* and Roman Polanski's *The Pianist*. Rywin allegedly proposed to steer the bill through parliament in a way that would benefit Agora in exchange for a bribe of US \$17.5 million. Rywin allegedly acted on behalf of the prime minister and the chairman of the state television company. In July 2002, Michnik secretly captured a tell-all interview with Rywin on tape, but he only published the transcript in the *Gazeta Wyborcza* six months later, in December 2002.

Since then the affair has been investigated by both the public prosecutor and a specially appointed parliamentary commission whose sessions are broadcast for several hours once or twice weekly. Although details of the

bribery aspect remain to be verified, the public hearings imply that the political establishment is connected by a series of mutual ties that undermine Poland's democratic mechanisms.

Allegations suggest that the prime minister and the justice minister (who is also the general public prosecutor and a close ally of the prime minister) knew of the bribe proposition, as did the president (who in turn is a close friend of the chairman of the state television company). None felt it appropriate to inform the prosecution agencies. The prime minister appeared before the special commission in April 2003 to proclaim his innocence. In June 2003 a deputy accused Prime Minister Miller of perjury. By July the special commission declared that it would not question the president and that it would release a report by September.

The investigation has led analysts to predict that the Rywingate affair may contribute to efforts to dismiss the TV chairman, the minister for justice and even the prime minister, who has announced early elections.¹ Experts worry that public disillusionment is on the rise now that corruption is perceived as having reached the highest levels of power.

Legislation holds political parties to account, but serious loopholes remain

Anti-corruption amendments that were introduced to the act on political parties in April 2001 constitute a significant step towards holding political entities to account, but the regulations that govern this field are far from perfect. Loopholes in the legislation allow for the circumvention of the new provisions.

While numerous parties failed to meet minimum standards since the legislation was first applied, an unprecedented level of transparency is evident in the financing of political parties. Parties' and election campaign financial statements are examined by the state election commission, or PKW. If the PKW finds a party to have violated the rules, it may reject a financial statement or election campaign statement. In August 2002, after reviewing the parliamentary elections of September 2001, the PKW announced that it had approved the financial statements of five of the seven parties that had received the required amount of votes.² In 2002, the treasury paid these parties nearly 30 million new Polish zlotys (US \$7.6 million) in the form of budget subsidies.

To comply with new regulations, parties that ran were required to submit campaign financing statements to the PKW in December 2001. The statements – a total of 93 reports – were subsequently published on 31 March in the *Polish Monitor*. The PKW, which had four months to examine the reports, announced its decision on the statements in April 2002.

It rejected the reports of the Polish People's Party (PSL), the League of Polish Families (LPR) and Samoobrona (the Self-Defence Party), as well as those of some parties that had not secured any seats in the parliament, such as Solidarity Election Action of the Right (AWSP). As a result, the PSL's and LPR's campaign refunds were reduced by 75 per cent and Samoobrona's by 65 per cent. The most common infringements were payment irregularities – in cash or by post – and exceeding the limit on contributions from individuals, which is set at 11,400 new Polish zlotys (US \$2,900). Another common fault was that many parties did not establish a separate election fund for the purpose of collecting money for the election campaign.

The PSL, LPR and Samoobrona appealed to the supreme court, which upheld the PKW's decision, and the campaign refunds of these parties were reduced accordingly.

The subsidy for each member of parliament was 111,000 new Polish zlotys (US \$28,000). In July 2002, the PKW provided the public prosecutor's office with a list of people who had allegedly violated election regulations. The list includes the financial officers of the election committees of Samoobrona, the PSL and LPR, individuals who are deemed responsible for a total of 88 misdemeanours or offences.

Most campaign reports did not meet the standards of the election law, prompting the PKW to reject them or raise objections. These results reflect the poor professional capabilities of members of the political class and raise questions as to their honesty. Nevertheless, the rules constitute a significant step in strengthening democratic procedures, as they call for an enhanced level of scrutiny. Moreover, the regulations make cheating the system somewhat more complicated and risky, in terms of legal sanctions and concrete financial losses, as well as future electoral support.

Although it introduced a new level of transparency, however, the recent political party legislation is undermined by serious weaknesses and loopholes. In particular, a number of amendments weakened penalties for failing to abide by regulations. An amendment adopted by the Sejm in July 2002, for example, drastically reduced the penalties for the year 2002 for parties whose financial statements were rejected by the PKW. Their budget subsidies were only cut by 30 per cent – as opposed to completely, or by up to 75 per cent of the amount originally allocated, as envisioned by previous regulations.

Another weakness relates to conducting economic activity for profit and on earning income from real estate leasing, both of which were banned in November 2002. Article 27 of the amended act on political parties allows political parties to conduct their 'own activity', such as selling programmes, promotional objects or publications. Consequently, anyone who has contributed the maximum donation may

make additional donations by buying a copy of the party's programme, for example, at an unrestricted price. Similarly, companies can circumvent the ban preventing them from financing parties by purchasing a substantial amount of the party's promotional material. Another provision allows party leaderships to establish foundations, which are entitled to hire activists. The employment of such staff by the foundation – instead of the party itself – allows the party to save money from public funds. In addition, corporate donors are free to sponsor such foundations.

Concerns over these loopholes appeared justified in April 2003, when the media alleged that the PSL had circumvented the ban on earning income from property leasing

by making use of the provision allowing political parties to establish foundations.³ To maintain control over its real estate, the PSL had created a foundation, the Fundacja Rozwoju, in August 2002. The party transferred its property – a dozen buildings in the largest cities and several dozen in smaller towns – to the foundation, donating three buildings and selling the rest for 90 million new Polish zlotys (US \$23 million), to be paid in instalments over a 10-year period. The stakes were high: the PSL reportedly earned around 13 million new Polish zlotys (US \$3.2 million) on the lease of its real estate in 2002. Such a manoeuvre is a mockery of the law, calling into question the true value of the anti-corruption provisions in the act on political parties.

*Julia Pitera with Magda Brennek, Janusz Kochanowski,
Andrzej Kojder and Jacek Łęski (TI Poland)*

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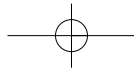
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Notes

1. RFE/RL, 18 February 2003 and 28 April 2003; *Warsaw Voice* (Poland), 26 June 2003 and 10 July 2003.
2. Individual parties must receive 3 per cent and election coalitions must receive 6 per cent.
3. These foundations can employ party personnel and be sponsored by private companies, allowing parties to create an alternative and non-transparent financial circuit that is not subject to control.

Russia

Corruption Perceptions Index 2003 score: 2.7 (86th out of 133 countries)

Bribe Payers Index 2002 score: 3.2 (21st out of 21 countries)

Conventions:

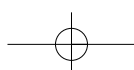
Council of Europe Civil Law Convention on Corruption (not yet signed)

Council of Europe Criminal Law Convention on Corruption (signed January 1999; not yet ratified)

UN Convention against Transnational Organized Crime (signed December 2000; not yet ratified)

Legal and institutional changes

- A new **criminal procedural code** was adopted in December 2001 and came into effect in July 2002 to move to a jury system in order to counter the practice known as ‘telephone justice’, where a government official would call a judge to tell him how a particular case should be decided. In January 2003 Prime Minister Mikhail Kasyanov disclosed that appropriations for financing the judicial system were to be increased by one-third.
- In June 2002 the draft ‘**anti-corruption policy fundamentals**’ were submitted to parliament. The first reading is scheduled for October 2003. The draft lacks detailed mechanisms for attempting to curb corruption.
- In August 2002 President Vladimir Putin signed a decree designed to improve the ethics and integrity of the state bureaucracy. According to the decree, **civil servants** will be expected to observe the law, serve the public efficiently, avoid conflicts of interest and remain politically neutral. A number of commentators were sceptical of the effectiveness of this latest measure and demanded tougher action to prosecute senior officials on corruption charges. The decree is advisory, not binding.
- The Russian Federation law on the **election of deputies** to the state Duma, the lower chamber of the Russian legislature, was passed in December 2002. It updates the 1999 law on Duma elections. New provisions are primarily concerned with finance,



the introduction of caps on overall spending, stricter regulation of funding sources and the size of donations received.

- A law aimed at **streamlining the presidential election process** was passed in December 2002. Its intention is to limit irregularities and increase party involvement in the elections. Only political parties may now nominate presidential candidates with the exception of self-nominated candidates, who are required to hold a meeting of 500 or more persons and collect 2 million signatures in support of their candidacy. Previously any group could nominate presidential candidates if they collected 1 million signatures.
- The OECD **Financial Action Task Force on Money Laundering** struck Russia off its blacklist after a new federal law to amend and supplement an acting law against money laundering entered into force in January 2003.
- In February 2003, the government issued a decree ‘guaranteeing **access to information** related to the activities of the government and the federal executive bodies of the Russian Federation’. The decree, which came into effect in May 2003, obliges the government and federal executive bodies to post information about their activities on their official websites and through other information resources, including legislation and amendments, personal information about government members and texts of international agreements.
- A draft law that would convert Russia’s **military forces** from a conscript to a predominantly professional basis by 2007 was approved by Putin in March 2003, and passed its first reading in the Duma in May. If adopted, it might decrease corruption since fewer potential conscripts would try to bribe their way out of military duty.
- A major **restructuring of the security agencies** took place in March 2003 (see below).

The Yukos affair

On 2 July 2003, Platon Lebedev, a major shareholder in Yukos, Russia’s leading energy company, and the head of its partner company, Menatep Group, was hauled out of his hospital bed and arrested. Two days later, the richest man in Russia and the head of Yukos, Mikhail Khodorkovsky, was brought in to the prosecutor general’s office for questioning in a high-profile criminal investigation that appeared to be the start of a serious effort to root out corruption amongst Russia’s powerful business leaders.

The Yukos arrests sent shockwaves through the national and international press, and contributed to a US \$25 billion fall in the value of the Russian stock market.¹

The Yukos investigations centred on charges of murder, attempted murder, theft of government property and, indirectly, the sensitive issue of past privatisation schemes. Allegations of widespread corruption in the company were not immediately confirmed by prosecutors. The allegations included claims that Menatep had laundered money from crime syndicates through the Eastern European Division of the Bank of New York, and that it was involved in the disappearance of US \$4.8 billion in IMF funds that were delivered to Russian accounts on 23 July 1998.²

The legal aspects of the Yukos affair and the political backdrop to the charges provided the ground for a media debate about the rule of law in Russia and corruption – by both

private companies and government. The discussion raged for six weeks until, in mid-August, the anti-monopolies ministry approved the merger of Yukos with its smaller rival Sibneft, creating a new oil giant – YukosSibneft – with Khodorkovsky still at the top. This calmed investors and Yukos shares began to rise again.

Media interest petered out to a trickle of articles, the most notable of which was a call by Yabloko party leader Grigoriy Yavlinsky for a 10-year ban on political activity by any private businessmen or political leaders who had been involved in the ‘loans-for-shares’ programme.³ This scheme, whereby the government borrows money from Russian banks and offers shares in state-owned enterprises as collateral, was responsible for the knockdown price Menatep paid for Yukos in 1995 – US \$159 million for one of the world’s largest oil companies.⁴

Several points are worth noting about the current case.

First, its timing. The arrests took place at the start of what Russians call the ‘cucumber season’ when the state Duma is on vacation. At the same time, the Russian media (including outlets taken over by the government in the days prior to the arrests) began to air programmes portraying the lifestyles of rich and famous oligarchs. The arrests also came shortly after the Kremlin asked the British government to arrest and extradite to Russia another oligarch, the self-exiled Boris Berezovsky, on charges of defrauding the state. And, finally, the apparent crackdown may have been an attempt to influence public opinion in the run-up to December’s parliamentary elections. Opinion polls show that Russians are overwhelmingly critical of the privatisations of the mid-1990s; any attempt to punish those who ‘stole Russia’ would be very popular with the electorate.⁵

A second point worth noting was the selective use of state prosecutorial capacity in the Yukos affair. Even as investigators were looking for evidence to build a case against Yukos, state-owned companies like Gazprom were being accused of serious illegalities in

the Western press without being called to account.⁶ One factor in particular may have fed into this apparent bias. While other recently privatised companies have remained politically loyal to Putin and his supporters, both Khodorkovsky at Yukos and Berezovsky used their newfound wealth to fund the political opposition.⁷ By focusing on cases of alleged murder, attempted murder and theft of state property, the prosecution was able to sidestep the political minefield of pursuing corruption allegations; it would have been difficult to prevent investigations from spreading to other formerly state-owned companies.⁸ President Putin faces a dilemma: in putting Khodorkovsky on trial, he risks accusations that he is playing politics with Russia’s economic rebirth; in setting him free, he may send the message that corruption does pay in Russia, and pays very handsomely.

The Yukos affair is expected to prompt the debate for tighter legislation to regulate the role oligarchs can play in the creation and funding of political parties and the legality of party funding by state-owned enterprises. But given that a law regulating funding was passed in November 2002, and that many political parties are dependent on funding from big businesses, it is doubtful that the Duma would pass any tougher law on party funding – or that the president would sign it.

Reshuffle at state security services may not be enough to curb police corruption

In March 2003 President Putin restructured the state security services in order to reduce corruption and tackle drug trafficking and terrorism – two crimes that have benefited in the past from official collusion. Though these are still early days, there are already doubts over what effect the structural changes will have on the battle against corruption.

Putin’s decree disbanded the Federal Agency of Governmental Communications

and Information (FAPSI) and the Federal Border Guard Service (FSP), incorporating them with the Federal Security Service (FSB). The move will lead to substantial savings, according to audit chamber head Sergei Stepashin, who estimated that the previous FSP budget was twice that of the FSB, with three times as many employees and 10 times as many generals.

In addition, a state defence procurements committee was created at the defence ministry and the federal tax police service (FSNP) was abolished, its functions being transferred to the interior ministry. The decree also created a new state committee on drug trafficking, which will employ staff of the defunct FSNP, once considered one of the more efficient, but most corrupt, agencies of the state. The move, therefore, allows the new agency to be staffed with experienced officers – while turning a blind eye to past misdemeanours committed by any such officer.

The extension of the interior ministry's powers jars with the widespread perception that it is one of the most corrupt federal structures. According to an opinion poll carried out by TI Russia between January 2002 and January 2003, 75 per cent of respondents consider the law enforcement agencies to be dishonest.⁹

The interior ministry has claimed some success in combating corruption, however. In 2002, it censured 21,000 police officers for criminal or other offences and fired 17,000, including police chiefs in 10 of the

country's 89 regions. Speaking a day after Putin's decree was announced, Deputy Prosecutor General Vladimir Ustinov called the ministry's claims 'greatly exaggerated'. He said that most of the dismissed officers were engaged in petty corruption, and the interior ministry had failed to tackle the corruption higher in its ranks.

The interior ministry's poor record of going after corrupt senior officers changed in June 2003, when it conducted a joint operation with the FSB and the prosecutor general's office in which they arrested three colonels and three lieutenant-colonels from Moscow's criminal investigations department (MUR), as well as Vladimir Ganayev, a lieutenant-general who headed the security department of the emergency situations ministry with responsibility for certifying all buildings for fire safety. They were accused of leading a gang of renegade police who planted guns, ammunition and drugs in order to blackmail citizens, and of extorting protection money from Moscow casinos, shopping centres and restaurants.

For many observers, the arrests were just the latest in a series of cosmetic gestures linked to electoral advantage or political rivalry. Interior Minister Boris Gryzlov heads Unity, one of the leading parties of the ruling coalition. The raids were televised and designed to play well to audiences. Gryzlov announced the crackdown while his officers were filmed knocking on doors across Moscow, prior to arresting the residents.

*Roman Kupchinsky (Radio Free Europe/Radio Liberty, Czech Republic),
Elena Chirkova and Marina Savintseva (TI Russia)*

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1. *Moscow Times* (Russia), 25 July 2003.
2. See series of articles by Timothy L. O'Brien for the *New York Times* (US), August 1999. See also Robert Friedman, *Red Mafiya: How The Russian Mob Has Invaded America* (New York: Little Brown and Co., 2000), which cites a 1995 CIA report that states that Menatep was 'controlled by one of the most powerful crime clans in Moscow' and had established 'an illegal banking operation in Washington'.
3. *Financial Times* (Britain), 2 September 2003.
4. Under the scheme, banks were given the right to auction shares if the government could not repay them; the loans were heavily over-collateralised and default would mean that banks would reap huge profits.
5. *Izvestia* (Russia), 25 July 2003. Russia's leading polling agencies have carried out surveys on how the bourgeoisie is viewed in Russia. According to a ROMIR Monitoring poll, 74 per cent of Russian citizens assess the role of oligarchs (also known as 'major capitalists') in the 1990s as absolutely or partially negative; 77 per cent say the oligarchs currently play a negative role in Russia. About the same number believe that the outcomes of the 1990s privatisations should be completely or partially revised.
6. See *Wirtschaftswoche* (Germany), 9 September 2001, for further information about Gazprom's alleged dealings with a suspected Russian criminal organisation.
7. Liberal Russia relies heavily on Berezovsky. Khodorkovsky funded Yabloko and the Union of Right Forces.
8. For a discussion of recent alleged corruption in Gazprom see 'Naftohaz Ukrayiny – A Study in State-Sponsored Corruption', RFE/RL *Organized Crime and Terrorism Watch*, vol. 3, no. 25, 18 July 2003, www.rferl.org/corruptionwatch/archives.asp
9. TI Russia, 'Corruption Indices for Russian Regions', 2003, available at www.transparency.org.ru/proj_index.asp

Senegal

Corruption Perceptions Index 2003 score: 3.2 (76th out of 133 countries)

Bribe Payers Index 2002 score: not surveyed

Conventions:

AU Convention on the Prevention and Combating of Corruption (adopted July 2003; not yet signed)

UN Convention against Transnational Organized Crime (signed December 2000; not yet ratified)

Legal and institutional changes

- A presidential decree was issued on the new **procurement code** in May 2002 (see below).
- In April 2003, the state approved a draft decree on the establishment of a **monitoring council** for good governance and anti-corruption measures (see below).

Plans for a monitoring council

In April 2003, the state approved a draft decree on the establishment of a council for monitoring good governance and anti-corruption measures. At this writing, the draft was being assessed by political parties, the private sector and civil society organisations.

President Abdoulaye Wade had argued for the creation of the council in December 2002, prompting the government to withdraw a year-old bill for setting up a national anti-corruption office (OFNAC). The OFNAC was envisioned as an independent agency designed to counter corruption and the illicit acquisition of wealth. It was to use a legal approach based on giving responsibility to all of the country's common law courts and reversing the burden of proof. The bill set out to restrict the mandate period for personnel assigned to the OFNAC to three years, non-renewable, and offer them immunity while employed by the organisation. As far as effective anti-corruption measures were concerned, OFNAC offered the best hope for legal and institutional solutions. Critics interpreted the government's withdrawal of the bill as a favour to the new administration and a way of protecting those implicated in corrupt activities.

Four months after the OFNAC bill was withdrawn, the government and its political partners submitted for discussion the draft decree aimed at creating a council for monitoring good governance and anti-corruption measures. The proposal that emerged was for a corruption investigation body composed of nine representatives drawn equally from the state, private sector and civil society. Reporting to the head of

state, the council was empowered to hear complaints regarding cases of alleged corruption and provide relevant information for the purpose of deciding whether a case should be brought to court.

Representatives of civil society organisations such as the Forum Civil, TI's national chapter, proposed that the council should have greater independence and executive powers. They called for a strengthening of its prerogatives, including the right to bring cases to court on its own account; the right to communicate its findings; and immunity and adequate compensation for its members. The government has considered the proposals and consulted with civil society representatives, but further action remains to be taken.

The new procurement code: an assessment

After eight years of preparation, a new procurement code was introduced by presidential decree in May 2002. The legislation applies the new constitution's principles of transparency to public procurement, but inherent flaws demand further revision.¹

The code includes provisions for open competition and advertising, ensures greater transparency and, under special circumstances, introduces the option of resorting to mutual agreements. It removes all existing derogation arrangements, including those enjoyed by the project for the construction and the restoration of state heritage, or PCRPE.² Closely associated with the presidency, the PCRPE has been widely criticised by the opposition and civil society

organisations as a strategy for bypassing procurement constraints imposed by the earlier code.

The new code proposes setting up a commission responsible for contracts at the ministerial level, but its range of application has been extended to include local collective units (*communes*, rural communities and regions) and mixed-economy organisations.

The new legislation still lacks tools such as decrees and orders, standard tender documents, classification instruments and vendor approval systems. In addition, qualified human resources are not available for the proper application of all new measures. Additional defects include the fact that it does not address the build-operate-transfer projects assigned to the investment promotion agency.³ It also has the drawback of being a decree rather than a law, signifying that it can be amended more easily.

By May 2003, the government, the World Bank, the African Development Bank, the private sector and civil society organisations had identified loopholes in the code and made the following observations:

- the tender requirements of the procurement code, a decree, contradict

those of the administrative responsibility code, a law

- procedures for granting public contracts to nominated state agencies, or independent organs of the administration, lack clarity
- recourse to derogations and contracts by mutual agreement continue to be made as a result of different interpretations of contradictory requirements
- costs have risen due to corruption and delays in payments
- appeal mechanisms must be more efficient
- there is a lack of control bodies to monitor procurement and provide advice to public buyers
- there is an absence of specific requirements in the public contract to prevent and punish corruption.

The groups presented their observations at a workshop, after which they were incorporated into proposals in the form of an action plan for 2003 to 2005. In mid-July 2003, an interministerial council chaired by the prime minister adopted the action plan. Whether its measures will be implemented depends on the political will of the government.

Mouhamadou Mbodj (Forum Civil–TI Senegal)

Further reading

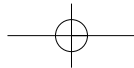
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World Bank, 'Evaluation de la pratique des marchés publics' (Evaluation of tender practices), Université Cheikh Anta DIOP, Dakar, December 2002

TI Senegal: www.forumcivil.sn



Notes

1. In January 2001, Senegal adopted a new constitution whose preamble establishes the principles of transparency and good governance in the conduct of public affairs.
2. The PCRPE is the *Projet de Construction et de Réhabilitation du Patrimoine de l'Etat*.
3. That agency is the *Agence Chargée de la Promotion de l'Investissement et des Grands Travaux*, known as APIX.

Serbia

NB: This report does not cover developments in Montenegro or Kosovo

Corruption Perceptions Index 2003 score:¹ 2.3 (106th out of 133 countries)

Bribe Payers Index 2002 score: not surveyed

Conventions:

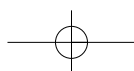
Council of Europe Civil Law Convention on Corruption (not yet signed)

Council of Europe Criminal Law Convention on Corruption (ratified December 2002)

UN Convention against Transnational Organized Crime (ratified September 2001)

Legal and institutional changes

- The broadcasting act of July 2002 regulates **broadcasting activities** pursuant to international conventions and standards with the aim of securing freedom of expression in Serbia. The act focuses on the establishment and competencies of the state-controlled Serbian Broadcasting Council (SBC), procedures for granting broadcasting licences and other issues relevant to the sphere of broadcasting. SBC is granted virtually unlimited authority to implement additional content regulation on the media.² Since its adoption, the act has already been violated: parliament appointed members of the SBC only after several months' delay and procedures for appointing members were violated in three cases.³ Public outrage prompted the parliament to repeat the vote on 15 July, only to confirm all three disputed appointments.⁴
- A **public procurement** act was passed in July 2002 (see below).
- A law on the organisation and jurisdiction of government authorities in the suppression of **organised crime** was passed in July 2002 (see below).
- The parliament of the province of Vojvodina, in northern Serbia, enacted an act in December 2002 that established the office of the **provincial ombudsman**. The ombudsman is empowered to engage in mediation and reconciliation and to initiate proceedings.⁵
- A **budget system** law was adopted in April 2002 and amended in December 2002. Its implementation, which began in 2003, is conducted by the consolidated treasury account (CTA) and the general treasury ledger (GTL), established by the ministry of



finance and economy and local self-government bodies. All financial resources of the national and local budget will be deposited in the CTAs; the ministry and local bodies responsible for finance will enter all transactions into the GTL. Besides compulsory internal budgetary control, annual account statements of the republic of Serbia and its local authorities will be subject to external audit. Amendments to the law established the public payment administration as the administrative body within the ministry of finance and economy.

- In force from January 2003, the law on **tax procedure** and tax administration defines the procedure of establishing, collecting and monitoring public revenues, the duties and obligations of taxpayers and tax offences in Serbia. Since the accounting and payment operations bureau (ZOP) was abolished in January 2003 and the payment system shifted to commercial banks, the law aimed to bring all tax activities under the umbrella of a single state body for tax administration.
- The constitutional charter of Serbia and Montenegro, adopted in February 2003, transfers all **competencies for fighting corruption** – both material and procedural – to its member states, Serbia and Montenegro. The general criminal code and criminal procedure code (previously in the competence of the federal state) consequently became part of Serbian legislation.
- In May 2003, the government appointed four new members to the **anti-corruption council**, an advisory body launched in December 2001.⁶ The council has actively initiated investigations into corruption, but some critics have called for a new anti-corruption agency with executive and police-style powers. Entrusted with monitoring anti-corruption activities and the implementation of existing regulations, the body may also propose legislation and programmes in the anti-corruption sector.
- Adopted in May 2003, the law on **urban planning and construction** simplifies procedures for obtaining construction permits and limits the time it should take for a permit to be issued to 15 days. The law also introduces penalties for the responsible authority in case the time limit is exceeded.

Unearthing corruption in the battle against organised crime

With the passing of a law on combating organised crime in July 2002, Serbia has made advances in combating corruption. The law was fully implemented after the assassination of Prime Minister Zoran Djindjic in March 2003, when police units were granted increased authority to pursue suspects.

The government made some efforts to suppress organised crime in Serbia in 2001 and early 2002, but results were disappoint-

ing. Although the ministry of the interior presented a report on organised crime activities in 2001, no action followed, which weakened public trust in the government's commitment.

After numerous statements of intent, the government took its first concrete step in July 2002 with a dedicated law. The law's provisions were derived from the experiences of other countries with high levels of organised crime, but they did not fully accord with Serbia's procedural and judicial system at the time. Subsequently, more efficient

measures were introduced for proceeding with most offences related to organised crime. Special police, public prosecution and court units were also introduced.

The law applies to bribe taking and bribe paying within the context of organised crime (along with all other offences that carry a potential sentence of more than five years' imprisonment).⁷ It introduces conflict of interest provisions, such as financial disclosure requirements for heads of special units and their families.⁸ Judges have assessed the law as 'decent', although some members of the judiciary called it redundant.⁹

Initially, the lack of financial and human resources represented an obstacle to the smooth implementation of the law. Yet this problem was overcome during the final days of the state of emergency in April 2003, which the government declared after the assassination of Prime Minister Djindjic. During the 42-day state of emergency, as part of Operation Sable, police forces received more authority to detain and imprison suspects and potential informants. Police questioned 10,111 and detained 2,599 individuals; 4,000 criminal charges were later filed against 3,500 persons suspected of committing about 5,900 criminal acts. Forty-five individuals were indicted by the end of August 2003.

Though corruption was not a priority in the operation, officials had expected cases to emerge since bribery and other corrupt activities tend to be staples of organised crime. One case involved allegations that a senior public prosecutor had accepted bribes to disclose the address of a protected witness and to sabotage trials against gang members; others implicated attorneys for allegedly bribing public prosecutors and judges.

Despite the upsurge in public expectations and trust in government, critics began voicing concerns in May and June 2003 over the government's own role in facilitating corruption and organised crime activities. Opposition politicians and even some

members of the government claimed that organised gangs owed their success to connections with politicians, or, at the least, their tacit approval. Some critics argued that Operation Sable had been selective in its fight against organised crime, and had merely served as a political tool.

Amendments promulgated during the state of emergency also came under attack. Originally designed to prolong the implementation of security measures, they drew vigorous criticism from opposition parties, human rights activists and legal experts, as well as diplomats and international organisations. The constitutional court resolved the problem in June 2003 by issuing a decision that denied the constitutional base for the disputed amendments.

Serbia introduces public procurement legislation, reaps benefits

Serbia introduced a law on public procurement in July 2002. Until then, provisions were dispersed in numerous laws regulating contractual activities, none of which featured any provisions for transparency, other than measures requiring fair competition. The selection of bids and award of contracts were completely opaque, subject only to the discretionary oversight of the procurement officials themselves.

Abuses were particularly glaring in the acquisition of goods for commodity stocks, the commissioning of capital projects and acquisitions through intermediaries. Corrupt practices included the bypassing or non-application of laws and regulations, private agreements, commissions and the division of profits.

By late 2000, domestic pressure for new legislation – coupled with repeated calls for reform from international financial organisations – prompted the authorities to examine ways to regulate public procurement procedures. The resulting public procurement act largely replicates the approach of the European Union (EU). The

act's directives on the use of open procedures actually exceed the minimum standards set in EU directives. When a limited number of suppliers are available for short-term standardised purchasing needs, restricted procedures apply and pre-qualification proceedings are always the first step.

The act includes a negotiated procedure modelled closely on the method described in the EU's minimum standards for procurement. Restricting negotiated methods of procurement had been a challenge in the Federal Republic of Yugoslavia, given the widespread practice of awarding contracts on the basis of negotiations and non-technical factors.¹⁰

The new legislation focuses on curbing nepotism, which was never addressed in previous legislation. Studies show that many of the firms taking part in public tenders were owned by family members or close friends of senior state officials.¹¹

Within one month of its implementation, however, the new act was revealed to be riddled with problems: it defined the contracting authority too broadly; its value limit on small procurement was too low; public announcements in the *Official Gazette* were too expensive; and neither purchasers

nor bidders were familiar with the new regulations.

Despite its weaknesses, however, the act does promote transparency in public procurement procedures thanks to several conflict of interest provisions. One provision regulates the publicising of the bidding process; another specifies deadlines for the submission of bids, which has a very strong anti-corruption effect.¹²

Furthermore, government officials have confirmed that the act has contributed to substantial savings and a 50 per cent drop in purchasing prices. Of the country's total annual public procurement budget, as much as 25 per cent had previously been used 'inefficiently'.¹³

During the first nine months of implementation, the act saved the state some US \$70 million. Two examples of savings stand out: the public enterprise Telekom saved 19.6 per cent (or US \$620,000) of the procurement value of vehicles and the ministry of the interior saved 26 per cent (or US \$430,000) on insurance.¹⁴ The law has also been found to curb corruption by eliminating intermediaries, improving conditions for local and foreign suppliers and bolstering competition.¹⁵

Nemanja Nenadic (TI Serbia)

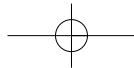
Further reading

Center for Liberal-Democratic Studies, 'Corruption at the Customs: Combating Corruption at the Customs Administration', Belgrade, 2002, www.clds.org.yu/html/e0.html

Center for Policy Studies, *Korupcija u novim uslovima* (Corruption in a new environment), Belgrade, 2002, www.cpa-cps.org.yu/cpa-cps/cpa/projekti/zavrzeni/Sadrzaj/ent_2002-10-06-16-26-02

European Commission, 'The Western Balkans in Transition', European economy occasional paper, Brussels, 2003, europa.eu.int/comm/economy_finance/publications/occasional_papers/occasionalpapers1_en.htm

OSCE Mission to the FRY, 'Report on Judicial Reform in Serbia', March 2003, www.osce.org/yugoslavia/documents/reports



Slobodan Vukovic, *Vladavina prava i korupcija* (Rule of law and corruption), Institut društvenih nauka, Belgrade, 2001, institut.institfdt.bg.ac.yu/ifdt/izdanja/zbornici/rekonstrukcija/27VukovicS.pdf

TI Serbia: www.transparentnost.org.yu

Notes

1. The CPI score applies to Serbia and Montenegro.
2. See Article 1 in www.mediacenter.org.yu/english/dokumenti/tranzicija/broadcast190901.asp; see also www.mediacenter.org.yu/english/dokumenti/tranzicija/memorandum-e.pdf
3. The SBC's image was tarnished by resignations, a parliamentary debate on council staffing issues and conflicts within the council. Criticism of the recent privatisation of B92 radio and television stations, which was conducted without a public tender, led the US ambassador to intervene on the side of the new owner which in turn contributed to an unprecedented diplomatic cooling between Serbia and the United States. For more information, see www.freeb92.com. For more on the delay in making appointments, see www.anem.org.yu/eng/medijska_scena/micic.htm
4. International Crisis Group, 'Serbian Reform Stalls Again', www.intl-crisis-group.org/projects/europe/serbia/reports/A401049_17072003.pdf
5. See www.vojvodina.sr.gov.yu/dokumenti/OmbudsmanSRL.htm
6. The council, which has not enjoyed government support, has failed to uncover any corruption cases since its creation.
7. With the adoption of amendments in 2003, the limit decreased to four years (for all criminal offences related to organised crime), while bribery is no longer identified separately. Indeed, the limit applies to almost all corruption-related offences.
8. Special units include the special prosecution office, the police service for combating organised crime, the special unit of the district court in Belgrade, the special unit of the court of appeal in Belgrade and the special unit for temporarily arrested persons.
9. OSCE Mission to Serbia and Montenegro, 'Report on Judicial Reform in Serbia', Belgrade, 2003.
10. World Bank, 'Country Procurement Assessment Report', 2002.
11. See Transparency International (TI) Serbia, 'The National Integrity System – Serbia and FRY', Belgrade, 2001.
12. TI Serbia, 'Information Accessibility in the Public Procurement Procedure', Belgrade, 2003.
13. Statement of Minister Bozidar Djelic, Belgrade, 24 April 2003, www.serbia.sr.gov.yu/news/2003-04/24/328902.html
14. Public procurement agency documentation; see www.ujn.sr.gov.yu/engleski/summary.htm and www.ujn.sr.gov.yu/Attachments/drzavne%20javne%20nabavke.pdf
15. Djelic statement, www.serbia.sr.gov.yu/news/2003-04/24/328902.html

South Africa

Corruption Perceptions Index 2003 score: 4.4 (48th out of 133 countries)

Bribe Payers Index 2002 score: not surveyed

Conventions:

AU Convention on the Prevention and Combating of Corruption (adopted July 2003; not yet signed)

SADC Protocol on Corruption (ratified May 2003)

UN Convention against Transnational Organized Crime (signed December 2000; not yet ratified)

Legal and institutional changes

- The **Prevention of Corruption Bill**, first introduced into parliament in April 2002, was the subject of review by parliament's justice portfolio committee during 2002–03. The bill, which is intended to address the shortcomings of the Corruption Act 1992, should become law by early 2004 (see below).
 - In October 2002 the South African police announced the closure of its Anti-Corruption Unit (ACU), which had been investigating **corruption within the police** since 1994. The decision was supposedly intended as an efficiency measure: ACU employees will be integrated into the Organised Crime and General Detective Units – but the ACU had until recently been investigating some members of the Organised Crime Unit for corruption. It remains unclear how effectively police corruption will be investigated in future.
 - Following the wave of international accounting scandals, the minister of finance established a special panel in December 2002 to review a draft Accounting Professions Bill that had been under discussion for several years, to strengthen the **regulation of auditors and accountants** (see below).
 - In December 2002 a Joint Anti-Corruption Task Team (JACTT) was established to confront corruption in the **Eastern Cape provincial government**. The body includes representatives of the national prosecuting authority, the ministry of public service and administration, and a private forensic auditing company. Eastern Cape is one of South Africa's poorest provinces and one of those most plagued by allegations of corruption in government. Within several months, the JACTT had secured the conviction of numerous officials, particularly in the education and welfare departments. However, the JACTT has a one-year mandate only and its future is uncertain.
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Further developments in the arms procurement scandal

An arms procurement scandal that goes to the heart of South Africa's government continued to unravel in 2002–03, attracting widespread public attention. The chief whip of the ruling party was sentenced to four years in prison for accepting a bribe as part of the deal, and investigations were conducted into allegations that Deputy President Jacob Zuma had solicited a bribe (see 'The politics of corruption in the arms trade: South Africa's arms scandal and the Elf affair', Chapter 4, page 59).

Legislation improving but implementation weak

A major hurdle in South Africa's fight against corruption in the past has been the lack of adequate legislative instruments to prosecute offenders. The Corruption Act of 1992 proved ineffective and was rarely invoked to formulate charges of bribery or corruption. New anti-corruption legislation that should remedy many weaknesses in the existing framework is currently being examined and should become law by early 2004. What it will not resolve, however, is the weakness of implementation.

Legislative reform was a key component of the cabinet-endorsed Public Service National Anti-Corruption Strategy of 2002. As part of that strategy, a new Prevention of Corruption Bill was tabled for debate in parliament in April 2002. The bill follows the international trend of 'unbundling' crimes of corruption by defining and prohibiting specific practices. In this regard it is substantially based on the provisions of Nigeria's Corruption Practices and Other Related Offences Act of 2000. Unlike South Africa's 1992 legislation, the new bill recognises both the supply and demand side of corruption by reinstating the common law offence of bribery, with a maximum sentence of 15 years and/or a fine. Importantly, given corporate South Africa's

engagement across the continent, the bill criminalises the bribery of foreign public officials abroad. The bill also places a duty on citizens to report instances of public corruption to the authorities, though this provision may face constitutional challenges given the state's limited capacity to protect whistleblowers. The original draft has also been extended to include private-to-private corruption, and a procurement blacklisting mechanism is being drafted for inclusion.

There were still limitations to the bill at this writing. Most significantly, it does not address nepotism or the private financing of political parties (see Box 2.1, 'The challenge of achieving political equality in South Africa', page 21). The African Union anti-corruption convention, adopted in July 2003, includes provisions on legislation governing the funding of political parties and may provide added impetus for the issue to be addressed at a national level. It was also not clear how the bill would facilitate whistleblowing.¹

Whatever the final form of the legal text, however, the greatest limitation is likely to lie in the law's implementation. A comprehensive review of South Africa's fight against corruption, published by the UN Office on Drugs and Crime in April 2003, praised the proposed Prevention of Corruption Bill but warned that 'there are serious weaknesses and shortcomings in the capacity and will of public sector bodies to implement and to comply with the laws'.²

The institutions responsible for implementation face decreasing budgets, pressure for rationalisation, increased caseloads and other resource constraints, and difficulties of transformation. The most pressing concern is the provinces, where 70 per cent of public officials work, anti-corruption policies are minimal and there are critical backlogs in resolving disciplinary cases (less than 10 per cent are given adequate attention). The government strategy includes: creating a minimum capacity to tackle corruption in all state departments; incorporating risk management systems, fraud prevention plans and professional and

security clearance for all managers; the promotion of whistleblowing, investigative capability and proper information systems; and programmes to promote professional ethics. Though neatly expressed on paper, these ambitious plans remain in their formative stages.

Part of the problem lies in the lack of financial resources. The introduction of the anti-corruption strategy has not been accompanied by additional financial support. Government departments are expected to resource their added activities from within existing budget allocations, or else seek donor assistance. Lack of information is a further obstacle. The UN report speaks of a 'grave shortage of information management', making it impossible to measure the effectiveness of anti-corruption strategies, though the UN assessment process itself offers a solid basis for further investigation.

Little achieved yet by the National Anti-Corruption Forum

Since the transition to democracy, South Africa has been infamous for racing to set up new institutions before carefully considering their impact. The National Anti-Corruption Forum, whose membership is drawn from government, the private sector and civil society, was no exception when it was set up in June 2001 after a lengthy process that began with the first National Anti-Corruption Summit in 1999. While the forum embodies the vital principle that government should not shoulder the burden of fighting corruption alone, little has happened since it was launched, though 2002–03 saw some attempts to revitalise the forum.

The forum was intended to operate as a non-statutory and cross-sectoral body that would 'contribute towards the establishment of a national consensus through the coordination of sectoral strategies against corruption'. While the formation of a compact across sectors was welcome, it could only be effective if partners were held

accountable for the commitments they had made. Unfortunately, none of the forum's main actors – government, business or civil society – are bound by its actions. Apart from sharing and publicising information on fraud management in business and the government's efforts to address corruption, little else has been achieved.

The work of the forum is partly constrained by limited capacity and low budgets, but also by weak civil society representation. The Institute for Democracy in South Africa (Idasa) has been instrumental in raising awareness of whistleblowing and party financing, but all civil society leaders will have to become more vigilant in mobilising opinion on corruption. Private sector representation has been more comprehensive, involving the South African Chamber of Business, the Black Management Forum, Afrikaanse Handelsinstituut and the National African Federated Chamber of Commerce, but the forum's impact on business practice has so far been minimal.

In November 2002 the government took steps to address the forum's leadership vacuum by appointing the minister for public services and administration, Geraldine Fraser-Moloketi, as its chair. In March 2003 the forum made an inaugural presentation to the parliamentary committee on public services and administration, where it reported some progress.

New initiatives to strengthen corporate accountability

Two new initiatives could strengthen corporate accountability in South Africa, if followed through. The King Code for Corporate Governance, developed by the King Committee under the auspices of the Institute of Directors in Southern Africa, was launched in March 2002, setting the corporate sector a huge ethical challenge.³ The code provides a comprehensive framework for corporate governance standards, calling on directors and boards to be far more transparent and accountable

to shareholders, and establishing a benchmark for international best practice. While compliance is voluntary and there are no formal measures in place to monitor implementation, the code received wide public exposure and there is considerable interest from the private sector.

In November 2002 the Ethics Institute of South Africa, an independent, non-profit organisation, published a survey of ethical practices within 53 large South African companies, which it intends repeating at two-year intervals as a way to track progress.⁴ The 2002 survey found that three-quarters of companies had official codes of ethics, but it found much weaker performance when it assessed compliance and the creation of an ethical culture, with inadequate communication and training on ethical issues.

The role of the accounting profession came under particular scrutiny following the wave of international accounting scandals. A draft Accounting Professions Bill had been under discussion for several years, but in December 2002 the minister of finance

established a panel to review the draft bill in the light of the accounting scandals. The panel was given the task of making recommendations on a range of issues, including the separation of the consulting and statutory auditing functions within firms, the introduction of term limits for auditors, audit rotation, disciplinary procedures when auditors fail to report properly and rules to govern accountability between an auditor and its clients.

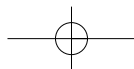
The challenge of reforming the corporate sector is considerable. The 2003 UN corruption assessment included a representative survey of 1,000 South African businesses. Although only 7 per cent reported paying bribes, 62 per cent agreed that 'bribery is becoming an accepted business practice', suggesting widespread underreporting of corporate bribery. In addition 34 per cent of businesses reported employee fraud. The majority (64 per cent) believed that corruption and fraud are obstacles to business, but only 31 per cent had specific policies in place to deal with them.

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Further reading

- Lala Camerer, 'Controlling Corruption in South Africa: Results of an Expert Panel Survey', Institute for Security Studies monograph series no. 40 (Pretoria, 2001)
- Department of Public Service and Administration (DPSA), United Nations Office on Drugs and Crime, Regional Office for Southern Africa (UNODCCP), 'Country Corruption Assessment Report: South Africa', DPSA/UNODCCP (Pretoria, 2003)
- Tom Lodge, 'Political Corruption in South Africa: from apartheid to multiracial state', in Arnold Heidenheimer and Michael Johnston, eds, *Political Corruption: Concepts and Contexts* (New Jersey: Transaction Publishers, 2002)
- Tom Lodge, 'Countering Corruption', in *Politics in South Africa: From Mandela to Mbeki* (Bloomington: Indiana University Press, 2003)
- Ugljesa Zvekcic, ed., *Corruption and Anti-Corruption in Southern Africa* (Hatfield: UNODC Regional Office for Southern Africa, 2002)

TI South Africa: www.tisa.org.za



Notes

1. The South African Law Commission has also been examining the question of whether the ambit of the Protected Disclosures Act 2000 should be extended to protect whistle-blowers beyond the employer/employee relationship, though it is by no means certain that this will result in a change to the law.
2. United Nations Office on Drugs and Crime, Regional Office for Southern Africa, and Government of South Africa, Department of Public Service and Administration, 'Country Corruption Assessment Report: South Africa' (Pretoria, 2003).
3. King Committee on Corporate Governance, 'King Report on Corporate Governance for South Africa', Institute of Directors (Johannesburg, 2002).
4. Ethics Institute of South Africa, 'Corporate Ethics Indicator: Business Ethics South Africa (BESA) Survey 2002' (Pretoria, 2002).

Uganda

Corruption Perceptions Index 2003 score: 2.2 (113th out of 133 countries)

Bribe Payers Index 2002 score: not surveyed

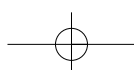
Conventions:

AU Convention on the Prevention and Combating of Corruption (adopted July 2003; not yet signed)

UN Convention against Transnational Organized Crime (signed December 2000; not yet ratified)

Legal and institutional changes

- The **Leadership Code Act 2002**, which came into force in July 2002 and replaces the 1992 leadership code, specifies a minimum standard of conduct for senior public officials and provides for enforcement of this standard through the Inspectorate of Government (IGG). The new legislation strengthens penalties for breaches of the code and, for the first time, renders declarations of assets and income by leaders public information (see below).
 - In an effort to streamline **government procurement**, which has been a major source of graft, parliament passed the Public Procurement and Disposal of Assets Act 2003. Procurement has been decentralised to line ministries and local governments. Each such body will have its own contracts committee and procurement secretariat. The law also saw the creation of the Public Procurement and Disposal of Assets Authority (PPDAA), which is mandated to monitor all procurement by both central and local government.
-



New measures to counter widespread impunity

Although Uganda has institutions with the legal authority to investigate and prosecute corruption, impunity remains widespread. New measures that strengthen the IGG are intended to counter this impunity, but what effect they will have remains to be seen given widespread complacency about corruption.

A number of prominent judicial commissions of inquiry have recently drawn critical conclusions concerning abuse of office and mismanagement, but they have not resulted in prosecutions. One, chaired by Justice Julia Sebutinde, into the purchase of sub-standard helicopters by the military and allegations of bribery linked to it, reported to the government in August 2001, but the government did not release the report until May 2003, in spite of widespread calls to do so. The report recommended the prosecution of the president's brother, Lieutenant-General Salim Saleh, and criticised the permanent secretary of the ministry of defence and other senior officials. At this writing no prosecutions had followed. In May 2003 the Porter Commission released its report into the plundering of resources in the Democratic Republic of Congo during Uganda's military intervention. The report was highly critical of several senior military officials and business figures, but its recommendations have not been implemented. The Sebutinde commission of inquiry into corruption in the Uganda Revenue Authority handed its report to the government early in 2003, but at this writing the government had still not made it public.

Another illustration of the extent of impunity is the recent trend in which the IGG has faced considerable resistance from local government officials. In one such case, exposed in the media in May 2003,¹ the IGG recommended the dismissal of the chief administrative officer (CAO) of Mukono district for corruptly diverting funds, but the CAO publicly defied the IGG with the support of the district chairperson. The CAO

was eventually forced to leave office, but only when the central government withheld funds from the district.

Recent reforms, including two pieces of legislation, are intended to strengthen the IGG and limit impunity. The Inspectorate of Government Act 2002 puts into effect the constitutional provision that the IGG should have independence from the executive, specifying that the IGG may only be removed from office on the recommendation of a special tribunal constituted by parliament. The new law also increases the penalty for non-compliance with the IGG, or for obstruction of its work, from one year's imprisonment or a fine of 10 million shillings (US \$5,800), to three years' imprisonment or a fine of 30 million shillings (US \$17,300).

The new leadership code, which came into force in July 2002, sets a minimum standard of conduct for leaders, who are broadly defined to include a wide range of public officials from ministers and parliamentarians to police officers, district chairpersons, town clerks, medium-ranking civil servants and accountants of any public body. The code's main focus is twofold: it requires leaders to declare their incomes, assets and liabilities, and it prevents conflicts of interest. The new code introduces penalties, which include dismissal from office, confiscation of undeclared property, up to two years' imprisonment or a 2 million shillings fine (US \$1,200). Unlike previous legislation, the new law expressly states that declarations of incomes and assets shall be open information, accessible to members of the public.

However, the IGG's resources are limited. It does not have the capacity to verify all the declared assets, and it is ill equipped to cover all of Uganda. So far, it has concentrated its efforts in the capital, Kampala. Given the challenge of enforcing the new legislation, the IGG underwent major reform in 2002–03 to increase its capacity and geographical range. Two new offices in Jinja and Hoima were added to the seven existing regional branches and the IGG headquarters in

Kampala, and about 50 more staff were engaged to run them.

Whether these new resources will make the IGG a more convincing performer is uncertain. As noted above, no action has followed several of the IGG's recent complaints and evidence so far suggests the IGG has not in practice gained greater independence from the executive, despite the new legislation. While the IGG's investigative capacity has been strengthened, without political will the IGG's presence could simply provide a cover for corruption, allowing impunity to continue.

Uncertainty remains over the freedom of political opposition

Since President Yoweri Museveni came to power in 1986, Uganda has claimed to be a 'no-party' democracy – opposition parties have been heavily restricted and the government has claimed to be not a party but a 'movement'. The absence of a functioning opposition has almost certainly facilitated corruption by minimising the scope for political parties and voters to hold the government to account. While corruption involving senior members of government is frequently exposed in the media, the government's record is unquestioned at a political level and the government lacks any competition in the formulation of policies to fight corruption. New legislation in 2002 was intended to reinforce the existing restrictions on political freedoms. In practice, however, it has exacerbated uncertainty about the future of Uganda's system of governance.

In June 2002 parliament enacted the Political Parties and Organisations Act 2002, which regulates the formation, financing, management and activities of political parties and organisations. It bars parties from campaigning for any elective office, limits their freedom to hold public meetings and bans them from opening offices outside the capital. The parliamentary vote followed a referendum in 2000 in which the majority

of votes were cast in favour of continuing the 'movement' system of governance. However, the new legislation met considerable opposition and caused intense debate in the press. Some politicians said they would not respect the law's provisions.

In March 2003 the constitutional court dismissed elements of the new law and ruled that the governing 'movement' system should itself be classified as a political organisation and, therefore, subject to the restrictions inherent in the new legislation. The Uganda Human Rights Commission, which has a constitutional mandate to monitor government compliance with international treaties – including the right to freedom of association – also criticised the legislation.²

The constitutional issues are not yet resolved. The government appealed against the court's ruling, and at this writing the verdict is still awaited. Even if a multiparty democracy is permitted to develop, it will take some time before there is any meaningful analysis of the government's record on corruption. Up to now, opposition parties have done little to formulate alternative programmes to confront corruption and there is little evidence that voters react to it as an issue.

Failure to resolve conflicts of interest

After the 2001 elections, the government reappointed two ministers, in spite of the fact that they had both been censured by parliament for conflict of interest and corruption, and the conflicts of interest had still not been resolved. At this writing Sam Kutesa and Jim Muhwezi remain in their posts in spite of protests. At a donors' group consultative meeting in May 2003, governments from around the world demanded that the president dismiss the ministers.

Contrary to the leadership code, Kutesa, a minister of state in the department of finance, planning and economic development, remained chair of the board

of Entebbe Handling Services even as he made ministerial decisions that had a direct bearing on the company's business. He was re-elected in 2001, there being no legal provisions that disqualify a censured minister from standing. Following his re-election, the president reappointed him to the same government office.

Muhwezi, then a minister of state in the department of education and sports, was censured in March 1998 for influence peddling and breach of the leadership code. Among other grounds for censure, parliament found the minister had used his position to influence decisions for the benefit of private individuals. Following the 2001 elections Muhwezi was appointed to the ministry of health.

The leadership code expressly requires leaders to disclose their interests and to remove themselves from decisions in which they might face a conflict of interest. It also prohibits leaders, their spouses, agents and any companies in which they have an interest from seeking, or holding, a contract with the public body with which the leader is associated. Failure to abide by the provisions is punishable by dismissal.

The cases of Kutesa and Muhwezi highlight only too publicly just how far the code is from rigorous implementation. If such cases are to be avoided in the future, offenders should be barred from standing for election to parliament.

Hassan Muloopa (TI Uganda)

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United States of America

Corruption Perceptions Index 2003 score: 7.5 (18th out of 133 countries)

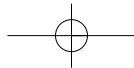
Bribe Payers Index 2002 score: 5.3 (13th out of 21 countries)

Conventions:

OAS Inter-American Convention against Corruption (ratified September 2000)

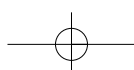
OECD Anti-Bribery Convention (ratified December 1998)

UN Convention against Transnational Organized Crime (signed December 2000; not yet ratified)



Legal and institutional changes

- The **Bipartisan Campaign Reform Act** (BCRA), known as the McCain-Feingold-Cochran bill, took effect in November 2002. Proponents consider it to be a major step towards reducing corruption in US politics by putting an end to 'soft money' and restricting candidate-specific 'issue' advertising. However, the legislation has shortcomings and has already been subject to legal challenges and efforts to circumvent it (see Box 2.2, 'Soft money "reform" in the United States: has anything changed?', page 25).
 - A series of multi-billion dollar corporate scandals spurred Congress to enact the **Sarbanes-Oxley Act** of 2002, named for its principal authors, Senator Paul Sarbanes and Congressman Michael Oxley. Signed into law by President Bush in July 2002, the law provides for sweeping corporate governance and accounting reform in publicly traded companies. Among its principal provisions are requirements that top corporate officials certify the accuracy of financial statements; that boards, and particularly audit committees, be comprised of independent directors; and that auditing firms report to the board and be limited in the services they can provide. The Securities and Exchange Commission (SEC) has issued for public comment and adopted numerous regulations implementing the law.
 - The Sarbanes-Oxley Act directed the SEC to create a **Public Company Accounting Oversight Board** (PCAOB) to set auditing, quality control, ethics, independence and other standards for auditors of listed companies. It also has the authority to conduct inspections of accounting firms, to enforce compliance with professional standards and relevant securities laws and to discipline accountants and auditing firms. Two of its five members must be certified public accountants (CPAs) and three may not be CPAs. The SEC appoints them after consultation with other senior officials.
 - The New York Stock Exchange (NYSE) and the National Association of Securities Dealers (NASD), through its subsidiary, the NASDAQ Stock Market, have developed **corporate governance** proposals for listed companies and the board of the NYSE has also approved sweeping reform of its own governance and disclosure practices.
 - As the Sarbanes-Oxley Act moved toward final passage, the Bush administration established a **Corporate Fraud Task Force**. Headed by the justice department, the 16-member force includes the secretaries of the Treasury and Labor Departments and the chairman of the SEC. Its objectives are to enhance investigation and criminal prosecution of financial crimes and to recover proceeds.
-



The US response to corporate corruption scandals

While corporate corruption continued to make headlines in 2003, a vigorous reform process moved ahead across a broad front, including investigations, prosecution, legislation, regulation and enforcement, as well as private sector reform. Although it is too soon to determine whether the multiplicity of efforts will successfully deter fraud and restore public confidence, there are signs that corporate directors and management are taking their responsibilities more seriously. At the same time, some charge that the reforms go too far and will cause economic harm, and special interests are seeking less onerous regulation.

The Enron bankruptcy that began to unfold in 2001 was the largest in US history involving over US \$62 billion in assets. It was also among the swiftest, taking less than a month from admitting inflated earnings to filing for bankruptcy. Even after Enron and Arthur Andersen collapsed, many still believed the problem affected only a few bad actors. With the bankruptcy of WorldCom, financial restatements at Adelphia Communications, Global Crossing, US Technologies and Xerox, and revelations of accounting improprieties by HealthSouth, Kmart, Symbol Technologies and Tyco, this early view became untenable.

The breadth and gravity of the scandals led to widespread calls for action. The Federal Bureau of Investigation, SEC and 11 congressional committees initiated investigations into Enron. Its former chief financial officer and other top officials now face multiple criminal charges of fraud, money laundering, conspiracy and obstruction of justice. Numerous shareholder lawsuits allege that dozens of executives cashed in over US \$1 billion in company stock before it plummeted, at the expense of investors and employees.¹

The Justice Department and SEC filed criminal and civil charges against former executives of numerous other corporations.

A former Tyco director pleaded guilty to securities fraud and avoided prison by agreeing to repay the US \$20 million he had been secretly paid, in addition to a US \$2.5 million fine.² Six former top officials of Xerox Corporation agreed to pay over US \$22 million to settle SEC accusations of accounting fraud. In June 2003, a founder of ImClone Systems was sentenced to the maximum of seven years and three months in prison on securities fraud and other charges. Celebrity Martha Stewart was also caught up in this scandal.

Congress moved swiftly to enact the Sarbanes-Oxley Act of 2002. Viewed as a 'watershed' for corporate governance, its provisions require chief executive officers (CEOs) and financial officers of listed companies to certify the accuracy and completeness of financial reports and to ensure effective internal controls and procedures. It requires companies to disclose whether they have a code of ethics for senior officers and, if not, to explain why.

The act improves accounting regulation and oversight. It requires corporate audit committees to be independent, bans accountants from providing some consulting services to firms they audit, requires CEOs and CFOs (chief financial officers) to certify annual and quarterly reports, and recommends that CEOs sign corporate tax returns.

The act provides 'state-of-the-art whistleblower protection for all private-sector employees of publicly traded companies'.³ In the past, laws varied from state to state; federal law now provides comprehensive protection for employees, including for disclosure of business crime or misconduct, and provides for compensatory damages and criminal penalties for retaliation. These provisions are notable given the critical role played by whistleblowers in exposing the Enron and WorldCom cases.⁴

It also strengthens the SEC's investigative and enforcement powers. It lengthens prison sentences and increases fines for those who defraud shareholders; creates criminal

liability for executives who knowingly file false financial reports; and makes it easier to prosecute executives who shred documents.

Congress has remedied the inadequacy of resources that impeded the SEC's work in the past. It appropriated US \$716 million for the SEC for fiscal year 2003 and is considering a request for over US \$840 million for 2004. This should enable the agency to handle the sharp increase in caseload.

Legislation is under consideration that would enable the SEC to increase civil administrative fines on corporate officers and directors up to US \$2 million per violation without first obtaining federal court approval. The legislation was passed by the Senate and awaits a vote in the House of Representatives.⁵ The SEC is already setting aside revenues from fines in a restitution fund set up under the act.

Charged with implementing the Sarbanes-Oxley Act, the SEC has published numerous proposed rules for comment prior to their adoption. It approved new rules requiring the audit committee, rather than management, to hire and fire outside auditors and preventing audit committee members from having consulting relationships, or other financial ties, with the corporation. New rules require greater disclosure and auditor independence and impose penalties for improper influence on the conduct of audits.

The NYSE has also submitted new governance rules for SEC approval, including requirements that listed companies have a majority of independent directors, that non-management directors meet regularly without management, that companies must have a corporate governance committee composed entirely of independent directors, and that they must have an independent audit committee of at least three independent directors. Listed companies must additionally adopt and disclose corporate governance guidelines, a code of business conduct and ethics, and annually certify that the CEO is not aware of any violation in the corporate governance listing

standards.⁶ The NASDAQ has devised its own set of standards, similar to those of the NYSE, mandating independent directors and an audit committee charter.⁷ It most recently proposed a rule that requires chief executives and chief compliance officers at brokerage houses to annually certify that their firms have adequate compliance and supervisory policies to protect investors.⁸

The NYSE has also undertaken reform of its own management systems. It adopted new rules to reduce conflicts of interest for directors and senior officials and to make senior officials' compensation public.

Many credit the impetus for reform to activities at the local level, particularly by officials like New York State Attorney General Eliot Spitzer, *Time* magazine's 'Crusader of the Year' in 2002. Spitzer launched an investigation in 2001 into how investment analysts altered stock information on which the public relies. He secured a US \$100 million fine against Merrill Lynch. Since then, regulators in almost a dozen states have investigated the practices of Wall Street firms. In May 2003, Spitzer and other regulators, along with SEC Chairman William Donaldson, charged 10 of Wall Street's biggest firms with fraud and announced a US \$1.4 billion settlement, the biggest in Wall Street history.

With new regulations, new leadership at the SEC and at the Public Company Accounting Oversight Board, prosecutions and unprecedented fines imposed, reform efforts are underway. Further actions are still anticipated, including SEC reviews every three years of all listed companies and a consideration of the merits of convergence between rules-based and principles-based accounting.

It will take time to determine the extent to which reforms are adopted. The jury, comprised of the public and financial markets, is still out on whether corporate officials, accountants and auditors, lawyers, analysts, rating agencies, investors, legislators, regulators and even the media

have taken all steps necessary to ensure integrity and restore public trust.

Transparency and accountability in the NGO sector

The non-profit sector has also had its share of governance scandals. One concerned United Way of the National Capital Area, a local chapter of a nationwide charity that collects and distributes donations to other charities. In 2001, the local group collected more than US \$97 million from over 300,000 donors, including government employees.⁹ A federal inquiry was launched into allegations that it had misstated and misused contributions. There were also allegations of questionable payments of millions of dollars to senior management, which reportedly refused to turn over important financial information to its board of directors. Following widespread media coverage, the charity lost significant corporate support and individual contributions.

Another high profile case concerned the Nature Conservancy, an environmental group well known internationally for its efforts to save endangered land and water, which is estimated to have amassed US \$3 billion in assets. A series of articles in the *Washington Post* described alleged financial transactions, including preferential land sales and loans to its governing board members, their companies, state and regional trustees and contributors, which raised serious concerns. According to the articles, the organisation undertook business ventures that failed, leaving millions worth of debt. Neither these failures nor the legal issues pending against Nature Conservancy are mentioned in the charity's annual reports, nor is there disclosure of business dealings with trustees, directors or family members. Information provided on executive compensation was considered highly inaccurate.¹⁰

Non-profit sector organisations represent a wide range of interests, including social services, health, education, arts and culture,

the environment and issue advocacy. Reflecting their growing importance, Congress is turning its attention to governance as it considers legislation to promote charitable giving. Senator Chuck Grassley, the senior Republican on the Senate finance committee that oversees tax-exempt organisations, has called on United Way and the Nature Conservancy for information about the press allegations. He has introduced several disclosure requirements for non-profits that benefit from the CARE act, a charitable-giving bill under consideration in Congress.¹¹

Donors and those who contract with non-profits are beginning to focus on governance and internal oversight issues. A recent study examined these practices among boards and senior management at over 1,000 non-profit organisations doing business with New York City.¹² According to one of the authors, corporate governance expert Ira Millstein, boards have a duty 'to hold management accountable for the use of assets entrusted to them – whether these assets derive from charitable contributions or state largesse in the form of tax breaks, incentives or direct grants. The non-profit board is not accountable to shareholders, but to a more amorphous constituency – the public, through the mission for which the state has granted the special non-profit status.'

This status permits non-profits to be exempt from taxes but requires transparency. It is due to this status that US law currently requires public disclosure of information on their activities and some aspects of their financial status. There is growing pressure for more transparency and better governance.

Among the findings in the New York study are that non-profit boards of directors should be more aware of their responsibility for financial oversight and should communicate directly with auditors. They highlight *interested party transactions* as an important problem for non-profit boards to address and recommend formal, written conflict of interest policies and enforcement mechanisms.

As noted by BoardSource, formerly the National Center for Non-Profit Boards, 'there was a time when service on many non-profit boards was perceived mainly as an honorary role. Today, non-profit boards are expected to govern.'¹³

While there is evidence of the need for greater transparency and voluntary reform getting underway, external pressure is growing. A UN Commission, chaired by former Brazilian president Henrique Cardoso, is set to recommend the adoption of guidelines and other mechanisms to promote accountability among NGOs accredited to the UN.¹⁴

However, some organisations are taking advantage of the focus on governance to target NGOs whose policy stances they find objectionable. Pointing to the 'unprecedented growth in the power and influence of non-governmental organisations' in June 2003, the American Enterprise Institute and the Federalist Society launched a website to monitor them. The NGOWatch.org website indicates that it will 'without prejudice,

compile factual data', but the underlying impetus appears to be to object to NGO positions and tactics, including those that are 'anti-free market' and 'internationalist'.¹⁵

NGOs will clearly have to address issues of accountability if they are to maintain their credibility, but acting on this imperative may take time. According to another recent study, 'The 21st Century NGO', some 'see the issue coming, but want to postpone the day of reckoning. The reaction was strongly reminiscent of corporate responses to the whole reporting agenda a decade or so ago when the triple bottom-line agenda began to emerge.'¹⁶

For those seeking to address these issues, there are many who provide advice. The American Bar Association recently published a 'Non-Profit Governance Library'. It consists of three publications with legal guidance, checklists and policies.¹⁷ There are also new transparency standards, such as the Global Reporting Initiative and AccountAbility's AA1000 standard that may help NGOs comply with best practice.

Nancy Z. Boswell (TI USA), Phyllis Dininio (Transnational Crime and Corruption Center, American University) and Michael Johnston (Colgate University)

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D. Renzulli, *Capitol Offenders: How Private Interests Govern Our States* (Washington D.C.: Center for Public Integrity, 2002)

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13. Charles F. Dambach, *Structures and Practices of Non-profit Boards* (Washington, D.C.: BoardSource, 2003).
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16. SustainAbility, *The 21st Century NGO: In the Market for Change* (Washington, D.C.: SustainAbility, 2003).
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Zambia

Corruption Perceptions Index 2003 score: 2.5 (92nd out of 133 countries)

Bribe Payers Index 2002 score: not surveyed

Conventions:

AU Convention on the Prevention and Combating of Corruption (adopted July 2003; not yet signed)

SADC Protocol on Corruption (ratified July 2003)

UN Convention against Transnational Organized Crime (not yet signed)

Legal and institutional changes

- In July 2002, President Levy Mwanawasa set up a **Task Force on Corruption** with the specific mandate of investigating the plunder of economic resources, particularly

that alleged to have taken place under former president Frederick Chiluba. The task force is a loose coalition of officers from the Anti-Corruption Commission, the Drug Enforcement Commission, the police, the Zambia Revenue Authority, the director of public prosecutions and the intelligence service. The appointment as its executive chairperson of Mark Chona, previously convenor of the NGO umbrella group Oasis Forum, was intended to improve coordination, but questions about the legal status of the task force remain. The task force has already arrested several prominent figures in the previous administration, who are being prosecuted on various charges of alleged abuse of authority or office and corruption.

- In December 2002 the president gave his assent to the Independent Broadcasting Authority Act and the Zambia National Broadcasting Corporation (Amendment) Act. The former allowed for the establishment of an independent **regulatory body for broadcasting**. The latter transferred the power to issue broadcasting licences from the minister of information to the proposed Independent Broadcasting Authority (see below).
- Although the Zambia Police (Amendment) Act was passed in 1999, the **Police Public Complaints Authority**, which it created, was not constituted until March 2003. The authority is intended to provide an avenue through which police officers may be reported for various infractions of the law, including corruption. Previously it was difficult for any person aggrieved by the conduct of a police officer to obtain redress because the superior to whom the report had to be submitted invariably shielded the officer from prosecution. Although it is too early to assess the authority, its chairperson, Christopher Mundia, is a respected lawyer who, as chair of the Law Association of Zambia, in league with other civil society organisations successfully opposed former president Chiluba's bid for a third term of office.
- In March 2003 parliament unanimously passed a motion calling for legislation to provide **public funding for political parties** in proportion to their representation in parliament. Were such legislation to be passed, it might help level the political playing field and reduce the demand for corrupt sources of political finance. However, the president declared that he would not assent to such a bill, arguing that the cost would be too great.

A new climate among prosecutors and the judiciary

After coming into office in January 2002 President Mwanawasa announced a policy of zero tolerance of corruption. The most prominent target was former president Frederick Chiluba, whose constitutional immunity from prosecution was lifted by

parliament in a unanimous vote in July 2002. In February 2003 the Supreme Court confirmed that parliament's action was constitutional and Chiluba was arrested within days. This was the first time in the history of a Commonwealth country that a former president was stripped of immunity by parliament. Chiluba was charged on numerous counts of abuse of authority and

theft of public funds, including one charge that he stole US \$29 million from the ministry of finance.

The fight against corruption gathered momentum in the year after the lifting of Chiluba's immunity. Chiluba's fate sent a clear message that the stature of one's office was no insulation against criminal charges, and has encouraged a more confrontational stance by prosecutors and the judiciary. A campaign against the pillage of resources by the former government has seen the arrest for alleged corruption of senior members of the previous government and, more recently, members of the current one. Prominent cases included the former managing director of Zambia's largest commercial bank, ZANACO – partly owned by government – and the secretary to the treasury, who were both arrested in January 2003 but subsequently discharged. More recently, the director general of the Zambia National Broadcasting Corporation was arrested for alleged abuse of office, and Arthur Yoyo, the president's press aide, was suspended after the Anti-Corruption Commission handed his case to the director of public prosecutions. The allegations against Yoyo dated from 2001, when he was permanent secretary in the ministry of information under the Chiluba government.

In the past, courts were reluctant to hand down custodial sentences against persons convicted of corruption and abuse of office, principally because it was felt that white-collar criminals did not deserve to go to jail. The courts typically gave suspended sentences for corruption charges. The new climate of hostility to corruption has encouraged judges to give custodial sentences. In April 2003, a magistrate in Solwezi, northwestern Zambia, sentenced an official to five years' imprisonment with hard labour for embezzling public funds. In May 2003, former minister of tourism Reverend Anoshi Chipawa was sentenced to five years' imprisonment with hard labour for stealing 29.9 million kwacha (US \$6,200) from constituency development funds while a member of parliament.

Government limits media reforms

While the government has shown a reasonable degree of commitment in fighting corruption, it has not easily accepted major media reforms despite mounting pressure from the media and civil society organisations.

The leading umbrella organisations of media and journalists, the Zambia Independent Media Association (ZIMA) and the Press Association of Zambia (PAZA), pushed for three reforming pieces of legislation: the Freedom of Information (FOI) Bill, the Independent Broadcasting Authority (IBA) Bill, and the Zambia National Broadcasting (Amendment) Bill. In August 2002, the bills were presented to parliament as private member's motions. The FOI Bill was intended to compel public institutions to release information to the media and public without undue prosecution. The IBA Bill aimed to establish an independent regulatory body. The Broadcasting Bill would have repealed the Zambia National Broadcasting Corporation (ZNBC) Act of 1987 and transformed the ZNBC from a state-controlled broadcaster into a public service broadcaster, allowing it to operate without official interference.

In early November 2002, the speaker of parliament rejected all three bills, citing procedural rules that required bills with financial implications to receive initial consent from the president through the vice-president or minister of finance. Shortly after, the government introduced its own versions of the bills, with some important modifications. Notably, the government cut the plan to repeal the ZNBC Act, thus retaining control of the broadcaster. Instead, it proposed an amendment to the ZNBC Act, transferring the power to issue broadcasting licences from the minister of information to the proposed IBA. In December 2002, after intensive lobbying and consultations, President Mwanawasa signed the revised IBA and ZNBC (Amendment) Acts into law.

However, the reforms have been still more limited. The FOI Bill was deferred for further

consultation. The members of the IBA have not yet been appointed. And in March 2003 it was alleged that the government threatened to close down Radio Ichengelo for giving airtime to Michael Sata, leader of the opposition Patriotic Front party, who attacked the government for corruption and tribalism.

The push for freedom of information legislation has continued through advocacy and lobbying. The main target is the constitutional review process that is currently underway, through which there is an opportunity to ensure the introduction of such legislation.

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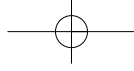
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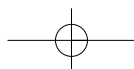
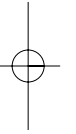
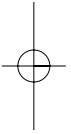
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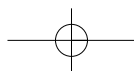
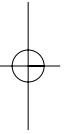
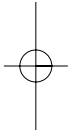
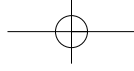
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Part three

Corruption research





9 Introduction

*Pablo Zoido and Larry Chavis*¹

Does corruption hit poor people harder than the middle class? Corruption hinders growth, yes, but through what channels? What policies work best in fighting corruption? Do organisational structures hamper women's ability to fight corruption once they achieve significant power? Is corruption worse in eastern or western Russia? Which Colombian institutions are clean and which ones corrupt? Does public mistrust lead to more corruption, or is it the other way around?

These are the kinds of questions social scientists are researching today. Questions about how to measure corruption or how to improve on current forms of measurement still linger, but the view that corruption cannot be measured, or that evidence is purely impressionistic or anecdotal, has been soundly defeated. A deeper understanding of how corruption works is allowing us to move from the broad questions to the specifics.

Since 1995, when Transparency International (TI) first published its Corruption Perceptions Index (CPI), empirical research on the effects of corruption has grown tremendously and ultimately matured. Few continue to argue that corruption might 'grease the wheels of commerce', as suggested by Samuel Huntington and others in the 1960s. The demand for data and analysis continues to grow and research is starting to have a direct impact on policy-making, as demonstrated by the inclusion of a corruption index in the Millennium Challenge Account (MCA), the most recent US aid-allocation initiative. The fight against corruption has barely started but we are beginning to see signs of progress – it is easier now to find success stories, or to come up with a set of policies that work and point to results (for an example, see Chapter 23 by Reinikka and Svensson, page 326). In sum, exciting new lines of research are adding to our knowledge about the causes and consequences of corruption.

Many of these new lines of research are present in this year's contributions to the *Global Corruption Report*. Below, we review these contributions, which can be divided into three groups: corruption indices, micro-level research and studies of poverty and corruption.

Corruption indices: from measurement to impact

Corruption indices have proved both controversial and remarkably successful. The CPI was the first index of its kind, and it is widely used to raise awareness, fight corruption and conduct statistical analysis. The 2003 CPI provides a new and enhanced look at relative levels of corruption across countries (Chapter 10, page 282).

Subjected to statistical analysis, indices such as the CPI have helped establish the link between corruption, growth and development (see Paolo Mauro's seminal 1995 paper²), and more recently they are having a direct policy impact, in particular in aid allocation. One of the main criticisms made of perceptions indices, however, is that they do not reflect the actual situation in a country. Seligson, for example, stresses the need to measure what percentage of a population actually experiences various forms of corruption (Chapter 17, page 307). Kaufmann and Kraay, presenting their latest set of governance indicators (Chapter 16, page 302), counter that objective measures may contain measurement error or be mere proxies for what they are intended to quantify. As a result, they argue, subjective measures are just as precise as objective ones. But Kaufmann and Kraay also warn against using corruption indices alone to determine policy decisions, since their imprecision may lead to the misclassification of countries.

Corruption indices have also motivated new areas of research, notably the channels through which corruption affects an economy and, in particular, the relationship between corruption and foreign direct investment. In studying the impact of corruption on development, Lambsdorff stresses the correlation between high levels of corruption (low CPI scores), lower annual capital inflows and also lower productivity (Chapter 18, page 310). Corruption may deter foreign investors because of its associated lack of secure property rights or 'low bureaucratic quality'. Habib and Zurawicki find that corruption is associated with lower levels of investment, especially from foreign investors (Chapter 19, page 313). Local investors may be less affected because they are used to 'navigating' the local conditions, or do not have the option to invest abroad. It is also important to take into account the level of corruption of a foreign investor's home country, since this may also have an impact on investment decisions.

Empirical corruption research: from macro to micro

But it is in micro-studies that the field of empirical corruption research is growing fastest and where the most exciting research is taking place. A large proportion of the contributions in this year's report are micro-level studies on a range of issues: measurement challenges, the role of information in the fight against corruption and women's participation in government as an anti-corruption strategy. The micro-studies in this year's report target very varied groups, including victims of crime, business people, elites and households. One of the most challenging areas for current research is the impact of corruption on poor households, to which we turn below.

Measurement challenges at the micro level

Cross-country measures of corruption are often criticised on the grounds that assigning a single score for an entire country is, at best, simplistic. How can one capture the varied perceptions of corruption or governance in countries as large and diverse as India, Indonesia or Russia? Indeed, diversity signals the need for a more in-depth understanding of how corruption varies across a single country. Two contributions in this year's report address this issue.

In his study, Court finds that perceptions of corruption in a wide array of institutions appear very similar across four widely diverse Indian states (Chapter 21, page 319). A

single score, he argues, can accurately portray the situation in a whole country. Using a different angle, Chirkova and Bowser conducted an extensive preliminary survey covering about half of Russia (Chapter 13, page 295). They have produced a corruption map where the indices vary significantly across Russia's regions and territories. Understanding the source of this variance may be one of the most interesting challenges that lie ahead. Taken together, Court and Chirkova and Bowser suggest that while a single index score might be a valid means of comparison across countries, more country-specific analysis is needed to understand the corruption and governance problems within a country.

Single-country studies have the advantage of being able to utilise local expertise and integrate country-specific idiosyncrasies. The fruits of this kind of analysis are visible in the work of *Transparencia por Colombia* and *TI Bulgaria*. In Colombia, *Transparencia por Colombia* created an index to monitor the performance of a number of public institutions, marrying hard data with survey responses (Chapter 12, page 292). In Bulgaria, data from a sociological survey and from the National Audit Office were combined to create an index of the transparency of political party financing (Chapter 14, page 298). These new approaches integrate the methodological advances made in corruption research at the macro level with the advantages of solid micro-level studies.

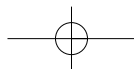
Studies of business, elites and victims of crime

Micro-level analyses have also focused on multiple countries and various social groups. Concentrating on victims of crime, Seligson suggests that there is a strong correlation between being a victim of corruption and a lack of trust in public institutions (Chapter 17, page 307). Steen also brings out the issue of trust and corruption in his review of surveys of business, government and cultural elites in Russia and the Baltic States (Chapter 22, page 323). The main challenge facing this line of research is establishing whether it is corruption that leads to mistrust – or the other way around.

Bray's contribution draws out the perceptions of senior decision-makers in international businesses (Chapter 20, page 316). In a study commissioned by Control Risks Group, Bray assesses the effect of international treaties, such as the OECD Anti-Bribery Convention, on the attitudes of international businesses. He finds that the new legislation is beginning to have an impact on the way they behave, but that there are major gains to be made in enforcement. He stresses that many companies believe that the United States and other OECD countries use undue political pressure to win business advantage.

Corruption and information

If corruption is to be eliminated, it must first be exposed. The power of publicising information is most obvious in the Uganda research presented by Reinikka and Svensson (Chapter 23, page 326). By making public the amount of education grants given to school districts, the government was able to reduce the degree of capture of these funds from 80 per cent in 1995 to 20 per cent in 2001. The research is important because of the potential the Uganda example has for similar measures elsewhere. What may be more significant for research in corruption diagnostics, however, is that identifying such low-cost policies would be impossible without the initial surveys to quantify the leakage in education funding.



Other examples of successful anti-corruption policies are the studies carried out by the International Budget Project (IBP) (Chapter 24, page 330). Working with national experts and NGOs, IBP has made extensive studies of budget processes across Africa and Latin America with the intention of identifying the specific areas where reforms are needed to promote more transparency.

Though very different in approach, the work of Azfar and Nelson also illustrates the benefits of transparency (Chapter 25, page 333). Using an experimental economic model, they demonstrate in a controlled environment how corruption is reduced when more information is made available to the electorate. Because of the lack of direct data on corrupt transactions, the use of experimental settings has great potential to help explain corrupt behaviour in certain situations. The results from Azfar and Nelson give both possible policy prescriptions and areas for further testing.

Corruption and gender

One area of corruption research that continues to receive attention is the role played by gender. If men are inherently more corrupt than women, increasing women's participation in public life would seem likely to reduce the incidence of corruption. However, the studies presented here indicate important subtleties. More research will be needed if we are to understand the impact on corruption of increasing the participation of women in government.

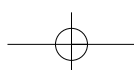
The work of Mukherjee and Gokcekus suggests that, while gender does affect corruption, the reason may have more to do with organisational dynamics than with gender-specific characteristics (Chapter 26, page 337). Either a low proportion of men or a low proportion of women in a public organisation can foster corruption. Thus, what may be needed to reduce corruption is a better balance of male and female employees in an organisation.

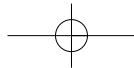
In a study of local government in India, Vijayalakshmi fails to find a correlation between female participation and the level of local corruption (Chapter 27, page 340). Vijayalakshmi points to the entrenched nature of corruption networks, the fact that new officials are drawn into these networks early in their careers and the limited ability of groups of women to affect decision-making.

Poverty and corruption: challenges ahead

Analysis of household data is an important and challenging area for the study of the relationship between corruption and poverty. The principal finding that emerges from this literature is that corruption affects the poor disproportionately. The poor spend more on bribes as a share of their income, and their access to public services is severely curtailed.

Thampi's contribution is a good example of this line of research (Chapter 15, page 300). Summarising the results of surveys commissioned by TI national chapters in South Asia and covering 15,000 households across five countries, Thampi stresses that 'the poor in these countries face the danger of exclusion from public services due to the high artificial barriers, economic and otherwise'.





Herrera and Roubaud's report from a representative survey of nearly 20,000 households in Peru (Chapter 28, page 343) refines the picture. Their findings indicate that the poor pay less to corrupt officials than the non-poor, but that such payments weigh more heavily on their budget. Razafindrakoto and Roubaud present the findings of surveys across French-speaking Africa (Chapter 29, page 346), focusing on factors that determine the chance of becoming a victim of corruption, such as social status, gender and religion. One interesting finding is that civil servants are less likely to become victims of corruption at the hands of their colleagues. Both studies argue that the impact of corruption on the poor is often not direct – as many of the poor have so little access to public services – but indirect, as corruption is one factor that contributes to the lack of access.

TI's new Global Corruption Barometer, which also shows the impact of corruption on the poor (Chapter 11, page 288), relies on surveys of more than 40,000 people in 47 countries. Two out of five respondents on low incomes believe that corruption plays a very significant part in their personal and family lives, whereas only one in four high-income individuals expresses the same belief. Such results lead to the conclusion that corruption hits the poor and vulnerable hardest.

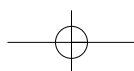
Conclusion

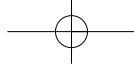
The array of research presented here reflects how research on corruption has moved forwards. While comparative indices continue to garner wide attention, they now represent only one strand in this research. The majority of research presented here has a micro-level focus. The level of research analysis is shifting as we move away from comparing countries to the study of regions or groups within countries. This approach is helping to build a more comprehensive picture of how corruption operates within different societies.

There are many other avenues still to explore. As anti-corruption programmes take off, research such as Reinikka and Svensson's offers an evaluation of anti-corruption measures at work (Chapter 23, page 326). Such studies are valuable policy tools. To address the current interest in micro-level studies on corruption, more work is required that uses the firm as a unit of analysis, with the aim of providing a broader view of the impact of corruption in an economy. One current weakness of macro-level research is that the CPI and other cross-country indices do not allow for the comparison of changes in corruption over time. As new tools become available, we will be better able to track changes that help to identify the policies that are most useful in fighting corruption.

Notes

1. Pablo Zoido and Larry Chavis are at the graduate school of business at Stanford University, United States. Contact: zoido_pablo@gsb.stanford.edu and chavis_larry@gsb.stanford.edu
2. Pablo Mauro, 'Corruption and Growth', *Quarterly Journal of Economics*, no. 110 (1995).





10 Corruption Perceptions Index 2003

Johann Graf Lambsdorff¹

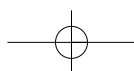
Transparency International's Corruption Perceptions Index (CPI) has been published annually since 1995 and continues to be widely used by social scientists as an indispensable instrument in investigating the causes and consequences of corruption. It aggregates the perceptions of well-informed people with regard to the extent of corruption, defined as the misuse of public power for private benefit. The extent of corruption reflects the frequency of corrupt payments and the resulting obstacles imposed on businesses.

While methodological innovations are introduced continuously, the results from different years show a high level of consistency. The most remarkable improvement this year is the expansion of the index from 102 to 133 countries.

This year's CPI used data collected between 2001 and 2003. The CPI is a composite index. Altogether 17 data sources were used in the 2003 CPI, from 13 different institutions: (1) the World Economic Forum; (2) the Institute of Management Development (in Lausanne); (3) the Economist Intelligence Unit; (4) Information International from Beirut (Lebanon); (5) the World Markets Research Centre (London); (6) Gallup International, on behalf of Transparency International; (7) Freedom House's *Nations in Transit*; (8) PricewaterhouseCoopers; (9) the Political and Economic Risk Consultancy (in Hong Kong); (10) the World Business Environment Survey of the World Bank; (11) Columbia University; (12) a multilateral development bank; and (13) the Business Environment and Enterprise Performance Survey of the EBRD and the World Bank.

One precondition for the inclusion of a source in the index is that it must provide a ranking of nations. Another is that it must measure the overall level of corruption. Ensuring these conditions is essential to guarantee that we are not mixing apples with oranges. Sources exist that merge the level of corruption with other variables, such as xenophobia, nationalism, political instability or expected risks due to changes in corruption. Including such sources would distort the measurement of perceived levels of corruption, rendering a resulting composite index defective for wide areas of academic research and public awareness. We take a conservative approach, only including sources that strictly compare levels of corruption.

The strength of the CPI lies in the combination of multiple data sources in a single index, which increases the reliability of each individual score. The benefit of combining data in this manner is that erratic findings from one source can be balanced by the inclusion of at least two other sources, lowering the probability of misrepresenting a country's level of corruption.



The high correlation of the different sources used in the CPI indicates its overall reliability. The reliability is also depicted in Figure 10.1, which shows the 90 per cent confidence intervals for each country included in the 2003 CPI. This range indicates how a country's score may vary, depending on measurement precision. Most countries are measured with sufficient precision to allow a ranking of nations.

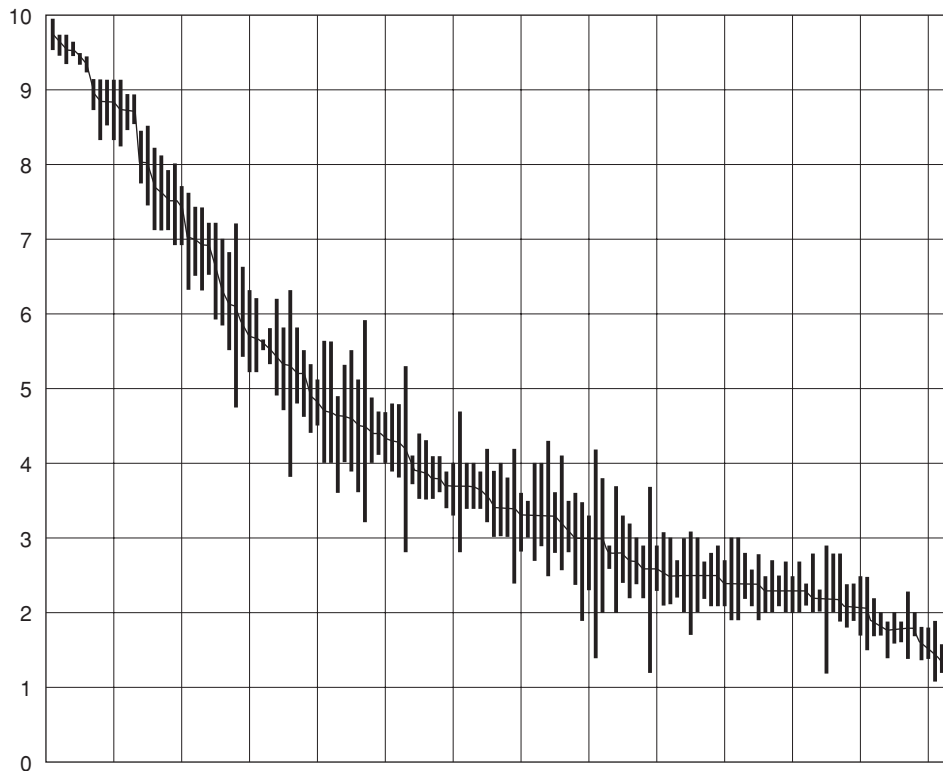


Figure 10.1: 2003 CPI and 90% confidence intervals

The index provides an annual snapshot of the views of decision-makers. Comparisons with the results from previous years should be based on a country's score, not its rank. A country's rank can change simply because new countries enter the index. However, year-to-year comparisons of a country's score result not only from a changing perception of a country's performance, but also from a changing sample and methodology – each year different viewpoints are collected and somewhat different questions are asked. Nevertheless, current research indicates that the effect of the changing sample and methodology is small, particularly when looking at long-term trends in the CPI.

The CPI gathers perceptions that are invariant to cultural preconditions and represent a global perspective. The robustness of the CPI findings is enhanced by the fact that surveys containing residents' viewpoints were found to correlate well with surveys that poll expatriates. In the past, the viewpoint of less-developed countries seemed under-

Table 10.1: Corruption Perceptions Index 2003

Country rank	Country	CPI 2003 score ^a	Surveys used ^b	Standard deviation ^c	High-low range ^d	90% confidence range ^e
1	Finland	9.7	8	0.3	9.2 – 10.0	9.5 – 9.9
2	Iceland	9.6	7	0.3	9.2 – 10.0	9.4 – 9.7
3	Denmark	9.5	9	0.4	8.8 – 9.9	9.3 – 9.7
	New Zealand	9.5	8	0.2	9.2 – 9.6	9.4 – 9.6
5	Singapore	9.4	12	0.1	9.2 – 9.5	9.3 – 9.4
6	Sweden	9.3	11	0.2	8.8 – 9.6	9.2 – 9.4
7	Netherlands	8.9	9	0.3	8.5 – 9.3	8.7 – 9.1
8	Australia	8.8	12	0.9	6.7 – 9.5	8.3 – 9.1
	Norway	8.8	8	0.5	8.0 – 9.3	8.5 – 9.1
	Switzerland	8.8	9	0.8	6.9 – 9.4	8.3 – 9.1
11	Canada	8.7	12	0.9	6.5 – 9.4	8.2 – 9.1
	Luxembourg	8.7	6	0.4	8.0 – 9.2	8.4 – 8.9
	United Kingdom	8.7	13	0.5	7.8 – 9.2	8.5 – 8.9
14	Austria	8.0	9	0.7	7.3 – 9.3	7.7 – 8.4
	Hong Kong	8.0	11	1.1	5.6 – 9.3	7.4 – 8.5
16	Germany	7.7	11	1.2	4.9 – 9.2	7.1 – 8.2
17	Belgium	7.6	9	0.9	6.6 – 9.2	7.1 – 8.1
18	Ireland	7.5	9	0.7	6.5 – 8.8	7.1 – 7.9
	USA	7.5	13	1.2	4.9 – 9.2	6.9 – 8.0
20	Chile	7.4	12	0.9	5.6 – 8.8	6.9 – 7.7
21	Israel	7.0	10	1.2	4.7 – 8.1	6.3 – 7.6
	Japan	7.0	13	1.1	5.5 – 8.8	6.5 – 7.4
23	France	6.9	12	1.1	4.8 – 9.0	6.3 – 7.4
	Spain	6.9	11	0.8	5.2 – 7.8	6.5 – 7.2
25	Portugal	6.6	9	1.2	4.9 – 8.1	5.9 – 7.2
26	Oman	6.3	4	0.9	5.5 – 7.3	5.8 – 7.0
27	Bahrain	6.1	3	1.1	5.5 – 7.4	5.5 – 6.8
	Cyprus	6.1	3	1.6	4.7 – 7.8	4.7 – 7.2
29	Slovenia	5.9	12	1.2	4.7 – 8.8	5.4 – 6.6
30	Botswana	5.7	6	0.9	4.7 – 7.3	5.2 – 6.3
	Taiwan	5.7	13	1.0	3.6 – 7.8	5.3 – 6.2
32	Qatar	5.6	3	0.1	5.5 – 5.7	5.5 – 5.6
33	Estonia	5.5	12	0.6	4.7 – 6.6	5.3 – 5.8
	Uruguay	5.5	7	1.1	4.1 – 7.4	4.9 – 6.2
35	Italy	5.3	11	1.1	3.3 – 7.3	4.7 – 5.8
	Kuwait	5.3	4	1.7	3.3 – 7.4	3.8 – 6.3
37	Malaysia	5.2	13	1.1	3.6 – 8.0	4.8 – 5.8
	United Arab Emirates	5.2	3	0.5	4.6 – 5.6	4.6 – 5.5
39	Tunisia	4.9	6	0.7	3.6 – 5.6	4.4 – 5.3
40	Hungary	4.8	13	0.6	4.0 – 5.6	4.5 – 5.1
41	Lithuania	4.7	10	1.6	3.0 – 7.7	4.0 – 5.6
	Namibia	4.7	6	1.3	3.6 – 6.6	4.0 – 5.6
43	Cuba	4.6	3	1.0	3.6 – 5.5	3.6 – 4.9
	Jordan	4.6	7	1.1	3.6 – 6.5	4.0 – 5.3
	Trinidad and Tobago	4.6	6	1.3	3.4 – 6.9	3.9 – 5.5
46	Belize	4.5	3	0.9	3.6 – 5.5	3.6 – 5.1
	Saudi Arabia	4.5	4	2.0	2.8 – 7.4	3.2 – 5.9
48	Mauritius	4.4	5	0.7	3.6 – 5.5	4.0 – 4.9
	South Africa	4.4	12	0.6	3.6 – 5.5	4.1 – 4.7

Table 10.1: *continued*

Country rank	Country	CPI 2003 score ^a	Surveys used ^b	Standard deviation ^c	High-low range ^d	90% confidence range ^e	
50	Costa Rica	4.3	8	0.7	3.5 – 5.5	4.0 – 4.7	
	Greece	4.3	9	0.8	3.7 – 5.6	3.9 – 4.8	
	South Korea	4.3	12	1.0	2.0 – 5.6	3.8 – 4.8	
53	Belarus	4.2	5	1.8	2.0 – 5.8	2.8 – 5.3	
54	Brazil	3.9	12	0.5	3.3 – 4.7	3.7 – 4.1	
	Bulgaria	3.9	10	0.9	2.8 – 5.7	3.5 – 4.4	
57	Czech Republic	3.9	12	0.9	2.6 – 5.6	3.5 – 4.3	
	Jamaica	3.8	5	0.4	3.3 – 4.3	3.5 – 4.1	
	Latvia	3.8	7	0.4	3.4 – 4.7	3.6 – 4.1	
59	Colombia	3.7	11	0.5	2.7 – 4.4	3.4 – 3.9	
	Croatia	3.7	8	0.6	2.6 – 4.7	3.3 – 4.0	
	El Salvador	3.7	7	1.5	2.0 – 6.3	2.8 – 4.7	
	Peru	3.7	9	0.6	2.7 – 4.9	3.4 – 4.0	
	Slovakia	3.7	11	0.7	2.9 – 4.7	3.4 – 4.0	
64	Mexico	3.6	12	0.6	2.4 – 4.9	3.4 – 3.9	
	Poland	3.6	14	1.1	2.4 – 5.6	3.2 – 4.2	
66	China	3.4	13	1.0	2.0 – 5.5	3.0 – 3.9	
	Panama	3.4	7	0.8	2.7 – 5.0	3.0 – 4.0	
	Sri Lanka	3.4	7	0.7	2.4 – 4.4	3.0 – 3.8	
	Syria	3.4	4	1.3	2.0 – 5.0	2.4 – 4.2	
70	Bosnia & Herzegovina	3.3	6	0.7	2.2 – 3.9	2.8 – 3.6	
	Dominican Republic	3.3	6	0.4	2.7 – 3.8	3.0 – 3.5	
	Egypt	3.3	9	1.3	1.8 – 5.3	2.7 – 4.0	
	Ghana	3.3	6	0.9	2.7 – 5.0	2.9 – 4.0	
	Morocco	3.3	5	1.3	2.4 – 5.5	2.5 – 4.3	
	Thailand	3.3	13	0.9	1.4 – 4.4	2.8 – 3.6	
	76	Senegal	3.2	6	1.2	2.2 – 5.5	2.6 – 4.1
	77	Turkey	3.1	14	0.9	1.8 – 5.4	2.8 – 3.5
	78	Armenia	3.0	5	0.8	2.2 – 4.1	2.4 – 3.6
		Iran	3.0	4	1.0	1.5 – 3.6	1.9 – 3.5
		Lebanon	3.0	4	0.8	2.1 – 3.6	2.3 – 3.3
		Mali	3.0	3	1.8	1.4 – 5.0	1.4 – 4.2
		Palestine	3.0	3	1.2	2.0 – 4.3	2.0 – 3.8
83	India	2.8	14	0.4	2.1 – 3.6	2.6 – 2.9	
	Malawi	2.8	4	1.2	2.0 – 4.4	2.0 – 3.7	
	Romania	2.8	12	1.0	1.6 – 5.0	2.4 – 3.3	
86	Mozambique	2.7	5	0.7	2.0 – 3.6	2.2 – 3.2	
	Russia	2.7	16	0.8	1.4 – 4.9	2.4 – 3.0	
88	Algeria	2.6	4	0.5	2.0 – 3.0	2.2 – 2.9	
	Madagascar	2.6	3	1.8	1.2 – 4.7	1.2 – 3.7	
	Nicaragua	2.6	7	0.5	2.0 – 3.3	2.3 – 2.9	
	Yemen	2.6	4	0.7	2.0 – 3.4	2.1 – 3.1	
92	Albania	2.5	5	0.6	1.9 – 3.2	2.1 – 3.0	
	Argentina	2.5	12	0.5	1.6 – 3.2	2.2 – 2.7	
	Ethiopia	2.5	5	0.8	1.5 – 3.6	2.0 – 3.0	
	Gambia	2.5	4	0.9	1.5 – 3.6	1.7 – 3.1	
	Pakistan	2.5	7	0.9	1.5 – 3.9	2.0 – 3.0	
	Philippines	2.5	12	0.5	1.6 – 3.6	2.2 – 2.7	
	Tanzania	2.5	6	0.6	2.0 – 3.3	2.1 – 2.8	
	Zambia	2.5	5	0.6	2.0 – 3.3	2.1 – 2.9	

Table 10.1: *continued*

Country rank	Country	CPI 2003 score ^a	Surveys used ^b	Standard deviation ^c	High–low range ^d	90% confidence range ^e
100	Guatemala	2.4	8	0.6	1.5–3.4	2.1–2.7
	Kazakhstan	2.4	7	0.9	1.6–3.8	1.9–3.0
	Moldova	2.4	5	0.8	1.6–3.6	1.9–3.0
	Uzbekistan	2.4	6	0.5	2.0–3.3	2.2–2.8
	Venezuela	2.4	12	0.5	1.4–3.1	2.1–2.6
	Vietnam	2.4	8	0.8	1.4–3.6	1.9–2.8
106	Bolivia	2.3	6	0.4	1.9–2.9	2.0–2.5
	Honduras	2.3	7	0.6	1.4–3.3	2.0–2.7
	Macedonia	2.3	5	0.3	2.0–2.7	2.1–2.5
	Serbia & Montenegro	2.3	5	0.5	2.0–3.2	2.0–2.7
	Sudan	2.3	4	0.3	2.0–2.7	2.0–2.5
	Ukraine	2.3	10	0.6	1.6–3.8	2.0–2.7
	Zimbabwe	2.3	7	0.3	2.0–2.7	2.1–2.4
	Congo, Republic of the	2.2	3	0.5	2.0–2.8	2.0–2.8
113	Ecuador	2.2	8	0.3	1.8–2.6	2.0–2.3
	Iraq	2.2	3	1.1	1.2–3.4	1.2–2.9
	Sierra Leone	2.2	3	0.5	2.0–2.8	2.0–2.8
	Uganda	2.2	6	0.7	1.8–3.5	1.9–2.8
	Côte d'Ivoire	2.1	5	0.5	1.5–2.7	1.8–2.4
	Kyrgyzstan	2.1	5	0.4	1.6–2.7	1.9–2.4
118	Libya	2.1	3	0.5	1.7–2.7	1.7–2.5
	Papua New Guinea	2.1	3	0.6	1.5–2.7	1.5–2.5
	Indonesia	1.9	13	0.5	0.7–2.9	1.7–2.2
	Kenya	1.9	7	0.3	1.5–2.4	1.7–2.0
124	Angola	1.8	3	0.3	1.4–2.0	1.4–1.9
	Azerbaijan	1.8	7	0.3	1.4–2.3	1.6–2.0
	Cameroon	1.8	5	0.2	1.4–2.0	1.6–1.9
	Georgia	1.8	6	0.7	0.9–2.8	1.4–2.3
	Tajikistan	1.8	3	0.3	1.5–2.0	1.7–2.0
	Myanmar	1.6	3	0.3	1.4–2.0	1.4–1.8
	Paraguay	1.6	6	0.3	1.2–2.0	1.4–1.8
131	Haiti	1.5	5	0.6	0.7–2.3	1.1–1.9
132	Nigeria	1.4	9	0.4	0.9–2.0	1.2–1.6
133	Bangladesh	1.3	8	0.7	0.3–2.2	0.9–1.7

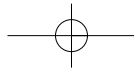
^a 'CPI 2003 score' relates to perceptions of the degree of corruption as seen by business people, academics and risk analysts, and ranges between 10 (highly clean) and 0 (highly corrupt).

^b 'Surveys used' refers to the number of surveys that assessed a country's performance. A total of 17 surveys were used from 13 independent institutions, and at least three surveys were required for a country to be included in the CPI.

^c 'Standard deviation' indicates differences in the values given by the sources: the greater the standard deviation, the greater the differences of perceptions of a country among the sources.

^d 'High–low range' provides the highest and lowest values given by the different sources.

^e '90% confidence range' provides a range of possible values of the CPI score. It reflects how a country's score may vary, depending on measurement precision. There is a 5 per cent probability that the score is above this range and 5 per cent that it is below. This interval, particularly when only three sources are available, should only be regarded as a rough guide.

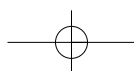
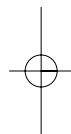
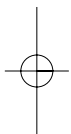


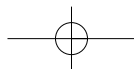
represented. For the 2003 CPI, however, Gallup International on behalf of Transparency International surveyed respondents from less-developed countries, asking them to assess the performance of public servants in industrial countries. The same approach was applied by Beirut-based Information International. The results from these groups of expatriates correlate well with the other sources used in the 2003 CPI.

A more detailed description of the methodology is available at www.transparency.org/cpi/index.html#cpi or at www.gwdg.de/~uwvw

Note

1. Johann Graf Lambsdorff is professor of economics at the University of Passau, Germany, and director of statistical work on the CPI for TI. Contact: jlamsbd@uni-passau.de





11 Global Corruption Barometer 2003

Transparency International

The Global Corruption Barometer is a new global, public opinion survey of perceptions, experiences and attitudes towards corruption. The barometer was carried out in association with Gallup International, as part of their first Voice of the People survey. The Voice of the People Survey involved interviews in July 2002 with 40,838 people in 47 countries across all continents.¹

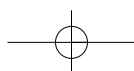
Complementing TI's Corruption Perceptions Index, the barometer involved questions intended to capture different aspects of corruption's extent and impact. Questions addressed the impact of corruption on different spheres of life, as well as perceptions of change in previous years and expectations of the future. TI hopes to repeat the survey in future years, which would allow an assessment of trends over time in both the perception and experience of corruption.

The most striking finding came when respondents were asked from which institution they would choose to eliminate corruption first if they had a magic wand. The overwhelming first choice was political parties, followed by the courts and the police. Political parties was the most frequently chosen institution in 33 of the 45 countries where this question was asked,² most notably in Argentina and Japan, where more than 50 per cent of respondents picked political parties. In total, almost 30 per cent of all respondents worldwide singled out political parties as the institution from which they would most like to eliminate corruption (see Figure 11.1).

The courts were selected by 14 per cent of respondents worldwide, most notably in Cameroon, Indonesia and Peru, where they were pinpointed by more than 30 per cent. The police were singled out by 12 per cent of respondents worldwide, but by more than 30 per cent in Hong Kong, Malaysia, Mexico and Nigeria. The medical services, the fourth choice globally, were selected by more than 20 per cent of respondents in Bosnia and Herzegovina, Croatia and Poland.

The survey also posed a series of questions about the effect of corruption on personal and family life, on the business environment, on political life and on the culture and values of society. Notably the survey found that corruption hits the poor hardest (see Table 11.1). More than 40 per cent of respondents who indicated they were on a low income believe that corruption has a very significant effect on their personal and family life. The same answer came from only 25 per cent of respondents who indicated they were on a high income. The correlation with income was found to be very significant.

It was found that attitudes towards corruption and its impact vary substantially across the world, and that they do not necessarily correlate with corruption levels.



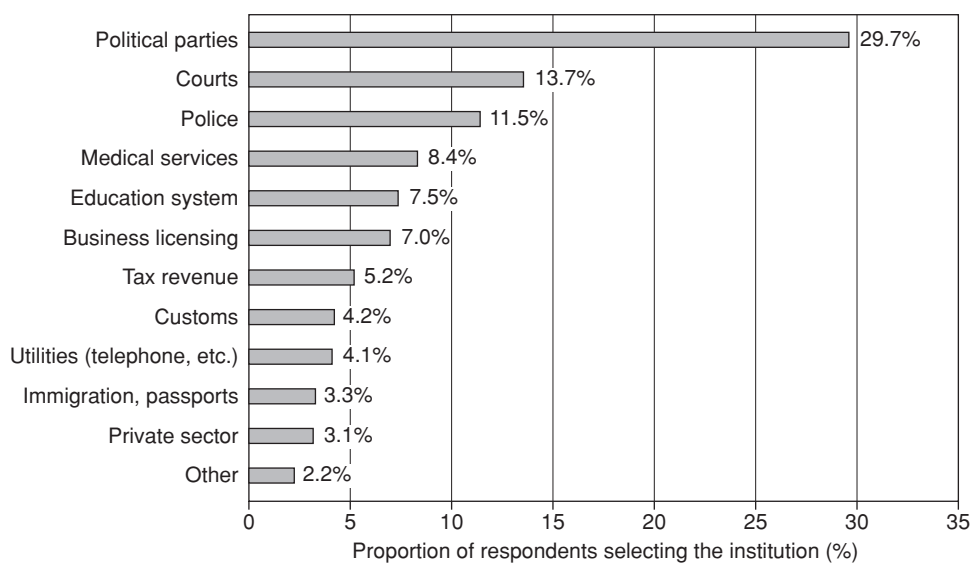


Figure 11.1: Priorities for eliminating corruption^a

^a Respondents were asked: 'If you had a magic wand and you could eliminate corruption from one of the following institutions, what would your first choice be?'

Table 11.1: The perceived impact of corruption by income level

Income-level	Respondent's beliefs about how corruption affects his personal and family life		
	Not significantly (%)	Somewhat significantly (%)	Very significantly (%)
Low income	29.7	29.3	41.0
Medium income	36.7	35.7	27.5
High income	44.5	30.1	25.4
Refused to answer question on income ^a	40.9	28.0	31.1
TOTAL	35.2	31.1	33.7

^a One in six respondents (17.4%) refused to provide information about their income.

Table 11.2 (with a small sub-sample of countries) shows that in some countries with a relatively low incidence of corruption (for example, Canada), people view corruption as having a significant impact. On the other hand, some countries with a relatively high incidence of corruption (including Pakistan) view its impact as low.

Two questions addressed perceptions of change in corruption levels over time. Firstly, respondents were asked how they felt corruption had changed over the past three years. Of those surveyed 47 per cent felt that it had increased, and only one in 10 felt

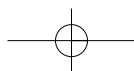


Table 11.2: The perceived impact of corruption on different spheres of life

	Percentage of respondents saying corruption has a 'very significant' effect on:			
	Personal and family life	Business environment	Political life of society	Culture and values
Argentina	64.4	87.9	93.0	85.1
Bosnia and Herzegovina	69.7	75.5	81.4	82.3
Canada	42.5	16.6	13.1	17.0
Hong Kong	14.7	81.8	25.5	28.5
Italy	15.4	69.7	59.8	37.2
Korea	19.2	39.5	51.3	31.5
Pakistan	10.0	7.4	9.5	9.9
USA	26.5	7.4	7.1	9.6
AVERAGE for 45 countries ^a	33.8	48.6	55.1	43.7

^a Data were missing for Brazil and China. Data from the Palestinian Authority are not included in the overall total.

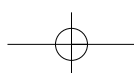
Table 11.3: Expected change in corruption over the next three years

	Increase a lot (%)	Increase a little (%)	Stay the same (%)	Decrease a little (%)	Decrease a lot (%)	Don't know/no response (%)
The optimists (more than 50% expect decrease in corruption):						
1. Colombia	14.0	10.0	11.7	28.3	32.0	4.0
2. Indonesia	10.0	7.8	25.9	41.0	13.7	1.6
The pessimists (more than 50% expect increase in corruption):						
1. India	55.8	18.5	13.6	6.7	1.2	4.1
2. Netherlands	21.5	37.9	20.0	4.5	0.0	16.2
3. Israel	19.0	39.5	23.0	7.4	1.6	9.6
4. Turkey	37.2	19.4	14.7	9.0	3.0	16.7
5. Georgia	34.6	20.6	11.5	9.2	1.3	22.8
6. Cameroon	39.4	15.1	13.3	15.3	4.7	12.1
7. South Africa	36.1	14.7	13.5	19.3	10.8	5.6
8. Norway	6.7	43.5	29.2	10.5	1.6	8.5
Overall:						
AVERAGE for 45 countries ^a	20.1	22.0	27.1	15.4	4.6	10.8

^a Data were missing for Brazil and China. Data from the Palestinian Authority are not included in the overall total.

that it had decreased. This finding mirrors the 2002 Bribe Payers Index, where less than one-third of respondents thought that international bribery involving senior public officials had declined over the past five years, and only 6 per cent experienced a significant decline.

When asked about the future, more people expected corruption to increase than expected it to fall over the next three years. While 42 per cent predicted it would

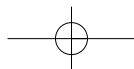


increase either 'a lot' or 'a little', only 20 per cent predicted it would fall (see Table 11.3). In Colombia and Indonesia, the most optimistic in the survey, more than 50 per cent expected corruption levels to decrease. By contrast, the majority of respondents in Cameroon, Georgia, India, Israel, Netherlands, Norway, South Africa and Turkey expected corruption to increase in their countries.

The data analysis was conducted by Frances Smith and Professor Ross Homel of the Key Centre for Ethics, Law, Justice and Governance at Griffith University, Queensland, Australia. The full data is available at www.transparency.org/surveys

Notes

1. The 47 countries were: Argentina, Austria, Bolivia, Bosnia and Herzegovina, Brazil, Britain, Bulgaria, Cameroon, Canada, China, Colombia, Costa Rica, Croatia, Denmark, Dominican Republic, Finland, Georgia, Germany, Guatemala, Hong Kong, India, Indonesia, Ireland, Israel, Italy, Japan, Luxembourg, Macedonia, Malaysia, Mexico, Netherlands, Nigeria, Norway, Pakistan, Panama, Peru, Poland, Portugal, Romania, Russia, South Africa, South Korea, Spain, Sweden, Switzerland, Turkey and the United States. Data on corruption questions were missing for Brazil and China. In a separate survey, 1,315 people were surveyed in the Palestinian Authority by the Palestinian Center for Policy and Survey Research in April 2003, the results of which are not included in the overall totals reported here.
2. Data were missing for this question in Brazil, China and Pakistan, but was available in the Palestinian Authority.



12 Integrity Index for Public Institutions: measuring corruption risks in Colombia

*Transparencia por Colombia*¹

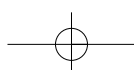
Transparencia por Colombia, TI's national chapter in Colombia, developed an Integrity Index for Public Institutions in 2002, comparing corruption risks in the country's public institutions. It is the first tool of its kind developed by an independent civil society organisation. The project aims to generate awareness of corruption and integrity issues in Colombia, improve monitoring, and produce information that can be used for the design of further anti-corruption policies.

The overall index score is the average of 16 indicators, most of which are objective measures, with the others reflecting the opinions of a sample of public officials from each institution. The indicators focus on integrity – the measures taken by institutions to prevent and penalise corruption – rather than on the level of corruption. The indicators were therefore designed more to encourage reform than to point the finger of blame. The indicators fall into three groups:

- *Transparency*. Four indicators, including: information found on the institution's web page, existence of mechanisms for filing complaints and obtaining information on the phone, and ratings from public servants in each institution on transparency and institutional autonomy.
- *Control and punishment*. Eight indicators, including: the number of complaints presented, investigations opened, charges filed and sanctions issued by the attorney general's office; the number of fiscal sanctions issued by the office of the general comptroller, and the cost of penalties resulting from sentences and settlements.
- *Efficiency and institutionality*. Four indicators, including: scores from a sample of public servants in each institution on the simplicity of organisational processes, performance of the internal control function, incentives for employees, and the commitment of personnel.

The process of constructing the index revealed how limited public access to information is in Colombia. Hard data is scattered, disorganised and barely systematised, while officials often refuse or are 'inefficient' when asked to provide information to civil society organisations.

Only institutions that could provide enough information for all of the scores to be calculated were included. In total, the 2002 Integrity Index rated 88 national public



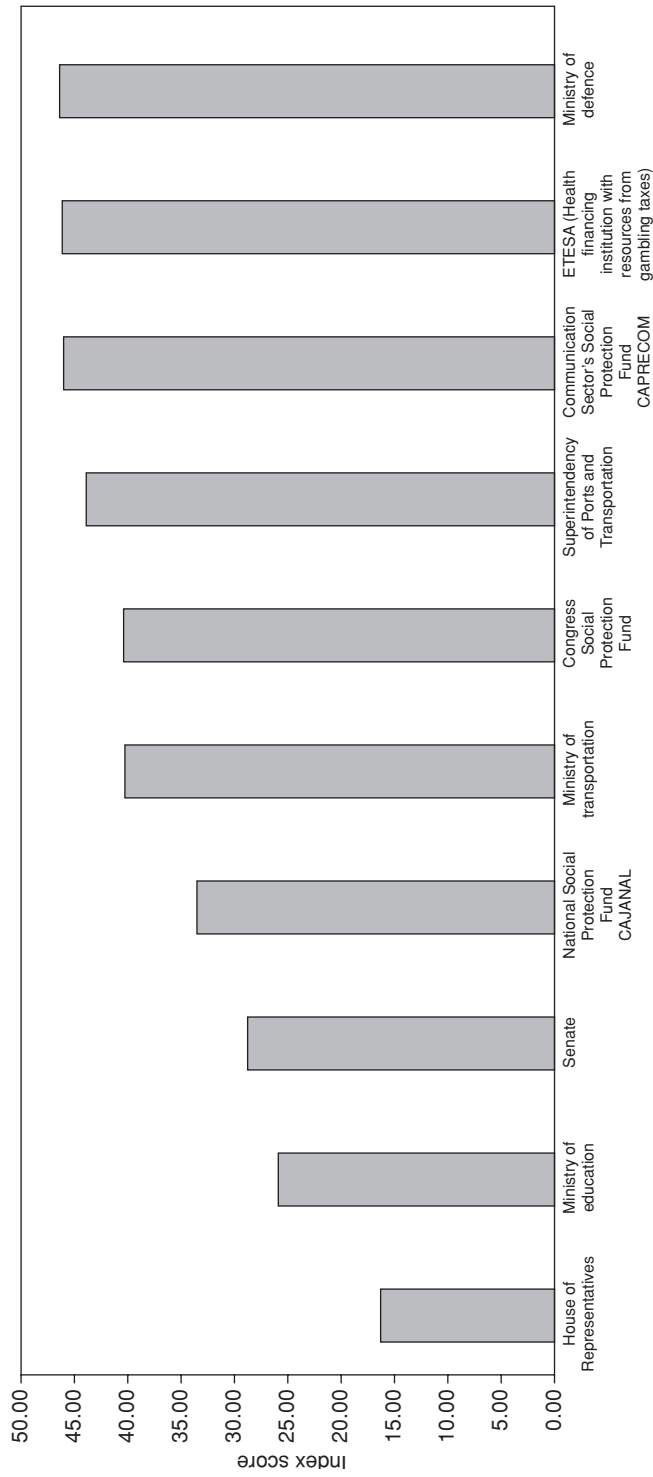
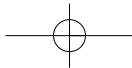


Figure 12.1: Institutions with a high risk of corruption (index scores lower than 50)



institutions. The institutions covered most functions of the state, from policy definition and implementation, legislation and regulation to the relevant punishment mechanisms. They include the executive, legislative and judicial branches, tax offices, the attorney general's office and the ombudsman.

On a scale from 0 to 100 (where 100 is the best possible score), only one institution exceeded 90 points, while 22 institutions obtained a score of between 70 and 90 points. Sixty-five institutions fell below this level.

The most worrying results were those of the 10 institutions that scored below 50 points (see Figure 12.1). This group included the national congress (senate and chamber of representatives), several ministries responsible for large portions of budget (transport, education and defence), four of the funds and institutions managing health and social security resources, and two important institutions for rural development.

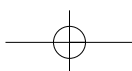
The index will be published annually, allowing the monitoring of performance over time. A number of institutions have already stated their interest in making internal reforms to improve their performance in future indices.

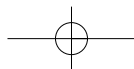
The task now is to improve the index's potential by including new institutions, improving procedures for assessment and overcoming obstacles to the acquisition of information. Publication of the index has already encouraged the government to adopt policies aimed at improving the availability of relevant information.

For more information about the index, see www.transparenciacolombia.org.co

Note

1. At Transparencia por Colombia, Marcela Rozo Rincón is research director and Ana Maria Torres Soto is head researcher. Contact: indiceintegridad@transparenciacolombia.org.co





13 Corruption in Russian regions

Elena Chirkova and Donald Bowser¹

Researchers are paying increasing attention to variations in perceived levels of corruption within countries. Marked variations characterise cross-country comparisons. To explore whether such variations also define large federal states – and to dispel the myth of Russia as monolithic – TI Russia carried out a public opinion survey entitled the Corruption Index for Russian Regions.²

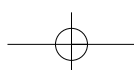
Funded by the Open Society Institute (Soros Foundation), the survey was designed to create a multidimensional picture of corruption in Russia. It sought to capture the relative amounts of bribery, the characteristics of corrupt practices and the degree of public confidence in government institutions, both in the Russian Federation as a whole and across its regions. In July and August 2002, 5,666 individuals and 1,838 entrepreneurs (representing small and medium businesses) were surveyed in 40 out of Russia's 89 regions. The survey involved two questionnaires, which targeted private citizens and businessmen. Questions related to both perceptions and personal experiences of corruption. Results were aggregated to develop composite corruption indices.

The survey addressed different forms of corruption, including both private sector corruption and petty corruption between citizens and public officials. Within the area of private sector corruption, the survey assessed both administrative corruption (involving corruption between businesses and authorities) and state capture (involving the impact of businesses on policy-making). Questions on trust assessed the degree of public trust in different levels of government (federal, regional and local) and in different institutions (executive, judiciary, legislature and law enforcement agencies).

The principal output of the project was a 'map of corruption' reflecting the different perceived levels of corruption across Russia's regions (see Figure 13.1). Several main tendencies become apparent from the mapping of survey results.

The findings suggest that the southern part of Russia is seen as more corrupt than the north. Corruption is perceived as a serious problem in the agricultural, pro-communist regions known as the southern belt – stretching from the Rostov *oblast* to the Volga region.³ In contrast, northern regions such as Arkhangelsk, Karelia and Yaroslavl *oblast* tend to be seen as less corrupt. This distinction may reflect the developmental and cultural differences between the more modern, Europeanised regions of northern Russia and the more traditional regions of southern Russia; the stronger family and clan structures that flourish in the Caucasus may facilitate corruption.

The findings also point to other geographical distinctions. Respondents perceive the eastern part of Russia – such as Khabarovsk *krai* and Primorski *krai* – as more corrupt



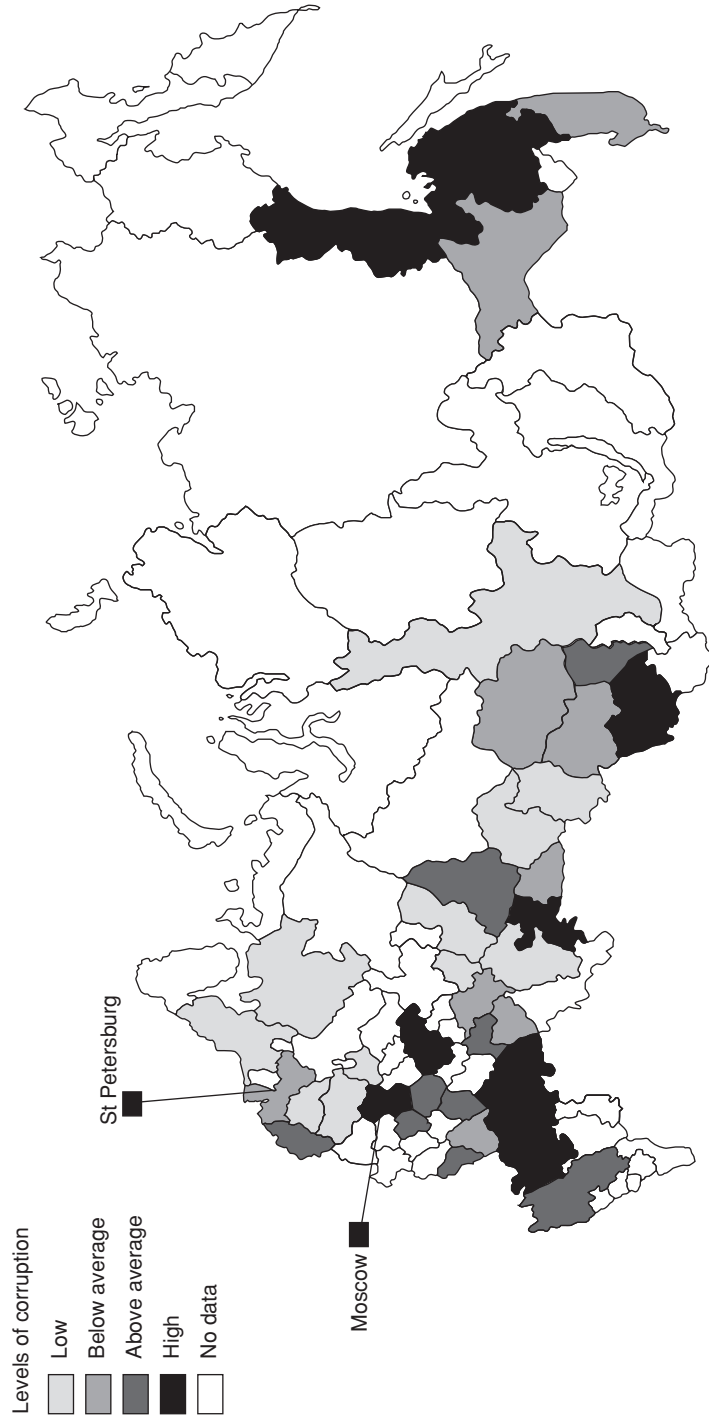
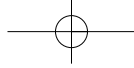


Figure 13.1: Perceived levels of corruption across Russia's regions

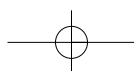
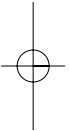
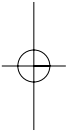


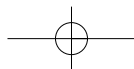
than the west. However, the western area known as the capital region – St Petersburg, Moscow city and Moscow *oblast* – was assessed as one of the most corrupt regions. Thirdly, counter to popular expectations, the degree of corruption in areas that are rich in natural resources – such as Tyumen *oblast* and Bashkortostan – was viewed as below average.

In order to be able to monitor changes in the scope and structure of corruption, similar surveys are planned on an annual basis. It is hoped that in future the survey will encompass all of Russia's 89 regions.

Notes

1. Elena Chirkova is programme coordinator for corruption research at TI Russia. Donald Bowser is programme development coordinator at TI Russia and director of IMPACT, a private consultancy firm.
2. The project may be downloaded from www.transparency.org.ru/proj_index.asp
3. *Oblast* and *krai* are the administrative districts of the Russian Federation.





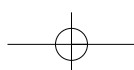
14 Measuring the transparency of political party financing in Bulgaria

*TI Bulgaria*¹

During 2002–03 Transparency International Bulgaria carried out a project to promote integrity in political party financing, with the support of the Westminster Foundation for Democracy. The project included developing guidelines for greater transparency, as well as suggesting mechanisms for civil society monitoring. As part of the project, an independent expert evaluation was made of the level of transparency and accountability of party financing, which involved designing a new index for transparency in party financing, with two components:

- The *qualitative* component was a survey of personal assessments among four target groups: local and national leaders of political parties, representatives of the business sector, NGO activists and journalists. The survey was carried out from October–December 2002 in the cities of Sofia, Burgas, Varna, Veliko Turnovo and Kurdzhali. In total, around 180 people were interviewed. The survey asked a series of questions, including whether party financing is sufficiently transparent, whether control measures are effective, whether there are sufficient legal mechanisms for limiting illegal financing, and whether legislation needs amending.
- The *quantitative* component was an empirical assessment based on the regular reports submitted by political parties to the National Audit Office (NAO). Every year all parties are required to submit their annual reports to the NAO. Within one month of all elections, they are required to report their campaign incomes and expenses. Within six months of receiving the parties' annual reports, the NAO has to announce publicly whether the reports are in compliance with legislation. (If a party is found not to be in compliance, it is deprived of its annual state subsidy for the relevant year.)

The survey results showed agreement between the four different groups on several issues. Many respondents felt that the mechanisms limiting illegal financing are not applied effectively – they noted a persistent problem concerning the financial control of political parties and the implementation of sanctions. A large majority of those interviewed believed that the public does not have enough information on the principles of financing and control of political parties (see Table 14.1). Among all groups the



dominant opinion was that Bulgaria's party financing law needs amending – 64 per cent of all respondents thought so, and only 9 per cent disagreed.

Table 14.1: Do you agree that political party financing in Bulgaria is sufficiently transparent?

	Political parties	Business sector	NGOs	Journalists	Average
Definitely yes (%)	3.0	0	0	0	0.7
Yes, but there are a lot of improvements to be made (%)	21.2	9.1	5.6	11.1	11.6
Do not know (%)	15.2	3.0	11.1	2.8	8.0
Rather not (%)	24.2	27.3	25.0	30.6	26.8
Definitely not (%)	36.4	60.6	58.3	55.5	52.9

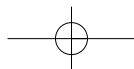
On the basis of both the qualitative and quantitative components of the evaluation, a new index was developed: the Index for Transparency of Political Party Financing. The qualitative component was based on the survey results and represents the perceptions of the level of transparency of political party financing. On a range from 0 (highly corrupt) to 10 (highly clean), the political parties themselves gave the highest rating (2.25) and business representatives the lowest (0.71). NGO representatives gave a score of 1.30 and journalists 1.76. The combined perceptions score was 1.52. The quantitative component was based on the NAO's review of parties' financial reports and was calculated as the proportion of parties that had submitted their financial reports on time. The score was 3.36.² Giving equal weight to the qualitative and quantitative components, this first use of the index indicated a low level of transparency in political party financing in Bulgaria: an aggregate score of just 2.44 out of 10.

A strength of the survey is that it can be used regularly for measuring the dynamics of transparency in party and campaign financing. All groups of respondents in the first survey agreed that the index should be tested during elections. Local elections in Bulgaria are scheduled for October 2003, and on the eve of the local elections TI Bulgaria is planning to assess transparency in campaign financing of both political parties and independent candidates.

The survey could be applied in any country with minimal legal provisions and guidelines on reporting contributions and expenses, though it would be necessary to adapt the methodology to the particular regulations in a given country. It would be particularly interesting to use the index to compare the transparency of election campaign financing with the transparency of political financing between elections.

Notes

1. For further information contact Katia Hristova-Valtcheva, programme director at TI Bulgaria: katia@transparency-bg.org
2. According to the NAO, only 90 out of 268 parties (33.6 per cent) had submitted reports of their revenues and expenses by 15 March 2002.



15 Benchmarking corruption in South Asia: insights from a household survey

*Gopakumar K. Thampi*¹

South Asia accounts for 30–40 per cent of the world's poor and more than 40 per cent of its 1.4 billion people live in poverty. Corruption is rampant in public services across the region and impinges directly on everyday life. Across South Asia, the state has a monopoly on the delivery of critical public services such as potable water, health, education and power. Given the overarching role of the state, there is no real 'exit' option whereby the majority of the population could move to another provider.

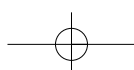
In such an environment, 'voice' mechanisms, such as citizen feedback surveys, are particularly important. Surveys highlight an interesting array of useful information for service providers and at the same time empower other stakeholders to demand more accountability from the state.

Transparency International (TI), which has a strong presence in South Asia through its national chapters, designed a project in 2001 to assess the levels and forms of corruption in the five large countries of the region. What made the initiative unique was that a common questionnaire was used to capture perceptions and experiences across the region, making it possible to compare emerging trends. The focus of the survey was on a set of public services of particular importance to the poor: healthcare, education, power, land administration, taxation, police and the judiciary.

The surveys were conducted in Bangladesh, India, Nepal, Pakistan and Sri Lanka between November 2001 and May 2002 and focused on urban and rural households in each country, ranging from 2,278 households in Sri Lanka to 5,157 in India. Three thousand households were surveyed in Pakistan, 3,030 in Bangladesh and 3,060 in Nepal.

The survey results reveal the grip of petty corruption on the everyday lives of citizens in South Asia. Access to public services was found to be an important issue for a large proportion of the population in all five countries, especially in Bangladesh, Pakistan and Sri Lanka. The finding implies that the poor in these countries face the danger of exclusion from access to public services due to the high artificial barriers, economic and otherwise.

Petty corruption was found to be endemic in all key public sectors in the five countries, with citizens reporting moderate to high levels of corruption in their regular interaction with public services. Lack of accountability and monopoly of power were quoted as major factors contributing to corruption in public services. Extortion was



the most prevalent form of corruption, with middle and lower-level functionaries identified as the key facilitators of corruption in all sectors studied.

The survey revealed that bribes impose a heavy financial burden on South Asian households, because of both the high frequency of demands and the large sums paid. More than half of the users of public hospitals in Bangladesh, for example, reported that they had paid a bribe to access a service, with bribes averaging 1,847 takas (US \$33). In Pakistan, 92 per cent of households with experience of public education reported having to pay bribes: the average amount paid was 4,811 rupees (US \$86). These sums are substantial given that per capita gross national income in Bangladesh and Pakistan is US \$360 and US \$410 per annum, respectively.

When asked about perceptions of specific sectors, respondents identified the police as the most corrupt sector in four out of five countries. In Nepal, the police were perceived to be the third most corrupt after land administration and customs. Asked about their experiences, actual users of services in all countries (see Table 15.1) indicated that the police and judiciary were the two most corrupt sectors, followed by justice, land administration and the tax department.

Table 15.1: Percentage of respondents reporting bribery in their interaction with different public services

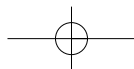
	Education	Health	Power	Land admin.	Tax	Police	Judiciary
Bangladesh	40	58	32	73	19	84	75
India	34	15	30	47	15	100	100
Nepal	25	18	12	17	25	48	42
Pakistan	92	96	96	100	99	100	96
Sri Lanka	61	92	Sample too small	98	Sample too small	100	100

The survey revealed the pervasive nature of corruption in critical public services across South Asia, with large numbers of the population victims of extortion. The survey strongly supports the case for empowering regulatory bodies, such as the office of the ombudsman, to oversee the activities of public agencies, which are the sole providers of many basic necessities across the region.

For more information about the survey, including the full report, see www.transparency.org/pressreleases_archive/2002/2002.12.17.south_asia_survey.html

Note

1. Gopakumar K. Thampi is chief of programmes of the Public Affairs Foundation, India, and former executive director for Asia at Transparency International. Contact: gopa66@yahoo.com



16 Governance Matters III: new indicators for 1996–2002 and methodological challenges

*Daniel Kaufmann and Aart Kraay*¹

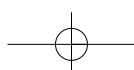
In our latest effort to measure the quality of governance worldwide, we constructed governance indicators for 199 countries and territories for four time periods: 1996, 1998, 2000 and 2002. The indicators are based on several hundred variables measuring perceptions of governance, drawn from 25 data sources constructed by 18 organisations. We constructed six aggregate indicators from the variables: voice and accountability, political instability and violence, government effectiveness, regulatory burden, rule of law, and control of corruption.

An attractive feature of the aggregation method is that it provides measures of the precision of the indicators. While the addition of data has improved precision relative to past years, the margins of error remain large, as illustrated in Figure 16.1 by our rule of law indicator for 2002. For each country we show a vertical bar summarising the range of statistically likely values, with the mid-point representing our best estimate. These ranges are large relative to the units in which governance is measured.

The substantial margins of error imply that cross-country comparisons should be made with caution. This is particularly the case for changes over time, which in the vast majority of cases are small relative to the margins of error. Nevertheless, in those cases where changes over time are large (for example, the recent deterioration of rule of law in Zimbabwe, or the worsening political instability in Argentina), we generally find that there is broad consensus among our many sources as to the direction of change.

The margins of error reflect the observation that individual sources provide a noisy signal of the unobserved 'true' level of governance. It is important that aggregate indicators combine the imperfect sources as efficiently as possible, and accurately represent the extent of remaining measurement error. As we discuss in our latest paper,² we use a methodology that optimally weights each individual source according to its precision or reliability, which results in substantial reductions in overall margins of error relative to unweighted average scores. We also show that the methodology used to create margins of error matters – for example, we argue that the bootstrapping procedure used by TI to construct margins of error for the Corruption Perceptions Index may overstate the index's precision, especially for countries with relatively few data sources.

As well as describing our methodology, our latest paper addresses a number of frequently heard criticisms of subjective governance indicators:



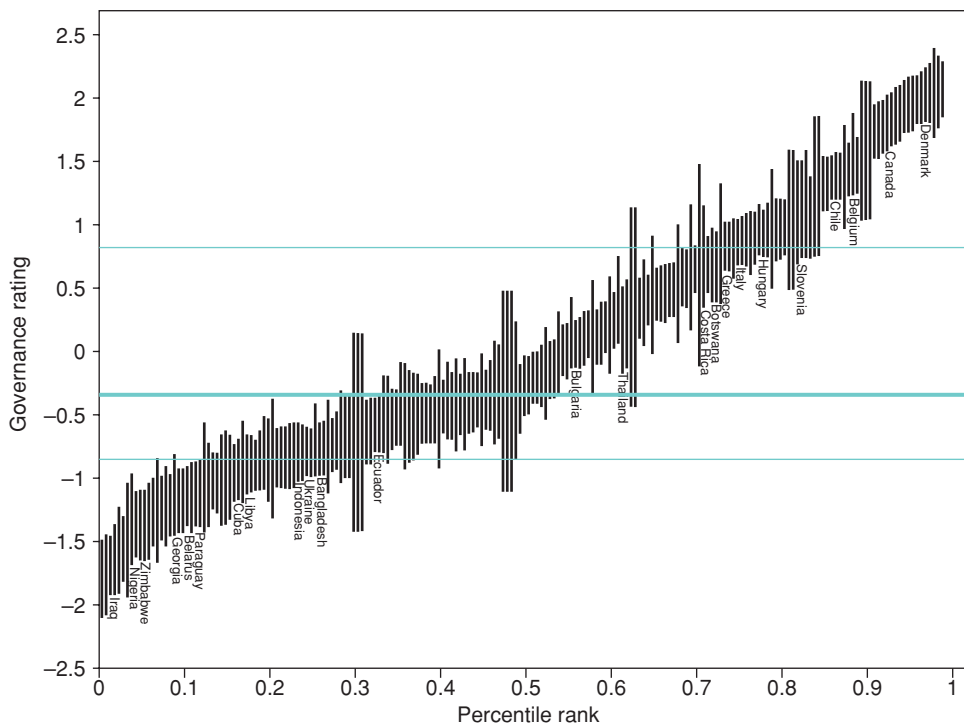


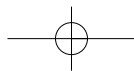
Figure 16.1: Estimates of rule of law, 2002^a

^a The figure shows estimates for all countries of the rule of law in 2002 (on the vertical axis), with each country's percentile rank on the horizontal axis. Vertical bars show the statistically likely range of values for each country, with the midpoint corresponding to the best single estimate. Selected countries are labelled. The ranking of countries along the horizontal axis is subject to significant margins of error and in no way reflects the official view of the World Bank, its executive directors or the countries they represent.

1. Is subjective data useful for measuring governance, or should it be dismissed as 'only capturing opinions'?

For many dimensions of governance, subjective data is the only data that is even potentially informative – especially for corruption, which is almost impossible to measure directly given its illegal and clandestine nature. Nevertheless, recent research has made an effort to document corruption 'objectively', for example by comparing differences in prices paid for similar objects in public procurement.³ However, given the immense data problems associated with such an exercise, it is unlikely that cross-country comparable measures based on this idea will be a viable alternative in the near future.

In contrast, we currently have a wealth of perceptions-based data on corruption from diverse sources, among which there is broad agreement regarding cross-country differences. Furthermore, subjective data contains significant 'signal' content, and



perceptions do matter in terms of the behaviour of economic agents. Finally, there have been significant improvements in questionnaire design, so that so-called subjective variables increasingly rely on 'experiential' questions, which are often quantified in a cardinal sense (for instance, measuring percentage of revenues paid as bribes).

2. Since the margins of error are large, shouldn't we rely on 'objective' indicators that do not have these measurement problems?

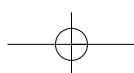
Objective measures of governance also have measurement error, and hence should also have associated margins of error. Consider, for example, using the share of trade tax revenue in total revenues to capture the inability of a government to broaden its tax base. This measure will be a 'noisy' indicator of overall government effectiveness for at least two reasons: the tax revenue itself may contain a variety of errors, and the extent of the tax base is only one dimension of government effectiveness. Our calculations suggest that measurement error in many objective sources is at least as important as the measurement error in subjective governance indicators.

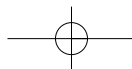
3. Do the perceptions of think tanks and commercial risk rating agencies reflect the ideological biases of these institutions?

In order to isolate the effects of potential ideological biases in governance ratings produced by these types of organisations, we compared their ratings with the responses of firms and/or individuals in cross-country surveys to see whether they gave systematically higher or lower scores to countries with left-wing or right-wing governments. (The survey data should not reflect any ideological biases since the respondents form a very large sample of individuals.) We did not generally find evidence of ideological bias. In the one case where we did, the effects tended to be small on average – with a difference in ratings for countries with left- and right-wing governments of only about 10 percentile points.

4. Since the indicators only capture countries' relative positions, is it possible that some countries' scores worsen simply because the others are getting better?

The limited information that we have on absolute trends over time in governance, if anything, suggests a small worsening worldwide. We reviewed the global averages of the individual sources that are available in a consistent format since 1996. While most of the changes in these global averages are small, most of the statistically significant ones point to deteriorations. Whether this reflects a true worsening of institutional quality, or reflects other factors at play, is an open question. However, there is no evidence of a worldwide improvement in governance, and thus downward trends in individual countries cannot be justified with the argument that the world at large is getting better.





5. Are these governance indicators sufficiently informative to be used as a basis for aid allocation or other policy decisions?

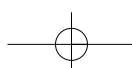
This question has become relevant with the US government's recent proposal to rely in part on our governance indicators to allocate funds from the new Millennium Challenge Account (MCA) (see 'Governance, corruption and the Millennium Challenge Account', Chapter 7, page 135).⁴ In order to be eligible, low-income countries need to score well on a number of governance indicators, including several of ours. Most prominently, countries need to be in the top half of low-income countries on our control of corruption indicator. A mechanistic rule such as this one risks misclassifying countries, given the substantial margins of error in the governance indicators.

The risk of misclassification is illustrated in Figure 16.2, which shows our control of corruption indicator for countries potentially eligible for the MCA. The vertical lines indicate the margin of error for each country, with the mid-point the best single estimate. While for countries well below and well above the median the risk of misclassification is low, there is a non-trivial risk that many countries near the median will be misclassified. For the latter group of countries, the probability that the corruption score is above the median is between 25 and 75 per cent. The large margins of error point to the importance of complementing cross-country indicators such as ours with more nuanced and in-depth information from country governance diagnostics.

More generally, we recognise that there are limitations to what can be achieved with this kind of cross-country, highly aggregated data. This type of data cannot substitute for in-depth, country-specific governance diagnostics as a basis for policy advice. Thus a significant complementary effort has taken place to develop country-based governance diagnostic methodologies, based on in-depth surveys of enterprises, users of public services and public officials.⁵ Such diagnostics unbundle governance performance by type of governance and institution, permitting the use of the significant variations within a country to learn about the priorities for action for a country.

Notes

1. Daniel Kaufmann is the director for global governance and regional learning at the World Bank Institute, United States. Contact: dkaufmann@worldbank.org. Aart Kraay is a senior economist in the development research group at the World Bank. Contact: akraay@worldbank.org. The opinions expressed here are the authors' and do not necessarily reflect the official views of the World Bank, its executive directors or the countries they represent.
2. For the full paper, see www.worldbank.org/wbi/governance/pubs/govmatters3.html. The data and a graphical interface are available at www.worldbank.org/wbi/governance/govdata2002
3. See for example R. DiTella and E. Schargrodsy, 'The Role of Wages and Auditing During a Crackdown on Corruption in the City of Buenos Aires', *Journal of Law and Economics*, April 2003; Transparency International, *Global Corruption Report 2003*.
4. See www.worldbank.org/wbi/governance/pubs/mca.html
5. See www.worldbank.org/wbi/governance/capacitybuild/index.html



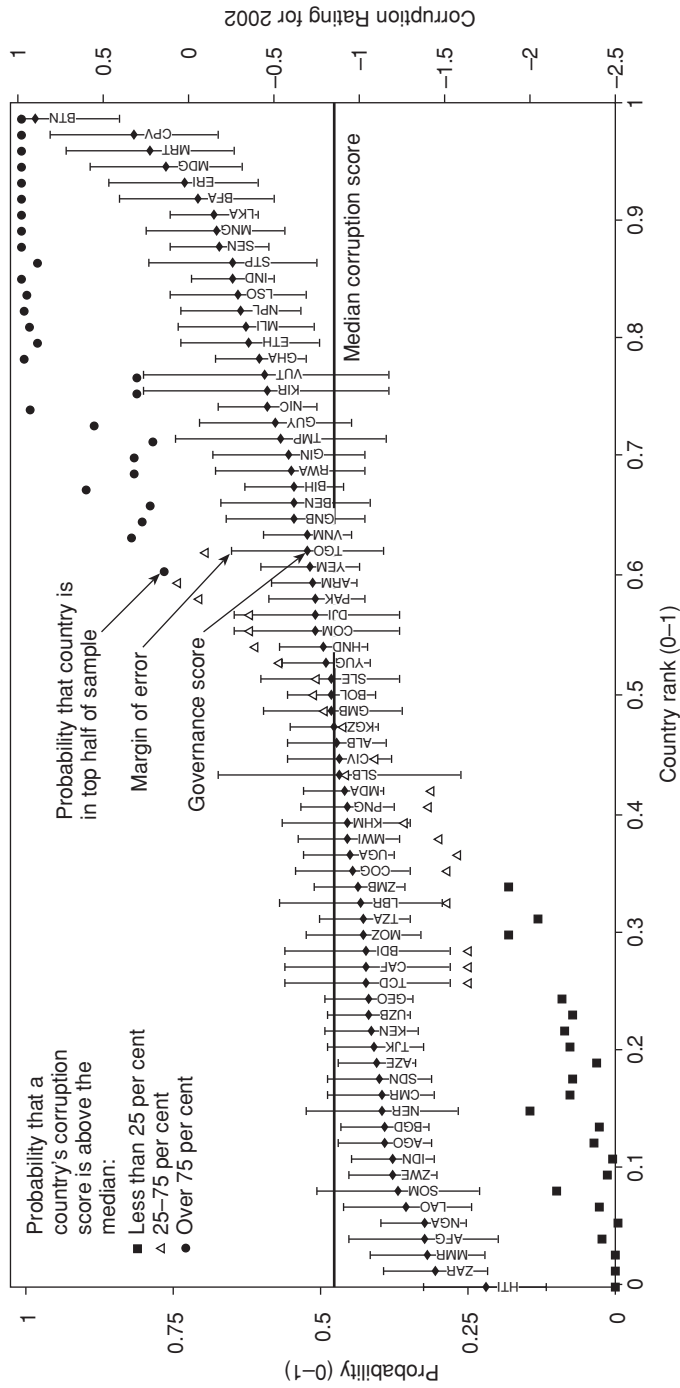
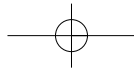


Figure 16.2: Margins of error in the control of corruption indicator, 2002^a

^a The figure shows estimates of the control of corruption in 2002 (right-hand vertical axis) for all 74 countries potentially eligible for the first round of the MCA, with each country's percentile rank on the horizontal axis. The vertical line for each country indicates the 90 per cent confidence interval, with the mid-point showing the best single estimate. The ranking of countries along the horizontal axis is subject to significant margins of error, and the ordering in no way reflects the official view of the World Bank, its executive directors, or the countries they represent.



17 The University of Pittsburgh Latin American Public Opinion Project's corruption victimisation scale

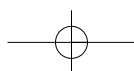
*Mitchell A. Seligson*¹

TI's Corruption Perceptions Index is the most widely used measure of corruption available today, providing a picture of corruption perceptions aggregated at the national level. If researchers want to know the characteristics of people most likely to have been victims of corruption, however, or to know in which nations the experience (rather than perception) of corruption is greater, then a measure of corruption experience at the individual level can help. The University of Pittsburgh Latin American Public Opinion Project developed a series of questions that it included in national samples in several Latin American countries to provide such information.

The questions were inspired by crime-victimisation surveys, the mainstay of sociological investigation into crime. They built on work by the United Nations Centre for International Crime Prevention – launched in 1989, the International Crime Victims Survey now includes more than 70 countries and in 1996, for the first time, it included a question on bribe victimisation.² But a broader series of questions is preferable, since anti-corruption projects need much more detailed information about the nature and level of corruption than any single question can provide.

In 1996 the University of Pittsburgh Latin American Public Opinion Project therefore began applying a broader approach, as did the World Bank in 1998. These efforts, which may also ask about perceptions of corruption, focus on citizens' actual experience (victimisation) with public sector corruption. At Pittsburgh the aim has been to measure both corruption and its impact.³ A module of questions on corruption experience was included in public opinion surveys of democratic values and behaviour applied to a random (probability) sample of the nation being studied.⁴

Respondents were asked a series of questions recording their experience with corruption over the year immediately prior to the survey. The forms of corruption measured were selected on the basis of focus groups and are the ones found to be most commonly experienced in Latin America. The questions varied between the questionnaires, but included items such as: observing a bribe being paid to a public official, being asked to pay a bribe to a police officer, paying bribes to a public utility to avoid paying the full bill, or being asked to pay a bribe in the school system. Respondents were also asked questions on their trust in the system of government, so that the impact of corruption victimisation on trust can be measured (controlling for other factors, such as the respondent's income, education, gender, region and party affiliation).



The data allow particular forms of corruption to be highlighted. For example, Figure 17.1 shows the proportion of respondents (men and women shown separately) who reported that a public employee solicited a bribe from them during the preceding year. The proportion ranges from less than 10 per cent in El Salvador and Honduras to well above 20 per cent in Bolivia. While corruption-victimisation rates vary substantially from country to country in Latin America, in all the countries studied it is substantially higher than in advanced industrial countries. According to the UN data, in advanced industrial countries the corruption-victimisation rate is less than 1 per cent in any given year. The figure also shows that men are more likely to be the victims of corruption than women in Latin America.

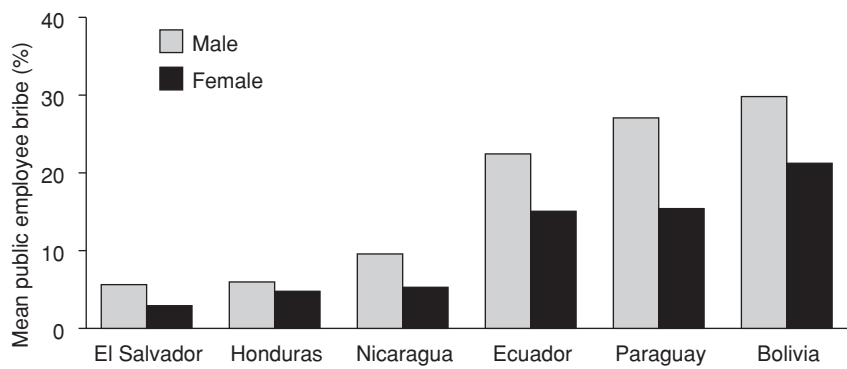


Figure 17.1: Corruption victimisation by gender: six countries. Public employee solicited bribe

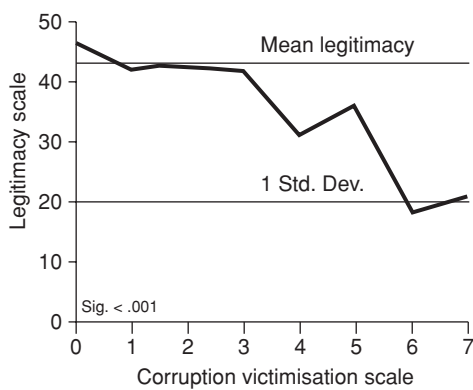


Figure 17.2: The impact of corruption victimisation on legitimacy in Nicaragua

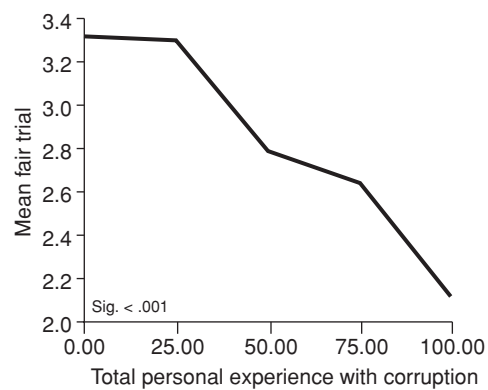
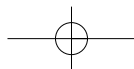


Figure 17.3: Belief in ability to get a fair trial in Nicaragua and total personal experience with corruption

An overall corruption-victimisation scale was also developed from the various questions,⁵ allowing us to examine the link between corruption and other variables, such as political legitimacy. In the case of Nicaragua, a country that has been struggling with problems of political stability, the overall legitimacy scale declines steadily as corruption victimisation increases, as shown in Figure 17.2, falling from above the national mean for those who had not been victimised by corruption (0 on the horizontal axis) to one standard deviation below the national mean for those who had frequently been the victims of corruption (6 or 7 on the horizontal axis). One especially relevant item from the legitimacy scale – the belief that people can get a fair trial – clearly demonstrates that corruption does erode confidence in the system. As Figure 17.3 shows, again for Nicaragua, the greater the personal experience with corruption, the less likely individuals were to believe they could get a fair trial.⁶ Similar results were found for other Latin American countries.

Notes

1. Mitchell A. Seligson holds the Daniel H. Wallace Chair of Political Science and is also a Professor in the Graduate School of Public and International Affairs, both at the University of Pittsburgh, United States. Contact: seligson@pitt.edu
2. See *Global Corruption Report 2001*.
3. The World Bank surveys do not include questions on the impact of corruption victimisation.
4. The surveys reported on in this project are all national probability samples carried out at various times from 1998 to 2002 in Bolivia, Ecuador, El Salvador, Honduras, Nicaragua and Paraguay. The samples each have between 2,500 and 3,000 respondents, except for Paraguay, which included only 1,463. The first survey, conducted in Nicaragua, was developed with Casals and Associates. The author would like to thank Sergio Dias Briquets of Casals and Andrew Stein, now of the US Department of State, for assistance in that early work. Orlando Pérez of Central Michigan University has assisted in more recent studies in Ecuador and Honduras.
5. When formed as a scale, the items were found to be reliable (Cronbach Alphas of around 0.75, depending on the country).
6. We can be confident that the direction of causality runs from corruption victimisation to reduced legitimacy because corrupt officials could not be selecting their victims based on the former's foreknowledge of the latter's belief in the legitimacy of the political system.



18 How corruption affects economic development

*Johann Graf Lambsdorff*¹

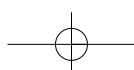
That corruption adversely affects economic development has become a commonplace assertion in academia and public discussion. Identifying the precise reasons for this impact is not straightforward, however. Two recent papers shed light on the reasons by suggesting that corruption may either deter investments or render them less productive.² The appropriate remedy depends on which impact is of greater concern in a given country.

Our recent research has revealed that an increase in corruption by one point on a scale from 10 (highly clean) to 0 (highly corrupt) lowers productivity by 4 per cent of GDP and decreases net annual capital inflows by 0.5 per cent of GDP. An improvement with regard to corruption by 6 points of the Transparency International Corruption Perceptions Index – for example, Tanzania improving to the level of the United Kingdom – increases GDP by more than 20 per cent and increases net annual capital inflows by 3 per cent of GDP.

Investments are often sunk and cannot be redeployed if investors are disillusioned about the institutional environment of a country. Railroads cannot be moved, pipelines cannot be relocated and real estate cannot possibly be used in a different region. Politicians and bureaucrats may misuse their position once investments are sunk. They can delay necessary permits and hold up investors until offered a bribe. Governments with a reputation for corruption find it difficult to commit to effective policies and to convince investors of their achievements. As a result of such failures, capital inflows deteriorate with levels of corruption, as shown in Figure 18.1 for a cross-section of countries. This finding is robust to statistical tests related to the inclusion of further explanatory variables, sample selection, measurement error and endogeneity.

The absence of corruption can be assessed through four governance indicators: law and order, bureaucratic quality, government stability and civil liberties. The Political Risk Service's International Country Risk Guide provides data on the first three variables; Gastil/Freedom House provides a measurement of the last variable.

Our analysis has shown that the crucial means by which corruption adversely affects capital inflows is through an absence of *law and order*. A good performance with respect to law and order is assigned to countries that have sound and accepted political institutions, a strong court system and provisions for an orderly succession of power. Corruption can undermine a tradition of law and order, for example when judicial decisions and laws are for sale. It is particularly the failure of a country's integrity system



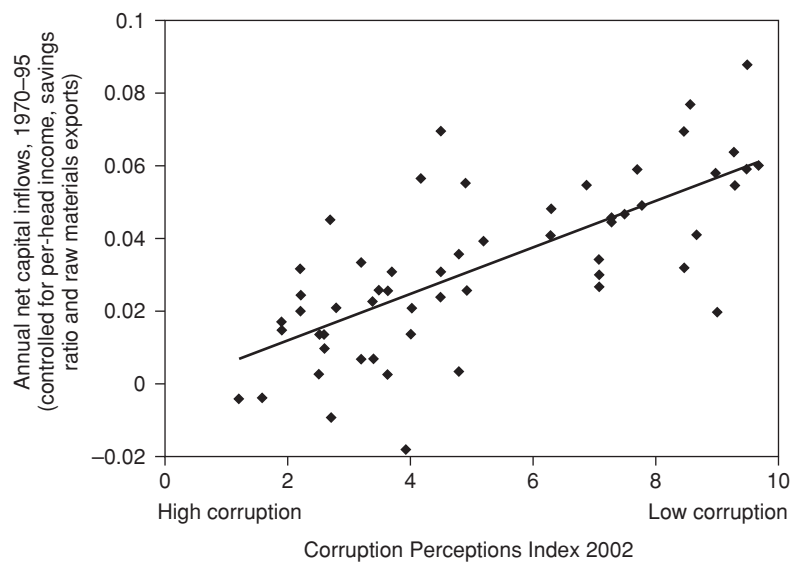


Figure 18.1: Corruption and capital inflows

and the resulting insecurity of property rights which alienates investors. We found the other governance indicators to be less significant in the calculus of investors.

Corruption can also be shown to lower capital productivity, as shown in Figure 18.2.³ The relationship with productivity can be traced to a variety of channels. A country's tradition of law and order is insignificant in this context, but other governance indicators come into play.

One mechanism through which corruption reduces productivity is the undermining of *government stability*. Politicians' search for corrupt income is commonly in contrast to their declared programmes, reducing their popular support and threatening their ability to stay in office. When office holders devote themselves to obtaining illegal, additional payoffs, the allocation of capital goods will not be optimal, because they prefer projects that promise large side-payments and low risks of detection to those that benefit the public at large. Reduced productivity is the result.

A second mechanism is the link between corruption and restricted *civil liberties* because such restrictions tend to distort markets, inducing the search for illegal ways to circumvent them. Distorting markets can be lucrative when corrupt politicians have the power to manage the resulting bottlenecks. Such bottlenecks, however, 'sand the wheels' of business and lower productivity.

But the crucial reason why corruption has an adverse impact on productivity is related to accompanying low levels of *bureaucratic quality*. Corruption may imply that public servants are appointed on the basis of nepotism or bribes, without regard to efficiency and capacity concerns. In addition, the effort level of public servants may suffer from adverse incentives because creating artificial bottlenecks can increase the

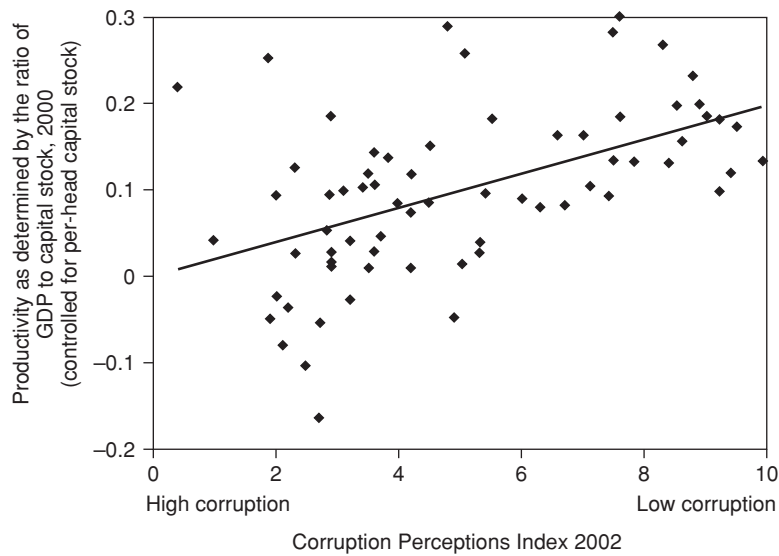


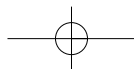
Figure 18.2: Corruption and productivity

need to pay 'speed money'. Attempts to increase productivity must address corruption through public sector reform aimed at improving integrity in the bureaucracy.

Anti-corruption reform strategies should be fine-tuned, depending on whether countries are primarily concerned with increasing productivity or attracting foreign capital. Public sector reform aimed at increasing bureaucratic quality, improving government stability and expanding civil liberties should be given priority if countries are to increase productivity. Legal reform should be addressed primarily with the aim of improving law and order and the security of property rights if countries want to attract foreign capital.

Notes

1. Johann Graf Lambsdorff is professor of economics at the University of Passau, Germany. Contact: jlambsd@uni-passau.de
2. Johann Graf Lambsdorff, 'How Corruption Affects Persistent Capital Flows', *Economics of Governance*, vol. 4, no. 3 (2003); Johann Graf Lambsdorff, 'How Corruption Affects Productivity', *Kyklos*, vol. 56, no. 4 (2003).
3. This finding, again, is robust to statistical tests related to the inclusion of further explanatory variables, sample selection, measurement error and endogeneity. Contrary to the argument that corruption has had less of an impact on economic development in Asian countries, these countries performed no better than others in our regressions.



19 Corruption and foreign direct investment

Mohsin Habib and Leon Zurawicki¹

Corruption is widely recognised as a factor in investment decisions though, at first glance, it does not appear to be an absolute deterrent to foreign direct investment (FDI). China, Brazil, Thailand, Mexico and Argentina have all received substantial FDI inflows, notwithstanding perceived high corruption levels, as measured by the Corruption Perceptions Index (CPI). Our research carried out over the last few years helps to reveal a more complex relationship between corruption and FDI.²

The findings of our research support the following generalisations:

1. Foreign investors are more sensitive to corruption than their local counterparts.
2. Individual countries involved in FDI respond differently to host country corruption.
3. Corruption is one of the dimensions of the psychological distance separating the home and the host countries. For that reason, FDI is affected by the differences in corruption between the home and the host countries.

Corruption is often expected to exert negative influences on both FDI and local investment. In fact, because of their more extensive experience in the domestic market, local investors are better positioned to manage the local transaction costs than their foreign counterparts. Moreover, unlike foreign investors, most local investors do not have the option to invest abroad and must become more creative to make the best under difficult circumstances. Accordingly, this research verifies statistically that corruption affects the rate of FDI more than it does domestic investment.

Table 19.1 shows that corruption, as measured by the CPI, negatively affects FDI. Holding everything else constant, countries with a higher corruption level receive relatively less FDI. The table also indicates that corruption has a significant negative effect on local investment. When compared, the magnitude of the CPI coefficient for FDI is double that for local investment. Corruption appears to be twice as important for foreign investors as for local ones.

The effect of host country corruption on incoming FDI was further analysed by controlling for variables such as cultural similarity, the openness of the economy (trade/GDP) and economic ties. These variables are expected to promote FDI and weaken the effects of corruption. The results show that corruption remains a significant negative factor but that the magnitude of its impact is less. The findings suggest that, for example, a decrease of corruption from the level of Pakistan to the level of Morocco or Jamaica (roughly one point on the CPI) will result in an estimated 19 per cent increase in FDI for Pakistan. That shift corresponds to about US \$130 million of foreign investment.

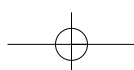


Table 19.1: Corruption reduces attractiveness of FDI^a

		Log FDI	Log local investment
CPI	Correlation	0.40	0.30
	Regression coefficients	0.51	0.24
Absolute difference in CPI	Regression coefficient	-0.10	

^a The CPI coefficients are based on regressions of log FDI (or log local investment) on corruption (CPI), log population, GDP growth, log GDP/capita, unemployment, trade/GDP, cultural distance, log distance, economic ties, political risk and price index. The 'absolute difference in CPI' coefficient is based on a PROBIT analysis of log FDI on similar variables. All reported results are statistically significant. The FDI data are for 89 countries for the period 1996–98.

A separate study focused on the similarity in the levels of corruption between the home and host countries. FDI becomes a challenge for companies that are unwilling to or incapable of working in a country that is more corrupt than their own. In such cases, corruption can result in a decision to avoid FDI. In contrast, exposure to corruption at home can prepare individual companies for work in corrupt environments abroad. This advantage is lost, or turns into a disadvantage, when expertise in corruption becomes redundant in 'clean' markets. The difference in the exposure to corruption between the host and home countries is thus expected to affect foreign investors.

This analysis used data on aggregate bilateral FDI flows. The absolute difference in corruption levels between the host and the home countries was calculated with CPI data. The results of the analysis, shown in the bottom part of the table, indicate that the absolute difference in CPI variables has a significant negative effect on the share of FDI flow.

Finally, separate analyses were carried out of each investing country and its bilateral FDI flows. In Figure 19.1, the vertical axis highlights the differences in response to host country corruption for 17 investing OECD countries. As the scores on the vertical axis show, the magnitude of the CPI regression coefficients, which reflect the impact of host country corruption on FDI inflow, varied considerably. The horizontal axis shows the corruption levels of the investing countries. As expected, the figure shows that the two factors are correlated: investing countries that are more exposed to corruption in their home markets are relatively less sensitive to corruption in foreign markets.

In conclusion, the negative effect of corruption on FDI suggests that firms do not support corruption. The difference in corruption levels between the home and host countries also has a negative impact on FDI. Foreign investors may shun corruption because they believe it is morally wrong or because it is costly and difficult to manage. Public officials must realise that the macro-environment and the institutional framework play a critical role in FDI decisions, and that corruption is one relevant factor in this respect.

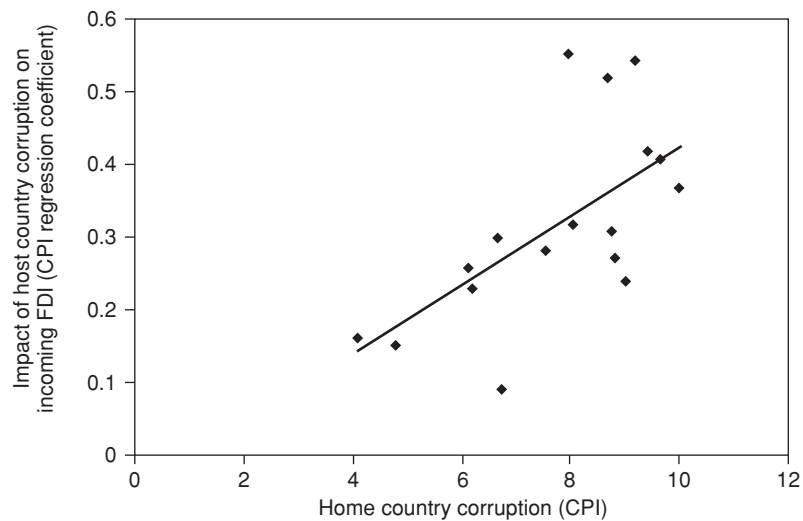
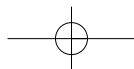


Figure 19.1: Home country corruption and responses to host country corruption^a

^a The CPI coefficients are based on regressions of log FDI on host country corruption (CPI), log population, trade/GDP, log distance, economic ties and political risk for 17 home countries. The home country CPIs are for Australia, Austria, Denmark, Finland, France, Germany, Italy, Japan, Korea, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, UK and USA. The correlation between the two variables is 0.62.

Notes

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2. See Mohsin Habib and Leon Zurawicki, 'Corruption and Foreign Direct Investment', *Journal of International Business Studies*, 2002, vol. 33, no. 2; 'Country-Level Investments and the Effect of Corruption: Some Empirical Evidence', *International Business Review*, 2001, vol. 10, no. 6; 'Foreign Direct Investment and Corruption: Conceptual and Methodological Issues', *Journal of Transnational Management Development*, 2001, vol. 6, no. 4; and 'National Differences in Investors' Responses to Corruption: An International Comparison', *International Business and Economics Research Journal*, 2002, vol. 2, no. 1.



20 International business attitudes toward corruption

*John Bray*¹

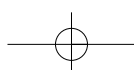
International companies have an important role to play in the struggle against corruption. In the worst case, by paying bribes too easily, they help perpetuate the problem. In the best case, they can serve as positive agents for change by implementing high standards within their own operations, and by using their influence to lobby for reform. But what do leading business people really think about corruption? In August and September 2002, Control Risks Group commissioned a survey of business attitudes in six jurisdictions. The results give a revealing indicator of current business views.²

On Control Risks' behalf, IRB Ltd conducted a total of 250 telephone interviews with 50 companies each in Britain, Germany, the Netherlands and the United States, and 25 each in Hong Kong and Singapore. All respondents were senior decision-makers at or near board level, and all the companies operated internationally. The respondents represented eight different commercial sectors: banking and finance; public works/construction; arms and defence; oil, gas and mining; telecoms; power generation; retail; and pharmaceuticals. Control Risks commissioned a similar survey with a smaller sample in 1999.³

The respondents made clear that graft can have a major impact on commercial success (see Table 20.1). More than half of the Hong Kong and Singaporean companies believed they had lost business in the previous year because a competitor had paid a bribe. The figure was lower for companies from the United States and Europe but, even so, a quarter of British companies thought they had lost business to corrupt competitors in the last five years.

Table 20.1: Percentage of companies that lost business because a competitor paid a bribe ...

	... in the last 12 months	... in the last 5 years
Hong Kong	56%	60%
Singapore	52%	64%
Netherlands	24%	40%
Germany	24%	36%
United States	18%	32%
Britain	16%	26%



The sector worst affected was public works/construction: about 40 per cent of companies believed that they had lost business to bribe-paying competitors in the last year, and about 55 per cent in the last five years.

General awareness of the OECD Anti-Bribery Convention is low,⁴ though new legislation introduced as a result of the convention is beginning to have an impact on business thinking. The survey suggested that 68 per cent of companies in Britain were familiar with their country's new anti-corruption laws, and more than half had reviewed business practices as a result. In response to a separate question, 84 per cent of British companies said that they banned facilitation payments ('speed money'), compared with only 60 per cent in the 1999 survey: the new British law makes no distinction between these payments and other forms of bribery. By contrast, German companies appeared more cynical: 52 per cent of respondents were aware of new national legislation, but only 24 per cent had reviewed their business practices.

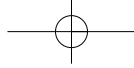
If outright bribery is forbidden, companies will look for other means of exercising influence. Some of these approaches are legitimate, others more controversial. One of the most sensitive issues is the use of middlemen, such as agents, consultants and joint venture partners. The survey points to a widespread belief that both US companies and their counterparts from other OECD countries 'occasionally' or 'regularly' use such middlemen to get round anti-corruption laws.

Similarly, there was a general perception that both US and other OECD-based companies gain business advantage as a result of political pressure from their governments, either 'regularly' or 'occasionally' (see Table 20.2). This issue may become more controversial in future. Embassies play a valuable role in helping companies identify openings in new markets, and political pressure from the home government can help companies resist demands for bribery. Nevertheless, pressure that is seen as inappropriate may create problems. If a company or project is thought to be 'imposed' on the host country, it may eventually face a backlash.

Table 20.2: How often do international companies benefit from political pressure from their home governments to gain business advantage?

	Never (%)	Occasionally (%)	Regularly (%)	Nearly always (%)	Don't know (%)
US companies	7.6	48.4	25.2	6.0	12.4
Companies from other OECD countries	9.2	54.8	25.6	2.0	8.4

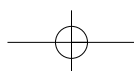
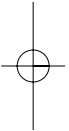
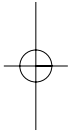
Respondents' views of the future were mixed. Overall, nearly half believed that current corruption levels would remain the same. The Dutch were the most optimistic, with 42 per cent believing that corruption levels would decrease. Hong Kong correspondents were the most pessimistic with 48 per cent believing that current levels would remain the same, and 42 per cent expecting an increase.

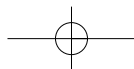


The scale of the challenge of beating corruption was aptly summarised by an American respondent: 'On the surface we seem to be beating it [corruption], but underneath it's like Internet security. People make it better, then other people find ways to sneak through.'

Notes

1. John Bray is director for analysis at the Tokyo office of Control Risks Group, Japan. Contact: John.Bray@control-risks.com
2. A summary of the findings is available on www.crg.com. The results are discussed in greater detail, together with a presentation of business strategies to counter corruption, in Control Risks' report, *Facing Up to Corruption* (London: Control Risks, 2002).
3. See Transparency International, *Global Corruption Report 2001*, pp. 279–81.
4. The findings were similar in Transparency International's 2002 Bribe Payers Index. See Transparency International, *Global Corruption Report 2003*, pp. 266–8.





21 Assessing governance in diverse and complex contexts: evidence from India

*Julius Court*¹

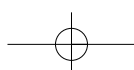
Is it possible to assess governance at the national level in countries with diverse economic, social and political contexts? India provides an important and interesting case to investigate this question. Groups of governance experts from four states – Andhra Pradesh, Bihar, Delhi and Kerala – were surveyed to assess the extent to which they had different views on governance at the national level. The findings suggest that even in a country with the diversity and complexity of India it is feasible and valuable to carry out national governance assessments.

The India study was part of the World Governance Survey (WGS) project, a comprehensive assessment of governance in 16 developing and transition countries representing 51 per cent of the world's population. Using a cohesive framework and questionnaire, the WGS generated responses from a panel of governance experts in each country. The general findings were reported in the *Global Corruption Report 2003*.² The panels in the WGS countries were mostly from capital cities – in India, for example, Delhi was surveyed.

Given the size, complexity and diversity of India, however, surveys were also carried out in three other regions to compare the results to the Delhi-based survey. These surveys were undertaken from May to July 2001 in partnership with local researchers. The assessments were conducted in four very different Indian states:

- Andhra Pradesh, with its dynamic state government and innovative information technology-based development strategy
- Bihar, with its violence, criminality and the lowest literacy rate and per capita income in India, often seen as the worst-governed of India's states
- Delhi, the political heart of the country; with high-growth industry and significant foreign investment
- Kerala, with the highest literacy rate in the country, a reform-oriented state apparatus and an active and highly politicised public.

In each state, a local coordinator constituted a diverse panel of around 40 governance experts to complete the assessment. Respondents completed a questionnaire of 30 questions – with five questions in each of six arenas of governance. The experts rated each indicator on a scale from 1 to 5; the higher the score the better. Many also provided



extensive comments to support their rating. Table 21.1 reports on how the expert panels in different parts of India assess governance at the national level, with an aggregate score for each of the six arenas.

Table 21.1: Comparing perceptions of governance across India

Region	Civil society	Political society	Government	Bureaucracy	Economic society	Judiciary	Total
Andhra Pradesh	3.18	2.96	3.0	3.1	2.95	2.96	3.03
Bihar	3.30	3.1	2.8	3.16	2.97	3.05	3.07
Delhi	3.31	3.16	3.3	3.37	3.18	3.07	3.25
Kerala	3.34	3.06	3.11	3.21	2.87	2.95	3.12
Average	3.28	3.07	3.05	3.21	2.99	3.01	3.11
Difference high-low	0.16	0.20	0.50	0.27	0.31	0.12	0.22

Three general observations deserve mention. The first is that experts in all four states give roughly similar ratings at the aggregate levels. The average rating for the country was 'moderate' for all regions, with a range from 3.03 in Andhra Pradesh to 3.25 in Delhi. It does seem surprising that the variation is not more pronounced given the vastly different nature of the regions where the survey was undertaken. This seems to indicate that experts are looking beyond local circumstances to give roughly similar governance ratings at the national level.

Second, the ratings are relatively similar for many of the arenas – particularly civil society, political society and the judiciary. But the ratings for the government arena differ the most markedly. This difference is generated by a very high rating for Delhi – likely due to high self-evaluations by bureaucrats and government officials there – contrasting with a very low rating of the government by respondents in Bihar.

A third important finding is that respondents from Delhi consistently give higher ratings for the quality of national governance than the experts in other states. While the difference is not substantial, it would be prudent to draw on national panels rather than just to focus on experts in the capital city.

Next, it is worthwhile looking at the findings for specific questions. Figure 21.1 shows the average rating for all 30 questions by respondents in the four states. The key finding is that the difference in ratings between specific questions is sometimes greater than the difference between the four states. For example, within the civil society dimension experts in all four regions agree that freedom of expression (question 1) is 'high' (score of 4.00) in India, whereas they also agree that there is 'moderate' (score of 3.00) discrimination in politics (question 3). In contrast, the average score for the civil society dimension varies little, from a low of 2.96 in Andhra Pradesh to a high of 3.16 in Delhi. The pattern seems to indicate that experts are looking beyond local circumstances. Given the expected disparity in conditions, this is an important finding in terms of methodology.

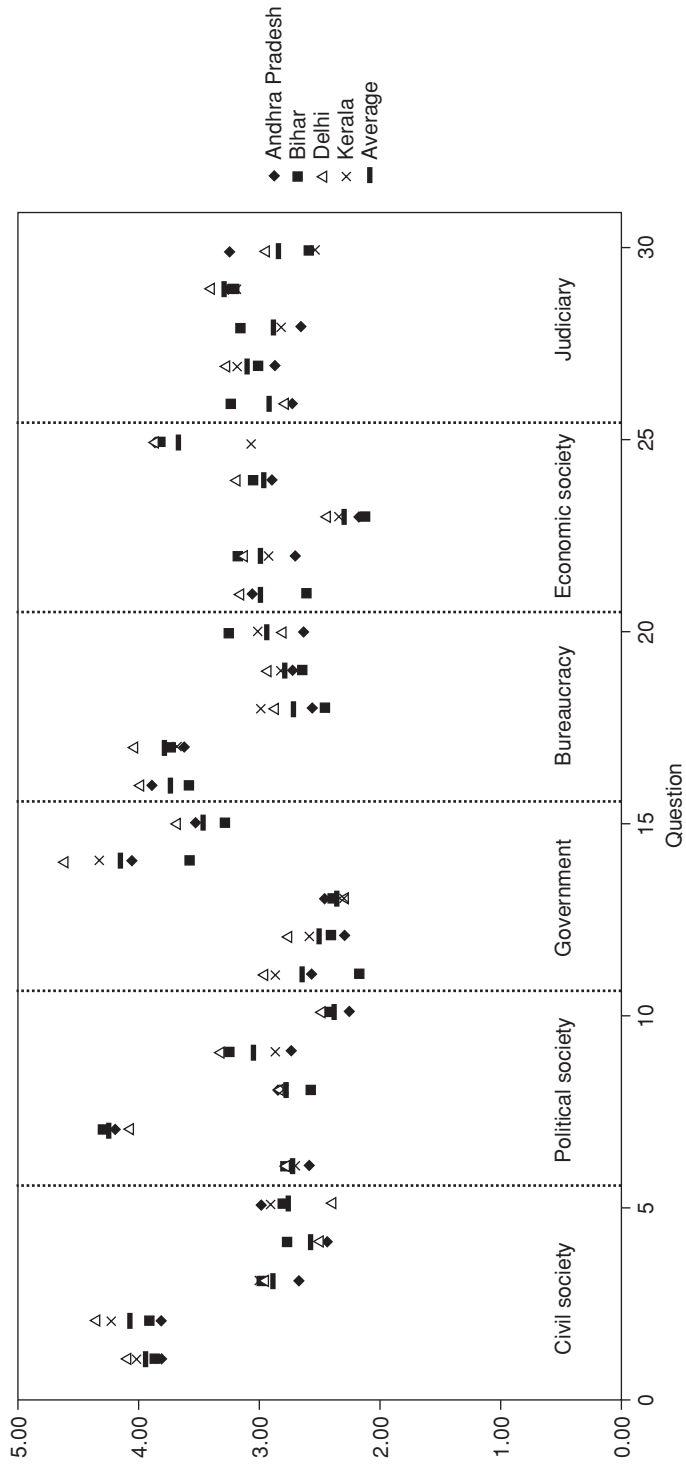


Figure 21.1 Comparing governance perceptions across India: ratings for each question

The perceptions of experts in Delhi and Bihar differ markedly with regard to the government arena, particularly regarding question 14 (the subordination of the military to civilian government). This difference is almost certainly explained by the violence that characterises politics and society in Bihar.

A key conclusion is that great diversity within a country does not present a major problem for assessing governance at the national level. For most issues, experts in very diverse parts of the country gave relatively similar assessments of governance at the national level. There were certainly specific areas where state issues affected the expert's views significantly, but it was surprising that the number of such cases was relatively low.

Although methodological considerations mean findings are indicative rather than conclusive, the survey does highlight some bright spots, including high levels of freedom of expression and association; high levels of political competition; a respected bureaucracy; and a military that accepts its subordination to civilian government.

There was an overarching concern, however, that policy-making is rather divorced from the people – especially the poorest members of society. Democracy in India is more impressive in form than substance. More specifically, the survey found that corruption was the most important governance challenge in the country. As one respondent dejectedly put it: 'Right from birth to death, nothing happens without bribery and corruption. People can neither live nor die with dignity.'

The full paper and additional information can be found on the project website: www.unu.edu/p&g/wga

Notes

1. Julius Court is a research fellow at the Overseas Development Institute, Britain. Contact: j.court@odi.org.uk
2. The pilot phase of the WGS was carried out in early 2001 with support from the United Nations University and United Nations Development Programme. A larger round of country assessments is planned for early 2004.

22 How elites view corruption and trust in post-Soviet states

*Anton Steen*¹

Post-communist countries are still in a process of transformation. Apathy is widespread in the population and there are few signs of strong civic culture. Perhaps the most serious impediment to viable economic reform is corruption at the elite level and the lack of transparency. The post-communist legacy of closed networks has laid the basis for fragile institutions and politics dominated by elites. As a result, the strength of political and administrative institutions depends on the commitment of the elites to take corruption seriously, as well as their confidence in public officials and state institutions.

The Department of Political Science at the University of Oslo began to survey Baltic elites in the early 1990s and later included Russian elites, with a focus on attitudes towards democratisation and marketisation. Comprising top leaders and the political bases of governments, these elites are likely to be well informed about political and administrative practices and able to influence policy decisions directly or indirectly.

The data presented here sheds light on the orientations of elites in Estonia (281 respondents), Latvia (285), Lithuania (315) and Russia (605) in the year 2000. Trained experts from national polling companies conducted face-to-face interviews using structured questionnaires. For each country, the elite sample consists of parliamentary deputies (proportionally drawn according to party strength) as well as top leaders from the ministries, state enterprises, private business, the judiciary, local government and cultural institutions (mass media, education and art). In this article, these institutionally defined elites have been merged into one group.

Table 22.1 shows that an overwhelming majority among the elite in all four countries thinks it is important to solve corruption problems. Nevertheless, there are nuances: while about 60 per cent of all Russian, Latvian and Lithuanian elites consider corruption a particularly important problem, Estonian leaders are somewhat less concerned, with about 50 per cent of respondents being very worried.

Table 22.2 shows that elites do not generally trust public officials. Respondents view many public officials as primarily interested in benefiting from their positions in the state machinery – between 39 and 61 per cent of the elites agree that public officials are more concerned with personal gain than the good of the people. However, there are marked differences between countries. Estonia's elite has the most positive impression of public officials, their Russian counterparts are most negative, and Latvia and Lithuania rank between the two.

Table 22.1: Solving the corruption problem

	Percentage of respondents who believe that solving corruption is...				
	... very important	... somewhat important	... not very important	... unimportant	Don't know/no answer
Estonia	51	38	11	0	0
Latvia	72	25	3	0	0
Lithuania	61	35	2	0	0
Russia	69	23	8	0	0

Table 22.2: The pursuit of self-interest by public officials^a

	Fully agree (%)	Somewhat agree (%)	Somewhat disagree (%)	Fully disagree (%)	Don't know/no answer (%)
Estonia	4	35	56	4	2
Latvia	11	44	40	2	3
Lithuania	14	37	44	2	2
Russia	21	40	31	4	4

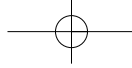
^a Respondents were asked whether they agreed with the statement that public officials in their country pursue their self-interest more than the good of the people.

Many population surveys show that people's confidence in political and administrative institutions is very low in post-communist countries. The outlook of the elites reflects a level of confidence that is considerably higher than the population average. Table 22.3 considers an institution that is particularly important for political performance, namely the ministries, and shows how the elite's confidence compares with its perception of people's confidence in the leaders of these institutions. Put differently, the table shows how the elite assesses mass public opinion.

Table 22.3: Elite confidence in ministries and elite images of people's trust in leaders of ministries^a

	A great deal of trust (%)		Quite a lot of trust (%)		Not very much trust (%)		No trust at all (%)		Don't know/no answer	
	Elite	People	Elite	People	Elite	People	Elite	People	Elite	People
Estonia	7	1	63	43	26	50	4	4	0	3
Latvia	2	0	53	22	38	73	7	4	1	1
Lithuania	0	0	41	18	45	69	11	10	3	4
Russia	0	1	31	38	52	48	14	7	3	6

^a The 'elite' columns indicate the attitude of elites towards ministries in their own country. The 'people' columns indicate what the same elites believe the attitudes are of most people in their country towards the leaders of ministries.

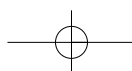
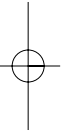


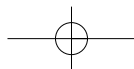
The results demonstrate that very few members of elites have considerable trust in the ministries. In Estonia, 70 per cent of the elite have either 'quite a lot' or 'a great deal' of confidence in the ministries, whereas 55 per cent do so in Latvia, 41 per cent in Lithuania and only 31 per cent in Russia. The Estonian elite also makes the most positive evaluation of people's trust in the ministries. While the Russian elite's trust in ministries is very low, they have a more positive impression of people's attitudes towards ministry leaders. The Latvian and Lithuanian elites are significantly more pessimistic about the public's trust in ministries.

The findings clearly demonstrate that post-communist elites see corruption as a serious problem that requires attention. The data suggest that Estonia may have a less serious corruption problem than Latvia, Lithuania or Russia. These results dovetail with those of various studies on Estonia's leading position among post-communist countries in overcoming the legacies of communist practices. A new, younger generation of politicians and administrators is supporting this positive development, which seems to correlate with an elite culture distinguished by relatively high confidence in institutions and other leaders. The responses of elites in all four countries also conform well to the ranking of TI's Corruption Perceptions Index.

Note

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23 The power of information: evidence from public expenditure tracking surveys

*Ritva Reinikka and Jakob Svensson*¹

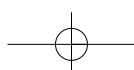
A well-known survey of primary schools in Uganda revealed that only 13 per cent of student capitation grants made it to schools in 1991–95, and comparable surveys in other countries recently made similar findings. When the Ugandan government launched an information campaign targeting the schools, the level of leakage fell significantly. New research measured the power of information by gauging the extent to which leakage fell when transparency was increased.

For every dollar spent by the central government on non-wage education items in 1995, only 20 cents actually reached schools, with local governments capturing most of the rest.² Poor students suffered disproportionately because schools catering to them received even less than others. Disbursements were rarely audited or monitored, and most schools and parents had little or no information about their entitlements to the grants. To respond to the problem, the central government began publishing data on monthly transfers of capitation grants to districts in newspapers, and to broadcast them on the radio. It required primary schools and district administrations to post notices of all inflows of funds. This promoted accountability by giving schools and parents access to the information needed to understand and monitor the grant programme.

An evaluation of the information campaign reveals a large improvement. Not all schools are receiving the entire grant and there are delays. But capture by interests along the way was reduced from 80 per cent in 1995 to 20 per cent in 2001 (Figure 23.1).

A before-and-after assessment comparing outcomes for the same schools in 1995 and 2001 – and taking into account school-specific factors, household income, teachers' education, school size and supervision – suggests that the information campaign explains most of the massive improvement. However, the results of the assessment should be interpreted with care.

To identify a causal effect we should be able to control for all time-varying factors – including policy changes – that have occurred since 1995 and that may have influenced the relationship between schools and district officials. During this period Uganda's education sector saw a number of other reforms, such as improved monitoring and supervision by the central government, increased capitation grants and a reduction of school fees. It is possible that these policy measures, or some other time-varying factor, influenced the degree of capture of funds.



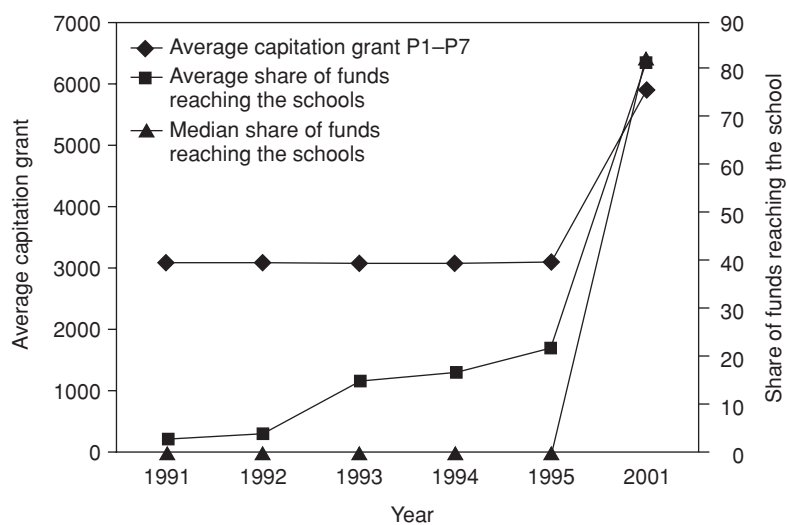


Figure 23.1: Schools received what they were due after an information campaign^a

^a Amount of capitation grant (Uganda shillings) that schools were supposed to receive, and average (mean and median) percentage actually received by schools, 1991–2001.

Sources: R. Reinikka and J. Svensson, ‘Explaining Leakage of Public Funds’, Centre for Economic Policy Research (CEPR) Discussion Paper 3227 (London, 2002); and R. Reinikka and J. Svensson, ‘The Power of Information: Evidence from a Campaign to Reduce Capture’ (Washington, D.C.: World Bank, 2003).

A way around the problem of identifying causality is to explore differences between schools in access to newspapers – as noted earlier, a key component in the information campaign was publicising transfers of public funds in newspapers. In 1995 the schools that received newspapers had suffered just as much from leakage as schools that did not. And from 1995 to 2001, both groups experienced a large drop in leakage. But the reduction in leakage was significantly higher for schools with access to newspapers, which increased their funding by 14 percentage points more than schools that lacked newspapers.

To assess the impact of the information campaign, however, it is not enough to simply compare schools with and without newspapers, since there may be a spillover effect from schools that are informed about their entitlement to those that are not. If a district official responsible for sending funds to schools cannot distinguish between informed and uninformed schools, or if teachers learn about a school’s entitlement from their peers in other schools, then a simple comparison of schools with and without newspapers will severely underestimate the impact. Taking these spillover effects into account, we find that the information campaign can explain nearly 75 per cent of the reduction in capture of funds since the mid-1990s.

Policy-makers in developing countries seldom have information on actual public spending at the level of front-line provider. A public expenditure tracking survey – like

the one carried out in Uganda and subsequently in several other countries (findings on leakage summarised in Table 23.1) – tracks the flow of resources through various layers of government, on a sample survey basis, in order to determine how much of the originally allocated resources reach each level. The survey also collects other data to help explain variation in leakage across service providers.³

Leakage of non-wage funds is a major issue in all cases. According to the public expenditure tracking survey in Zambia – unlike in Uganda in the mid-1990s – rule-based allocations seemed to reach the intended beneficiaries: more than 90 per cent of all schools received their rule-based non-wage allocations. But rule-based funding accounted for only 30 per cent of all funding. In discretionary allocations (70 per cent of total spending) the positive results no longer held: less than 20 per cent of schools received *any* funding from discretionary sources.

Table 23.1: Leakage of non-wage funds in primary education: evidence from public expenditure tracking surveys (%)

Country	Mean
Ghana 2000	50
Peru 2002 ^a	30
Tanzania 1999	57
Zambia 2002	60

^a Utilities only.

Sources:

Ghana: X. Ye and S. Canagarajah, 'Efficiency of Public Expenditure Distribution and Beyond: A Report on Ghana's 2000 Public Expenditure Tracking Survey in the Sectors of Primary Health and Education', World Bank Africa Region Working Paper Series No. 31 (Washington, D.C., 2002).

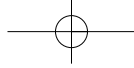
Peru: Instituto Apoyo and the World Bank, 'PETS: The Education Sector in Peru', background paper for *Public Expenditure Review: Peru, Restoring Fiscal Discipline for Poverty Reduction*, World Bank Report No. 24286-PE (Washington, D.C., 2002).

Tanzania: PricewaterhouseCoopers, 'Tanzania Public Expenditure Review: Health and Education Financial Tracking Study. Final Report, Vol. I-II' (Dar es Salaam, 1999).

Zambia: J. Das, S. Dercon, J. Habyarimana and P. Krishnan, 'Rules vs. Discretion: Public and Private Funding in Zambian Basic Education. Part I: Funding Equity' (Washington, D.C.: World Bank Development Research Group, 2002).

The extent of corruption and leakage seems to have less to do with conventional audit and supervision mechanisms, and more with the opportunity that schools – or clinics in the health sector – have to voice their claims for funds. Traditionally, it is left to government and a country's legal institutions to devise and enforce public accountability. The Uganda experience questions this one-sided approach. With an inexpensive policy action – the provision of mass information – Uganda dramatically reduced the capture of public funds. Because poor people were less able than others to claim their entitlement from district officials before the campaign, they benefited most from it.

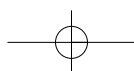
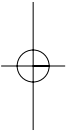
Collusion, inefficiencies, abuse and lack of responsiveness to citizens' needs cannot easily be detected and rectified even with the best of supervision. When institutions are weak, the government's potential role as auditor and supervisor is even more



constrained. Measures to empower beneficiaries by increasing information are an important complement.

Notes

1. Ritva Reinikka is research manager in the development research group at the World Bank. Contact: rreinikka@worldbank.org. Jakob Svensson is assistant professor at the Institute for International Economic Studies at Stockholm University, Sweden, and senior economist in the development research group at the World Bank. Contact: jakob.svensson@iies.su.se
2. Case study evidence and other data showed that the school funds were not going to other sectors either. A. Jeppson, 'Financial Priorities Under Decentralisation in Uganda', in *Health Policy and Planning*, vol. 16, no. 2, 2001.
3. For the survey instruments and other methodological issues visit www.publicspending.org



24 Budget transparency: assessments by civil society in Africa

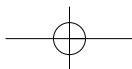
Joel Friedman¹

The lack of public access to reliable and timely information about government budgets greatly contributes to governance problems. Secret accounts, off-budget activities and the lack of public scrutiny all lend themselves to corrupt practices. An increasing number of NGOs recognise the need to draw attention to budget transparency. Recent research has focused on the availability of specific budget information, assessing its timeliness, accuracy and usefulness. It also emphasises the importance of scrutiny at all stages of the budget process, from opportunities for civil society to comment on budgetary priorities to the careful auditing of revenue and expenditure after a fiscal year has ended.

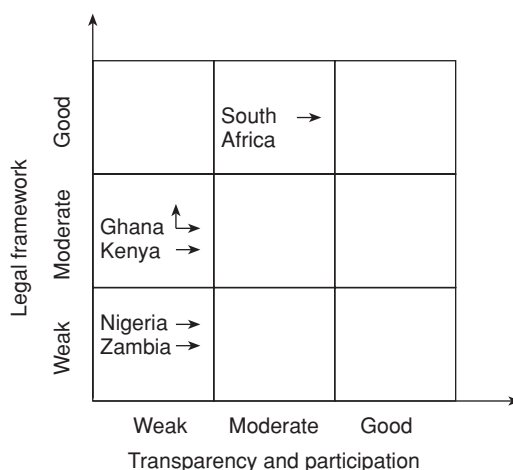
An early NGO effort to research budget transparency was carried out in 1999 by the Institute for Democracy in South Africa (Idasa), in cooperation with the Washington-based International Budget Project (IBP). Following its initial study of budget transparency in South Africa, Idasa's African Budget Project joined with four other NGOs in Africa to expand the research to cover Ghana, Kenya, Nigeria and Zambia. The participating organisations included Isodec in Ghana, Transparency International in Kenya, Integrity in Nigeria and, in Zambia, Women for Change, the Catholic Commission for Justice and Peace and a consultant from the University of Zambia.

The researchers for this multi-country project, initiated in 2000, relied on a case-study method to explore the legal underpinnings of each country's budget process and budget information requirements, as well as the practices that each country actually followed. In each country, the researchers conducted extensive interviews with officials in the executive and legislative branches, civil society groups and the media. Interviews were supplemented by a review of budget documentation, audit reports, policy papers and legislation. A peer review group was established in each country to check the results. The group published its study, *Budget Transparency and Participation: Five African Case Studies*, in June 2002.

The study finds that aspects of transparency and participation in the budget process are weak in each country, though there are important differences (see Figure 24.1). In South Africa, the researchers consider the legal framework 'good', due to the comprehensive overhaul of the budget process undertaken since 1994. The legal frameworks in Kenya and Ghana are also viewed positively, but their effectiveness is weakened by a number of factors. Kenya's framework is outdated and in conflict with government attempts to improve budget management while Ghana's is compromised by official



secrets legislation. In Zambia and Nigeria, the legal frameworks are judged to be 'weak'. The budget laws in Zambia allow for almost limitless expenditure with approval after the fact and require little information to be published. In Nigeria, they can be contradictory and ambiguous, confusing responsibility for budget management.



Arrows indicate direction of trends in performance

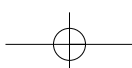
Figure 24.1: The budget process in five African countries

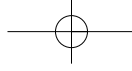
Although recent reforms have substantially improved the public availability of information in South Africa, the study finds that there are still only 'moderate' opportunities for participation. In the other countries, transparency and participation are rated as 'weak', albeit improving. The study recommends that civil society in all five countries should have greater access to information and more opportunities to participate in the budget process.

There are plans to update and expand the study, with five new countries being added: Botswana, Burkina Faso, Cameroon, Namibia and Uganda. In addition, a related research project (reported in the *Global Corruption Report 2003*, pages 274–7) has been undertaken in five Latin American countries – Argentina, Brazil, Chile, Mexico and Peru – and five new countries are being added to this study too: Colombia, Costa Rica, El Salvador, Ecuador and Nicaragua.

More generally, the IBP has been working with NGOs to develop a set of core questions that can be incorporated into any budget transparency research effort. NGOs in three dozen countries across Africa, Asia, Latin America, Eastern and Central Europe, and Central Asia are expected to be engaged in budget transparency research by the end of 2004.

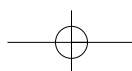
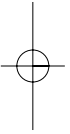
For further information see www.internationalbudget.org

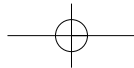




Note

1. Joel Friedman is a senior fellow at the International Budget Project (IBP) at the Center on Budget and Policy Priorities, United States. At the IBP, contact: Joel Friedman (friedman@cbpp.org) or Pamela Gomez (gomez@cbpp.org). On the Africa study, contact: Marritt Claassens (marritt@idasact.org.za).





25 Transparency, wages and the separation of powers: an experimental analysis of the causes of corruption

Omar Azfar and William Robert Nelson Jr¹

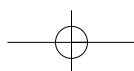
Assessing the causes of corruption is difficult with real world data, given problems of inference.² In an experiment we can overcome these problems through controlling the environment in which people act. The use of experiments in economics is a growing field. In the past economists were largely sceptical of the approach, but experimental economists have recently shown that their results hold both in different societies and when the stakes are raised. Indeed the 2002 Nobel Prize in economics was awarded to Daniel Kahneman and Vernon Smith for their pioneering experimental investigations.

The game

The experiment involved a game with eight players who, at different times, played the role of voters, the executive and the attorney general. The incentives that players faced were designed to mimic those in the real world. Participants played for real stakes: at the end of a session, each player was allowed to take home his winnings from one randomly selected round of the 12 rounds played. The average take-home winnings were approximately US \$25 per player for a two-hour session. The six-round game was played 24 times in total, generating 144 observations, with the experimental design changing between games. The set of players was changed 12 times.

The basic idea of the game is as follows:

- An executive is determined by a popular vote of the players.
- The attorney general is either appointed by the executive, or selected in a separate, simultaneous election.
- Both the executive and the attorney general unconditionally receive a wage in each round of the game (the executive received US \$30 in low-wage rounds and US \$60 in high-wage rounds).
- The executive rolls a six-sided dice to see how many valuable tiles he receives. The valuable tiles represent public funds and each is worth US \$30 if distributed to voters and US \$15 if corruptly kept by the executive.
- The valuable tiles are mixed with the appropriate number of blank tiles to reach a total of 10, 14 or 22 tiles. Only the executive knows how many of the tiles are valuable.



- The executive distributes six tiles to the voters. It is up to him how many of the valuable tiles he corruptly keeps for himself.
- The attorney general may then attempt to expose corruption by turning over up to four of the tiles kept by the executive. The executive keeps any valuable tiles that he successfully hides, while nobody gains from those that are exposed. To mimic the effort involved in being vigilant, the more tiles the attorney general turns over, the more he must pay from his own wage. The attorney general's efforts may be rewarded through re-election or through election to the executive.
- The executive (and, in some games, the attorney general too) stands for re-election, and another round is played. The game involves six successive rounds.

We decomposed accountability into one factor that influenced the cost of being caught, wages while in office, and two factors that determined the probability of being caught, transparency and the separation of powers. Hence, three variables were used to test the effects on corruption of these components of accountability:

- Half the games were played with high wages and half with low wages.
- The total number of tiles distributed to the executive varied: the larger the total number, the more difficult it was for the attorney general to expose corruption. One-third of the games were played with 10 tiles in total (high transparency), one-third with 14 (medium transparency) and one-third with 22 (low transparency).
- In half the games the attorney general was elected (separation of powers); in half he was appointed by the executive (no separation of powers).

Results and discussion

Our salient findings, all of which are statistically significant, are:

1. Voters are unlikely to re-elect executives found to be corrupt.
2. Increasing the executive's wages reduces corruption (see Figure 25.1 – executives with high wages tend to keep fewer valuable tiles).
3. Increasing transparency reduces corruption (see Figure 25.1 – the smaller the total number of tiles, the fewer valuable tiles the executives tend to keep).
4. Directly elected attorney generals work more vigilantly at exposing corruption than do appointed attorney generals (see Figure 25.2 – elected attorney generals are more likely to turn over a large number of tiles).

Each of the findings has important real-world parallels and implications. There is a continuing debate about the importance of high wages in reducing corruption. Some anecdotal accounts suggest an effect. For instance, a devaluation that dramatically lowered the real wages of government officials in Cameroon was reportedly followed by a sharp increase in corruption. Our findings (result 2) confirm this anecdotal evidence in an experimental setting: higher wages reduced corruption.

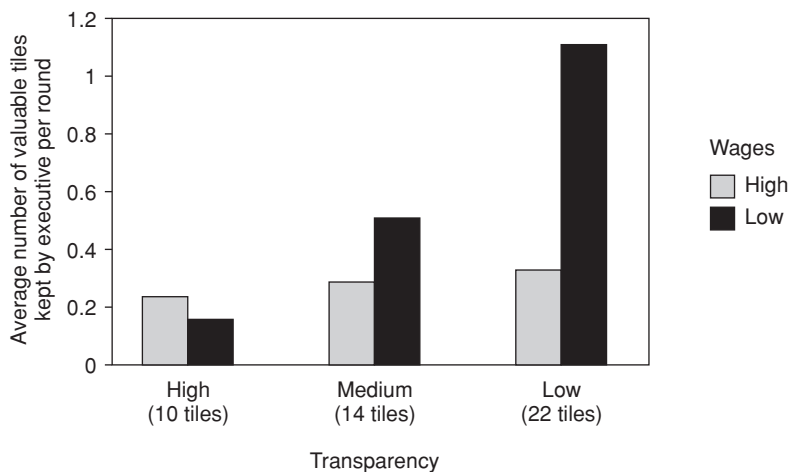


Figure 25.1: Executive corruption^a

^a The average number of valuable tiles per round was 3.6, of which the executive on average chose to keep 0.46.

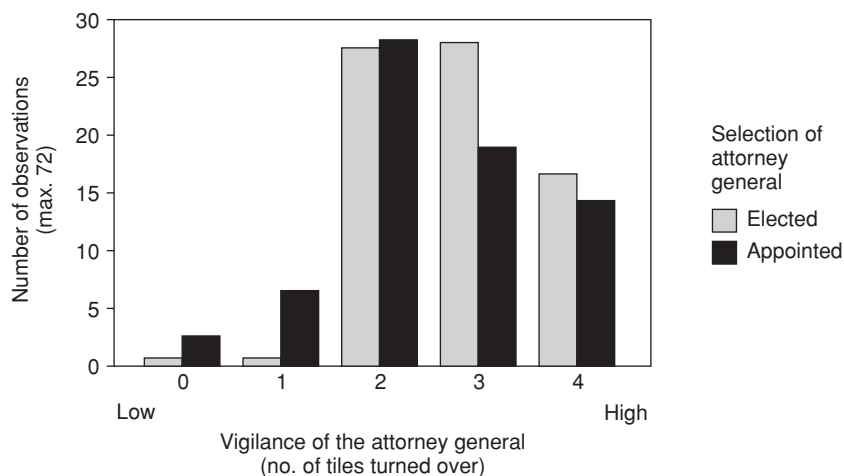
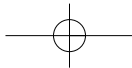


Figure 25.2: Attorney general's vigilance^a

^a The average number of tiles turned over per round by the attorney general was 2.6.

Increasing transparency is thought by many to be the most effective means of reducing corruption. Many of the successful anti-corruption policies that were adopted in Hong Kong, Singapore, the Philippines and La Paz (Bolivia) can be thought of as increasing the probability of exposure. Our findings (result 3) provide additional evidence that transparency reduces corruption.



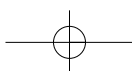
In almost all countries the attorney general is appointed by the executive and has weak incentives to investigate the executive branch of government. It is very difficult, using real world data, to evaluate the impact on corruption of direct elections for attorney general, given the lack of examples. Within the United States, of the 50 attorney generals at state-level, 44 are directly elected and six appointed. But the small number appointed and the poor quality of corruption data for US states make conventional analysis difficult. However, it is possible to examine this issue with experimental data. Our findings (result 4) indicate that elected attorney generals are more vigilant than appointed attorney generals.

Experimental data does suffer from a lack of environmental validity. Situations created in the laboratory imperfectly mimic real world situations and the stakes are usually much lower. In future, we hope to conduct corruption experiments in developing countries where the greater prevalence of corruption, and our ability to provide stakes equal to several days' wages, will improve the credibility of our results. We invite potential collaborators to contact us.

For further details see the full article, available at www.experimentaleconomics.com and www.iris.umd.edu

Notes

1. Omar Azfar is research associate at the Center for Institutional Reform and the Informal Sector at the University of Maryland, United States. Contact: omar@iris.econ.umd.edu. William Robert Nelson Jr is assistant professor in the University at Buffalo School of Management, United States. Contact: wrnelson@buffalo.edu
2. The problems of inference include overlapping definitions, reverse causality, co-linearity and omitted variable bias.



26 Gender and corruption in the public sector

Ranjana Mukherjee and Omer Gokcekus¹

If women are less corrupt than men, as is commonly believed, increasing women's representation in public employment should reduce corruption in public organisations. Very little is known, however, about possible connections between corruption and women's participation in government. Two previous studies have explored whether corruption is connected with women's share in a country's labour force and women's representation in parliament.² Our focus was public sector organisations; this study examined whether corruption in public sector organisations is linked to the percentage of women employed in them.

The investigation relied on survey responses from nearly 4,000 public officials in 90 public sector organisations in six countries: Argentina, Bolivia, Bulgaria, Guyana, Indonesia and Moldova. Officials employed by public organisations were asked about their institutional environment, including the severity of corruption and the probability of it being reported.³ We used survey responses to calculate corruption indicators for each public organisation. We then checked the organisation's corruption level against the percentage of women it employs.

Recognising that responding officials were reporting perceptions on a sensitive issue, we checked the reliability of officials' self-reported perceptions with TI's 2001 Corruption Perceptions Index (CPI), which is not based on self-reporting. As Table 26.1 shows, we found that public officials' perceptions correlated well with the CPI. We also checked for other biases, such as women systematically under- or overestimating corruption: as Table 26.1 indicates, we found that the perception of female public officials was very similar to that of male officials.

Table 26.1: Perceptions of corruption in public organisations

	Argentina	Bolivia	Bulgaria	Guyana	Indonesia	Moldova	Average
Percentage of women in the institutions surveyed	42	29	68	60	26	44	47
Perceptions of corruption							
TI CPI	3.5	2.0	3.9	–	1.9	3.1	–
Percentage of <i>all officials</i> who reported that corruption is a significant problem	62	88	50	32	93	73	67
Percentage of <i>female officials</i> who reported that corruption is a significant problem	61	87	53	34	93	76	62

We found that a statistically significant relation exists between gender and corruption in public sector organisations. The level of corruption declines initially as the percentage of women in an organisation increases, but only if women continue to be in the minority. After a certain threshold, increasing the proportion of women actually reverses the trend of reduced corruption: corruption increases as women become more of a majority in an organisation, as is summarised in Figure 26.1. In other words, having too few or too many women is associated with an increase in the severity of corruption. Rather, a balance between women and men appears to minimise corruption in an organisation.

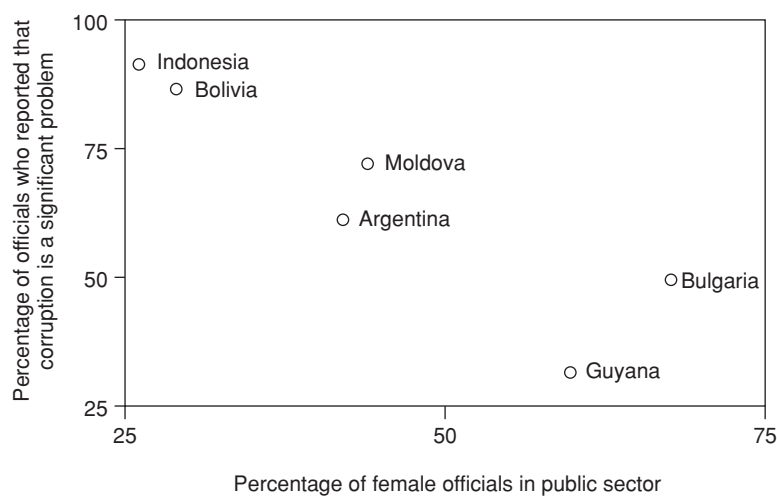


Figure 26.1: Association of corruption severity with percentage of women employed in public sector ($r = 0.9$)

Figure 26.2 shows that, in four of the six sampled public sectors (Argentina, Bulgaria, Guyana and Indonesia), organisations with lower-than-average numbers of women had higher corruption levels than organisations with a higher-than-average proportion of women. The reverse was found to be true in Bolivia and Moldova. However, when all 90 public sector organisations – from all six countries – were pooled, we found that organisations with lower representation of women had more corruption than organisations with higher representation of women.

These findings suggest that countries with a low proportion of women in the workforce (Argentina, Guyana, Bolivia and Indonesia among the six countries that we studied) may benefit from increasing the proportion of women in public organisations. But, in countries that already have a fairly large percentage of women in public employment (Bulgaria and Moldova in our study), recruiting more women might increase corruption in public organisations.

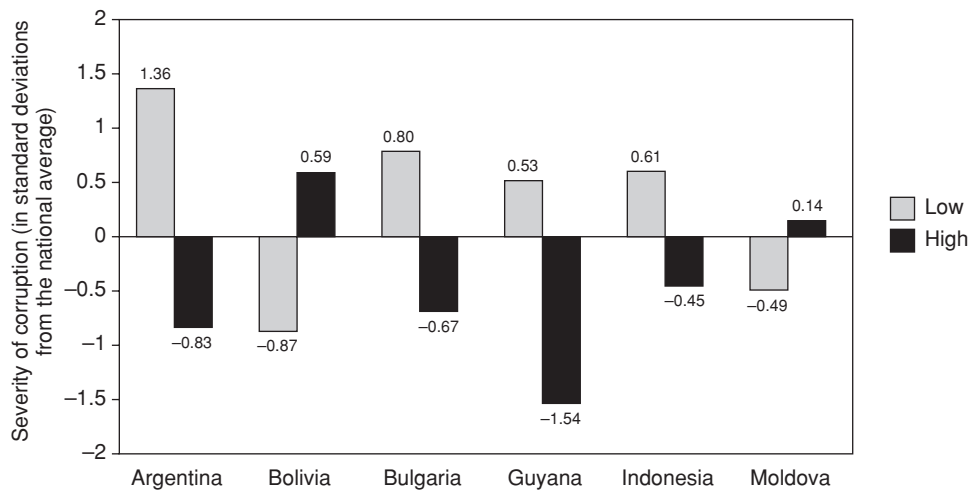


Figure 26.2: Severity of corruption in public organisations with higher or lower than average number of female officials

A possible explanation for this conclusion is that corruption levels may have more to do with group dynamics than with gender. We also recognise that the direction of causality might in fact be the reverse of what is often hypothesised: corruption might actually be the cause of an imbalance in the representation of men and women in the public sector.

For more information about the survey see www1.worldbank.org/publicsector/PREMweek/genderorruption.doc

Notes

1. Ranjana Mukherjee works in the Poverty Reduction and Economic Management Network at the World Bank. Contact: rmukherjee@worldbank.org. Omer Gokcekus is at the John C. Whitehead School of Diplomacy and International Relations, Seton Hall University, United States. Contact: gokcekom@shu.edu
2. D. Dollar, R. Fisman and R. Gatti, 'Are Women Really the "Fairer" Sex? Corruption and Women in Government', *Journal of Economic Behavior and Organization*, vol. 46 (2001); A. Swamy, S. Knack, Y. Lee and O. Azfar, 'Gender and Corruption', *Journal of Development Economics*, vol. 64 (2001).
3. See www1.worldbank.org/publicsector/civilservice/surveys.htm

27 Rent seeking and gender in local government in India

V. Vijayalakshmi¹

Constitutional provisions in India ensure that one-third of elective positions in local government and a similar proportion of executive seats are reserved for women. In the institutions of rural local government, known as Panchayati Raj Institutions or *panchayats*, nearly 40 per cent of elected representatives and 33 per cent of presidents or chairpersons are women at the district, sub-district and village levels. Although the *panchayats* were conceived to enhance the quality of governance by being more responsive and accountable to citizens, there is in fact a wide gap between expectations and their actual functioning. Rough estimates gleaned from surveys of government representatives, officials and contractors suggest that 55–65 per cent of the funds intended for development are lost to corruption. Are such high levels of corruption and the gender balance in local governance in any way linked?

This study sought to answer that question by asking elected representatives and government officials about their attitudes towards corruption and perceptions of the level of rent seeking in the *panchayats*.² It was carried out in Kerala and Karnataka, two states in south India that have significant variations in social and gender development indicators and levels of civil society participation. Information from two districts in each state was used – Kollam and Kozhikoe in Kerala and Mandya and Udupi in Karnataka. Members of two district *panchayats*, eight sub-district *panchayats* and 20 village *panchayats* were interviewed. In total 434 elected representatives (218 in Kerala and 216 in Karnataka), 45 officials, 20 contractors and 350 citizens from both states were surveyed.

Attitudes towards corruption

The elected representatives were asked to respond to a set of statements on corruption and rent-seeking behaviour, indicating the extent to which they thought a particular act was acceptable. The statements included: 'awarding contracts to relatives and friends is acceptable', 'accepting commissions is not corruption', or 'commissions and bribes are acceptable to cover election expenses'. Responses were graded and an aggregate score of opinions was constructed, where a score between 23 and the maximum of 33 indicates the belief that corruption is justified, while a score below 11 indicates the belief that corruption can never be justified.

The mean score was found to be 25.37 for men and 25.49 for women, indicating no significant relation between gender and attitudes towards corruption. Furthermore,

a probit model was designed to ascertain various factors that might influence the attitude of the representatives towards rent seeking – gender was not found to be a significant factor. Instead, factors that were found to affect attitudes towards corruption were the effectiveness of transparency and accountability measures, the risk of getting caught and punished, and the size of election expenses.

There was a difference in the attitude of representatives between Kerala and Karnataka: views from Kerala were less openly supportive of corruption. This finding may be linked to the higher levels of civil society participation in Kerala, which, while not necessarily reducing the prevalence of corruption, could discourage elected representatives from expressing tolerance of corruption.

Perceived levels of corruption

Officials and elected representatives were also asked to respond to 12 questions about the level of corruption in the *panchayats* and rank them against a scale of 'high', 'medium' and 'low'. These included questions on the frequency of rent seeking, the prevalence of political corruption, the degree of bureaucratic corruption, the role of middlemen, the extent of commissions, and nepotism. An aggregate score was constructed indicating the perceived level of corruption in the *panchayats*.

Both men and women perceived a high level of corruption. While there was a variation in the corruption-level scores between Kerala and Karnataka, gender was not a significant factor. In both Kerala and Karnataka the number of corruption cases filed was low, and there were hardly any cases where action was taken against rent seekers.

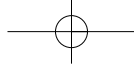
Of particular interest from the perspective of gender and corruption were the *panchayats* that had a woman as president or female representatives who were elected for a first term. The level of perceived corruption in the *panchayats* with a female president was not significantly different. While nearly 96 per cent of women were elected to the *panchayats* for the first time, being new to politics and inexperienced did not reduce rent seeking. This finding suggests that profiteering practices may be speedily learned.

Conclusion

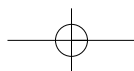
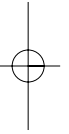
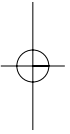
The findings indicate that having women in elected positions does not reduce the level of corruption, even when the findings were controlled for *panchayats* where women were presidents or chairpersons. The evidence suggests that women too exhibit profiteering tendencies when acting as officials or elected representatives.

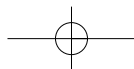
Notes

1. V. Vijayalakshmi is project coordinator of Decentralised Governance, Representation and People's Participation at the Institute for Social and Economic Change, India. Contact: vijayalakshmi@vsnl.com



2. For a more detailed discussion, see V. Vijayalakshmi, 'Rent Seeking and Gender in Local Governance', paper presented at the Conference on Re/constructing Corruption, University of East Anglia, Britain, April 2003; and 'Corruption and Local Governance: Evidence from Karnataka', paper presented at the seminar on Lok Ayukta and Governance, at ISEC, Bangalore, India, 28 June 2003. This study is a part of a research programme on decentralised governance and civil society, carried out at the Institute for Social and Economic Change, Bangalore, India, and financially supported by the Ford Foundation.





28 Poverty and corruption in Peru

*Javier Herrera and François Roubaud*¹

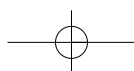
Household surveys are the best way to gauge the population's view of corruption. During the last quarter of 2002, a module on governance, corruption and citizen participation was introduced into a survey on living conditions of Peruvian households (ENAHO), which was carried out by Peru's National Statistics Institute, or INEI.²

Three main characteristics distinguish this survey from prior efforts to measure corruption in Peruvian households. First, its sample size and geographic scope are quite superior to those of other surveys on the subject: nearly 20,000 households were surveyed on the basis of a departmentally representative household survey design.³ Second, matching the module on corruption with other information collected by the ENAHO – such as income, expenses, social programmes, human capital and physical assets, work and economic activity – opens many possibilities for the analysis of corruption. Finally, the fact that the INEI conducted the survey and addressed such questions for the first time ensures that the data is treated as a public good and that a true institutionalisation process may be launched countrywide.

The corruption section of the ENAHO survey differs from other surveys in two additional respects. First, instead of being limited to heads of households, it is representative of the whole population aged 18 years or older. As a result, we can identify who is more vulnerable to corruption by considering gender and youth issues in particular. Second, the survey features a detailed assessment of whether household members have had any contact with public institutions during the last year. Based on this information, estimates of the incidence and cost of corruption can be restricted to individuals who have made use of public institutions. Since poor people have less access to public services, estimates of the incidence of corruption and its costs are usually upward-biased. The study also investigates whether households reported corruption cases in which they were victims, or their reasons for not complaining. Information on income and expenditures gathered for each household were used to investigate whether poorer households were more or less prone to becoming victims of corruption.

In answer to an open question on the issue, households responded that unemployment and poverty were the country's two main problems (74 per cent and 61 per cent, respectively). Corruption was third, with 32 per cent, far ahead of other problem areas, such as government transparency and credibility, the quality of public education, and crime.

As Table 28.1 shows, the percentage of individuals residing in households in which at least one member had been a victim of corruption in 2002 was 5.2 per cent. If the



15 per cent who had no contact with public institutions are excluded, the incidence of corruption reached 6.1 per cent. The amounts paid by households to corrupt civil servants represented 0.4 per cent of their total expenses, and 1.1 per cent with respect to their food expenses. This amount is far from negligible, representing approximately one-third of government transfers to households through anti-poverty social programmes.

Table 28.1 The link between corruption and poverty in Peru^a

	Incidence of corruption (All individuals)	Incidence of corruption (Individuals in contact with government)	Average cost of corruption (Nuevos soles per capita per year)	Pressure from corruption (Corruption as % of food expenses)
Non-poor	6.8%	7.9%	69	1.3%
Poor	3.9% ^b	4.6% ^b	15 ^b	0.7%
Total	5.2%	6.1%	48	1.1%

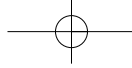
^a The table reflects the number of individuals residing in a household in which at least one member has been a victim of corruption.

^b The difference between poor and non-poor is significant at 1 per cent.

Source: estimate by authors based on ENAHO 2002, IV quarter, INEI, 18,598 households.

As the table also shows, corruption in Peru seems to affect the poor less than the non-poor, contrary to common expectations. More generally, the incidence of corruption increases according to the standard of living. Two factors qualify this finding, however. Firstly, corruption is a root cause for differential access to public services, as it generally discourages individuals who are less equipped to protect their rights – the poor. Secondly, although the absolute average cost of corruption and its relative budgetary pressure (as a percentage of food expenditures) appear to weigh heavier on non-poor households, poor households are not meeting food, health, education and other essential requirements partly because of the direct cost of corruption. For the poor, the marginal utility of one nuevo sol (about US \$0.30) paid or extorted as a bribe is thus greater than for the non-poor.

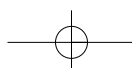
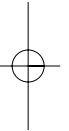
The institutions in charge of fighting corruption, namely the judiciary and the police, were found to be precisely those in which the most corruption cases occurred (accounting for 31 per cent and 15 per cent of cases, respectively). Higher proportions of cases of judicial and police corruption were found to affect the poor. It is thus not surprising that the judiciary and the police were among the five institutions of which Peruvians were most critical in the survey: respectively 65 per cent and 58 per cent had little or no confidence in them.⁴ These findings may help explain why nine out of 10 victims of corruption did not denounce the acts to which they fell prey, especially because of a fear of reprisals. For this reason, insufficient government action in response to corruption penalises the poor more than the non-poor.

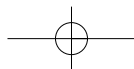


Not surprisingly, the survey found that more than one-third of the population considered corruption to have worsened between 2001 and 2002, despite the mechanisms put in place to fight it, as opposed to barely 15 per cent who thought otherwise. Significantly, the poor were less optimistic than the non-poor regarding the fight against corruption.

Notes

1. Javier Herrera works at Peru's National Statistics Institute. Contact: jherrera@inei.gob.pe. François Roubaud is an economist at DIAL and director of the research unit CIPRE at the Institut de recherche pour le développement, France. Contact: roubaud@dial.prd.fr
2. The module was adapted from surveys 1–2–3 conducted by DIAL, a European public research centre based in Paris and dedicated to applied economic research in developing countries; see www.dial.prd.fr
3. Only about 1,000 households were surveyed for the Latinobarómetro; the Apoyo survey focused on 5,122 households.
4. The other three institutions are political parties, parliament and trade unions.





29 Daily corruption in francophone Africa

Mireille Razafindrakoto and François Roubaud¹

Drawing on previous experience in Madagascar, representative household surveys incorporating modules on governance and democracy were conducted in seven capitals in the West African Economic and Monetary Union in 2001 and 2002.² An eighth survey was carried out in Antananarivo, capital of Madagascar, in 2003. In total, nearly 35,000 adults aged 18 years or over, were questioned. The analysis below only concerns seven, since data is not yet available from Burkina Faso.

A major advantage of the household survey methodology is that it combines subjective opinion poll questions – on issues such as the operation of democracy and the efficiency of government – with objective data on respondents. Some of the objective data reflects social behaviour and practices, including the proportion of respondents who have access to public services; who are members of a party or political association; or who have been victims of corruption or violence during the past year. Further objective data involves socio-economic information, such as gender, age, education, migration, employment, income and consumption.

By their nature, household surveys generate information on petty corruption rather than grand corruption. The surveys provided both subjective data on perceptions of corruption and objective information on individuals' personal experience of corruption during the previous year. The surveys also asked respondents to identify institutions where corrupt behaviour took place, the types of transaction involved, and the sums of money.

The surveys' results indicate that, despite the diversity of countries studied, their rates of corruption are remarkably similar (see Table 29.1). On average, approximately one in 10 adults had personally been the victim of corruption in the previous year. However, the level of petty corruption in Abidjan stands out as significantly higher, with over 16 per cent of adults having been a victim of corruption there.³

In all seven surveyed cities, between 20 and 40 per cent of all citizens had no contact with public services. The reasons for this exclusion are complex, and include the administration's lack of resources, household poverty, and lack of time and awareness. Perceptions of inefficiency or corruption may also be a disincentive. When groups who have no contact with public services are excluded, the corruption rate rises significantly (see third row of the table). In Abidjan, nearly one in four such adults was a victim of corruption in 2002 – a proportion that never falls below 11 per cent in any of the seven cities. Controlling for statistical differences, three groups of countries can be distinguished: Côte d'Ivoire exhibits the highest corruption rate; medium levels characterise Benin, Mali and Togo; and corruption rates are lowest in Madagascar, Niger and Senegal.

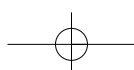


Table 29.1: Incidence and determinants of petty corruption in francophone Africa

	Niger	Madagascar	Benin	Togo	Mali	Senegal	Côte d'Ivoire
Corruption incidence (% of total adult population)	8.1	8.4	8.7	9.1	10.3	10.9	16.5
No contact with the administration (%)	33.0	23.5	43.1	41.1	37.3	19.0	28.7
Corruption incidence (% of those in contact with the administration)	12.1	11.0	15.3	15.5	16.4	13.4	23.1
Sample size	6,330	3,020	6,330	1,900	4,530	6,590	4,760

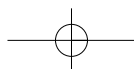
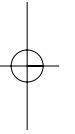
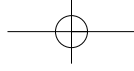
The other information collected in the household surveys makes it possible to examine factors that may explain the incidence of corruption. At first glance, gender and educational level seem particularly important in determining an individual's risk of being a victim of corruption – with women and the least educated being much less affected in all countries. However, these groups also have less contact with public services. When we control for whether or not individuals have contact with public services, a high level of education and gender (male) cease being risk factors.

Looking at all seven capital cities together, there were several robust findings with regard to the group profile of those most often the victims of corruption. The wealthiest groups and heads of household are common targets of corrupt officials, doubtless due to their solvency. Other things being equal, youth increases vulnerability. In Abidjan, foreigners are more at risk than others. Contrary to preconceived notions that ethnicity and religion are the driving forces behind discriminatory practices, almost all the survey results show that these variables do not affect the rate of corruption.⁴

Finally, civil servants seem least likely to fall victim to corruption in five of the seven capitals. This observation may support the theory that solidarity operates among civil servants, but two other reasons could explain the finding. Officials may be victims of corruption less often than others because of their knowledge of the workings of government, or professional relations. Alternatively, they may be less inclined than others to inform on corruption, since the border between victim and corrupter is often indistinct.

Notes

1. Mireille Razafindrakoto is an economist at DIAL (Développement et insertion internationale), France. Contact: razafindrakoto@dial.prd.fr. François Roubaud is also an economist at DIAL and director of the research unit CIPRE at the Institut de recherche pour le développement, France. Contact: roubaud@dial.prd.fr
2. Surveys were conducted in Abidjan, Bamako, Cotonou, Dakar, Lomé, Niamey and Ouagadougou.
3. The greater extent of corruption in Abidjan was found to be significant at the 1 per cent level.
4. A few exceptional cases include the Jola in Dakar, who are relatively spared for reasons that need to be explored in detail.



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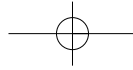
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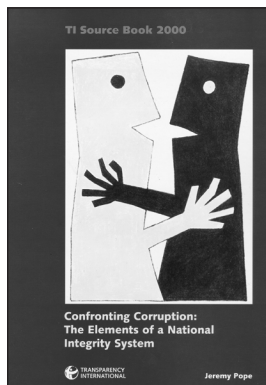
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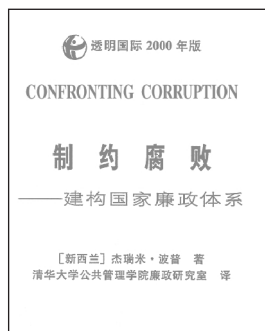
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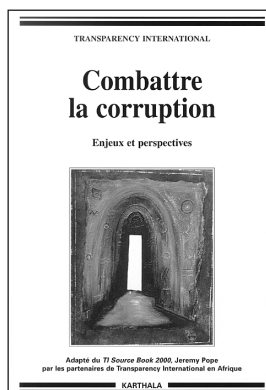
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Confronting Corruption: Building a National Integrity System (in Chinese)

Fangzheng Press, 2002, 538 pp., ISBN 7-80107-617-6

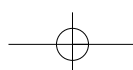
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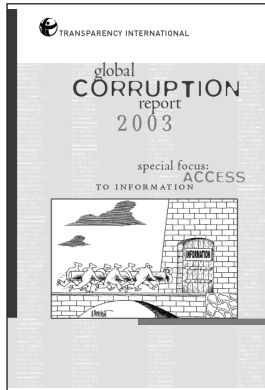


Combattre la corruption – enjeux et perspectives

Editions Karthala, 2002, 360 pp., ISBN 2-84586-311-X

This guide to confronting corruption is an adaptation of the leading anti-corruption reference work, the *TI Source Book*, to the socio-political and legislative environment of francophone Africa.

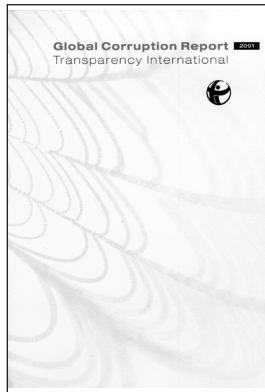




Global Corruption Report 2003

Profile Books, 352 pp., ISBN 1-86197-467-0

The 2003 edition of the *Global Corruption Report* focuses on the need for greater access to information in the struggle against corruption. It explores how civil society, the public and private sectors and the media use and control information to combat – or conceal – corruption. A French version of the text is available from Editions Karthala, 2003, 424 pp., ISBN 2-84586-405-1. The full texts are available on the website www.globalcorruptionreport.org



Global Corruption Report 2001

Transparency International, 336 pp., ISBN 3-935711-00-X

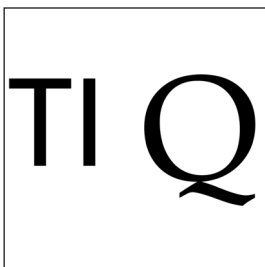
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Transparency International, ISBN 3-935711-02-6

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TI's quarterly newsletter, available in English and French, highlights recent corruption scandals as well as reforms and initiatives to increase transparency and accountability. The newsletter also reports on the work of TI national chapters around the globe. Current and past editions of *TI Q* are available on the website www.transparency.org/newsletters

TI Annual Report

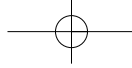
The *TI Annual Report*, available in English, French and Spanish, includes a summary of the most important anti-corruption events of the year, highlights the work of TI national chapters and describes the internal development of the global TI movement. Current and past editions of the *TI Annual Report* are available on the website www.transparency.org/about_ti/annual_rep

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Executive summary

The *Global Corruption Report 2004* provides an overview of the state of corruption around the world. It covers national and international developments, institutional and legal change and activities within both the private sector and civil society for the period from July 2002 to June 2003. This year the *Global Corruption Report* focuses on political corruption. It presents 34 country reports and the latest research on corruption.

Political corruption: the scale of the problem

Political corruption is the abuse of entrusted power by political leaders for private gain. The scale of the problem can be vast. One of the world's most corrupt leaders, Mohamed Suharto of Indonesia, allegedly embezzled up to US \$35 billion in a country with a GDP of less than US \$700 per capita.

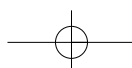
Corruption in political finance takes many forms, ranging from vote buying and the use of illicit funds to the sale of appointments and the abuse of state resources. Not all are illegal. Legal donations to political parties often result in policy changes, for example. A 2003 World Economic Forum survey finds that in 89 per cent of the 102 countries surveyed the direct influence of legal political donations on specific policy outcomes is moderate or high.

Controlling political finance

The legal regimes governing political finance are generally inadequate. Standard regulations control the public financing of parties, establish limits on contributions and spending, and obligate parties and candidates to disclose the sources of their funding. But even disclosure requirements – the least controversial of regulations – are lacking in one in four countries. Worse yet, one in three countries still has no overall system in place to regulate political party finance.

In addition to direct funding, regulations must take account of in-kind donations to parties, particularly free or subsidised media access. In Guatemala and Uruguay, media owners have gained significant political leverage by offering free air time to governing parties. In Italy, Prime Minister Silvio Berlusconi is simultaneously the largest private broadcaster and the regulator of three public networks, pointing to a conflict of interest.

Laws regulating political finance must be followed up with effective enforcement. In Greece, evidence that candidates ignored campaign rules in 2000 failed to trigger



an investigation. The government amended its party finance regulation in mid-2002, but what was needed was better enforcement of existing rules, not new rules.

Effective enforcement requires independent oversight agencies endowed with powers to supervise, investigate and, if required, institute legal proceedings in cases of malpractice. Unfortunately, many governments lack the political will to give teeth to supervisory agencies lest it work to their disadvantage once out of office. The Mexican Federal Electoral Institute, for example, was given access to bank data in 2003, but this access only applies on a case-by-case basis and if the electoral court rules that strict bank secrecy laws can be waived.

It is often only civil society initiatives that make political financing laws work, mainly by monitoring enforcement, analysing party accounts and making information accessible to the public. In the United States, the Center for Responsive Politics helped unravel Enron's extensive connections with the Bush administration, revelations that led many to wonder if the government had turned a blind eye to the company's many transgressions.

Bringing corrupt politicians to justice

One positive development during the year under review was the lifting of the immunity of former Nicaraguan president Arnoldo Alemán and his subsequent prosecution for embezzlement and asset laundering. But a review of 34 countries reveals that more governments – including Italy and Kyrgyzstan – chose to extend the scope of immunity from prosecution, rather than to limit it, during the course of 2002–03.

Important efforts to bring corrupt politicians to justice have been thwarted by anomalies in extradition laws. Former Peruvian president Alberto Fujimori, for example, gained refuge from prosecution by virtue of his Japanese citizenship. In spite of numerous requests from Peru and international NGOs, Japan refuses to extradite him.

Legal loopholes also prevent the speedy repatriation of wealth embezzled by corrupt leaders. The relaxation of Switzerland's secretive banking code in the late 1990s raised hopes that stolen funds would be more easily returned to their countries of origin, but progress has been slow. It took international prosecutors more than five years to obtain a judgement requiring Benazir Bhutto to repay US \$250,000, a fraction of the millions she and her family are alleged to have stolen from Pakistan. In a more positive development, Nigerian president Olusegun Obasanjo announced in late 2003 that the Swiss had agreed to repatriate US \$618 million reportedly embezzled by the late military dictator Sani Abacha, as long as Nigeria committed the returned funds to improving education, health, agriculture and infrastructure.

The supply side of political corruption: the role of the private sector

As the source of much of the money that funds political corruption, the corporate sector has a vital role to play in ending the abuse of power.

Sanctioned secrecy and a lack of price transparency help perpetuate corruption in the arms trade. The revelation that bribes were paid to secure arms deals led to the

downfall of French and German politicians in the 1990s and continues to take its toll on officials in South Africa, where a giant defence deal was signed in defiance of the country's acute social and economic problems.

The energy sector is another major breeding ground for political corruption. The flow of oil money is so vast that it can distort decision-making in poor producer countries and the rich world alike, as the Elf scandal revealed. The larger the oil sector relative to a country's economy, the greater the potential for political corruption.

Global and regional developments

The UN Convention against Corruption, scheduled to be signed in December 2003, is the first global anti-corruption instrument. It sets new standards in domestic and international law, in part by committing its signatories to enhanced cooperation and mutual legal assistance, particularly on the return of assets. But its success requires political will and a commitment to monitor implementation.

The African Union Convention on Preventing and Combating Corruption and Related Offences represents the first framework for the fight against corruption for member states. Adopted in July 2003, it must be ratified by 15 member states before entering into force. The convention contains imperfections, such as weak enforcement mechanisms and a provision allowing signatories to opt out of selected issues.

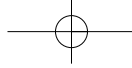
Optimism surrounding the OECD Anti-Bribery Convention has given way to frustration. Although the convention came into force in February 1999, there had been no related convictions by the end of 2003 – with the exception of cases filed in the United States under legislation that predates the OECD convention. Furthermore, many businesses are still not aware that bribing foreign public officials is now a crime.

The imminent accession of 10 states to the European Union raises concerns as to their preparedness and the EU's dedication to fighting corruption within its own structure. Having created largely cosmetic anti-corruption institutions to qualify for admission, former communist countries with pervasive problems of corruption are now set to enter an EU that has failed to develop a Union-wide anti-corruption framework.

If implemented, the Millennium Challenge Account will radically redraw US foreign assistance policy by providing substantial amounts of aid to a select group of countries. To qualify for aid, a country must score above the median on a corruption index. The problem is that this firm make-or-break requirement assumes that corruption data are accurate and neglects to consider the relative starting points of countries seeking aid.

National developments

Public contracting is riddled with corruption, resulting in sub-standard work at inflated prices. Bulgaria, Senegal and Serbia drafted new procurement legislation in 2002–03. But in Algeria, where 2,300 people died after houses collapsed during the May 2003 earthquake, the government considered relaxing regulations to speed up reconstruction, a move likely to encourage corruption – and construction that is structurally unsound.



There is a widespread need to strengthen the autonomy of the judiciary. In Argentina, a judge and a public prosecutor were dismissed for pursuing cases against corrupt members of local government. Elsewhere, there were more positive developments. The lifting of the immunity of former president Frederick Chiluba in Zambia encouraged a more confrontational stance by prosecutors and the judiciary, as was the case after a similar measure was taken in Nicaragua.

The success of anti-corruption efforts depends on the political will to implement change. President Lula da Silva of Brazil signed an anti-corruption pledge that committed his government to an array of anti-corruption measures, including the creation of a new anti-corruption agency, although delivery has been slow. In Egypt, critics claim that President Hosni Mubarak's anti-corruption campaign is merely a ruse whereby he hopes to install his son as political successor.

Access to information, a crucial ingredient of anti-corruption strategies, was hampered by developments that curtail the independence of the media. The Australian government sought to grant ministers the discretion to waive restrictions on cross-media ownership and foreign ownership of media. In Burundi, a new media law secures certain rights for journalists but establishes penalties of up to five years' imprisonment for publishing 'defamatory statements'. Newspaper licences were replaced with temporary permits in the run-up to Kyrgyzstan's constitutional referendum, which further entrenched the president's power.

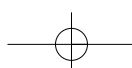
Corruption research

New methodologies and lines of research continue to strengthen our understanding of corruption, and improve ways to measure it. TI's Corruption Perceptions Index 2003, which reflects perceptions of the degree of corruption among public officials and politicians in 133 countries as seen by business people, academics and risk analysts, shows that 70 per cent of countries score less than 5 out of a clean score of 10. Surveys of personal experience of corruption reflect that victims lack trust in public institutions.

Recent research demonstrates that corruption leads to lower capital inflows and lower productivity. Corruption may deter foreign investors because it is often associated with a lack of secure property rights as well as bureaucratic red tape and mismanagement.

Surveys of many companies around the world indicate that OECD countries use undue political pressure to win business advantage – despite legislation that aims to level the international playing field. Moreover, these surveys point to a widespread belief that companies from OECD countries use middlemen to circumvent anti-corruption laws.

Assessments of anti-corruption measures suggest that publishing information is effective. After the amount of grants awarded to school districts in Uganda was made public, exposing leakage in educational funding, the level of leakage fell from 80 per cent in 1995 to 20 per cent in 2001. Gender balance within organisations also affects corruption, but two studies suggest that the reason may have more to do with organisational dynamics than with gender-specific characteristics.



Surveys from West Africa, South Asia and Peru all suggest that corruption affects the poor disproportionately. The poor spend more on bribes as a share of income and their access to public services is severely curtailed by corruption.

Key recommendations

- Governments must enhance legislation on political funding and disclosure. Public oversight bodies and independent courts must be endowed with adequate resources and skills and the power to review, investigate and hold offenders accountable.
- Governments must implement adequate conflict of interest legislation, including laws that regulate the circumstances under which an elected official may hold a position in the private sector or a state-owned company.
- Candidates and parties should have fair access to the media. Standards for achieving balanced media coverage of elections must be established, applied and maintained.
- Political parties, candidates and politicians should disclose assets, income and expenditure to an independent agency. Such information should be presented in a timely fashion, on an annual basis, as well as before and after elections.
- International financial institutions and bilateral donors must take political corruption into account when deciding to lend or grant money to governments. They should establish sensitive criteria to evaluate corruption levels.
- The UN Convention against Corruption must be swiftly ratified and enforced.
- The OECD Anti-Bribery Convention must be strengthened and properly monitored and enforced. Signatory governments should launch an education campaign to ensure that businesses know the law and the penalties for breaching it.

Access to information and political finance reform: promising policy areas for building transparency

Democracies can no longer tolerate bribery, fraud and dishonesty, especially as such practices disproportionately hurt the poor. For the past 10 years, Transparency International has helped governments and citizens come to this realisation, in part by spearheading efforts to inform and educate them about the corrosive effects of political corruption, but also by developing ways to reduce it. As a member of TI's Advisory Council, I am pleased that The Carter Center has had the opportunity to work with many local TI national chapters, particularly in the Americas.

Like TI, The Carter Center is committed to fostering transparency and preventing corruption. In countries such as Jamaica, Ecuador and Costa Rica, the Center has helped governments and civil society organisations develop plans and mechanisms to achieve these goals. Through our work, we have recognised that corruption is concomitant with a marked decrease in citizens' satisfaction with democratic institutions.

In our experience there are two policy reforms that hold the most promise for reducing corruption and promoting citizen confidence in government: development of an access to information regime and reform of political party and campaign finance systems.

Access to government-held information allows citizens to hold their government accountable for policy decisions and public expenditures. Informed citizens can more fully participate in their democracy and more effectively choose their representatives. Importantly, access to information laws can be used to ensure that basic human rights are upheld and fundamental needs met, as individuals may request information related to housing, education and public benefits. Such laws also help government, as they increase the efficiency and organisation of critical records. Governance is improved, and the private sector is assured of more transparent investment conditions. Access to information bridges the gap between state and society as a partnership for transparency unfolds.

The Carter Center's Americas Program has collaborated with countries in the western hemisphere as their legislatures seek to pass and implement access to information laws that meet emerging international standards. We have further assisted civil society organisations as they prepare to use and enforce their new right to information. In Jamaica, we helped to inform the debate regarding the now approved access to information act and have continued to provide advice and technical assistance relating to effective implementation. In Bolivia, we have begun working with the vice-presidency's new anti-corruption secretariat to amend its draft access to information bill and engage civil society in the passage and implementation of this law. We encourage every nation to ensure that citizens have a right to access information, and The Carter Center stands ready to assist.

Transparency in campaign and party finance is needed to bolster public faith in democratic institutions, especially political parties and legislatures. Citizens are increasingly angry and alienated when elected representatives respond to the selfish interests of campaign donors, instead of to the general public. This trend is evident in Latin America and the Caribbean, where poverty and inequality persist despite democracy, but public scepticism about the disproportionate influence of wealthy and corporate donors has driven campaign finance reform efforts in the United States and Canada as well.

In March 2003, building on the efforts of TI, International IDEA and the Organization of American States, The Carter Center convened a hemispheric conference to examine campaign and party finance in the Americas and discuss possible improvements. Informed



by the deliberations of representatives from government, the private sector, the media and civil society, 10 former presidents and prime ministers from the western hemisphere reached consensus on principles that should guide campaign and party finance. They backed a set of objectives and tools stemming from the premise that democratic governance costs money, and we should be willing to invest in our democracies. Their recommendations emphasised the role of public finance, equitable access to the media, the need for full and timely disclosure and the importance of effective enforcement.

International organisations such as TI and The Carter Center play an important role in supporting such governmental, multilateral and civil society initiatives to fight and prevent corruption. We look forward to continuing together on this path.

Jimmy Carter
former president of the United States of America

Corruption and human rights

Corruption produces human rights violations and affects many lives. When individuals and families have to pay bribes to access food, housing, property, education, jobs and the right to participate in the cultural life of a community, basic human rights are clearly violated. In tackling these ills, therefore, there can be no doubt of the importance of forging closer ties between those working for human rights and those fighting against corruption. But it is also clear that to work most effectively together, the question 'Just what have human rights to do with corruption?' is one that needs further reflection.

This link was highlighted for me when, as High Commissioner for Human Rights, I addressed an audience of parliamentarians in Cambodia in mid-2002 on the issue of trafficking in people. The parliament was full and many eloquent speeches were made. I then went to a village to meet representatives of a small NGO. The women had all escaped from a life of being trafficked as prostitutes and all were HIV positive. They spoke to me about corruption – of the bribery of officials and the police – and it was corruption they asked me to talk about at the press conference that was to follow.

As this example shows, corruption hits hardest at the poorest in society, those with limited or no possibilities to defend themselves. But corruption affects the whole of society as well. Decisions supposedly taken for the public good are in truth motivated by a desire for private gain and result in policies and projects that impoverish rather than enrich a country.

In order for a corrupt system to prevail, numerous other rights are likely to be restricted in the areas of political participation and access to justice. The need for the corrupt to protect themselves and their cronies undermines the electoral process, leads to intimidation and manipulation of the press and compromises the independence of the judiciary in North and South alike. Especially disturbing is the impunity that covers up so many of these acts.

If human rights are violated by corruption, respect for human rights can be a powerful tool in fighting corruption.

The Ethical Globalization Initiative (EGI) seeks to work with those who are committed to bringing the values of international human rights to the tables where decisions about



the global economy are being made. The EGI is driven by the conviction that in order to build a world in which security is underpinned by sustainable development and social justice, and where globalisation works to the benefit of all the world's people, multi-lateralism and respect for international law – in particular, international human rights law – are vital.

Essentially, my argument is that the binding human rights framework must become part of the rules of the road of globalisation. An integral part of this value system is the rejection of corruption and a commitment to its elimination.

Human rights and anti-corruption activists each have their own methods, actors and challenges, but they also have much in common. From a human rights perspective, anti-corruption activities and information can help identify and eliminate barriers to the enjoyment of human rights. That, in turn, would enable human rights bodies to recommend better preventive action.

From the anti-corruption perspective, analysing corruption in the light of its impact on human rights could well strengthen public understanding of the evils of corruption and lead to a stronger sense of public rejection. In addition, the use of the human rights legal machinery to raise cases of corruption as human rights violations in public fora might well bring positive results.

There are a number of ways that we could go forward together. As a starting point, a clear statement of the interrelationship of the fight against corruption and the promotion of human rights in a more just world could provide authoritative guidance for us all as we embark on this joint endeavour.

Mary Robinson
executive director, the Ethical Globalization Initiative
former president of Ireland and former UN High Commissioner for Human Rights