

Globethics Repository



[Global Corruption Report,2004] Global, Regional and Country Reports

This page was generated automatically upon download from the Globethics Repository.
More information on Globethics see <https://www.globethics.net>. Data and content policy of Globethics Repository see <https://repository.globethics.net/pages/policy>.

Item Type	Book chapter
Authors	Transparency International
Publisher	Transparency international
Rights	With permission of the license/copyright holder
Download date	2026-09-15 16:26:12
Link to Item	http://hdl.handle.net/20.500.12424/177649

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 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)

Further reading

Anders Åslund, 'Specific Taxation Problems and Possible Solutions in the CIS', 2000, www.leontief.ru/rus/13_2001dok9.htm

Corporate Governance and Enterprise Reform Project, 'Strengthening Corporate Governance and Judicial Reform', a survey of 404 judges and lawyers, Asian Development Bank, TA no. 3779-KGZ, 29 July 2003

TI Kyrgyzstan, 'The problems of fighting corruption in Kyrgyzstan' (forthcoming)

Notes

1. The government published provisions for this council's operation in the 29 July 2003 issue of *Slovo Kyrgyzstana*, a pro-government newspaper.

2. Interfax news agency (Russia), 14 April 2003.
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.akiexpress.org
12. NDI Statement following the constitutional referendum on 2 February 2003. www.ndi.org/worldwide/eurasia/kyrgyzstan/kyrgyzstan_statement_020403.asp
13. 'Family voting' traditionally involves the casting of votes by the head of the family in the name of the rest of the family members. The individual's right to vote is thus sacrificed.
14. www.prima-news.ru/eng/news/news/2003/6/20/25004.html
15. www.freedomhouse.org/pfs2003/pfs2003.pdf
16. *Novaya Gazeta*, 7 July 2003, novayagazeta.ru/nomer/2003/48n/n48n-s44.shtml

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 parliamentarian.

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)

Further reading

Arab Finance Corporation, 'Report on the Republic of Lebanon 2003', Beirut, 2003, www.menafn.com/rc_country.asp?country=3
 Albert Dagher, 'L'administration libanaise après 1990' (The Lebanese administration after 1990), conference paper January 2002, thorstein.veblen.free.fr/pdf/A.DAGHER.pdf
 European Union, 'Lebanon: Country Strategy Paper 2002–2006' and 'National Indicative Programme 2002–2004', europa.eu.int/comm/external_relations/lebanon/csp/02_06_en.pdf

IMF, 'International Monetary Fund Concludes 2002 Article IV Consultation with Lebanon', public information notice no. 03/36, 2003, www.imf.org/external/np/sec/pn/2003/pn0336.htm#P31_344

Bassim Kanaan, 'Anti-Money Laundering Legislation 2002', for Etude Badri & Salim El Méouchi law firm, www.elmeouchi.com/pdf/laundrying.pdf

Lebanese Republic, 'Beyond Reconstruction and Recovery ... towards Sustainable Growth', paper presented at the Paris II Meeting, Beirut, 2002, www.lebanonwire.com/paris2/index.htm

US Department of State, 'Lebanon', country report on human rights practices, March 2003, www.state.gov/g/drl/rls/hrrpt/2002/c8699.htm

TI Lebanon: www.transparency-lebanon.org

Notes

1. *Daily Star* (Lebanon), 11 February 2002.
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.fatfgafi.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)

Further reading

Sada Diarra, 'Les fondements juridiques de la corruption sous la 3ème République au Mali' (Judicial foundations of corruption in the 3rd Republic of Mali), June 2000, www.aidtransparency.org/francais/articleune.cfm?vararticle=267

Brahima Fomba, 'Elections et corruption politique au Mali' (Elections and political corruption in Mali), conference paper, June 2002, available through GERDDES-Mali (Groupe d'Etudes et de Recherches sur la Démocratie et le Développement Economique et Social), www.gerddes.org

Notes

1. Decree no. 02-380/PM-RM of 30 July 2002 and decree (amendment) no. 02-400/PM-RM of 7 August 2002 established the committee. *Journal Officiel*, no. 24, 31 August 2002.
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)

Further reading

Commission for Investigation of Abuse of Authority (CIAA), 'Investigation and Prosecution: Guidelines', 2003

CIAA, 'A Collection of Constitutional and Legal Provisions on Corruption and Principles Enshrined in Supreme Court Verdict', 2003

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.tinepal.org

TI Nepal: www.tinepal.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 (*Ética y Transparencia, Nicaragua*)

Further reading

Alejandro Serrano, ed., *Ética y Política* (Ethics and politics) (Nicaragua: Universidad Politécnica de Nicaragua, 2003)

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/anticorruptcion/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

Inge Amundsen and Basem Ezbeidi, 'Clientelist Politics, State Formation and Corruption in Palestine 1994–2000' (Bergen: Chr. Michelsen Institute, 2002)

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 co-ordinated 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

Apoyo Opinión y Mercado – Proética, 'Primera Encuesta Nacional sobre Corrupción y Gobernabilidad' (First national survey on corruption and governability), Lima, 2002, www.proetica.org.pe/encuesta/frameset.htm

Omar Pereyra Cácares, *Percepciones sobre la corrupción en la zona norte del Perú* (Perceptions about corruption in northern Peru) (Lima: Servicios Educativos Rurales, 2002)

Comisión Andina de Juristas (CAJ), *Libertad de Expresión y Acceso a la Información Pública* (Freedom of expression and access to public information) (Lima: CAJ, 2002)

Comisión Andina de Juristas (CAJ), *La Sombra de la Corrupción* (The shadow of corruption) (Lima: CAJ, 2002)

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.

*Gabriella Quimson (School of Political Science and International Studies,
University of Queensland, Australia)*

Further reading

Amando Doronila, *The Fall of Joseph Estrada: The Inside Story* (Manila: Inquirer Books and Anvil Publishing, 2001)

Sheila Coronel and Lorna Kalaw-Tirol, eds, *Investigating Corruption: A Do-It-Yourself Guide* (Quezon City: Philippine Centre for Investigative Journalism, 2002), www.pcij.org

David Kang, ‘Crony Capitalism: Corruption and Development in South Korea and the Philippines’, *Journal of Public Policy*, vol. 22, no. 3, 2002

TI Philippines: ti-ph.tripod.com

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)*

Further reading

Piotr Bogdalski, Grażyna Kędzierska and Wiesław Pływaczewski, eds, *Unia Europejska: wyzwanie dla polskiej Policji* (European Union: challenge for the Polish police) (Szczytno: Wydawnictwo Wyższej Szkoły Policji, 2003)

EU Accession Monitoring Program, 'Korupcja i polityka antykorupcyjna: Raporty krajowe Polska' (Corruption and anti-corruption policy: country reports on Poland), Open Society Institute, Warsaw, 2002, www.batory.org.pl/ftp/program/przeciw-korupcji/publikacje/inne_publicacje/korupcja_i_polityka_antykorupcyjna.pdf

Andrzej Kojder, 'Korupcja i poczucie moralne Polaków' (Corruption and morality among Poles), in Janusz Mariański, ed., *Kondycja moralna społeczeństwa polskiego* (The Moral condition of Polish society) (Krakow: Polska Akademia Nauk, 2002)

Andrzej Kojder, 'Przestępczość i korupcja' (Crime and corruption), in Andrzej Kojder, ed., *Dawne i nowe problemy społeczne: Szkice do obrazu społeczeństwa polskiego u progu XXI stulecia* (Old and new social problems: sketches of Polish society on the threshold of the 21st century) (Warsaw: Wydawnictwo Kancelarii Sejmu, 2002)

Andrzej Kojder and Andrzej Sadowski, eds, 'Klimaty korupcji' (Corruption climates), Centrum im. A. Smitha, Warsaw, 2002

Niels von Redecker, 'Das polnische Beamtenrecht' (Polish civil service law), in *Studien des Instituts für Ostrecht* (Studies of the Institute for Eastern Law), vol. 45, (Frankfurt am Main, 2003)

Marcina Waleckiego, ed., *Kulisy finansowania polityki* (Secrets of policy financing) (Warsaw: Instytut Spraw Publicznych, 2002)

TI Poland: www.transparency.pl

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)*

Further reading

- M. Gornij, *Civil Society Against Corruption* (St Petersburg: St Petersburg Humanitarian Political Strategy Centre, 2002)
- Ivan Sikora, *Anti-Corruption Strategies for Transition Economies* (Kiev: TI Russia, National Anti-Corruption Programme 'Freedom of Choice' Coalition and TI Ukraine, 2002)
- St Petersburg Humanitarian Political 'Strategy' Center, 'Prevention of Corruption in Budgetary Strategy', 2002, www.strategy-spb.ru/Koi-8/Proekt/Vibori/inforpis.htm [Russian]

A. Solovjova, 'Municipal Programme for the Prevention of Corruption in Izhevsk', Transregional Centre for Supporting of Non-government Organisations and Civil Activities, 2002

TI Russia, 'The Citizen is Entitled to Know: Drafting of Law of Procedure to Disclose Information by Bodies of the State Government of Kaliningrad', Moscow, 2003

TI Russia: www.transparency.org.ru

Notes

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

Giorgio Blundo and J.P. Olivier de Sardan, 'La corruption au quotidien en Afrique de l'Ouest', *Politique africaine* (France), no. 83, October 2001; see also www.unimainz.de/~ifeas/workingpapers/corruption.pdf

Forum Civil and Orgatech, 'Enquête ménages sur la perception de la corruption au Sénégal' (Survey on the household perception of corruption in Senegal), May 2002, www.forumcivil.sn/Rapport%20entreprises%20.doc

Forum Civil and Orgatech, 'Enquêtes: secteur privé, sur la perception de la corruption au Sénégal' (Private sector survey on the perception of corruption in Senegal), May 2002, www.forumcivil.sn

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.mediacycenter.org.yu/english/dokumenti/tranzicija/broadcast190901.asp; see also www.mediacycenter.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.
-

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.

Daryl Balia (TI South Africa)

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 Zvekic, 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)

Further reading

Hassan B. Muloopa, Stephanie McIvor and Allan Doig, 'National Integrity Systems Country Study Report: Uganda 2003' (Transparency International, forthcoming)
Inspectorate of Government, 'The 2nd National Integrity Survey Report' (Kampala: 2003)

Notes

1. *New Vision* (Uganda), 4 May 2003.
2. Uganda Human Rights Commission, *Annual Report to Parliament: January 2001–September 2002*.

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)

Further reading

Nancy Boswell and Peter Richardson, 'Anti-Corruption: Unshackling Economic Development', *Economic Perspectives* (March 2003), www.usinfo.state.gov/journals/ites/0303/ijee/boswell.htm

Michael Lippe, 'Corruption at the Local Government Level: The U.S. Experience', March 2002, www.transparency-usa.org/documents/corruptioninlocalgovernmentinamerica.doc

D. Renzulli, *Capitol Offenders: How Private Interests Govern Our States* (Washington D.C.: Center for Public Integrity, 2002)

TI USA, 'Anti-Bribery Toolkit: Guidance for Small and Medium Companies to Develop Compliance Programs', May 2002, www.transparency-usa.org/Toolkit.html

TI USA, 'Statement on Corporate Governance and Accounting Reforms', July 2002, www.transparency-usa.org/Corporate%20Governance%20Statement.htm

TI USA, 'Corporate Governance: Code of Conduct/Compliance Programs Leading Practices Survey', February 2003, www.transparency-usa.org/documents/03020397750_CorporateGovernanceSurvey-FINAL.pdf

TI USA: www.transparency-usa.org

Notes

1. Charles Lewis, 'The Enron Collapse: A Financial Scandal Rooted in Politics', Center for Public Integrity, www.publici.org
2. *New York Times* (US), 31 December 2002.
3. See 'Statement of Government Accountability Project' at www.whistleblower.org
4. *Time* (US), 22 December 2002.
5. Reuters (Britain), 9 April 2003; *New York Times* (US), 10 April 2003.
6. 'NYSE Corporate Governance Proposal', Commission File No. SR-NYSE-2002-33, Release No. 34-47672.
7. 'NASDAQ Corporate Governance Proposal', Commission File No. SR-NASD-2002-141, Release No. 34-47516.
8. *New York Times* (US), 4 June 2003.
9. See www.unitedway.org
10. *Washington Post* (US), 4 and 7 May 2003.
11. 'Grassley Seeks Details on United Way's Financial Management', press release, 20 August 2002, www.grassley.senate.gov/releases/2002/p02r8-20a.htm; 'Senate Finance Committee Passes Non-Profit Bill', *OMB Watch*, June 2002.
12. Alan G. Hevesi and Ira Millstein, 'Non-profit Governance in New York City', www.comptroller.nyc.gov/bureaus/opm/Nonprofit%20Governance%20In%20New%20York%20City.pdf
13. Charles F. Dambach, *Structures and Practices of Non-profit Boards* (Washington, D.C.: BoardSource, 2003).
14. OneWorld (US), 12 June 2003, www.us.oneworld.net
15. Much of this emerged in a conference hosted by the American Enterprise Institute and the Institute of Public Affairs of Australia, 'Non-Governmental Organizations: The Growing Power of an Unelected Few', www.ngowatch.org
16. SustainAbility, *The 21st Century NGO: In the Market for Change* (Washington, D.C.: SustainAbility, 2003).
17. See www.abanet.org

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.

Christine Munalula (TI Zambia)

Further reading

Alfred Chanda, *National Integrity Systems Country Study Report: Zambia 2003* (TI Zambia, 2003), www.tizambia.org.zm/research.html

Inyambo Mwanawina *et al.*, *Transparency and Participation in the Budget Process – Zambia: A Country Report* (2002)

TI Zambia, *2001 State of Corruption Report* (2002)

TI Zambia: www.tizambia.org.zm