
# [Global Corruption Report,2004] Country Reports

# 8 Country reports

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

## Algeria

**Corruption Perceptions Index 2003 score:** 2.6 (88th out of 133 countries)
**Bribe Payers Index 2002 score:** not surveyed

**Conventions:**
AU Convention on the Prevention and Combating of Corruption (adopted July 2003; not yet signed)
UN Convention against Transnational Organized Crime (ratified October 2002)

### Legal and institutional changes

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

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

## The Khalifa affair

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

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

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

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

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

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

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

## The earthquake of 21 May 2003

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

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

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

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

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

### Further reading

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

### Notes

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

## Argentina

**Corruption Perceptions Index 2003 score:** 2.5 (92nd out of 133 countries)
**Bribe Payers Index 2002 score:** not surveyed

**Conventions:**
OAS Inter-American Convention against Corruption (ratified October 1997)
OECD Anti-Bribery Convention (ratified February 2001)
UN Convention against Transnational Organized Crime (ratified November 2002)

### Legal and institutional changes

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

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

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

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

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

The article prompted a judicial investigation by federal judge Claudio Bonadio, who ordered a number of senators, bankers, trade unionists, Catan and Bercun to testify. The ABA president, Mario Vicens, denied receiving any requests for bribes or knowing anyone in the banking world who had heard of any such requests. Senators gave different opinions. Carlos Maestro, senate leader for the opposition Radical Civic Union (UCR), dismissed the story and threatened Catan with a judicial complaint if he did not back up his allegations. Senate president Juan Carlos Maqueda, from the ruling Justicialista Party (PJ), said that he thought 'something must have happened', though he gave no further details.

Catan swore before Judge Bonadio that the published information was true, but he refused to reveal his sources. In a controversial request, Judge Bonadio asked the state intelligence office for a detailed list of Catan's telephone calls, violating the constitutional guarantee of anonymity for a journalist's sources.

Catan's life in Buenos Aires subsequently turned into a nightmare. Rather than prompting thorough investigation of corruption with his article, he became the focus of investigations himself. When Catan heard of Judge Bonadio's request to the intelligence services, his legal advisers applied to the federal courts for an injunction to safeguard his rights under article 43 of the constitution, which protects the secrecy of journalists' sources, and article 18, which guarantees the privacy of addresses, correspondence and private papers. The courts found in favour of the reporter and forced the judge to destroy the lists. The senate launched an investigation in late 2002, but the recess intervened and the case had not been resumed by mid-2003.

This was the second case of suspected bribery in the senate in two years. In 2000, a local journalist published allegations that the executive paid a group of senators to vote in favour of labour reforms. The then vice-president, Carlos Alvarez, tried to deepen the investigations, but resigned 10 months into his term of office.

## Overstepping the division of powers: judges penalised for tackling corruption

The division of powers of government is little more than a theory in parts of Argentina. In

Salta, for example, the provincial constitution was amended in June 1986 and April 1998 to eliminate tenure for judges, which is a condition of an independent judiciary. They now serve only six years with further terms dependent on the governor and the provincial senate. Moreover, as the removal of Judge Roberto Gareca in late 2002 demonstrated, even this restricted protection of judges is sometimes violated.

Gareca was removed by the Salta jury of indictment in December 2002 on the grounds that he had delayed hearing a case and had disclosed privileged information about a second case in a radio interview. Gareca refuted the allegations and said his removal was motivated by political considerations arising from his record of issuing independent judgments.

During his four years in office, Gareca investigated and filed charges of corruption against more than 15 officials and former officials from Governor Juan Carlos Romero's administration.[2] When the jury of indictment began proceedings against Gareca, he was investigating former production and labour minister Gilberto Oviedo and former secretary of public works Luis Siegrist for alleged irregularities in awarding contracts worth more than US $40 million.

Despite demonstrations in Salta supporting Gareca and protesting the violations of his right to due process, the judge was removed – a comparatively easy task since many members of the jury of indictment are directly or indirectly related to the governor.[3]

In February 2003, Gareca presented an extraordinary appeal to the Salta supreme court claiming that his removal was unconstitutional and requesting reinstatement. He foresees taking the case to Argentina's highest court, the supreme court of justice, and, if necessary, the Inter-American Court of Human Rights.

The NGO Fundación Poder Ciudadano nominated Roberto Gareca for Transparency International's Integrity Awards in 2003 and a Salta newspaper honoured him as its 'person of the year'. Gareca has set up a law practice to support his family while waiting for the court's decision.

This is not an isolated incident. In October 2002, José Manuel de la Sota, governor of Córdoba province, ordered the removal of anti-corruption prosecutor Luis Juez on charges of 'qualified fraud against the public administration'. Juez claimed the allegations were spurious – he had been investigating members of de la Sota's administration at the time, including Sota's wife, Olga Riutort, who also held a senior public position.

## Opaque appointments at the supreme court are challenged

The independence of the courts has been a point of controversy since former president Carlos Menem repeatedly tried to stack the supreme court with party loyalists in 1989, his first year in office. When that failed, he proposed a bill expanding the number of sitting justices from five to nine, which congress approved. Menem had achieved the automatic majority he sought. Since then, successive presidents have tried to unseat those loyal to Menem, often by less than transparent means.

Efforts to rid the court of those loyal to Menem resonate with public attitudes towards the judiciary. Protesters gathered weekly outside the supreme court in Buenos Aires at the height of Argentina's economic and political crisis in 2002, to denounce corruption in the country's judiciary. They accused the courts of rubber-stamping crucial decisions, such as the privatisation of the national airline in the face of widespread suspicion of corruption and other irregularities.[4]

In December 2002, interim president Eduardo Duhalde nominated Senator Juan Carlos Maqueda to the post of supreme court justice, sending the necessary documents to the senate for ratification. When the local press reported the appointment as a fait accompli, days before the decision was due, civil society organisations canvassed the responsible senate authorities asking them

to ensure that a proper debate was held in the senate and that representatives of civil society would be able to air their views about the nomination. Their suggestions were ignored and Maqueda was appointed within five days of being nominated.

When President Néstor Kirchner came to office in May 2003, the debate was reopened. During a nationwide TV and radio address 10 days after his inauguration, Kirchner called on legislators to sack one or more of the 'sad and famous automatic majority' from the Menem era. At the sharp end of his criticism was Julio Nazareno, a former partner in Menem's own law firm, who had held the court presidency for more than a decade. Nazareno's performance as judge, Kirchner said, was 'emblematic' of the court's failings; namely corruption and political bias.

The following day, civil society organisations met Justice Minister Gustavo Béliz to demand that the president abstain from intervening in the selection of supreme court judges. In response, on 19 June 2003 Kirchner issued a decree based on their proposals, affirming that his government would respect judicial independence. In the meantime, Julio Nazareno resigned under the threat of a revived congressional probe into allegations of fraud and other charges. Wide-ranging public debates, including a hearing in the senate, were held over who should replace Nazareno. At this writing, Eugenio Zaffaroni, a respected practitioner and academic, is expected to be appointed.

Kirchner has not broken entirely with past appointment practices, however, as the nomination of Alessandra Minnicelli to the post of auditor of the national general auditing agency (Sindicatura General de la Nación, SIGEN) shows. Because she is married to Julio De Vido, the minister of federal planning, public investment and services – the ministry SIGEN is primarily intended to monitor – there was a clear conflict of interest. Poder Ciudadano asked President Kirchner to revoke her nomination, citing the regulation that 'close familial relationships' are an impediment to employment with SIGEN. Despite complaints, Minnicelli's nomination was confirmed in June 2003.

The anti-corruption office defended the government's position, saying there is 'no legal impediment' to Minnicelli's appointment because she 'can excuse herself from dealing with matters relating to the ministry [that her husband is responsible for]'. But the portfolio in question embraces a wide range of issues with scope for abuse, notably the allocation of state resources for contracts, the renegotiation of rates for utilities and other public services now in private hands, and the government's ambitious infrastructure plan, involving the construction of new housing, water and sewage works, transport links and port services.

*Laura Alonso (Fundación Poder Ciudadano, Argentina)*

## Further reading

Fundación Poder Ciudadano, 'Banco de Datos de Políticos Argentinos' (Database of Argentine politicians), Buenos Aires, 2003, www.poderciudadano.org/elecciones2003/index.asp

Fundación Poder Ciudadano, 'Contrataciones Transparentes' (Transparent contracting), Buenos Aires, 2003, www.accioncolectiva.net

Fundación Poder Ciudadano, 'Primer diagnóstico sobre la independencia judicial' (First analysis of judicial independence), Buenos Aires, 2003, www.poderciudadano.org/relaciones/210_justicia.doc

Organization of American States, 'Informe del Comité de Expertos del Mecanismo de Seguimiento de la Implementación de la Convención Interamericana contra la

Corrupción' (Report of the Committee of Experts of the Follow-up and Implementation Mechanism of the Inter-American Convention against Corruption), Washington, D.C., February 2003

Daniel Santoro, *Venta de Armas – Hombres de Menem* (Arms sales: Menem's men) (Buenos Aires: Planeta Arg, 2003)

Miguel Trotta, *La metamorfosis del clientelismo político: contribución para el análisis institucional* (The metamorphosis of political clientelism: a contribution to institutional analysis) (Buenos Aires: Espacio Editorial, 2003)

Fundación Poder Ciudadano: www.poderciudadano.org

### Notes

1. The law was applied for the first time in the April 2003 presidential election. A survey of campaign costs carried out by Fundación Poder Ciudadano shows that the 18 presidential candidates only disclosed the origin of 20 per cent of funds from private sources. The winner, Néstor Kirchner, disclosed just 0.2 per cent while runner-up Carlos Menem disclosed 6 per cent.
2. Governor Romero was elected for a second consecutive four-year term in 1999. He ran as a vice-presidential candidate in the elections of April 2003, alongside former president Carlos Menem. Romero's father, Roberto Romero, governed Salta from 1983 to 1987.
3. For more information on the lack of judicial independence in Salta see Fundación Poder Ciudadano, 'Primer diagnóstico sobre la independencia judicial', 2003, www.poderciudadano.org/relaciones/210_justicia.doc
4. In 1990, the supreme court took the unprecedented move of declaring a '*per saltum*' – which wipes out all lower court rulings and gives the supreme court itself jurisdiction over a case – after a trial court judge blocked the sale of Aerolíneas Argentinas on the grounds of irregularities alleged by a commission of experts. In a single day, 21 November 1990, the case was reviewed by the supreme court and it decided that the sale to Spain's Iberia had been carried out lawfully.

## Armenia

**Corruption Perceptions Index 2003 score:** 3.0 (78th out of 133 countries)
**Bribe Payers Index 2002 score:** not surveyed

### Conventions:

Council of Europe Civil Law Convention on Corruption (not yet signed)
Council of Europe Criminal Law Convention on Corruption (signed May 2003; not yet ratified)
UN Convention against Transnational Organized Crime (ratified July 2003)

### Legal and institutional changes

- The law on **parties**, passed in July 2002, regulates issues related to the formation, reformation and liquidation of parties, as well as their activities and legal status. It

prohibits party members who work in the state and local government from using their positions for the benefit of the party.

- The laws on the tax service and customs service, both passed in July 2002, are designed to ensure that government posts are filled through **open competition** and to prevent employees from working with immediate relatives.
- The new criminal code, passed in April 2003, binds government officials to **conflict of interest regulations** and enlarges the definition of corruption to include the illegal involvement of public officials in business activities. Yet it also sets milder penalties for corruption-related crimes, such as the abuse of power and position by public officials and the giving and taking of bribes. Punishment for abuse of power can vary from a fine of 200 times the defined minimum monthly salary to imprisonment for two to six years.[1]
- The bill on **freedom of information** regulates the rights of those who possess information and defines the rules, procedures and conditions for receiving information from government institutions. The law ensures access to information as well as its dissemination and transparency. It also provides that requested information be delivered within a five-day period, unless it requires additional work, in which case it must be provided within 30 days. At this writing, the bill was expected to pass into law.
- The **ombudsman** law aims to regulate the appointment and dismissal of the ombudsman, as well as related rights and obligations. It provides that the ombudsman be appointed by the president and approved by the national assembly for a five-year term. The ombudsman is to be independent, adhere to the constitution and enjoy immunity during the term of office. The law has passed the second reading, but has not yet been promulgated.
- A controversial law on **mass media**, allowing for increased state control of the media, is in draft form. Protests prompted the justice ministry to submit a revised draft in 2003, but critics are still not appeased.

## The unclear status of Armenia's anti-corruption programme

Since Prime Minister Andranik Margaryan established the state anti-corruption commission in 2001, progress on the development of a national anti-corruption programme has been slow and less than transparent.[2] The final proposal for the programme is currently pending approval, yet its complete contents have not been shared openly.

In early 2002, at the request of the government, the World Bank allocated US $300,000 to draft the anti-corruption strategy programme.[3] An expert group, comprised of two international and six local experts, was formed to work on proposals for legislative, institutional and public-involvement measures, as well as a detailed implementation plan. Their proposals had to include mechanisms for monitoring and evaluating anti-corruption activities.

Since one of the World Bank's requirements was the active involvement of civil society in a transparent drafting of the anti-corruption strategy programme, members of the National Anti-corruption

NGO Coalition were invited to attend one of the expert group meetings.[4]

At the international level, the OSCE took the lead in coordinating donor assistance in combating corruption through the international Joint Task Force (JTF), which included all the key international organisations and diplomatic missions. Following discussions with the president and prime minister, an agreement was reached on maintaining regular contacts between the JTF and the government during the strategy's development.

Initially, the expert group prepared a broad strategy outline of more than 200 pages, which had to be discussed in detail with the JTF and civil society. The group also prepared a detailed plan for implementation. By July 2002, two workshops were organised to present and discuss the draft strategy. Its main elements included issues such as the economic transition and shadow economy; energy, infrastructure and natural resources; oversight and regulation; the legislative and regulatory environment; the political system and elections; civil society participation in anti-corruption initiatives; e-governance and access to information; and international cooperation.

The expert group completed the first version of the programme later than expected, in August 2002, and circulated it to ministries, agencies and the JTF. The delay may be explained by the fact that the presidential and parliamentary elections were due to take place in 2003. The public sector reform commission, which serves as the secretariat for the anti-corruption commission, then announced that the ministries and agencies had reviewed the programme and that the final version had been submitted to the prime minister for approval in March 2003. At 23 pages, however, the revised action plan is a fraction of the length of the original plan, eliciting heavy criticism from the JTF.

The revised plan has not been reviewed by civil society, which is still concerned about several issues. One particular area of concern relates to the establishment of an independent body that would be responsible for implementing and monitoring the anti-corruption strategy programme. One model suggested by the expert group was that the current anti-corruption commission itself take on this role. In this case, a secretariat that could coordinate everyday work and implement decisions would have to be formed to serve the commission.

An alternate suggestion called for the creation of an anti-corruption agency with full investigative and law enforcement powers. Critics of this model argue that, instead of creating a new enforcement body, the capacity of institutions that already have such powers should be strengthened.

A third option envisions the establishment of an anti-corruption council responsible to the prime minister or the justice minister. This council would consist of the representatives of the president's office, national assembly, constitutional court, as well as the chief of staff of the government, key ministers, the prime minister's adviser on anti-corruption and the general prosecutor. The council would also include five representatives of civil society, appointed by the president.

Regardless of which model is accepted, the anti-corruption body must secure the trust of the people, most of whom are unaware that the government has even developed anti-corruption initiatives. Those who are aware have little confidence that the initiatives are effective, because they view government officials as the main initiators of corruption. They do not believe that those who are corrupt can be truly committed to fighting corruption.[5]

## Armenia's 2003 elections: a case for reform in political party financing

A civil society monitoring project, undertaken during parliamentary elections in May 2003, revealed troubling inadequacies in the regulation and monitoring of political party financing.[6]

Using the project's findings, the opposition Ardarutyun (Justice) alliance appealed to the constitutional court to nullify the election results. The alliance pointed to violations of election procedures and voting irregularities, alleging that tens of thousands of ballots cast for Ardarutyun were allocated to other parties. The official result was that Ardarutyun won 14 per cent, rather than the 50 per cent or more that it claimed. The opposition also contested the election results in 19 single-mandate constituencies.

Although Ardarutyun's appeal was dismissed due to insufficient evidence, the court admitted that the issue required attention and proposed to promote greater transparency and accountability in the management of political party financing.

Armenia's election process is regulated by an electoral code that needs considerable revision. The provisions that cause most concern relate to the opaque system of party financing and the lack of enforcement mechanisms.[7]

According to article 25 of the code, the parties' declaration forms must be published by the Central Electoral Commission (CEC) in the format determined by the CEC. During the recent elections, the sources of the parties' pre-election income were never published though the issue drew strong public interest and was regularly discussed in the media.[8] Although required by law to present this information to the CEC, the parties and blocs were willing to publicise only the number of contributors to pre-election funds. In some cases, parties did not reveal any information at all.

Reasons for concealing the revenue sources vary. Some parties may be involved in money laundering or using foreign funding, which is prohibited by law. Furthermore, as Armenia's business sector is not well regulated and many businesses tend to hide their real turnover, they may wish to prevent the tax authorities from learning of their donations to party pre-election funds. Finally, rivalry between the opposition and government does not encourage businesses to publicise their contributions to pre-election funds.

After two rounds of presidential elections in February and March 2003, only the candidates' total campaign revenues and expenditures were published. When queried about the rationale behind not publishing more detailed information, the CEC head, Artak Sahradyan, replied that the commission had not published itemised accounts because it had not identified any violations of party finance regulations.

The monitoring team found that two of the 11 parties and blocs that agreed to provide campaign finance information had exceeded the limit of the pre-election fund.[9] An analysis of the figures showed discrepancies for all other parties except one, whose reported data was consistent with that of the project's findings. Indeed, the overall tendency observed was that almost all the parties avoided registering their campaign expenses in the pre-election fund and that they spent most of their money 'outside the fund'.

Further results showed that violations of party finance regulations fell into two major categories. First, large sums were not properly accounted with respect to political advertising on television. TV companies either offered certain parties discounts, or provided more airtime to selected parties than was officially declared.[10] Second, the code requires all party publications to mention the number of copies printed and the name of the publisher. Several parties and some experts revealed that parties often printed more copies than officially declared. In some cases, campaign materials were ordered before the campaign period and paid for from the party account. Moreover, a number of parties conducted transactions with service providers without a contract; money for these services was paid in cash, which is prohibited by law.[11]

These types of violations are motivated by several factors. By paying cash, parties avoid the 20 per cent VAT and service providers evade taxes. For parties, especially those exceeding fund limitations, such

dealings represent a way around the pre-election fund.

Another concern is that the law is vague about what expenses should be covered by the pre-election fund, as opposed to the party account. During the campaign period, for example, parties continued to pay expenses related to their permanent office(s) through the party accounts, while expenses related to temporary sub-offices were covered by the fund. In general, parties hid the cost of temporary offices, stating that party members or relatives provided office space free of charge.

Salaries were another issue of concern, since parties concealed their true expenses to avoid paying taxes. Violations related to travel expenses and administrative costs were also apparent but difficult to monitor systematically.

The Control and Review Service (CRS) – established ad hoc under the CEC – is responsible for regulating such violations and taking the necessary action. Despite substantial media coverage and the results of the monitoring project, the CRS filed no reports of party finance violations by the review deadline. While the law itself provides too much flexibility to parties and does not allow for easy monitoring, the reluctance of Armenia's state institutions to enforce the law is at the root of ongoing abuses in political party financing.

*Arevik Saribekyan (Center for Regional Development/TI Armenia)*

## Further reading

Armenian Democratic Forum, 'Sociological Survey on Public Sector Reforms', for enterprises and households, 2001; see lnweb18.worldbank.org/ECA/ecspeExt.nsf/0/1B062B0DC8A543B485256C63005D49FD?Opendocument&Start=1&Count=1000&ExpandView

CRD/TI Armenia: www.transparency.am

## Notes

1. The minimum monthly salary is 1,000 drams (around US $2), so the fine would be equivalent to US $355.
2. Decision No. 4, adopted on 22 January 2001. The commission is headed by the prime minister and includes the vice speaker of the national assembly (as deputy head), heads of key ministries and the chief of staff of the president.
3. The grant was provided through the World Bank Institutional Development Fund.
4. The National Anti-corruption NGO Coalition was established in March 2001 under the CRD/TI Armenia. Currently the Coalition has 26 members representing different fields, including journalism, business development, human rights, environment, local government, the army, tourism and education.
5. See the 'Country Corruption Assessment: Public Opinion Survey', carried out by CRD/TI Armenia in March–April 2002. The sample of the survey included 1,000 households, 200 entrepreneurs and 200 public officials. In answering the question, 'Who mainly initiates corruption in Armenia?', all three groups of respondents identified government officials as the most corrupt.
6. Implemented in March–June 2003, the CRD/TI Armenia project, 'Monitoring of the Political Parties' Finances during the 2003 Parliamentary Elections', was funded by the

Open Society Institute, Assistance Foundation – Armenia. The report is available online at www.transparency.am

7. The amended electoral code was adopted and ratified in July 2002; it entered into force in August 2002. See par03.elections.am/?lan=eng&go=code
8. Legislation requires that participating parties and blocs open a pre-election fund during the election campaign period.
9. Actually, three parties exceeded the limit of the pre-election fund, two of which provided information within the framework of the monitoring project. The pre-election fund limit is 60,000 times the minimum defined monthly salary, which for this year was 60,000,000 drams (US $110,000). Independent monitoring was conducted for all 21 parties and blocs.
10. Article 18.3 of the electoral code requires the mass media to provide equal airtime at the same price to all parties. Article 11 of the Law on TV and Radio states that all the TV and radio agencies must announce their rates for political advertising before the pre-election campaign.
11. Article 25.7 notes that if during the pre-election campaign the candidate or party uses financial means other than the pre-election fund, the court may consider the candidate or party registration invalid.

## Australia

**Corruption Perceptions Index 2003 score:** 8.8 (8th out of 133 countries)
**Bribe Payers Index 2002 score:** 8.5 (1st out of 21 countries)

### Conventions:

OECD Convention on Combating Bribery of Foreign Public Officials (ratified October 1999)

UN Convention against Transnational Organized Crime (signed December 2000; not yet ratified)

### Legal and institutional changes

- Federal: a September 2002 senate report into the 2001 Public Interest Disclosure Bill recognised the need for comprehensive legislation to protect public sector **whistleblowers** but recommended that the bill as drafted should not proceed as it had deficiencies. After nearly 10 years of debate, as a result, there is still no whistleblower protection legislation at the federal level, though all states and territories (except the Northern Territory) have introduced laws.
- The federal treasury issued proposals in September 2002 under its **Corporate Law Economic Reform Program (CLERP)**, which included only limited **whistleblower protection** for disclosures to the Australian Securities and Investments Commission. Draft implementing legislation was equally insufficient in this regard. TI Australia made a submission in November 2002 that argued for much broader protection for corporate whistleblowers.[1]

- New South Wales (NSW): the **Statute Law (Miscellaneous Provisions) Act** of December 2002 amended the Protected Disclosures Act 1994. The general view is that the legislation will still not be sufficient to overcome entrenched negative attitudes to **whistleblowing**. A survey by NSW's Independent Commission against Corruption (ICAC) showed that nearly 70 per cent of state officials expect whistleblowers to suffer retribution.[2]
- Western Australia: the ongoing Royal Commission into Police Corruption issued an interim report in December 2002. The government accepted its recommendation to replace the Anti-Corruption Commission (generally considered to have inadequate powers) with a new external oversight agency, the **Corruption and Crime Commission**, with extended investigation and enforcement powers and the power to conduct public hearings, like NSW's ICAC and Police Integrity Commission.
- The **Australian Crime Commission (ACC)** commenced operations on 1 January 2003, replacing the functions of the National Crime Authority, the Australian Bureau of Criminal Intelligence and the Office of Strategic Crime Assessments. The ACC's functions include criminal intelligence collection and analysis, setting national criminal intelligence priorities, conducting intelligence-led investigations of criminal activity of national significance, including organised crime and corruption, and the exercise of coercive powers to assist in intelligence operations and investigations.[3]
- Victoria: Public calls for a royal commission into **police corruption** were rejected, although more than 50 police officers are facing charges and the state's most senior detective is being prosecuted for drug trafficking and making death threats. In May 2003, the Ombudsman of Victoria issued an interim report on **Operation Ceja**,[4] an ongoing Police Ethical Standards Division investigation into allegations of corruption at the former drug squad. The investigation has led to several criminal prosecutions and disciplinary actions, as well as a recommendation that officers working in areas at high risk of corruption should be rotated and drug investigators limited to three-year postings.
- In July 2003, the national standards organisation launched a set of five standards for effective **corporate governance**, including fraud and corruption and whistleblower protection programmes.[5]

## Media concentration and ministerial discretion

The government's proposed relaxation of media ownership restrictions, as provided under the Broadcasting Services Amendment (Media Ownership) Bill 2002, has been a burning topic. Existing rules prevented the ownership of a newspaper and television station in the same metropolitan market and restricted foreign ownership in any media asset to 25 per cent. The government has come under considerable pressure from large media organisations to remove one or both of these restrictions – as a lifting of restrictions would allow the purchase of media assets that were off limits, or would increase the price for which they could be sold.

The more positive aspects of the bill included: (1) the lessening of restrictions

that govern Australian media ownership and diversity of that ownership, and (2) the stipulation that media companies seeking takeover authorisation must outline their plans, rules and structures, avoiding a mischief to which 'diversity of ownership' provisions in the old legislation were directed. The requirements for the latter were very weak, however.

In addition, the bill did not propose the removal of restrictions on cross-media and foreign ownership, but it granted discretion to the relevant minister to waive these rules. Although the Foreign Investment Review Board (FIRB) vets foreign investments and recommendations are made to the minister, the FIRB is not privy to the discussions between media companies and ministers. This might seem a recipe for corruption in the deal-making that goes on between politicians and media owners to support governments at re-election time, or when government is about to pursue a controversial course of action.

These proposals raised the concern that politicians might back legislation that supports the interests of media owners in order to secure favourable coverage. This is not merely a theoretical risk. Media mogul Conrad Black claimed before a parliamentary committee that then prime minister Paul Keating once reneged on a deal to increase the ceiling on media ownership to 35 per cent in exchange for even-handed coverage in the 1993 elections. Paul Keating denied the claim. The issue is not whether this claim was true,[6] but how the risk is managed within democracies.

The bill proposes an 'editorial separation' system as the key mechanism to preserve diversity. However, it ignores one of the long-standing reasons for media diversity (once championed by Rupert Murdoch) – that different owners would have different views. It does nothing to prevent those with expanded media ownership from exercising it to influence or even direct their expanded media empires. The requirement of providing basic information on editorial policy cannot fulfil that function and is not designed to do so.

The senate eventually rejected the Broadcasting Services Amendment Bill twice, but it was still on the government's agenda at the time of writing. It could be put to a joint sitting of both houses, if the government were to seek a double dissolution of both houses of parliament in the next election.

Ministerial discretion in areas where media proprietors have huge financial interests must be identified as constituting a clear risk of corruption. The temptation to do what a media owner wants in return for improved media treatment during an election or a controversial war is great. Even if media owners never influence the content of their newspapers, the belief is that they might continue to affect a minister's decision. One possible reform is that communications between media owners and either ministers or ministerial staff should be recorded by independent civil servants and filed with a relevant integrity agency. Another is to develop a systematic regulatory framework or a media integrity regime.[7]

*Peter Rooke with TI Australia*

## Further reading

Auditor-General of Australian Capital Territory, 'Fraud and Corruption Prevention in the ACT Public Sector', Canberra, May 2003, www.audit.act.gov.au/auditreports/reports2003/Rpt4_2003.pdf

Australian Institute of Criminology Research and Public Policy Series no. 48, 'Serious Fraud in Australia and New Zealand' (Canberra/Melbourne: 2003). See www.aic.gov.au/publications/rpp/48

NSW Audit Office Report no. 114, 'Freedom of Information', Sydney, August 2003, www.audit.nsw.gov.au/perfaud-rep/Year-2003-2004/FOI-August2003/foi-contents.html

NSW Independent Commission Against Corruption, 'The NSW Public Sector: Functions, Risks and Corruption Prevention Strategies', Sydney, January 2003, www.icac.nsw.gov.au

Queensland Crime and Misconduct Commission, 'Public Perceptions of the Queensland Police Service: Findings from the 2002 Public Attitudes Survey', Brisbane, February 2003, www.cmc.qld.gov.au/library/CMCWEBSITE/PublicPerceptionsoftheQPS.pdf

TI Australia, Whistleblower Conference, Sydney, August 2002; Business Integrity Systems in Australia, November 2001; Australian National Integrity Systems Assessment, Queensland Handbook, July 2001, www.transparency.org.au

TI Australia: www.transparency.org.au

### Notes

1. See www.transparency.org.au/documents/clerp9sub.pdf
2. See section 5.3 of 'Unravelling Corruption II', ICAC, Sydney 2001 ISBN 0731072871 at: www.icac.nsw.gov.au/pub/summary_pub.cfm?ID=248
3. See www.crimecommission.gov.au
4. See www.ombudsman.vic.gov.au/downloads/ceja.pdf
5. Copies of the standards can be downloaded from Standards Australia's website www.standards.com.au
6. Black had originally gained 15 per cent at a time when that was considered not to constitute 'control'; he then demanded the right to own more than 15 per cent on the basis that he should have a greater share of the extra value generated by his control of the assets.
7. The general issue of integrity systems for the media is covered in C. Sampford and R. Lui, 'Media Ethics Regime and Ethical Risk Management in Australia', paper delivered to Media Ethics Conference, Parliament House, Canberra, 3 July 2002.

## Azerbaijan

**Corruption Perceptions Index 2003 score:** 1.8 (124th out of 133 countries)
**Bribe Payers Index 2002 score:** not surveyed

**Conventions:**
Council of Europe Civil Law Convention on Corruption (signed May 2003; not yet ratified)
Council of Europe Criminal Law Convention on Corruption (signed May 2003; not yet ratified)
UN Convention against Transnational Organized Crime (signed December 2000; not yet ratified)

## Legal and institutional changes

- A few amendments to the constitution that were adopted by referendum in August 2002 may contribute to an increase in political corruption. One allows ordinary courts to close down **political parties**; formerly, only higher-level courts could ban parties. Another increases the term for official confirmation of **election results** from seven to 14 post-election days, which gives incumbents a better opportunity to falsify official precinct protocols. Sections of the Azeri opposition claimed that one amendment was designed to make it easier for President Heydar Aliyev, who turned 80 in May 2003, to name his successor – as appears to have happened in August, when parliament elected his son, Ilham, as prime minister.[1]
- In August 2002, the ministry of taxes closed down audit sections in its district branches and passed its **audit authority** to a centralised body within the ministry. One positive aspect of the change is that it led to a significant reduction in the number of unjustified inspections of small and medium-size enterprises (SMEs).
- President Aliyev signed a decree on state support to **business development** in September 2002. The measures contain several anti-corruption regulations.
- Following the enactment of the law on public procurement, the president proposed and parliament adopted amendments to the laws on investment activities, on the electric energy industry and architectural activity in December 2002. In all three laws, the amendments replaced the term 'tender' with the term '**competition**'. Critics of the amendments described 'tender' as a legal term with a precise formal meaning, while 'competition' was open to interpretation and thus seen as facilitating corrupt procurement.
- In January 2003, a presidential decree ratified amendments to the law on **public service**, allowing interviews as a tool of recruitment. Earlier versions of the law envisaged only open formal competition, leading some opposition critics to warn that the amendment would encourage corruption in the access to public jobs.
- A presidential decree on **preventing interference in business** closed down the Department of Struggle against Economic Crimes of the ministry of the interior in September 2002. The decree also instructed the ministry of the interior to reduce traffic police by 15 per cent. This cut may serve to decrease corruption after the president had recognised that the excessive number of police checkpoints was an obvious example of corruption. The ministry of taxes was instructed to decrease the number of auditors by 40 per cent. The decree also called on all city and district authorities to close down departments engaged in the audit of businesses and enterprises. The decrease in the number of inspecting agencies has led to a slight improvement in the corruption rate among SMEs, as demonstrated by recent research data.[2]

## Official state registration

Extortion of bribes by civil servants who control the obligatory state registration process is not uncommon in Azerbaijan. In view of the growing number of private enterprises and civil society organisations, which must register with the state, however, the need to improve relevant legislation and standards has grown more urgent.

The problem attracted particular attention after the representative of the American Chamber of Commerce in Azerbaijan, Jonelle Glosch, cited official registration and taxes as the most difficult obstacles to investing in the country in a television interview. 'Four companies were supposed to receive licences in April 2002. This was very difficult. We, together with representatives of the British and US embassies, went to the Presidential Executive Staff office and met [the president]. After getting his instruction, the companies were registered', she said.[3]

Meanwhile, the new re-registration process drew criticism from religious associations as well as human rights observers. In 2002, all religious associations that had previously registered with the ministry of justice were required to re-register with the state committee. The authorities have stated that all care has been taken to make religious associations aware of the need to re-register and to ensure transparency in the documentation process. Nevertheless, reports indicate that some religious associations have not been properly informed about the need to re-register or what documentation they must submit.[4]

Besides having to register with the ministry of justice, NGOs are now obliged to register all grants with the justice ministry as well. Most NGOs protested against this decision, pointing to a high likelihood that extortion would rise as a result. In turn, they argued, international donors would be discouraged from funding civil society and other projects in Azerbaijan.[5]

Political parties also face discretionary, inequitable registration scenarios. Election laws – be they presidential, parliamentary or municipal – as well as judicial practice create a number of opportunities for arbitrary and illegal denial of registration to candidates and their political parties. This trend can be traced back at least to the parliamentary elections of November 2000, when several leading opposition parties were denied registration for 'proportional' seats. They were finally included on the ballot after intense international pressure – though this pressure failed to assist other candidates in the constituencies registering for 'majority' seats. This problem was still in evidence during the by-elections of 2002 and 2003. Some key political parties, such as former president Ayaz Mutallibov's Civic Unity Party, still work without official state registration.[6]

A centralised and simplified official registration system for legal entities would be the most effective way of addressing the problem. A few initial steps have been taken in this direction, including the launching of a state programme for SMEs, which aims to simplify registration and licensing procedures for SMEs and ensure protection of their rights.[7]

## Local excesses, central responsibility: an accountability update

Accountable only to the president, local executive authorities remain the most influential organ of governance throughout the country. The lack of formal popular control over their activities renders them one of the major sources of corruption.

In April 2003 President Aliyev replaced the heads of executive authorities in Sumqayit, Ganja and Lenkaran, the three largest cities after Baku. The move followed a televised speech in which he levelled corruption allegations against high-ranking city managers and the local business community.[8] The president also demanded financial involvement from a local businessman who had not been 'very active' in assisting the city of Sumqayit with its

social programmes. The president's speech seemed to imply that heads of the executive authority are empowered to force local businessmen to finance public services and reconstruction.

In May 2003 the parliament passed a law on administrative control over activities of municipalities, which empowers 'an appropriate organ of executive authority' to conduct audits and general assessments of the municipalities. This measure further reduced the independence of municipalities compared to that of the local executive authority.

Despite such setbacks, which have increased the power of the local executive authority throughout the country, a marked improvement in the accountability of political leaders to the legislature is in evidence. In June 2002, parliament adopted the constitutional law on additional rights of parliament concerning confidence in the cabinet of ministers. The law obliges the cabinet to report to parliament on an annual basis and requires cabinet executives (with consent of the government) to respond to verbal and written questions at parliamentary sessions. The first such exercise took place on 18 March 2003, when First Deputy Prime Minister Yaqub Eyyubov made a presentation and answered questions. This development is a move in the right direction, as Azerbaijan has thus far lacked a tradition of government reporting to the elected legislature.

Similarly, positive steps were taken to improve accountability in the newly created independent State Oil Fund (SOFAR), which accumulates all oil proceeds besides taxes, which are funnelled directly to the state budget. SOFAR is to ensure transparency of oil revenues earned by the State Oil Company of the Republic of Azerbaijan (SOCAR).[9] On 13 May 2003, parliament amended the law on budget systems to include SOFAR in the country's consolidated budget, a first significant step towards making the oil fund accountable to legislative authority.

Yet domestic critics and the International Monetary Fund have demanded full subordination of SOFAR to the legislative authority to ensure its transparency and prevent the diversion of funds. SOFAR was created by presidential decree, its expenditures are largely controlled by the presidential administration and its low levels of oversight render it vulnerable to political manipulation.

A panel discussion organised by Eurasianet in June 2003 concluded that Azerbaijan, along with Kazakhstan, may see poverty worsen as oil exports grow. The discussion focused on the 'resource curse', a term that describes the pattern through which poor countries become poorer when they begin to sell lucrative oil exploration rights. Experts stressed the need to encourage corporate best practices in order to reduce the scope for corruption in the oil industry. In particular, they argued for foreign companies to disclose how much they pay to specific state ministries for the right to drill, a practice encouraged by the 'Publish What You Pay' initiative.[10]

## Corruption persists in the military

Corruption and a lack of accountability in the military remain burning issues of public concern. Reports by local and international human rights activists have found that conscripts are targets of economic exploitation in the army and that officials from the ministry of defence have extorted informal fees – mostly in cash – for draft exemptions, deferrals and deployments to units in the least risky areas. In some units officers have siphoned off supplies or surreptitiously used conscripts as unpaid labourers. Eight conscripts died of sunstroke while working on a construction project in July 2002.[11]

As can be expected, conscripts who cannot bribe their way out of military service or into easier service tend to be poor. Since they frequently suffer from malnourishment or tuberculosis, they are prone to accidents and

are often not fit enough to perform the tasks assigned to them.[12]

On occasion, corruption in the army feeds into major political scandals. In February 2003, military journalist Uzeir Jafarov, who had been convicted of fraud and abuse of power, held a press conference and charged that his conviction had been 'inspired' by the newly dismissed deputy minister of defence, Mammad Beydullayev. Jafarov presented a list of facilities formerly owned by the ministry of defence and implied that they had been illegally privatised. No action has been taken.[13] Alekper Mammadov, a former high-ranking military officer, also accused the ministry of defence of systemic corruption.[14]

In early September 2002, an uprising at a military college in Baku led to hundreds of cadets leaving the campus illegally to march in protest against corruption in school. Speaking in Ganja a few days after the incident, President Aliyev admitted that there had been 'violations of law, bribery by commanders and abuse of power for covetous aims'.[15] Nevertheless, he stressed that the cadets' reaction had not been justified. By spring 2003 all command staff at the college had been replaced, but the leaders of the cadet protest were sent to serve as privates on the Armenian or Karabakh borders.

Further areas of concern involve the 'military commissariats', or conscription agencies, which enjoy a great deal of arbitrary authority, which is sometimes employed as a political tool against opponents. A case in point concerns Mahammad Ersoy, editor-in-chief of the newspaper *Bizim Yol*. Immediately after publishing a series of articles criticising the government, Ersoy was called to military service and the newspaper was partially confiscated from newsstands.[16]

While such developments are discouraging, criticism of secrecy in the military was heard in August 2002 when President Aliyev ordered the creation of a special fund to collect donations from citizens and companies willing to support the national army. In an apparent bid to silence critics of the lack of transparency in military accounting, the president ordered that the fund be audited once a year.[17]

*Rena Safaralieva (TI Azerbaijan) and Ilgar Mammadov (Demokr-IT, Azerbaijan)*

## Further reading

Sabit Bagirov, ed., *Corruption*, Transparency Azerbaijan, 2002
Turan news agency expert group, 'Corruption in Azerbaijan' survey, 4 April 2001

TI Azerbaijan: www.transparency-az.org

## Notes

1. Ilham Aliyev was elected president in mid-October 2003, although election monitors pointed to irregularities.
2. www.echo-az.com/archive/432/facts.shtml#11
3. Interview with ANS TV, 16 February 2003.
4. ECRI Report on Azerbaijan, Council of Europe, 15 April 2003, www.reliefweb.int/w/rwb.nsf/6686f45896f15dbc852567ae00530132/a2b221ae7a267396c1256d09002fcf5f?OpenDocument
5. The presidential decree of January 2003 enacted amendments to the law on grants of 1998, which is actually dated April 2002.

6. www.vbp-az.org/english/presssl.html
7. The programme was launched by presidential decree in mid-August 2003.
8. *Novoye Vremya* (Azerbaijan), 4 April 2003.
9. Complicating matters further, Azerbaijan became the target of high-level allegations in November 2002, when Czech businessman Viktor Kozeny accused the Azeri government of defrauding him in connection with the privatisation of SOCAR; see www.eurasianet.org/departments/business/articles/eav111802.shtml
10. Eurasianet Organisation, 'Will a "Resource Curse" Befall Azerbaijan and Kazakhstan?', 27 June 2003. See also, Svetlana Tsalik, *Caspian Oil Windfalls: Who Will Benefit?*, OSI Caspian Revenue Watch, Central Eurasia Project, 2003, www.soros.org/publications/caspian/index.html
11. Human Rights Watch, *World Report 2003*, www.hrw.org/wr2k3/europe3.html
12. Agence France-Presse (France), 31 July 2002.
13. *Echo* (Azerbaijan), 5 April 2003.
14. Interview with Alekper Mammadov, *Echo* (Azerbaijan), 25 January 2003.
15. Turan news agency, 12 September 2002.
16. Turan news agency, press review, 29 April 2003.
17. www.rferl.org/nca/features/2002/08/23082002155927.asp

## Brazil

**Corruption Perceptions Index 2003 score:** 3.9 (54th out of 133 countries)
**Bribe Payers Index 2002 score:** not surveyed

### Conventions:

OAS Inter-American Convention against Corruption (ratified July 2002)
OECD Anti-Bribery Convention (ratified August 2000)
UN Convention against Transnational Organized Crime (signed December 2000; not yet ratified)

### Legal and institutional changes

- The impact of a ruling from February 2002 requiring candidates to present their **campaign expenditure statements electronically** was first felt in the October 2002 general elections. The superior electoral court issued the ruling. Previously, such statements were presented on paper, making it virtually impossible to aggregate the data and cross-reference information on candidates and their donors.
- A law passed in December 2002 modified the sections of the criminal procedural code that relate to **improbity**. Prior to its introduction, prosecutors could initiate legal actions in first instance courts. Under the new law, elected and career officials can only be judged by superior courts of justice, either state or federal, and not by first instance courts. This could make it more difficult to bring corruption cases to trial.
- A **Council for Public Transparency and the Fight against Corruption** was established within the inspector general's office (Controladoria Geral da União, CGU) in May 2003. Civil society organisations were involved in its creation.

- The CGU, created during the previous administration, shows signs of reinvigoration under the new government of President Luis Inácio Lula da Silva. The new inspector general, Waldir Pires, has declared the fight against corruption a major concern and has introduced some innovations. In May 2003 the CGU introduced a programme to **verify the use of federal resources** in cities with populations of up to 20,000 inhabitants. The cities are selected at random each month.
- The minister of justice and the president of the central bank announced a series of new measures to combat money laundering in June 2003 (see below).

## Government fails to curb tax evasion and money laundering

Tax evasion and money laundering have been routine in Brazil for years. Money from illegal transactions such as bribery, political corruption and drug dealing is easily sent abroad or diverted to fiscal havens. There is strong evidence that vast amounts of undeclared assets owned by Brazilians are held abroad, mostly by businessmen and the affluent seeking to avoid foreign exchange risk. So far the government has proved unable to curb this capital flight.

Measures to stimulate the declaration of assets maintained abroad have had little impact. The previous administration introduced the voluntary declaration before the central bank of all transactions exceeding US $10,000, including purchases of foreign currency or money sent abroad. The measure depended on far more good will than was available. It was hard to conceive that corrupt politicians, public officials, drug dealers and unethical businessmen would spontaneously declare to the authorities the fruits of bribery, tax evasion and other illegal transactions.

Two recent cases are emblematic of the levels of tax evasion and money laundering in Brazil. In January 2003, the Swiss courts announced that they had frozen US $36 million laundered by Brazilian account holders and kept in Swiss banks, following a request by the Brazilian authorities. The accounts were in the name of tax inspectors from the Rio de Janeiro state government whom companies had allegedly bribed to overlook their tax evasion activities. One of them, Rodrigo Silveirinha, was a deputy head of the state tax-collection office, nominated during the administration of former governor, Anthony Garotinho. A state parliamentary inquiry commission was established to investigate the case. By mid-2003, 12 tax inspectors had been arrested. The case emerged 10 days after Garotinho's wife was sworn in as the new governor of Rio and shortly after Garotinho – who stood in the October 2002 presidential elections – became the state's secretary of public security. The direct participation of Garotinho and his wife in the fraud is under investigation, but has not been proven.

Another financial scandal, involving Paraná state-owned bank Banestado, came to light in February 2003, in response to accusations made by the newly elected senator for the neighbouring state of Santa Catarina, Ideli Salvati of the Workers' Party. Federal investigations revealed the existence of a tax evasion and money laundering scheme amounting to US $30 billion between 1996 and 1999. The money was transferred from a Banestado branch in Foz do Iguaçu, near the borders with Argentina and Paraguay, to 130 accounts in the bank's New York branch through a special form of account reserved for non-residents. The names of several politicians and well-known businessmen were included in the list of beneficiaries. The senate rejected a request for an investigation, but in June 2003 the lower chamber of congress agreed to establish a parliamentary commission of inquiry.

The parliamentary commission, since transformed into a joint commission, began its work in mid-2003 and its findings were due by the end of the same year.

In June 2003, the attorney general and the president of the central bank introduced a new set of measures aimed at tackling money laundering. Banks must now notify the central bank of all deposits or withdrawals of more than 100,000 reais (US $30,000). The measures also included the creation of a general registry of bank accounts; the formation of a new department of recuperation of illicit profits to coordinate investigations between different ministries and departments; and the restructuring of the council for financial activities control (COAF, a part of the finance ministry).

## The new government has yet to fulfil anti-corruption promises

In September 2002, before the first round of the most recent presidential election, Lula da Silva of the Workers' Party signed an anti-corruption pledge prepared by Transparência Brasil. The document set out eight measures to curb corruption and redress the lack of adequate state control mechanisms. The most important measure was the establishment of an anti-corruption agency. Within six months of the new government taking office, the agency would draw up an anti-corruption plan with the participation of the legislature, judiciary, public prosecutor's office, supreme audit court and, as observers, civil society organisations.

The pledge contained initiatives concerning public procurement; the establishment of a network of ombudsmen in federal government; the prohibition of public officials hiring relatives; the strengthening of investigative bodies; the implementation of international anti-corruption conventions already ratified by Brazil; and the consolidation of initiatives taken by the former government in the areas of corruption control and conflict of interest.

After several unsuccessful campaigns, da Silva beat his rival, José Serra, winning 61 per cent of the vote with a pledge to reconcile the government's relations with the Brazilian people. His victory reflected Brazil's disillusionment with the free market policies of the outgoing government, which had a record of poor administration of public funds, administrative inefficiency, corruption, inadequate income redistribution and high unemployment.

President da Silva's emphasis on the need for a smooth transition allayed international fears about what Brazil's first Workers' Party administration might portend, and Brazilians are optimistic at the prospect of change. Firm action to punish corruption – from nepotism to bribery and embezzlement – would satisfy many Brazilian expectations. Many consider a reduction in corruption not only a moral necessity, but a practical concern if Brazil is ever to compete fairly in the global economy.

Although the fight against corruption has traditionally been a theme in Workers' Party election campaigns and was cited as a policy initiative in President da Silva's inaugural address in January 2003, the new government has implemented few concrete measures to tackle the problem. At this writing, no steps have been taken to create an anti-corruption agency.

*Ana Luiza Fleck Saibro (Transparência Brasil)*

## Further reading

Larissa Bortoni and Ronaldo de Moura, *O mapa da corrupção no governo FHC* (A map of corruption in the government of FHC) (São Paulo: Ed. Fund. Perseu Abramo, 2002)

Antoninho Marmo Trevisan, *O Combate à corrupção nas Prefeituras do Brasil* (The fight against corruption in Brazilian city halls) (TBrasil, 2003), www.transparencia.org.br

Rodrigo Penteado, *Corrupção: 18 Contos* (Corruption: 18 Short Stories) (Ateliê Editorial and Tbrasil, 2002)
Jeremy Pope and Bruno Wilhelm Speck, eds, *Caminhos da Transparência* (Paths of transparency) (Campinas: Editora da Universidade Estadual de Campinas, 2002), www.transparencia.org.br/source/#!
TBrasil, 'Corruption in Brazil: The Private Sector's Perspective', survey by TBrasil in association with Kroll Brazil, November 2002, www.transparencia.org.br

Transparência Brasil: www.transparencia.org.br

## Bulgaria

**Corruption Perceptions Index 2003 score:** 3.9 (54th out of 133 countries)
**Bribe Payers Index 2002 score:** not surveyed

### Conventions:

Council of Europe Civil Law Convention on Corruption (ratified June 2000)
Council of Europe Criminal Law Convention on Corruption (ratified November 2001)
OECD Anti-Bribery Convention (ratified December 1998)
UN Convention against Transnational Organized Crime (ratified December 2001)

### Legal and institutional changes

- Adopted in July 2002, amendments to the **judicial system act** provide for the establishment of a system of accountability to the Supreme Judicial Council (SJC) for courts, prosecution offices and investigation services; various anti-corruption checks on the judiciary, notably property and income declarations; adoption by the SJC of ethics codes for magistrates and administrative staff; competitive recruitment for magistrates and promotion according to objective criteria; and the creation of a public institution – the National Institute of Justice – to train members of the judiciary. The act also modifies procedures for adoption of the judiciary budget.
- After a first reading in July 2002, the legislature passed controversial amendments to the civic procedure code granting prosecutors the right to **discretionary interference in private contracts**. Though still pending, a second hearing was delayed in view of criticism from civil society organisations.
- In September 2002, amendments to the **criminal code** introduced more precise provisions on organised crime and corruption, including trading in influence, private sector corruption and the bribing of magistrates, juries and foreign public officials. The definition of 'foreign public official' was extended to reduce the scope of protection providing for acquittal in some cases of bribe paying. The amendments also introduce fines as a penalty for bribery and more severe punishments for bribe taking by judges,

jury members, prosecutors and investigators. Finally, non-material benefits were included as a further definition of bribery.

- A **parliamentary commission against corruption** was established in September 2002 with responsibility for monitoring draft laws for compliance with existing anti-corruption legislation prior to their adoption by parliament. The body will propose amendments to existing laws as well as new legislation; assist in the elaboration of common criteria and a strategy for curbing corruption; and provide related reports, statements and legislative proposals (see below).

## When anti-corruption bodies are powerless

Despite creating two specific anti-corruption bodies in the past two years, Bulgaria still lacks an effective institution to tackle and prevent corruption. Neither the inter-ministerial commission against corruption, known as the White Commission, nor the parliamentary commission against corruption has investigative powers.

Established in December 2001 and chaired by Minister of Justice Anton Stankov, the White Commission is composed of representatives from the justice, interior, finance and other ministries and is tasked with monitoring the government's anti-corruption measures. It coordinates the implementation of the national strategy against corruption, on whose progress it reports, and suggests measures to increase its effectiveness.

While the White Commission has no investigative powers and is unable to intervene in corruption cases, it functions as a clearing house through which cases are transferred to the appropriate investigative authorities. To ensure that the accused are presumed innocent unless proven guilty, the commission does not release its findings to the public. Claiming that less sensitive information must also remain confidential, it has made no effort to cooperate with civil society. Furthermore, the body is weakened by the members' inability to work full time, as the chairman and other members have full-time ministerial roles.

In September 2002, the government sought to compensate for some of these weaknesses by creating the Parliamentary Commission against Corruption (PCC), comprised of 24 deputies from all parliamentary groups. The PCC can propose amendments, monitor existing laws and identify gaps in enforcement practices, but it still does not address the central problem in Bulgaria's anti-corruption strategy – the absence of investigative powers.

In his annual report on 23 January 2003, President Georgi Parvanov launched a public debate on the prospects of creating an independent anti-corruption agency with investigative powers. He cited deteriorating public confidence in state institutions and foreign pressure to improve anti-corruption measures as motives. The president identified several advantages that a new agency could bring to the fight against corruption: increased effectiveness against corruption by senior government officials and politicians, the detection of officials' crimes by an independent authority not subject to political influence, improved public confidence in state institutions, and a strong preventive effect on senior government officials.

The proposed plan of action is to pass a special law setting up an independent agency headed by a single individual. The appointment would not coincide with the term of the national assembly so as to avoid the director's replacement by an incoming government. The agency would be assigned the same scope of investigative functions as the ministry of the interior and it would

focus on crimes committed by a comparatively small circle of senior officials. The data collected would be sent to the prosecutor's office for a decision on whether to commence proceedings.

Government and NGO representatives generally welcome the initiative, but critics observed that the government should focus on strengthening existing institutions, rather than creating a new body with similar functions. Some argue instead for the introduction of the post of ombudsman.[1]

## Promoting transparency in public procurement

In autumn 2002 the government drafted a new public procurement law to comply with the European Commission's Regular Report for the Accession of Bulgaria to the EU. The draft is pending in parliament.

The current public procurement law was enacted in 2000. Following recommendations of the World Bank's procurement review, it was amended in 2002 to include a judicial appeal procedure and facilitate direct negotiations between the contracting authority and the bidder. Despite these changes, however, procedures still need revision.

The business community is nearly unanimous in citing the procurement appeals procedures as the biggest problem in the field. Legally and in practice, filing an appeal stops the procurement process in its tracks until the courts rule on the case. Since no disincentives were established to discourage bidders from filing an appeal, no matter how baseless, they occur frequently.

Another problem relates to the linkage between public procurement and the budget planning and allocation processes. Uncertainties about the availability of funds delay the initiation of essential procurement, while the need to commit funds before the end of a fiscal year – or lose them – gives rise to hasty decisions and procedural violations. Budgetary uncertainty also leads to delayed payment or non-payment of suppliers, discouraging bidders from competing for government contracts.

But the greatest shortcoming of the existing legislation is the vague assignment of responsibilities for regulatory functions within procurement. One or more organisations must still be given clear mandates for updating primary legislation and providing secondary legislation covering operating procedures. The regulatory function should also include the preparation and dissemination of standard documents, monitoring and quality control, and supervision of professional training of procurement staff. Further, it should include a review of procurement appeals outside the court system, thereby eliminating one of the main sources of disruption in the process.

Some other procurement problems pertain to deficiencies in the law and to the way it is presently implemented, including the absence of arbitration procedures and the need for more clarity about the applicability of the law. Excessive requirements for documentation of bidder qualification remain to be adjusted and specifications favouring one bidder should be eliminated. There is also a need for a review of contract value thresholds, insurance requirements, bid commission procedures and the need for sanctions for improper procedures.

## Glaring inadequacies define new political finance legislation

The year 2002 was the first year in which new rules for political party financing were expected to show results. Yet the new legislation – the act on elections, as well as amendments to the act on local elections – failed to rectify problems that still mar the credibility of Bulgaria's political system. Opinion polls indicate that the new leadership has not fully convinced voters that it has kept its anti-corruption promises.[2]

Indeed, political corruption is perceived as Bulgaria's most serious problem by a large part of the population, which has singled out political parties as one of the most

corrupt institutions in recent years. There are two major concerns: one relates to sources of party funding, the other involves transparency, control and sanctions for offenders.

The act on political parties of March 2001 confers the supervision of political party expenses and income to the National Audit Office (NAO), whose reports evaluate the integrity of political party financing (see Chapter 14, 'Measuring the transparency of political party financing in Bulgaria', page 298). The act requires parties to present their annual reports to the NAO by 15 March, or lose their state subsidy for the relevant year. Within six months of receiving annual reports, the NAO must announce whether these comply with the relevant legislation. Parties are also required to file reports within one month of elections.

Despite this new legislation, the NAO has identified several aspects of party financing as ongoing problems. Anonymous donations allow parties to dodge naming donors or declaring their gifts to the NAO. Secondly, parties are not equally sanctioned for failing to submit their reports within the time prescribed by law. The act on political parties guarantees state subsidies only to parties that obtain 1 per cent of the vote during parliamentary elections; parties that do not reach that threshold are not punished for failing to submit their statements.

Numerous parties have failed to submit financial information in their annual reports and some are registered under incorrect addresses, leading observers to assume they are not truly engaged in political activity. One way to address this problem is to re-register parties according to the provisions of the act on political parties.

Local election campaign financing also needs tighter controls. The act on local elections, passed in 1995 and last amended in mid-2003, provides for elections of municipal councillors and mayors. Campaigns can be financed through funds of political parties and coalitions, as well as by individual donations and corporate bodies, as long as their shares are not owned by public or foreign entities.[3]

The lack of effective controls and the failure to sanction offenders continue to thwart transparency in the political landscape. Spending limits are now determined based on population figures, but the amended act still does not provide for the control of candidates' income and expenses, or for the application of sanctions. The problem is exacerbated by the lack of accounting requirements related to fundraising, as is the case for candidates for municipal councillor who have access to double funding if they set up personal bank accounts while also taking advantage of political party funding.

The poor control of local election financing stems from the lack of legally binding reporting requirements for candidates and political parties after elections are held. Moreover, no body is legally authorised to oversee electoral campaign financing. Control can only be exercised when parties or coalitions request a review of their adversaries' financing.

*Katia Hristova and Diana Kovatcheva (TI Bulgaria)*

## Further reading

Access to Information Programme, 'Access to Information Litigation in Bulgaria', 2003; and 'Access to Information Situation in Bulgaria: AIP Annual Report 2002'; www.aip-bg.org

Coalition 2000, Corruption Assessment Report 2002, www.anticorruption.bg/eng/coalition/car2002.htm

Open Society Institute, 'Corruption and Anti-Corruption Policy in Bulgaria', 2002; ftp.osi.hu/euaccession/2002_c_bulgaria.pdf

TI Bulgaria, 'Methodology for Drafting and Implementation of an Ethics Code of Court Administration', 'Strengthening Public Confidence in the Judicial Administration', 'Improving Transparency in the Work of Municipalities in Relation to the Governing of Municipal Property and Public Procurement Procedures', all September 2002; 'Political Party Financing', conference paper, June 2003

TI Bulgaria: www.transparency-bg.org

### Notes

1. See 'Establishment of a New Anti-Corruption Body in Bulgaria: The President's Position and Public Debate', Center for the Study of Democracy, www.csd.bg/news/acagensy_stenograma.doc
2. See the annual report on Bulgaria for 2002 of the Access to Information Programme, www.aip-bg.org/pdf/an_rep02.pdf
3. Local Elections Act, article 68.

## Burundi

**Corruption Perceptions Index 2003 score:** not surveyed
**Bribe Payers Index 2002 score:** not surveyed

### Conventions:

AU Convention on the Prevention and Combating of Corruption (adopted July 2003; not yet signed)
UN Convention against Transnational Organized Crime (signed December 2000; not yet ratified)

### Legal and institutional changes

- A September 2002 amendment to a 1996 law on **privatisation** was spurred by the creation of a dedicated ministry. One provision, preventing senior officials and their families from bidding for shares in public organisations, applies to members of the Interministerial Privatisation Committee (Comité Interministériel de Privatisation), experts in the department responsible for public organisations (Service Chargé des Entreprises Publiques), consultants, independent agents as well as any head of a public organisation who has been convicted of fraudulent management of an organisation under privatisation. The prohibition applies for five years from the conviction.
- In the second half of 2003 a parliamentary commission considered a bill on the creation of an **audit court**, with the national assembly due to examine the matter thereafter. The Arusha Peace and Reconciliation Agreement in Burundi provides for the creation of an audit court that would be 'responsible for examining and certifying

the accounts of all public organisations. This court will present a report on the propriety of the state accounts to the national assembly. This report will establish whether funds have been used in accordance with established procedures, and in accordance with the budget approved by the above-mentioned assembly.' The court is also a requirement of the transitional constitution and the International Monetary Fund made its creation a condition for the release of the second instalment of credit to the government.

- The assembly adopted a law on the **media** in early August 2003 (see below).

## The devastating impact of war on corruption

Although it is difficult to measure the impact of war on corruption in Burundi and little information is available on the subject, the role of the hostilities cannot be underestimated. For almost 10 years, the country has been immersed in a civil war that has had disastrous consequences. The proportion of the population living below the poverty level has risen from 30 per cent in 1989 to 60 per cent in 2000. The mortality rate has risen to 114 per 1,000, and life expectancy dropped dramatically from 54 years in 1992 to 41 years in 2000. Burundi is one the world's eight poorest countries.[1]

Coexistent with the war are regular massacres of innocent victims, mass displacement and restrictions on civil and human rights, such as the freedoms to travel, hold demonstrations and express oneself openly. The democratic process barely functions in such an environment, which is aggravated by the virtual political impunity that produces conditions favourable to the spread of corruption.

Despite the Arusha peace treaty of August 2000 and various ceasefire agreements since, the situation in Burundi is deteriorating. Corruption, which used to be comparatively inconspicuous, has adopted more public dimensions, spreading into every aspect of the public and private sectors and affecting procurement, the granting of land use concessions, customs, public health, the application for driver's licences and even the assignment of school grades.

The presence of military personnel throughout the countryside has contributed to the increase in petty corruption. Soldiers commonly stop people under the pretext of making identity checks, only to extort a bribe before releasing them. In rural areas, a fee is levied on farmers for harvesting after the curfew, while on the main roads, soldiers use the curfew as an excuse to exact money from drivers.

Analysts note that the military elite, already enriched by the diversion of public funds, has more to gain from letting Burundi sink deeper into debt than from pursuing the peace process, which might lay the basis for a return to democratic governance and lead to reform in the army.[2] At a government level, a 2003 report by financial inspectors drew attention to the misappropriation of more than 20 million Burundi francs (about US $20,000) in public funds at city hall in Bujumbura. The report of the general inspection of the ministry of finances found that more than 6 billion Burundi francs (about US $6 million) had been diverted since 1993. Inspectors point to regular corruption in the departments of taxation, customs, procurement, as well as in many state-owned companies.[3]

In the absence of peace and security, and in circumstances where the authority and the very institutions of the state are challenged or rejected by warring groups, the fight against corruption is not likely to become a priority, even if the political will were strong. This situation may explain why corruption has taken on more public dimensions. Christophe Sebudandi,

president of the Governmental Action Observatory (OAG), an umbrella association of 18 media and civil society organisations, finds that 'corruption has spread, openly and publicly, to such an extent that those who practice it have become stronger than those who are fighting against it. This has resulted in a kind of reversal of values.'[4] In the view of Julien Nimubona, a political science professor at the University of Burundi, the civil war has produced 'a mafia-like tendency at the heart of the state. Corruption is an ever growing blight on public services that relegates fundamental social values to a secondary role.'[5]

## Freedom of the press legislation: revisions needed despite progress

The national assembly adopted a long-awaited media law in early August 2003 that revises the measures laid out in legislation from 1997. While it secures certain rights for the media, the law fails to address crucial aspects related to freedom of information.

Debates on the media law began in December 2001, following completion of a government-initiated study on the legal framework for media and communications that was partly funded by a UNDP project to support democratic government. The assembly considered the proposed new legislation during its June 2003 session.

The new law makes some noteworthy improvements to the previous legislative regime. It removes the need for authorisation prior to publication: the 1997 law required that the national communication council approve the content of all newspapers and periodicals before they could be published.

The new law also dispenses with a previous requirement that compelled publications to reveal their sources, which constituted a serious constraint on journalistic freedom and was compounded by the fact that sources could not be prosecuted for violating media laws. Since only the heads of media outlets could be prosecuted for offences arising from published or broadcast information, dishonest journalists could safely denounce persons who never actually provided them with any information.

One element of the new law that may be useful in combating corruption relates to the prevention of conflicts of conscience. Journalists are now granted the right to call on a 'conscience clause' that allows them to 'break the contract that binds them to a publishing organisation if a new orientation of the said organisation conflicts with the terms of their contract'. If editors should decide to serve the interests of a political party in exchange for a bribe, for example, a journalist may refuse to be involved by invoking this clause.

Despite including these valuable reforms, however, the new law also sets stringent limits to media freedom, along with related penalties. Under the law, the media may no longer invoke the right to broadcast or publish information in certain cases that relate to such matters as national defence, state security and secret judicial inquiries.

The law assigns fines and penalties of six months' to five years' imprisonment for the publication of insults directed at the head of state, as well as writings that are defamatory, injurious or offensive to public or private individuals.

Though some exceptions to freedom of information rights may be justified, prohibitions regarding official secrets could act as a shield for government, enabling wrongdoers to carry out secret or corrupt activities. Restrictions on publishing information on alleged corrupt activities of public figures could be used to intimidate or censor the media. The rules of conduct in this area must therefore be given more precision, and the courts must show objectivity in examining the grounds for this type of argument.

At the same time, journalists and editors must be trained to respect journalistic standards and sharpen their investigative skills – admittedly difficult in an environment of war that does not favour freedom of the press.[6] To facilitate progress,

the national communication council itself recommended in July 2003 that freedom must be the rule and preventive detention an exception. Without seeking to justify violations of media laws, for instance, the council argued that professional errors should only be a reason for detention if there is a possibility the perpetrator will flee.

The government withdrew the bill in February 2003 after the introduction of a last-minute amendment on financial support for the press, but it was reconsidered in the June session. The assembly approved the bill with the amendment in early August 2003, with provisions to grant the press tax exemptions on imported supplies and to secure funds for media support.

*Nestor Bikorimana (TI contact group, Burundi)*

### Further reading

Association burundaise des consommateurs and Observatoire de l'action gouvernementale , 'Atelier de lutte contre la corruption au Burundi' (Summary report on the workshop for fighting corruption in Burundi), September 2002, www.ligue-iteka.bi/d180902.htm

Report of the parliamentary inquiry commission investigating cases of misappropriation of funds (Bujumbura: Assemblée Nationale, August 2000) [French]

UNDP Support Project for Promotion of Proper Government in Burundi, 'Transparency and the fight against corruption in Burundi: a quick diagnosis', May–June 2000

### Notes

1. www.worldbank.org/data/databytopic/GNIPC.pdf
2. *Économie* (Burundi), 13 November 2002.
3. RTNB (Radio Télévision Nationale du Burundi), 23 August 2003.
4. Atelier de lutte contre la corruption (Workshop for fighting corruption), Association burundaise des consommateurs (ABUCO, Burundi Consumers Association) and Observatoire de l'action gouvernementale (OAG, Governmental Action Observatory), 12–13 September 2003, www.ligue-iteka.bi/d180902.htm
5. Julien Nimubona, 'L'analyse critique de l'Accord d'Arusha' (A critical analysis of the Arusha treaty), OAG, May 2002, see www.ligue-iteka.bi/n121101b.htm
6. For more information, see 'Rapport de la table ronde sur le projet de loi sur la presse au Burundi' (Report on the roundtable about the media bill in Burundi), Maison de la Presse, Association burundaise des journalistes and Institut Panos, Bujumbura, 3 May 2003, www.panosparis.org/fichierProj/fichierProj94.doc

## Chile

**Corruption Perceptions Index 2003 score:** 7.4 (20th out of 133 countries)
**Bribe Payers Index 2002 score:** not surveyed

### Conventions:

OAS Inter-American Convention against Corruption (ratified October 1998)
OECD Anti-Bribery Convention (ratified April 2001)
UN Convention against Transnational Organized Crime (signed December 2000; not yet ratified)

### Legal and institutional changes

- In February 2003 a new law on **government remuneration** and spending, which regulates salaries for high-level officials and caps their discretionary budgets, came into force. All discretionary ministerial funds must now be disaggregated and submitted to the auditor general.
- The requirement to maintain a **register** of all individuals, institutions and companies who receive public funds became law in February 2003.
- In June 2003 a new **public administration** law came into effect. The most significant change concerns recruitment processes; jobs must be open to competition and promotion must be based on merit, and the number of political appointments has been reduced. It also regulates payment structure, probation processes, and bonus and pensions arrangements.
- In July 2003 a new **law on public supplies and services contracts** came into effect. The law makes the contracting process more transparent and stipulates that Internet-based selection mechanisms should be used for contracts above a certain threshold.
- In July 2003 a new **law on political party financing** was adopted. The law introduces direct public funding for political parties (Chile had been, along with Peru, one of two countries in the region with no direct public funding for political parties). It establishes ceilings on spending and calls for sources and amounts of donations to be disclosed (see below).
- In July 2003, congress began to debate a proposal to regulate **lobbying** in the legislature. The aim is to make the practice more transparent and provide a framework for sanctioning unlawful acts.
- Congress is reviewing amendments to the **immunity law** and considering a bill that would increase transparency of parliamentary funds.
- The government has continued to advance its wide-ranging **electronic government** programme, originally introduced in 1998. In 2002 and 2003, services made available online included customs processes, loan applications from micro- and small businesses, tax payments, agricultural-export certificates and patents registration. The government's system of purchases and public contracts was further developed after the electronic signature bill was passed in April 2002.

## Chile's clean image tarnished by scandals

In October 2002, the weekly news magazine *Qué Pasa* ran an article alleging that government officials had received bribes from a businessman seeking a contract to build a new vehicle-licensing plant. Corruption scandals have emerged several times in President Ricardo Lagos' administration (most notably, involving contracting and trading patterns at the state-owned copper company, Codelco).[1] But the October case was different in that it triggered a series of further revelations implicating high officials and strengthened public perceptions that the entire machinery of government was tainted.

The impact was felt deeply. According to Thomson Financial Brasil, Chile suffered net outflows of US $1.1 billion in the first half of 2003, which was widely attributed to the scandals. The government moved to allay concerns, hurriedly adopting a series of legal and institutional measures, some of which had been languishing in the legislative pipeline for years (see below).

The scandals were striking in view of Chile's relative complacency about its reputation as a clean destination for investors' funds. Chile has ranked favourably against other Latin American countries in indices measuring corruption, but perceptions were at variance with the underlying reality and many necessary reforms were not seen through to their conclusion.

The need for reform in two specific areas was emphasised by the series of scandals. The October case, known as *Caso Coimas* (the 'bribes case'), and a second scandal in March 2003 that involved the central bank, a state development agency and a private holding company, highlighted the need to clean up the interface between the public and private sectors. The Inverlink holding company allegedly used US $100 million in deposit certificates, stolen from the state development agency Corfo, as security for positions it took in the fixed-interest market, based on insider information supplied by the secretary of the former central bank president, Carlos Massad. Both Massad and Corfo's vice-president, Gonzalo Rivas, were forced to resign. The investigation continues.

The second area for reform – public sector conditions and performance – was underscored by two further scandals. In April 2003 charges were filed against 22 officials, including former transport and public works minister Carlos Cruz, for circumventing official pay scales by routing ministry funds to staff through an outsourcing company called Gate that had ostensibly hired them as consultants. In the other case, the ministry of public works (MOP) paid top-up salaries to consultants and experts at the Centre for Applied Business Research of the University of Chile. Thirteen MOP officials were charged with unlawfully paying extra fees for a job that the trial judge deemed was never properly realised: high fees were paid for merely filling in a questionnaire, when the consultants were supposed to have designed and implemented a system for evaluating public proposals and contracts by the MOP's regional divisions.

These last two cases should be viewed in the light of Chile's low public sector salaries. For decades governments have paid top-up fees to professionals, division heads and even ministers to attract well-trained staff. In many cases employees were given multiple contracts with the same institution for work that was never done. The additional salaries are often paid out of reserved funds, which are not subject to any detailed accountability mechanisms.

While there was no direct connection between the Corfo–Inverlink case and the later scandals, they merged in the eyes of the press and public opinion into a single governance malady. Media outlets failed to make any clear distinction between corruption, administrative error, accusations and facts, all of which contributed to a strong public sense that corruption stalks the corridors of government.

## Scandals provide new impetus for reforms

In reaction to this spate of revelations (see above), the Lagos government created a transparency commission, composed of representatives from government, the opposition and two civil society organisations, with the task of drafting proposals to remedy the systems that had failed to detect corrupt practices.

Cross-party working groups were established in March 2003 to draft new legislation and propose amendments to laws that were currently being debated. Many of the anti-corruption measures that were debated were based on proposals by civil society organisations such as Corporación Chile Transparente, Transparency International's national chapter. An all-party anti-corruption pact, called the 'Agreement for the modernisation of the state, transparency and promotion of growth', was launched.

The opposition lent its support to the governing coalition to help speed through congress a dozen anti-corruption initiatives that have since passed into law. These were part of the 'short reform agenda'. Thirty-seven other reforms, the 'long reform agenda', are still being debated.

Among other areas, the new legislation raised government salaries across the board to reduce the temptation to seek bribes, and abolished the opaque system of bonuses. The number of civil service posts the president is entitled to fill was reduced from 3,000 to about 700 and new campaign-finance regulations were passed. The new measures also included regulating the use of discretionary government expenses and political financing, and introducing a formal, non-party national integrity commitment between government, political leaders, businesses and civil society that would establish more robust monitoring mechanisms.

But typical of reforms that have been enacted hastily, not all the changes were well thought out. The campaign finance law, for example, makes a contribution to greater transparency in elections and introduces public funding for the first time, but it is undermined by a number of loopholes. It establishes spending limits, but does not provide sanctions for those who exceed them.[2] It allows as much as 30 per cent of donations to remain anonymous.[3] It also fails to restrict donations from private companies and congress is discussing new bills that would even exempt these donations from taxes. Another problem is that the law does not provide strict enough safeguards against candidates violating the financing ceilings by creating their own campaign funds, parallel to party funds. A further criticism is that there is no regulation of donations and spending outside of the electoral campaign period.

In other areas, reform proposals ran into opposition. One proposal, aimed at avoiding future Inverlink-style scandals by giving regulators more control over banking and insurance licences, was derailed because of perceived constraints to Chilean markets.

By late 2003 the fate of the 'long reform agenda' looked uncertain. There was growing concern that the ruling coalition might lose opposition support for the remaining reforms as parties seek to position themselves for the 2005 elections.

*Andrea Fernández (Corporación Chile Transparente)*

## Further reading

Centro de Estudios Publicos, *Reforma del Estado Volumen II* (State Reform Volume II) (Santiago de Chile: Andros, 2002)

Corporación Chile Transparente, 'Memoria: Legislación nacional y probidad' (Notes: National legislation and probity), 2001

Juan Jorge Faundes, 'Periodismo de Investigación en Sudamérica' (Investigative journalism in South America), 2002, portal-pfc.org/bibliografia/periodismo/2002/periodismo_faundes.pdf

Claudio Fuentes, 'Financiamiento Electoral en Chile: La necesaria modernización de la democracia chilena' (Electoral finance in Chile: the necessary modernisation of Chilean democracy), in *Colección Ideas*, no. 30, April 2003

Luis Bates Hidalgo, 'La legislación chilena y la Convención Interamericana contra la Corrupción' (Chilean legislation and the Inter-American Convention against Corruption), 2000, probidad.org/regional/legislacion/2001/022.html

Corporación Chile Transparente: www.chiletransparente.cl

### Notes

1. Codelco was the focus of Chile's biggest financial scandal in 1994, when it emerged that futures trader Juan Pablo Davila had cost the company US $200 million by inflating the size of trades in order to generate higher commissions for his preferred brokers. More recently, the company has come under fire for failing to be transparent in adjudicating contracts. See *Qué Pasa* (Chile), 28 March 2003.
2. The first draft of the law was passed by the senate, but later challenged by the constitutional court on the ground that it did not provide channels for the accused to seek legal redress. Rather than develop the necessary dispute-resolution mechanisms (an electoral tribunal), the government opted to erase sanctions from the bill and resubmit it for approval.
3. As much as 20 per cent of the candidate's total campaign expenditure can be made up of anonymous donations as long as these do not exceed 340,000 pesos (US $484). A further 10 per cent can come from donations as large as 10 million pesos (US $14,500), which do not need to be disclosed to anyone other than the candidate.

## China

**Corruption Perceptions Index 2003 score:** 3.4 (66th out of 133 countries)
**Bribe Payers Index 2002 score:** 3.5 (20th out of 21 countries)

### Conventions:

UN Convention against Transnational Organized Crime (ratified September 2003)

### Legal and institutional changes

- In June 2002 the Standing Committee of China's National People's Congress (NPC) passed the Government Procurement Act, which came into force in January 2003. The law regulates **public procurement** and includes guidelines for preventing corruption (see below).

- In December 2002 amendments to the criminal code were ratified. One of the provisions stipulates that abuse of authority and dereliction of duty by **judicial officials** are subject to a criminal penalty of up to 10 years' imprisonment (see below).
- In 2002–03 a pilot scheme for political reform began in **Shenzhen** municipality, involving the separation of the powers of policymaking, enforcement and supervision – a radical departure from the current political model (see below).
- China's new leadership, which came to office in March 2003 under President Hu Jintao, called for an acceleration of the country's anti-corruption drive. One of its first measures was a new focus on **monitoring provincial-level officials** through the dispatch by the Communist Party's Central Commission of Discipline Inspection (CCDI) of 45 inspectors to visit all the country's provinces. The inspectors are expected to finish their monitoring programme within four years. The decision should be viewed in the context of criticisms made of the CCDI for failures to tackle corruption effectively.
- In August 2003 a law on **administrative licensing** was passed by the NPC standing committee. The new law, which takes effect from July 2004, will streamline and introduce transparency into the system of administrative permits. Until now official authority to issue licences for everything from marriage to establishing a business has provided a lucrative source of corruption to supplement meagre wages. Those seeking licences have often paid serial bribes to obtain approval from different authorities. The new law seeks to tackle the problem by introducing one-stop application procedures. The new rules also require licence applications to be filed in writing in order to avoid face-to-face contact with officials, hopefully lessening the incidence of 'improper fee collection'.

## Reforms to combat widespread judicial corruption

Many of China's most senior leaders admit that corruption is rife in the country's judicial and law enforcement systems, in spite of a major crackdown on illegal practices and a series of recent reforms. In November 2002, Liu Liying, former deputy secretary general of the CCDI, highlighted judicial corruption as one of the key concerns.[1] Offences by judges and court officials include abuse of power in lawsuit proceedings, intentional errors of judgment, forging court papers and accepting bribes.

In an effort to improve practices, recent reforms have included the introduction of open trials; more restrictive requirements on evidence; the separation of trials from enforcement and monitoring; and the monitoring and evaluation of judges. The reform programme includes harsher responses to judicial corruption. In December 2002 the NPC standing committee passed amendments to the Criminal Code (IV), which will punish the abuse of authority by court officials with up to 10 years' imprisonment.

As a consequence of the crackdown, 24,886 court employees were arraigned or prosecuted in 2002, or 2 per cent of the country's judicial staff.[2] Those investigated for allegations of corruption included two provincial chief justices. In the last two years a number of prominent officials in the legal system have been found guilty of taking

bribes, including Li Jizhou, former deputy minister of public security.

The government is also trying to improve judges' professionalism. Previously, there were no specific requirements for members of the judiciary, who typically hold prominent political positions since the institution is not independent. In March 2002 – for the first time – lawyers, judges and procurators faced a professional examination. Training is also being strengthened. In July 2002 the supreme people's procuratorate cooperated with the World Bank and Tsinghua University to run anti-corruption courses for procurators.

## New experiments with political reform in Shenzhen

Shenzhen, a 'special economic zone' close to Hong Kong, has pioneered national experiments in economic reform for over 20 years, becoming one of China's wealthiest cities in the process. Recently it has been the scene of a number of administrative experiments designed to reduce corruption. In 1997–98 Shenzhen introduced a pilot reform, creating a 'one-stop service' for more than 1,000 items requiring the approval of the municipal administration. By early 2003, the number had been reduced to around 300.[3] Since 2000, similar reforms have been extended to other cities.

In January 2002 the CCDI approved a corruption prevention strategy for Shenzhen and the city again took the lead in experimenting with systemic reform in 2002–03. The latest reforms are intended to create a transparent, accountable and law-abiding government, both to fulfil China's commitments to WTO principles and to build the kind of market environment demanded by the multinationals whose investments have propelled the city's development.

The central element of the reforms is the separation of policy-making, implementation and supervision, a measure that involves limiting the powers of the Communist Party and, in a conscious imitation of the separation of powers that underpins democratic systems, separating the party from the government. What makes these proposed reforms qualitatively different from previous administrative reforms is that the role of the party will henceforth be restricted to 'drawing up the overall economic development strategy for an area, and for setting some other important policies', according to Shenzhen's mayor.[4] The party will be forbidden from involvement in the executive side of government. The local people's congress will be responsible only for reviewing and approving the party's development strategies and large-scale spending plans.

The reform also involves placing supervision and audit bureaus directly under control of the mayor. The city has already created a new Bureau of Supervision, with powers of prosecution. In addition there will be a 'non-governmental' consultative institution, intended to increase government accountability. The Shenzhen government also plans to accelerate the sale of government stakes in local enterprises, to create a clearer separation between the state and business.

If successful, the Shenzhen experiment could be rapidly copied elsewhere in China. But the limitations must be kept in mind: they remain reforms at the level of administration, not of democratic accountability.

## More open public procurement, under international pressure

Preparations for the 2008 Olympic games in Beijing and Expo 2010 in Shanghai – as well as major development programmes such as 'Developing Western China' – have focused attention on the widespread corruption in public procurement and have motivated a series of reform measures. According to a survey by the anti-corruption authorities of Licheng district in Jinan (Shandong province) in 2002, more than 70 per cent of cases involved bribery, 44 per cent of them

in public procurement. The highest occurrence was in construction, which accounted for 63 per cent of all bribery cases.

In recent years the authorities have taken steps to reform contracting procedures in order to improve efficiency and curb corruption. Experiments with open bidding began in Shanghai in 1996 and spread rapidly to other cities, with a growing proportion of bidding carried out by Internet. In 2000 open bidding was introduced into state-funded engineering projects, when the Invitation and Submission of Bids Law came into effect. Most notably, the NPC passed a government procurement act in June 2002, along with a series of other new regulations. The new law standardises rules across the country and at all levels of government, and aims to increase transparency in public contracting.

So-called 'construction markets' (*Jianzhu Youxing Shichang*) have been introduced in most big cities with the aim of regulating bidding in construction projects and curbing under-the-table deals. Under the new system, contractors have to win contracts through transparent and fair competition conducted at such trading centres. All procedures are computerised.

However, China's rapid transition has resulted in huge investment in construction, breeding widespread corruption. The volume of government expenditure in public procurement jumped from 3.1 billion yuan (US $0.4 billion) in 1998 to 65.3 billion yuan (US $8.2 billion) in 2001, and is expected to rise to 150 billion yuan (US $18.7 billion) in 2003. Since all levels of administration enjoy overwhelming and barely checked power – and transparency and effective monitoring are generally low – the opportunities for corruption are high, and the task of curbing it Herculean.

International commitments and perceptions play an important role in motivating the reform of public contracting. China has been a member of the World Trade Organization (WTO) since 2001. Though it has not signed the WTO Agreement on Government Procurement, which requires opening public procurement to foreign suppliers on an equal basis, it is an observer to the agreement and is negotiating to sign. In addition the overseas involvement of Chinese companies is having a strong domestic impact.

Two weeks after the passage of the government procurement act, the Beijing municipal government and the Olympic Organising Committee issued an action plan for the Olympics, which embraces a wide range of associated construction projects. The organising committee is cooperating with the Anti-Corruption Research Centre at Tsinghua University, and other institutions, to introduce transparency into all procurement projects for the 2008 games.

*Guo Yong (Tsinghua University, China) and Liao Ran (Transparency International)*

## Further reading:

Angang Hu, ed., *China: Challenging Corruption* (Hangzhou: Zhejiang People's Press, 2001)

TI, *Combating Corruption: Building a National Integrity System*, translation of TI Source Book 2000 into Chinese by the Anti-Corruption Research Centre, Tsinghua University (Beijing: Fangzheng Press, 2002)

Minggao Wang, *A Study of Special Strategies and Measures to Oppose and Control Corruption in China in the New Century* (Beijing: Hunan People's Press, 2003)

## Notes

1. www.jcrb.com.cn, 20 November 2002.
2. Chinese Chief Justice and Prosecutor's Working Reports to the National People's Congress, 2003.
3. *Nanfang Metropolis* (China), 18 January 2003.
4. *Financial Times* (Britain), 11 January 2003.

# Costa Rica

**Corruption Perceptions Index 2003 score:** 4.3 (50th out of 133 countries)
**Bribe Payers Index 2002 score:** not ranked

**Conventions:**
OAS Inter-American Convention against Corruption (ratified June 1997)
UN Convention against Transnational Organized Crime (ratified July 2003)

### Legal and institutional changes

- Amendments to the 1983 **Law against Illicit Enrichment by Public Officials** have been proposed. The existing law obligates public servants to declare property ownership each year and threatens them with removal from office if they fail to do so. But not a single government employee has been prosecuted as a result of the contents of his or her statement. The proposed bill would allow the auditor general's office to examine the bank accounts of public servants and establish a broader range of sanctions for wrongdoers. Some legislators oppose the bill on the grounds that it would violate their right to privacy, as well as existing bank secrecy norms.

- Two specialised divisions within the attorney general's office were established by the law on the **creation of the prosecutor's office for public ethics**, which was promulgated in April 2002 and came into force three months later. One is for illicit acts and falls under the treasury and public service jurisdiction (a new jurisdiction established in May 2002 to deal with cases of corruption involving public servants) and the other is for acts related to drug trafficking.

  The same law obligates the attorney general's office to carry out the administrative activities necessary to prevent, detect and eradicate corruption and to increase ethics and transparency in public service. It also states that the attorney general's office can denounce and accuse individuals before the courts of justice – a function normally reserved for the public prosecutions service – for abuse of authority in matters that fall within the treasury and public service jurisdiction.

  In the case of **non-government employees**, the attorney general's office will only act when these persons have been involved in the administration of public property or funds, have received benefits arising from subsidies or payments with public funds, or have participated in a criminal offence committed by public servants. The

expanded functions of the attorney general's office do not preclude criminal acts from having to be processed additionally through existing administrative control and supervision channels, and do not impinge on the powers of the auditor general.

- The General Law of Internal Control entered into force on 4 September 2002 and establishes the minimum standards that must be followed by the national **auditor general's office** and the bodies under its supervision when setting up, improving, evaluating and maintaining their internal control systems.

## Court ruling highlights need to close political financing loopholes

Investigations into the source of financing for the two main political parties, the National Liberation Party (PLN) and Social Christian Unity Party (PUSC), during the 2002 presidential election campaigns, uncovered a myriad of irregular funding tools – currently the subject of a congressional probe – and highlighted the need to tighten political finance legislation.

Political parties have a substantial amount of their campaign costs reimbursed by the state, according to the number of votes each party obtains and with the authorisation of the supreme elections tribunal (TSE). Parties first have to find the funds to pay for their campaigns. This sum is known locally as 'political debt' and the right to have it repaid by the state is enshrined in the constitution.

The nature of 'political debt' was called into question in May 2003 when the TSE ruled that it was lawful for the PLN to violate the ceiling on campaign contributions and the requirement to report the names of contributors, because contributions by individuals to a bank trust fund represented an 'investment in politics', rather than a donation – which would come under the category of 'political debt'. The fund was set up in September 2001 and party contributions were deposited on the basis that the money would be repaid after the elections with the funds the state traditionally reimburses.

The TSE ruling was criticised by NGOs and the press, who argued that parties and their funders should not resort to their role as 'private investors' in an effort to evade the controls and limitations set by law, especially when the funds used to guarantee their investments are public. A trust fund set up for purely commercial purposes is different from a trust fund established to handle political donations, which are subject to the controls established by the electoral code, as well as laws concerning the use and administration of public funds.

These obligations are set out in the law for the financial administration of the republic and public budgets, which stipulates how and when public funds can be authorised. It applies to all public bodies and also to 'private entities, in relation to the resources of the public treasury that they administer or dispose of'. The same law expressly prohibits the constitution of trust funds using public money (unless there is a special law authorising them), while the electoral code expressly forbids donations and contributions in the name of third parties – which is a specific characteristic of a trust fund.

At this writing, the congressional committee created to investigate the irregularities in the financing of the last presidential campaign is debating whether permitting the existence of trust funds of this kind would entail distorting the sense of electoral law and violate therefore the limits and prohibitions that have been set for political donations.

The committee is also investigating other sources of irregular funding, particularly the use of parallel fundraising systems by both the PUSC and the PLN to collect donations that were not reported to the TSE.[1]

The findings of the committee include donations that exceeded the legal ceiling several times, as well as donations from foreign nationals, who are banned by law from contributing to political parties. Among the transactions, according to the *La Nación* newspaper, were unrecorded cheques totalling US $500,000 from Taiwan's International Bank of China that were channelled to a secret PUSC account held at Banco Internacional de Costa Rica (BICSA), an offshore Costa Rican bank registered in Panama.[2]

The scandals have prompted a wide-ranging discussion on the adequacy of campaign-finance laws, and an agreement on the need to revise them.

## Court decision revives debate on access to information law

In response to the PUSC and PLN financing scandals, the constitutional court ruled in May 2003 that the assets of political parties are subject to the principles of 'publicity and transparency', pursuant to article 96 of the constitution. The lack of access to party accounts made it difficult to follow the money trail and establish whether illegal donations had been made. Since the ruling, the movements and balances of current accounts held by political parties in state or private commercial banks or in any other non-banking financial entity can, in principle, be accessed by anybody.

The court declared that 'banking secrecy cannot be maintained in opposition to the constitutional norm of the public nature of the political parties' private contributions, since the former institution does not have constitutional, but legal status'. It stressed that banking secrecy and the right to privacy are still in force for every bank account not connected with political parties. The decision reaffirms the right of an individual to ask for and receive information about the bank accounts of the political parties, or of limited companies that handle resources linked to political groups.

Many politicians were unhappy about the decision, claiming it compromised the independence of the legislature, might worry investors and violated the rights to privacy. Bank officials also voiced complaints on the grounds that the ruling violated customer privacy.

This ruling also helped to revitalise the debate over the bill to regulate access to information, which had become stuck in parliament. Progress in establishing the new legislation can be expected in the near future.

The party funding issue clearly has an international dimension as well. The local press reported that the Panama branch of Banco Internacional Costa Rica refused to open for inspection a current account registered in the name of Bayamo S.A., which allegedly acted as a channel for funds from overseas contributors to the electoral campaign of President Abel Pacheco. The branch defended its refusal by appealing to Panamanian law.

*Roxana Salazar and Mario Carazo (Transparencia Internacional Costa Rica)*

## Further reading

Programa Estado de la Nación, *Auditoría ciudadana sobre la calidad de la democracia* (Citizens audit on the quality of democracy) (San José: UNED, 2001), www.estadonacion.or.cr

Programa Estado de la Nación, *Octavo informe sobre el estado de la nación* (Eighth report on the state of the nation) (San José: UNED, 2002), www.estadonacion.or.cr

Roxana Salazar and Mario Carazo, 'Guía de la Convención de la OEA' (Guide to the OAS Convention) (San José: Transparencia Internacional Costa Rica, August 2002)

Roxana Salazar and Mario Carazo, 'Memoria del programa Elecciones Transparentes' (Record of the Transparent Elections Programme) (San José: Transparencia Internacional Costa Rica, December 2002)
Roxana Salazar and Mario Carazo, 'Guía de acceso a la información' (Guide for Access to Information) (San José: Transparencia Internacional Costa Rica, March 2003)

Transparencia Costa Rica: www.transparenciacr.org

### Notes

1. In its evaluation of campaign expenditure for the 2002 elections (which is used to calculate the level of government reimbursements to parties for funding), the general auditor's office found serious omissions in the information provided by parties, including unauthorised spending and undocumented claims.
2. *La Nación* (Costa Rica), 12 September 2003.

## Egypt

**Corruption Perceptions Index 2003 score:** 3.3 (70th out of 133 countries)
**Bribe Payers Index 2002 score:** not surveyed

**Conventions:**
AU Convention on the Prevention and Combating of Corruption (adopted July 2003; not yet signed)
UN Convention against Transnational Organized Crime (signed December 2000; not yet ratified)

### Legal and institutional changes

- To reduce red tape and petty corruption and 'streamline transactions', in August 2002 the ministry of administrative development created **citizen service centres** where citizens and investors can do their government business without going to the relevant ministries. The ministry publishes a guide of the 450 most requested services (out of a total of 728) and posts it on the Internet, specifying the documents and official fees associated with each.[1]
- In an effort to confront widespread corruption among its members, the ruling National Democratic Party (NDP) announced in September 2002 the creation of a new **secretariat for ethics**, headed by a retired judge. New rules calling for more regular elections of urban and provincial party leaders were adopted.[2]
- In November 2002, the government appointed new chief executives to the four major **public sector banks** and required the establishment of an audit committee within each, comprising three non-executive board members.[3]

- In May 2003 parliament passed the **Unified Banking Law**, which governs the Central Bank of Egypt (CBE), the banking system and foreign exchange bureaus. The government claims that the law will grant the CBE greater oversight powers by entitling its governor to appoint senior banking officials. The change comes in response to a recent spate of bad loans by public sector banks to tycoons who default and often flee the country. Prime Minister Atef Ebeid claimed the law places a premium on transparency and disclosure, but critics say it does nothing to change the CBE's supervision by the presidency.[4] The CBE will be required to submit comprehensive reports regarding monetary conditions in Egypt to the president and the assembly at the end of every fiscal year.
- In June 2003 parliament passed a package of reforms introduced by the NDP's Policy Secretariat, headed by President Hosni Mubarak's son, Gamal. The package included a law abolishing the **state security courts**. These exceptional courts, created in 1980, were ostensibly designed to mete out swift justice on national security issues, but have been used to try everyone from corrupt ex-ministers and businessmen to democracy advocates, such as Egyptian-American sociologist Saad Eddin Ibrahim. An NDP official asserted that abolishing the courts will facilitate the extradition of corrupt businessmen who flee Egypt after defaulting on loans.[5] Lawyers and human rights activists point out that the new law leaves intact emergency state security courts, whose verdicts are final and subject only to presidential review.[6]

## Assessing the Mubarak government's campaign against corruption

'Our battle against corruption is serious and genuine', Prime Minister Atef Ebeid has said. 'Our slogan is that no one is above the law.'[7] Indeed, the government pursued several high-profile corruption cases in 2002–03 with prosecutorial zeal, partly to woo foreign investors and partly to show the public that it is serious about purging the bad apples from its ranks. But details of the anti-corruption campaign reveal a more chequered picture, with political considerations superseding genuine efforts at institutional reform.

The timing of the well-choreographed anti-corruption campaign is paramount. In the last 12 months, the nature of the campaign and its near-exclusive focus on senior officials in President Mubarak's NDP, concurrent with the political rise of his son Gamal, has led to speculation that the crackdown is simply a prelude to his son's increasingly public role.[8]

The most striking feature of the campaign is that it is completely government-run and managed, lacking any input from NGOs and other civil society groups. Despite the administration's rhetoric about forging coalitions to combat graft, the 'no to corruption' slogan is a government monopoly. Draconian press and NGO legislation strips civil society of the requisite autonomy and resources to expose corrupt officials.

The Egyptian media have been relegated to the role of broadsheets for publishing the salacious details of corruption cases revealed by the government. A press law of 1996 imposed hefty fines and prison terms for journalists convicted of slander. It was put on the books after the muckraking opposition newspaper *Al-Shaab* ran campaigns against sitting ministers and threatened to get uncomfortably close to the alleged shady business practices of Mubarak's sons (Gamal and especially Alaa'). The

newspaper was eventually closed in 2000. In June 2003, journalist Moustafa Bakri and his brother, editors of the independent *Al-Usbu* newspaper, were put in prison for a year on charges of slandering editor Muhammad Abdel Aal, though their allegations of his extortionist practices proved true and he is now in prison.[9] The Bakris were later released after the public prosecutor ordered a stay of implementation and review of the court ruling against them.[10] Journalists have long called for the reform of the 1996 law to empower them to investigate corruption free from the threat of imprisonment under the pretext of libel and slander. A reform bill presented by an opposition member of parliament two years ago has not made it out of parliament's Proposals and Complaints Committee.

NGOs are even more crippled, hemmed in by new legislation that imposes more restrictions than the 1964 law it replaced. Ratified in June 2002, the law gives the administration the right to veto candidates for NGO boards; prohibits NGOs from 'engaging in politics'; enables the government to dissolve them without a court order; and requires that the government approve funding from foreign sources before NGOs can access it. The no-politics clause effectively rules out citizen participation in the fight against corruption and is designed to limit the monitoring capability of advocacy NGOs, especially human rights groups.

Parliament, another potential check on corruption, has historically been dwarfed by the overwhelming powers of the executive. It has neither financial powers, requiring presidential approval before changing items in the budget, nor oversight of the defence budget. Moreover, the 1971 constitution empowers the president to hold referenda by which parliament can be bypassed altogether.

The executive branch has four capable monitoring and auditing agencies that would go a long way towards uncovering and pursuing corruption, but they are not institutionally empowered to pursue wrongdoers. The Central Auditing Agency (Al-Jihaz al-Markazi li al-Muhasabat) can only make recommendations and issue reports. The elite anti-corruption Administrative Control Authority (Al-Riqaba al-Idariya) is a powerful monitoring agency and a corrupt official's nightmare, but it is tied to the presidency. The Administrative Prosecution Authority (Al-niyaba al-Idariya) and Public Funds Prosecution (Niyabat al-Amwal al-Aama) are competent investigative agencies but dependent on the prosecutor general, who is appointed by the president.

Since the presidency stands at the centre of Egypt's institutional structure, it controls the pace and direction of any corruption campaign – which is why observers discount the efficacy of the current one. They interpret it as essentially a political project, a cover for shoving aside the old guard and paving the way for a new team of technocrats, headed by Mubarak's son Gamal. At least one of the new appointments to head the corruption-ridden, public sector banks is a friend of the president's son, himself a banker.[11]

The issue of political succession has come to the fore recently because President Mubarak has yet to select a vice-president. Both father and son deny that Gamal is being groomed to succeed, but the younger Mubarak's promotion to head the Policies Secretariat (a completely new body) at the NDP congress in September 2002, combined with the demotion of powerful agriculture minister Youssef Wali and the targeting of cronies of Kamal al-Shazli, minister of state for parliamentary affairs and *the* top old-guard NDP politician, reinforced suspicions of the anti-corruption campaign's political motivations.[12]

Any serious crackdown on corruption must begin with effective institutional reform. Government auditing bodies must be empowered to initiate and carry out independent investigations and delve into no-go zones, such as the interior, defence and justice ministries. They should answer

to parliament, not the presidency, and the legislature needs to regain its oversight powers over the executive.

## The last refuge: the Egyptian judiciary

Former court of appeal judge Yahya al-Refai dropped a bombshell in early 2003 when he told the Judges Club and the Bar Association that he was leaving the profession and aired startling revelations about government corruption of judges via the ministry of justice. Almost as startling was the silence that greeted Refai's allegations. No government or ministerial spokesman either addressed or denied the charges; only the opposition, Nasserist weekly *Al-Arabi* printed Refai's statement in its 5 January edition.[13]

The incident illustrated the effectiveness of the government's gag on any discussion of corruption that it does not design and choreograph itself. The issue of judicial corruption is a particularly sensitive subject, constituting a central taboo in Egypt's public discourse. While legal activists have been worried by trends in judicial politics over the last 10 years, Refai was the first to articulate the details and practices. An unimpeachable career and his long activism on behalf of judicial autonomy lent even more credibility to Refai's whistleblowing.[14]

The justice ministry, headed by a former chief justice of the Supreme Constitutional Court (SCC), has worked overtime to take full control of the nation's judges, Refai alleged. The minister appoints justices to courts for as long as he wants and has powers to discipline and transfer judges. Refai also touched on the issue of judges' income, describing how a freeze on their notoriously meagre salaries was complemented by a system of selective bonuses to identify pliant judges – and punish upstanding ones.[15] For the first time since the British occupation in the nineteenth century, Refai continued, the ministry has required judges to provide it with copies of civil and criminal suits against important officials, and adopted other measures to influence the outcome of high-profile cases.

The Egyptian judiciary, particularly the high court of appeal, the SCC and the administrative courts, are virtually the only remaining institutions to retain public confidence, despite fears of corruption among lower-ranking justices and those in the exceptional judiciary. But it has become an open secret in the legal community that the executive has made dangerous inroads into judicial independence.

Despite the hoopla surrounding President Mubarak's appointment of the first woman judge to the SCC, there have been worrying developments. For the first time in the SCC's history, and contrary to its tradition of self-selecting its chief justices, Mubarak appointed a chief justice and five judges to the court from outside its own ranks in August 2001. The newly minted judges all worked earlier in the ministry of justice, designing restrictive press and NGO legislation.[16]

Yet the judiciary retains signs of vibrant life in its upper echelons, despite attempts to rein it in. In December 2002, the highest court of appeal accepted the appeal of former finance minister Mohieddin El-Gharib, sentenced to eight years in prison in February for accepting bribes from a businessman in exchange for helping him evade customs duties. The court overturned the supreme state security court verdict, released El-Gharib and ordered a retrial. On 18 March 2003, the same high appeals court ended the three-year saga of Egyptian-American sociologist Saad Eddin Ibrahim, finally exonerating him after two state security courts found him guilty of vague charges and sentenced him to seven years in prison.[17]

Both cases show that the judiciary remains a viable refuge for those who fall foul of the government, and that it refuses to participate in government-sponsored smear campaigns. The high courts retain a significant degree of autonomy from executive dictates. In April 2003, an administrative court dealt a further blow to the government, issuing a precedent-setting decision allowing public demonstrations

and criticising the government for its unconstitutional ban on such gatherings.[18]

The fundamental problem is the lack of institutional guarantees for the independence of the judiciary. The absence of lifetime tenure is the main way the executive controls the judiciary, dangling in front of retiring judges lucrative offers of governorships, consultancy work or appointment to government posts, a fact stressed by Refai in his statement. That judges do not have control over their budgetary or disciplinary matters is a further crippling feature. As with parliament and civil society, the executive must loosen its stranglehold on the judiciary and allow it to manage its own affairs.

*Mona El-Ghobashy (Columbia University, United States)*

## Further reading

Administrative Control Authority (Cairo), Annual Report 2002 [Arabic]

Abdel Meguid, ed., *Democratic Development in Egypt* (Al-Ahram Centre for Political and Strategic Studies, 2002) [Arabic]

Hanan Salem, *The Culture of Corruption in Egypt: A Comparative Study of Developing Countries* (Cairo: Dar Misr al-Mahrousa, 2003) [Arabic]

## Notes

1. *Al-Ahram* (Egypt), 1 August 2002.
2. *New York Times* (US), 3 October 2002.
3. *Al-Ahram Weekly* (Egypt), 19 June 2003; *Business Today* (Egypt), 1 November 2002; *Financial Times* (Britain), 1 February 2003.
4. *Cairo Times* (Egypt), 24–30 April 2003; *Al-Ahram Weekly* (Egypt), 10–16 April 2003.
5. *Al-Ahram Weekly* (Egypt), 13–19 March 2003.
6. *Cairo Times* (Egypt), 26 June–2 July 2003.
7. *Al-Ahram Weekly* (Egypt), 6–12 February 2003.
8. Gamal's proposal to do away with the state security courts (see above), and other reform initiatives that passed into law in June, led some analysts to conclude that a campaign was underway to legitimise his unelected entry into politics by portraying the president's son as the 'saviour from corruption'. See *Al-Ahram Weekly* (Egypt), 5–11 June 2003; *Al-Arabi* (Egypt), 18 May 2003, p. 5; and *Middle East Quarterly* (US), Spring 2001.
9. *Cairo Times* (Egypt), 5–11 June 2003.
10. *Cairo Times* (Egypt), 26 June–2 July 2003.
11. *Al-Arabi*, 11 May 2003. As Eberhard Kienle, a Middle East expert at London's School of Oriental and African Studies, points out, the anti-corruption fervour 'is always very selective, so I wouldn't conclude that it's a general campaign to end corruption. It has to be understood as power games between various groups'; Reuters, 23 September 2002.
12. Wali was demoted after his deputy, Youssef Abdel Rahman, was charged with receiving bribes from a French pesticide company in exchange for allowing their carcinogenic products to enter Egypt.
13. *Cairo Times* (Egypt), 10–16 July 2003.
14. Refai's name came to national prominence in 1969 when he and 188 other respected judges were dismissed or transferred to administrative positions as part of a purge by the Nasser regime. The purge was in response to a 1968 statement the judges had authored blaming Egypt's 1967 defeat by Israel on the lack of democracy and political

accountability. After being reinstated by President Anwar Sadat, Refai went on to head a circuit of the Court of Cassation (high court of appeal), Egypt's most independent judicial institution. Since no judges have lifetime tenure, Refai left the profession upon reaching the mandatory retirement age. He opened a private legal practice and continued to campaign for constitutional and legal reforms that would free judges from the ministry of justice, and was one of the first to raise the issue of full judicial supervision of parliamentary elections.

15. *Cairo Times* (Egypt), 30 January–5 February 2003.
16. *Cairo Times* (Egypt), 27 June–3 July 2002.
17. The state security courts were abolished when law 105 was repealed in June 2003.
18. The ruling came in response to a suit filed by activist Abdel Mohsen Hammouda to hold a demonstration against the US invasion of Iraq. See *Cairo Times* (Egypt), 5–11 June 2003.

## France

**Corruption Perceptions Index 2003 score:** 6.9 (23rd out of 133 countries)
**Bribe Payers Index 2002 score:** 5.5 (12th out of 21 countries)

### Conventions:

Council of Europe Civil Law Convention on Corruption (signed November 1999; not yet ratified)
Council of Europe Criminal Law Convention on Corruption (signed September 1999; not yet ratified)
EU Convention on the Fight against Corruption (ratified August 2000)
OECD Anti-Bribery Convention (ratified July 2000)
UN Convention against Transnational Organized Crime (ratified October 2002)

### Legal and institutional changes

- A law passed in September 2002 introduced a number of changes in the **criminal justice process** and its organisation. By specifying statutes of limitations for certain types of offences, and allowing for court appearances and anonymous testimony in cases involving some lesser offences, the new provisions help pre-empt opportunities for corruption (see below).
- In March 2003, the legislature modified the constitution to reflect a 2002 ruling related to **arrest warrant and extradition** procedures between EU member states. In effect, the arrest warrant allows for extradition without applying the principle of double jeopardy, according to which the alleged crimes must be offences in both the member state issuing the warrant, as well as in the member executing it. The ruling identifies corruption as an offence.
- The long-awaited **financial security law** came into force in August 2003. It is designed to strengthen the regulatory system's powers of control and penalisation by creating a single authority for financial markets. Auditors will assume increased responsibil-

ities and be prohibited from providing an audit and advice for the same client, unless both services are part of the audit process. The law more clearly specifies what types of conflict of interest preclude auditors from working on accounts. An independent authority linked to the ministry of justice – the high council of the audit office – will be responsible for regulating auditors. The law also calls for auditors' remuneration to be made public; for the annual general meeting to receive information on a board's work and on issues of internal control; and for all organisations making a public share offer to publish all transactions carried out by their managing agent, or by the latter's associates.

- At this writing, parliament was reviewing a bill that would alter the **justice system** to reflect recent developments in crime and that would overturn French criminal law procedures. The bill introduces the concept of pleading guilty and contains rules dealing with international legal cooperation that promote the effectiveness of anti-corruption activities. In particular, it seeks to amend the criminal code to reflect the May 2000 Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, as well as the 2002 ruling to institute Eurojust, the EU body dedicated to fighting serious cross-border or transnational crime.[1]

## The misuse of company property

Judges investigating corruption cases often pursue suspects for the offence of misuse of company property. The statute of limitations and types of punishment for the crime are now likely to change.

Until recently, the statute of limitations in cases of misuse of company property began not from the date of the offence but from its discovery; in contrast, the statute of limitations for corruption offences is applied from the date of the offence but runs only for three years. Consequently, investigating judges have tended to prosecute for the misuse of property rather than for corruption, which is usually more difficult to prove. In June 2001, however, the court of cassation ruled that the date the statute of limitations begins must coincide with the date on which a company publishes its annual financial statements, unless there is non-disclosure.[2]

Yet the definition of non-disclosure is actually at the heart of this debate. Opinions would be divided, for example, in a suit involving the appearance of a fictitious employee listed in an annual report: would this case constitute non-disclosure? In its annual report of 25 April 2003, the court of cassation requested that the legislature settle this debate. Until now, parliament, fearing controversy among political groups, had refrained from becoming involved in associated legislative initiatives.

In a related matter, punishment for the misuse of company property may now be affected by the 2002 law modifying the justice system (see below). New procedures allow, for example, a public prosecutor to terminate a criminal prosecution and propose a fine or a restraining order on someone who pleads guilty and accepts the offer. All offences punishable by five years' imprisonment – including the misuse of company property – are subject to the new procedures.

## The diminishing role of the investigating judge

The 2002 law on modifying the justice system met strong opposition from investigating magistrates, whose authority it

promises to reduce. Politicians, by contrast, have not commented openly on the legislation, though they widely support a reduction in the power of the judges, based largely on three aspects of judicial authority.

First, to date French criminal procedure has been based on a system of inquiry that favours a very active role on the part of the investigating judge. The public prosecutor presents complex criminal cases to investigating judges, who are responsible for impartially expediting the inquiry with a view to establishing the facts in a case. Napoleon called the investigating judge the most powerful man in France because of his right at the time to send the accused back to custody; since then, another special judge has been assigned that role, after a law passed in June 2000.

Secondly, politicians on all sides have frequently called into question the role played by investigating judges in very sensitive cases, in particular because several trials have been annulled after the discovery of procedural errors.[3] To the further dismay of many, important cases have ended in acquittal, notably those involving Roland Dumas, François Mitterrand's foreign affairs minister, Dominique Strauss-Kahn, the former minister for economy and finance, and Robert Hue, former secretary general of the French Communist Party.

Thirdly, even the attorney general of the court of appeal of Paris has spoken in favour of the abolition of investigating judges to better protect the rights of the accused.

Unsurprisingly, the new law confers additional powers on the public prosecutor at the expense of the investigating judge. The attorney general – accountable to the minister of justice – may now employ coercive means, such as searches and telephone tapping, hitherto only possible once a case had been referred to an investigating judge. The attorney general may also determine which cases are related to organised crime and plea bargain with a defendant who has admitted to committing an offence. Strengthening the judge's role as arbiter represents an important step towards an accusatory procedure, while empowering the public prosecutor is equivalent to sidestepping the investigating judge. In her recent book, Eva Joly observes that if this reform had applied to the Elf case, the Elf scandal could have been avoided as a settlement would have been reached at the beginning of the proceedings.[4]

## The proposed reform of public contracts: too liberal?

A symptom of France's current tendency towards loosening procedures, the controversial regulation for the reform of public contracts has been the subject of lively debate. Opposition critics argue that this regulation creates new opportunities for corruption, and professional groups are concerned because they consider stricter procedures and safeguards to be guarantees of transparency and greater accountability. The government responded to these reactions by introducing major alterations to the regulation, with particular attention paid to spending limits.

This rule, which could be passed as early as the end of 2003, proposes a major reorganisation of France's procurement system. Through a development of partnerships between the public and private sectors, the government would grant businesses responsibility for the design, construction and operation of public amenities such as hospitals. The removal of all government oversight and management of the funding and performance of such facilities was condemned by the public finance courts 10 years ago and the process was abandoned because of its openness to financial abuse. Concerns are fuelled by issues such as the fact that political parties were estimated to have received around US $100 million of procurement monies from 1989 to 1995, funds that were supposed to be used for the renovation of high schools in the Ile de France region.

The original text would permit a local elected officer to sign a public works contract

for €6.2 million (US $7.1 million) with the organisation of his choice without needing to refer to a tender commission or discussing the contract with a council. When asked about the opportunities for corruption these reforms might create, the minister of economy and finance responded that corruption would not be eliminated through restrictive procedures since it was a 'question of the condition of the spirit'.[5]

Initial criticism of the first draft of the reform prompted the government to introduce major alterations to the text and, in July 2003, to create a cross-party commission of deputies to re-evaluate the more restrictive procedures set forth in the regulations.

The ministry of economy and finances subsequently announced that the new competitive threshold would be €240,000 (US $275,000) for all public tenders. For construction contracts between €240,000 and €6.2 million (US $7.1 million), the state and the local communities will be able to choose one of three formulas: the traditional bidding process, recommended when competition between companies is strong; a publicised negotiation process, which allows communities to raise questions and call for improvements in the bids; and competitive dialogue, in which the public procurer defines needs to the company. For contracts involving more than €6.2 million (US $7.1 million), only the traditional bidding process will be authorised. Further, public procurers must regularly publish a list of all significant transactions and vendors. The finance ministry has decided to continue monitoring transactions with an eye to enforcing the regulations.

The reform was put forth in a climate that broadly favours decentralisation, with central government seeking to devolve increased responsibilities to regional, departmental and municipal authorities. In particular, authority for road construction is soon to be hived off to local authorities while occupational and professional training, and non-national infrastructure projects, will be regional responsibilities.

*Yves-Marie Doublet (Ecole Nationale d'Administration, France)*

## Further reading

Thierry Beaugé, 'Vers une nouvelle réforme du code des marchés publics' (Towards a reform of the code for public contracts), TI France, newsletter no. 17, April 2003

Yves-Marie Doublet, 'Quel financement futur pour les partis politiques européens?' (Questions of future financing for European political parties), TI France, newsletter no. 17, April 2003

'A propos de la réforme en cours du code des marchés publics, il est possible de concilier simplification et transparence' (The current reform process for public procurement can reconcile simplification and transparency), TI France, newsletter no. 18, July 2003

'La délinquance financière devant les tribunaux français' (Financial criminality before French courts), TI France, newsletter no. 15, October 2002

Service central de prévention de la corruption (Central service for the prevention of corruption), 2001 report, Editions des journaux officiels, no. 4433 [in French]

'En finir avec la criminalité économique et financière' (Putting an end to economic and financial criminal activity), Syndicat de la magistrature et ATTC, Editions mille et une nuits, no. 46, November 2002

## Notes

1. For more on the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, see europa.eu.int/scadplus/leg/en/lvb/l33108.htm and www.justice.ie/802569B20047F907/vWeb/pcSBHN548FKE
2. The court of cassation is the supreme court of the judiciary, which is the final court of appeal against the judgments of the lower courts.
3. In France, judges and prosecutors form part of the same single body of magistrates. They may be sitting magistrates or standing magistrates. Sitting magistrates are akin to judges on the bench in the United States; they can issue ordinances, judgments and arrests. Standing magistrates are public prosecutors who work for the government in the criminal jurisdiction.

   The principle of security of office applies to judges but not to prosecutors, the latter being under the direction and supervision of their hierarchical superiors and the authority of the minister of justice. French criminal procedure involves discretionary prosecution by the public prosecutor's office and so far has granted judges a greater role than parties in the conduct of proceedings.
4. Eva Joly, *Est-ce dans ce monde-là que nous voulons vivre?* (Paris: Les Arènes, 2003).
5. *La Tribune* (France), 30 April 2003.

# Greece

**Corruption Perceptions Index 2003 score:** 4.3 (50th out of 133 countries)
**Bribe Payers Index 2002 score:** not surveyed

**Conventions:**
Council of Europe Civil Law Convention on Corruption (ratified February 2002)
Council of Europe Criminal Law Convention on Corruption (signed January 1999; not yet ratified)
EU Convention on the Fight against Corruption (ratified April 2001)
OECD Anti-Bribery Convention (ratified February 1999)
UN Convention against Transnational Organized Crime (signed December 2000; not yet ratified)

### Legal and institutional changes

- In November 2002 the government established the post of **General Inspector of Public Administration** (GIPA) with the aim of improving the performance of monitoring agencies and exposing corruption. The GIPA can order inspections into government departments, public firms or public officials, and examine the private assets of civil servants engaged in any monitoring role. It will publish an annual report listing the most significant examples of corruption, misgovernance or lack of transparency in the public administration.

  While the post may yet have a positive impact on corruption, critics have dismissed it as just the latest example of a habit of responding to problems by simply creating

new institutions, rather than examining why the existing ones do not function properly. The GIPA's remit overlaps with several other agencies', including the economic fraud squad and the Inspectors–Controllers Body for Public Administration, created in 1997.

- In January 2003, a new act extended the responsibilities of the **ombudsman** to include investigating corruption allegations in public service departments as well as addressing human rights and children's rights. The current ombudsman is assisted by five deputies and several investigators.
- In February 2003 parliament reformed the law on **immunity** for members of government. Under the reformed law, members of the government may not be prosecuted, arrested or imprisoned without the approval of parliament. Parliamentary consent is also required before an investigation into government behaviour can be launched or ended. Elected deputies enjoy immunity under article 62 of the constitution and parliament tends to protect its members against prosecution.

## Construction for the Olympic Games multiplies opportunities for corruption

Greece has been pursuing an accelerated economic development programme over the past few years, due to approval of a third EU funding package and its hosting of the Olympic Games in 2004, which has increased the need for public works. The two programmes have multiplied opportunities for bribe taking and raised concerns about the authorities' ability to monitor such large procurements for maximum transparency and optimal growth.

EU development funds for 2000–06 amount to around €50 billion (US $57 billion), much of which will be spent improving the competitiveness of the economy by modernising infrastructure.[1] The cost of preparing for the Olympic Games is over €4.4 billion (US $5 billion).[2]

Three ministries supervise the awarding of contracts: the ministry of finance (service provision); the ministry of environment, planning and public procurement (construction and real estate); and the ministry of development (state supplies). The Audit Court plays an important monitoring role. It exercises prior control when the value of the contract exceeds €1.5 million (US $1.7 million) in the case of supplies and services, or twice that amount in the case of construction schemes, and can conduct an *ex post* review of the selection procedure if it is challenged. The Greek Olympic Committee, in collaboration with the government, also supervises infrastructure projects associated with the games.

To increase transparency, parliament ratified an act in June 2002 that prevents media firms from participating in public works contracts because of their influence on public opinion and politicians. It was feared they might enjoy beneficial treatment as candidates to implement public works, or that they might engage in influence peddling.

More robust legislation on monitoring public procurement was proposed in October 2002, but not passed. The main points included: the establishment of an independent committee to supervise the selection process for awarding contracts, guarantees to ensure that the cost and quality of public works are measured objectively, and stricter penalties for corrupt officials and firms that distort procedures. Both GRECO and TI-Greece, among other organisations, have proposed further detailed measures to combat corruption.

The need for more effective mechanisms is underscored by indications of bribery, corruption and favouritism in the award of public contracts. An Audit Court examination of preliminary contracts in 2000 found 43 out of 182 were illegal, and 34 out of 164 in the following year.[3] An opinion poll conducted in February 2001 revealed that 72 per cent of respondents believed that public administration bodies were responsible for most corruption in Greece and needed to be substantially reformed, while 86 per cent were dissatisfied with the way they operate.[4] Floods seriously damaged many public works in summer and autumn 2002, raising further questions about quality and the effectiveness of the monitoring authorities. Some 2,140 cases of corruption, mostly concerning public officials, are currently under investigation by the authorities.[5]

## Financing of political parties during the elections

Many candidates and parties in the 2000 elections were criticised for their lack of transparency concerning donors and the true amount of funding they received. Prompted to act by such dissatisfaction, parliament ratified a new law on political financing in June 2002 that provides stricter penalties for candidates who do not comply with campaign financing rules during elections.

The new law set the level of public funding for parties at 0.022 per cent of the national budget. Its proportional distribution depends on the number of a party's parliamentary members and votes it received. The total amount spent by a party in the election season should not exceed 20 per cent of the previous public funding package. The new law also set regulations on private contributions. Greek nationals are permitted a maximum annual contribution of €15,000 (US $17,000) to a party and €3,000 to a candidate. Foreigners and Greek owners of media firms are not allowed to donate to political parties.

The new law is also more exacting about how parties report their income. Accounts that record expenses, revenues and the names of donors are required annually. Monitoring them is the responsibility of a committee composed of members of parliament and judges. Those who violate the new rules face fines or, in serious cases, dismissal. The ministry of internal affairs, public administration and decentralisation is to set up a special elections committee before elections with responsibility for implementing the act effectively.

The concern, however, is not with the details of the new law, but whether political parties actually follow them. After the 2000 elections, TI Greece reported several instances where candidates had not followed the existing rules on promotional strategies, but nothing was done to punish the offenders.[6] Rather than pass more legislation, the priority should be ensuring compliance with existing laws.

*Vassilios Ntouvelis (Transparency International Greece/Diethnis and Athens University of Economics and Business)*

## Further reading

Center for the Development of Ideas for Greece in the 21st century, 'Corruption: Policies Aimed at the Containment of Corruption in the Public Sector', 1998, www.E21.gr [Greek]

Council of Europe's Group of States against Corruption (GRECO), 'Evaluation Report on Greece', May 2002, www.greco.coe.int/evaluations/cycle1/GrecoEval1Rep(2001)15E-Greece.pdf

European Anti-Fraud Office, 'European Commission Fight Against Fraud Reports', 2000, 2001 and 2002, europa.eu.int/comm/anti_fraud/reports/commission/2002/en.pdf

TI Greece: www.transparency.gr

### Notes

1. Ministry of Development, www.ypan.gr
2. TI Greece.
3. 'GRECO: Evaluation Report on Greece'.
4. Opinion poll on transparency, conducted by TI Greece in collaboration with Prognosis.S.A. The sample was 920 people from the region of Athens and Pireus, aged 16–69 in February 2001.
5. www.in.gr, 13 February 2003.
6. Although nothing was proven, TI Greece sent a report to the committee responsible for the monitoring of the election process detailing several cases of candidates who had failed to follow regulations concerning spending on publicity. But it faced resistance and bureaucratic difficulties in getting the report to the committee. It is not known whether the report actually reached the committee.

## Guatemala

**Corruption Perceptions Index 2003 score:** 2.4 (100th out of 133 countries)
**Bribe Payers Index 2002 score:** not surveyed

**Conventions:**
OAS Inter-American Convention against Corruption (ratified July 2001)
UN Convention against Transnational Organized Crime (ratified September 2003)

### Legal and institutional changes

- In October 2002, the Anti-Narcotics Operations Department (DOAN) was dissolved and the **Anti-Narcotic Information and Analysis Service** (SAIA) created in its place. The SAIA has responsibility for investigating money laundering. DOAN had been embroiled in a series of scandals – 320 of its staff were arrested for corruption in 2002 – and the level of drug seizures fell under its steerage. The US Bureau for International Narcotics and Law Enforcement Affairs trained 400 new SAIA agents in the year 2002–03.
- A law on pre-trial hearings was approved by congress in December 2002 and entered into force in February 2003. It extends to a greater number of public officials the right to have cases heard by congress before they can be tried in court.[1] It also gives the congressional commissions unlimited time to decide whether or not to lift the **immunity** of the accused, except in the cases of judges or magistrates when the decision must be taken within two months.

- A **Law on Probity and Responsibilities** was approved by congress in December 2002 and entered into force in February 2003. Containing rules and processes for opening administrative procedures against public officials, it specifies the imposition of monetary sanctions when found guilty. The sanctions, however, are mild and the procedures it establishes cumbersome. Also problematic is the fact that the text refers to the offence of 'illicit enrichment', which has not been defined in this or any other law.
- In December 2002, President Alfonso Portillo created the **National Commission for Transparency and against Corruption** to coordinate anti-corruption activities and encourage transparency through implementing institutional policies to 'prevent, sanction and eradicate corruption in the public, private sector and civil sectors'. Set up as an autonomous, impartial body, composed of equal numbers of representatives from civil society and government, by late 2003 the commission was facing allegations that it was not transparent and its future looked uncertain.
- In December 2002, congress approved a decree that gives the attorney general's office responsibility to defend, both legally and extrajudicially, the interests of the state both in Guatemala and abroad. This latter point has positive implications for the **repatriation of assets**.
- A number of bills that would enhance **transparency** were presented to congress, but there was little interest in discussing, let alone passing them. They included: a law to regulate **social funds**, which are currently administered in an entirely discretional way; a law on **access to information** (though this bill has been neutered by the addition of 40 amendments in the legislature); definitions of the offences of **transnational bribery**, illicit enrichment and influence peddling; and a law for the **protection of witnesses** who denounce corruption.

  Most worrying for civil society organisations and the media is the proposal to reform the penal code to criminalise the '**improper use of privileged information**', which would encourage the denial of public information, limit freedom of expression and reverse progress on making information public. What is understood by 'privileged information' is not defined. There is little chance of the law being passed, however, due to its unpopularity and the fact that 2003 is an election year.

## Culture of impunity serves grand corruption

Recent years have seen several cases of grand corruption involving officials at the highest level. Many have not been resolved, reflecting a culture of impunity deeply entrenched in the Guatemalan state. The scandals were exposed by an increasingly vigilant local press.

One of the biggest cases was the alleged embezzlement of 4.5 million quetzals (US $600,000) of public funds by President Portillo, Vice-President Juan Francisco Reyes and his private secretary, Julio Girón. They were accused of setting up 13 bank accounts and four ghost companies in Panama to launder the money. The so-called 'Panama connection' came to light in a report published by the newspaper *Siglo XXI* on 5 March 2002.

In August 2002, anti-corruption prosecutor Karen Fischer Pivaral abandoned the investigation due to lack of evidence. But the accusations continued to rain down and, in December, she asked the Panamanian authorities to take up the investigation. Fischer resigned in March 2003 under pressure, she alleges, from Chief State Prosecutor Carlos de León to terminate the investigation. She later fled Guatemala after claiming to have received death threats.

Fischer's successor, Tatiana Morales, presented her letter of resignation in July 2003 alleging similar pressures. She referred in her letter to frustration that other branches of the public prosecutions service were undermining her work. A special advisory commission created to review the case, in parallel to the anti-corruption prosecutor's investigations, advised against continuing the investigation on the basis of information from the Panamanian bank supervisory body that Portillo had no bank accounts in Panama and, furthermore, that the supreme court should first lift his immunity. Panama's supreme court in mid-July ordered the attorney general's office to open investigations based on a request filed by Morales.

Another case that has still not been properly investigated is corruption at Guatel, the state-owned telecommunications company. It first came to public attention in August 2002, when the newspaper *El Periódico* published a series of investigative reports alleging that Guatel manager, Guillermo Estuardo Del Pinal, and people close to him had misused public funds.[2]

Del Pinal allegedly authorised several large payments that had already been paid and accounted for under the previous Guatel management. In late 2001 a transfer of 70 million quetzals (US $9 million) was reportedly made to cover a debt to the US Eximbank, but Guatel accounts show that this sum had already been paid in 1998–99. He is also accused of providing jobs in Guatel to the friends and family of high-level officials, as well as for members of congress.

Although Finance Minister Eduardo Weymann said that the transactions were illegal – as did the auditor general – he saw no significant obstacles to authorising Guatel's budget for 2000 and 2001. Neither were the allegations an obstacle to Oscar Dubón Palma's election to his current post of auditor general. Dubón had allegedly signed the duplicate when he was financial director and deputy manager of operations of Guatel. He then resigned from his post to run for auditor general, a post he was seeking at the time the allegations emerged.[3]

The cases are indicative of a generalised practice in Guatemala: the abuse of public office for personal enrichment, or as a source of jobs and wealth for family and friends. They raise questions about the lack of autonomy of the various branches and bodies of government – which are frequently headed by people close to the party or officials in government, as the Guatel case demonstrated. Fischer's resignation from the post of anti-corruption prosecutor gives particular cause for concern about the ability of public prosecutors to act in cases involving high-level public officials – the chief state prosecutor has total discretion to remove and name prosecutors. This lack of independence contributes to the prevailing impunity for perpetrators of corruption.

*Violeta María Mazariegos Zetina (Acción Ciudadana, Guatemala)*

## Further reading

Acción Ciudadana, 'Manual Ciudadano: Conociendo y Denunciando la Corrupción' (Citizens manual: knowing about and denouncing corruption), Guatemala, 2002

Acción Ciudadana, 'Manual Ciudadano para el Acceso a la Información Pública' (Citizens manual on access to information), Guatemala, 2003

Acción Ciudadana, 'Manual ciudadano de monitoreo del gasto público' (Citizens' manual on monitoring public spending), Guatemala, 2003

Asociación de Investigación y Estudios Sociales, '¿Llegó la hora de la ética, la integridad y la transparencia en la gestión pública?' (Has the time arrived for ethics, integrity and transparency in public management?), June 2001, www.asies.org.gt/ analisis6-2001.htm

Foro Guatemala, 'Por la Transparencia en la Administración Pública y el Combate a la Corrupción en Guatemala' (For transparency in public administration and the fight against corruption in Guatemala), Guatemala, February 2002

Reporteros sin Fronteras, 'Un "monopolio de facto" en torno al Gobierno' (A '*de facto* monopoly' surrounding the government), 2002 www.infoamerica.org

Acción Ciudadana: www.quik.guate.com/acciongt

### Notes

1. This portion of the law was declared unconstitutional and suspended on 2 September 2003.
2. All of the details from this case were reported in a special investigation by *El Periódico* (Guatemala), 21–26 August 2002.
3. Congress elects the auditor general for a four-year term. The post holder can only be removed by congress, in cases of negligence.

## Japan

**Corruption Perceptions Index 2003 score:** 7.0 (21st out of 133 countries)
**Bribe Payers Index 2002 score:** 5.3 (13th out of 21 countries)

### Conventions:

OECD Anti-Bribery Convention (ratified October 1998)
UN Convention against Transnational Organized Crime (signed December 2000; not yet ratified)

### Legal and institutional changes

- The Act Concerning Elimination and Prevention of Involvement in Bid Rigging, approved in July 2002, came into effect in January 2003. The law introduces mechanisms to prevent public servants, at national and local level, from involvement in **bid rigging in public procurement**. Bid rigging is pervasive in Japan, especially in the construction sector. It was already criminalised under the penal code and regulated under the fair trade law: the new law empowers the Fair Trade Commission (FTC) to require the head of a ministry or local government to take steps to eliminate suspected bid rigging by public servants. When the FTC requires, a minister or head

of local government is now obliged to conduct investigations, punish and demand compensation from the officials involved.

- The **Fair Trade Commission** was relocated in April 2003 and now comes under the direct control of the cabinet office. Since 2001 it had been a semi-autonomous agency within the ministry of public management, home affairs, post and telecommunications. The FTC's previous location raised doubts about its independence since its remit included oversight of the post and telecommunications industries, which were governed by another bureau in the same ministry.

## Failure to extradite Fujimori

Responding to Peru's formal request in July 2003 for the extradition of former Peruvian president Alberto Fujimori to face charges of human rights abuse and corruption, an official said the Japanese government had no intention of overturning its principle of not extraditing Japanese nationals. A bilateral extradition treaty could override this principle, but no extradition treaty exists between Japan and Peru. Fujimori was granted citizenship when he fled Peru in November 2000. While a campaign has been launched in Peru and worldwide to lobby for Fujimori's extradition, it has received only limited support in Japan. (See Box 6.2, 'Campaigning for Fujimori's extradition', page 94.)

## Little action yet against foreign bribery

Although there have been several reports of Japanese companies making illicit payments to win business in international markets, none has yet been charged. The bribery of foreign public officials was made illegal in Japan in February 1999 through an amendment to the Unfair Competition Prevention Law (UCPL), which followed Japan's signature of the OECD Anti-Bribery Convention.

The most prominent case in 2002–03 involved allegations that an employee of Mitsui & Co. gave 1.3 million yen (US $11,000) in bribes to a senior official in Mongolia's ministry of infrastructure between June 2001 and April 2002. The purpose was allegedly to win bids on construction projects for the Mongolian government, funded through Japanese official development assistance. In September 2002 the Japanese prosecuting authorities decided not to file a case against the company or the employee, although the public scandal led to the resignation of Mitsui's chairperson and president. Reportedly, the supreme public prosecutor's office determined that there was insufficient evidence to prove that money had been specifically given to obtain an illicit profit – an important requirement before the UCPL's anti-bribery provisions can be applied. The small amount of money allegedly involved and its timing – long before Mitsui won the tender – were also cited as reasons for dropping the case. However, dropping the case may have sent the message to Japanese companies that small bribes are permissible.

Japan also faced criticism from the OECD Working Group on the Anti-Bribery Convention about loopholes in existing legislation. The UCPL does not apply to cases where an overseas subsidiary of a Japanese company pays bribes to foreign officials. In an apparent attempt to fend off criticism, the ministry of economy, trade and industry announced in January 2003 that the government intended to enact a new law on bribing foreign officials within two years. The law is expected to replace the anti-bribery provisions of the UCPL and expand the law's jurisdiction.

## A year of scandal in the Diet

In March 2003 Takanori Sakai, a member of Japan's lower house of parliament, the Diet, was arrested on suspicion of violating the political funds control law. Prosecutors said that Takanori Sakai violated the law by ordering his secretaries not to report some 120 million yen (US $1 million) in donations he had received from businesses from 1997 to 2001. Sakai pleaded not guilty, and at this writing the case is still being heard in court. In the same month, agriculture minister Tadamori Oshima stepped down after his secretaries faced a series of allegations that they had failed to report receiving money from businesses.

The cases were the latest of a string of corruption allegations that led to the arrest or resignation of numerous Diet members over the past 12 months. In November 2002 Muneo Suzuki was charged on several counts, including receiving a bribe worth 5 million yen (US $42,000) in 1998 from a Hokkaido company in return for using his influence to obtain business related to a national park. At this writing the case is being heard in a district court.

In August 2002, former foreign minister Makiko Tanaka resigned from the Diet, apparently due to increasing suspicion that she had embezzled part of the official salaries paid to her secretaries. The first half of the year also saw the resignations of Social Democrat legislator Kiyomi Tsujimoto, Koichi Kato (former secretary general of the ruling Liberal Democratic Party) and Yutaka Inoue, president of the upper house. Tsujimoto resigned after allegations that she misused funds provided for her secretary's salary. The other two resigned following allegations that businesses had channelled illicit funds to their secretaries. None of the three was charged.

There are a number of reasons behind the high rate of political resignations during the year. While there is no evidence of increased levels of corruption in the Diet, the rate of detection has certainly shot up. Some cases were revealed by whistleblowers, and their actions have led to a growing demand for the introduction of laws to protect them. The media has also played an important role in stoking public impatience with the actions of politicians and their secretaries.

The case of Takanori Sakai may also be evidence of a more rigorous approach by the prosecuting authorities in applying existing legislation on political funding. Prosecutors regarded Sakai's alleged persistent demands for political donations as tantamount to extortion. It was the first time that a Diet member has been arrested under the political funds control law.

*TI Japan*

## Further reading

Ministry of Public Management, Home Affairs and Posts and Telecommunications, ed., *A Study of Corruption Cases in Local Governments: 2002* [in Japanese]

Tetsuro Murobushi, *A 130-year History of Structural Corruption in Japan* (Tokyo: Sekai Shoin, June 2000) [in Japanese]

TI Japan: www.ti-j.org

# Kazakhstan

**Corruption Perceptions Index 2003 score:** 2.4 (100th out of 133 countries)
**Bribe Payers Index 2002 score:** not surveyed

**Conventions:**
UN Convention against Transnational Organized Crime (signed December 2000; not yet ratified)

## Legal and institutional changes

- A **law on political parties** was adopted by parliament in June 2002 and came into force the following month (see below).
- A new **customs agency** was established in August 2002. Previously, it had been part of the ministry of public revenues and so lacked independence. This had resulted in clashes between the minister of public revenues and the chair of the customs committee, which the new structure seeks to avoid.
- The post of **ombudsman** was created by presidential decree in September 2002 to monitor respect for human rights and individual freedoms, including cases where rights have been violated as a result of corruption. The office received 226 enquiries in its first six months, many of them related to complaints about law enforcement agencies, or failures to comply with court decisions. In December 2002 the National Centre for Human Rights was established by presidential decree to support the ombudsman.
- The status of the **disciplinary boards** (DBs) of regions and of the cities of Astana and Almaty was altered and their powers increased by a resolution in December 2002. The DBs are consultative bodies, set up in March 1999 to monitor the activities of the *akim* (mayors) and the heads of other administrative and territorial agencies, including law enforcement bodies that are financed from the local budget. They issue recommendations about disciplinary action for public servants. The impact of the DBs on curbing corruption is not likely to be great, however. They lack autonomy because they depend on the *akim* for administrative personnel and resources. They are also subordinate to a presidential commission on corruption and public service ethics.
- The **Commission for Prevention and Suppression of Corruption** was established within the ministry of justice pursuant to an order from the justice minister in January 2003. There are plans to set up similar commissions in the regional departments of justice. This commission has the status of an interdepartmental body. Its main goals are to prevent and suppress corruption, abuse of office and the misuse of budgetary funds by employees of judicial authorities, though little has been achieved so far.

- The code on **privatisation of land** was approved in June 2003. It introduces private ownership of agricultural land, regulates property rights (ownership and rental), asserts the competence of the state and its bodies to oversee land disputes, and introduces mechanisms to protect and regulate use of the land. The process of privatising land has enormous potential to increase corruption if not properly monitored.
- An **amnesty for registering property** was proposed in June 2003 to legalise property acquired in the so-called 'shadow economy'. It aims to incorporate small businesses into the regulated economy and register property owned by rural immigrants in the cities. This one-off process of registration also has potential for corruption since information will not be disclosed and registration is voluntary. The draft law does, however, stipulate that rights to property that have been challenged legally, or were acquired through corrupt means, will not be granted.

## Restrictive political party financing law threatens democratic principles

Kazakhstan's new law on political parties introduces fundamental changes relating to the financial activities of political parties, including their sources of funding. Any beneficial outcomes that this might represent in terms of more transparent and accountable funding are, however, undermined by clauses in the law that constrain the formation and operation of new parties.

The new law allows political parties to seek funds through entrance and membership fees, donations by Kazakh citizens and Kazakh NGOs, and from local businesses. It stipulates that taxes on donations must be paid and that documentary evidence of donations must be provided.

A number of sources of financing for parties that had been included in the former law of July 1996 are excluded in the new law, such as the proceeds of lectures, exhibitions, sports, lotteries and publications. Also worth noting is that the new law only calls for information from parties about money held in accounts in banks registered under Kazakh legislation. The new law does not consider money held in foreign banks.

The official explanation for the new law is that it strengthens the role of political parties and makes their financing more transparent. By mid-2003 no political party had been charged with violating the sections of the new law relating to party funding.

Where the new law began to take its toll, however, was on party registration. The law increases the number of members a party needs to qualify for registration from 3,000 to 50,000, and requires that branches with no less than 700 members be established in every region in the republic. It also introduces rigid mechanisms for the state to regulate political party activity and increases opportunities for the state and its bodies to interfere in parties' internal affairs.

There were 19 registered parties before the new law was passed: now there are seven. Many of the others were unable to collect the required number of members to qualify for re-registration.[1] As a result, the only remaining opposition party in Kazakhstan is the Communist Party.

Some opposition groups, including the Republican People's Party of Kazakhstan and Azamat, have refused to abide by the law, arguing that some of its clauses directly contradict the constitution and other legislation. For instance, the new membership requirements for the formation of political parties contradict the 1996 Law on

Public Organisations that stipulates that only 10 people are needed to create a public organisation.

The effects of the law in its first year suggest that its benefits in terms of transparency may well be outweighed by the setback in democratic rights. In addition to clauses that debar parties from running if they fail to surpass the membership threshold, restrictions to opportunities for financing parties could force parties to resort to illegal means of financing their activities.

## Civil society and opposition parties mobilise to stem flow of oil dollars into private accounts

A lack of accountability, transparency and public oversight has led to the sad reality that some of the proceeds of Kazakhstan's oil boom have been siphoned into private bank accounts rather than fueling long-term economic development. The following case, referred to as 'Kazakhgate', illustrates how oil revenues are misused and is striking because of the huge sums involved, the senior officials implicated and the array of multinational corporations and banks involved. Almost as important, it demonstrates civil society's intolerance of such institutional failings.

The case gained prominence in March 2003 when US businessman James Giffen was arrested in New York and charged with paying more than US $20 million in bribes to senior Kazakh officials to secure lucrative contracts for his consulting firm, Mercator Corporation.[2] Giffen had been paid to advise President Nursultan Nazarbaev on attracting foreign, primarily US, capital to the oil and gas sector since 1992. His main task was to act as intermediary between oil companies and the Kazakh government, under an agreement dated 21 December 1994 between Mercator and the ministry of oil and gas. Mercator was paid 'success fees' for every deal it brokered.

From 1995 to 2000, Mercator received approximately US $67 million in 'success fees' for its work in Kazakhstan. Giffen also asked oil companies to pay about US $70 million into conditional deposit accounts in Banque Indosuez and its receiver, Credit Agricole Indosuez, in connection with the purchase of oil and gas rights so that this money could then be transferred to confidential Swiss accounts under his control. From the 'success fees' paid to Mercator and the money transferred to confidential Swiss accounts, Giffen allegedly made illegal payments totalling more than US $78 million to two of the most high-ranking officials of the Kazakhstan government, referred to in the case file as 'KO-1' and 'KO-2'. The *Wall Street Journal* of 23 April 2003 identified them as President Nazarbaev and former prime minister Nurlan Balgimbaev.

Opposition parties in Kazakhstan were aware of the fraud investigation long before the case erupted in the international press. In January 2003 the Democratic Party of Kazakhstan, Ak Zhol, launched a campaign on 'transparency of raw materials contracts' to alert the population to how the nation's wealth was being squandered. Activities included collecting signatures in support of greater transparency in awarding contracts for raw materials and, by 4 June 2003, the party said it had collected over 650,000. Ak Zhol also worked on draft amendments to legislation relating to transparency of contracts between the government and energy companies with the aim of making all contracts public. The party co-chairman requested that legislators from the *Majilis* (the board of parliament) support and begin work on the law. Lastly, party leaders appealed to all leading foreign companies working in the raw materials sector to remove confidentiality from oil contracts signed with the government.

The Communist Party also tried to obtain more information about Kazakhgate. In October 2002, the party's first secretary, Serikbolsyn Abdildin, repeatedly requested Prime Minister Imanghaliy Tasmagambetov to furnish details of the persons and sums of

money involved in the scandal – with no results. A request to include the issue on the parliament's agenda was turned down by the speaker, Zharmakhan Tuyaqbaev.

Civil society has played an equally prominent role in the struggle to ensure that oil revenues are not stolen or spent on pet projects or inefficient enterprises. The Caspian Revenue Watch project, coordinated by the Open Society Institute with input from local NGOs, is pushing for the government to implement systemic reforms in the management of oil revenues. It has called on foreign oil and gas companies to disclose their payments so the use of these revenues can be monitored. Without disclosure, the organisations insist, companies expose themselves to accusations that they have underpaid the government and are contributing to continued poverty.

Such opposition efforts, plus pressure from civil society, are vital because the government has so far made little attempt either to remedy the problem or cooperate with international investigators, pleading 'sovereign immunity'.

*Andrey Chebotarev, Nurgul Kuspanova and Sergey Zlotnikov (Transparency Kazakhstan)*

## Further reading

Mark Braden, 'Review of Kazakhstan's New Law on Political Parties', unpan1.un.org/intradoc/groups/public/documents/apcity/unpan006217.pdf

Andrei Chebotarev, 'Reciprocity Payments', *Izvestia-Kazakhstan* (Kazakhstan), 25 June 2002 and 'The Fight against Corruption in Kazakhstan: New Stage or Immediate Bluff?', *Towards Society Without Corruption*, no. 3 (11), June 2002

Transparency Kazakhstan, Source book of the student conference 'Youth against Corruption', 2001, www.transparencykazakhstan.org

Transparency Kazakhstan, 'Problems and Perspectives of Development in the System of Local Government', 2001, www.transparencykazakhstan.org

Transparency Kazakhstan, 'State of Corruption in Universities', 2002, www.transparencykazakhstan.org

Transparency Kazakhstan: www.transparencykazakhstan.org

## Notes

1. In four cases, the reason given by the justice ministry for debarring registration was infringement of the new law's prohibition on gender- or ethnic-based parties.
2. See www.kub.kz material of 30 April 2003 for the bill of indictment on the Giffen case issued by the court of the Southern District of New York.