7 Country reports

Argentina

Corruption Perceptions Index 2004 score: 2.5 (108th out of 146 countries)

Conventions:
OAS Inter-American Convention against Corruption (ratified October 1997)
OECD Anti-Bribery Convention (ratified February 2001)
UN Convention against Corruption (signed December 2003; not yet ratified)
UN Convention against Transnational Organized Crime (ratified November 2002)

Legal and institutional changes

- In December 2003 the government issued decree 1172/03, which aims to increase **transparency in government** (see below).
- A presidential decree issued in June 2003 that establishes more rigorous and transparent procedures for improving the **selection of supreme court judges** has been put into practice. Previously the president nominated supreme court judges and the senate ratified the appointments (see *Global Corruption Report 2004*). Under the new regulations, the general public and the legal community are invited to make observations or present objections about nominees. The decree failed, however, to open up senate hearings to discuss the president's shortlist of candidates, as requested by civil society organisations.
- Decree 588/03, signed in August 2003, extended the above procedures to the **selection of the attorney general, national ombudsman, public prosecutors and circuit court judges**.[1]
- The anti-corruption office has drafted a bill to **reform the public ethics law** of 1999. A public debate was held on the bill, which looks at the functioning of the national public ethics commission, at conflicts of interest, at sanctions and at the use of sworn declarations. At the time of writing the proposal was being examined by the ministry of justice, security and human rights.
- A new **chief prosecutor for administrative enquiries**, Manuel Garrido, was appointed in November 2003. The position carries the rank of head of the anti-corruption office and responsibility for investigating improper behaviour by public officials. The attorney general selected Garrido from a shortlist drawn up through a public competition. Garrido is well known for his anti-corruption work.

Improving the quality of democracy and its institutions

Decree 1172/03 on 'Improving the Quality of Democracy and its Institutions' represents an advance in terms of transparency of government contacts with powerful interest groups in Argentina. It goes part way to answering the public demand for radical change that faced President Néstor Kirchner when he took office in May 2003. But its application is patchy and it leaves important government sectors untouched. The decree was proposed by the sub-secretariat for institutional reform and strengthening democracy and by the anti-corruption office, and incorporates the recommendations of civil society organisations.[2]

The decree establishes the following mechanisms within the executive: high-ranking members of the national executive must record every meeting with lobbyists or special interest groups, providing the names of all participants at the meeting, its purpose and results; all agencies of the national executive, private organisations that receive state subsidies and privatised utilities must provide information within 10 days to any party who requests it; the official gazette must be made available in its entirety and free for posting on the Internet; an institutional space will be created to allow the public to make proposals and recommendations on all administrative rulings and draft laws submitted by the executive to congress; and the executive and bodies that regulate public services must hold public hearings and open meetings on policy changes, though the opinions that emerge are not legally binding.

In terms of access to information, the decree represents a clear advance since citizens will henceforth have the right to request and receive information from organisations under the jurisdiction of the executive. The decree does not overturn previous laws restricting access to public information, however. Moreover, the NGO Poder Ciudadano has monitored compliance with the conflict of interest aspect of the decree and found it to be variable from institution to institution.

The decree has a number of other shortcomings, too. First, its jurisdiction is limited to the executive; it generates no obligations for the legislature, the judiciary or sub-national bodies. These are aspects of government that face harsh questioning for their lack of openness and poor access to information.[3]

Second, the regulation of a constitutional right,[4] such as citizens' access to public information, should not be limited or granted by presidential decree, but rather should be the subject of a law adopted by the legislature. A bill on access to information, currently before congress, has received initial approval by the lower house, but is likely to falter if the senate fails to pass it before the end of the 2004 parliamentary year.

It is vital that the mechanisms included in the decree be applied to other areas and levels of government, such as the legislature, the judiciary and state governments, and that it be guaranteed by more robust laws – at present the decree could be modified or repealed by another presidential decree. Special attention should be paid to the problems that may arise from its implementation. It is too early to draw conclusions, but what is clear is that further steps are required if a gap is not to open between the new norms and their full implementation.

Plea bargaining: a path to truth?

In December 2003, two civil servants confessed to acts of corruption and offered to help law enforcement agencies with investigations that eventually threatened to envelop government officials of the highest rank. Confessions such as theirs are rare in Argentina, though they would be more common if proper witness-protection legislation were adopted.

Mario Pontaquarto, a former senate clerk, reportedly admitted to having been dispatched in April 2000 by the government

of Fernando de la Rúa (December 1999–December 2001) to bribe a number of senators into voting for a law that effectively reduced workers' employment rights and which passed in May 2000. The total amount of the bribe was apparently 5 million pesos (the equivalent of US $5 million before Argentina's financial collapse), which was allegedly siphoned from the state intelligence service's secret funds. The scandal came to light when Hugo Moyano, a leader of the General Labour Confederation, said former labour and social security minister Alberto Flamarique had told him that he 'had the Banelco' (a local debit card) for those senators who opposed the reform. The case lay forgotten, however, until December 2003 when Pontaquarto came forward.

The judge in charge of the investigation, Rodolfo Canicoba, took testimony from Pontaquarto, former intelligence secretary Fernando de Santibáñez and senators José Genoud and Emilio Cantarero. The information they gave was solid, the judge said, and there was ample evidence that bribery had taken place.

In July 2004 the first Buenos Aires criminal appeals court revoked the trial court decision on the grounds that the investigation had been 'defective' and that the details provided by Pontaquarto had not been rigorously checked. Further investigations were ordered that ultimately confirmed his story.

Meanwhile Roberto Martínez, a secretary to former justice minister Raúl Granillo, alleged that all the ministers and a number of secretaries apparently received an additional secret salary of 50,000 pesos (US $50,000) per month during the administration of Carlos Menem (1989–99). The money, he said, had been paid through the office of former cabinet chief Jorge Rodríguez. No receipts were issued or signed. Martínez confessed he had withdrawn an envelope with 50,000 pesos from the cabinet chief's building every month from July 1997 to November 1999.

Others like Pontaquarto or Martínez might step forward if Argentina were to adopt laws to comply with article 37 of the UN Convention against Corruption, which urges signatories to encourage persons who have participated in proscribed offences to confess in exchange for relative clemency. The law at present guarantees neither protection to informants, nor reduced sentences for penitent criminals who come forward with information.

Mixed success for new campaign finance in the 2003 presidential campaign

Law No. 25.600 regulating electoral campaign financing was applied for the first time during the presidential election campaign of 2003. The legislation provides for limits on permitted spending, disclosure of individual and corporate donors, and declaration of expenditure. Parties must also present a preliminary estimate of income and expenditure 10 days before voting and a final report one month later, and district judges must publish the financial statements of political parties on the Internet. This allows for campaign expenditures to be monitored by civil society organisations. The results of the first efforts to monitor the new law signal a gap between the regulations and their application.

The majority of the 21 parties or coalitions that contested the April 2003 elections complied with reporting requirements in a timely fashion. The final reports of the three most popular presidential candidates indicated that total spending was in the region of US $2.6 million, compared to nearly US $48 million in 1999.[5]

There was a big difference between the estimated spending projected in the preliminary report and the final reports, however. According to a report issued by the CNE (the national electoral commission) auditors, the discrepancies, of up to several hundred per cent, 'can distort the decision of the elector since they take into account a preliminary report when deciding their vote, which will be significantly different from the final version'.

There was also an enormous discrepancy between what the candidates said they spent and the traceable spending evidently invested in media campaigns. In the preliminary report supplied by his financial managers, Kirchner declared he had spent only US $1 in the 10 days before the election and that his sole donors were the two men responsible for his campaign, who allegedly contributed US $89 each. The final report included contributions in kind – mostly advertising – worth just over US $527,000, which was supposedly spent after the election. The auditors' report tells a different story, concluding that more than US $1.2 million in expenditure was left out of Kirchner's final report. Poder Ciudadano has estimated that Kirchner's television campaign cost at least US $2.6 million.

Menem's alliance disclosed income and expenditure of slightly over US $400,000, of which US $329,000 was spent on printing ballot papers.[6] Menem spent nothing on advertising, by official accounts, but media and NGO enquiries revealed that as much as US $5 million was allocated to this purpose. Two foundations from Salta[7] allegedly made a combined donation of US $714,000 to the Menem campaign, although this was not declared to the electoral authority.

In conclusion, parties now have to provide detailed reports on their financing, which is an improvement, but these reports too often remain in the realm of fiction. To close the gap, the supervisory body responsible for enforcing the law needs to be strengthened. One concrete recommendation is that the enforcement body be given the resources necessary to carry out a nationwide media audit, as the Mexican Federal Electoral Institute does.

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Further reading

The International Budget Project, *Latin-American Index of Budgetary Transparency: The Experience of 10 Countries, 2003* (Mexico, 2003)

Poder Ciudadano Foundation, 'Banco de datos de Políticos Argentinos' (Data bank on Argentine Politicians), www.poderciudadano.org/elecciones2003/index.asp

Poder Ciudadano Foundation, *Manual para el monitoreo del Consejo de la Magistratura* (Manual on the monitoring of the Judicial Council) (Buenos Aires: Manchita, 2003) and *Manual de monitoreo de medios en períodos electorales* (Manual on monitoring the media in election campaigns) (La Crujia: Buenos Aires, forthcoming)

Organization of American States, 'Report of the Experts Committee on the Mechanism for Monitoring Implementation of the Inter-American Convention against Corruption', Washington, DC, 2003, www.oas.org/juridico/english/mec_rep_arg.pdf

Daniel Santoro, *Venta de armas – Hombres de Menem* (Arms Sales – Menem's Men), (Buenos Aires: Planeta, 2003)

Fundación Poder Ciudadano (TI Argentina): www.poderciudadano.org

Notes

1. At a sub-national level, the autonomous government of Buenos Aires and the province of Santa Fe introduced in September 2003 and January 2004, respectively, new criteria for the selection of magistrates, public prosecutors and other legal appointees, making them subject to the approval of the local legislatures.
2. In its wording the decree acknowledges the input of the Political Reform Board and the NGOs Argentine Dialogue and the Social Forum for Transparency.

3. Organization of American States, 'Report of the Experts Committee on the Mechanism for Monitoring Implementation of the Inter-American Convention against Corruption' (Washington, DC, 2003).
4. The right of access to public information is guaranteed in the Constitution because article 75, section 22 gives constitutional status to international treaties that include respect for this right.
5. Based on information given by candidates to Foundation Poder Ciudadano.
6. Both the central government and political parties print ballot papers. Political parties receive public funding for this purpose.
7. Research by Daniel Santoro of the daily newspaper *Clarín* revealed that the Foundation Argentina Solidaria and the Salta Foundation, both formed by friends of Juan Carlos Romero, the governor of Salta who was also Menem's candidate for vice-president, made these donations.

Azerbaijan

Corruption Perceptions Index 2004 score: 1.9 (140th out of 146 countries)

Conventions:
Council of Europe Civil Law Convention on Corruption (ratified February 2004)
Council of Europe Criminal Law Convention on Corruption (ratified February 2004)
UN Convention against Corruption (signed February 2004; not yet ratified)
UN Convention against Transnational Organized Crime (ratified October 2003)

Legal and institutional changes

- The Azerbaijan parliament adopted **a new anti-corruption law** in January 2004. The law provides definitions of corruption and its perpetrators, and outlines the responsibilities of public officials. Though widely welcomed, the law fails to secure public disclosure of the income and property of public officials, and is overly permissive in its obligations to disclose close relatives as third parties in official transactions (see below).
- The March 2004 presidential decree on the application of the new anti-corruption law stipulates that the law will come into force in January 2005. The **deferred implementation** of the law is seen by many as a means of providing corrupt officials the opportunity to conceal their misdeeds prior to implementation. The decree establishes an anti-corruption agency under the prosecutor-general (see below).
- In April 2004 the **Commission for the Fight against Corruption** was constituted at the first meeting of the Civil Service Executive Board. A major weakness of the commission is its exclusion of civil society and the media. The commission is made up of a mix of presidential, parliamentary and constitutional court appointees. Both the executive board and the commission are headed by Ramiz Mehdiyev, the head of the presidential administration (see below).

Accusations of corruption

Following the ill health (and subsequent death) of former communist leader Heidar Aliev, the presidential elections of October 2003 saw Heidar Aliyev's son, Ilham, elected to the presidency of Azerbaijan. The change of administration triggered an unravelling of the relative cohesion between territorial-ethnic and economic interest groups,

largely held in abeyance under the former leader, and unleashed mutual, wide-scale accusations of corruption.

The principal division which opened up during the elections on the issue of corruption focused on the disposal of state assets in the transition from a centralised economy to a form of market economy. Conservatives, mainly opposition groups, had supported retention of state assets and tight state control over the private sector. Reformers, led by the presidential office, had supported moderate liberalisation. For both groups, corruption, or accusations of corruption, became a key issue in attacking the legitimacy of the opposing camp.

During the elections the conservative camp sought to attack the poor corruption record of the incumbent government, dominated by the Yeni Azerbaijan Party (YAP), and to demonstrate how dispersal of state monopolies had provided a cover for racketeering and widespread corruption. The main opposition parties in particular attempted to make 'the Kozeny scandal' one of the key issues of the election campaign.

Dating from early 2000, accusations of large scale corruption had surrounded the Czech-Irish national Viktor Kozeny, following his failure to secure the privatisation of the State Oil Company of the Azerbaijan Republic (SOCAR) for a US-based investment group (Omega Advisers Inc.).[1] Kozeny had admitted to the *Wall Street Journal* in September 2001 that he had spent US $83 million on bribes to high-ranking Azeri officials. He further claimed this was done with approval of his client and filed a complaint in a US district court against his US investors, naming several high-ranking Azerbaijan government officials as recipients of bribes.[2]

This scandal resurfaced again on the eve of the 2003 Azerbaijan presidential elections when, in October 2003, a charge of fraud was filed, again in the US, against Kozeny. Charges included appropriation of Omega Advisers Inc.'s clients' money to the tune of $182 million, funds intended for the purchase of SOCAR.[3]

For their part, the reformist camp has portrayed retention of state control of assets as serving the interests of a small elite of high-ranking public officials seeking to protect its control of Azerbaijan's limited markets and resources. The conservative agenda, they argue, is an attempt to sustain a system of patronage, preventing independent players from the private sector from emerging. In his public speech in February 2003, President Ilham Aliyev openly criticised monopolies supported by high-ranking government officials in basic commodities, such as trade in flour and bread products.[4]

In the main, however, the reformist retort to allegations of corruption within its own ranks appears to have been to level allegations of corruption at opposition figures. Such smear campaigns first appeared in spring 2004 with the publication of articles in the official state newspaper *Azerbaycan*, which severely criticised a group of high-ranking government officials reputed to belong to the conservative wing. The article portrayed them as incompetent and corrupt.[5]

The smear campaigns continued in June 2004. Opposition MP Sabir Rustamkhanli complained in parliament about corruption among chairpersons of the parliamentary commissions. Sirus Tabrizli, deputy chairman of the ruling Yeni Azerbaijan Party, demanded concrete facts.[6] These allegations were downplayed by the chairman of parliament on the grounds that Rustamkhanli had provided no names. Nevertheless, allegations were picked up again by Gohar Bakhchalieva, parliamentary vice-speaker, who also forwarded anonymous accusations against unnamed governmental figures opposed to the reformist agenda.[7]

Both locally and internationally there has been widespread criticism that the allegations of corruption against public officials are politically motivated. Locally, figures such as Presidential Chief of Staff Ramiz Mehtiyev have been publicly accused of orchestrating such campaigns.[8] There has been no response to the allegations of corruption from law enforcement bodies.

A new anti-corruption law

In his March 2004 decree, President Ilham Aliyev endorsed the law 'On the Fight against Corruption' and thus satisfied a precondition of Azerbaijan's admission to the Council of Europe. The law will come into effect in January 2005.

Though the delay for implementing the law has attracted criticism from observers who see this as a 'probationary period' in which to rectify previous misdeeds,[9] there are indications that such moves have improved public confidence in the ruling party's commitment to tackle corruption. A nationwide household survey conducted by Transparency Azerbaijan in May 2004 revealed that nearly all respondents believed that the implementation of a national anti-corruption programme and the establishment of a special anti-corruption agency would curb corruption. Only one quarter of all respondents did not believe that any serious anti-corruption efforts would result.

Despite such public optimism, it is not clear that the legislation that has been introduced represents a genuine commitment to fight corruption. On the positive side, the law stipulates the creation of a commission for the fight against corruption. However, the fact that both the board and the commission are chaired by a single high-ranking government official, the head of the presidential administration, calls into question the ability of this body to carry out its work impartially. The exclusion of civil society and the media from the commission can do little but accentuate this anxiety.

The track record of the Azerbaijani government in its ability to smother legislation is further cause for concern. Both the law on unfair competition and the law on anti-trust policy worked well in appeasing an international audience, but they failed to prevent the emergence of monopolies.

In the absence of a well-defined national anti-corruption programme to complement the anti-corruption legislation, there is every reason to suppose that this legislation will similarly fail when it comes to implementation. Given the legislation's deferment until after the parliamentary elections of November 2004, there is a very real danger that the legislation will be effectively shelved after the election. The failure to address these issues prior to the elections should ensure the issue of corruption will again dissolve into a political football between interest groups, as it did during the presidential elections.

Moreover, the presidential decree makes provisions for the establishment of an anti-corruption agency under the Azerbaijani prosecutor-general an office which, like the anti-corruption commission, is dependent on executive power. The law does not contain any special provisions envisioning conditions for the release of the chief prosecutor from his duties at a later date. Prosecutors have no legal right to refuse 'orders' coming from the executive authorities.

The drive within the ruling party to develop corruption-related legislation in 2003–04 should be seen as both aimed at appeasing domestic disquiet over corruption in the approach to parliamentary elections, and an attempt to bolster Azerbaijan's poor reputation for corruption at an international, particularly European, level. The likelihood of new waves of clashes between competing groups within the government and between government and opposition parties is very real.

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Further reading

Caspian Revenue Watch project, www.eurasianet.org
Elizabeth Lash, *Azerbaijan and Corruption* (Sommerville: Tufts University, 2002), www.transparency-az.org

R. Safaralieva, ed., *Corruption: A Business Ethics Manual for Azerbaijani Companies* (Baku: TI Azerbaijan, 2003)

TI Azerbaijan: www.transparency-az.org

Notes

1. *Fortune* magazine (United States), 6 March 2000.
2. Turan News Agency (Azerbaijan), 4 April 2000.
3. *Echo* (Azerbaijan), 11 October 2003.
4. *Echo* (Azerbaijan), 2 February 2003.
5. *Azerbaycan* (Azerbaijan), 20 April 2004.
6. *Adalet* (Azerbaijan), 5 June 2004.
7. *Zerkalo* (Azerbaijan), 12 June 2004.
8. *Eurasia Insight* (Azerbaijan), 5 May 2004, www.eurasianet.org
9. *Nedelya* (Azerbaijan), 9 January 2004.

Bangladesh

Corruption Perceptions Index 2004 score: 1.5 (145th out of 146 countries)

Conventions:
UN Convention against Corruption (not yet signed)
UN Convention against Transnational Organized Crime (not yet signed)

Legal and institutional changes

- In February 2004 parliament passed the **Anti-Corruption Commission Act**, paving the way for the establishment of an independent body to fight corruption in the country. The act provides the legal framework to set up a commission to promote good governance and ensure transparency in public administration. The commission is to consist of three commissioners with a chairman to be appointed from among them by the country's president. Whether the commission will truly be independent, however, is doubtful (see below).
- The planning ministry introduced new **public procurement regulations** in October 2003, in an attempt to promote transparency and accountability in the public procurement system. The regulations aim to ensure value for money in public procurement and that procurement is conducted in a fair, transparent and non-discriminatory manner. A major limitation of the regulations, however, is that exceptions are allowed on matters of state security, including military procurement. The rules also fail to mention price-quality considerations in procurement and delays in delivery. Most importantly, the regulations do not have the full force of a law. The government can, therefore, prevent their implementation at its own discretion.

Government efforts at reform: the creation of an independent anti-corruption commission

The Anti-Corruption Commission Act 2004 was passed by parliament in February 2004. The commission replaces the Bureau of Anti-Corruption, which had failed to address the endemic corruption in Bangladesh and which was itself widely believed to be riddled with corruption.

The impetus to create a new commission was the result of increasing pressure from civil society groups. From 2001 onwards, the regular appearance of Bangladesh at, or near, the bottom of Transparency International's Corruption Perceptions Index was particularly influential in keeping corruption on the political agenda. In 2004, all the major political parties included the creation of an independent anti-corruption commission in their election manifestos.

The objective of the commission is to prevent corruption and conduct investigations into corruption-related offences. Under the law, the commission is to consist of three commissioners with a chairman to be appointed from among them by the country's president. The commissioners are to be nominated by a five-member selection panel, which will include two judges, the comptroller and auditor general, the chairman of the public service commission and the most recently-retired cabinet secretary. Commissioners are appointed for a four-year term.

The commission's mandate includes several functions: to conduct inquiries and investigations, file and conduct cases, review the legally accepted measures for preventing corruption, promote honesty and integrity in public life and make recommendations to the president. It will also have the powers of arrest, to take testimony from those involved in allegations, to demand individuals to submit a statement of assets and liabilities, and to take possession of property in excess of known sources of income. A new court is also to be established.

While the decision to abolish the Bureau of Anti-Corruption and establish a new agency is welcome, the new law has serious shortcomings that call into question the potential effectiveness of the commission. First and foremost, the commission's autonomy appears seriously limited. Aside from the obvious weakness that the head of the commission is appointed by the president, the commission will also be dependent on the government for decisions about its organisational structure and, notably, its budget. The absence of civil society representation on the selection committee further jeopardises the neutrality of commissioners. There are no civil society oversight mechanisms and no provisions in the law for civil society to play a role in raising public awareness and preventing corruption.

Several amendments to the current law would strengthen the commission. The power of arrest should be made more specific; left as it is, such power is open to abuse. In addition, it is crucial that the commission be provided with adequate resources and personnel as soon as it is established. In order to avoid the fate of the Bureau of Anti-Corruption, the commission must achieve quick results to gain public respect. The credibility of the institution could be enhanced by introducing an asset-declaration requirement for the commissioners.

Bringing about institutional change in Bangladesh is no simple task; it will inevitably meet strong resistance. In the case of the new anti-corruption commission, it is the international donor agencies that have taken the most interest, though domestic civil society groups have done their best to back up demands for more public accountability.

Speeding up justice

The call for judicial reform in Bangladesh revolves around two themes, the abuse of judicial office for political ends and the chronic inefficiency of the judiciary leading to a poor quality of justice and the presence

of widespread 'low level' bribery. The April 2004 act that extends the 2002 'Speedy Trial Act' for two years is set to impact both these phenomena in complex and even opposing ways. While increasing the speed of trials may prevent certain types of 'low level' bribery, it may exacerbate the use of the judiciary for political ends.

The main objective of the act is to speed up the settlement of cases that have direct bearing on social violence and on the poor state of law and order in the country, both of which are popularly perceived to be on the rise in Bangladesh. In this regard, the notorious reputation of the Bangladeshi judiciary for slowness is richly deserved. Delays of several years have been reported in respect to child and sexual abuse cases for which the law requires a verdict within 90 days. The crimes covered by the act include extortion, destruction of public and private goods, public assault, intimidation causing anarchy, and violation of tender procedures. Under the law, investigations of these crimes should be completed within seven days of filing a case; the accused should be brought into the court within 24 hours; and a case should be settled within 30 days (60 days if the accused has absconded).

While the act does not specifically address the topic of corruption, the settling of such cases within a specific time frame could have a substantial impact on a major source of graft in Bangladesh. One particularly widespread technique of corruption has been for judicial officers to slow down judicial processes in order to compel the parties to pay bribes to achieve a judicial verdict. Indeed, the popular term for a bribe in Bangladesh is 'speed money'.

Gains in the area of 'low level' bribery for speedier trials may, however, come at the cost of exacerbating other forms of corruption. Critics of the act have argued that the law can be easily misused by the government to intimidate its opponents. Opinion polls conducted by TI Bangladesh have suggested that about one quarter of the cases heard under the Speedy Trial Act have been politically motivated. The country's opposition parties have all expressed objections to the law.

Reporters without Borders and the Bangladesh Centre for Development, Journalism and Communication have also protested against the misuse of the law to arrest journalists, including Abdul Mahbud Mahu of the local daily *Ajker Desh Bidesh* and Hiramon Mondol, a reporter for the daily *Prabartan*, saying that the journalists had no time to prepare a defence.[1]

A further worrying effect of speedy trials is that an increasing number of the accused are not present during their trials. There also seems to have been a lack of thought about the implications of accelerated trails for other areas of the judicial system. No additional resources were allotted to cope with increased activities of the courts or to deal with the knock-on effects in higher courts of appeal.

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Further reading

Centre for Policy Dialogue (CPD), *Developing a Policy Agenda for Bangladesh: Civil Society's Task Force Reports 2001* (Dhaka: 2003)

Federation of Bangladesh Chamber and Commerce Industry (FBCCI), *The Cost of Doing Business Study* (Dhaka: 2004)

Transparency International Bangladesh (TIB), Corruption Database (Dhaka, 2003)

TI Bangladesh: www.ti-bangladesh.org

Note

1. See www.rsf.org/article.php3?id_article=7778 and www.rsf.org/article.php3?id_article=9282

Bolivia

Corruption Perceptions Index 2004 score: 2.2 (122nd out of 146 countries)

Conventions:
OAS Inter-American Convention against Corruption (ratified February 1997)
UN Convention against Corruption (signed December 2003; not yet ratified)
UN Convention against Transnational Organized Crime (signed December 2000; not yet ratified)

Legal and institutional changes

- A **presidential anti-corruption delegation** (DPA) was created in October 2003, replacing the secretariat for the fight against corruption and for special policies, which was created in August 2002 under the auspices of the vice-president's office. The DPA's main task is ensuring compliance with the Inter-American Convention against Corruption, and coordinating anti-corruption efforts of the judiciary, the auditor general, the public prosecutor and the bank regulator. The delegation has drafted a wide-ranging action plan for 2004–07 focused on promoting public ethics; establishing monitoring mechanisms for corruption-prone bodies and processes; and supporting and strengthening authorities with powers to investigate and penalise corruption. Since starting, it has released a number of bulletins and reports, including analyses of specific corruption cases, and has established mobile anti-corruption brigades for rural municipalities as well as civic anti-corruption networks. The delegation also receives complaints related to corruption. Its effectiveness is limited, however, by its lack of investigative and prosecutorial powers. Another problem is that it was created by presidential decree and therefore has weak legal status, and as part of the executive has no legal authority over the judiciary or the legislature. It has also been criticised for its lack of independence, since it is part of the central government. Its success at a regional level has been mixed: in the state of Cochabamba, for example, in April 2004 the DPA delegate was allegedly given no support or office space by the head of the department, and eventually resigned.
- In the absence of a law on **access to information**, new rules were issued by presidential decree in February 2004 requiring public officials to give public access to information that is not of a confidential nature. The DPA is studying ways to implement the decree across government departments. A more extensive access to information bill has been drafted, but is unlikely to be discussed by the legislature in 2004.
- Congress agreed in March 2004 on the order in which a bicameral constitutional commission would investigate a series of **high-profile cases** involving corruption. They include allegations against former president Gonzalo Sánchez de Lozada as well as the Kieffer case (see below). Each legislative chamber has a separate ethics commission that can also look into corruption allegations, but political in-fighting has limited the effectiveness of these commissions. One advance was the modification in March 2004 of procedures for dealing with cases; the ethics commissions of both chambers can now take on cases directly, without the prior approval of the president of the respective chamber.
- At the time of writing, congressional commissions were drafting bills on the **criminalisation of illegal enrichment, whistleblower protection and the creation of a general anti-corruption prosecutor**. Fighting between political parties was likely to delay these legislative processes beyond 2004.

Kukoc scandal prompts legislature to deal with misuse of discretionary funds

The level of discretionary funds granted to government ministries has increased in recent years, reaching between US $120 million and US $140 million in 2003, in a country with a government budget for the same year of only US $1 billion. The general public can do little more than speculate about how this money is spent. The high-profile case of Yerko Kukoc, government minister under the second administration of Gonzalo Sánchez de Lozada (August 2002–October 2003), included allegations of the abuse of discretionary funds, and galvanised the legislature into debating a bill that would increase oversight as to how such money is spent.

The official justification for the discretionary funds is that they are spent on national security projects, such as countering drugs trafficking or quelling disturbances, which would be compromised if the spending were made public. Unofficially, however, they have allegedly been used to top up the salaries of senior government officials, including former presidents.

The auditor general's office is charged with supervising the discretionary funds, in line with an executive decree issued in May 2003, which was a first attempt to exercise control over how the funds are spent. In October 2003, mass protests against planned energy and gas sales, in which more than 100 people were killed, forced President Sánchez de Lozada to resign. Just before he did so, he issued a decree stating that accounts pertaining to reserved funds should be presented to the president only, and not to the auditor general.

Kukoc was appointed minister in March 2003 and was, along with the president, one of the most prominent figures during the October clashes. He too was forced to resign as a result, and fled the country. Three weeks later Kukoc returned and stated his readiness to talk about how the discretionary funds had been spent.

The public prosecutor initiated investigations in December 2003, after US $277,000 in cash was reportedly discovered in the house of Kukoc's alleged childhood friend, Milder Rubén Arzadum Monzón, who testified that Kukoc had asked him to hide the money. According to the public prosecutor, the money was from the ministry's discretionary funds.

Kukoc argued that he could account for most of his ministry's funds, except for those used to quell the October uprisings, which were covered by the presidential decree overturning the requirement to present accounts to anyone other than the president.

His position was further complicated when one of Bolivia's main trade unions, Central Obrera Boliviana, a key player in the uprising, accused Kukoc of ordering the withdrawal of 13.6 million bolivianos (US $1.8 million) from the central bank around the time of the presidential decree exempting officials from presenting discretionary fund accounts to the auditor general. The president of the central bank, Juan Antonio Morales, confirmed this. Kukoc reportedly admitted that he had transferred money to other ministers and officials, and that he had deposited part of the money he withdrew from the central bank in a private account.[1]

Kukoc was put under house arrest in January 2004, and posted bail later that month. He eventually pleaded guilty to stealing from the state, and received a two-year suspended sentence on condition that he would provide information about money embezzled by other public officials. He is the first person to be convicted in Bolivia for misusing discretionary funds.

Sánchez de Lozada's successor, President Carlos Mesa, revived the original decree requiring accounts to be presented to the auditor general, and in January 2004 issued new rules for spending, and accounting for, discretionary funds. In April 2004, a draft bill was submitted to congress to regulate discretionary funds, stipulating explicit

prohibitions on certain uses of the funds, and requiring accounts to be presented not only to the auditor general's office, but also to a legislative commission. The law, if approved by the legislature, will be less easily amended or repealed than a decree.

Power, immunity and the reach of justice: the case of Fernando Kieffer

Bolivia's judiciary, which appears weak relative to the executive and legislature, has time and time again proved unable to convict members of the political and economic elite for corruption. Political interference and the broad immunity from prosecution enjoyed by legislators are further stumbling blocks in the fight against official corruption. The case of Fernando Kieffer, a former defence minister and former congressman who allegedly misused money donated by the international community to help earthquake victims, illustrates how difficult it is to hold Bolivia's powerful and privileged to account.

Kieffer was first accused before the legislature in August 2000, but has yet to go on trial. There are three charges: that he diverted international donations for the people of Aiquile and Mizque who suffered an earthquake in 1998; that some of the money was used to buy an overpriced executive jet; and that he was behind the irregular purchase of Galil weapons for the army.

As a congressman, Kieffer claimed immunity from prosecution until the end of his term in 2002. The case stalled for another six months until Vice-President Jorge Quiroga ordered the case file to be transferred to the congressional commission responsible for examining high-level corruption cases. At the time of writing, it is now third in a list to be examined by the commission.

In the case of the aeroplane, the auditor general reportedly concluded that Kieffer had paid extravagantly more than the market value, and in late 2001 Kieffer and the head of the company that brokered the deal were ordered to pay the state just over US $1.1 million, which was the sum by which they had overpaid.[2] Kieffer unsuccessfully challenged the order. A second court again ordered him to pay in July 2003, and finally the defence ministry froze Kieffer's assets and gave him 10 days to pay the fine. Kieffer filed for an injunction, and has reportedly still not paid. He also allegedly accused anti-corruption delegate Lupe Cajías of obstructing his defence.[3] Faced with public pressure, the government found alternative sources of funds to transfer US $780,000 to each of the two provinces affected by the earthquake. The investigation into the unlawful weapons deal is ongoing in the legislature.

However slowly the courts appear to be moving in this case, things could have been worse. It looked as though the case might be shelved in May 2004, along with many others that ran into the four-year statute of limitations that applied under the old criminal code. The case falls under the jurisdiction of a new code of criminal procedure, however, first introduced in May 2001, which has helped transform the justice system from a closed, written system to a system of transparent oral trials.

Kieffer apparently continues to move freely within the highest echelons of Bolivia's political class, a tier of politicians apparently immune from, or inured to, the scorn normally poured on corrupt political leaders. Though the government has made some attempt to bolster the justice system, the level of impunity for officials is generally high. Political parties reportedly tend to protect their own, causing cases to stall in the legislative commissions charged with investigating them and, in the case of parliamentarians, with lifting immunity.

Jorge González Roda (Fundación Etica y Democracia, Bolivia)

Further reading

H. C. F. Mansilla, *La Policía Boliviana, entre los códigos informales y los intentos de modernización* (The Bolivian police, between informal codes and attempts to modernise) (La Paz: ILDIS – Plural, 2003)
Marco Antonio Gonzales and Fernando Fernández Orozco, *Basta ya de impunidad* (Enough impunity) (La Paz: Fondo Editorial de los Diputados, 2002)
Martín Sivack, *El dictador elegido* (The elected dictator) (La Paz: Plural, 2001)
Rafael Archondo, *Incestos y blindages, radiografía del campo político periodístico* (Incest and armour-plating, a radiography of political journalism) (La Paz: Plural, 2003)

Notes

1. *La Razón* (Bolivia), 17 January 2004.
2. *La Razón* (Bolivia), 17 July 2003.
3. *La Razón* (Bolivia), 29 July 2003.

Brazil

Corruption Perceptions Index 2004 score: 3.9 (59th out of 146 countries)

Conventions:
OAS Inter-American Convention against Corruption (ratified July 2002)
OECD Anti-Bribery Convention (ratified August 2000)
UN Convention against Corruption (signed December 2003; not yet ratified)
UN Convention against Transnational Organized Crime (ratified January 2004)

Legal and institutional changes

- The ruling issued by the superior electoral court in 2002 requiring candidates who participated in the national elections to present their **campaign expenditure** statements electronically was extended to candidates participating in the forthcoming 2004 municipal elections. The superior electoral court is expected to approve new procedures regulating the presentation of political parties' annual expenditure statements. Among other requirements, all statements must be presented electronically, in conformity with the system generated by the electoral court. Although parties have had to render accounts since 1993, the new regulation will provide a broad picture of party finance for the first time.
- The **Council for Public Transparency and the Fight against Corruption**, established within the inspector general's office in May 2003, had its structure approved and its functions regulated in December 2003. It is difficult to foresee what impact the council is likely to have, however, as it is an advisory body with no executive or enforcement power. It does have civil society representatives, but contrary to the government pledge to set up a centralised anti-corruption organisation with wide-ranging powers, it cannot impose reform programmes on other ministries. The result is that important anti-corruption initiatives are spread out across a number of uncoordinated offices.

- The law on the **budget guidelines** for 2005 was submitted to congress in April 2004. President Lula da Silva was first advised to refuse full access to budget expenditure on the grounds that strategic information should be protected, but apparently under pressure by the media and opposition forces in congress, he relented. The law was approved in August 2004 and gives members of congress access to computer data on the budget.

The not so beautiful game

Over the past few years, Brazilian football has been dogged by numerous problems allegedly largely attributable to dishonest and unaccountable management. Repeated corruption and embezzlement scandals have had a negative impact on football development. Although Brazil has an unmatched record on the field at international level, the country's domestic football shows severe financial difficulties. The exodus of top players seeking lucrative contracts abroad has resulted in a sharp decline in revenues coming from supporters at home.

A series of media reports on scandals involving team administrators, managers and player agents, following Brazil's defeat by France at the 1998 World Cup and its elimination by Cameroon at the 2000 Olympics, led to two congressional inquiries to investigate the 'dark secrets' of the sport. Included in the list of scandals was Ricardo Teixeira, the president of the Brazilian Football Confederation (CBF), accused of fraud and misappropriation of funds, and Wanderley Luxemburgo, the former coach of the Brazilian national team, involved in a case of alleged unreported income stashed in undeclared foreign bank accounts.

The investigation conducted by the lower house of parliament focused on alleged irregularities in a US $400 million sponsorship agreement between Nike and the CBF, but the investigation was shelved, reportedly after interference by Eurico Miranda, president of the Vasco da Gama club and member of the investigating commission.

However, a senate inquiry referred to irregularities including income tax evasion, non-payment of social security tax, money laundering, evasion of foreign exchange controls, skimming of gate revenues and paying off referees to help fix match results. The final report called on the prosecutor general to indict 17 officials on allegations of mismanagement and other crimes, but, so far, many of them remain in office, thanks either to their political connections or to the public prosecutors' inefficiency.

Besides the investigation of crimes and misconduct of football officials, the senate inquiry proposed new legislation in order to enforce transparency and accountability in the administration of clubs and federations. After two years of negotiations, President da Silva sanctioned, in mid-2003, the so-called 'Law of Moralisation in Sport', together with a more ambitious law, the 'Supporters' Statute', a bill of rights for football supporters.

The new legislation obliges football clubs and federations to publish their accounts annually and submit them to independent auditors, allows for the preventive removal of directors accused of misconduct, and encourages clubs to become companies and to abide by standard business regulations.

Not surprisingly, less than a week after Lula da Silva sanctioned the laws, the directors of some of Brazil's leading clubs threatened to suspend the national championship indefinitely in protest against the new legislation. Under a barrage of criticism from government officials, supporters and the media, and faced by the president's firm personal stand in favour of the laws, the football bosses backed down. Given the long history of widespread corruption associated with Brazilian football, it seems too early to foresee whether the new legislation will have the hoped-for impact on combating unethical and illicit conduct, and enforcing transparency in the administration of clubs and federations.

Politics, gambling and organised crime

The 52 million Brazilians who backed Lula da Silva's Workers' Party in the 2002 presidential election could have taken a major gamble, unwittingly. Early in 2004 President da Silva, having announced in his annual address to congress the government's intention to enact specific legislation to regulate gambling in bingo halls, decided to outlaw the activity, as the government considered it to be a front for money laundering and organised crime.

The government's move to ban gambling followed the disclosure of a videotape showing Waldomiro Diniz, an adviser to Jose Dirceu, the presidential chief of staff and one of the most influential men in the government, allegedly asking for bribes and campaign contributions from a major industrialist. Although the scandal does not directly involve Jose Dirceu, the episode dented his authority and credibility, and the opposition in congress began calling for a full-scale investigation and his removal from office.

This scandal, and the exposure in June 2004 of a ring of health ministry officials, lobbyists and businessmen who had allegedly conspired to inflate the price of government purchases of blood and blood derivatives, damaged the government's authority and the Workers' Party's clean image. In both cases President da Silva reacted immediately, firing the presidential assistant, banning bingo halls throughout the country, and calling for an in-depth investigation of the health ministry.

Analysts see the bingo ban as an almost naive effort to distance the government from involvement in dishonest behaviour. For many, the government is looking in the wrong direction, failing to assess correctly the magnitude of the problem. A number of analysts argue that the scandal represents more than an isolated case of corruption inside the government, but rather unveils dangerous connections between organised crime and political campaign financing in Brazil.

Nevertheless, it appears that the government bingo crusade is going to continue. After the approval of the presidential decree in the chamber of deputies, in a surprising result the senate rejected the measure as unconstitutional and allowed bingo halls to reopen. At the time of writing, the government was to introduce a bill in congress, in the same terms as the earlier decree, to try once more to outlaw gambling throughout the country. No inquiry to investigate the connections between political financing and organised crime had been proposed.

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Further reading

Claudio Weber Abramo, 'Corruption in Brazil: The Perspective from the Private Sector, 2003', survey by Transparência Brasil in association with Kroll Brasil, April 2004, www.transparencia.org.br

Bruno Wilhelm Speck and Claudio Weber Abramo, eds, Primeira pesquisa sobre o mercado de compra de votos na cidade de Campinas: demandas e ofertas (Survey on the vote buying market in the city of Campinas: supply and demand), survey by Transparência Brasil and Ponto-de-Vista, September 2003, www.transparencia.org.br

Bruno Wilhelm Speck and Claudio Weber Abramo, eds, *Corrupção na municipalidade de São Paulo* (Corruption in the city of São Paulo), 2003, www.transparencia.org.br

Transparência Brasil (TI Brazil): www.transparencia.org.br

Britain

Corruption Perceptions Index 2004 score: 8.6 (11th out of 146 countries)

Conventions:
Council of Europe Civil Law Convention on Corruption (signed June 2000; not yet ratified)
Council of Europe Criminal Law Convention on Corruption (ratified December 2003)
OECD Anti-Bribery Convention (ratified December 1998)
UN Convention against Corruption (signed December 2003; not yet ratified)
UN Convention against Transnational Organized Crime (signed December 2000; not yet ratified)

Legal and institutional changes

- In July 2003 the Joint Parliamentary Committee published its report on the draft corruption bill, which had been published by the government in March 2003. The report was highly critical of the draft bill, particularly in relation to the government's definition of corruption. The government published its official response to the report in December 2003, accepting some of the recommendations, but defending itself strongly against others, particularly in respect of the definition of corruption (see below).
- In November 2003 the Crime (International Cooperation) Act 2003 was passed, which provides new powers for cross-border information sharing between the Serious Fraud Office and overseas police bodies.
- In March 2004 the government published a white paper entitled *One Step Ahead: A 21st Century Strategy to Defeat Organised Crime*, which proposed that a new national police organisation, the Serious Organised Crime Agency (SOCA), should be established. SOCA would be responsible to the home secretary and would investigate organised immigration crime, drugs trafficking, and the recovery of criminal assets (see below).
- In May 2004 the Export Credits Guarantee Department announced new policies specifically designed to combat bribery and corruption (see below).

Corruption at the crossroads?

In March 2003 the government published its draft corruption bill, which aimed to codify existing corruption legislation, but its future remains uncertain.

The draft bill originated from a report by the Law Commission in 1998, following which a working group was established comprising, among others, the Law Commission, the Crown Prosecution Service, the treasury, the Serious Fraud Office (SFO), and the home office. The group published a White Paper in June 2000, *Raising Standards and Upholding Integrity: The Prevention of Corruption*, which was subsequently sent out for public consultation.

The White Paper's proposals, which set out to codify existing laws into a single piece of legislation, attracted only limited though focused criticism, including from Transparency International (UK). Consequently the draft bill contained nearly all the recommendations that were first made public in 1998.

In July 2003 the Joint Parliamentary Committee considering the bill published its report, which was drawn from oral

and written evidence made by a number of organisations, including Transparency International, the SFO, the OECD Expert Group on Bribery and the attorney general. The evidence presented by these and other witnesses was highly critical of the bill, which led the committee to suggest a number of fundamental changes to the proposed legislation.

The committee argued that the bill would not be 'readily understood by the police, by prosecutors, by jurors and by the public, including – especially – the business and public sector communities, and their advisors, both here and abroad'.[1] The report also criticised the definitions of 'corruption' and 'corruptly' contained within the bill as 'opaque', and argued that they fail 'to cover some corrupt conduct such as when the head of one firm bribes the head of another or when an employer consents to the bribery of his agent'.[2] The report made further suggestions regarding corruption in the private sector and parliamentary privilege.

In December 2003, the government published its official response to the report, which accepted several recommendations, but defended the bill against criticisms over its definition of corruption.[3] The government argued that the proposed legislation remained consistent from 1998 to 2003, in which time it underwent three periods of consultation, a fact attested to by the committee's report.[4]

Why, then, had these previous consultations not provided more substantive criticisms that could have been addressed in either the 2000 White Paper, or the 2003 bill itself?

One possible reason is simply the complexity of the area, in which few can agree on a definition of corruption. A second reason could be that there is a lack of political will within the government, and that legislative reform is simply not high enough on the government's agenda. Defenders of the government may point to its signing of the UN Convention against Corruption in December 2003. In order to ratify the convention, however, the government admitted that it needs to put in place primary and secondary legislation and there is no timetable for this process as yet. Indeed, it seems the government more heavily favours legislation on the fight against fraud and organised crime rather than corruption per se, as evidenced for example by its recent white paper *One Step Ahead: A 21st Century Strategy to Defeat Organised Crime* (see next section). The apparent lack of will may have resulted in public indifference.

As things stand, the future of reform is uncertain – although the redrafting process is ongoing, there is now no definite date for its completion. Reform of existing legislation, therefore, still appears to be some distance off.

A fragmented fight?

Although anti-corruption organisations appear to be successful in Britain, the relationship between them is complex and somewhat confusing. Any coordination that does occur takes place in three major ways: joint investigations; information sharing; and developing common standards.

In February 2004 David Blunkett, the home secretary, announced the creation of a new joint investigation body, accountable directly to him. The role of the Serious Organised Crime Agency (SOCA) was fleshed out in the White Paper, *One Step Ahead*. It is proposed that SOCA will be charged with combating drug trafficking and organised immigration crime, as well as the recovery of criminal assets. It was hoped that the creation of the new agency would 'reduce the number of organisations with which the police and others have to deal, improving efficiency and reducing bureaucracy'.[5]

The Department for Work and Pensions (DWP) contains another example of a joint investigation agency. To promote co-operation between the various units within the DWP, other government departments and local authorities, a joint working unit

was established, whose aim is to improve the number and quality of anti-fraud operations across organisational boundaries. In addition, the DWP has also worked in conjunction with the Inland Revenue and HM Customs and Excise, using intelligence and shared information jointly to investigate traders suspected of operating in the shadow economy with the aim of detecting and penalising benefit or tax fraud.

One example of information sharing is the Financial Fraud Information Network (FFIN) that covers regulators, government departments, professional bodies, law enforcement and the markets. Founded in 1992 to facilitate cooperation between the wide range of public bodies concerned with financial fraud, in 2003 the FFIN secretariat became part of the Financial Services Authority.

An example of developing common standards is the Public Audit Forum, a consultative and advisory body that provides a forum for developing professional standards. The forum is made up of the four national audit agencies and, in addition, has a consultative forum with representatives from central and local government, the national health service, and the accountancy and audit profession.

How effective these agencies will be is, of course, open to debate. What does seem to be important is that the examples of inter-organisational cooperation outlined above appear to reinforce the view that the government is currently focused on fraud and organised crime rather than corruption. Anti-corruption commentators have argued, for example, that SOCA will have little impact on cases of overseas bribery or corruption carried out by white collar criminals, which has recently been backed by a government announcement that the SFO would be the first agency to consider cases of overseas bribery and would take a lead in any subsequent investigations.[6]

Inter-agency cooperation seems intuitively to be a good thing, especially in an area as complex as corruption, but this very much depends on what type of cooperation is promoted. Information sharing, too, is an inherently sensible activity, but this must be considered in light of some agencies playing a key role in investigations: to what extent will they be willing to share information with others?

Perhaps most importantly, coordination is needed for common standards on corruption, particularly in terms of overseas bribery and corruption. Transparency International's recent National Integrity Systems study on Britain has argued that there is 'a certain hypocrisy at the heart of government commitment to integrity. On the one hand it is developing ethical frameworks to regulate the behaviour of public bodies in the UK. At the same time, it appears to condone the activities of government and business when operating overseas.'[7] This problem is highlighted in the case of the Export Credits Guarantee Department (ECGD).

Export Credits Guarantee Department

The ECGD is a separate government department, answerable to the minister for trade and industry, whose main role is to provide insurance to British exporters and British companies investing overseas. It also provides guarantees to British-based banks to make loans to overseas investors. In 2000, the ECGD underwent a major review of its mission, but in 2004 further anti-corruption measures were unveiled.

The ECGD is in a particularly strong position to detect and prevent corruption, and is also able to influence corporate behaviour in the rejection of bribery in the conduct of foreign business. Its application procedure includes a non-bribery declaration, and a request for information that the applicant has exercised all caution that no bribe has been paid during the course of the proposed transaction. The ECGD announced new policies and procedures specifically designed to combat bribery and corruption, which came into effect in May 2004. They

include provisions to increase the ECGD's powers to inspect exporters' contractual documents; requirements that applicants demonstrate that they have procedures in place to prevent corrupt activity; and an extension of declaration requirements to include affiliates as well as the directors and employees of companies.

These measures have only been introduced, however, after stringent public criticism. Recent media coverage has argued that the ECGD 'has been pervaded by an institutional culture of negligence when it comes to corruption',[8] which is particularly worrying in light of the ECGD's own claim that there has not been a single occasion since the 2000 review where ECGD cover has been refused due to any evidence or suspicion of corrupt practices.[9] The question arises, then, as to why cover has not been refused under what appear to have been less than transparent circumstances, particularly as it has been alleged that:

> Throughout the 1990's and into the early 2000's, the ECGD consistently supported projects, which were over-priced and plagued by corruption allegations, from dams such as the Lesotho Highlands Water Project to power plants such as the Dabhol Power Plant in India. In some instances it gave or continued backing despite knowing about these allegations. In most instances, it revealed a deep reluctance to investigate such allegations or pass them on to the relevant UK or local authorities.[10]

Such concerns are exacerbated by the scale of the ECGD's business: 95 per cent of all debt owed to Britain by developing countries is actually owed to the ECGD. It is crucial, then, that the new regulations prove to be effective rather than merely rhetorical. Until then, suspicion will remain that Britain has a very different approach to corruption abroad than it does at home.

The case of the ECGD therefore unites the themes of this report. A coordinated approach to common standards would seem to be the most logical way to combat bribery and corruption, particularly in overseas cases. Such an approach would best be tackled through legislation, which lays down clear rules to underpin Britain's anti-corruption strategy. Yet such legislation is being held up due to a variety of factors, which in turn has a knock-on effect on Britain's commitments to international anti-corruption measures such as the UN Convention. Despite Britain's relatively good standing in the Corruption Perceptions Index, then, there is still a need for the government to provide a clear foundation upon which to build an improved, consistent anti-corruption strategy.

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Further reading

S. Hawley, *Turning a Blind Eye: Corruption and the UK Export Credits Guarantee Department* (Dorset: The Corner House, 2003)

S. Hawley, *Underwriting Bribery: Export Credit Agencies and Corruption* (Dorset: The Corner House, 2003)

TI (UK): www.transparency.org.uk

Notes

1. 'Draft Corruption Bill – Report and Evidence' (HL Paper 157 HC 705).
2. The committee suggested that the definition in the draft bill should be replaced by the following definitions: 'A person acts corruptly if he gives, offers or agrees to give an improper

advantage with the intention of influencing the recipient in the performance of his duties or functions'; 'A person acts corruptly if he receives, asks for or agrees to receive an improper advantage with the intention that it will influence him in the performance of his duties or functions.'

3. 'The Government Reply to the Report from the Joint Committee on the Draft Corruption Bill', CM 6086 (2003).
4. According to the bill, 'The draft Bill is the product of a long policy-making process … The Law Commission published a Draft Bill on corruption in essentially similar terms five years ago.'
5. Home Office, *One Step Ahead: A 21st Century Strategy to Defeat Organised Crime*, Cm 6167 (London: HMSO, 2004).
6. *Financial Times* (Britain), 25 June 2004.
7. Transparency International, *National Integrity Systems, Transparency International Country Study Report, United Kingdom 2003* (London, 2004).
8. *Observer* (Britain), 2 February 2003.
9. 'New Procedures on Bribery and Corruption in Export Deals Announced by ECGD', 11 April 2004, www.ecgd.gov.uk/news_home.htm?id=6095
10. *Observer* (Britain), 2 February 2003.

Burkina Faso

Corruption Perceptions Index 2004 score: not surveyed

Conventions:
AU Convention on the Prevention and Combating of Corruption (signed February 2004; not yet ratified)
UN Convention against Corruption (signed December 2003; not yet ratified)
UN Convention against Transnational Organized Crime (ratified May 2002)

Legal and institutional changes

- The Public Accounts Court, established in 2002, delivered its first reports to the National Assembly in September 2003 for the period 1995–2000 and on 2001. The court's mandate is to monitor the **execution of budgetary legislation** and the management of the state's funding of political parties. The need for scrutiny in this area was underlined by the court's findings. In addition to delays in payments and the transmission of documents, the reports identified accounting errors and the non-reimbursement of loans made to government officials and parliamentarians.
- In January 2004 an **all-party group of parliamentarians** established a coalition to fight corruption that may serve as a link between them and anti-corruption activists as well as international networks, such as the African Parliamentarians' Network against Corruption. The year also saw the submission of a bill on parliamentarians' salaries to the parliamentary office, intended to tighten rules on gifts and contributions.
- In January 2004 REN-LAC, a nationwide anti-corruption network of more than 30 civil society organisations, submitted a memorandum to President Blaise Compaoré calling for more effective controls on corruption. Amongst a range of measures, REN-LAC recommended the introduction of **comprehensive anti-corruption legislation** governing all relevant institutions. The memorandum also called for greater independence

and powers for the existing control structures, including the Public Accounts Court, the General State Inspectorate and the High Commission for the Coordination of Anti-Corruption Activities. These offices currently have few enforcement powers, their reports are not made public and the government has final say over their membership. The government has not responded to REN-LAC's recommendations at the time of writing. The umbrella group intends to issue a new memorandum each year that includes an assessment of which of its recommendations the government has acted on during the preceding year.

- A workshop on good governance in the private sector was held in January 2004 at the initiative of Shell-Burkina and involving around 100 companies. The workshop called for a **private sector code of good conduct** that is expected to be adopted by multinational and national firms in the oil industry and other sectors during the course of 2004. The code will require them to comply with national legislation; to introduce specific anti-corruption rules and ensure compliance by their employees; and to monitor the practice of giving gifts, and forbid benefits in kind or abnormally high payments that might amount to bribery. The main challenges will be to mobilise other companies behind the code, and also to make it effective in the context of the close relationships that exist between political parties and the country's largest economic players.
- In April 2004 the majority of civil society organisations adopted a **code of conduct** including principles of good governance relating to financial management, human resources management, democratic management and the rejection of corruption. A national review committee comprising several important civil society figures was established to publish each year a register of those organisations that have adhered to the code. Questions are already being raised about the criteria that should be used for establishing the list.

Anti-corruption commission struggles to assert credibility

The High Commission for the Coordination of Anti-Corruption Activities (HACLCC) delivered its first annual report to Prime Minister Paramanga Ernest Yonli in January 2004. The report was not made public, nor were the reports from the Technical Inspectorate of Public Services, the General State Inspectorate and the General Inspectorate of Finances, all of which provided evidence for the HACLCC submission. In an unexpected move, however, the HACLCC organised a press conference after submitting its report, which had the effect of bringing back into the public eye well-known cases that had been gathering dust on the inspectors' shelves.

President Compaoré established the HACLCC, which officially began work in April 2003, as a way of demonstrating the government's commitment to fighting corruption at a time when, to use the prime minister's words, 'corruption [was] becoming a professional practice for some'. The commission's stated mission is to 'coordinate the fight against corruption and assist the government in the prevention, detection and fight against fraud and corruption within government'.

The press conference opened up a public debate as to whether the HACLCC reports should be publicly available. Against the backdrop of a nascent national anti-corruption strategy, the principle of publication was accepted – a victory for the advocates of transparency. Under pressure from lobby groups, international financial partners and the private sector, the prime minister responded by accelerating the formulation of a national anti-corruption policy under the auspices of the HACLCC. The resulting policy, made public in April

2004, has several strands: strengthening regulatory and legal measures; making existing monitoring systems and law enforcement more effective; improving the efficiency and transparency of public services; strengthening international cooperation; and improving civic participation in the fight against corruption.

The HACLCC has an immense task ahead in implementing the new anti-corruption policy. It must first deliver by establishing its own credibility. The commission began its work discreetly and is perceived in some quarters to be surplus to requirements, given the existence of similar bodies. To win the confidence of the public, it will need to send out a strong signal by bringing criminals to justice, particularly in large-scale corruption cases. The HACLCC's good faith will be put to the test by the way it deals with the cases brought to light by the General State Inspectorate.

To satisfy expectations it is essential that the HACLCC's work is visible to the public. The good work done to date by the General State Inspectorate has not been apparent due to the scope for government interference (including political blackmail and the invoking of secrecy rules) in following up its findings, and because of its lack of decision-making power.

The commission will therefore be judged by its success in making its work publicly visible and in bringing those responsible for corruption to justice. Otherwise, Burkina Faso will be no better than other countries in which anti-corruption agencies have become pawns in a political game of posturing to please development partners, or to scare off the opposition.

Success in the fight against corruption also depends on other official institutions, and the HACLCC report contained several recommendations directed at them. These included extending the scope of the Technical Inspectorate of Public Services to the fight against corruption and allocating extra staff and resources to it; the creation of a review committee for inspectorates; and strengthening the authority of the disciplinary committees within each government department by enforcing the clauses of the decree relating to civil service reforms.

The report also called for the HACLCC to establish a blacklist of individuals who have mishandled public funds, which would be held by the council of ministers and the government's general secretariat.

Scandal of government contract for verification of imported goods

There was considerable media interest during 2003–04 in the award of a government contract for the verification of imported goods, with allegations of bribes worth hundreds of thousands of dollars. The allegations were made against ministers, members of the commission that awards public sector contracts, journalists and customs officials.

Four companies proposed bids in response to an international tender in October 2003. The proposals were evaluated on technical merit, but the award committee's findings were not accepted and it was asked to repeat its assessment twice – with a new set of members on the committee the third time round. With the new set of members in place, the committee's initial findings were reversed in December 2003.

A combination of leaks to the press and an inquiry by REN-LAC led to public indignation about the apparent reversal of the committee's assessment and allegations of corruption in its decisions. Media and civil society pressure resulted in the government publishing the results of the tender in April 2004. The losing bidders then lodged an official complaint with the finance ministry's Commission for Out-of-Court Settlement of Litigation (CRAL).

To further complicate the allegations, a number of claims were made that some of the media coverage of the case had itself resulted from bribes. According to one of the losing bidders' complaints to the CRAL: 'It should be recorded that numerous articles

have appeared in the local press, which, aside from their polemical and libellous nature … disclosed a great deal of confidential information about the bidders to which only the contract award committee should have been privy.' The publisher of a trade periodical alleged he had received a bribe for an article he wrote based on documents hand-delivered by a director of one of the companies that lost the bid.

In June 2004, the CRAL completed its investigation into the import verification contract case. Its report concluded: 'Regarding the irregularities noted, the CRAL believes that the results of the bidding process … should be declared null and void in accordance with legal and regulatory rules relating to the tendering process.' The case is far from closed. At the time of writing, the decision lay in the hands of the finance minister. If the minister rules against the CRAL's conclusions, the complainants can appeal to an administrative tribunal. While the case is ongoing and allegations of corruption remain unproven, it continues to provoke public concern.

Luc Damiba (REN-LAC)

Further reading

Conseil économique et social (CES), *Rapport 2003 d'activités* (2003 report of activities) (CES, 2003)

Comité national d'éthique (CNE), *Rapport 2002* (2002 report) (Ouagadougou: IP, 2002)

REN-LAC, *Rapport 2003 sur l'état de la corruption au Burkina Faso* (2003 report on the state of corruption in Burkina Faso) (Ouagadougou: Editions REN-LAC, 2004)

UNDP, *Rapport sur le développement humain 2003: Corruption et développement humain* (Human development report 2003: corruption and human development) (Ouagadougou, 2004), www.pnud.bf/RAPDH2003.htm

REN-LAC: www.renlac.org

Cambodia

Corruption Perceptions Index 2004 score: not surveyed

Conventions:

UN Convention against Corruption (not yet signed)

UN Convention against Transnational Organized Crime (signed November 2001; not yet ratified)

Legal and institutional changes

- In September 2003 Cambodia was admitted to the **World Trade Organisation** (WTO), although the new National Assembly still needs to ratify the measure. WTO membership requires the creation of a commercial court to bring transparency in dispute adjudication in line with international standards. There are doubts, however, that the political will exists to create such a court that is both separate from the existing judicial system and free from political intervention.
- In what is widely viewed as a substantial step towards reforming the corrupt legal system, Cambodia's first school to train judges and prosecutors, the **Royal School of Judges and**

Prosecutors, opened in November 2003. The new graduates will eventually replace the 190 judges who currently preside. Critics, however, are concerned about the selection of students: one candidate who failed the entrance exam was reportedly offered admission in exchange for US $15,000.[1]

New government compromised by claims of illegitimacy

Following the country's second national election in 1998, the political situation in Cambodia has been highly unstable and corruption has flourished amid intense power struggles. In the run-up to the third national election in July 2003, Cambodian civil society groups and donors widely anticipated widespread corrupt activity. The international community threatened withdrawal of donor support if the election was not declared 'free and fair', and the National Election Committee (NEC) promptly declared them to be so. The civil society election monitor, the Committee for Free and Fair Elections in Cambodia (Comfrel), dispute this.[2]

Despite the three main parties signing a voluntary code of conduct for political parties (drafted by the NEC, the National Democratic Institute and the political parties themselves) in June 2003, there were reports of widespread vote buying, violence and intimidation by all contesting parties, particularly in rural areas. The ruling Cambodian Peoples' Party (CPP) bore the brunt of most of these allegations, and election monitors and opposition parties both accused the CPP of doling out money, rice and sarongs in exchange for votes. Other parties were accused of distributing gifts to participants at their rallies in an attempt to influence results.[3]

Civil society played an important role up to, and during, the election by distributing voter guides, arranging public discussion forums and participating as election observers at polling stations. Their presence created a relaxed atmosphere and assured voters that the process was fair. The presence of international and national election monitors was limited.

The CPP, which has been in power since 1979, won without an outright majority causing a political deadlock that lasted for 11 months. A fudged, and some argue unconstitutional, agreement between the CPP and the National United Front for an Independent, Neutral, Peaceful, and Cooperative Cambodia (FUNCINPEC) eventually resolved the deadlock and allowed a coalition government to be formed. Despite the questionable legitimacy of the current administration, however, there was very little criticism of the incoming government from academics, civil society groups or international observers. Instead, there was widespread agreement that the 2003 election was, at least, an improvement over that of 1998, with more open and issue-driven debates, and an overall reduction in the number of reported electoral irregularities.

While the CPP's continuing majority cannot be solely attributed to vote buying and intimidation, the voting demographics in Cambodia may keep such practices a prominent feature of the electoral landscape. The increasing loss of CPP's powerbase in the expanding, better educated urban areas creates an incentive to make up for this shortfall in the rural areas where the majority of corrupt practices already occur.

Corruption in rural areas is encouraged by two primary factors. First, in spite of the code of conduct for political parties, those buying the votes and doing the intimidating are local party leaders who were neither involved in the design of the code, nor the formulation of party election strategy. Their position reflects Cambodia's patron–client social structure in which a small elite determine overall political direction and only their local deputies actually have contact with voters. Since many local functionaries identify passionately with their party, and enhance their stature

according to the number of votes they can 'farm' in their commune or district, they are frequently indifferent to the means they have to use to get those votes.

The second explanation for high levels of corruption in rural areas is that Cambodians have come to expect gifts at election time and can easily fall victim to intimidation because of their poverty, illiteracy and lack of awareness both of legal procedure and even the political differences between the parties for which they have been pressured to vote.[4]

National anti-corruption law

There is a widespread belief that it is only through legislation that the so-called 'culture of corruption' will change in Cambodia. There has therefore been a great deal of civil society pressure to pass the Law on Anti-Corruption (LAC). Progress, however, has been painfully slow. The national assembly, a parliamentary committee and civil society groups combined to create a first draft in 1994. At a June 2002 donor conference, Prime Minister Hun Sen pledged to pass the LAC within 12 months. After more delays, and threats by the international donor community to withdraw funding unless the LAC was passed, it began its passage through parliament only to have its ratification interrupted by the June 2003 elections.

While the drawn-out process of attempting to pass this legislation has continued, civil society groups have been playing an active role in attempts to strengthen the draft of the LAC. In forming its recommendations reformers have drawn on similar laws in other countries and, most particularly, the UN Convention against Corruption (UNCAC), which Cambodia has not yet signed.

The LAC fails to meet the requirements of the UNCAC in a number of respects. The LAC is weaker in its definition of corruption and does not acknowledge the importance of international cooperation in reducing it. The LAC outlines five forms of corruption: bribery, the accepting of bribes, the offer or acceptance of any kind of favour, illegal use of influence or power, and 'any secret conspiracy with a lack of transparency'. In contrast the UNCAC contains separate and specific offences relating to bribery, embezzlement, the abuse of influence and illicit enrichment. In addition, the UNCAC contains definitions of 'illicit enrichment' – a lifestyle beyond the reach of a civil servant's official remuneration – that are absent from the LAC.

Another weakness that needs to be addressed is the implementation of the LAC, which in the present draft is the responsibility of the Supreme National Council against Corruption (SNCC). At present the LAC stipulates that the SNCC should be composed of seven members drawn from the royal court, the senate, the national assembly, the constitutional council, the government, the supreme council of magistracy and the national audit authority. Critics claim, however, that such a composition guarantees the SNCC's lack of independence.

If the LAC is passed, coalition trade-offs mean that it is unlikely to have a significant impact on the behaviour of high-ranking officials and is much more likely to function as an agency for snaring low-profile, middle-ranking officials. This is not, however, necessarily an argument against its adoption. The prosecution of lower-level officials may create a public demand to investigate higher up the professional ladder.

Christine J. Nissen (Centre for Social Development/TI Cambodia)

Further reading

Zim Chea and Bruce McKenney, Trading Forest Products in Cambodia: Challenges, Threats, and Opportunities for Resin, Working Paper No. 28 (Cambodia Development Resource Institute, 2003)

World Bank, *Cambodia Governance and Corruption Diagnostic: Evidence from Citizen, Enterprise and Public Official Surveys* (World Bank, 2001)
Toshiyasu Kato, Jeffrey Kaplan and Chan Sophaland Real Sopheap, *Enhancing Governance for Sustainable Development* (Cambodia Development Resource Institute and the Asian Development Bank, 2000)

Centre for Social Development (TI Cambodia): www.online.com.kh/users/csd

Notes

1. *Phnom Penh Post* (Cambodia), 21 November–4 December 2003.
2. Comfrel, *Final Statement and Report on the National Assembly Elections 2003* (Cambodia, 2003).
3. Ibid.
4. The Asia Foundation, *Democracy in Cambodia 2003: A Survey of the Cambodian Electorate* (2003).

Cameroon

Corruption Perceptions Index 2004 score: 2.1 (129th out of 146 countries)

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

Legal and institutional changes

- A law was passed in April 2004 regarding the organisation and operation of a **Constitutional Council**, and is due to come into effect some months after the presidential election in October 2004 (see below).
- In December 2003 parliament approved final provisions on the **National Electoral Observatory**, first established by legislation in 2000. The observatory's purpose is to achieve transparency and eliminate corruption from the electoral process. In its report on the June 2002 elections, it identified numerous malfunctions in the electoral system and made proposals to overcome them.

Forestry and corruption in Cameroon

In July 2003 the government of Cameroon created a ministerial unit to combat corruption in the ministry of the environment and forests. Like similar units in other departments, its objectives include proposing, implementing and monitoring measures to combat corruption within the ministry, and promoting ethical conduct.[1] However, as the units are headed by officials who answer to their superiors at the ministries, and therefore lack independence, there is a strong risk that they will be ineffec-

tive. The lack of means of coercion, and of material and financial resources, will further limit their actions. At the time of writing the anti-corruption unit within the ministry of forests had yet to take actions, in spite of widespread corruption in the sector.

Two related studies in 2003 by Greenpeace and Forests Monitor and by the British Department for International Development and the IMF indicate the scale of corruption in forestry in Cameroon, as well as extensive tax losses for the state as a consequence. The studies highlight two major groups of offence: illegal exploitation of the forest, in cases where there is no authorisation; and anarchic exploitation, which refers to operations that are authorised, but where there are serious violations, such as uncontrolled logging, the exploitation of trees outside concessions, or inaccurate tax returns. The studies indicated that 41 out of 92 concessions are exploited illegally. One of the studies, which looked at 21 concessions, found that a tax loss of FCFA 59.7 billion (US $115 million) plus FCFA 432 billion (US $834 million) in damages over five years, amounting to around one-quarter of the government's budget for 2004.

Corruption is surely at the root of the persisting illegality. Corrupt foresters use their influence on all those involved in the allocation, exploitation and management of the forests. In consequence, their activities, even when illegal, are legitimised year on year by the small size of penalties, whose payment is negotiable and always open to downwards revision.

In April 2004 the ministry of the environment and forests published its annual list of the 'top ten' companies in breach of forestry regulations. The publication of the list, which gives a partial view of the financial impact and tax loss suffered by the state through the anarchic exploitation of forests, was part of a package of measures required by the World Bank and IMF to accompany the current structural adjustment programme. Some companies appear on the 'top ten' list year after year.

Can the Constitutional Council guarantee electoral transparency?

The creation of a Constitutional Council, for which legislation was passed in April 2004 (in accordance with the 1996 constitution), will fill what some observers consider to be a legal vacuum, even though its powers are currently exercised by the supreme court. The council will rule on the constitutionality of laws and on conflicts of powers between state institutions and between central and regional governments. It will also monitor the lawfulness of elections and referenda, and will announce election results.

There are doubts, however, as to whether the provisions of the legislation will provide a satisfactory guarantee of the council's independence. The law provides that the 11 members of the Council (in addition to former presidents) shall be appointed as follows: three by the president, three by the president of the national assembly, three by the president of the senate and two by the judicial service commission. At times when Cameroon's president is also the president of the judicial service commission and leader of the party in power, and when that party has the majority in parliament, the choice of nearly all council members may be determined by the executive. The potential lack of independence may undermine the council's credibility.

Another factor that might further diminish its credibility is the fact that its offices will be run by a secretary general appointed by the president. The secretary general will play an important role in the council's functioning. Any lack of neutrality on his part would be bound to have an impact on the effectiveness and independence of the institution as a whole. Even if the council members make a concerted effort to remain independent, the secretary general may become the executive's Trojan horse within the organisation. If the Constitutional Council's independence is to be ensured, its enabling legislation needs to be amended.

Mounchipou: transparency trial or smokescreen?

Since the appearance of Cameroon at the bottom of TI's Corruption Perceptions Index in 1999, the courts have increasingly taken centre-stage in the fight against corruption in Cameroon. But a series of so-called 'transparency trials' has raised questions as to whether the courts are demonstrating a real determination to combat corruption and the embezzlement of public funds or whether they are merely creating a smokescreen to improve public and international perceptions.

The most sensational of the trials is known as 'the Mounchipou case' after the former minister for post and telecommunications, Mounchipou Seidou. The singularity of the trial lies in both the prominence of the main defendant, Mounchipou Seidou, and in the large number of defendants and the nature of the offences with which they were charged.

More than 20 defendants, including Seidou, numerous senior officials from the ministry of post and telecommunications and five company directors, were charged with embezzling public funds, forgery and using forged documents, fraud, and deriving a personal interest from a public act. The charges related to the award of contracts for building works and the purchase of equipment for the ministry. Although the proceedings were opened in 1999, the defendants were only tried in 2003 because of delays in the judicial system. After a trial lasting more than seven months, the verdict was handed down in November 2003. The court sentenced seven of the accused to 20 years' imprisonment combined with the confiscation of their assets, acquitting other defendants.[2]

However, despite the heavy penalties, the significance of the case remains unclear. Many observers point to the fact that, since the trial began in 1999, there have been no other prosecutions, in spite of numerous allegations of corruption in other government departments.

The police: a body riddled with corruption?

In TI's 2003 Global Corruption Barometer survey,[3] in response to the question 'If you … could eliminate corruption from one of the following institutions what would your first choice be?', 14 per cent of Cameroonian respondents chose the police, second only to the courts at 31 per cent. There are serious public concerns about police conduct, and even Pierre Minlo Medjo, the director of national security, admitted in December 2003 that 'From time to time we are informed of cases involving the illegal subcontracting of public service, of brazen swindling, of deliberate violence against individuals, of foreigners being cheated almost systematically, of abuses of all kinds, particularly of large scale corruption on the part of corrupt officials who see their office as an unlimited opportunity for personal enrichment.'[4]

These observations reflect the daily reality. To take one example, taxi drivers are routinely forced to bribe police officers FCFA 1,000 (US $2) or more for imaginary offences such as 'refusal to carry passengers', 'blocking the public highway', or having a 'double windscreen' in the case of taxi drivers who wear glasses.

This situation became so extreme that taxi drivers went on strike in March 2004, denouncing police harassment and demanding, among other things, that the rate set for fines should be respected. At the end of negotiations between the government and the taxi drivers' unions, the authorities published a list of official documents and other ancillary items to be produced when police checks are carried out, and a classification of fines. The taxi drivers resumed work, but corruption in the police is only likely to be stamped out by exemplary penalties for corrupt officers and the imposition of effective discipline.

Talla Jean-Bosco (TI Cameroon)

Further reading

Lucien Ayissi, *Corruption et gouvernance* (Corruption and governance) (Yaoundé: PUA, 2003)
Friedrich Ebert Stiftung, *Lutte contre la corruption: Impossible n'est pas Camerounais?* (The fight against corruption: nothing is impossible in Cameroon) (Yaoundé: PUA, 2002)
Pierre Titi Nwel, ed., *De la corruption au Cameroun* (On corruption in Cameroon) (Yaoundé: Gerddes-Cameroun and Friedrich Ebert Stiftung, 2001)
Babissakana and Abissama Onana, *Les débats économiques du Cameroun et d'Afriques* (The economic debates in Cameroon and Africa) (Yaoundé: Prescriptor, 2003)

Notes

1. 'Mise en oeuvre du programme national de gouvernance' (Implementation of the national governance programme) (Yaoundé, December 2003).
2. *Cameroon Tribune* (Cameroon), 1 December 2003.
3. Available at www.transparency.org/surveys/index.html#barometer
4. *Cameroon Tribune* (Cameroon), 26 December 2003.

Canada

Corruption Perceptions Index 2004 score: 8.5 (12th out of 146 countries)

Conventions:
OAS Inter-American Convention against Corruption (ratified June 2000)
OECD Anti-Bribery Convention (ratified December 1998)
UN Convention against Corruption (signed May 2004; not yet ratified)
UN Convention against Transnational Organized Crime (ratified May 2002)

Legal and institutional changes

- A law adopted in March 2004 (Bill C-4) restructured the office of the **Ethics Commissioner** so that it is now a body of parliament. Established in 1993 to provide advice to members of the lower house of parliament and investigate allegations of ethical violations, the commissioner previously reported to, and served at, the discretion of the prime minister. The same bill created a parallel post of Senate Ethics Officer for the upper house, which had long resisted such regulation despite its much-maligned reputation. The bill finally passed the senate when an informal compromise was reached by which the prime minister would appoint the ethics officer from a shortlist prepared by the chamber itself.
- New **campaign contribution limits** passed in 2003 as part of Bill C-24 came into effect in January 2004. In addition to a C $5,000 (US $3,870) per party cap on individual contributions, the most notable restriction is a ban on corporate or union contributions to parties, except for a C $1,000 allowance for donations to constituency associations or individual candidates. As partial recompense, a scheme of increased public financing was implemented. The bill also closed a loophole in the elections law that allowed parties to pay workers, claim them as an expense for tax purposes and then have the workers

donate the funds back to the party. The June 2004 federal election was the first to be governed by the new rules.

- In response to an ongoing sponsorship scandal (see below), a number of institutional reforms have been proposed or implemented. Bill C-25 proposes improved **whistleblower protection** for public sector employees, establishing a procedure for the disclosure of wrongdoing and protection from reprisal for exposing government corruption. Critics have argued that the bill contains significant weaknesses and fails to cover important subsectors of the public service such as political staff, the Royal Canadian Mounted Police and national security staff. The bill would establish a public service integrity commissioner, but would repeat the mistake of the original ethics commissioner legislation by making the office report to a minister rather than to parliament. It would also oblige potential whistleblowers to report allegations to their superiors before contacting the commissioner, which could subject them to intimidation, and it would allow the government to specify penalties for allegations deemed 'frivolous' or 'in bad faith'.
- The March 2004 federal budget outlined plans to reintroduce the office of **Comptroller-General**, also in response to the scandal, and to establish new accredited comptroller positions within government departments to vet new spending. Enhanced auditing requirements and governance regulations for public corporations were also revealed.
- The Treasury Board[1] announced new appointment procedures for executives of public corporations in March 2004 as a scandal-elicited 'preview' of a more comprehensive **review of public corporation governance**, scheduled for release in September 2004. The Treasury Board also announced a detailed **review of the financial administration law**,[2] to consider enhanced enforcement and recovery provisions as well as the application of sanctions to public servants, public corporation employees and office-holders.

The sponsorship scandal

2003–04 will be remembered primarily for the shockwaves sent out by the most damning auditor general's report ever, which detailed massive misappropriation and misuse of public funds in the department of public works.[3] Prime Minister Paul Martin, newly installed in December 2003, was immediately put on the defensive, acknowledging and sharing public outrage over the lack of accountability in the programme's administration, while claiming no direct knowledge of the abuses. The subsequent scandal was a major campaign issue in the June 2004 federal election, which saw Martin's Liberal Party, which had previously seemed assured of a fourth straight majority, entangled in a bitter contest and ultimately reduced to an unstable minority government.

In the years following the narrow defeat of the 1995 sovereignty referendum in Quebec, C $250 million (US $193.5 million) was spent on a sponsorship programme that was run under the department of public works and was intended to create a more positive perception of the federal government in Quebec. The then prime minister Jean Chrétien had fought Quebec nationalism throughout his political career and was determined to press the federalist cause. But zeal for funding the project combined with lack of adequate financial controls to produce disaster. Auditor general Sheila Fraser found little evidence to justify most of the expenditures and concluded that as much as C $100 million (US $77.4 million) was siphoned off to advertising firms – some with political connections to the government – through schemes involving over-billing, artificial invoices, fictitious contracts and other forms of abuse and mismanagement. Further, the audit concluded that 'parliament was not informed

of the programme's objectives or the results it achieved and was misinformed as to how the programme was being managed'.[4]

The first indications of misuse of funds emerged in 2000 with anecdotal reports of high and poorly documented expenditures. In 2002, spurred by additional revelations, the auditor general conducted a narrower audit of contracts within the sponsorship programme and declared that 'senior public servants broke just about every rule in the book' in awarding C $1.6 million in contracts to Montréal's advertising agency, Groupaction Marketing – a key player, as it turned out, in the wider scandal.[5] By late 2003, with Fraser's investigation yielding ever-more-alarming details, the government recognised the magnitude of the situation; on Martin's first day as prime minister he terminated the programme and its administering agency, Communications Canada.

Fraser's report was thunderous in its denunciation: 'The pattern we saw of non-compliance with the rules was not the result of isolated errors. It was consistent and pervasive. This was how the government ran the programme.'[6] Furthermore, the payments 'appear designed to provide commissions to communications agencies, while hiding the source of funds and the true nature of the transactions'.[7]

The government's response to the report was swift and, in addition to attempts at damage control and blame avoidance, contained a number of parallel investigations and the institutional reforms noted above. Alfonso Gagliano, who as minister of public works had overseen the programme, was recalled from a diplomatic posting to face inquiries into his role and that of his department. A special counsel for recovery was appointed, with a mandate to pursue reclamation of improperly received funds. Most visibly, the parliament's public accounts committee began immediate hearings into the matter.

In his testimony to the parliamentary committee, Gagliano claimed ignorance of the misappropriations and argued that, despite the principle of ministerial responsibility, he could not be held accountable for the actions of his department because he did not have hiring and firing authority over the agency involved. He instead blamed Communications Canada's administrator Charles Guité. Others involved, however, described weekly meetings supervised by Gagliano and generally contradicted his testimony. Guité also claimed innocence, pointing the finger of blame at his superiors, especially Gagliano.

Daily developments, charges and counter charges, firings and suits for wrongful dismissal or loss of reputation continued from February to May 2004.[8] With the calling of a federal election in May, the investigation was suspended by the dissolution of parliament. The inquiry was replaced by campaign rhetoric as opposition parties took advantage of the scandal to attack the Liberal Party. The police are pursuing a number of criminal investigations at the time of writing, however, and an independent judicial inquiry was scheduled to begin in September 2004. Overall responsibility for the affair remains in dispute and the auditor general pointedly warned that the incidents uncovered so far might only be the tip of the iceberg: her office's resources only allow direct audit oversight of a fraction of government spending, chosen on the basis of risk. The question is whether the sponsorship abuses are the product of an exceptionally overheated, undermanaged (and overfunded) but isolated programme, or whether they represent a more widespread erosion of responsibility in the government and public corporations.

Ultimately, detailed rules and regulations exist that should have been applied to the activities of Communications Canada, and if applied, would have prevented the abuses from going so far. The problem appears to be that lack of accountability allowed administrators to exploit enthusiasm for the implicit anti-separatist goals of the programme and engage in practices that invited corruption by abrogating 'two fundamental principles

of internal control: segregation of duties and appropriate oversight'.[9] With a small group of individuals effectively exercising control over all disbursements, there was no resistance to 'temptation', and no exposure until the excesses drew the attention of the auditor general.

Police corruption in Toronto

In January 2004 six police officers were charged with offences including conspiracy, extortion, assault, perjury and obstruction of justice at the end of a two-and-a-half-year internal investigation into corruption in the Toronto Police Central Field drug squad.[10] Affidavits released by the investigating task force alleged a wide range of illegal acts, including the theft of hundreds of thousands of dollars from safe deposit boxes during the execution of search warrants, and the sale of weapons and narcotics to drug dealers.[11] The head of the task force hinted at wider corruption, indicating that prosecutors had chosen to charge only those individuals whose cases were so egregious as to result in certain conviction.

The drug squad had previously been disbanded after a number of complaints against its members. Since 1999 as many as 200 drug prosecutions in Toronto had been stayed due to problems with the credibility of officers, and cash payments were made to settle at least three civil suits brought against them.[12] Meanwhile, a separate investigation resulted in charges against several more officers – including two sons of a former chief of police and the president of the police union – for allegedly running a protection racket for downtown bars and restaurants.[13] As of June 2004 more than 20 officers and detectives had been charged or notified of potential charges.

Police Chief Julian Fantino announced a number of measures in response to the charges and enlisted retired Superior Court Judge George Ferguson to craft specific recommendations. Ferguson suggested a variety of measures including improved hiring, training and promotions procedures; mandatory drug and psychological testing; time limits for assignments to 'high-risk' elite units such as the drug squad; new methods for handling informants; spot checks by senior inspectors; an enhanced internal affairs unit with separate facilities; an internal 'snitch line' for allegations of police misconduct; and better protection for whistleblowers.[14]

But Fantino had already publicly alienated a number of key members of the civilian Police Services Board, as well as the newly elected mayor of Toronto (by actively campaigning for a rival) and civil liberties activists. Although he was not personally implicated, his detractors criticised him as slow to react to the problems in the drug squad. The board approved all Ferguson's proposals, but then announced plans for its own, civilian-led inquiry into police management practices. The board did not extend Fantino's contract as chief when it came up for renewal in June 2004.[15]

As with the sponsorship scandal, both civil and criminal investigations are continuing, with the final disposition of the individuals involved – and the institutional after-effects – likely to be subjects of debate for an extended period. There is no shortage of reform proposals in the wake of Canada's largest law enforcement corruption scandal, but with municipal politics affecting high-level decisions on how to conduct and even conceptualise the daily work of the police, real structural improvement may be difficult to accomplish.

Maureen Mancuso (University of Guelph, Canada)

Further reading

Report of the Auditor General of Canada (Ottawa: November 2003) www.oag-bvg.gc.ca/domino/reports.nsf/html/03menu_e.html

O.P. Dwivedi and Maureen Mancuso, 'Corruption as a Threat to Good Governance: Lessons from Canada', in Gerald Caiden, O.P. Dwivedi and Joseph Jabbra, eds, *Where Corruption Lives* (Bloomfield: Kumarian Press, 2001)
Ian Greene and Eleanor D. Glor, 'The Government of Canada Approach to Ethics: The Evolution of Ethical Government', in *Public Integrity* 5 (Winter 2002–03)
Kenneth Kernaghan, 'Corruption and Public Service in Canada: Conceptual and Practical Dimensions', in Seppo Tiihonen, ed., *The History of Corruption in Central Government*, International Institute of Administrative Sciences (Amsterdam: IOS Press, 2003)
Denis Saint-Martin, 'L'Affaire Groupaction: un cas de politisation de la fonction publique fédérale?' in *Canadian Public Administration* 46 (2003)

TI Canada: www.transparency.ca

Notes

1. The Treasury Board is a powerful cabinet committee, with overall responsibility for the financial, personnel and administrative duties of the executive. It is considered the general manager and employer of the public service.
2. The law governs public service procedures, responsibilities, offences and sanctions. It is essentially a rulebook for how the government and public service handle money.
3. The author acknowledges the research assistance of Josh Alcock, Nick Erdody, Jordan Hatton and David Hornsby in tracking and digesting this evolving scandal.
4. Government of Canada, *Report of the Auditor General of Canada* (Ottawa: November 2003), section 3.1.
5. Auditor General of Canada, press conference, 8 May 2002, www.oag-bvg.gc.ca/domino/other.nsf/html/02ossp_e.html
6. *Report of the Auditor General*, section 3.122.
7. Ibid., section 3.44.
8. In addition to Gagliano, Guité and Pelletier, Crown Corporation presidents Marc LeFrançois (VIA Rail) and Michel Vennat (Business Development Bank of Canada) were fired, and André Ouellet (Canada Post) was suspended without pay pending investigation of his corporation's role in the scandal. Numerous executives at the various ad agencies and public relations firms involved were also dismissed or charged with offences.
9. *Report of the Auditor General*, section 3.21.
10. Canadian Broadcasting Corporation, www.cbc.ca/stories/2004/01/07/police040107
11. *Ottawa Citizen* (Canada), 20 January 2004.
12. Ibid.
13. *Ottawa Citizen* (Canada), 27 April 2004.
14. Many of Ferguson's proposals arose from his report, *Review and Recommendations Concerning Various Aspects of Police Misconduct* (Toronto: 2004), which Fantino commissioned in November 2001 in parallel with the early stages of the task force probe.
15. *Toronto Sun* (Canada), 26 June 2004.

China

Corruption Perceptions Index 2004 score: 3.4 (71st out of 146 countries)

Conventions:
UN Convention against Corruption (signed December 2003; not yet ratified)
UN Convention against Transnational Organized Crime (ratified September 2003)

Legal and institutional changes

- The regulations on the **procedures for the handling of administrative cases** were published in August 2003 by the ministry of public security to control the use of coercive measures by police officers. The regulations responded to concern that police officers used unlawful detentions to exact fines or used force to obtain confessions from innocent people.
- The central disciplinary committee in January 2004 issued 'Document No. 1', which called for reform of the much-abused system of **confiscating land for building** purposes, with the aim of strengthening the rights and interests of peasants (see below).
- In February 2004 the Chinese Communist Party (CCP) enacted new regulations on **party supervision and disciplinary policy**. These had yet to be fully implemented at the time of writing. The new regulations emphasise the independence and supervisory powers of the Disciplinary Inspection Committee (DIC), which is responsible to the central committee of the CCP, and introduce monitoring mechanisms for provincial-level officials and central government ministries.
- A Guideline to Build Law-Based Government was introduced by the central government in April 2004 and addresses the **separation of government functions** from the management of state-owned enterprises, and the separation of powers and functions between levels of government and government departments. It also calls for a system to monitor government officials.
- The CCP in April 2004 implemented temporary regulations on the resignation of officials in an attempt to call senior party leaders and civil servants **to account for their actions**. The regulations stipulate circumstances under which resignation is mandatory, including for certain specified severe mistakes, severe misconduct or serious under-performance, even though such misdeeds may not be criminal offences.
- A **real estate register** has been drawn up in Beijing for the first time. Published in May 2004, the regulations provide for a complete map of land ownership in the capital, which is made available for public scrutiny at the national land and building bureau. Visitors are allowed to copy the register. Previously, information on real estate ownership was kept secret.
- The Supreme People's Procuratorate and the ministries of construction, communications and water resources decided in May 2004 to introduce a **blacklisting** system to combat corruption in the **construction** sector in five pilot areas (see below).
- The municipalities of Guangzhou and Shanghai are implementing plans to widen **public access to information** in 15 government departments. Guangzhou passed the necessary legislation in 2003, followed by Shanghai in May 2004. In Shanghai, all information related to economic management and social public services, except that kept confidential by law, will be made totally or partially available to the public. Among the departments concerned are education, personnel, real estate, water supply, quality inspection, programming, commercial business, police, foreign business and trade, sanitation, labour protection, finance and city administration. Government branches have to compile and publicise guidelines for opening up access to government information, and provide the names and telephone numbers of those responsible for providing information to the public. The Shanghai government has launched a training programme to help ensure effective implementation of the scheme.

- Implementation guidelines for the **Government Procurement Law**, which came into effect in January 2003, have been drafted and are under review. Related measures including guidelines on procurement procedures, registration of bidding agents and evaluation mechanisms for central procurement bodies have also been drafted and several of them were expected to be approved in late 2004.

Corruption in China's booming construction sector

As the Chinese economy gallops ahead, the huge investment in new infrastructure projects combined with weak enforcement of contracting regulations has created numerous opportunities for corruption. Local officials play a decisive role in the tendering process and in many cases have ignored the relevant regulations. From 1997 to the present, 14 directors of transport in nine provinces have been investigated for corruption. Three successive heads of transportation in Henan province were caught taking bribes and convicted for complicity in other crimes.[1]

Similar malpractice exists in land development and real estate. China is feverishly modernising its cities. Large numbers of old houses are being swept aside to make way for new high-rise offices and dwellings. This process not only offers opportunities for officials to misappropriate the property in their charge, it provides tangible evidence of their 'professional achievement' and improves their career prospects. With such a skewed motivation, it is little wonder that officials become spellbound by 'image projects' that can have serious consequences on the long-term development of the local economy. Investors have been induced to tie up their savings in projects that fail to materialise, while householders have been forced by corrupt municipal councils and provincial governments to move out of their homes, which are then demolished and the sites developed. This phenomenon has sparked popular protests around the country, especially on the fast-growing coast and in the capital, Beijing.

At the presentation of his 'Work Report' in March 2004, Prime Minister Wen Jiabao reiterated his demand that confiscation of land be strictly controlled and carried out with due consideration for the law and for planning priorities. Flooded with complaints, the country's chief prosecutor announced in December 2003 that the fight against corruption in the real estate sector and in construction project tenders would be a high priority for his offices in 2004.

There have been some improvements to the legal framework in recent years. In January 2000 the Tendering and Bidding Law entered into force, and the construction ministry subsequently issued a series of regulations on the tendering process for urban infrastructure and civil construction projects specifically. As early as 1994, the construction and supervision ministries helped promote the Tangible Construction Market (TCM), a market for open tendering and bidding for civil or urban infrastructure construction projects involving investment from the government or majority state-held companies. Currently 325 of China's 336 cities have established similar procurement centres. Although the TCM has had some impact on reducing corruption in procurement, it remains under-resourced and under-utilised.

In May this year the government introduced blacklisting for building contractors convicted of bribery in five areas – the provinces of Jiangsu, Zhejiang and Sichuan, Chongqing municipality and Guangxi Zhuang Autonomous Region. Under this pilot scheme, the blacklist will be made available to local governments and those responsible for construction projects in these areas. Debarment can be either temporary or permanent. The scheme is

modelled on a blacklisting system introduced in Wuxi, in Jiangsu province, in 2002.

The period 2004–08 will be the key period for the construction of venues and transport facilities for the 2008 Olympic Games in Beijing. Construction and service projects related to the Games will provide as much as US $16 billion in business opportunities for domestic and foreign investors. To counter the risk of corruption, the Beijing municipal government and the organising committee for the Games have set up an Auditing and Supervision Department (ASD), comprising 23 members from the ministries of supervision, finance and construction and the state commission for development and reform of the National Sports Bureau. The ASD will supervise the bidding and facilities-development processes and is developing a code of conduct for relevant staff. Protests at the forcible requisition of land and the forcible demolition of homes to make way for the sports centres, hotels and restaurants needed for the Games have already cast a shadow over the process, however.

High-level corruption captures the public imagination

Cases of senior government officials travelling abroad to spend the proceeds of bribery and other corrupt acts have pushed the issue of corruption high up the public agenda. In tandem, China has increased its cooperation with international bodies in its fight against corruption and has entered into international agreements – for instance by ratifying international anti-graft instruments – that commit the government to tackling the problem with seriousness.

In April 2004, the US authorities handed Yu Zhendong to the Chinese police at Beijing's Capital International Airport. Yu is former president of the Kaiping city branch of the Bank of China in Guangdong and is suspected of embezzling bank money between 1993 and 2001, of which US $485 million has since been restored to China. Cases such as this one may well be just the tip of the iceberg: research indicates there may be as many as 4,000 others suspected of corruption or bribery who are still abroad. The total sum of money stolen may amount to five billion yuan (US $600 million), according to official sources.[2] There is a growing trend for Chinese officials to send their children abroad to study or live, a luxury many would be unable to achieve through the legal use of their authority or income.

The decision to focus the anti-corruption drive of recent years on corruption by high-ranking officials has won popular support. According to a series of household surveys conducted by the Central Commission for Discipline Inspection of the Communist Party of China, people's satisfaction with the anti-corruption drive has increased from 33 per cent in 1996 to 52 per cent in 2003.

A concern, however, is the capacity of China's judicial system to prosecute and sanction wrongdoers impartially. In 2003, 13 provincial or ministerial officials were convicted of corruption. One of them was sentenced to death and another two were given death sentences that were later suspended for two years. A separate case, that of Liu Yong, a former chairman of Kiyang Group in Shenyang, who was sentenced to death for 27 separate crimes including bribe paying, involvement in criminal gangs and illegal ownership of weapons, illustrates the closed nature of the judicial process. His sentence, handed down by an intermediate court in Tieling District, Liaoning province in April 2002, was subsequently suspended for two years, from August 2003, on the grounds that his confession had been extracted under torture. This decision was overturned again by the supreme court, and his immediate execution was ordered. The general public was not informed about what motivated the vacillations over his sentence.

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

Further reading

Li Yongzhong, 'China will Launch a Decisive Anti-Corruption Battle', Beijing, *Liaowang Dongfang Journal*, 2004
Guo Yong, 'Study on Character and Trends of Corruption Cases Involving China's Senior Public Officials', in *Comparative Economic and Social Systems*, 2004
Xie Ping and Lu Lei, 'Study on China's Financial Corruption: from Quality to Quantity', *Comparative Studies*, Vol. 8, 2003

Notes

1. *People's Daily* (China), 7 April 2004.
2. China News Agency, 29 September 2003.

Colombia

Corruption Perceptions Index 2004 score: 3.8 (60th out of 146 countries)

Conventions:
OAS Inter-American Convention against Corruption (ratified November 1998)
UN Convention against Corruption (signed December 2003; not yet ratified)
UN Convention against Transnational Organized Crime (ratified August 2004)

Legal and institutional changes

- President Álvaro Uribe's **national development plan** 2002–06, called 'Towards a Communitarian State' and approved by congress in June 2003, contains the stated intention to increase the transparency and efficiency of state functions by involving civil society in decisions about how the public administration should operate. The two components of the plan with the greatest potential to reduce corruption are: reforms to the public contracting process, in particular making more information public about contracts and the budget; and a tightening of sanctions for public officials whose actions by design or default led to the loss of public funds.
- In November 2003 a law regulating **citizen watchdog groups** entered into force. The groups monitor public authorities, be they administrative, political, judicial, electoral, legislative, fiscal or disciplinary. The groups may also monitor private sector entities and national or international NGOs that execute projects that use public resources. These groups have existed without being regulated since the late 1980s. The law prohibits organisations from monitoring public entities with which they have service-provision or similar contracts.

Public prosecutions office faces its worst crisis yet

The public prosecutions office was created in 1991 with the hope that it would help bring down the high levels of impunity that existed in Colombia. The reality has not met these expectations and 2004 saw the body mired in its worst ever crisis, facing allegations of corruption and of

infiltration by paramilitary soldiers and drug traffickers.

In Cali, in the west of the country, 16 officials were suspended for alleged links to drugs traffickers in February 2004. That same month, the public prosecutions delegate to the supreme court, Justo Pastor, was forced to resign when he could not explain why one of the people involved in a criminal process had given him an expensive watch. Shortly afterwards, in March 2004, Carlos Arias was forced to resign from his position as national director of public prosecutions offices, for allegedly putting pressure on the judiciary to alter rulings and for sexual harassment.

Party politics may have motivated some of the allegations directed at the public prosecutions office. The public prosecutions office is currently headed by Luis Camilo Osorio, a member of the Partido Conservador who was appointed during the administration of former president Andrés Pastrana; a number of the allegations come from supporters of opposition parties.[1] In February 2004, for example, a parliamentarian from the opposition Polo Democrático Party claimed that members of paramilitary groups had infiltrated the public prosecutor's office in the northern city of Cúcuta.

According to an analysis of the cases by the weekly magazine *Revista Semana*,[2] a number of the dismissals at the prosecutor's office may have been aimed at avoiding criminal investigations that would have affected individuals higher up the political strata. In one case the prosecutor responsible for preparing charges against the security chief under former president Pastrana, Royne Chávez, saw the arrest warrant he had prepared withheld by Osorio. Osorio's decision was finally overturned, however, and Chávez was arrested.

There are institutional reasons that make the public prosecutions office vulnerable to corruption, in addition to the fact that the office is operating in the context of a countrywide conflict between paramilitary and guerrilla groups, and a powerful illegal drugs industry. First, the chief public prosecutor has the power to appoint, transfer or dismiss the 16,000 officials that work for the office. Second, he or she has discretionary power to assign and reassign cases to prosecutors, who themselves enjoy little autonomy since they must provide detailed updates on every case to the chief prosecutor's office at regular intervals. This situation may be remedied with the entry into force of a new code on criminal procedures in 2005. This code will strip the public prosecutions office of its judicial power, restricting its functions to investigation and accusation, giving judicial authority back to criminal judges. The reform establishes an accusatorial system, with oral hearings, which should speed up processes. Analysts have expressed concerns about one aspect of the reform, however, which is that it increases the public prosecutor's scope to decide whether or not to open investigations into certain types of crime.

Electoral corruption

The electoral process continues to be one of the aspects of Colombian life that is most affected by corruption. Corrupt practices include: vote buying with small quantities of cash, tiles or cement, food, promises of medical or other help; false registration of voters, including the registration of dead people as voters; moving voting poll booths without prior notification; throwing away votes; falsifying or fixing the official vote tallies; fabricating or withholding voter identification cards; and registering individuals who are not allowed to vote.

The high level of irregularities has meant that a number of elections have had to be annulled in recent years. In August 2003, the attorney general's office asked the state council to annul the March 2002 election for the present congress and carry out a recount, excluding the votes cast at 20,503 ballot boxes where irregularities had been observed. This would have amounted to 30 per cent of the total voting stations and

would have changed the composition of congress. In Barranquilla, the capital of one of the most seriously affected departments, Atlántico, the national electoral council calculated that 30,000 of the 215,000 registered voters were fabricated or corresponded to people who lived outside of the district.[3] The national electoral council eventually annulled 180,000 of the 400,000 votes that the attorney general requested be annulled.

These cases have reopened the debate about the need for electoral reform and for a reorganisation of the political party system. A number of analysts argue that the large number of political parties and movements that compete in elections, about 70 in all, weakens their ability to monitor each other. A criticism made by the national planning council – a formal platform for citizen input into the national development plan – is that the national electoral council needs to be more independent and more professional. The national planning council also proposed changes to the financing of politics beyond the duration of election campaigns.

Transparency pacts for mayors and governors

One of the pillars of the fight against corruption launched by President Álvaro Uribe in his national plan 'Towards a communitarian state', is the so-called transparency pacts between mayors and governors, and civil society organisations. Officials from the office of the vice-president act as witnesses to the signing of the pacts.

The pacts commit mayors and governors to be accountable to their constituents and to increase citizen participation and transparency in their administrations. Civil society organisations are supposed to follow up and evaluate compliance with these commitments through monitoring committees. The presidency proposed that the pacts should be signed in all 32 departments and in 30 per cent of the country's municipalities.

The impact of the scheme has been limited, not least because of reluctance by sectors of civil society to support the scheme. Many people have criticised the strategy for its failure to define goals and clear measures of compliance. This makes it difficult for civil society organisations to measure advances or setbacks. Another criticism is that the monitoring committees have not been given the resources needed to carry out their work. The programme could fail if it depends on the political will of the signatories and the existing capacity of civil society organisations.

This is not to say that the intention to curb corruption at regional and municipal level is ill conceived. Several cases of corruption in public contracting and in the use of public money have emerged in 2003–04 within departments and mayoralties. In some cases there have been signs of influence by paramilitary groups and drugs traffickers in local government, in particular in several municipalities along the Caribbean coast. According to the Fundación para la Libertad de Prensa, four journalists were murdered in 2003 as a result of their investigations into local corruption in Neiva, Barrancabermeja, Maicao and Buenaventura.

Rosa Inés Ospina (Transparencia por Colombia)

Further reading

Corporación Transparencia por Colombia, *Índice de integridad de las entidades públicas nacionales* (Integrity index of national public bodies) (Bogotá: Transparencia por Colombia, 2002 and 2003)

Organization of American States, Report of the Committee of Experts of the Mechanism for Follow-up of Implementation of the Inter-American Convention against Corruption: Report on its Implementation in Colombia (Washington, DC, 2004), www.oas.org/juridico/english/mec_rep_col.pdf

Eduardo Wills, 'La relación entre la corrupción y el proceso de descentralización en Colombia' (The relation between corruption and the process of decentralisation in Colombia) in *Evaluación de la descentralización municipal en Colombia: Balance de una década* (Evaluation of a decade of municipal decentralisation in Colombia) (Bogotá: Departamento Nacional de Planeación, 2002)

World Bank and Colombian vice-presidency, *Estudio sobre corrupción, desempeño institucional y gobernabilidad: desarrollando una estrategia anti-corrupción para Colombia* (Study of corruption, institutional performance and governance: developing an anti-corruption strategy for Colombia) (Bogotá, 2002)

Transparencia por Colombia: www.transparenciacolombia.org.co

Notes

1. The president nominates a shortlist of three candidates for the post of chief public prosecutor and the supreme court makes the final selection.
2. *Revista Semana* (Colombia), 19 April 2004.
3. *Revista Semana* (Colombia), 18 October 2003.

Democratic Republic of the Congo

Corruption Perceptions Index 2004 score: 2.0 (133rd out of 146 countries)

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

Legal and institutional changes

- In June 2004 the national assembly, followed by the senate, passed a law determining the organisation, powers and functioning of the **Commission for Ethics and the Fight against Corruption** (CELC). The purpose of the commission is to: make people more aware of ethical questions and the fight against corruption; influence political, public and religious authorities; increase the capacity of national institutions to promote integrity; and ensure the operating capacity of all national institutions involved in the fight against corruption. Although it is chaired by a representative of civil society with the rank and powers of a minister, the CELC is in practice controlled by the government, which may limit its ability to take effective action against public corruption. It is also important that the CELC's existence be confirmed in the forthcoming constitution.
- In May 2004 parliament began examining a bill to amend the **criminal code**. The bill is concerned with the fight against money laundering and the financing of terrorism,

and if passed will amend the law relating to corruption, illegal payments, the trading of favours and culpable failures to act on the part of officials.

- The General Directorate of Taxes (DGI) promulgated a **tax code** in March 2004. Both a large companies directorate and a tax centre directorate were created within the DGI, in order to simplify procedures with a view to reducing the opportunities for corruption.

Fighting corruption in transition

In June 2004, in a letter to the vice presidents of the current transition regime, published in the press, President Joseph Kabila acknowledged the anxiety felt by civil society and the international community on account of the level of corruption in the country: 'The reports of international organisations, editorials in the newspapers, complaints from the churches, reports from all sectors of the population, show the persistence, if not the resurgence, of corruption and the misappropriation and embezzlement of public funds in all sectors of national life. The leaders of the people cannot be indifferent to this state of affairs.' If the number of speeches were a measure of change, there would be real hope for the fight against corruption in the Democratic Republic of the Congo (DRC). Some observers believe that the government's statements on corruption have been given force by exposures in 2003–04 of financial scandals perpetrated by leaders of state-owned companies and even members of the government.[1]

However, many observers are questioning the significance of the government's stated good intentions. One of the distinguishing features of the DRC as a country undergoing reconstruction after years of war, is that the people who in the past played a part in the embezzlement and plundering of resources are now in power, thanks to the inter-Congolese negotiations which gave rise to the transition regime. The fear of seeing the precarious political equilibrium collapse inhibits initiatives that might be taken to eliminate corruption and related offences.[2] Furthermore, the plundering of natural resources, which was condemned by a UN inquiry, is still ongoing according to many reports. The loss of resources provides the income that keeps the troubles and the war alive.

To respond to the critics, President Kabila has invited parliamentary commissions to take on the role of monitoring the government and in particular state-owned companies. Following the invitation, the CELC organised a seminar for the managers of state-owned companies in June 2004. It also drew up a strategic plan to fight corruption in the DRC and initiated radio and television programmes intended to increase public awareness of the problem.

If change is to take place, both legal and institutional reforms are required. Initial steps towards public administration reform are being taken, following recommendations made during a World Bank seminar on good governance and the fight against corruption in September 2002. Full reform of the public administration will involve requiring certain officials to retire, carrying out a census of the workforce and eliminating fictitious employees, training officials, creating a civil service college, creating a school for judges and law officers, making the public servants' code of conduct more understandable to the general public, and increasing government officials' salaries.

Judicial reform is also needed. From October 2003 to March 2004, a multidisciplinary team of consultants carried out an audit of the judicial system in order to identify specific support needs. Since 2003 the NGO Justice and Democracy has been organising training for police officers from the national police force in partnership with the ministry of the interior. The trained officers are monitored on a regular basis. It is also organising

educational work with law officers, judges and prosecuting authorities.

Public procurement contracts in the DRC

The DRC does not have a credible or efficient public procurement system. Public officials lack technical skills and the provisions governing public contracting are out of date. Temporary changes to regulations have been made to meet immediate needs, but they have not formed part of an overall modernisation of the legal framework. As a result many legal and regulatory provisions, far from clarifying the regulations, simply add to the difficulty of applying them.

Projects financed by international donors include procedures that aim to ensure transparency and prevent corruption and that seem to work well, in compliance with international contractual standards. In contrast, only 3 per cent of contracts entered into by the Congolese authorities involve a tendering process.[3] The others are awarded either by restricted allocation or by private contract. There is currently no planning and no programming of procurement contracts. Many public contracts, particularly those awarded by private contract, do not comply with legal requirements.

Furthermore, the weakness of internal and external oversight mechanisms makes it very difficult to identify breaches and apply sanctions. The appeal body, the Conseil Supérieur des Adjudications, has never functioned effectively, and there is no mechanism for independent appeals. Indeed, no corruption case involving a public procurement contract has ever been referred to the courts, because of the difficulty of gathering evidence and a shortage of the necessary skills.

Following the arrival in office of a transition government in June 2003, the government and the World Bank together launched an examination of the system for awarding and executing public contracts. Initially, the government set up a national working group, consisting of a group of government experts. On the basis of their report in May 2004, an action plan was drawn up, which aims to incorporate the concepts of transparency, competition, economy and effectiveness into public contracting in order to combat corruption, among other problems.

Reducing corruption in public contracting will require clarifying the legal framework, strengthening the relevant institutions, but also changing mentalities. Given the practices over many years, a real shift in attitudes is unlikely to happen overnight.

Anne-Marie Mukwayanzo Mpundu (Réseau d'Education Civique au Congo) and Gaston Tona Lutete (Observatoire Anti-Corruption, DRC)[4]

Further reading

UN, Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo (2001), www.un.org/News/dh/latest/drcongo.htm

World Bank, *Rapport analytique du système de passation des marchés publics* (Country Procurement Assessment Report) (2004)

UNDP, *Governance for Human Development in DRC* (UNDP, 2000)

S. J. Leon de Saint Moulin, J. M. Kinkela, N. Paluku and E. Tshimanga, *La perception de la démocratie et de l'Etat de droit en RDC* (Kinshasa: Konrad Adenauer Stiftung and Cepas, 2003)

Notes

1. See Observatoire Anti-Corruption (OAC), 'Corruption et spoliation du patrimoine de l'état dans la liquidation de la BCCE, dans l'ONPT et dans la GECAMINES', Doc. 2 (Kinshasa: OAC, 2003).
2. At the time of writing an amnesty for these crimes was due to be examined by parliament in July and August 2004.
3. World Bank, 'Rapport analytique du système de passation des marchés publics en RDC', volume 1 (2004).
4. With the assistance of Julien Attakla-Ayinon, former programme coordinator at Transparency International on the DRC.

Costa Rica

Corruption Perceptions Index 2004 score: 4.9 (41st out of 146 countries)

Conventions:
OAS Inter-American Convention against Corruption (ratified June 1997)
UN Convention against Corruption (signed December 2003; not yet ratified)
UN Convention against Transnational Organized Crime (ratified July 2003)

Legal and institutional changes

- In April 2004 the legislative assembly gave its initial approval to the **Law against Corruption and Illegal Enrichment in Public Office**. The draft law had been submitted five years before and had yet to be fully approved at the time of writing. The aim of the law is to bring the Costa Rican legal framework into line with the provisions of the Inter-American Convention against Corruption. The law defines corruption crimes and allows asset declarations made by public officials to be invoked in prosecutions.
- The supreme court called in April 2004 for the revocation of a provision of a law creating special courts for cases of **mismanagement of public resources and tax crimes** because the resources necessary to properly implement the law were not allocated. The provision was part of a law adopted in May 2002, that had been criticised for making it more difficult and expensive to tackle corruption cases because they have to be dealt with in a centralised court in the capital, San José.

Trafficking in influence sullies Costa Rica's social security system

Despite a fairly sound legal framework and operational enforcement mechanisms, influence peddling continues to dog public procurement in Costa Rica, with lucrative contracts sometimes going to those companies that are prepared to grease the palms of government officials. One recent case that illustrates the problem, and has sparked anger among the general public, involved the Costa Rican Social Security Administration (CCSS), the country's biggest buyer of medical equipment, and a pharmaceutical distributor, the Fischel Corporation.[1]

The case came to light after government investigators' suspicions were aroused by a massive increase in the value of medications sold by Fischel Corporation to the CCSS, from US $530,000 in 2002 to US $990,000 in 2003. It was soon discovered that the head of the CCSS, Eliseo Vargas, was renting a

luxury house at a cut-price rate from the Fischel Corporation. The company had used a series of firms registered in Panama to buy the property. Vargas resigned in April 2004, after the scandal erupted.

A further investigation was also opened into alleged irregularities in medical equipment purchases using money from foreign loans, from Finland and Spain. Medical equipment worth US $39.5 million had been bought using a Finnish loan that was conditional on the CCSS using at least half of the money on Finnish medical equipment, even though much of the equipment listed in the terms of the loan did not correspond to the priority needs of CCSS hospitals. The company that was eventually given the supply contracts was Instrumentarium-Medko Medical, a Finnish consortium that was represented by Fischel Corporation.

The president created a special commission of four well-respected individuals from the government, judicial, medical and business communities to investigate both allegations. The commission's three-month investigation ran parallel to a legislative inquiry and investigations by the public prosecutor's office, which began in December 2003. This has caused problems: when called to testify before congress, the accused have tended to refuse on the grounds that their statements could be used against them in the parallel criminal process. A second problem is that, according to the chief prosecutor, a number of CCSS officials have been threatened with dismissal or other sanctions if they denounce acts of corruption in the sections where they are employed.

The case has been widely publicised and public pressure generated by the scandal contributed to the decision by the legislature to begin the process of adopting the law against corruption and illegal enrichment, which had been languishing in the legislative assembly for nearly six years. The case also highlights the important role of investigative journalists, who uncovered the links between the Fischel Corporation and CCSS directors who were involved in the scandal.

Technical oversight promises to help uncover corruption

Kilometres of pot-holed highways and bridges that remain incomplete years after they were started beg questions about the administration of public resources and the effectiveness of the contracting and construction processes in Costa Rica. In 2002 the legislature appointed a technical institute to oversee CONAVI, the state body responsible for building and maintaining the country's roads, and to investigate the shoddy construction practices that shortened the useful life of the road network.

The oversight body is the National Laboratory for Structural Materials and Models (LANAMME) of the University of Costa Rica. Since being assigned with the monitoring role, LANAMME has produced a number of reports criticising the quality of roadworks – both their construction and maintenance – which have served as the basis for allegations of conflicts of interest and political interference. The response from CONAVI to the new monitoring body has been lukewarm at best. By law, CONAVI should transfer 3 per cent of its annual budget to LANAMME, but in 2004 it was projecting a total transfer of only 2.1 per cent for the year. With each critical report from LANAMME, payments have tended to be delayed or cancelled, making it difficult for the oversight body to carry out its work.

LANAMME looks at the technical aspects of projects. Its reports show clearly where substandard, cheaper materials have been used and where feasibility studies have not been carried out. One case worth mentioning is the Barranca-Peñas Blancas highway. In this case, the technical specifications of the contract were modified by government officials who wanted the job finished quickly, even though this would mean cutting corners that would create potential problems in the future.

In the case of Barranca-Peñas Blancas, a 200-kilometre and US $16.8 million stretch of the main highway in the north of the country is defective. The investigation showed poor project planning and administration. The decision by CONAVI to waive the preliminary studies required under the terms of the contract is expected to spark an investigation into the reasons behind the irregularities. The money was paid to the contractor even though the work was delayed by 50 days, 80 kilometres of the road have yet to be repaired, and the private company that was subcontracted to monitor the quality of the cement failed in its task. The work went US $4 million over budget.

LANAMME's work ends with technical evaluation, but this may well, as in the above cases, produce enough evidence to trigger investigations into the reasons behind poor decision-taking and poor quality work, and in particular whether corruption was involved. The question now is whether the agencies responsible for looking into the political and criminal dimensions of the many cases LANAMME has investigated have the political will to build on the technical work. A related need is for LANAMME to gain financial independence from CONAVI, which currently has the authority to reduce LANAMME's budget unilaterally. Statistics for the sector demonstrate the urgency of LANAMME's work: only 23 per cent of the country's roads are in a good state of repair, while 38 per cent are in bad condition.

Roxana Salazar and Mario Carazo (Transparencia Costa Rica)

Further reading

Villasuso Estomba and Juan Manuel, *Corrupción en Costa Rica: análisis, discusión y propuesta de acción* (Corruption in Costa Rica: analysis, discussion and proposed actions) (San José: Fundación Ebert, 2003)

Rodolfo Saborío Valverde, 'Rendición de cuentas en Costa Rica: diagnóstico y ensayo de sistematización' (Accountability in Costa Rica: diagnosis and systematisation) in *Colección de documentos del Instituto Internacional de Gobernabilidad*, October 2003

Roxana Salazar y Mario Carazo, *Guía sobre rendición de cuentas. Un compendio* (Guide to accountability) (San José: Transparencia Internacional Costa Rica, 2004)

Roxana Salazar y Mario Carazo, *Principios empresariales antisoborno* (Anti-bribery business principles) (San José: Transparencia Costa Rica, 2004)

Transparencia Costa Rica (TI Costa Rica): www.transparenciacr.org

Note

1. The story was reported in the national newspapers *La Nación*, *Diario Extra*, *Diario Al Día* and *La Prensa Libre* in May 2004.

Croatia

Corruption Perceptions Index 2004 score: 3.5 (67th out of 146 countries)

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

Legal and institutional changes

- Parliament passed the Prevention of **Conflicts of Interest** in the Exercise of Public Office Act (PCIA) in October 2003, which entered into force later that month. The law extends the obligations and restrictions placed on public officials. Primarily, the PCIA attempts to combat conflicts of interest through preventative measures (see below).
- An **access to information law** was passed in October 2003 and came into force the following month. Shortfalls in the substance of the law are exacerbated by a politically undermined and under-resourced implementing body (see below).
- The **criminal law** was amended in July 2003 to expand the possibility of prosecuting journalists for defamation, removing an earlier provision that protected journalists from prosecution if the intent to defame was not proven. In November 2003 the supreme court overturned the amendment because the proper procedures had not been observed when it was adopted.
- After more than two years in operation, the **Office for Prevention of Corruption and Organised Crime** (USKOK) set up a working party on the creation and implementation of amendments to its charter in March 2004. Changes are being sought to ensure that USKOK has the power to work more effectively with the police and other state bodies, and to take a leading role in the investigation of criminal matters. According to information from the state attorney's office, USKOK received 410 reports accusing 261 people during 2003, of whom 57 were sent for trial.[1]
- A July 2003 amendment to labour legislation includes a provision **protecting whistleblowers** against dismissal where they have filed a report about corruption to the authorities in good faith.

Is the right of access to information law dead in the water?

Following intense lobbying from civil society groups in Croatia, the Right of Access to Information Act (RAIA) was passed in October 2003. Important omissions from the final legislation and its weak implementation procedures, however, call into question whether this legislation complies with internationally accepted standards.

Following recommendations from the Council of Europe to improve access to information in Croatia, civil society groups submitted various drafts of laws for consideration by the Croatian legislature. Although they clearly had an impact on the final draft, crucial elements from the suggested drafts were omitted, including standards relating to the timeliness and extent of the information provided. The act also does not recognise that the information seeker may need further information to set his or her enquiry in context.

The act also lacks key public interest and proportionality tests. These tests would stipulate that a denial of a request for access to information should not be used to cover up a violation of the law by a public authority, and that a public body cannot deny access to information simply by giving reasons for its decision.

The law's provisions have already been widely ignored. For example, all public authorities are obliged to submit an annual report on the implementation of the law to the central state administrative office for public administration, which, in turn, must submit a cumulative report to the government for submission to parliament. However, at the time of writing, no such reports had been submitted. Similarly, every public body is obligated to appoint an official information officer, in order to

ensure that citizens can exercise their right to access information. At the time of writing only one such person had been appointed.

Crucial, planned amendments to the legislation have failed to appear. Subordinate legislation obligating public authorities to keep an official logbook of requests, procedures and decisions regarding the exercise of the right to access information was posited, however, the body responsible for drafting the amendment, the Central State Administrative Office for Public Administration, has so far failed to produce any such instrument.

Although the legislation is a step in the right direction, it is important to acknowledge its limitations. The substance of the legislation is weak and there seems to be little will to improve access to information in Croatia. In a public debate in May 2004, the 'Club of Journalists' described the law as 'dead', in that the government did not respect it and citizens and journalists did not use it.[2] Amendments strengthening the law and implementation mechanisms are urgently required. It is also necessary that resources be made available to allow public offices to comply with the legislation.

What went wrong with the conflicts of interest law?

Following lengthy debate, the Prevention of Conflicts of Interest in the Exercise of Public Office Act (PCIA) was passed in October 2003. Its stated objective is to define the rules of conduct for public officials.

While there are concerns over the substance of the law (e.g. gifts to officials are not fully covered, and a last minute amendment permitted public officials with less than a 2 per cent stake in a company to avoid declaring their involvement with that company), its main weakness relates to its implementation. The control mechanisms demonstrate a clear lack of political will to prevent conflicts of interest in Croatia.

The body charged with overseeing the implementation of the act is the Commission for the Resolution of Conflicts of Interest. The commission consists of seven members who choose a president from among their number. Four of the commission members are members of parliament and the remainder are to be respected public officials. Although the law came into force in October 2003, participating members of the commission were finally announced in February 2004. Only six members were named, reducing the chances of attaining the four member agreement needed for the commission to make a decision, and the first five sessions of the commission were inquorate.[3]

Neither the 2003 nor 2004 budgets guaranteed any money for the work of the commission. Legally the commission does not even exist as it is not yet registered at the National Statistics Department, has not received a unique national registry number, nor does it have a bank account.[4] There are also serious restrictions on the commission's ability to take any action against corrupt members of parliament.

The lack of public outcry about the new law suggests a lack of understanding among the general public about conflicts of interest. There is also an insufficient understanding among public officials of the principles contained in the law. Much work remains to be done in educating public officials and the general public about the legislation and its importance.

Ana First (TI Croatia)

Further reading

Josip Kregar and Gordana Vučinič Palašek, *Korupcija, Sukob Interesa, Dostupnost Informacija; Stavovi i Iskustva* (Corruption, Conflict of Interest and Public Access to Information: Attitudes and Experiences) (Zagreb: TI Croatia, 2003), www.transparency.hr

GFK – Centre for Market Research, *Citizens on Corruption and Bribing* (Zagreb: GFK, June 2001, December 2003 and January 2004), www.gfk.hr/default.htm

TI Croatia: www.transparency.hr

Notes

1. *Slobodna Dalmacija* (Croatia), 7 April 2004.
2. Round Table discussion organised by TI Croatia and the NGO, 'Club of Journalists' on 20 May 2004.
3. *Novi list* (Croatia), 31 March 2004.
4. Statement of Mr Petar Marija Radelj, a member of the Commission for Resolution of Conflicts of Interest in *Slobodna Dalmacija* (Croatia), 8 April 2004.

Czech Republic

Corruption Perceptions Index 2004 score: 4.2 (51st out of 146 countries)

Conventions:
Council of Europe Civil Law Convention on Corruption (ratified September 2003)
Council of Europe Criminal Law Convention on Corruption (ratified September 2000)
OECD Anti-Bribery Convention (ratified January 2000)
UN Convention against Corruption (not yet signed)
UN Convention against Transnational Organized Crime (signed December 2000; not yet ratified)

Legal and institutional changes

- At the end of 2003, parliament adopted **a new law on public procurement** to harmonise existing rules with the European Union, which the Czech Republic joined in May 2004. The law provides for significant changes in the legal framework governing public procurement, but is a missed opportunity in terms of anti-corruption measures. It establishes additional exceptions to procurement rules and limits the filing of appeals against decisions by requiring the payment of relatively high administrative fees and an additional fee that a complainant must pay to submit an appeal. This fee is retained by the control body if it adjudicates there are no grounds for the complaint.
- A 19-member **subcommittee on corruption** was established in the lower house of parliament in October 2003. The new panel will focus on initiating anti-corruption legislation and assessing foreign experiences of anti-corruption strategies.
- A new **conflict of interests bill** was prepared by TI Czech Republic and sponsored by the government in early 2004. The proposal addresses many shortcomings of the current law by requiring officials to regularly update registers of interests and asset declarations. It covers members of parliament and government officials, regional and local politicians and their close family members. Following governmental intervention proposed post-employment limitations were removed. Opposition to this bill is strong. Some mayors, for example, see it as an attack on local government independence. Hot debate over this proposal is expected in late 2004.

- Throughout 2003 Czech **anti-corruption police forces** underwent a major institutional change when two units specialised in investigating corruption and economic crimes were merged into Corruption and Financial Criminality Investigation Unit. Recent investigations of local government officials and sports officials suggest the merger may yield positive results.
- In January 2004 the justice ministry introduced an **anti-corruption hotline** to be used by the public to report misconduct or suspicion of corruption in the judiciary. By establishing the service, the ministry followed other government bodies that had launched similar services shortly before, to no great effect.

New bankruptcy legislation urgently needed

There is little evidence of systemic corruption in the Czech judiciary, with one exception: bankruptcy proceedings. Current bankruptcy legislation lacks transparent criteria for the appointment and removal of bankruptcy administrators by judges. This had provided opportunities for corruption when bankruptcy judges and bankruptcy administrators collude. Specifically, a limited number of bankruptcy administrators may be given access to lucrative bankruptcy cases and collusion between the judge and the administrator may lead to the siphoning off of post-bankruptcy assets.

One illustrative case of the potential for corruption due to such collusion is the ongoing police investigation of Jiří Berka, a bankruptcy judge in the Ústí nad Labem regional court. Police enquiries from 2003–04 revealed that several bankruptcy cases against Zbrojovka Brno, ZKL Klášterec nad Ohří, Stavební podnik Ralsko, Báňské stavby Most and Krušnohorské strojírny Komořany demonstrated a pattern of corrupt practice.[1] First, an indebted company with its head office in Judge Berka's jurisdiction was identified. Berka's accomplices then bought out the company's debts in order to accumulate the claims necessary to file a bankruptcy petition. Immediately after the petition was delivered to the court, Judge Berka declared the company bankrupt and appointed a colluding administrator. The administrator's task was to satisfy claims of those who had bought out the debts and allegedly, in cooperation with the court-appointed appraiser, to siphon off bankruptcy assets.

Although the case is still under investigation, the unfolding details of this and other cases demonstrate clear institutional shortcomings in bankruptcy proceedings in the Czech Republic, the topic of long-time criticism by some private sector investors. At the time of writing, legislation is being prepared to entrust agents other than bankruptcy judges (such as a creditor's committee) with the power of assigning bankruptcy administrators to individual cases so as to induce arms-length relations between bankruptcy judges and administrators. The same proposed legislation aims to impose stricter requirements for entering into bankruptcy administration and, at the same time, establish a body to monitor their conduct.

Suspicious procurements

One of the largest recent corruption cases originated in the ministry of foreign affairs. The secretary of the ministry, Karel Srba, had allegedly been manipulating the bidding process for the reconstruction of embassies abroad and the leasing of other official buildings.[2] As the media picked up on the story, Srba and his accomplices took out a murder contract on Sabina Slonková, a leading investigative journalist with the daily *Mlada Fronta Dnes*, who had managed to trace some of the embezzled money. The police thwarted the attempt and, in June

2003, a court sentenced Srba to eight years' imprisonment for attempted murder.[3]

Meanwhile, the investigation of corruption in ministerial procurement continues. The court hearing will take place in late 2004, but there are already suggestions that the degree of abuse of power at the highest political sphere is far greater than had been previously suspected.

The Srba affair demonstrates clientelism in the award of public contracts that prevails at many levels of public administration. An external audit of public procurements conducted at Prague city hall in 2003 reported that all of the 133 contracts audited were unlawful.[4] Following this first external audit, Prague city hall is considering repeating the exercise on a regular basis. However, as public officials are able to influence the selection of the cases to be examined, substantial concerns about conflicts of interest remain.

In December 2003 parliament adopted a new public procurement law that was intended to bring the Czech Republic into line with EU regulations, and the government widely presented it as an 'anti-corruption law'. It introduced some positive changes, but loopholes remain. The external regulatory framework is still ineffective. The anti-monopoly office that conducts external controls focuses on formal aspects of the contracting process only, and often fails to distinguish between corruption and administrative error. The law also lowered penalties.

The law does not specify the selection criteria to be used in the evaluation of bids, so there is still a possibility to set subjective criteria that favour individual bidders. The selection of bids is also subject to discretionary oversight by procurement officials, and the decision to publish contracts and amendments is made by the contractor, making public control difficult, if not impossible.

In addition, there is no legal limit on subsequent price increases and the content of contracts remains an issue of agreement between contractor and bidder. The opportunities to 'motivate' persons to increase the cost and content of a contract appear considerable. There have been examples of contracts being increased by 1,000 per cent of the bidding offer – notably in the case of the Fata Morgana greenhouse in Prague, the cost of which now amounts to hundreds of millions of crowns (more than US $8 million).

The new law does little to bring transparency to the public procurement process in the Czech Republic and the authorities seem to lack the political will to ensure a fair and effective distribution of public funds. Public procurement issues remain the area most vulnerable to corruption as EU funds come on stream.

Corruption in Czech football

In November 2003, Radek Váňa, the captain of a minor-league football team, approached an investigative journalist with Czech TV and offered to demonstrate that corruption in football was pervasive. Together, they approached three referees with a small bribe of CZK 500 (US $19). All referees accepted without hesitation.[5]

Demonstrating the vulnerability of whistleblowers in Czech society, the football union suspended Váňa from playing from March to December 2004 and his team lost 12 points.[6] Váňa did, however, receive a great deal of moral support from the Czech public and was awarded the Czech Olympic Committee's Fair Play Prize.

Coverage of Váňa's story on Czech TV generated great interest from the public and the authorities and the police instigated an eight month investigation into corruption in Czech football, resulting in bribery charges against five referees and one manager.[7] At the time of writing others were expected to be charged following allegations that 14 of the Czech Republic's 16 premier league teams had bribed referees.[8]

David Ondráčka and Michal Štička (TI Czech Republic)

Further reading

Inna Čábelková, *Entry Restrictions, Corruption and Extortion in the Context of Transition* (Prague: CERGE-EI, 2001)
Chmelík, J. (ed), *Pozornost, úplatek a Korupce* (Favour, Bribe and Corruption) (Prague: Linde, 2003)

TI Czech Republic: www.transparency.cz

Notes

1. ČTK Press Agency (Czech Republic), 16 February 2004.
2. See www.transparency.cz/index.php?id=727
3. Radio Praha online, 30 June 2003, see www.radio.cz/en/news/42476#1
4. Bez Korupce online, 15 January 2003, see www.bezkorupce.cz/vypis_zpravy.php?id=71
5. ČTK Press Agency (Czech Republic), 24 November 2003.
6. See www.transparency.cz/index.php?id=1971
7. See www.transparency.cz/index.php?id=2346
8. BBC Czech Online, 14 May 2004, see www.bbc.co.uk/czech/domesticnews/story/2004/05/040514_football_1830.shtml

Georgia

Corruption Perceptions Index 2004 score: 2.0 (133rd out of 146 countries)

Conventions:
Council of Europe Civil Law Convention on Corruption (ratified May 2003)
Council of Europe Criminal Law Convention on Corruption (signed January 1999; not yet ratified)
UN Convention against Corruption (not yet signed)
UN Convention against Transnational Organized Crime (signed December 2000; not yet ratified)

Legal and institutional changes

- In January 2004, two days after being sworn in, President Mikheil Saakashvili sent a **package of bills** to parliament that aimed to amend 12 laws, including provisions making it easier to arrest those suspected of bribery and to facilitate the confiscation of illegal assets (see below). The bills were subsequently approved by parliament. In an effort to reduce parliament's potential as a safe haven for criminals, a constitutional amendment was passed in February 2004 limiting immunity for members.
- Changes to a **law on corruption and conflicts of interests** within public services in early 2004 made the prosecution of criminal cases possible regardless of whether the defendant is present or not. The amendment plugs a loophole in the legislation that was widely abused by absconding defendants, or ones who claimed ill health, to evade prosecution. The law applies to public officials and the heads of state-run enterprises (see below).
- The judiciary added another tool in the fight against corruption by approving the inclusion of **plea-bargaining in the criminal code** in February 2004. A judge is to oversee the

process to ensure suspects do in fact turn over critical information about those more deeply involved in criminal activity.

Saakashvili gets tough

The Rose Revolution that blossomed in reaction to the rigging of the parliamentary elections in November 2003 led to the resignation of former president Eduard Shevardnadze and the rise to power of Mikheil Saakashvili in January 2004. Both as candidate and president, Saakashvili consistently asserted that corruption was his main priority. Indeed, such is the zeal with which Saakashvili has pursued his anti-corruption campaign that concerns have been raised over the respect being paid to civil and human rights in Georgia.

In early 2004, the government made conspicuous efforts to detain Shevardnadze-era officials, including Shevardnadze's son-in-law, Gia Jokhtaberidze who was detained on charges of tax evasion. During this period five high-ranking officials were detained on charges including tax evasion, embezzlement and misappropriation of state property. Besides Jokhtaberidze, these included the former head of Georgia's railway department, a former energy minister,[1] and a former minister of transport and communications.[2] The detentions all made front-page news and bolstered the government's image for being tough on corruption.

Such government actions have won international confidence. The IMF resumed the operations it suspended in summer 2003 and in June it announced a US $144 million three-year loan. The June 2004 Brussels donor conference secured pledges of US $1 billion for 2004–06, of which Georgia had earmarked US $78 million for governance and anti-corruption reform. Later that month, the World Bank announced a further US $24 million for anti-corruption activities. Georgia was one of 16 countries eligible to apply for the United States' Millennium Challenge Account, which is conditional on the level of corruption (see *Global Corruption Report 2004*).

The government's new anti-corruption strategy includes mandatory asset declaration. A draft law states that if the general prosecutor's office has reason to believe a suspect has acquired property or other assets through illegal means, the administrative court can convene a separate investigation and court hearing. Importantly, the provision allows for relatives or close associates of a suspect to come under investigation. If a suspect fails to appear in court, a decision can still be handed down, overcoming the popular escape route of claiming ill health to avoid prosecution. The justice ministry also elaborated legislation modelled on the US Racketeer Influenced and Corrupt Organizations (RICO) laws. Parliament was due to discuss the first draft in September 2004.

A further pillar of the government's anti-corruption policy is the easing of the tax burden on small business in an attempt to reduce Georgia's shadow economy, estimated to amount to 70 per cent of GDP.[3] There is widespread agreement that the cumbersome tax code is at the core of the stifled economy and primarily responsible for driving legitimate business underground. The president announced an amnesty for businesses who had evaded their taxes up to a threshold of US $500,000 and who signed up to a long-term repayment plan. A 15-member team, led by the prime minister and including foreign tax specialists, was at the time of writing drafting a new tax code for parliamentary review in September 2004.

However, while international expectations rose that Georgia was starting to put its appalling corruption record behind it, a rather more muted discourse questioned the price at which this turnaround was being achieved. Some, for example, have questioned the transparency of anti-corruption activities. Many of the high-ranking officials arrested have subsequently paid money to be released and it remains unclear whether the charges

have been dropped in response.[4] Allegations of improper treatment of prisoners, including torture, have also spread. Sulkhan Molashvili, the former chairman of the state audit agency, claimed that he was burned with cigarettes and subjected to electric shocks while in official custody on corruption charges.[5] Human Rights Watch warned that high-level official statements praising harsh methods of fighting corruption may encourage human rights violations.

Disappointingly, parliament has scarcely debated these events and few civil society groups or public figures have spoken out on the need for the government to be more accountable for its actions. This muted response can be attributed to several factors, not least of which is Saakashvili's overwhelming popularity, having received 97 per cent of the presidential vote. The breakneck speed of political developments in Georgia and the ongoing crises in Adjaria and South Ossetia[6] have absorbed public attention. The timely payment of pension and salary arrears from funds the state claims it recovered from 19 corrupt officials since January 2004 (US $23.4 million) has also boosted public support for government policy in fighting corruption.[7]

Early assessments of Saakashvili's anti-corruption policy thus suggest there may be reason for both optimism and concern. The current hard-line approach and proposals to increase jobs and economic growth look set to go some way towards reducing incentives for corruption, but care is also needed to protect Georgian civil liberties.

Georgia's smuggling crisis

Research by the Petroleum Advisory Group revealed that the government loses an estimated US $300 million in revenue each year from the smuggling of petroleum products, tobacco and alcohol into Georgia. Contraband, including basic products such as flour and citrus products, streams across the border.

The ministry of the interior and the state border protection service both came under scrutiny in early 2004. The former deputy interior minister resigned in March after he was charged with violations of customs regulations on imported vehicles that left a 9 million laris (US $4.4 million) shortfall in the budget for 2000–03.[8] The border protection service director, Valeri Chkheidze, was accused of corruption and the head of the personnel department was arrested on charges of fraud and counterfeiting after a military investigation.[9]

The president has demanded an end to corruption in customs and, at the time of writing, work is currently underway, with the help of European experts, to rewrite the customs code with special attention to delineating the responsibilities of customs officials. It was also expected that legislation would be passed to ensure that in future goods will be cleared at the border rather than inside the country's breakaway regions, the source of most of Georgia's contraband. Major infrastructural changes will be required to ensure this happens. The head of customs also declared that he is to cut his department's staff by nearly 400 after skills testing of current employees.

However, many of those engaged in smuggling are economically and socially deprived, making any crackdown both a political and social litmus test. Until their livelihood can be enhanced by other means, it might be unwise and even dangerous to pursue a strategy that punishes the offenders without attacking the large-scale smugglers, law enforcement bodies, and corrupt officials who facilitate smuggling and permit it to continue unhindered.

So far the government has not taken this risk. While it has taken some short-term anti-smuggling measures (for example, the destruction of 'smuggler roads'), it appears more interested in an effective, long-term strategy of reform than in prosecuting smugglers who are already in desperate economic conditions.

Johanna Dadiani (TI Georgia)

Further reading

Alexandre Kukhianidze, Aleko Kupatadze and Roman Gotsiridze, *Research Report for American University's Transnational Crime and Corruption Center* (Tbilisi: Georgia Office, 2003)
Georgian Opinion Research Business International (GORBI), *Corruption Survey* (Tbilisi, 2003), www.gorbi.com

TI Georgia: www.transparency.ge

Notes

1. *Georgia Online Magazine* (Georgia), 3 April 2004, at www.civil.ge
2. *The Messenger* (Georgia), 5 February 2004.
3. Alexandre Kukhianidze, Aleko Kupatadze and Roman Gotsiridze, *Research Report for the American University's Transnational Crime and Corruption Center* (Tbilisi: Georgia Office, 2003).
4. *The Messenger* (Georgia), 2 April 2004.
5. See eurasianet.org/departments/insight/articles/eav091104.shtml
6. Abkhazia and South Ossetia are breakaway regions not under central government control. Adjaria was a third breakaway province that came under central control in May.
7. *The Government's Strategic Vision and Urgent Financing Priorities in 2004–2006* (Brussels: 2004), www.civil.ge
8. RFE/RL Newsline, 3 March 2004.
9. RFE/RL Newsline, 19 February 2004.

Germany

Corruption Perceptions Index 2004 score: 8.2 (15th out of 146 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 January 1999; not yet ratified)
OECD Anti-Bribery Convention (ratified November 1998)
UN Convention against Corruption (signed December 2003; not yet ratified)
UN Convention against Transnational Organized Crime (signed December 2000; not yet ratified)

Legal and institutional changes

- In February 2004 Germany's largest association of pharmaceutical companies (Verband der Forschenden Arzneimittelhersteller) presented a **code of conduct** to its members that rules out offers of improper advantage and regulates corporate gifts and entertainment for doctors. Although this was a long overdue development, the code has serious shortcomings in precision that may render it ineffective. Compliance will be monitored by a self-regulatory association that can apply sanctions in case of infringement.
- The states of Saxony and North Rhine-Westphalia and Saxony established **special task forces to combat corruption** in April and March 2004, respectively. In the task forces

prosecutors, police officers and accountants cooperate to tackle the increasingly complex networks of corruption. Scandals in both states provided the impetus to strengthen efforts in this direction.

- In March 2004 Hamburg became the first German state to establish by way of law a **blacklist for companies** found guilty of corruption. Other states, including North Rhine-Westphalia, Hessen, Lower Saxony and Baden Württemberg, have introduced blacklists, but their legal foundation is not as strong as in Hamburg because they have been established by administrative order (*Verordnung*), rather than by law. In April, North Rhine-Westphalia announced it wanted to update its provisions in this regard. Its current blacklist is mandatory only for tenders at state level, not at the communal level.
- Germany finally ended its resistance to provisions in the UN Convention against Corruption concerning the **bribery of members of parliament**. The German stance delayed negotiations in 2003. Members of parliament argued that creating such an offence would carry no advantage since nobody would try to bribe them and that, in addition, the rules of appropriate conduct could not easily be specified. In December Germany signed the convention, though it still needed ratifying at the time of writing.

Bribery scandal in Munich

In March 2004 – to considerable public surprise – police raided the offices of Karl-Heinz Wildmoser, the popular and colourful president of Munich's second biggest football club, TSV 1860 München. Wildmoser and his son, Karl-Heinz Wildmoser Jnr, were arrested and accused with two others of receiving kickbacks worth €2.8 million (US $3.4 million) in connection with a contract to build the new football stadium that will stage the opening match of the 2006 World Cup.[1]

Munich's two major football clubs, Bayern München and TSV 1860, currently share the stadium built for the 1972 Olympic Games. In 1997 Bayern München decided to build a new stadium specifically to host football games, although the project only began in autumn 2001. The two clubs formed a joint holding company to manage the project, Münchener Stadion GmbH, with Karl-Heinz Wildmoser Jnr as its senior manager.

From then on the course of events became less clear. Stefan Dung, a school friend of Wildmoser Jnr active in the real estate business, allegedly contacted the Austrian construction company Alpine and received money in return. The actual amount and why it was paid have not been revealed. It was reported that Alpine claimed Dung had informed them of the tender for the stadium and recommended they work together on it. Alpine officials apparently said they paid him an 'arrangement fee' of €1.4 million (US $1.7 million) for this information, following standard business practice.[2] The Munich public prosecutor Christian Schmidt-Sommerfeld, however, claimed that Alpine paid €2.8 million not as an arrangement fee but as a kickback for classified information about the tender that the company ultimately won. Wildmoser Jnr allegedly admitted he had received more than €2 million, but maintained that his father was not involved in the affair.[3] The father was cleared of the allegations, but the trial of Wildmoser Jnr was due to open in late 2004.

At one level the Wildmoser affair was hardly exceptional – because corruption is perceived to be common in the construction sector and not unusual elsewhere in the economy. But, at another level, it had a profound effect. The alleged involvement of a celebrity and the link to the 2006 World Cup, due to be held in Germany, lent it symbolic importance. Politicians voiced fears that Germany's 'clean' reputation could be seriously damaged and called for a national blacklist of companies convicted of

corruption. Just such a bill failed two years ago because of resistance in the Bundesrat (the upper house of parliament), and the ministry of economic and labour affairs has not given it high priority. However, there are chances that the proposal will be revived in connection with a procurement reform. While some states, such as Hamburg, have introduced blacklisting mechanisms on their own, the Bavarian parliament recently rejected a similar motion introduced by the opposition. The Bavarian government argued that action was primarily needed at the federal level.

The Mannesmann case

In January 2004 the controversial trial began of several prominent members of Germany's business elite on charges of breach of fiduciary duty (*Untreue*) after the hostile takeover of Mannesmann AG by Vodafone in February 2000.

At the heart of the allegations lay severance payments totalling €57 million (US $70.4 million) to Mannesmann's former CEO, Klaus Esser, and two other top representatives of the company. Prosecutors originally claimed Esser was bribed into accepting the takeover, a charge that the court refused to accept due to lack of evidence. Instead, the trial centred on whether the defendants – who, in addition to Esser, included Josef Ackermann, CEO of Deutsche Bank, Klaus Zwickel, former head of the powerful trade union IG Metall, and Joachim Funk, Mannesmann's former chairman – had been acting in the interest of the company when they voted for the severance package. While Judge Brigitte Koppenhöfer indicated in April 2004 she thought the prosecution would be unable to prove the defendants did anything criminal,[4] there remained the possibility that the board members contravened the law on listed companies, which would have constituted a civil offence. In July 2004 the court acquitted all the defendants, though state prosecutors lodged an appeal against the acquittal.[5] Irrespective of the final decision, the trial nevertheless laid bare several important issues.

First, the proceedings were instituted in the face of opposition from the international business press and domestic politicians, who both argued that a trial would be a mistake that could damage Germany's reputation as a place to conduct business. The capacity of the judicial system to act independently of such powerful interests was undoubtedly reassuring.

Second, in spite of reported indications that not all the rules were followed during the takeover,[6] the prosecution was unable to prove its case and had to rely on circumstantial evidence. Many observers highlighted flaws in the prosecution strategy, but this also reflected the highly opaque nature of a case in which important witnesses claimed to have forgotten basic facts[7] and the relevant parties apparently had little interest in uncovering the true story. Though the trial proved significant shortcomings in Germany's corporate governance system, it also illustrated the difficulty of addressing issues such as this through judicial proceedings.

Finally, the public trust that was already strained by corruption scandals and economic decline was further eroded by public exposure of the arrogance of some of Germany's business elite. The payments were considered by many to be an indication of unbridled greed.

NGOs and parliamentarians push for freedom of information

Though a powerful tool for combating corruption, transparency is not a word that springs to mind in connection with Germany's public services. Indeed, access to information is the exception: if there is no explicit provision saying a document is accessible, it is confidential. In this respect, Germany is increasingly isolated in the developed world and, together with Luxembourg, it is the only EU member that has not enacted

freedom of information legislation. Though four states have made their administration's documents accessible – Brandenburg (1998), Berlin (1999), Schleswig-Holstein (2000) and North Rhine-Westphalia (2002) – action is needed at federal level, if only to send out a strong signal.

Prospects looked promising after the change of government in 1998 when the ruling, two-party coalition documented its intent to introduce freedom of information legislation, but the project did not get off the ground. A working group of civil servants in the ministry of the interior began drafting a bill in 1999 but, after five years of resistance from the business sector and ministries – notably defence, economic affairs and foreign affairs, which all demanded far-reaching exceptions – it finally gave up the effort in March 2004.

At this crucial moment a coalition of five professional associations and NGOs – Deutscher Journalisten-Verband, Deutsche Journalistinnen- und Journalisten-Union in ver.di, Netzwerk Recherche, TI Germany and Humanistische Union – stepped in. Frustrated by inaction at the federal level and wishing to revive the public debate, the alliance began to draft a freedom of information bill in mid-2003. The finished document was handed to the president of the Bundestag in April 2004.[8] The draft gained widespread publicity and, more important, lent momentum to an initiative by several parliamentarians who in parallel were drafting a bill, intended to be introduced on behalf of the ruling coalition. The proposed legislation would only cover federal agencies, which could speed up the procedure since the upper house of parliament would not need to vote in favour. Its disadvantage is that it would not affect information at the communal level, since the states enact their own legislation in this area.

Carsten Kremer (TI Germany)

Further reading

Hans von Arnim, ed., *Korruption – Netzwerke in Politik, Ämtern und Wirtschaft* (Corruption – Networks in Politics, Public Agencies and the Business Sector) (München: Knaur, 2003)

Britta Bannenberg and Wolfgang Schaupensteiner, *Korruption in Deutschland* (Corruption in Germany) (München: Beck, 2004)

Hans Leyendecker, *Die Korruptionsfalle* (The Corruption Trap) (Hamburg: Rowohlt, 2003)

Michael Wiehen, *OECD Convention: Overcoming Obstacles to Enforcement. Summary Report on Germany* (October 2003), www.transparency.de/Stellungnahme_Pruefbericht.113.0.html

TI Germany: www.transparency.de

Notes

1. *Financial Times* (Britain), 11 March 2004.
2. Associated Press (US), 18 March 2004.
3. *Der Spiegel* (Germany), 15 March 2004.
4. *FAZ* (Germany), 1 April 2004.
5. *Financial Times* (Britain), 24 July 2004.
6. See for example *Der Spiegel* (Germany), 2 February 2004.
7. *FAZ* (Germany), 2 April 2004.
8. www.transparency.de/uploads/media/DOK406_IFGNeufassung_040402.pdf

Greece

Corruption Perceptions Index 2004 score: 4.3 (49th out of 146 countries)

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)
OECD Anti-Bribery Convention (ratified February 1999)
UN Convention against Corruption (signed December 2003; not yet ratified)
UN Convention against Transnational Organized Crime (signed December 2000; not yet ratified)

Legal and institutional changes

- The powers of the **General Inspector for the Public Administration** (GIPA), established in November 2002, were amended in 2003 to allow it to call for disciplinary measures against employees found violating the law. Another legislative amendment empowers GIPA's 'special inspectors' to control, inspect and investigate; to act as prosecutors; and to carry out administrative interrogations. In its first year of operations, GIPA investigated 386 cases, of which 49 referred to corruption and transparency. GIPA's 2003 report included a number of proposals for combating corruption and increasing transparency in the public administration.
- During 2003 the first supreme court decisions were issued on cases involving the newly reformulated offence of bribery, which had been modified in response to the EU's anti-corruption convention. Unlike the previous wording of the law, the supreme court ruled that it is not illegal to give bribes *after* the action they are supposed to influence has taken place. As a result **gratitude gifts** are now allowed despite the obvious risk that they may create an obligation from the employee to the gift giver.
- The new government elected in March 2004 made a number of **legislative proposals** for public administration reform, including: reform of the law on influence peddling between the media and public works contractors (see below); a proposal to eliminate the so-called 'mathematic formula' which was seen to be an inadequate and non-transparent means of selecting contractors; and the creation of ministerial committees with the participation of NGOs for drafting the new legislation.

Mass media and public contracts

In 2003 public bodies for the first time included in bids for public contracts the provisions of a new law on mass media and public contracts. The law, based on a constitutional amendment in 2001, is intended to promote transparency and limit the trade in influence by prohibiting owners or shareholders of mass media organisations from participating in companies that implement public contracts. Violators of the law face serious penalties, with the possibility of recall of a broadcaster's licence, and cancellation of the public contract.

The law follows several occasions in the last few years in which the Greek press published reports alleging that the award of public construction contracts had resulted from the influence of media owners who were also shareholders – or their relatives were – in the companies that won the contracts. With the massive increase of public building required for the 2004 Olympic Games, such cases naturally generated considerable publicity.

The new law refers to the broad public sector, including: contracts with the state and municipalities; private companies whose board is selected by the state or which receive substantial public funding; and companies founded by the state. The law applies to all public contracts worth more than €250,000 (US $302,000), many of which are for public works and construction projects.

Under the new law for companies to participate in a bid above the threshold, all board members, directors and shareholders with more than a 5 per cent participation; the shareholders of the shareholding companies; and their relatives all have to sign a declaration that they are neither an owner nor shareholder in a media company. Even a small firm with three shareholders, a board of five members and two directors, all from small families, might have to send a list of 150 names, while figures of up to 500 names are not unusual.

However, in the event that one of the persons listed is indeed connected with a media company, he or she merely has to prove financial independence from the relative participating in the company's bid. Since a mass media organisation and a construction company, even if owned by the same group of individuals, may easily be financially independent of one another, this provision makes it easy to avoid application of the law, in spite of its apparent severity. The law can also be by-passed by off-shore companies, which cannot be obliged to publish the names of their shareholders.

Initial hopes that the new law would prevent misuse of influence receded in 2003, just months after it was implemented. Although such cases were broadly discussed in the media, only one reached the courts, and not as a criminal procedure. The case in question, which concerned annulling the award of a construction project to a company owned by the sons of a media owner, was heard in the supreme administrative court.

The requirements that the law introduced were clearly impractical and bureaucratic, while providing ample scope for evasion. The New Democracy government, elected in March 2004, proposed to amend the law later in the year, but any amendment will come long after the Olympics and Greece's largest publicly funded construction boom in recent years.

A specialised police agency

In 2003 the Greek government responded to calls for a specialised agency to tackle corrupt public employees. The need for such an office had been obvious for years, judging from the number of public complaints about corruption and the lack of prosecutions.

Instead of building a new agency, an existing institution, the Directorate of Internal Affairs of the Greek police had its competence broadened. This move followed the recommendations of the GRECO inspection team, which visited the directorate in 2001, evaluated positively its anti-corruption work in the police force and proposed expanding its activities to other areas of public administration.[1]

Choosing an already well-functioning, experienced and broadly independent institution has already proved effective. During its first year, in 2003, 396 complaints against police officers and 65 complaints against public officers – all for corruption – were filed. Twelve cases against public officers were prosecuted and will be brought to trial. Bribery already constitutes the second largest group of violations (after violation of duty) investigated by the Directorate.

The Directorate of Internal Affairs was established in 1999. It has functional independence, reports directly to the chief

of police and is supervised by a high-ranking prosecutor from the court of appeals. The directorate is responsible for all crimes committed by police personnel, including corruption, and following the broadening of its powers, it is now empowered to investigate acts of bribery and extortion by any public officer. These include employees of the ministries, public agencies, municipalities, prefectures, tax inspectors, and so on. Only port authority employees are excluded, since the relevant ministry has its own internal affairs directorate. Unlike other anti-corruption authorities in Greece, including the GIPA, the directorate primarily has a penal function, while the others are mainly administrative.

The directorate investigates complaints, which can be anonymous, but may also act independently (for example, on inside information). The investigations are conducted secretly but with caution so as not to harm the reputation of wrongly accused public officers.

Several of the 2003 cases were brought against tax inspectors who had been specifically assigned to combat corruption in the field of taxation. Several scandals relating to them had led to frequent public questioning of 'Who will control the controllers?' Their investigation by the Directorate of Internal Affairs is of major importance, not only in answering this question, but in preventing future corruption.

Markella Samara (TI Greece)

Further reading

TI Greece: www.transparency.gr

Note

1. Council of Europe Group of States against Corruption (GRECO), 'Evaluation Report for Greece' (2002).

India

Corruption Perceptions Index 2004 score: 2.8 (90th out of 146 countries)

Conventions:
UN Convention against Corruption (not yet signed)
UN Convention against Transnational Organized Crime (signed December 2002; not yet ratified)

Legal and institutional changes

- The **Central Vigilance Commission (CVC) bill** became law in September 2003. The law permits inquiries into corruption offences alleged to have been committed by certain categories of public servants. The legislation came in response to a 1997 recommendation by the supreme court to increase the independence of the Central Bureau of Investigation (CBI) and other investigative bodies that probe high-level corruption by transferring supervision of the CBI from the government to the CVC. The CVC law, however, fails to give the CVC a strong mandate. The law restricts the CVC's supervision of the CBI and

fails to address other key problems highlighted in 1997 such as the need to establish a special agency to oversee cases of high-level corruption.

- Several laws on **election finance** were amended in September 2003. The amendments aim to counter the purchase of political favours through increased transparency and accountability of party financing. The changes should also help parties mobilise more campaign funds. They grant corporations tax exemption for political party contributions and require political parties to report all private or corporate donations above 20,000 rupees (US $435) to the election commission. Failure to do so forfeits the tax deduction on the contribution. The bill also provides indirect public funding in the form of allocation of time on the cable television network and electronic media.
- An **anti-defection law** received presidential assent in January 2004. This legislation aims to curb corruption in the electoral process by limiting the number of ministers in central and state government. One of the methods of destabilising governments has been to lure members of parliament to change party with promises of a cabinet position. Under the new law, some of the states with excessively large cabinets had to reduce them by June 2004. The law also bars 'defectors' from becoming ministers until the following election. While the law reduces incentives for corruption, it also sanctions parliamentarians who vote against their party line and may therefore stifle internal party debate. In addition, the law provides that the parliamentary speaker is the final authority in determining disqualification for defection, leaving the door open for political manipulation.
- Following a directive of the supreme court and pending enactment of suitable legislation, the government issued a **resolution on whistleblowers** in April 2004. The resolution assigns the CVC as the agency to receive complaints by whistleblowers of allegations of corruption or misuse of office by public servants. While a welcome step, the resolution is weak in relation to the draft whistleblowers act, written by the Law Commission and under examination by the government, which would empower the CVC to issue directives to government departments.[1] Instead the resolution merely allows the CVC to issue advice to the departments concerned once whistleblowers' complaints have been investigated. The draft act would also stipulate that once criminality is established the designated agency can directly ask for prosecution of errant government officials, while under the current resolution sanction for prosecution is needed from higher authorities.

The role of the courts and civil society in stemming political corruption

State parliamentary elections of November 2003 saw the first extensive test of an important initiative to improve electoral transparency. Following a directive of the supreme court in May 2003, the election commission issued guidelines requiring all candidates contesting elections to declare their education, criminal record, assets and financial liabilities. Despite a shaky start in local elections in K. R. Puram, a township on the eastern outskirts of Bangalore (where 30 out of 170 candidates failed to fully declare their assets), all of the candidates in the parliamentary elections made declarations, and the information was published extensively in the media.

The supreme court also took the lead in deciding the outcome of state elections in Bihar. In April 2004 the Patna High Court ordered a recall of votes in constituencies where the candidates were in prison facing serious charges including murder, extortion and kidnapping. The supreme court stayed the order of the Patna High Court on the

grounds that the election (of 26 April) had taken place before the order of the High Court (announced on 30 April).[2] The case remains open, however, awaiting a final ruling of the supreme court. Nevertheless, the Patna High Court decision may lead to new measures to prevent those convicted of serious offences from contesting elections.

Another effort to increase accountability and political transparency came in the form of a lawsuit initiated by an NGO, Krishak Bharat, seeking to recover money owed for electricity, water and telephone charges by 656 current and former members of parliament. The money was owed to the New Delhi Municipal Corporation and the Mahanagar Telephone Nigam. In March 2004, the Delhi High Court directed the election commission to make this information public. Later, the High Court asked the secretariats of both houses of parliament to ensure recovery of dues from parliamentarians.[3]

The civil society group Lok Sevak Sangh filed a petition to the supreme court in July 2003 seeking the scrapping of the Member of Parliament Local Area Development Scheme. The programme, which entitles a member of parliament to spend 20 million rupees (US $440,000) every year on welfare schemes in their constituency, has been plagued by misuse, according to a report by the comptroller and auditor-general submitted to the president in 2001. The group contends that the scheme gives incumbent members of parliament an unfair advantage against their opponents at election time.

A coalition of 22 NGOs formed an 'election watch' for state elections in Delhi, Chhatisgarh and Gujarat in 2003–04. During the general election of April–May 2004, an election watch was mounted in 12 states across the country. The task of the election watchdogs was to raise awareness among voters about their right to vote, collect data on the criminal records and financial liabilities of the candidates, and keep the public informed about their candidates. Observers also monitored the corrupt practices of political parties during the campaign and on election day.

The election watch NGO coalition called on all the parties to declare their policy on corruption, particularly their positions on establishing an ombudsman's office at national and state levels, a code of ethics for ministers and parliamentarians, a regular audit of the accounts of political parties and a bill on whistleblowing.

There have been positive steps towards electoral transparency in India. The electoral commission's requirements were by and large respected and civil society initiatives have achieved significant results. On the negative side, while the parties made statements about the need to fight corruption they did not commit to specifics. Furthermore, despite the declaration of candidates' assets and criminal records, several candidates with criminal backgrounds were still elected. This can be explained in part by the popularity of particular candidates, but also many voters continue to base their decisions on a system of patronage, whereby politicians are known to buy votes through offering improved access to public services.

P. S. Bawa (TI India)

Further reading

Centre for Media Studies, *Corruption in Urban Public Services* (New Delhi: 2003), www.cmsindia.org

S. K. Das, *Public Office, Private Interest: Bureaucracy and Corruption in India* (New Delhi: Oxford University Press, 2001)

Garry Jeffrey Jacobsohn, *The Wheel of Law* (Princeton and Oxford: Princeton University Press, 2003)

Bhure Lal, *Corruption: Financial Anarchy in Governance* (New Delhi: Siddharath Publications, 2002)

TI India: www.ti-bangladesh.org/ti-india/

Notes

1. *Indian Express* (India), 7 May 2004.
2. *The Hindu* (India), 2 May 2004.
3. *Indian Express* (India), 2 May 2004.

Indonesia

Corruption Perceptions Index 2004 score: 2.0 (133rd out of 146 countries)

Conventions:
UN Convention against Corruption (signed December 2003; not yet ratified)
UN Convention against Transnational Organized Crime (signed December 2000; not yet ratified)

Legal and institutional changes

- The long-awaited **anti-corruption commission** was set up in December 2003. The commission has powers to try corruption cases over IDR 1 billion (US $106,300) to coordinate corruption prevention, to oversee the investigation and trial of corruption cases by prosecutors and police, to order a high-ranking public official under investigation to be released from his or her post, and to order banks to disclose suspicious transactions and freeze accounts. The commission can also take over corruption investigations from police and prosecutors that drag out – a common symptom of corruption in Indonesia. At the time of writing the commission had received 800 corruption cases from the public. Its first case involved alleged corruption by the governor of Aceh province. The limited size of the commission and the protracted process of creating it, however, gave rise to concerns about the degree of political commitment to this institution.
- A **presidential decree on public procurement** was issued in December 2003 to replace regulations existing from 2000. The decree prescribes the establishment of a national procurement office as an oversight body for all public procurement. New rules require full disclosure of all bidding information. Bidding procedures are to be announced in the press at least one month before a deadline for submitting bids. The decree allows civil society to monitor the procurement process. Pre-qualification of bidders is restricted. However, the decree still allows for direct appointment of contractors in emergency situations. As the definition of what constitutes an emergency is not specified, this opens loopholes for government officials to delay procurement until it is too late to conduct a proper bidding process. At the time of writing, the national procurement office was yet to be established.
- In October 2003 parliament passed a **law on money laundering** to amend existing legislation from 2002. This followed criticism of the 2002 law from the OECD's Financial

Action Task Force on Money Laundering (FATF) that put Indonesia on the FATF's list of Non Cooperative Countries and Territories. The new law makes modifications to several controversial articles in the old law, including: eliminating the minimum amount of laundered money required to be considered under the law, shortening the time limit for reporting suspicious transactions from 14 days to three days, adding the post office to the list of financial institutions and including terrorism and human trafficking related transactions. The law's amendment also allows the Centre for Reporting and Analysis of Financial Transactions (PPATK) to report its findings to the public. But at the time of writing, Indonesia's status on the FATF list remained unchanged. PPATK, had recorded 807 suspicious transactions since May 2002, of which 132 were reported to police but only one of these cases was prosecuted.[1]

Anti-corruption movement takes root

Whereas in the past the fight against corruption was primarily addressed by NGOs, 2003–04 saw a broadening of the anti-corruption movement in Indonesia as business and religious organisations joined the campaign for more transparency and accountability. The Indonesian Chambers of Commerce and Industry (KADIN) announced a written pledge to curb bribery in October 2003. Two weeks later, Nahdhatul Ulama and Muhammadyah, the two largest Islamic organisations in Indonesia, also made a declaration against corruption.

Public perceptions of the two newcomers to the anti-corruption struggle vary considerably. The widespread belief that a number of the signatories to the KADIN declaration have been involved in collusion and corruption with Indonesian public officials has led to a perception that the declaration is window dressing. In contrast, Indonesians have welcomed the declaration by the two Islamic organisations and look to it with high expectations. According to the 2001 Governance and Anti-Corruption Survey of the Partnership for Governance Reform, religious organisations are by far the most trusted in Indonesia.

The declarations have brought about a heightened awareness of corruption among the public. Nahdhatul Ulama passed a *fatwa* (holy decree) that someone found guilty of corruption should not be given a proper Muslim ceremony when they die. Their efforts, together with those of the country's anti-corruption NGOs, succeeded in influencing the election agenda. Corruption was one of the key issues during the 2004 legislative and presidential elections, with all parties and presidential candidates pledging to fight corruption if elected.

While the religious parties clearly have the confidence of the public, there is still work to be done in moving from statements to real action. The biggest challenge faced by Nahdhatul Ulama and Muhammadyah is how to actually integrate transparency and accountability into Islamic schools, the distribution of charitable donations and the management and administration of mosques. The issuing of a *fatwa* or Islamic teaching on corruption is no guarantee of effectiveness and there is little evidence thus far that behaviour has changed.

Money politics reign during the 2004 elections

The 2004 Indonesian elections were riddled with 'money politics' – the purchase of public support by political parties. In the Indonesian context money politics takes various forms: donations to religious bodies, providing public facilities, offering door prizes at rallies, promising to donate part of a candidate's salary if elected, distributing basic goods (such as rice and other food), throwing money at the audience at rallies and outright vote-buying.

The General Election Supervisory Committee reported 57 such cases to the police, while Transparency International Indonesia reported 93 such cases and

Indonesia Corruption Watch reported 48. Only 21 cases were taken to court. Of these, only nine resulted in prosecutions by the time of writing – with fines imposed of IDR 1–1.5 million (US $110–160) and up to two months' imprisonment.

The failure to comply with campaign finance rules and regulations can be traced to the weakness of the election law of 2003. The law includes little in terms of sanctions. The maximum penalty for breech of the law is 12 months in prison and a fine of IDR 10 million (US $1,060). There is no sanction for failing to submit a list of donors or campaign accounts, which tied the hands of the election commission when 14 of the 20 parties failed to submit their lists of donors by the deadline in 2004.

Other irregularities were also present during the elections. It was widely held that campaign expenditure was greater than was reported to the election commission. Hidden campaign accounts were common during the 2004 elections.

Although Indonesia's electoral law is in urgent need of reform, there has been clear progress towards democracy. For the first time, political candidates were known to their electorate and direct elections forced candidates to articulate their policies, including public commitments to combat corruption, for which they can be held accountable.

Legislators on the take

Since the end of the Suharto era, a new form of corruption has emerged. Prior to 1998, large-scale corruption centred around the former president, along with his family and cronies. With the long awaited decentralisation that defines the 'reform era' in Indonesia, however, has come a fear that corruption has been exported to the local and national legislature. Evidence that these fears are justified is now emerging.

In May 2004 a court in Padang, West Sumatra, sentenced 43 of the province's 55 councillors to two-year prison terms and fines of IDR 100–127 million (US $11,000–14,000) for embezzlement of IDR 4.6 billion (US $500,000) of state funds. The trial was the result of a two-year advocacy campaign by the Forum of Concerned Citizens of West Sumatra and a group of law professors from Andalas University.[2]

The ruling is not final and all 43 defendants have appealed. Nevertheless many Indonesians have widely welcomed the West Sumatra verdict and the cases in Pedang have had a snowball effect on civil society's efforts to make parliamentarians more accountable. Since the verdict was announced, 12 other corruption cases involving legislatures have been investigated.

Unlike during the Suharto era, legislatures now have the power to determine government budgets, to make decisions about procurement and development funds and to investigate complaints from the public. These powers are vital to control the executive branch, but is also clear that many Indonesian legislators are willing to abuse their authority for private gain. There are increasing reports in the media of irregularities over allowances, travel, health insurance and pension funds.

Emmy Hafild (TI Indonesia)

Further reading

Merly Omar Khouw, *The Private Sector Response to Public Sector Corruption, Business in Indonesia: New Challenges, Old Problems* (Singapore: Institute of Southeast Asian Studies, 2004)

Pranowo U. Tantowi, *Membasmi Kanker Korupsi* (Eradicating the Cancer of Corruption) (Jakarta: Pusat Studi Agama dan Peradaban Muhammadiyah, 2004)

W. Zakiyah, D. Widyoko, I. Kusuma and R. A. Edi, *Menyingkap Tabir Mafia Peradilan* (Uncovering court mafia) (Jakarta: Indonesian Corruption Watch, 2002)

TI Indonesia: www.ti.or.id

Notes

1. Information from PPATK's public relations office.
2. See www.laksamana.net/vnews.cfm?ncat=35&news_id=7069.

Ireland

Corruption Perceptions Index 2004 score: 7.5 (17th out of 146 countries)

Conventions:
Council of Europe Civil Law Convention on Corruption (signed November 1999; not yet ratified)
Council of Europe Criminal Law Convention on Corruption (ratified October 2003)
OECD Anti-Bribery Convention (ratified September 2003)
UN Convention against Corruption (signed December 2003; not yet ratified)
UN Convention against Transnational Organized Crime (signed December 2000; not yet ratified)

Legal and institutional changes

- In October 2003 Ireland ratified the Council of Europe's Criminal Law Convention on Corruption, which applies to money laundering as well as bribery in both the private and public sectors. The previous month it ratified the OECD Anti-Bribery Convention, making it a crime to bribe foreign public officials.

Tribunals of inquiry

Allegations of wrongdoing involving political and business interests prompted the establishment of a number of tribunals of inquiry in the 1990s.[1] The origins of the Moriarty tribunal into payments to politicians and the Flood tribunal into planning corruption in Dublin lay, respectively, in a dispute about control of the Dunnes Stores supermarket group in the mid-1990s, and allegations made to a firm of solicitors in Northern Ireland following a request for information on planning malpractice. The material that came to light created the momentum for investigations to which the political system was compelled to respond. The government and political parties viewed tribunals as the best means possible of establishing the facts and commanding public confidence. Some had hoped that such an approach would also serve to take corruption off the immediate political agenda. This latter hope has not prevailed since the tribunals have heightened perceptions of systemic corruption at all levels of Irish government.

The Flood and Moriarty tribunals have been in existence since late 1997 and show no sign of ending. Both have enjoyed spectacular success in uncovering complex networks of covert financial payments to politicians and public officials. If they have not yet proved that money definitively bought political favours, they have increasingly posed the question of why some businessmen contribute so lavishly to individuals in a position of power.

The 1997 McCracken investigation into payments to the former taoiseach (prime minister), Charles Haughey, reported that he received more than £8 million (US $14.7 million) in the course of a long political career, but failed to substantiate he was

guilty of corruption. The McCracken tribunal also identified payments to the Fine Gael politician Michael Lowry, but again it found there was no political impropriety.[2] At the time of writing the Moriarty tribunal was still investigating the payments to Lowry.

Only one politician was found to have received a corrupt payment as a result of evidence from the various tribunals. The second interim report of the Flood tribunal in 2002 found there had been a number of corrupt payments to the former minister of foreign affairs and communications, Ray Burke.[3] Burke rejected the tribunal's findings. In September 2004 his application for costs was refused by the tribunal on the grounds that he had obstructed its work.

The planning tribunal, now chaired by Mr Justice Alan Mahon, has spent much of its time investigating claims by property developer Tom Gilmartin that, after a meeting in February 1989 with senior government ministers, including the present taoiseach, Bertie Ahern, a party representative asked him to 'donate' £5 million (US $9.2 million) to clear the way for building a shopping complex in west Dublin. Most observers estimate that at current rates of progress the planning tribunal will only end in 2020, 23 years after it was established. Politicians bear some responsibility for the delay, given the initial failure to augment the number of judges in the face of repeated pleas from Justice Flood that he had insufficient resources to pursue his terms of reference.

The allegedly corrupt dealings of George Redmond, the most important planning official in Dublin for over a quarter of a century, were first drawn to public attention by the Flood tribunal in 1999. When threatened with up to two years in jail for misleading the tribunal, he admitted he had received large sums of money from a variety of builders and landowners. When he retired as the assistant county manager of Dublin city and county in 1988, he was receiving a salary of €24,000 (US $29,200). However, his investments were then in the region of €830,000 (US $1 million) and he banked €217,000 in that year alone.[4]

Subsequently convicted of failing to make tax returns, Redmond was investigated by the Criminal Assets Bureau.[5] He was found guilty on two charges of corruption in November 2003 and was sentenced to 12 months' imprisonment. This was the first high-profile conviction of a senior public figure on corruption charges arising from the planning tribunal. Redmond appealed his conviction and it was quashed in July 2004 when new evidence he produced made the earlier evidence of the person who made the payment unsafe. No retrial was ordered since Redmond had already served most of his sentence. Notwithstanding his acquittal, there can be no doubt that the decision to send him to trial in the first place demonstrated that the director of public prosecutions was treating accusations of white collar crime with a new seriousness.

The planning tribunal's third report, issued in January 2004, stated that Redmond had received corrupt payments from a property developer and a builder, relating to land developments in the late 1980s. The report dealt with four allegedly corrupt payments to Redmond and stated that he had received regular kickbacks from planners and developers since the 1960s.[6] These claims followed the tribunal's second report, issued in September 2002, which accused the former minister of foreign affairs, Ray Burke, of also receiving corrupt payments from various builders. The report was sent to the director of public prosecutions, the police commissioner, the Criminal Assets Bureau, the Revenue Commissioners and the office of the Director of Corporate Enforcement. One reason for the length of time the report has been with these authorities lies in the nature of the law on tribunals of inquiry, which stipulates that no admission made by a person before a tribunal can be admitted as evidence against that person in a criminal proceeding.

The Morris inquiry into the police

Another ongoing tribunal of inquiry, the Morris tribunal, is investigating complaints concerning police officers in Donegal. In July 2004 it issued its first interim report, in which it stated that two police officers, including a superintendent, orchestrated the planting of ammunition and hoax explosive devices to boost their careers. In addition senior officers were criticised as negligent because they failed to uncover the plot organised by the two.

The report, said Mr Justice Morris, must lead to significant reforms, including more hands-on control by police headquarters, tougher discipline within the force, a new promotions structure and improved record keeping. The minister for justice, equality and law reform, Michael McDowell, noted that the systemic problems in Garda management were not confined to Donegal.[7]

As a result of the report, there are likely to be substantial changes to forthcoming legislation on the police. At the time of writing the government was also expected to move to establish a new audit unit that would have the power to conduct random spot-checks in police stations. What might be even more effective would be the establishment of a police ombudsman, similar to that which exists in Northern Ireland, to provide an independent, impartial police complaints system. The establishment of such a body in the Republic of Ireland would go some way towards rebuilding public confidence in the police.

Raising standards in public life

Assessing the extent of political corruption in Ireland has proved contentious. In July 2003 Mr Justice Matthew Smith, chairman of the Standards in Public Office Commission (SIPO), which polices ethics legislation and the funding of political parties, rejected claims (made in a study by the British-based Joseph Rowntree Charitable Trust) that corruption was a 'central theme' of Irish politics. While warning of potential damage to Ireland's reputation, he acknowledged that there was a pressing need to monitor and raise standards in the public interest. The judge wrote that it was a cause for regret that the examination of past difficulties in such a public manner had led to criticism of the system of governance: 'This criticism is not, in the main, supported by the facts, which, in my view, would show that the integrity of the decision-making process has not been impugned.'[8]

But as the planning tribunal has so far only dealt with allegations of corruption in Dublin, leaving unexamined questions about malfeasance in other regions, it is impossible to state with certainty just how accountable decision-making processes really are. What is certain is that the tribunals running since 1997 have done the state much service, through providing crucial insights into the way Ireland has governed itself in the very recent past.

Partly because of the tribunals, the government has initiated a comprehensive ethics programme and all the main political parties have introduced codes of conduct for members and have comprehensive policy positions on standards in public life. SIPO itself has played an important role in ensuring that the concepts of openness, accountability and transparency are embedded in Ireland's ethics legislation.

Some critics have argued that the tribunals are expensive and futile, but shutting them down would send out the wrong signal about attitudes to corruption. The tribunals should be allowed to continue their work, making the Irish body politic face up to its past and creating pressure for higher standards in public life in the future.

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Further reading

Neil Collins and Mary O'Shea, 'Political Corruption in Ireland', in M. J. Bull and J. L. Newell, *Corruption in Contemporary Politics* (Basingstoke: Palgrave Macmillan, 2003)
Council of Europe, 'GRECO, First Evaluation Round, Compliance Report on Ireland' (2003), www.greco.coe.int/evaluations/cycle1/GrecoRC-I(2003)14E-Ireland.pdf
Paul Cullen, *With a Little Help from my Friends: Planning Corruption in Ireland* (Dublin: Gill and Macmillan, 2003)
Colm McCarthy, 'Corruption in Public Office in Ireland: Policy Design as a Countermeasure', in Economic and Social Research Institute, *Quarterly Economic Commentary* (2003), www.esri.ie/pdf/QEC1003SA_McCarthy.pdf
Gary Murphy, 'A Culture of Sleaze: Political Corruption and the Irish Body Politic 1997–2000', *Irish Political Studies* 15 (2000)

Notes

1. The tribunal of inquiry is a device set up by the Irish parliament to investigate matters of urgent public importance.
2. See www.irelandsown.net/tribunal.htm
3. See www.ireland.com/newspaper/special/2002/flood/index.html
4. *Irish Times* (Ireland), 20 December 2003.
5. The Criminal Assets Bureau was established in 1996 to identify assets of persons deriving, or suspected of deriving from criminal activity.
6. See www.planningtribunal.ie/images/SITECONTENT_219.pdf
7. *Irish Times* (Ireland), 16 July 2004.
8. See www.sipo.gov.ie/281e_246.htm

Japan

Corruption Perceptions Index 2004 score: 6.9 (24th out of 146 countries)

Conventions:
OECD Anti-Bribery Convention (ratified October 1998)
UN Convention against Corruption (signed December 2003; not yet ratified)
UN Convention against Transnational Organized Crime (signed December 2000; not yet ratified)

Legal and institutional changes

- **Whistleblower protection** was approved in June 2004 and will come into force within two years. The fact that many recent corporate misdeeds were revealed by insiders' communication to the relevant authorities made the public and the government aware of the need for better whistleblower protection. The law will protect employees who reveal illegal corporate behaviour that runs counter to the public interest. A public servant who blows the whistle on such behaviour will also be protected under the law.
- **Nationality jurisdiction** was introduced in June 2004 to Japan's legislative measures to implement the OECD Anti-Bribery Convention and the Japanese Unfair Competition

Prevention Law (UCPL). This amendment enables law enforcement authorities to investigate and prosecute cases of bribery committed outside the territory of Japan. The reform was made in line with a recent amendment to the penal code, under which public servants receiving bribes outside the country and private persons paying bribes outside the country are punishable.

- A draft amendment to the law for the Punishment of Organized Crimes, Control of Crime Proceeds and other Matters was submitted to parliament, which would extend **confiscation of proceeds to bribe payers.** The existing legislation only provides powers for freezing the assets of those receiving bribes. At the time of writing the amendment had not been approved. The procedure would apply to the offence of bribe payment provided for by the penal code, as well as to the offence of bribery of foreign public officials under the UCPL, which is not mandatory under the OECD Convention.
- The government established in May 2004 a new unit in the cabinet office charged with promoting deregulatory reforms. The move is part of a three-year plan that includes measures to strengthen the anti-monopoly law, empower the Fair Trade Commission and **improve the quality of government procurement**, all of which are expected to have a positive impact on the prevention of corruption.
- **Cronyism in hiring** practice by local governments has long been an issue that needs to be addressed. In February 2004 the ministry of internal affairs and communications announced plans to amend the Local Officials Law with the view of expanding the powers of its disciplinary committee – whose function was previously limited to reviewing complaints over penalties given to employees – so that it will be able to monitor and control employment procedures. Prefecture governments and designated cities have independent personnel committees supervising employment practices, but no counterparts are installed in local governments, where heads of the administration are deeply involved in hiring. The expansion of the disciplinary committee, which is independent of the administrative offices, is an improvement if not a total solution to the problem.

Discretionary police funds under the spotlight

Police slush funds have been a subject of concern for at least a decade. Citizens' groups resorted to information disclosure procedures in a bid to make local police departments accountable for such money. Critical information, however, remained undisclosed in most cases. Several lawsuits filed by citizens' groups were successful in court, leading to rulings that facilitated further disclosure of police information. In April 1998, the Sendai High Court partially overruled a district court's rejection of a citizens' group's demands that the Miyagi prefectural government disclose information on travel expenditures by the prefecture's police and assembly. This was the first ruling on disclosure of information concerning police expenses, but, as with subsequent cases, it had only limited impact on police transparency.

Insider revelations of such funds have helped speed up progress in this area. A senior official in the Hokkaido police department confessed in February 2004 that officials routinely made efforts to secure discretionally funded money from the national police budget. In the same month a senior official of the Fukuoka police department told a television show how he and his colleagues earmarked such money, and how it was spent. According to him, a division of the department secured ¥10–20 million (US $90,000–180,000) each year that was secretly spent boosting police officials' wages, or on entertainment and gifts. It has

long been a tradition that on a top official's transfer to another posting, he is given all the money still left in the safe as a parting gift.

Amid rising public doubts about police honesty, the National Police Agency (NPA) issued instructions in March 2004 to police departments urging them that if a local office is involved in mismanagement, it should apologise and return the amount misspent from its own accounts where possible. The NPA is also reportedly considering changing the receipts system, allegedly another hot bed of corruption in which those on the receiving end of funds use false names.

The steps taken to prevent or reduce police corruption deserve credit, but surveillance of police by citizens' groups must continue. Further steps to be taken include reforming the auditing system so that external auditors are used, but the police authorities have so far refused.

Laws aimed at curbing electoral corruption are seen to be implemented

For the past few years there has been visible improvement in the enforcement of the Political Funds Control Law (PFCL), which obliges political parties and organisations to submit an annual financial report to the designated authorities. Three members of the Diet have been arrested and indicted in the past four years under the terms of the law.

One of last year's most widely reported scandals involved the daughter of Governor Yoshihiko Tsuchiya of Saitama prefecture, who has held the posts of speaker for the upper house of parliament and head of the environment agency. She was arrested and indicted for false reporting in her father's political fund organisation, in violation of the PFCL. In April 2004 she was sentenced to 18 months' imprisonment, which was commuted to a four-year suspended sentence after she showed remorse. Governor Tsuchiya stepped down from office after the allegations surrounding his daughter surfaced in July 2003.

Another scandal involved the chairman and executives of the Japan Dental Association (JDA), a long-time supporter of the ruling Liberal Democratic Party (LDP). Unaccounted funding contributions by the JDA reportedly amounted to ¥100 billion (US $910 million) in the years 2000–02, and many people believe that much of it went directly into politicians' pockets. In April 2004 authorities arrested the executives of the JDA for bribing public officials.

Police also cracked down on vote buying in elections for the lower house of parliament in November 2003. Arrests included two incumbent LDP parliamentarians on charges they had delivered cash to voters in violation of the Public Offices Election Law. Such arrests were previously rare in Japan. In a parallel development, the police announced it had decided to rigorously apply a five-year exclusion rule preventing a candidate whose campaigners are convicted of vote buying from running in a future election, even if the candidate was not directly involved in the offence. Allegations have been reported that Hiroshi Kumagai, a former head of the Conservative Party who announced his retirement from politics after being defeated in Shizuoka prefecture, may have gone for this reason.

Corruption shakes the medical world

A wave of medical malfeasance was exposed in 2003–04. A professor in the faculty of medicine at Tokyo University was found to have misused subsidies from a private foundation, and was given disciplinary punishment in October 2003. The misappropriation of subsidies by a professor of medicine at Jikei Medical College came to light in March 2004, and he was dismissed.

In April 2004 an investigation revealed that as many as 1,500 doctors from over

50 universities had lent their names to medical institutions to which they were not officially attached. That number is likely to increase as the investigation continues. The public was largely unaware of the practice, whereby hospital officials 'trade' the names of respected doctors at university hospitals either to gain reputation or to meet the requirements in receiving government grants.

A separate scandal involving the Japanese Dental Association (JDA) was revealed in the same month. Executives from several medically related organisations, including the Social Insurance Agency, the Japanese Trade Union Confederation (RENGO) and the Central Social Insurance Medical Council operated by the ministry of health, labour and welfare, were arrested on suspicion of accepting bribes from the chairman of the JDA. In a related development, the Japanese Dentist Federation, the political wing of JDA, was at the time of writing under investigation on suspicion of having made unlawful political donations (see above). This investigation might ultimately incriminate senior political figures affiliated with the ruling Liberal Democratic Party.

Being a medical doctor in Japan gives one considerable advantages, in addition to a job for life. Unlike lawyers or accountants, medical doctors do not need clients; they can thrive inside established institutions such as social and health insurance schemes, which utilise their influence to engage in political lobbying. These institutions help to keep medical treatment in Japan costly and spending of medical research high. Their sense of privilege can lead to the concealment of malpractice by fellow institutions at the expense of their patients.

There are welcoming signs that the integrity of medical society in Japan is about to improve, however. The number of cases in which medical institutions or doctors have been held accountable for malpractice increased by 35 per cent to 248 in 2003. The public is demanding more transparency and disclosure, and a number of whistleblowers have revealed the misdeeds of doctors and institutions. Mechanisms to evaluate medical institutions have been introduced. The Japanese Council for Quality Health Care, a foundation established in 1995, has undertaken independent evaluations on medical institutions for the purpose of accreditation since 1997, and a number of private organisations, including rating agencies, began evaluating medical institutions in 2003. These developments are expected to lead to greater competition and improved quality of medical services.

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Further reading

Youichi Ishii, *Sekai-no-oshoku, Nihon-no-oshoku* (Corruption in the World, Corruption in Japan) (Iwanami: 2003)

Kazuo Kawakami, *Oshoku-Zoushuuwai: Sono Sousa-no-jittai* (Corruption in the Light of Police Investigations) (Kodansha: 2003)

Kazuko Miyamoto, *Naibu-kokuhatsu-no-jidai* (The Age of Whistleblowing) (Kaden-sha: 2002)

Hajime Mizuno, *Daremo-kakanakatta Nihon-ishikai* (Untold Stories of the Japan Medical Association) (Soushi-sha: 2003)

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