Kenya

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

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

Legal and institutional changes

- The **Public Officer Ethics Act**, passed in May 2003, lays down a code of conduct for public officers. Its main thrust is wealth declaration: public officials are legally obligated to declare their assets. Critics say that while it is laudable to require public officials to declare their wealth, doing so in secret as stipulated in the act – an October 2003 deadline was silently observed – surely defeats the purpose. No government official has been prosecuted in connection with the legislation, and it has been difficult for the media or any other independent agency to access information.
- Several bodies established under the **Anti-Corruption and Economic Crimes Act** passed by parliament in May 2003 became operational in 2003–04. The main investigating body for economic crime, the **Kenya Anti-Corruption Commission**, has powers to investigate corruption but not to prosecute. The **Public Complaints Office**, established under the same legislation, functions as an Ombudsman's office. The **Public Service Integrity Programme** aims to establish an anti-corruption prevention plan within every public institution. It creates the position of an integrity assurance officer in each public body to act as an in-house watchdog.
- In May 2004 the government launched a **National Anti-Corruption Steering Committee** to run a country-wide anti-corruption awareness-raising campaign. The committee is composed of representatives from government, civil society and the private sector.
- The ministry of justice and constitutional affairs has established several **tribunals and commissions** to hear allegations into past economic crimes. The two most significant examples are the Goldenberg Commission and the judicial tribunals (see below).

Fresh scandals show that corrupt networks persist

In May 2004 a Kenyan daily newspaper ran an article with the headline: 'Five cabinet ministers face corruption probe'. The article, quoting the chairman of parliament's public accounts committee, alleged that one cabinet minister 'irregularly acquired a staggering Ksh 800 million [US $10 million] which he has stashed in banks both in the country and abroad'. A day earlier, the same paper printed a large photograph of another cabinet minister alongside an article entitled 'Overnight millionaire?' This story alleged that the minister used his cabinet position to acquire government contracts for an insurance company in which he is a director.

While the minister denied the allegations, the story demonstrated that Kenya is in a state of flux. As a new order struggles to establish

itself, the old order fights to retain its old constituencies – patronage networks that continue to exist both within and outside mainstream politics and the bureaucracy. Credibilities are being questioned, and it is difficult to determine where the truth lies. The articles cited above, for example, were published in the *East African Standard*, a newspaper controlled by former president Daniel arap Moi. Similarly, the most popular television and radio stations are owned by individuals allegedly connected to the old regime. Rumours abound, and they are fuelled by a flourishing and increasingly influential yellow press that established itself as a force in the latter years of Moi's rule. Many of these informal publications are said to have been sponsored by politicians connected to Moi, although it has been difficult to ascertain ownership. The new regime has been slow to communicate its agenda in what is turning out to be a propaganda war.

At this writing, the National Rainbow Coalition (NARC) government, had been in power for 18 months. In December 2002 this grouping of key opposition figures and disgruntled elements of the Moi regime won a historic general election by a two-thirds majority. They defeated the KANU (Kenya African National Union) regime, which had held on to power by virtue of an intricate patronage system financed by the proceeds of official corruption. NARC's platform was anti-corruption and for constitutional reform. Today, the question on the minds of many Kenyans is whether the country is returning to the bad old days of KANU.

Anti-corruption investigations: smokescreen or resurrection?

To the new government's credit, moribund watchdog institutions have been revived, not least the parliament's Public Accounts Committee (PAC) and the office of the auditor and controller general. Whereas under the KANU government the two bodies would routinely submit reports years late – with recommendations that were often ignored – in the first few months of 2004 both the PAC and the auditor general's office acted swiftly on new cases of corruption. At the same time, the permanent secretary of governance and ethics, the president's special adviser on corruption, on a number of occasions moved quickly to prevent emerging cases of corruption.

The PAC played a particularly prominent role investigating the so-called Anglo-Leasing scandal that broke in April 2004. According to the press, this passport-procurement scandal cost the state almost Ksh 2.7 billion (US $34 million). The storm broke when it emerged that a routine upgrade of Kenyan passports that should have cost about US $10 million had ballooned to three times that amount. Opposition legislator Maoka Maore named in parliament several prominent individuals in connection with the scandal, including the vice-president, the minister of finance, two permanent secretaries and senior civil servants, in addition to a Swiss company. The president acted swiftly, suspending both of the permanent secretaries involved. A PAC investigation was launched, and it is likely that heads will roll as the PAC investigation proceeds. None of the public officials initially named had been exonerated at the time of writing.

A possibly worrying aspect of the scandal is that, while the president was quick to suspend senior government officials, he did not punish the sitting cabinet ministers implicated. This may suggest that, like the KANU regime before him, the president is content with sacrificing the small fry but is reluctant to give up the big fish. Whether or not this is the case, the damage done to the new regime's credibility by these and other highly-publicised scandals has been considerable. Public confidence in the NARC government has fallen as a result of the return of official corruption, internal wrangles between the two main coalition partners and, most importantly, the government's foot-dragging on constitutional reform.

The government's ambivalence regarding constitutional reform has meant that the

powers of the presidency – by far the biggest sticking point during the constitutional review debate – remain largely intact. While the president has remained largely above direct criticism on this matter, his circle of supporters has been criticised for perpetuating the KANU legacy of arbitrary and partisan appointments of individuals to public institutions. In Kenya, this has always been a sure route to accessing state largesse and personal capital accumulation. It is the president's so-called 'kitchen cabinet' that is rumoured to be at the centre of many of the corruption scandals currently besieging the government.

Progress on the judiciary and repatriation of stolen assets

Nevertheless, there is little doubt that many within the government are committed to the fight against corruption. There is no shortage of anti-corruption rhetoric, and the rhetoric has been backed by real action. Two cases in particular demonstrate this: the clean-up of the judiciary and the appointment of a permanent secretary for governance and ethics.

One of the new government's first popular victories came on the judicial front with the dismissal in February 2003 of the chief justice, Bernard Chunga. Chunga was viewed by many as one of the most cynical appointments made by former President Moi. During Chunga's tenure, there was a huge backlog of cases and justice was up for sale as judges, magistrates and judicial officers were routinely bribed.

Chunga's replacement, Chief Justice Evans Gicheru, immediately ordered an inquiry into corruption in the judiciary. Released in September 2003, the report named 23 judges and 82 magistrates, all of whom were accused of participating in various acts of corruption and incompetence. All were given the option of either resigning or responding to the charges through a judicial tribunal. Most opted to resign, although, significantly, a number of judges have recently sued the judiciary for wrongful termination of employment. Two judges opted to face tribunals, and the cases are ongoing.

Public expectations of the new government's commitment to fighting corruption were raised a notch higher by the appointment in January 2003 of John Githongo as the president's special adviser on corruption. John Githongo, a prominent anti-corruption activist, was one of a number of civil society leaders from the pre-NARC era appointed to a senior position in government. His efforts since taking office have brought largely positive results. In 2003–04 his biggest achievement was to identify the location of US $1 billion stashed away in foreign accounts by individuals close to the Moi regime, though there had been no news of progress in recovering the funds at the time of writing. In addition, he stopped at least two irregular procurement deals before they went ahead.

Mixed results from the Goldenberg Commission

While the new government has been unable to shake off criticisms that it is not doing enough to fight corruption within its ranks, it has taken major steps to deal with economic crimes of the past. In addition to the shake-up of the judiciary, another significant example has been the government's handling of the Goldenberg case, the biggest financial scandal in Kenya's history.

Ten years ago, a young gold trader somehow convinced the government that there was enough gold in Kenya for export. As a result, parliament passed an export-compensation bill (in a single afternoon) exclusively for this purpose. It soon emerged that Kamlesh Pattni, the gold trader, was falsifying gold exports – actually not exporting gold at all – but still claiming export compensation. The Goldenberg scandal cost the country an estimated US $1 billion.

One of the first actions of the new government was to set up a public tribunal to investigate the allegations. The Goldenberg

tribunal has no prosecutory powers but is widely expected to recommend the arrest and prosecutions of many of those implicated. More than 1,000 individuals have been informed by the chairman of the Goldenberg Commission, Justice Samuel Bosire, that they will be adversely mentioned at the commission. Among the most prominent are former president Daniel arap Moi, former vice-president and Minister of Education George Saitoti, former finance minister Musalia Mudavadi, two governors of Kenya's central bank and numerous senior civil servants.

However, at the time of writing there had been little sign of real progress. After sitting for close to one year, the legitimacy and impartiality of the Goldenberg Commission had been repeatedly questioned. Indeed, in mid-2004 cross-examination of Kamlesh Pattni pointed to the possibility of improper actions within the commission itself. Questions were asked about the veracity of his testimony, with allegations that he may have cut a deal to keep prominent members of the NARC government out of his testimony.

Playing to the donors

While the government has appeared to be fighting corruption – both past and present – the public's diminishing confidence has dented its credibility. Where the government has institutionalised the fight against corruption, it has been accused of doing so principally for the benefit of donors. In February 2003 the president recalled parliament early, primarily to pass two bills: the Anti-Corruption and Economic Crimes Act and the Public Officer Ethics Act (see above). The intent of both is to institutionalise the fight against corruption, in the former, mainly by establishing a constitutionally protected independent anti-corruption body and, in the latter, by making it a statutory requirement for public officers to declare their wealth. Both bills were passed in record time. The passing of anti-corruption legislation was a key factor in securing large donor-aid commitments in December 2003, which had been suspended since 1991.

By mid-2004, however, it was clear that the government–donor relationship had begun to unravel, precisely on the issue of corruption. Many observers, for example, questioned the effectiveness of the Public Officer Ethics Act. In July 2004, the British High Commissioner, Edward Clay, who had carved himself a niche as a negotiator between the warring factions in the government coalition, launched a scathing attack on corruption in the government. While the government reacted angrily, his remarks were met with widespread public support.

Parselelo Kantai (TI Kenya)

Further reading

TI Kenya: www.tikenya.org

Latvia

Corruption Perceptions Index 2004 score: 4.0 (57th out of 146 countries)

Conventions:
Council of Europe Civil Law Convention on Corruption (signed February 2004; not yet ratified)

Council of Europe Criminal Law Convention on Corruption (ratified February 2001)
UN Convention against Corruption (not yet signed)
UN Convention against Transnational Organized Crime (ratified December 2001)

Legal and institutional changes

- Adopted by the government in March 2004, the **National Anti-Corruption Strategy** is Latvia's first ever umbrella strategy on corruption. The strategy is complemented by the **updated National Corruption Prevention Programme**, first created in 1998. More than 100 operations and institutions are included in the programme for 2004–08. The strategy is intended to strengthen financial control over political parties, improve criminal investigations and anti-money-laundering procedures, provide transparent public budgeting and protect whistleblowers. Many of the initiatives are concerned with raising awareness of legal responsibilities among public officials and the wider public.
- Amendments to the **law governing the financing of political parties** were adopted in February 2004 (see below). This reform sets limits on the overall campaign expenditure of political parties, prohibits corporate donations, and provides for comprehensive reporting requirements and control mechanisms. The law is one of the most progressive in the region.
- Amendments to the **public procurement law** came into force in April 2004 in accordance with conditions set by the European Commission (EC) for Latvian entry into the European Union (EU). However, the new provisions actually reduce transparency and accountability. Prior to this legislation, pressure from civil society had led the then prime minister, Einars Repše, to implement measures making all public tender information available to the public, including the final agreement with the winner. The EC, however, required that public access to tender agreements be denied. They also required the withdrawal of a clause allowing a public institution to request information concerning the real owners of a company, which could be used, for example, if an offshore company was applying to tender. The EC argued that the changes would prevent violation of general EU regulations on free competition and protection of commercial secrets.
- Parliament appointed a **new head of the Anti-Corruption Bureau** in May 2004. The bureau, which during its two years in operation had already seen one fully appointed and three acting heads, had been undermined by lack of permanent leadership. A civil society consultation council for the bureau was created which includes public interest NGOs, business associations, a council of foreign investors and organisations representing doctors and patients, construction workers and bankers.
- A supervisory body at the Data Protection Inspectorate was set up in January 2004 to oversee the implementation of the 1998 **Law on Freedom of Information**. Despite long-term criticism from research and civil society bodies, the supervisory mechanism for this crucial law remains severely under-resourced.

Amendments to party finance law trigger change of government

Following the 2002 parliamentary elections there was increasing public disquiet about the fierce competition between political parties to collect ever greater donations to finance media campaigns with little political content.[1] Since 1995, when the law requiring regular reporting by political parties was first introduced, election costs have quadrupled.[2]

In consequence, amendments to the law governing the financing of political parties were adopted in February 2004 allowing each party to spend no more than 0.20 lats (US $0.35) per voter – around US $550,000 in total. The new law also places tighter controls on the income side, a proposal of the new Anti-Corruption Bureau. Following from their work on disclosure forms in 2003, the bureau estimated that false, or so-called third-party donations (in which a 'false' donor serves as a proxy for another donor who has used up his/her donation limit), comprised more than half of all declared donors during the 2002 elections. However, according to its then acting head, Juta Strīķe,[3] the bureau lacked the means to prove such donors had lied.

Under the new legislation individuals are entitled to donate US $17,000 (reduced from US $46,000), but will only be allowed to donate money from their legally declared and taxable income of the previous three years. These changes will improve the chances of proving that funds from one donor are not being spread over several, technically unconnected, entities. The amended law also bans corporate donations.[4]

Even given the difficulty in establishing third party donations, the Anti-Corruption Bureau was able to prove that the 13 biggest parties had received illegal funds of roughly US $230,000.[5] Faced with the first ever external examination of their party accounts, the Greens and Farmers Union (the party of the prime minister since March 2004, Indulis Emsis, and the parliamentary speaker, Ingrīda Ūdre) have initiated legal action to establish whether administrative penalties are applicable. The case is still pending.[6]

Prior to the 2004 elections, changing the political party finance law was a priority for both the newly established Anti-Corruption Bureau and the then prime minister and leader of the New Era party, Einars Repše. He also had the backing of three other government coalition parties. At the last reading of the amendment, however, the First party suddenly opposed the change, protesting against setting the same limits to party membership and admission fees as for other donations.

The conflict between the prime minister and First Party leader (and deputy prime minister), Ainars Šlesers, led to a major rupture between the two leading parties and was the official reason for the government's resignation in February 2004. The New Era party, however, gained political momentum because it was expected to form the new government, and managed to put pressure on parliament to pass the party finance bill.

Up to the 2002 elections, Latvian political policies were largely dictated by behind the scenes donations. This has led to favourable privatisation deals, laws favouring certain businesses, the writing-off of debts, employment patronage and the dubious awards of public contracts. While the amended law seems well placed to address these issues, the real test for the new legislation will be its ability to control the income and expenditure limits for the local elections in March 2005.

Finding a head for the Anti-Corruption Bureau

The Anti-Corruption Bureau has comprehensive reach and powers, but too much of its independence and efficiency can be determined by the individual at its head. Manoeuvrings within the Latvian political system have led to leadership battles at the bureau which have thrown serious doubt on the ability of the office to remain clear of political influence.

In the summer of 2003, Prime Minister Repše launched an open competition to find a leader for the Anti-Corruption Bureau, attracting 58 candidates for the job. A special selection commission led by the prime minister and composed of the prosecutor general, the auditor general, representatives of the state chancellery and several ministers, and monitored by civil

society, unanimously voted for a 33-year-old security police officer, Juta Strīķe.

However, opposition groups within parliament, widely believed to be associated with the Greens and Farmers Union, twice blocked Strīķe's appointment.[7] Repše responded by using his powers under the Civil Service Act to appoint Strīķe as the deputy head of the bureau and then to appoint her as acting head of the bureau. Despite heavy criticism for this action from coalition partners, opposition parties and civil society organisations, Strīķe continued working for 10 months without the approval of parliament and gathered widespread popular support.

Following the change in administration in early 2004, and in just his second week as prime minister, Indulis Emsis (Greens and Farmers Union) unilaterally announced a new candidate as head of the Anti-Corruption Bureau, despite Strīķe's popularity and his own verbal support for her. However, the candidate refused to run after receiving heavy criticism from the media and civil society. Only after this did the prime minister open another public competition for the post.

A similar selection commission to the previous one voted in favour of Strīķe by three out of six votes. The prime minister, however, refused to put forward her name alone to the cabinet of ministers, and instead nominated three candidates. During the open cabinet meeting, but without proper explanation, ministers voted unanimously for Aleksejs Loskutovs.

When Aleksejs Loskutovs' appointment was confirmed by parliament for a term of five years in May 2004, the reaction from anti-corruption experts was generally positive. Widely considered to be of the 'new generation', he was a lecturer in criminology and criminal law. Loskutovs told the media: 'I do not owe anything to politicians for this vote',[8] and promised to run the bureau in an independent and professional manner.

However, the independence of the bureau has yet to be proved. Sections of the media have suggested that the cabinet selected Loskutovs because he was opposed to Strīķe, a useful thing for the cabinet's own political interests.[9] Indeed, one of Loskutovs' first steps in the job has been to launch an internal investigation into the work of Strīķe. A high level of media and civil society attention may prevent Loskutovs from firing Strīķe this time, but it is alleged that political players behind the scenes are hoping that he will.[10]

Inese Voika (TI Latvia)

Further reading

GRECO, *Evaluation Report on Latvia* (Council of Europe, 2004), www.greco.coe.int

Valts Kalnins and Lolita Cigane, *On the Road Toward a More Honest Society: The Latest Trends in Anti-Corruption Policy in Latvia* (Riga: Latvian Institute of International Affairs, 2003), www.policy.lv

TI Latvia: www.delna.lv

Notes

1. Public Survey Opinion, SKDS company, February 2003.
2. *Analysis of Campaign Finance of the 2002 Parliamentary Elections* (TI Latvia, Delna and the Soros Foundation, 2003).
3. Presentation by the bureau head, Juta Strīķe, at the round table 'Party Financing – What are We Going to Change?' (2003), www.politika.lv/index.php?id=107578&lang=lv
4. *Diena* (Latvia), 2 February 2004.

5. *Diena* (Latvia), 22 November 2003.
6. *Diena* (Latvia), 2 July 2004.
7. NRA, *Deputāti dievojas: balsojuši par. Strīķi neapstiprina* (2004).
8. LETA news service (Latvia), 27 May 2004.
9. *Diena* (Latvia), 26 May 2004.
10. *Diena* (Latvia), 29 July 2004.

Nicaragua

Corruption Perceptions Index 2004 score: 2.7 (97th out of 146 countries)

Conventions:
OAS Inter-American Convention against Corruption (ratified March 1999)
UN Convention against Corruption (signed December 2003; not yet ratified)
UN Convention against Transnational Organized Crime (ratified September 2002)

Legal and institutional changes

- Since late 2002, but more markedly in the first six months of 2004, the ruling Partido Liberal Constitucionalista (PLC) presented a series of bills whose sole aim was to free former president **Arnoldo Alemán**, who was jailed for 20 years in 2003 for money laundering, fraud and embezzlement. The PLC's efforts, which had all failed at the time of writing, led to a political crisis that effectively paralysed the national assembly; not a single law was adopted in the first five months of the year.[1] Among the proposed PLC-led bills were: an amnesty covering all acts of administrative corruption by public officials from 1997 to 2001; an attempt in January 2004 to put forward a new interpretation of the law on money laundering (under which Alemán was principally condemned) that would have limited its application to crimes connected to drug trafficking; an attempt in March 2004 to modify the penal code so that ex-presidents serve out their prison sentences under house arrest; a law that safeguards state property, which the executive is promoting in the context of a conflict between the opposition Sandinistas and the state-owned national insurance and reinsurance institute, Instituto Nicaragüense de Seguros y Reaseguros (INISER); and a bill to reform the judiciary (see below for a fuller discussion).
- In June 2004 the government signed a 'Compact to Promote Transparency and Combat Corruption' with the G8 countries, which pledged to **provide technical assistance** in the areas of public budgets and financial management, including revenues, expenditures, government procurement and the letting of public concessions.
- The ministry of finance and public credit and the Integrated Financial Management System (SIGFA) have increased **budget transparency** by posting national budget allocations and spending on the Internet.[2] The NGO Coordinadora Civil, which has been analysing the budget since it was presented in October 2003, found hidden government spending allocations in the budget amounting to almost US $80 million.
- In July 2003 the national assembly elected five new **supreme court judges** out of a total of 16, in a move that some analysts say has increased the body's already high level of political polarisation. For more than six months, the court failed to choose its president or make the appointments for which it has responsibility. In this period, the judges openly

considered the benefits of an agreement to alternate the presidency of the supreme court between the main political parties on an annual basis.

Challenges in establishing a judicial career law

The Consultative Group for Nicaragua, made up of 12 governments, bilateral donors, the World Bank and the Inter-American Development Bank, met in September 2003 in Managua to reiterate what national and international organisations had long been saying: institutional reform, particularly in the judiciary, is crucial to the country's development. The current judicial system is criticised for its sluggishness and excessive politicisation. The supreme court submitted a draft judicial career law to the national assembly at the end of 2003.[3] In its June evaluation of corruption in Nicaragua, the G8 cited the bill as an important component of the administration's anti-corruption agenda, but described its chances of passing in the current political climate as 'moderate'.

Several versions of the bill were discussed by the national assembly, but no law had been approved at the time of writing. The reasons for this failure reflect the lack of political will from parties with an interest in blocking the bill's two main reforms: the 'professionalisation' of the judiciary through transparent and competitive appointments; and the fostering of its external and internal independence, which would require the supreme court to relinquish its current responsibility for administering appointments and salaries.

The supreme court's proposal addressed the lack of merit-based mechanisms for hiring and promotion, but continued to give itself control over the administration of judicial careers. Experts criticised it for failing to separate the administrative and judicial functions of the judiciary and, therefore, not addressing the issue of internal independence.

There are three main views of the proposed legislation in the national assembly. The PLC – which does not have a sufficiently large majority to pass laws on its own – argues that the judiciary sympathises with the Frente Sandinista, Nicaragua's second largest party, since the majority of its members were appointed in the Sandinista revolutionary period. Because of this, and the fact that the current judiciary imprisoned former president Alemán on corruption charges, the PLC wants to use the new law to replace judicial officials.

The Frente Sandinista rejects the bill, citing the constitution which grants the supreme court authority over the 'administration of justice'. They argue that this guarantee cannot be altered by any law adopted under normal procedures, but would need a qualified majority of parliamentarians to amend the constitution. In the past few years they have found allies in a number of judges, nervous about the loss of power and political relevance that the proposed judicial career law might entail.

A third faction is headed by President Enrique Bolaños, whose aim is to depoliticise the judicial system. This was a campaign promise and it is widely seen as key to Nicaragua's economic development.

Given that the majority required for constitutional reform is impossible without the support of the Frente Sandinista, it will be difficult to win approval for the proposed law. This political logjam highlights the barriers confronting any attempt to instigate institutional reform in Nicaragua.

Accusations of corruption against the president highlight the need for electoral reform

When President Bolaños announced in 2002 that charges had been filed against Alemán for corruption that had cost the state at least US $100 million, he could scarcely have imagined his action would lead to further charges related to his own use of funds, allegedly embezzled by Alemán.

The money embezzled and laundered by Alemán allegedly ended up in three different places: the pockets of the officials involved; monthly 'under-the-table' payments to 500 officials from the executive, legislative and judicial branches of government; and the coffers of the PLC election effort, including Enrique Bolaños' campaign.

It appears that no legal consequences will follow the use of these funds to pay PLC officials, including Bolaños, who has not denied that as vice-president at the time he received US $500,000 of the total. There is also concern that the president and his circle allegedly failed to register the payments and evaded taxes.

Nevertheless, in condemning Alemán to 20 years in prison, Judge Juana Méndez left open the possibility that charges for electoral crimes might one day be brought against President Bolaños and his closest campaign advisers. Nicaragua's electoral law forbids the misuse of state funds (whether direct or indirect) in electoral campaigns.

Nicaragua's current legislation is far from being a model of political finance regulation. The law does, however, dictate that the misuse of state funds is a clear violation of the law, and implicates both the party involved and all who knew about the origins of the funds.

Initially President Bolaños publicly renounced his immunity to face the charges, though he signally failed to keep the promise to cooperate with the prosecution, the general comptroller's office and even the presiding judge. Meanwhile, the evidence of unreported funds entering his election campaign accounts continues to grow, though there is no proof that he was personally aware of their possibly illicit origins.

There is concern that rather than being handled transparently, the case will continue to be used as a bargaining chip by the Frente Sandinista and the PLC, since the two parties between them have enough votes to strip the president of his immunity and force him into court. The courts themselves have shown no sign of being either willing or able to prosecute him without political approval.

The crisis serves to underscore the need for reform of the electoral law. Since the last reform took place in 2000, Nicaragua's electoral system has proved to be one of the most expensive in the world in per capita terms. Another defect is the excessive politicisation of the authority responsible for overseeing elections. National and international election observers have called for root-and-branch reforms.

Following a study by the NGO Grupo Cívico Etica y Transparencia (TI's chapter in Nicaragua), a group that includes electoral observers, human rights groups and small political parties tried in 2003–04 to come up with a draft bill to reform the electoral process in the hope that it would receive the endorsement of President Bolaños, who campaigned for electoral reform. The bill aims to reduce the cost of elections, regulate party financing, improve the internal democratic processes of political parties and reduce the influence of individual political parties over the bodies responsible for overseeing the elections. The proponents of the bill want to present it to the national assembly, where the two leading political parties are well aware of the deficiencies in the electoral law, but are torn between the loss of political credibility if they ignore them and a potential loss of power if they back reform. This last point will be critical and might water down any genuine attempt at reform.

Grupo Cívico Etica y Transparencia has separately called for private financing to be eliminated or at least monitored as international observers recommend, to limit escalating costs and make elections more equitable. Private and public financing need to be transparent and subject to proper controls if elections are to be fair, and sanctions need to be imposed for infractions and applied fairly by a legitimate authority.

Roberto Courtney (Grupo Cívico Etica y Transparencia, Nicaragua)

Further reading

Grupo Cívico Etica y Transparencia (TI Nicaragua): www.eyt.org.ni

Notes

1. Other bills that would have had a positive impact on corruption were presented in the reporting period but either not discussed or not approved. They include a bill on the judicial career structure and a bill protecting state property.
2. Although making budget information available on the Internet is a positive step, a related and unresolved problem is that the budget does not include full information on tax revenue. The NGO network Coordinadora Civil has complained about this failure for two consecutive years.
3. The supreme court is able to submit draft laws to the legislature about judicial matters.

Norway

Corruption Perceptions Index 2004 score: 8.9 (8th 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 March 2004)
OECD Anti-Bribery Convention (ratified December 1998)
UN Convention against Corruption (signed December 2003; not yet ratified)
UN Convention against Transnational Organized Crime (ratified September 2003)

Legal and institutional changes

- Parliament enacted three new sections of the civil penal code in July 2003. The provisions are stricter than the ones they replace and comply with the Council of Europe Criminal Law Convention on Corruption, but in some respects they go further than required. They introduce the concept of 'improper advantage', a standard whose scope will eventually be determined by case law. The jurisdiction of the rules is universal, applying within Norway, as well as to Norwegian nationals acting abroad. Section 276(a) stipulates that any person actively supplying, or passively accepting, an offer of improper advantage in connection with a post, office or commission will be punishable by fines or imprisonment up to three years. Section 276(b) criminalises gross corruption with sentences of up to 10 years. Police investigative powers will increase when gross corruption is suspected, with courts empowered to sanction the surveillance of communications. Section 276(c) criminalises trading in influence.
- Some of the recommendations made in 2002 by the Council of Europe's evaluation body, GRECO, have yet to be implemented, including legal clarification of the right or duty of public servants to report unlawful, improper or unethical behaviour, or behaviour involving maladministration. This lack of clarity means not all allegations of impropriety in the public sector are reported to the police or prosecutor's office. In June 2004 the government announced it would review the issue. It also announced new 'quarantine

regulations' for public servants, such as a prohibition of re-employment in the private sector for a period of time, to prevent conflicts of interest.

- The government announced in June 2004 that it would ensure greater transparency in corporate payments to foreign states. It plans to make it mandatory for companies to publish in their accounts to which states they have transferred payments.
- A new law on the Office of the Auditor General (OAG) entered into force in July 2004, following a much-needed review of the regulatory framework for cooperation between the OAG, the police, the National Authority for Investigation and Prosecution of Economic and Environmental Crime (Økokrim) and other law enforcement bodies. The OAG is now allowed to report any suspicions to the police/Økokrim immediately and confidentially upon discovery while a public audit is ongoing. The audited office does not have to be informed of the suspicion. When police initiate a criminal investigation, the OAG may disclose to them documentation from its audit, irrespective of any obligations of confidentiality regarding information of a personal nature or concerning trade secrets. This reform came in response to a specific GRECO recommendation in 2002.
- In May 2004 the government published a White Paper, *Fighting Poverty Together*, in response to the challenges posed by the UN Millennium Development Goals. The document acknowledged that development assistance may contribute to corruption when donors close their eyes to its illegitimate use. The document outlined the government's anti-corruption policy in development assistance. The government intends to focus on anti-corruption in its bilateral dialogue with countries receiving aid, and to encourage other states to ratify the UN Convention against Corruption. The government also stated that it will pursue a dialogue with the Norwegian private sector 'to increase the awareness of how to counter corruption', support the Extractive Industries Transparency Initiative, and support asset recovery initiatives. The government has not yet specified the resources available for implementation nor outlined benchmarks for monitoring progress, making it difficult to hold the government accountable for the proposals.

Norwegian corruption comes home

Allegations of corporate corruption received substantial media attention in 2003–04, but it was the Statoil–Horton affair that made the biggest headlines. State-owned Statoil is Norway's largest company. In June 2002 Statoil signed a 10-year, US $15 million consulting agreement with Horton Investments to exploit Iran's oil and natural gas. Horton Investments, a company owned by exiled Iranian Abbas Yazdi, was also allegedly a financial intermediary for Mehdi Hashemi Rafsanjani, son of Iran's former president, director of the National Iranian Oil Company (NIOC) and an influential figure in the country's energy sector.

In autumn 2002 Statoil was awarded operational control of South Pars, the world's largest offshore gas field, in partnership with a NIOC subsidiary. Statoil committed to spending US $300 million to construct three production platforms and a pipeline. After completion, control of South Pars reverts to NIOC and Statoil will recover its project costs and a share of NIOC sales.

In September 2003 Statoil's internal auditors reportedly questioned a US $5.2 million payment to Horton Investments' account in the Turks and Caicos Islands, leading to an investigation by Økokrim, Norway's economic crime unit. Statoil's chairman Leif Terje Løddesøl and CEO Olav Fjell both resigned. Økokrim concluded that the payment was an offer of improper advantages in return for influence in securing the Iran deal. In June 2004 Økokrim issued penalty notices against Statoil and the former director of its international department, Richard Hubbard. A NOK 20

million (US $2.9 million) fine was imposed on Statoil.

Statoil was also under investigation by the US Security and Exchange Commission for breaching the US Foreign Corrupt Practices Act, which is applicable because of the company's listing on the New York Stock Exchange. The Iranian parliament looked into the allegations against Statoil, while Swiss authorities investigated Abbas Yazdi for alleged money laundering. A major delaying factor in the inquiry was Rafsanjani's refusal to submit to interrogation, thereby underlining the procedural obstacles facing investigators who seek to enforce anti-corruption legislation beyond their domestic jurisdiction.

Another high-profile case involved the construction concern Veidekke, the lead company in the consortium contracted to build the Bujagali hydropower plant in Uganda. In 2002 it was alleged that the company had made a payment to Uganda's energy minister, Richard Kaijuka, less than a year before the contract was awarded to the Veidekke consortium without competitive bidding. Veidekke's British subsidiary, Noricil Ltd, allegedly transferred US $10,000 to a London bank account held by Kaijuka. After the World Bank Group halted financing for the scheme, Økokrim launched an investigation, but the case was dismissed in 2003 due to lack of evidence.

These and other cases involving questionable practices abroad raised the profile of corruption issues in Norway. One key question was whether Norwegian companies applied different standards in their dealings at home and abroad. Another debate was when and how to apply 'zero-tolerance' policies. But recent surveys suggest that corruption by Norwegian companies is still higher than they admit. While a majority of Norwegian business leaders think that some bribery is necessary to win contracts in developing countries, most do not acknowledge that their companies encounter corruption in international business transactions.

Norway's annus horribilis

A survey by Norway's largest insurance company, Gjensidige NOR, showed 25 per cent of business leaders now believe that corruption exists in their own industry sector, though only 10 per cent admitted it affected their company.[1] Perhaps the survey's most important message, however, was that Norwegians no longer consider corruption an exclusively foreign, or developing-country issue. More business leaders recognise the domestic dimension of the problem. Gjensidige NOR's survey followed press coverage of a string of cases involving alleged private sector corruption and conflicts of interest.

At the time of writing four large construction companies were under investigation for price fixing, collusive tendering and market sharing in both public and private works contracts. A cartel that included Veidekke, Selmer Skanska, NCC Construction and Reinertsen Anlegg was taken to court in February 2003 by the Norwegian Competition Authority for alleged illegalities encompassing the construction of industrial developments, power plants, bridges, docks and Oslo airport. NCC Construction admitted to 'illegal cooperation' with its competitors, issuing false invoices and compensating competitors who lost the tender. Veidekke, Selmer Skanska and NCC Construction were also under investigation for cartel activity in the concrete market.

Finance Credit, a financial services company, was under criminal investigation at the time of writing, accused of siphoning off funds it borrowed from six Norwegian banks to offshore tax havens. The charges involved fraud worth US $200 million and false and misleading accounting. Finance Credit's public relations company, Madland & Wara, allegedly attempted to 'buy' an investigative journalist to silence him.[2]

An external consultant hired by the international classification and certification company, Det Norske Veritas, to assess the

need for a new IT system was convicted in May 2004 of soliciting bribes by demanding a 10 per cent kickback from UNISYS in return for recommending procurement.[3] In a case that was ongoing at the time of writing, a former finance director of the Norwegian Red Cross and his two brothers were on trial for allegedly embezzling US $1 million during the rehabilitation of the Red Cross headquarters and bribing an independent building inspector to approve false invoices.[4] The trial was postponed until September 2004.

Cases like these have been characterised in the Norwegian media as symptoms of a business community that has lost its virtue. This is a new phenomenon in Norway and the public debate has been as lively as it has been mixed. Most have welcomed the new focus on corruption, the media revelations and the enhanced debate about ethics and corporate responsibility. But shallow and rosy declarations about zero tolerance, and a lack of public recognition of corruption in everyday practice do not make for a convincing anti-corruption strategy or promote genuine corporate progress. While companies recognise the need to strengthen protective measures and internal controls, they have yet to acquire the knowledge and tools to implement effective anti-corruption policies.

Fiduciary duties in the health sector

Norway's public administration purchases one quarter of all mainland investment and employs one third of the labour force. It is currently undergoing deep structural change. Public responsibilities are being outsourced, privatised and exposed to market forces, reorganisation and demands for efficiency improvements. An increasing number of private businesses now depend wholly or partially on public budgets, tenders, loans, regulations, relocations and privatisation projects. The sums involved in public procurement pose challenges to the integrity of the individuals responsible for administering them. Current safeguards in procurement practice do not constitute a sufficient deterrent against illegality and corruption, especially in districts and municipalities.

Particular relationships in the management of public funds foster grounds for potential conflicts of interests. A case in point concerned the Research Council of Norway (RCN), a national funding agency for research and innovation. In 2003–04 the media exposed allegations of external advisers hired by RCN who reportedly, after submitting and accepting their own funding applications, rejected applications from other researchers. Following an independent inquiry into its procedures, the RCN issued new guidelines in 2004 that compel its external advisers to absent themselves from proceedings where they have a conflict of interests.

Another example concerned the nexus between government funding of public medication and pharmaceutical companies' efforts to convince doctors and hospitals to procure and prescribe their products. Pharmaceutical companies finance medical congresses and courses, and commission medical research, bringing undeniable benefits to the participants. But the fact that the government covers most medication costs through a rights-based approach to each patient could constitute an incentive for doctors to disregard both the patient's and the government's interests.

Sending costs to the government creates a situation in which the controlling and funding entity is distant from the decision-making process, resulting in the possible prescription of prejudiced, unnecessary or costly medications. To counter increased corruption, 250 doctors signed a petition in 2004 that called for greater transparency and more control measures in the profession, as well as regulations to govern relations between the pharmaceutical industry and medical personnel. They proposed a duty to inform on doctors who participate in testing and approval procedures for new drugs.

Jan Borgen, Henrik Makoto Inadomi and Gro Skaaren-Fystro (TI Norway)

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TI Norway: www.transparency.no

Notes

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3. www.okokrim.no
4. Ibid.

Palestinian Authority

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

Legal and institutional changes

- A draft **law dealing with unlawful gains** passed its second reading in the Palestinian Legislative Council (PLC) and was referred to the Council of Ministers in April 2004. If enacted, this law will require government officials to account for property and funds acquired during their term of office.
- A draft law dealing with the functioning of the **administrative and financial monitoring office** passed its second reading in the PLC and was referred to the Council of Ministers in April 2004. The office is currently accountable only to the president of the Palestinian Authority (PA), who has power to appoint the director. Under the proposed provisions, the appointment of the director will be subject to the approval of the PLC which, along with the head of the executive, will also receive reports from the office. If enacted the law will have far-reaching consequences for the public monitoring of all government activities.
- **Private sector monopolies** have been a huge source of corruption in the PA, giving rise to widespread allegations of bribery of government officials to secure control of lucrative markets. A draft law giving incentives to competition and prohibiting monopolies passed its first reading in the PLC in April 2004.
- A draft law concerning **the powers of the constitutional court** passed through the stage of general discussion in the PLC in December 2003. If enacted, it will weaken the far-reaching powers of the executive. A clear separation of powers can make corrupt ministers or high officials accountable in a court of law, without being able to rely on the protection of the head of the executive (the president), as has happened in the past.

The reform agenda

Reform has dominated the public discourse of Palestinian civil society and business sectors since the mid-1990s, with allegations of corruption forming a common thread. The eruption of the second intifada in September 2000, however, raised questions about reform priorities, particularly whether reform should retain priority over resistance to the Israeli occupation. This issue has become increasingly urgent as the economic

and security situation has deteriorated and as the PA has become unable to provide basic services amid spiralling unemployment.

Although the reforms contained in the so-called Road Map (for example, the appointment of an 'empowered' prime minister, the drafting of a constitution and holding elections), which were adopted by the 'Quartet plus Four',[1] reflected the concerns of many Palestinians, the fact that the reform agenda was presented by external parties raised questions for many about the real motives behind the reforms. Nevertheless, popular support for reform and for the fight against corruption remained strong. Following the resignation of the government of Mahmoud Abbas in September 2003, Prime Minister Ahmed Qurei's government sought much-needed popular legitimacy through the formation of a civil society coordinating committee for reform,[2] and its representation in the National Reform Committee (NRC).

By the time of writing, the NRC had met three times since the formation of Qurei's government and a number of reform measures had already been taken. The prime minister and the council of ministers presented quarterly reports of their activities – in accordance with the amended Basic Law – to the president of the PA, and to the PLC (it should be noted, however, that the power to pass and amend key legislation remains in the hands of the president).

Increasing financial transparency is seen as particularly important. Measures have been taken to unify and integrate all the PA's financial operations and to establish the Palestinian Investment Fund as an independent legal entity. The PLC and civil society institutions view the government's punctual presentation of the draft budget to the PLC for the last two financial years as a positive development.

The ministry of finance has been able to make an inventory of all the PA's investments, to apply the principle of a unified budget, and to unify the treasury of the West Bank with that of the Gaza Strip. In April 2004 the ministry was finally able to enforce the payment of salaries to the security and police services through the banking system, which significantly reduces opportunities for the misappropriation of public funds when payments are made in cash.

Acknowledging the significant steps towards reform that have been taken in respect of the PA's finances, the World Bank announced its intention of establishing a fund to support the PA's budget, which has accumulated a deficit of US $650 million for the year 2004. On the negative side, a law regulating the salaries, promotion and pensions of civil servants has not been implemented (ostensibly because of the PA's difficult financial situation), permitting the continued abuse of public office in respect to appointments – in terms of public perception one of the most common forms of 'low-level' corruption in the PA.[3] The chairman of the PLC's budget and financial affairs committee announced that he expected the amended law to be implemented in July 2004, affecting those employed in the civil administration from that date, and those employed in the police and security services by the end of the year. Regretfully, this legislation would still fall short of being applicable to all those employed by the PA.

Elections as mechanisms to combat corruption

A key reform to increase accountability and enhance the fight against corruption would be the immediate organisation of elections – be they internal political party, legislative, presidential or local. The suspension of nearly all electoral activity within the Palestinian Authority has strengthened the power of individuals whose interests are well served by the stasis caused by the political and military deadlock between the PA and Israel.

Elections are widely seen as a mechanism for the renewal of the PA, and for the creation of a new dynamic in the Palestinian political system through encouraging the participation of opposition political parties

in the process of legislation (through the PLC) and policy-making (through participation in government). General elections could provide Palestinians with a chance to elect representatives who are more able, have more integrity, and are more ready to fight corruption.

General elections have been due since May 1999, but the political and military conflict with Israel, particularly since September 2000, created objective obstacles to the holding of such elections, such as an extensive system of road blocks and checkpoints and sections of the separation wall that intrude into PA territory. The PA leadership (that is, the Fateh leadership) has been unwilling to call for elections even within their own party. Municipal elections have been due since 1997. Although the frequent incursions in the Gaza Strip and West Bank and the armed confrontations have made any serious progress towards presidential and legislative elections unrealistic, the holding of local elections is widely seen as both plausible and crucial for fighting corruption and reducing the inefficiency of centrally appointed municipal and village councils.

Calls by political and civil society groups for local elections have been insistent and regular. Nearly two-thirds (64 per cent) of Palestinian adults surveyed in March 2004 said there is discrimination in the provision of services by local government councils, and 70 per cent said that family and kinship connections play a part in appointments in local government. Some 69 per cent of the public believe corruption exists in local government councils.[4]

The holding of general and local elections is an essential part of the reform agenda, and a certain degree of change may now be inevitable. The prime minister announced that the council of ministers had decided in a joint meeting with the National Security Council under the chairmanship of President Arafat (held in May 2004) to start holding local elections in August 2004, after making the necessary amendments to local government election law. The meeting also decided to ask the PLC to approve a general election law, and to ask the Quartet Committee to work with the PA to create suitable conditions to hold general elections, and to set a date for them.

Jamil Hilal (TI Palestine)

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TI Palestine: www.aman-palestine.org

Notes

1. The 'Quartet' of Middle East mediators comprises the European Union, the Russian Federation, the United Nations and the United States; four other bodies involved in negotiations are Japan, Norway, the World Bank and the IMF.

2. The committee is composed of representatives of various civil society bodies, including Aman – The Coalition for Accountability and Integrity (TI Palestine), private sector companies, Palestinian professional associations and the General Union of Palestinian Women.
3. A majority of Palestinians in the West Bank and Gaza Strip believe that corruption exists in the PA, and 77 per cent believe that jobs in the PA are, to a large extent, obtainable through informal connections (Palestinian Centre for Policy and Survey Research, Ramallah, poll number 11, 14–17 March 2004).
4. Poll No. 3 (25–27 March 2004) conducted by PANORAMA (Palestinian Center for the Dissemination of Democracy and Community Development, Ramallah, 2004).

Panama

Corruption Perceptions Index 2004 score: 3.7 (62nd out of 146 countries)

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

Legal and institutional changes

- A draft **code of parliamentary ethics and honour** was submitted to the legislative assembly in September 2003, setting out the behaviour expected of parliamentarians and their substitutes when faced with a conflict of interest situation, nepotism, attempted bribery and the abuse of office for personal gain.[1] Several allegations of corruption involving legislators emerged in the period under review, but the bill had not been passed at the time of writing.
- A draft law to reform the 1998 **regulations governing the legislative assembly** was submitted in September 2003. The bill aimed to improve the legislature's public image at a time when the credibility of its members had been damaged by media reports about high levels of absenteeism and allegations that parliamentarians were abusing a right to import cars for personal use by selling them on to third parties. The proposed reforms include the introduction of salary cuts for failure to attend plenary and commission sessions, and the reduction of the right to import cars from three to one car per legislator, and two to one car per substitute. At this writing the bill had not been passed.
- A draft law modifying secondary legislation that enforces a constitutional provision against **administrative corruption** was also introduced in September 2003. If passed, the law will compel high-ranking officials to declare the value of their assets before taking up office and upon leaving it. The reform would give the auditor general powers to ensure that a full asset declaration is made. It would also lower the burden of proof for complainants to file allegations of illegal enrichment; circumstantial evidence would be sufficient to convict, rather than summary evidence as at present. Civil society organisations are calling for asset declarations to be made public, for an annual audit of them to be kept by the auditor general, and for public notaries to facilitate investigations in case of a complaint. At this writing the bill had not been passed.
- A draft law was submitted in September 2003 to modify a 2002 law on **transparency in public administration**. The reform would eliminate the requirement that anybody

requesting information must first prove that he or she has a direct link to the information requested. The condition was added to the original law by executive decree in May 2002 and is considered the main obstacle to implementation of the transparency law. After the May 2004 elections the supreme court ruled that the section of the decree relating to access to public information was illegal. At this writing the reform of the law had not been passed.

- A draft law submitted in December 2003 aims to expand a law on the **transparency of public procurement** processes by disclosing the owners or shareholders of companies that do business with the state. Under the bill shareholders of companies that win state contracts would have to certify ownership of their shares and pass this information to the public prosecutor's office or to the auditor general. At this writing the reform of the law had not been passed.

Corruption takes centre stage in the third general elections

Martín Torrijos was elected president in May 2004 on a platform of zero tolerance for corruption, in an election that was widely praised for its transparency and fairness. As in the elections in 1994 and 1999, voter turnout was high at 77 per cent and both Panamanians and the international community generally regarded them as honest. This was in sharp contrast to the 1989 elections, which were annulled because of electoral fraud. The winning candidate was announced four hours after voting centres closed and his three rivals acknowledged defeat a few moments later.

President Torrijos ran for Patria Nueva, a coalition of the Partido Revolucionario Democrático and the Partido Popular. His election platform featured 16 anti-corruption promises, including pledges to create a National Council of Transparency and the Fight against Corruption; to implement a professional civil service career structure; and to submit a salary bill to the legislative assembly. The pledges read well in principle, but the experience of his predecessor in office, Mireya Moscoso, contains a cautionary tale. Her plan of action also included measures to fight corruption and the fact that they were never carried to fruition generated disappointment among the public.

All four candidates in the 2004 presidential election placed corruption high on their agendas. In December 2003, TI Panama sent them a 'minimum agenda to fight corruption' and each responded by adopting around half of the 13 proposed actions. President Torrijos now has a majority in the legislative assembly and therefore little excuse not to push through the legislative changes called for under his anti-corruption agenda.

Other actions may require more than political will, however. Anti-corruption institutions need to be strengthened and consideration should be given to the creation of a body charged with the prevention of corruption, such as a public ethics office, an anti-corruption office or a prosecutor general specialised in corruption. Whistleblower protection also needs to be introduced – at present the Panama Canal Authority is the only public institution in Panama that provides full protection for whistleblowers, making investigations easier to carry out. Another challenge is to strengthen the widely discredited supreme court and attorney general's office. In order to do so, a proper career structure needs to be created, with nominations based on merit so that judges do not act in the interests of the government that selected them.

A deep reform of electoral law is also required. The electoral court is expected to set up a commission in 2005 to evaluate changes to the electoral code. One proposal is to call for a second round of voting if the

leading candidate fails to win 50 per cent of the vote. President Torrijos only obtained 47.3 per cent; Moscoso won in 1999 with 44.8 per cent; and Ernesto Pérez Balladares won in 1994 with 33 per cent. Another set of proposals, already being discussed in the legislature as part of a constitutional reform package, is to limit the campaign period and reduce the period of transition from four to two months. A third issue, and one that has received a lot of public attention, is establishing ceilings on campaign donations and requiring disclosure of campaign funding sources. A previous electoral reform commission discussed the issue, but only one party supported a proposal to require parties to disclose the size and sources of donations. The text that the legislature eventually approved only requires parties to present accounts to the electoral court in 'a confidential manner'.

The number of electoral irregularities denounced to the prosecutor responsible underscored the need for reform. There are currently 1,186 cases under investigation and, while the majority are related to voter fraud (chiefly, falsely registered addresses), a number are related to campaign finance. Several legislators have been accused of misusing public or private funds in their re-election bids, for instance by handing out scholarships, supermarket vouchers and cheques in exchange for votes. One of the biggest scandals involved legislator Haydée Milanés in the province of Darién who was found guilty of channelling US $370,000 of government funds through 28 bank accounts into her re-election campaign. The case was widely publicised and Milanés eventually went on hunger strike in protest at the accusations.

Monitoring the Inter-American Convention against Corruption

Within the framework of the monitoring mechanism provided by the Organization of American States (OAS) to oversee the implementation of the Inter-American Convention against Corruption (IACAC), civil society organisations identified shortcomings in Panama's compliance with the provisions of the convention. These failings were echoed by the OAS committee of experts.

In February 2004 civil society organisations presented an alternative report to the government on the state of compliance with the convention at a hearing with the OAS panel of experts. Civil society organisations acknowledged the advances made by the current government, spoke of difficulties in implementing the IACAC and issued recommendations. Among the positive developments mentioned was the adoption in July 2001 of reforms to the penal and judicial code and new norms to prevent corruption.

There was also agreement between civil society and the experts about obstacles to fighting corruption. First, in terms of access to information, the committee of experts strongly recommended that Panama revise and modify the decree regulating the law on transparency (see above). Second, there are problems with the national anti-corruption directorate, which was created by executive decree in 1999 but has never been regulated through secondary legislation. The directorate is coordinated by an interim director and does not have national reach. Third, concerns were expressed about the regulations for financial disclosure by public officials, since there is little evidence that they are being implemented efficiently.

Both civil society organisations and the panel of experts agreed in recommending a number of actions, including: strengthening the implementation of laws and enforcement systems with regards to conflicts of interest in order to underpin a practical and effective system of public ethics; creating and establishing mechanisms for publicising asset declarations (of income, debt and assets); and carrying out a full evaluation of the powers currently in the hands of the

national anti-corruption directorate, with a view to creating a new national office of governmental ethics.

The OAS experience of civil society inclusion in anti-corruption work highlights the importance of listening to non-governmental voices that are able to penetrate official rhetoric in assessing the state of corruption. The UNDP has also taken some steps in engaging civil society organisations in the effort to promote public integrity and transparency, though its Foro Panama 2020, a forum for the government, political parties and civil society to debate public policies until 2020.

Angélica Maytín Justiniani (TI Panama)

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TI Panama: www.libertadciudadana.org

Note

1. Each legislator has two substitutes.

Peru

Corruption Perceptions Index 2004 score: 3.5 (67th 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 January 2002)

Legal and institutional changes

- A framework law for a participatory budget, adopted in August 2003, is aimed at increasing **transparency and citizens' participation in budgetary decision-making** in the municipalities and the newly created regions. Civil society groups had pushed for the law which, while a positive step, is stated in very general terms and lacks clarity about how civil society organisations are to be identified and encouraged to participate.

Secondary legislation adopted by the finance and economy ministry in November 2003 failed to clarify these points (see below).

- Peru's first ever law regulating political parties was adopted in November 2003. One of the aims was to improve the transparency of **political party financing**, which had previously been poorly regulated. The new law bans funding from certain clearly stated sources; sets a ceiling on private donations; establishes auditing procedures; regulates campaign advertising; and establishes some sanctions. There are still flaws in the legislation, however: it does not call for disclosure of sources of financing and does not establish sanctions for all infractions.
- A law adopted in October 2003 created the Special Commission for the Integrated **Reform of the Justice Administration** (CERIAJUS), as called for by a wider commission for restructuring the judicial system. Reform proposals under consideration include public ethics training for judges, steps to make it easier for people to file complaints, and the introduction of asset-declaration mechanisms for judges. The civil society recommendation that external controls on the judicial system be introduced was not adopted, however.[1]
- A series of scandals involving serving government officials prompted the cabinet chief in February 2004 to announce **new anti-corruption measures**, though these were not widely discussed and have not been fully implemented. They included the re-launch of the National Anti-Corruption Commission (CNA) with new functions and a new president (the first president stepped down in February 2003 to take up a diplomatic post). Four months after the announcement, the justice minister designated a group made up almost entirely of civil society representatives to review and revive the wide-ranging anti-corruption proposals made by the National Anti-Corruption Initiative (INA), the working group set up by the transition government that recommended the creation of a robust and independent CNA.

Lack of political will to root out corruption

The transition to democracy in Peru had a strong anti-corruption element from the outset, but its focus was always on the past. Specialised anti-corruption courts, prosecutors and police divisions were set up to investigate and prosecute the grand corruption that took place during the regime of former president Alberto Fujimori. There were important successes: the main heads of Fujimori's corruption racket have been charged and many have been convicted. But fewer successes can be claimed against corruption that unfolded under the transitional administration or under the new democratically elected government.

There is a clear need for a national anti-corruption strategy to tackle not just past corruption cases, but current and future cases. This involves looking at prevention as well as enforcement and requires an anti-corruption policy that is interdepartmental and has short-term, as well as long-term, objectives.

This does not mean that such a blueprint for change does not exist – the INA working group set up under the transitional government drew up a comprehensive set of recommendations which the government has so far failed to implement. Nor does it mean that there are no departmental or institutional initiatives to fight corruption in Peru. The clearest example is the project to restructure the judiciary, as outlined above. Other important areas of reform are the police and armed forces, previously the pillars of Fujimori's corrupt network, and the development of online procurement systems. But these efforts have not been sufficient to curb corruption, as demonstrated by the

number of scandals exposed by the press in recent years.[2]

President Alejandro Toledo selected a new cabinet in February 2004 and the cabinet chief took responsibility for drawing up an 'exit strategy' for overcoming the political crisis amid plummeting approval ratings. The cabinet chief's proposals included a series of disparate anti-corruption measures that are individually positive (for example, actions against contraband, new extradition mechanisms and a commitment to formulate a coherent anti-corruption plan), but once again fail to add up to a strategy that goes to the structural roots of corruption.

President Toledo has always spoken of his will to fight corruption, but he has failed to translate this into effective initiatives, arguably because of the restraining factor of allegations of corruption against people and interest groups who are close to him. Media sources have reported a number of corruption allegations involving family members, legislators affiliated to the president's party, close friends, ministers, ex-ministers and the first lady.[3] The fact that there are legislators aligned with the ruling party who were closely tied to the Fujimori regime adds to suspicions that the president lacks the necessary distance from groups or individuals who might be compromised by an effective fight against corruption.[4]

The chances of a national anti-corruption policy being drawn up are inevitably linked to the evolution of the political crisis, which at present threatens to fell the president and produce an early election. The creation of a working group to revive proposals made by the aforementioned INA is positive, but comes at a difficult time. If the elections are brought forward and the new government also lacks the political will to address the roots of corruption, the recommendations could once again be shelved.

Decentralising corruption

Various sectors of Peruvian society, especially the poorest and most marginalised, have long been calling for the devolution of power to the regions. In the second half of the 1980s the Aprista government initiated a process of decentralisation that was dismantled by Fujimori after 1992. During the 2001 election campaign after Fujimori's escape to Japan, the question of decentralisation was again raised as an election promise. When Alejandro Toledo won, expectations were high that he would fulfil his campaign pledge.

Public demands for an immediate start to the process of decentralisation led to an announcement in 2002 that elections would be held for presidents of regions that had yet to be fully constituted. The organic law on regional governments was not promulgated until November 2002, four days after the elections took place.

The speed with which the operation was implemented meant there was no time to put in place the necessary control mechanisms to supervise the new local government institutions, let alone work out a timetable for when programmes would be transferred. The only control mechanisms in place were those that already existed, namely the auditing bodies created under Fujimori, ostensibly to oversee the Transitory Regional Administration Councils but in practice to ensure that social programmes were allocated along political lines to benefit the former president's election campaign in 2000. The fact that the same mechanisms had failed to prevent Fujimori from spinning a web of corruption begged the question whether they would exercise real control over the new regional governments.

The question was answered in 2003 and the first half of 2004: corruption was decentralised along with political and administrative powers, as a number of experts had predicted. By the time of writing, eight of the 25 regional presidents had already been subjected to investigation on suspicion of corruption, and one had been deposed for bribery and embezzlement.

The 'decentralisation' of corruption may be explained by the limited access to

information and civil society monitoring in Peru.

Access to public information was enshrined in law in August 2002, but many institutions seem not to understand the contents of the law or lack the resources necessary to implement it.[5] Implementation is also hindered by 'attitudes of mistrust and reticence to provide information when it is requested … attitudes [that] were associated in many cases with the disinformation of public officials with regard to norms and procedures', the civil society monitoring network Vigila Perú found.[6]

According to Vigila Perú's survey of 12 regional governments, the barriers to accessing information related to the budget have lessened since 2003. The same is true for political and normative information produced by the Regional Council, the highest regional government body, and the Council for Regional Coordination. Transparency of information about purchases and acquisitions has also improved. While these improvements are important, it is equally important to note that regional governments are moving towards minimal compliance with the law, and not beyond. At the level of municipal government the problems are much worse: they are notorious for disorganised information systems and for having 'difficulty' locating relevant documents, particularly from the past.

The lack of civil society participation is also critical. In almost all sub-national arenas there is a political component that strains relations between the government and civil society, as the political opposition can abuse monitoring functions by using audits as a weapon against the authorities. Hence officials tend to reject attempts by civil society to monitor government, even when they are provided for in legislation. By law, the Council for Regional Coordination must include provincial mayors and representatives of civil society elected by member organisations, but in practice, according to ongoing research by TI's chapter in Peru, Proética, sub-national governments have found ways to keep institutions that do not support them out of the council. In addition, two public hearings must be held each year to monitor the budget. In past hearings, however, only those institutions that support the administration were invited, or invitations were poorly distributed. In other cases, public hearings were not carried out at all.

This situation provides the backdrop to the high level of corruption in decentralised administrative bodies in Peru, where authorities have very low approval ratings among the population.[7] As a result, the process of decentralisation has been called into question. A tragic indictment of this state of affairs occurred in April 2004 when part of the population in Ilave, Puno, outraged by allegations of corruption made by the political opposition, lynched their mayor.

Samuel Rotta Castilla (Proética, Peru)

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Notes

1. CERIAJUS supported the proposal, but the commission for restructuring the judicial system – which looks at all aspects of judicial reform, not just judicial administration – argued in favour of the existing system of self-regulation.
2. Some of the most notorious cases involve the national intelligence council (which is currently being reorganised), and political interference in the media and the judiciary.
3. For the most part these allegations have not been confirmed by official investigations, with the exception of the case of César Almeyda, a friend of the president's and former chief of the national intelligence council who has been in prison since February 2004 for business dealings with the Fujimori corruption racket.
4. *Global Corruption Report 2004*.
5. See, for example, a study by Proética on the health and education departments of the Lambayeque regional government, César Guzmán Valle, *Diagnóstico de la organización de la documentación en el gobierno regional de Lambayeque*, available at www.proetica.org.pe
6. Vigila Perú, *Reportes nacionales* (National reports) (Lima: Grupo Propuesta Ciudadana, 2003), www.participaperu.org.pe
7. *II encuesta nacional sobre corrupción* (Second national corruption survey) (Lima: Apoyo Opinión y Mercado, 2004).

Poland

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

Conventions:
Council of Europe Civil Law Convention on Corruption (ratified September 2002)
Council of Europe Criminal Law Convention on Corruption (ratified December 2002)
OECD Anti-Bribery Convention (ratified September 2000)
UN Convention against Corruption (signed December 2003; not yet ratified)
UN Convention against Transnational Organized Crime (ratified November 2001)

Legal and institutional changes

- In September 2003 a **law creating Voivodship tax administrative bodies** and amending other laws entered into force. The law on tax control was amended by specifying groups of persons obliged to submit annual property and income declarations. The specified groups include tax inspectors, employees of tax offices and customs officials. Monitoring is the responsibility of an office within the finance ministry. By increasing the transparency of the personal finances of administrative officers, the law should reduce the incentive for tax and customs officers to abuse their position by demanding bribes.
- Also in September 2003 the lower house of parliament adopted **legislation on military service** (which entered into force in July 2004), which prohibits professional soldiers from holding positions in companies or foundations, and from earning money for advisory

roles. The law requires military commanders, deputy commanders and chief accountants to submit property declarations. The introduction of the law followed several recent corruption scandals in which officials with influence in military procurement decisions were shown to have positions in private companies bidding for the contracts.

- In January 2004 a new law on **public procurement** was passed, following amendments to the previous law in August 2003. The changes were intended to tighten controls, increase transparency and improve appeals procedures (see below).

Buying laws in parliament

In April 2004 investigations into 'Rywingate', Poland's most notorious corruption scandal of recent years, drew to a close, prompting widespread questions about the extent to which legislation in Poland can be bought by business interests. The case involved an attempt in 2002 by film producer Lew Rywin to intervene on behalf of the Agora media consortium during the passage of legislation that would have prevented Agora from purchasing the Polsat television station. Rywin allegedly represented senior members of the government, including then prime minister Leszek Miller, and demanded a US $17.5 million bribe.[1]

In its decision of April 2004 the district court in Warsaw sentenced Rywin to two and a half years' imprisonment and a fine of 100,000 zloty (US $27,000). When issuing the sentence, the court modified the charge from paid protection to fraud. One legal effect of this modification was to prevent the implication in the crime of a 'power-holding group', an informal set of persons with influence in the administration of the state. The sentence was condemned by many who argued that the trial should have implicated other influential figures. Adam Michnik (chief editor of *Gazeta Wyborcza*, and the man who first disclosed the scandal), described the court's decision as 'a big gift for the "power-holding group"'.[2]

Subsequently, in May 2004, the lower house of parliament voted to accept one of the six reports prepared by different members of a specially appointed parliamentary commission of inquiry. The adopted report, perceived to be the most critical of the six, specified that the 'power-holding group' in the case were Leszek Miller (prime minister at the time), the head of the prime minister's office, one of the prime minister's advisers, the former chairman of public television and the secretary of the National Council for Radio and Television. The report recommended that members of the group should bear legal responsibility, and also recommended that Miller, the president (Aleksander Kwaśniewski) and the former justice minister should be taken to the Tribunal of State and bear constitutional responsibility.[3]

Rywingate was a breakthrough in uncovering political corruption in Poland. For a long time there had been allegations of corrupt, informal connections in public policy-making, but no proof until Michnik recorded a conversation with Rywin on tape. Rywingate has already motivated investigations into other cases. Allegations were made that laws affecting pharmaceuticals, bio-fuels and mobile telephones have also been affected by the 'dirty lobbying' of politicians. A media investigation that began in August 2003 resulted in allegations of inappropriate lobbying and links to organised crime in the passage of a bill that would benefit the owners of slot machines.[4]

Another effect of Rywingate was to make clear that the existing legislation on political party financing was not sufficient to prevent businesses influencing the legislative process. The buying of legislation in Poland is eased by the centralised nature of the political party system. Members of parliament vote strictly along party lines, as the penalty for breaching party discipline is

often exclusion from the list of candidates in elections. Polish electoral law makes it impossible to participate in elections without being on a party list. As a result, a lobbyist need only have contact with one senior party figure to win an entire party's votes in parliament.

In order to prevent the buying of laws, two bills on lobbying have been prepared, one by the ministry of the interior and the second by non-governmental organisations, including the Institute of Public Affairs. There was also increasing pressure to modify the electoral law. In May 2004 more than 400 prominent figures published an 'appeal of those concerned about the destiny of the country', addressed to the president. It included an appeal for urgent modification of the electoral law to a majoritarian system based on single-member constituencies. Among those who signed the appeal were Władysław Bartoszewski (the former foreign minister), Stefan Bratkowski (honorary chairman of the Polish Journalists Association) and the professors and rectors of leading universities.

Public procurement

A series of measures were introduced in 2003–04 to tighten controls on public procurement, and to increase transparency and improve appeals procedures. First, in August 2003 the lower house of parliament adopted amendments to the public procurement law. The amendments granted power to the chairman of the Office of Public Procurement (UZP) to designate the arbitrators considering appeals against public procurement decisions. Previously the UZP had only selected one arbitrator, with the involved parties selecting the others, with no controls against the risk of corruption in the choice of arbitrators. Subsequently, in November 2003, the UZP chairman issued regulations introducing more transparent methods of arbitrator selection. In addition, the legal amendments gave public access to a wide range of documentation including bids, declarations and certificates submitted in the course of public procurement proceedings (except for confidential business information), with documents to be made available before the end of the tender award process.

In January 2004 parliament adopted a new law on public procurement, which entered into force in March 2004. The law strengthened the powers of the chairman of the UZP and tightened monitoring procedures, with mandatory control of the proceedings before the conclusion of high-value tenders. The law introduced the institution of independent observer, to monitor public procurements worth more than €5 million (US $6 million) in supplies and services and €10 million (US $12 million) in construction works. The law provides for control at two stages: ex ante, preventive measures before the conclusion of tenders; and ex post, allowing procurement proceedings to be examined up to three years after the awarding of a contract. An independent observer is designated by the chairman of the UZP from a list of arbitrators. The law also allows for the possibility of awarding public contracts through an electronic auction system. The regulations on the selection of arbitrators were further tightened, and the chairman of UZP was granted the right to impose cash penalties for breaches of the law.

Julia Pitera (TI Poland)

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TI Poland: www.transparency.pl

Notes

1. See *Global Corruption Report 2004*.
2. *Warsaw Voice Online* (Poland), 5 May 2004, www.warsawvoice.pl
3. *Polish News Bulletin* (Poland), 27 September 2004.
4. *Gazeta Wyborcza* (Poland), 29 November 2003.

Romania

Corruption Perceptions Index 2004 score: 2.9 (87th out of 146 countries)

Conventions:
Council of Europe Civil Law Convention on Corruption (ratified April 2002)
Council of Europe Criminal Law Convention on Corruption (ratified July 2002)
UN Convention against Corruption (signed December 2003; not yet ratified)
UN Convention against Transnational Organized Crime (ratified December 2002)

Legal and institutional changes

- In October 2003 the Romanian parliament passed a set of constitutional amendments designed to combat corruption in Romania. The **immunity of MPs** was restricted to political opinions, and the power of the ministry of justice over administrative and disciplinary matters relating to magistrates was entrusted to the council of the magistracy, substantially improving the **political autonomy of magistrates**.
- February 2004 saw the passage of the first **code of conduct** for civil servants, which set out the fundamental principles of modern administration: rule of law, priority of public interest, equality of treatment, professionalism, impartiality, independence, moral integrity, good faith and transparency. Improving on previous law, the code clarifies conflicts of interest legislation by defining public interest, personal interest and situations in which conflicts of interest can arise. Other provisions prevent civil servants from carrying out political activities, or using their official status for the promotion of commercial activities. Civil servants are prohibited from accepting gifts, services or any other advantage for themselves or their family, parents, friends or business and political associates. However, the effective range of the code applies only to civil servants, leaving elected and appointed officials out of reach.
- Emergency ordinance 24, passed in April 2004, amended earlier provisions on **asset disclosure** for politicians and clarified the sanctions. The law imposes the same obligations

on all candidates for elective positions (presidency, parliament, local and county councils, mayors), and declarations must be published on the Internet. The political opposition criticised the timing of the measure in the run-up to the June elections, claiming there was insufficient time to fill out the forms while candidates for the party in power had known of the requirement in good time. Despite the wide coverage, no investigations have been triggered by suspicious declarations, suggesting ineffective implementation or a lack of political will. Additional concerns are that whistleblowers are left open to charges of libel, that the disclosure requirements exclude art, 'patrimony' and precious metals, and that there is no cross checking with annual income tax declarations.

- A government decision in July 2003 established the structure and function of the Government Control Office (CCG). The CCG exerts internal administrative control on central and local government, investigates complaints on **conflict of interest legislation**, coordinates anti-fraud activities and protects the financial interests of the EU in Romania (see below). However, since the CCG itself is subordinate to the cabinet, it may have its own problem with conflicts of interest.
- In April 2004 the **National Anti-Corruption Prosecution Office** (PNA) was awarded a substantial increase in resources (23 per cent) and increased financial autonomy from the ministry of justice. On the other hand, the range of PNA's activities was broadened to include smaller acts of corruption greatly increasing its workload. The PNA has, in the past, come in for criticism for dodging the 'big sharks' and NGOs have questioned its independence. Despite the above amendments, the PNA remains directly subordinate to the ministry of justice and the ministry appoints and disciplines prosecutors.[1] The PNA's head recently declared that the PNA would not submit its annual report to parliament, restricting reporting to the ministry of justice. Shortly before the June 2004 elections the PNA reopened a case against the opposition leader Traian Basescu (though the investigation was later suspended until after the election) even though the same administration had investigated the case in 1997 and been forced to drop it for lack of evidence.
- The controversial **Independent Service for Anti-Corruption and Protection** (SIPA) within the ministry of justice changed its name to the General Office for Anti-Corruption and Protection (DGPA). Notwithstanding the new body's formal accountability to parliament and its declared duties to prevent and identify criminal acts in prisons, corruption and acts that undermine national security or the security of magistrates, the need for a 'secret service' in the judiciary remains questionable.

Judicial independence: to be or not to be

Romanian justice has been widely criticised both locally and internationally for corruption, delays in resolving cases and lack of independence.[2] According to a survey carried out in early 2004, 63 per cent of Romanians do not believe that justice can be obtained through the courts, compared to just 21 per cent who feel the opposite.[3] Reports from the European Commission have repeatedly warned of the acute need for judicial reform, particularly 'the improvement of judicial independence and the reduction of the influence of the executive on judicial decisions'.[4]

At a regulatory level, judicial independence has been compromised since 1992, when Romania's first law on the organisation of the judiciary came into force. This legislation established a judicial structure whereby career path, disciplinary responsibility and salaries for magistrates are all at the discretion of the ministry of justice.

In late 2003 the ministry of justice introduced a package of draft laws to allow the cabinet to finalise EU accession negotiations on the judicial chapter, a critical benchmark of Romania's readiness to join the EU in 2007. The ministry initiated two laws on the organisation of the judiciary and the status of magistrates but crucially maintained many of the same levers of control (career path, disciplinary responsibility, management of courts, and so on).

In early 2004 several Romanian NGOs held a press conference to raise awareness of the faults in the reform package.[5] They successfully demanded that the juridical commission in the lower house of parliament prevent the two laws from being adopted until a third draft law on the Superior Council of the Magistracy (CSM) had been finalised. It was later discovered that the latter law was in the ministry pipeline, but had been deferred until late 2004.

Debates between civil society, the ministry of justice and the CSM have continued but a draft guaranteeing the independence of the judiciary has still not been achieved. During negotiations during early 2004, drafts thought agreed among the various parties have appeared on the ministry's website substantially modified for the worse. The final draft addresses the main reform issues (disciplinary responsibility, career path and administrative autonomy) but crucially the financial autonomy for the judiciary was denied. Furthermore, effective oversight of the legislation has been severely hampered by the denial of full-time status to the members of the CSM.

Conflicts of interest at work

Romania has been given the largest portion of EU funding for accession countries and, used wisely, EU structural funds have the power to redress the social, economic and educational imbalances between Romania and the other accession states. The large sums involved, however, have also tempted the corrupt, and the means by which some of the structural funds have been distributed has revealed gaping legal and administrative flaws in the Romanian public integrity system.

A major scandal erupted in February 2004 when the media revealed that several EU Sapard projects in Suceava county had been marred by conflicts of interest because of links between the civil servants awarding the contracts and the boards of the winning companies.[6] Out of a total of 37 signed contracts, 16 were found to have broken some aspect of conflict of interest legislation. The European Commission demanded a full inquiry into the Suceava contracts.[7]

The responsible agency subsequently launched a nationwide verification of all contracts under the national programme. It found that of approximately 150 active contracts, more than one third had been in breach of conflict of interest legislation.[8] Romania has registered the highest number of irregularities reported to the EU's European Anti Fraud Office (OLAF), according to the auditing agency's report for 2002–03.

Because of such cases, there has been a notable increase in state sensitivity to the issue of conflicts of interest. In July 2003 the head of the European integration portfolio, Hildegard Carola Puwak, secured €150,000 from an EU-funded educational programme for companies owned by her husband and son. Two contracts had been approved before Puwak took over the ministry, but others were endorsed after she entered office. OLAF and the PNA both opened inquiries which concluded that there had been no breach of contract-awarding procedures since she had not taken part directly in the decision-making process. Even so, the minister was forced to resign in October 2003.[9]

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TI Romania: www.transparency.org.ro

Notes

1. At the time of writing a draft law is being processed on the Superior Council of the Magistracy that aims to make prosecutors independent of the ministry of justice.
2. According to TI's Global Corruption Barometer 2003, Romanians perceive the justice system as second only to political parties in terms of corruption.
3. Centre for Urban and Regional Sociology, *Sondaj la Nivel National in Mediul Urban* (National Urban Survey) (2004).
4. Report on Romania's application for membership of the European Union and the state of the negotiations, see www.europarl.eu.int/meetdocs/committees/afet/20000710/406856_en.doc
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6. *Evenimentul Zilei* (Romania), 25 February 2004.
7. *Gardianul* (Romania), 28 February 2004.
8. BBC News, 28 March 2004.
9. Radio Free Europe/Radio Liberty, 2004.

Russia

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

Conventions:
Council of Europe Civil Law Convention on Corruption (not yet signed)
Council of Europe Criminal Law Convention on Corruption (signed January 1999; not yet ratified)
UN Convention against Corruption (signed December 2003; not yet ratified)
UN Convention against Transnational Organized Crime (ratified May 2004)

New legislation and institutional developments

- President Vladimir Putin signed a decree in November 2003 creating the **Council for the Struggle against Corruption**. The council, a consultative body, consists of the prime minister, the speakers of both chambers of parliament, the heads of the constitutional, supreme, and higher arbitration courts. According to the decree, the main goal of the council is to identify the reasons for the spread of corruption and to help the president determine policies for fighting it.

- In April 2004 a **Special Commission for the Struggle against Corruption** was founded by the new parliament, elected in December 2003. Its tasks consist of analysing laws and draft bills to detect flaws that might provide opportunities for corruption. It also serves as an agency to take citizens' complaints, receiving roughly 100 in its first two and a half months of existence.
- In March 2004 the **Federal Financial Monitoring Service** (FFMS) was reorganised. This 'finance intelligence' service monitors all property contracts and transactions exceeding a value of 3 million rubles (US $100,000). When organisations carry out such transactions, they are obliged to inform the FFMS immediately. Obligations to inform the FFMS also apply for certain cash operations, transactions with accounts held anonymously, operations by legal entities registered within the past three months, financial leasing operations, and also interest-free loans that exceed 600,000 rubles (US $20,000).

Putin's anti-corruption policy

Curbing corruption has become one of the catchwords for legitimising Vladimir Putin's 'strong presidency' and rebuilding the so-called 'power vertical' – Putin's main project to modernise and strengthen the Russian state. In line with this project, the struggle against corruption is characterised by top-down, campaign-style measures, and the creation of new agencies. As the anti-corruption campaign has built up momentum in Russia, however, it has also become evident that, as in some other countries in the Commonwealth of Independent States (for example, Ukraine and Belarus), the struggle against corruption is becoming a powerful tool in the hands of the president who may turn it selectively against unhelpful officials or political opponents.

The 'Yukos affair' is a case in point. In October 2003 Mikhail Khodorkovsky, chief executive of the Russian oil giant Yukos, regarded as the richest man in Russia, and a major financier of the reformist Yabloko Party, was arrested on charges of fraud, forgery, embezzlement and tax evasion. Many observers believe the affair was triggered not only by Khodorkovsky's rising political ambitions, but also by an incident during a meeting between Putin and the so-called oligarchs in early 2003, when Khodorkovsky supposedly criticised the pervasiveness of corruption in the executive.

As early as April 2002 Putin had criticised the state administration as being badly run and corrupt, and called for institutional reforms in his annual state of the nation address, since then no measures were taken. Two days after Khodorkovsky's arrest, however, Putin declared corruption a threat to national security and called for a 'systemic anti-corruption policy'. In November 2003 he instigated the Presidential Council for the Struggle against Corruption, which consists of two commissions – one to fight corruption, and the other to uncover conflicts of interest which may arise when government officials accept gifts from, or spend vacations with, company executives.

The formation of a presidential council is a long-established method within Russia of dealing with difficult issues. The council is directly subordinate to Putin and is limited to an advisory role. Its design is interpreted by many analysts as signalling a victory for liberals over hard-liners within the Kremlin who had stipulated the establishment of a special agency commanding an armed force, either independent or as part of the interior ministry. While the latter approach would have been unnecessarily heavy handed (and particularly opposed by Russia's business elite),[1] critics of the winning, 'soft' solution question the council's effectiveness in the absence of law enforcement. In any case, at the time of writing the council has been inactive.[2]

Another element of Putin's anti-corruption activities is civil service reform. The first visible step in this regard was the creation by presidential decree of a commission on administrative reform in July 2003. The call for administrative reform rests on two assumptions. Firstly, sweeping bureaucratic discretionary power, responsibilities that cut across multiple agencies and excessive arbitrariness in the application of state regulations all cause corruption. Secondly, civil servants' low salaries give rise to bribery. While the first problem has received little attention so far, the second was addressed when in April 2004 salaries were substantially raised by presidential decree. For some, the decree represents a real breakthrough, while others point out that increased salaries has to be accompanied by other measures.[3] Public opinion, too, remains sceptical that this measure will be effective.[4]

Curbing corruption: civil society activities

Civil society in Russia is weak. Grassroots organisations face difficult hurdles because access to politics is limited to the ruling elite and media restrictions also serve to stifle the growth of civil society.[5] That said, anti-corruption initiatives from business and civil groups that have access to independent resources have begun to surface.

One initiative was started by the Russian Union of Industrialists and Entrepreneurs (RUIE), the most influential business association in Russia. In August 2003 RUIE founded a joint arbitration system in cooperation with two minor business associations. The new arbitration courts can bypass the regular, often corrupt, courts in cases of dispute settlement among business partners. Although appealing to the arbitration court is voluntary, and presupposes the consent of both partners, its decisions are binding. Non-compliance will be punished by entry onto a 'blacklist'. The arbitration system is so far the most important step undertaken by RUIE to improve the business climate in Russia. As one commentator ironically stated, the main beneficiaries of the new system are the small and medium-sized entrepreneurs since 'big business has already established long-term relations with the courts'.[6]

A second noteworthy initiative is 'Antikorruptsiya', founded in February 2004 by representatives of the Association of Small Businesses and human rights organisations. It aims to 'consolidate the resources of the civil society' and to help and urge the government to curb corruption. Antikorruptsiya seeks to carry out investigations by questioning officials and politicians and to publish the results in the mass media and online. It monitors compliance with the law by public officials, and will take cases to court if necessary. The first lists of questions relating to allegedly corrupt activities were presented in May 2004 to the general prosecutor, the ministers of transport and communications, and the chief of the Moscow city court, amongst others.[7]

A third source of non-state anti-corruption initiatives draws heavily on the support of the United States Agency for International Development, which started a 'Partnership against Corruption' (PAC) programme designed to build government integrity, accountability and transparency in Russia's regions. Local 'partnerships' have been established, non-profit organisations that arrange anti-corruption measures, bringing together regional and local state agencies, businesspeople and civil society activists.[8]

In a different approach, the National Anti-Corruption Committee (NAC), a 'club' of 55 politicians and political analysts and the regional PACs cooperated closely with government agencies to try to strengthen honest politicians at the top. The NAC believes that the pervasiveness of corruption in Russia is led by the Russian bureaucracy and that Putin is the only person able to rid the system of corruption. The NAC recommends that Putin use his broad popular support as a 'presidential resource' in the battles ahead.

Although there is an anti-corruption network of non-state actors in the making which builds around a small core of activists, assessing the real importance of these initiatives is no easy task. The general weakness of civil society encourages a 'top-down' approach, as does the structure of some anti-corruption groups who are connected to elite interest groups rather than being broad-based popular movements. The current appeal of an 'iron hand', however, is problematic in an environment where anti-corruption campaigns may also serve as a political weapon against opponents.

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3. See www.grani.ru/Politics/Russia/Cabinet/p.67340.html and www.chuvashia.com/cap_xp/main.asp?prev=9151&pos=153
4. Public Opinion Foundation, http://bd.fom.ru/report/map/projects/finfo/of0416/of041603
5. Briefing Report: 'Corruption, Biased Media Turn Russian Election Into "Farce"'. JRL 8108, 9 March 2004, www.cdi.org/russia
6. *Financial Times* (Britain), 6 August 2003.
7. www.iamik.ru/15674.html
8. See: www.stopcor.ru, www.nakhodka.info, http://coalition.tomsk.ru, http://a-corruption.irkutsk.ru/index.htm

Serbia

NB: This report does not cover developments in Montenegro or Kosovo

Corruption Perceptions Index 2004 score:[1] 2.7 (97th out of 146 countries)

Conventions:
Council of Europe Civil Law Convention on Corruption (not yet signed)
Council of Europe Criminal Law Convention on Corruption (acceded December 2002)

UN Convention against Corruption (signed December 2003; not yet ratified)
UN Convention against Transnational Organized Crime (ratified September 2001)

Legal and institutional changes

- A **law on political party financing** was adopted in July 2003 and implemented from January 2004. The law provides state funding both for general party finances (e.g. running costs) and to fund candidates in electoral campaigns, 0.15 per cent of the national budget, and 0.1 per cent of national budget respectively. The maximum amount of private contributions allowed is US $800,000 per party or candidate in parliamentary or presidential elections. Violations of the law attract steep fines by national standards. However, the law was passed with little public discussion and its implementation was poorly prepared. Loopholes in the text led to a number of misinterpretations by parties, state bodies and even electoral experts in the run-up to the presidential election in June 2004 (see below).
- The newly elected parliament adopted a **law on prevention of conflict of interest in public office** in April 2004 after a long period of lobbying by TI Serbia, among others. The law did not meet civil society expectations, but does provide for the creation of a control body for resolving conflicts in favour of the public interest. Implementation got off to a shaky start, with uncertainties surrounding the enforcement mechanisms. Some have criticised the law for failing to make conflicts of interest a criminal offence and its lack of positive incentives (see below).
- The **law on public procurement** was amended in May 2004 to facilitate tender procedures and enhance bidders' rights through an improved complaints mechanism. Unsuccessful bidders can take their suspicions of unfair tendering first to the client itself and then to a commission for the protection of bidders' rights, which has powers to confirm or override all or part of the tender procedure before contracts are signed. The amendment falls short of best practice, which would require the appeal body to be independent of the executive and to report directly to parliament.
- A **draft law on access to information** was submitted to parliament in July 2003, but withdrawn after too many discrepancies were found to make amendment possible. After the change of government, work resumed on the draft in April 2004. If passed, the new version would provide access to information possessed by the executive, legislature and judiciary, local government, public enterprises and any other entities performing public functions. A special commissioner would be created with appeals and advisory functions. Access can be denied when the relevant information represents a threat to national security, or violates confidentiality or the legal protection of personal data. The media would enjoy enhanced rights of access. Concerns have been raised over the vague definitions for exempted categories. The draft also fails to make provisions for protecting whistleblowers from criminal prosecution or other disciplinary action.

Party financing descends into chaos

There are clear shortfalls in the provisions of the latest legislation governing party financing in Serbia, which came into effect in January 2004. In particular, the control mechanisms have been heavily criticised on the grounds that the submission of reports is made to the electoral commission – a body created for other purposes and with little capacity for checking reports. The most pressing problem however, is the state's attempts to renege on one of the fundamental pillars of the legislation – the

provision on state financing for political campaigns.

The core of the new legislation is a multi-pillared approach in which stricter restrictions on party funding are supplemented with state support for running costs and election campaigns. The specific aim of state funding is to strike a balance between public and private sources, and so to decrease the dependence of political parties on private donors.

To finance campaigns the January 2004 law provides 0.1 per cent of the national budget for political parties or 'citizens groups'. Based on figures for Serbia's national budget of 2004, the total figure available for election expenses would be 227 million dinars (US $4 million).[2] One-fifth of the amount is to be disbursed to all candidates equally, and four-fifths to the party that proposed the winning candidate. The maximum amount of private contributions allowed is set at one-fifth of the overall national budget, 45.3 million dinars (US $800,000). Funds not spent on campaign expenditures should be reimbursed to the state.

However, at the first test for the legislation, the June 2004 presidential elections, the provision of state funding collapsed in disarray. Apparently by mistake, in March 2004, the ministry of finance calculated a much lower sum for state support for election campaigns based on presidential election laws which had been superseded by the January 2004 legislation. Claiming national budget constraints, the state subsequently attempted to enshrine the lower figure in law by passing an amendment to the January 2004 legislation.[3]

On the basis of the prior law governing the provision of presidential electoral expenses, total state commitments amounted to 12 million dinars, compared to the 227 million dinars discussed above (making a difference between US $200,000 and US $3.8 million). Following the rejection of the amendment enshrining the lower budget allocation (0.01 per cent of the state budget),[4] the government eventually offered 45 million dinars (US $740,000). Representatives of 11 of the 15 first-round candidates announced their willingness to challenge the decision of the ministry of finance to disperse them 607,000 dinars (US $10,000), claiming entitlement to five times this amount.[5]

With the legal confusion created by state donations, private contributions also became mired in uncertainty. As noted above, levels of private financing are tied to levels of state financing. In the context of uncertainty over the levels of state funding it is unclear what sum is available for candidates and parties from private sources or what legal consequences arise from using the higher figure.

It is still uncertain whether it is the state's intention to abandon the central concept of the law (balanced financing from public and private sources) or merely to make short-term savings for budgetary purposes. What is certain is that if the law is to work all the political parties must achieve a common interpretation of the law's provisions before September 2004 local elections. Legal amendments must also be made to remove any ambiguities. Implementation controls must be improved, and a proxy should be appointed by the election commission to engage certified auditors in a process of verification.

A long way to conflict of interest legislation

Public awareness of the issue of conflicts of interest reached its peak due to a series of conflict of interest scandals throughout the summer of 2003. Allegations were made against the minister for transport and communications and one of the prime minister's advisers.[6] These cases were bought to public attention through opposition political parties, and in the run up to the elections in December 2003, opposition groups sought maximum political capital from the scandals, and in the process closely aligned themselves with the commitment to legislative reform. In consequence, the law on the prevention of conflict of interest in

the discharge of public functions was one of the first that the new administration enacted on assuming power.

While the legislation covers many important aspects of conflicts of interest and imposes tight restrictions on state officials at central, provincial and local levels, it also shows the hallmarks of hasty drafting and a shortfall in expert input. The law covers only a small part of the area that should be regulated.

There are also concerns over the legislation's implementation mechanisms. The central control body of the law is the Republic Board for Resolving Conflict of Interest. This body consists of nine members nominated by the supreme court, the academy of science and arts and the bar association. There are concerns that this body will be able to deal with the workload, particularly given that a provision to create regional oversight boards was dropped in the law's adoption process. Cooperation with other government agencies is not guaranteed, and despite the complexities of the task before them, salaries for the board members are low.

A further problem with the legislation is that it does little to provide positive incentives to engage state officials. The law imposes many restrictions governing their behaviour – restrictions on sources of income, obligations to declare personal and family assets and interests – but offers little in return, such as an explicit reference to future salary increases. One rather weak incentive is offered in terms of a new, safe mechanism for resolving potential conflicts of interest cases by seeking advice from a control body on potential infringements of the law prior to engaging in a particular business venture or accepting a gift.

The expectations of some that conflicts of interest would be made a criminal offence were not realised. That said, there are indications that in the Serbian context, this shortfall may not be as far reaching as it would at first appear. Opinion polls in Serbia show that despite a general preference for severe penalties there is a relatively high degree of public confidence that political sanctions could be effective.[7] This may be due to the level of public sensitivity about conflict of interest and an apparent readiness not to vote for implicated politicians. It is also not clear that more legislation is helpful given that legislation covering abuse of power by politicians is already extensive.

Nemanja Nenadic (TI Serbia)

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TI Serbia: www.transparentnost.org.yu

Notes

1. The CPI score applies to Serbia and Montenegro.
2. Amounts are calculated according to 2004 budget figures.
3. *Glas javnosti* (Serbia), 20 April 2004.
4. *Glas javnosti* (Serbia), 15 April 2004.
5. BETA News Agency (Serbia), 19 June 2004.
6. Ibid.
7. See www.transparentnost.org.yu/publications/conflict.pdf

Slovakia

Corruption Perceptions Index 2004 score: 4.0 (57th out of 146 countries)

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

Legal and institutional changes

- An **amendment to the code of criminal procedure and the criminal code** came into effect in December 2003. The powers of the office of 'agent provocateur' were expanded to permit initiating corrupt actions. Procedures were introduced for reducing sentences for offenders who turn state's evidence. The amendment also introduces punitive measures for conspiring to commit a corrupt act. A person who could plausibly inform on another person committing, or conspiring to commit, corruption was also made liable for imprisonment of up to three years.
- The **law on a special court and prosecutor to fight corruption and organised crime** was passed in October 2003. The law establishes a centralised anti-corruption institution with considerable autonomy. Its particular structure is designed to prevent tampering of courts, prosecutors and politicians, and to overcome the unwillingness of judges to prosecute corruption cases (see below).
- A **new law on protection of the public interest** in performing the functions of public officials was adopted by parliament in May 2004 (due to come into force in October 2004). The law sets out conditions for protecting the public interest, and for incompatibility of public functions with other activities. It also addresses the accountability of officials for breach of the law (see below).

A conflict of interest

Before May 2004, conflict of interest legislation in Slovakia was anchored in the 1995 constitutional law relating to senior officials and state officers in the discharge of their public functions. While the earlier act looked promising on paper, it suffered from weak implementation and the exclusion of great numbers of state officials from its scope. The Association of Towns and Villages, a professional organisation of mayors of

Slovakia, successfully lobbied to eliminate municipal bodies and local administrations from coming under the purview of the act. Information, such as property declarations, was rarely verified and was not made public. The oversight body, the Committee of the Parliament of the Slovak Republic (CPSR), had no mandate to refer any matter to other state bodies such as the tax authority.

The inadequacies of the old law were highlighted by several high profile cases involving well-known public officials. Most notably, in 2003–04, the former Slovak premier, Vladimír Mečiar, become the focus of media scrutiny and intense public speculation about the amount of property he owned, and the means with which he acquired it. Despite the public furore, Mečiar refused to disclose his assets within the deadline set, bringing to widespread public attention the lack of force behind conflicts of interest legislation in Slovakia.[1]

A steady stream of such scandals provided a great impetus for change, and a number of civil society coalitions have developed to campaign on the issue. After several failed attempts by the government to pass stronger conflicts of interest legislation, TI Slovakia initiated the formation of the Alliance – Stop Conflict of Interest, an informal association of more than 240 NGOs who worked with Minister of Justice Daniel Lipsic to present a draft bill to parliament. Amendments to the draft bill by parliamentary committees led Lipsic to withdraw the bill in early 2004, but the initiative had generated the impetus for legal reform. Unsurprisingly, the bill eventually adopted by the Slovakia parliament in May 2004 was much weaker than that presented by Lipsic and replicated many of the failings of the existing legislation both in terms of scope and implementation.

In terms of scope, the law does not apply to state representatives of the national property fund, nor does it apply to state representatives in commercial companies in which the state has a property stake lower than 100 per cent. Some sections of municipal councils are also excluded.

In terms of implementation, the decision-making processes are complex and heavily weighted against making a decision to impose sanctions. The threshold level for deciding to pursue a corrupt official is very high. To initiate proceedings, at least three-fifths of the respective parliamentary committee members are required to agree that the case before them constitutes a conflict of interest; a minimum of 90 members of parliament are required to decide on sanctions. On past experience, such rigorous demands render the act without effective sanction.

The law has other shortcomings too. The public disclosure of the source of loans for public officials is not required, nor does the law require the public disclosure of property declarations submitted by family members of parliamentarians. The law has weak post-employment restrictions, focusing only on post-public sector employment which provides earnings that are more than 10 times the minimum wage.

While the act clearly introduces some positive elements, for example, the need for members of parliament to make property declarations for family members (though not publicly) and the inclusion of more public authorities and officers under its remit (deputies of some municipal councils are still not included), its weaknesses cast some doubt on its ability to deal with the problems of conflicts of interest in Slovakia. That said, some remain optimistic and the law, and the will to implement it, is yet to be fully tested.

Detecting and prosecuting corruption

The law on establishment of a special court and the office of a special prosecutor became effective in May 2004. It aims to create a centralised unit of legal experts focusing on organised crime and corruption. The central office is to be run under a special regime to isolate it from relations which often facilitate corruption.

The unit is to provide enhanced security measures for personnel and enhanced remuneration for staff. Staff are required to undergo a rigorous screening process conducted by the national security office, and will include members of parliament, government members, chairmen of state administration central bodies, chairman and vice-chairman of the Supreme Audit Office, judges of the constitutional court, judges and prosecutors. A special court shall decide on criminal acts of corruption, while the most serious financial cases are to be verified by a special investigator and tax and financial experts.

On the positive side, the state has allocated a relatively large amount of money for its operations, and the first special prosecutor was appointed at a meeting of the Slovak parliament in May 2004 and is widely held in high esteem. On the other hand, there is great concern that the power of the office was substantially weakened as a result of political manoeuvring within the coalition government.

As with the new conflicts of interest law, discussed above, one way in which the initiative was weakened was by interest groups within the legislature limiting which public officials are to come under the scope of the institution. The wording of the law was also weakened so that the law only applies to acts directly related to execution of a public official's job. In practice, this means that criminal acts committed by a public official before or after his period in office remain under the purview of the general prosecutor.

There was significant resistance to the passing of this law from political opposition groups, particularly SMER who rejected the bill wholesale on the grounds of its potential for abuse against those not participating in the coalition government. Concerns had been raised over the office of the general prosecutor and its relation to the office of the special prosecutor. The law provides that the special prosecutor was to be chosen by the National Council of the Slovak Republic from a selection of candidates forwarded by the general prosecutor. The office of general prosecutor was also strengthened by the provision that the prosecution of a member of parliament by the special prosecutor requires the consent of the general prosecutor and the national parliament.

In sum, the establishment of the office of special prosecutor and the special court is a positive but not sufficient condition for successfully combating corruption in Slovakia. There seems to be some commitment from the state to create and finance the institutions at this time, but the law has also been weakened by self-interest in the legislature.

Emília Sičáková-Beblavá and Daniela Zemanovičová (TI Slovakia)

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TI Slovakia: www.transparency.sk

Note

1. *Daily Pravda* (Slovakia), 10 December 2002.

Sri Lanka

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

Conventions:
UN Convention against Corruption (ratified March 2004)
UN Convention against Transnational Organized Crime (signed December 2000; not yet ratified)

Legal and institutional changes

- The Sri Lankan government enacted the **Fiscal Management (Responsibility) Act No. 3** in 2003. The law aims to enhance transparency and financial accountability and ensure that the government's fiscal strategy is based on responsible fiscal management. Under the law, the finance minister is required to publicly disclose the government's fiscal policy and performance. The law's effectiveness will depend on vigilant public scrutiny of the finance minister's reports, and state commitment to enforcement and oversight mechanisms.
- Drafting of the **Audit Act** was completed at the end of 2003. The bill will widen the mandate and strengthen the powers and independence of the office of the auditor general. Under the law, the auditor general's report must be presented to parliament within five months of closure of the financial year (reduced from the current requirement of 10 months). The law widens the auditor general's authority to audit all income and expenditure of parliament.
- The need for a **freedom of information law** was recognised by the cabinet in December 2003 and was scheduled to go before parliament in late 2004. If passed the bill should overcome a severe deficit in public access to government documents such as the audit report, recruitment and promotion schemes for public sector staff, and public contracting transactions. The inability to access such information has resulted in widespread cronyism and misappropriation of public funds. The proposed legislation is flawed in that it is unclear in its scope, and various provisions within the legislation provide ample opportunity for restrictions.

An ailing judiciary

According to a Transparency International survey, the judiciary is perceived to be the second most corrupt public institution in Sri Lanka after the police.[1]A further study carried out by Marga Institute also revealed the extent of the problem in the Sri Lankan judicial system. Of the 50 judges (including retired judges) who responded to a questionnaire, 41 reported 226 incidents of bribery within the judiciary. Among the respondents, the prevalent view (84 per cent) was that Sri Lanka's judicial system was corrupt.[2]

Even the highest authority in the Sri Lankan judiciary has been tainted with allegations of corruption. There have been two attempts to impeach the chief justice, Sarath Nanda Silva, on charges including obstruction of justice, violation of the constitution, abuse of power and inappropriate personal behaviour relating to the status of a supreme court justice.[3] The second impeachment was presented to the speaker of parliament in November 2003.

Neither attempt has led to a parliamentary inquiry because the president dissolved parliament, on both occasions, before proceedings could be completed.

Faced with a malfunctioning judiciary, urgent reforms are needed. First, any proceedings or inquiries involving judges should be resolved by appropriate and timely judicial action. Impeachment proceedings against the chief justice should be dealt with rapidly and according to due process of the law. Bar associations and judges should address the issue of integrity while maintaining high standards themselves. Support for the judiciary from the executive and the legislature must be ensured while guarding against bias, and the perception of bias, in court proceedings and in the selection of judges. Strict discipline of the lower judiciary must be ensured through an independent judicial service commission.

Election abuses spark reforms

The Sri Lankan constitution provides for an election commission whose powers are limited to issuing written orders. Following a constitutional amendment in 2001, designed to distance the commission from executive influence, the power to select appointees was taken away from the president and given to a constitutional council whose selections, nevertheless, have to be endorsed by the president. The failure of the president to endorse such nominees created a lacuna in combating electoral corruption and the responsibility to oversee the elections fell to the election commissioner – an office ill-equipped to deal with the widespread electoral abuse in Sri Lanka.

A civil society initiative, the Programme for the Protection of Public Resources (PPPR),[4] sought to monitor the abuse of public resources in the 2004 elections through gathering information from the political parties, media scrutiny and the use of investigative teams. The PPPR published weekly reports containing the names of abusers and details of their abuses. The findings of the PPPR highlighted the election commissioner's inability to address electoral abuse over a wide range of areas, but particularly his failure to prevent the abuse of the state's electronic media by the incumbent party, the United People's Freedom Alliance (UPFA).

In their survey of the state electronic media, PPPR found that a large number of special programmes were broadcast to promote the election of the UPFA. These programmes criticised the main opposition party and did not feature opposing opinions. News bulletins also predominantly supported the UPFA. Sri Lanka Rupavahini Corporation (SLRC), the main state television channel, carried 101 news items favouring the UPFA, while presenting only one unfavourable news item. In contrast, there were only 22 positive news items about the main opposition party, the United National Front (UNF), and 46 negative ones. Air time granted to political parties free of charge was also abused. For example, the president, who was leading the election campaign for the UPFA, made a 28-minute speech billed as an 'address to the nation' which contained criticism of the other parties and their policies. Discussion programmes were also found to be highly biased in favour of the UPFA, though the boycott of such programmes by the UNF should be taken as a contributing factor here.

Prior to the election campaign, the election commissioner had introduced guidelines[5] to ensure balanced reporting in the media and to give equal air time to all political parties. Once it became clear that the state electronic media had violated these guidelines, the election commissioner utilised his powers under the law to appoint a competent authority to oversee these media organisations. Not only did the state media challenge the powers of the competent authority, but they also ignored its directives not to air certain programmes.

Beyond abuse of the state media, the PPPR received reports of 555 state vehicles utilised for election work, mainly by the UNF, and found evidence substantiating 129

of these cases. Public facilities and buildings, including the presidential residence, were used free-of-charge for publicity work of the UPFA. A number of government employees were released from certain state duties to enable them to support certain candidates in their political activities. There were also reports of emergency aid received by the state being distributed by politicians to win favour with voters.

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Notes

1. Transparency International, *Corruption in South Asia* (2002).
2. Marga Institute, *A System under Siege: An Inquiry into the Judicial System of Sri Lanka* (Colombo: Rasanjala, 2002).
3. See www.thesundayleader.lk/20031109/spotlight-2.htm
4. PPPR is a joint project of Transparency International Sri Lanka, the Institute of Human Rights, and the Centre for Monitoring Election Violence.
5. *Daily Mirror* (Sri Lanka), 10 March 2004.

Turkey

Corruption Perceptions Index 2004 score: 3.2 (77th 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 March 2004)
OECD Anti-Bribery Convention (ratified July 2000)
UN Convention against Corruption (signed December 2003; not yet ratified)
UN Convention against Transnational Organized Crime (ratified March 2003)

Legal and institutional changes

- At the time of writing a draft **anti-corruption law** was being reviewed in parliamentary committees. It was prepared by the ministry of justice and, if passed, would alter existing laws regarding the prosecution of corruption offences. The draft law lists all those activities that are to be considered corruption offences and the procedures to be followed in their prosecution. It also extends the statute of limitations and revises a host of other related

legislation such as the criminal code, the tax code and drug enforcement laws. It also contains provisions covering paying reparations and damages, whistleblower protection and the training of civil servants. The draft legislation features a temporary clause allowing bank owners who have illegally siphoned deposited funds for personal use to avoid incarceration by repaying their depositors directly, rather than the burden being placed on the state. Unlike anti-corruption laws in other countries, it would not establish an independent entity dedicated to fighting corruption.

- A new law that came into force in August 2003 criminalises **false reporting by banks**, including misreporting deposit amounts. This piece of legislation is known as the Uzan Law, named after the family that owns the Imar Bank. Under the new law, the state assumed control of the bank, which was involved in Turkey's largest ever banking scandal (see below).
- Moving towards greater public transparency, a new **access to information law** was approved by parliament in October 2003. The law is designed to increase transparency in public management and allows citizens access to information about public activities. The law came into force with the passing of regulations in April 2004. Definitions of state and commercial secrets are noticeably absent from the new law.
- Public pressure led to the introduction of a **public procurement law** in January 2002. However, the current administration used its majority in parliament to reverse many of the provisions of the reform with an amendment law passed in July 2003. Powerful interest groups, including government entities, continue to lobby for exclusion from its provisions.
- A **law establishing a public servants ethics commission** was passed by parliament in May 2004. The law fails to set out any aims, definitions or guiding principles. In addition, the law states that the president, members of parliament and the cabinet of ministers are not subject to the articles of the law.

Banks siphon funds from public accounts

A recurring focus of scandal since the late 1990s has been the illicit use by bank owners and high-level managers of public accounts, with money being transferred to external companies or their personal accounts – sometimes out of the country – or used unethically to obtain credit.

The largest and most organised of these skimming operations was exposed in July 2003. It involved the Uzan family, who in addition to the Imar Bank owned a national daily newspaper and two national television stations and who operated electrical companies which they leased from the state. The family used their media outlets to support political candidates and to undercut their business rivals. One of the family's sons won a significant share of the vote in the November 2002 election, but did not break the 10 per cent threshold that would have admitted him to parliament.

In mid-2003, following an investigation by the Banking Supervisory and Regulation Agency (BDDK), the government took over the management of Imar Bank. The BDDK inspectors found a huge discrepancy between registered deposits and money actually deposited by the public. The hidden deposits in the Imar Bank case amounted to US $5.7 billion, 90 per cent of the deposits collected.[1]

The consequent public outrage led to the rapid drafting of the so-called 'Uzan Law' in August 2003. This law amended the banking code so that misreporting deposits would be classified as a crime. Banking regulations were further tightened with

parliament's enacting in December 2003 a law to improve the supervision of banks. The law ostensibly forces banking groups to reach remuneration settlements with the government in the case of banks siphoning money, though the difficulty of recovering funds transferred out of the country leaves a big question mark over the efficacy of this legislation.

In the past seven years the state has been obliged to take over 22 banks whose owners and senior officials are on trial for embezzlement, involving a cost to the Turkish taxpayers of US $42 billion.[2]

Claims of corruption and bribery in the judiciary

In January 2004 events surrounding financial irregularities in Turkish medical services and judicial corruption dating back more than a year finally came to light. In early 2003 a legal investigation into medical procurement programmes in which pharmaceutical companies had allegedly been bribing doctors and hospital managers to use and prescribe specific brands resulted in numerous arrests. The owners of the pharmaceutical companies were arrested first, followed several months later by a raft of medical professionals and hospital administrators.

Allegations of judicial corruption subsequently arose over the release of a number of the accused pharmaceutical company owners after a brief time in custody. A very low bail was set, and their release was processed even though it was a weekend and the court was not in session.

Following widespread public criticism, investigations were launched that revealed that the Edin family, one of whom who had owned a pharmaceutical company implicated in the procurement affair, had allegedly used a group of lawyers to bribe high-level justice officials to obtain the release of family members that had been arrested.[3] These allegations were substantiated by taped telephone conversations which allegedly confirmed the payment of bribes. Consequently, lawyers and others were arrested along with members of the Edin family – all of whom were later released on bail.[4]

Despite such high-profile cases indicating the depth of corruption within the judiciary in Turkey, there is little indication that reform will be forthcoming. The chief prosecutor of the high court opined that if there were bad apples, they should remove themselves. The impact of such statements was, unsurprisingly, limited and at the time of writing there had been no new developments in the Edin case or sanctions against other corrupt judges.

Ercis Kurtulus (TI Turkey)

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2. Ibid.
3. *Hurriyet* (Turkey), 12 July 2003.
4. *Vatan* (Turkey), 17 January 2004.

Vanuatu

Corruption Perceptions Index 2004 score: not surveyed

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

Legal and institutional changes

- The Public Prosecutor Act was passed in August 2003, establishing the **Office of the Public Prosecutor** and its functions. Previously, the public prosecutor functioned under constitutional powers only, and there was no legislatively established office. The new law should help ensure that staff are appointed on merit and that the office remains independent. The law also requires the public prosecutor to develop a procedural manual and a code of ethics.
- One legislative trend was the passage of laws aimed at ensuring that **managers of statutory authorities are correctly appointed**. Revisions to the Broadcasting and Television Act, which came into effect in September 2003, now require the general manager of the Vanuatu Broadcasting and Television Corporation to have primary competence and experience in management, with secondary competence if possible, in broadcasting, finance, law or journalism. The Chamber of Commerce and Industry of Vanuatu Act was amended in January 2004 to state explicitly that the general manager must be appointed on merit. On the same day, the Vanuatu National Provident Fund Act was amended to the same effect.
- In December 2003 an amendment to the Vanuatu Commodities Marketing Board (VCMB) Act **increased the powers** of the VCMB. Previously, only the VCMB and its agents were permitted to export prescribed commodities. The amendment means that the VCMB now also controls the purchase of prescribed commodities within Vanuatu. In the past, the VCMB has been the subject of several Ombudsman's reports, and there have been allegations of political interference and mismanagement. Any increase in its powers could, therefore, increase the potential for corruption, although the amendment also increased its reporting requirements.

The re-election of Barak Sope

In mid-2002 Barak Sope was sentenced to three years' imprisonment for forging government guarantees while holding the office of prime minister.[1] Sope had provided government guarantees to two private companies – one for US $5 million and the other for US $18 million – to enable them to procure loans, but he did not follow proper procedures, thus rendering them worthless. The supreme court ruled that

Sope had been fully aware he was creating false documents. Since Sope was a member of parliament at the time, he was stripped of his seat. Later that year, after President John Bani pardoned Sope on the grounds of poor health, he appealed against the loss of his constituency. In early 2003 the supreme court rejected Sope's challenge, but ruled that the pardon allowed Sope to run in a by-election.[2] The election was held in November 2003 with Sope standing for the party he leads, the Melanesian Progressive Party. His main rival was Foster Rakom of Vanua'aku Pati, a party generally perceived as free of corruption. Voter turnout was low at 46 per cent, but Sope was re-elected by a comfortable margin.

The result highlighted the nature of voter choices in Vanuatu and the apparent lack of opposition to crimes of corruption. The issue has been raised in the past when voters re-elected politicians who were the subject of ombudsman's reports on corrupt practices. There are a number of explanations as to why voters re-elected Sope. One is that voters did not really understand why Sope was wrong in his actions. Some voters considered his actions to be related to him not 'following the rules' within a 'white man's system'.[3] Media reports that indicated that 'jailing has increased [Sope's] popularity among local ni-Vanuatu, who regard him as strong on land issues and Vanuatu nationalism' support this explanation.[4]

But another explanation is that voters do not perceive the relevance of the political system to their lives and are indifferent to parliamentarians' behaviour. The most they expect is a little money in exchange for their votes, rather than any improvement in services. Related to this is the cultural expectation that 'big men' are not questioned in public, which acts as a further check on criticism.[5] While these explanations are only hypotheses, there are clearly fundamental problems in public attitudes to corruption and the relationship between the electorate and the political system in Vanuatu.

Presidential election

In March 2004 President John Bani's term expired and Alfred Maseng Nalo was elected in his place. It soon came to light that Nalo was a convicted criminal and, at the time of his election, was serving a two-year suspended sentence for aiding and abetting, misappropriation and receiving property dishonestly after money went missing following sales of cocoa. Nalo was acting as an agent for the VCMB at the time. The conviction would automatically have disqualified Nalo as a candidate, but the electoral commission, which is responsible for conducting background checks, did not detect it because the certificate of previous offences, issued by the police, had allegedly been filled out incorrectly.[6]

Nalo refused to step down, forcing the government to take the issue to court. In May the supreme court ordered Nalo's removal from the presidency, a decision later confirmed by the court of appeal. Until a new president can be appointed, the speaker of parliament has taken on the role of acting president, in accordance with the constitution.

While a number of chiefs, NGOs and political leaders called on Nalo to resign, he appeared not to accept blame for making a false declaration. Indeed, the blame tended to fall on the police, the electoral commission and the prime minister who, according to some critics, bore ultimate responsibility for ensuring that only suitable candidates stand for election.[7] What is certain, however, is that the public does not appear to decry Nalo for any wrongdoing. There was even a public perception that, as president, Nalo could legally use his powers to pardon himself.

Changes of government

Vanuatu experienced two major changes of government in 2003–04. In November 2003 there was a change of coalition. Then, in the May 2004 parliamentary session, it appeared

that a no-confidence motion would succeed in removing Prime Minister Edward Natapei and the Vanua'aku Pati from government. To avoid this Natapei persuaded the acting president to dissolve parliament. Critics considered the dissolution a misuse of power and a ploy to remain in office, though the government claimed it was done in the interests of stability. New elections were due to be held on 6 July.

Instability is a long-term feature of politics in Vanuatu, and is perceived to arise because of the abuse of power for personal advantage by individual members of parliament. It is common for members to cross the floor of parliament because a new party can offer more personal benefits than their old one. Legitimate reasons for crossing the floor, such as fundamental disagreements about policy, are rarely the motive for such defections.

The lack of continuous government also contributes to corruption. A recent review of the national integrity system indicated that frequent changes of government in Vanuatu perpetuate institutional weaknesses, creating an environment in which corruption flourishes. Parliament's public accounts committee, which is responsible for examining audit documents, is particularly vulnerable to disruption after frequent changes in government.

The main weakness of the civil service is that it is not clearly separate from the executive. Changes in the executive lead to changes in the civil service, with appointments often based on family, business or political connections rather than merit. Similarly, appointments to the boards of statutory bodies are usually made at the discretion of a particular minister and, as ministers change, so do the boards. Appointments are often seen as patronage for political supporters. One notable example of mismanagement due to politicisation was the VCMB's decision in 2001 to pay higher crop prices to farmers than they could actually sell it for. The decision was widely seen as a ploy to ensure popularity for the UMP government in an upcoming election.

Frequent changes of government are indicative of, and contribute to, wider systemic issues relating to public understanding of the role and operation of the political system. There is a growing perception that political leaders take as much as they can because they think that they will only be in power for a short time. It is possible that further regulation could be developed to inject more stability into Vanuatu's system of government but, given the wider systemic issues, such measures are unlikely to be entirely successful. Instead education to develop public expectations of parliament, and to train parliamentarians and party members on their roles within a functioning democracy, is necessary. These issues cut to the core of corruption, since they involve the development of both political will to act within the bounds of power, and public will to ensure that leaders do so.

Vanuatu Maritime Authority

The Vanuatu Maritime Authority (VMA) was established in 1998 with the primary aim of regulating and promoting the maritime industry. There have been rumours of political interference and mismanagement for some time, but their potential increased when the composition of the VMA was altered in 2002. Initially the VMA consisted of one ministerial appointee, and a number of senior civil servants, including the attorney general, the financial services commissioner, the commissioner for maritime affairs and several director generals. The Vanuatu Maritime Authority (Amendment) Act 2002 altered this so that the VMA is now entirely appointed by the incumbent minister.

This change in composition led to a number of changes in VMA's management. The commissioner for maritime affairs, John Roosen, left in April 2003, followed two months later by Marie Noelle Patterson, the

former Vanuatu ombudsman and current president of TI Vanuatu, whose position as corporate director was terminated. Both had been critical of changes to the composition of the VMA including the appointment as chair of Christopher Emelee, who as manager of the Tuna Fishing Agency faced a conflict of interest. In August 2003 Timbaci Bani, the VMA's acting commissioner and Roosen's former counterpart, was suspended reportedly for resisting efforts by the new board members to prevent their rivals from sailing and favouring their friends and allies.[8] Bani was initially replaced by Donald Hosea, who admitted misappropriating VMA money in early 2002, and was removed from the post.

As a result of continued reporting of the VMA story in the *Vanuatu Daily Post*, publisher Marc Neil-Jones was assaulted outside its office in September 2003. The following day Emelee's lawyer filed for an injunction in the magistrate's court to prevent the *Vanuatu Daily Post* from publishing anything about the VMA or Emelee and his family. A court initially granted this injunction, but the supreme court overturned the decision several days later.

The VMA saga appears to demonstrate numerous aspects of political interference, although prior to the dissolution of parliament it appeared that the government might be taking steps to rectify problems. Emelee was removed as chair, and the post of commissioner was advertised to allow for a politically neutral appointment. However, the future of the VMA appears to depend on the outcome of the next election, and whether the next minister responsible for the body resists political interference.

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Further reading

Anita Jowitt and Tess Newton Cain, *National Integrity Systems, TI International Country Study Report: Vanuatu* (Transparency International, 2004), www.transparency.org.au/nispac/vanuatu.pdf

Notes

1. *Public Prosecutor* v. *Sope Maautamate* [2002] VUSC 46. www.paclii.org
2. Details of the supreme court and court of appeal decisions can be found in *Sope Maautamate* v. *Speaker of Parliament* [2003] VUCA 5. www.paclii.org
3. Immediately after Sope's imprisonment there were calls for him to be pardoned – and threats of protests if he were not – on the grounds that the trial had been an example of 'neo-colonialism', and that Sope had been victimised by Australia and New Zealand. See Pacific Islands Report, 24, 25 and 30 July 2004. A recent TI study on Vanuatu's National Integrity System indicates that one of the major contributors to a lack of public outrage in response to corruption by leaders is the lack of personal connection to events within the political system. (Anita Jowitt and Tess Newton Cain, *National Integrity Systems, TI International Country Study Report: Vanuatu*, TI, 2004).
4. *Vanuatu Trading Post*, 14 January 2003.
5. Jowitt and Cain, *Country Study Report: Vanuatu*.
6. Port Vila Presse Online, 28 April 2004, www.news.vu/en/news/national/nalo-election.shtml
7. *Vanuatu Daily Post*, 23 April 2004.
8. *Vanuatu Daily Post*, 19 August 2003.

Vietnam

Corruption Perceptions Index 2004 score: 2.6 (102nd 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

- In March 2004 the standing committee of the national assembly issued a resolution calling on candidates in the April 2004 elections to **declare their assets**. Candidates were asked to declare their land and property. They were also required to declare their business activities, including fixed and liquid assets, and any items worth more than VND 50 million (US $3,250).
- In a major step towards improving corporate governance, the government issued a decree in March 2004 that strengthens regulations pertaining to the provision of independent auditing services. There were few regulations governing the **standards and activities of auditors** prior to the issuance of this decree.
- In April 2004 the State Bank of Vietnam (SBV) submitted to the government a draft decree aimed at combating **money laundering** and the financing of terrorism. According to the SBV's inspection department, the decree will provide guidance for setting up systems for the detection and reporting of suspicious transactions. The draft decree also stipulates possible sanctions against money laundering.[1]
- The national assembly has passed a new **inspection law** designed to increase the effectiveness of the official investigative agencies in their efforts to prevent and detect corruption. The law, which passed in May 2004, includes regulations on the function, rights and powers of inspectors.

The Nam Cam affair

The Communist Party of Vietnam has long been aware that the erosion of its probity is the most serious threat to its maintenance of popular support and legitimacy. General Secretary Nong Duc Manh, who came to office in April 2001, has repeatedly affirmed the determination of the party and state to tackle corruption. His predecessor, Le Kha Phieu, staked his reputation on a similar campaign, but failed to maintain the momentum. Manh has adopted much tougher anti-corruption rhetoric and is adamant that harsh penalties will be handed down to make examples of wrongdoers.

An opportunity to prove the seriousness of the anti-corruption drive arose in a high-profile case that centred on the activities of the Ho Chi Minh City gang leader, Truong Van Cam, also known as Nam Cam. After a highly publicised three-month trial, which involved 155 defendants in three courtrooms, Nam Cam was found guilty in June 2003 of bribery and ordering a rival's murder. He was executed in June 2004. Although it was notable that a figure as well connected as Nam Cam was convicted, it was also significant that a number of prominent government figures were also found guilty, either for turning a blind eye to organised crime or helping Nam Cam to avoid prison

on previous occasions. (A special police force from neighbouring Tien Giang provinces was brought in to arrest Nam Cam, because the Ho Chi Minh City police had been so corrupted by his network.) Tran Mai Hanh, a former central committee member and director of state radio, was sentenced to 10 years in prison; Pham Sy Chien, a former deputy state prosecutor, received a six-year sentence; and Bui Quoc Huy, a former deputy minister for public security and central committee member, was sentenced to four years. The outcome of the trial was hardly surprising. Vietnamese lawyers commented that the trial was closely monitored and guidance provided to the court by the relevant party committee. The appeals of three senior officials found guilty of accepting bribes and failing to perform their duties were refused in October 2003.

The outcome of the trial sent a warning to other senior officials that they were not beyond the reach of the law. In a widely reported speech to the national assembly in mid-2003, Deputy Prime Minister Nguyen Tan Dung said the government would 'severely punish every corrupt official, without exception'.[2] This determination presents the leadership with a double-edged dilemma: the more evidence the party produces that it is rooting out corruption from its own ranks, the more it undermines its legitimacy. Failing to act, however, would similarly reinforce the perception that corruption is rampant. The authorities are likely therefore to continue to make an example of prominent figures who are found guilty, promoting such cases as evidence that the party is making headway in the fight against corruption. To avoid any major damage to the party's image, however, investigations will probably remain selective, rather than extensive.

With tight state control over the media, there is little independent investigation into the wrongdoing of senior officials. Indeed, in spite of the high number of officials implicated in the Nam Cam scandal and the unusual degree of media coverage allowed, there are still doubts as to the thoroughness of the investigation. Soon after the trial ended, Nguyen Khoa Diem, head of the party's ideology and culture commission, announced that the media could no longer report freely on the scandal. He also stated that the media must not 'reveal secrets, create internal division or obstruct the key role of propaganda'.[3]

Ministers are being held to account for wrongdoing

The national assembly has been gradually shedding its reputation as a rubber stamp for the party by displaying a greater determination to hold senior officials accountable for their actions.

In June 2004 deputies voted to oust minister of agriculture and rural development Le Huy Ngo for failing to prevent the corruption scandal surrounding the operations of a state-run investment and marketing company affiliated with the ministry. (The company's former director, La Thi Kim Oanh, was sentenced to death in December 2003 for misappropriating US $4.7 million. Two former deputy ministers, Nguyen Thien Luan and Nguyen Quang Ha, were given suspended sentences of three years for their part in the scandal.[4]) Ngo offered to resign, but Prime Minister Phan Van Khai proposed that the minister be relieved of his responsibilities by the legislature.

The tenure of post and telecommunications minister Do Trung Ta may also end prematurely after allegations of wrongdoing in the management of the state-owned conglomerate, Vietnam Posts and Telecommunications Corporation (VNPT). Following an investigation that started in late 2003, the state inspectorate accused VNPT officials in May 2004 of widespread violations in the methods used to award contracts over the previous five years. The inspectorate called for the dismissal of four senior executives: VNPT's deputy general director; the head of its marketing and pricing department; and the director

and deputy director of VNPT's cell phone network.

Also under the spotlight is the decision to renegotiate the profit-sharing arrangements in a contract with VNPT's mobile phone partner, Sweden's Comvik International Vietnam. According to local media reports, the new arrangement may have deprived the government of around US $45 million in revenue. The telecommunications minister was chairman of VNPT's board when the contract with Comvik was agreed, and may suffer the same fate as Le Huy Ngo should he be implicated in wrongdoing. Prime Minister Khai set up an interministerial group to investigate the matter further, but by the time of writing the group had not reported its findings.

Administrative reforms curtail opportunities for graft

Much of the focus of the crackdown on corruption has been on punishing prominent offenders, but efforts are also being made to reduce the opportunities for more junior officials to abuse their positions in order to boost their income. The government is near the middle of the 2001–10 Public Administration Reform Master Programme, which aims to improve the delivery of administrative services at provincial, district and commune levels. The most notable initiative in terms of limiting the opportunities for graft is the expansion of the 'One-Stop Shop' (OSS) network. OSSs are central to the government's efforts to improve service delivery through the creation of single agencies that deal with applications for a range of activities, including construction permits, land-use rights certificates, business registrations, and approvals for local and foreign investment projects.[5]

In September 2003 the government announced that it intended OSSs to be established at provincial and district levels in all of Vietnam's 64 cities and provinces by the end of 2004, and to be developed at the commune level from January 2005. Despite teething problems, the expansion of the OSS network reflects a genuine attempt to improve the state's administrative capabilities. The transparency of administrative procedures has also improved since OSS publish details of their services and fees, thereby limiting the opportunities for officials to demand additional payments.

There are concerns, however, that the pace of legal reform has not kept up with administrative reforms. Recent amendments to the Law on Citizens' Complaints and Denunciations focused on increasing the roles and responsibilities of officials in the administrative courts overseeing cases, but did not expand the review and enforcement powers given to the courts. As it stands, courts are only permitted to consider decisions that violate or exceed legal regulations, but they lack the jurisdiction to consider administrative bias or enforce decisions against recalcitrant officials.

Local and foreign investors are also still discouraged by the burdensome red tape and the overlapping of government approvals that provide officials with opportunities to line their own pockets. The results of a survey of business sentiment were revealed at the Vietnam Business Forum in December 2003. Of the 143 foreign and local firms that responded, 54 per cent complained that bureaucracy and corruption were their biggest hindrances.[6] Similar findings emerged from a 2004 survey by Hong Kong's Political and Economic Risk Consultancy of expatriate businessmen and women, and their perceptions of corruption in 12 Asian countries. Vietnam was ranked behind Indonesia and India (Bangladesh was not included) as the third most corrupt nation in the region, with a score of 8.67 (on a scale of 0 to 10, with 10 reflecting the worst case).[7]

Further initiatives aimed at improving investor confidence and tackling corruption are in the pipeline. Deputy Prime Minister Nguyen Tan Dung has stated his commitment to implementing a range of measures including: developing a legal framework

that includes policies on public finance management; setting up an independent judicial system; reforming public sector salaries; and opening forums for the media and the public to offer opinions on the management of public investment projects.[8]

The implementation of such measures is long overdue. Given the Communist Party's determination to retain control, however, it is unlikely that the pace of change will match up to the expectations of foreign investors and donors.

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Further reading

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Notes

1. Agence France-Presse (France), 26 April 2004.
2. Reuters (Britain), 2 June 2003.
3. Reporters Sans Frontières, Vietnam – 2003 Annual Report, www.rsf.org/article.php3?id_article=6491
4. VietnamNet online, 2 January 2004.
5. For an evaluation of the One-Stop Shop mechanism see 'One-Stop Shops in Vietnam', Swiss Agency for Development and Cooperation, July 2003, www.deza.ch/ressources/product_7_en_625.pdf
6. Reuters (Britain), 1 December 2003.
7. See www.asiarisk.com
8. Vietnam News Agency (Vietnam), 1 April 2004.

Zimbabwe

Corruption Perceptions Index 2004 score: 2.3 (114th out of 146 countries)

Conventions:
AU Convention on the Prevention and Combating of Corruption (signed November 2003; not yet ratified)
UN Convention against Corruption (signed February 2004; not yet ratified)
UN Convention against Transnational Organized Crime (signed December 2000; not yet ratified)

Legal and institutional changes

- In January 2004 the legislature enacted the Bank Use Promotion and **Suppression of Money Laundering** Act which came into operation a month later. The legislation is intended to promote the use of the banking system; to limit its abuse for the purpose of money laundering; and to aid the identification and confiscation of the proceeds of serious crime. The act, drafted in reaction to the crisis caused by a shortage of bank notes in 2003, provides for the creation of a unit in the Reserve Bank whose mandate is the detection

and investigation of money laundering in the financial system. The inspectors will have general investigating powers and may seize property and enter premises in connection with their enquiries, but they must refer their findings to the relevant law-enforcement authorities.

- The **Criminal Procedure and Evidence Amendment Act**, passed in June 2004, gave police the power to detain suspects for 21 days without charge. Ostensibly part of a package of anti-corruption measures, the act targets the unlawful possession of precious metals or stones, money laundering, the contravention of exchange control regulations, and unlawful dealing in grain. The presumption of innocence is eliminated by the new law and judicial officers have been divested of their discretion to grant bail to those covered by the law. The provisions seem calculated to augment the provisions of the much-criticised Public Order and Security Act, and the potential for abuse by police, political officials, judges and others is enormous. When the bill first came before parliament on 22 June, a number of legislators from the ruling ZANU (PF) party walked out.[1] At the time of writing the legislation was awaiting presidential assent.
- The **Anti-Corruption Commission Bill** was introduced to parliament in April 2004 and passed in June. At the time of writing it was awaiting presidential approval. The bill provides for the establishment of an anti-corruption commission and confers upon it powers to investigate suspected cases of economic crime. Legislation on an independent anti-corruption commission has long been a priority advocacy issue for civil society and the private and public sectors in Zimbabwe. The constitution was amended as early as 1999 to provide for the creation of such a commission.
- A new ministry of special affairs in the president's office responsible for anti-corruption and anti-monopolies was created in February 2004 with a mandate to deal with issues of corruption and **abuses of power**. However, the creation of the new ministry was considered a non-event since adequate entities to fight corruption already existed within the executive. What was always missing was the political will to enforce the existing laws and provisions against corruption and other improprieties.
- A Zimbabwean chapter of the **African Parliamentarians' Network Against Corruption** was launched in November 2003. The chapter has already been instrumental in presenting anti-corruption strategies to parliament on behalf of civil society.

Anti-corruption drive?

Zimbabwe's economy has been persistently stripped of its assets by corruption in the private and public sectors. Over the past year this has been driven in large part by the chaotic land reform process that led to the virtual collapse of the agricultural economy. This in turn precipitated a chain reaction as Zimbabwe ran out of basic commodities such as fuel, foreign currency and foodstuffs. With an inadequate legal infrastructure to contain the problem within formal structures, the result has been a parallel, informal market that is a haven of corrupt practices. Substantial amounts of local and foreign currency have been externalised illegally. Observations on the ground suggest that corruption has drastically increased over the past year and it is being held officially responsible for the socio-economic conditions that have bedevilled Zimbabwe since the late 1990s. Hyperinflationary pressures, foreign exchange shortages, the proliferation of black markets for basic items and rising poverty levels are in part the symptoms of corrupt business practices, though both they and the corruption are largely the result of financial and political mismanagement.

The unveiling of a new monetary policy by the new governor of the Reserve Bank of Zimbabwe in December 2003 may be a turning point. The governor made a number of recommendations to address irregularities in the banking system. Over the following months, a number of business executives were arrested or placed on the wanted list for crimes ranging from theft and fraud to corruption and the flouting of exchange regulations. Among those detained were James Makamba of the ruling party's central committee and Chris Kuruneri, the then finance minister. At the time of writing, both cases were still being heard in the courts. President Robert Mugabe has declared that anyone involved in corrupt activity will be dealt with severely, though critics say his anti-corruption drive is selective and forms part of his political campaign in the run-up to the 2005 general elections.

The Bank Use and Suppression of Money Laundering Act seeks to promote the use of banking and simultaneously to introduce measures to suppress its abuse by money launderers. Unlike money launderers themselves, the measures are limited to the banking sector. Nevertheless, the new law is a fundamentally positive step since no other piece of legislation explicitly deals with money laundering in Zimbabwe and there have been widespread complaints from law enforcement agencies, legal practitioners, judicial officers and the private and public sectors. The law creates a financial intelligence unit and provides it with an opportunity to acquire the relevant level of specialisation regarding the detection and investigation of money laundering cases. It also has a mandate to train other institutions on how to identify and prevent money laundering. The Reserve Bank is in a better position to attract qualified personnel than the government where one of the major causes of high staff turnover is poor remuneration.

However, the nomination process for the unit's inspectors, who may be recruited from the Reserve Bank, the ministry of finance and the revenue authority, is likely to cause conflict of interest. The officers will come from different departments with different interests and operational methods. One clear problem is that the minister responsible is a political appointee, while both the governor of the Reserve Bank and the commissioner general of the revenue authority are more independent. Another shortcoming is the investigators' lack of extensive powers to investigate or arrest suspects. To carry out their mandate effectively, inspectors will need powers at least equal to the police, rather than the current situation in which they must refer their findings to them, with all the bureaucracy that inevitably entails. Lengthy reporting procedures can only work against the tracking of funds that can be transferred elsewhere at the click of a mouse.

The passing of the Anti-corruption Commission Bill in June 2004 was a response to the SADC Protocol against Corruption of 2001 to which Zimbabwe is a signatory. The preamble specifically refers to the protocol as a basis for enacting the new legislation and it is hoped that the commission will draw on the experiences of other countries in the region where similar institutions already exist. However, the bill requires strengthening in several respects.

First, the independence of the commission is crucial to discharging its mandate. The commission must not be controlled by the executive. The appointment of commissioners and other key officers should not be the prerogative of the government alone, and should involve a more prominent role for parliament.

The commission also requires that extensive powers of investigation, arrest, search and seizure should be conferred on its officers. It should be borne in mind that the commission was created to ensure the existence of a specialised unit to deal with corruption because of the failure of other law enforcement agencies to tackle such issues effectively. To give those same agencies the power to make crucial decisions on the commission's anti-corruption enquiries is both retrogressive and counterproductive.

Further shortcomings include the lack of provision for penalising persons who obstruct officers in the execution of their duties, or those who provide false information; the recruitment of Zimbabwean citizens only; and restricting officers to men or women who are over 40 years old. Senior officers in the new commission, such as the chairperson, his or her deputy, commissioners and officers also remain vulnerable to legal action under the wording of the legislation, which also fails to make provision for the protection of informants and whistleblowers.

Rampant disregard of ethics

Zimbabwe witnessed an unprecedented onslaught on its national integrity systems during 2003–04. Critical shortages of basic commodities, such as fuel, basic food stuffs, foreign currency and bank notes, added significantly to the 'culture of corruption'. The worsening economic crisis played a fundamental role, but there was no serious consultation between the government and other stakeholders to resolve the crisis.

The most regrettable development is that almost everyone from every section of society was involved, voluntarily or involuntarily, actively or passively, in some form of corrupt activity. Most people had little choice but to obtain basic commodities on the illegal parallel market. The same scenario applied to the availability of foreign currency, as reflected by the large number of cases that came before the courts in 2003–04. Most businesses and banks traded foreign currency on the black market, and even state institutions did so.

New types of business flourished while the rest of the economy went down. Banks declared 'super' profits and the profession of asset management became suddenly attractive. It was only after December 2003 that it came to light, following the announcement of the new monetary policy by the Reserve Bank, that most banks and asset management firms were not as sound as they had conveyed to the public. Most asset management firms were revealed to be shams calculated to defraud unsuspecting members of the public.[2]

There is now a crucial need for the country to begin rebuilding confidence by sending a clear message that corruption will be dealt with severely. What has always been lacking is the political will. The reason for the apparent change of attitude by the government is, however, subject to conjecture. One view is that the current anti-corruption drive is genuine, as demonstrated by the number of cases in the courts, but many observers believe it is merely cosmetic and intended to sway public opinion ahead of the 2005 general elections.

A further dimension to the argument is that the recent revelations by the new governor of the central bank presented the government with an opportunity to blame the current economic turmoil on corruption, rather than on the failure of its own policies. Regardless of the motive, however, most Zimbabweans hope the initiative will go beyond the general elections and any possible change of political leadership.

The regulation of asset management firms, banks and money transfer agencies is now the domain of the Reserve Bank, and requirements have been made much more stringent to ensure that only persons of good business repute, and entities with adequate resources and buffer funds to provide client security, are registered.[3]

There have been positive signs at last that there is political will to fight the endemic problem of corruption in Zimbabwe and that the government may be yielding to recommendations from civil society and the private sector on appropriate anti-corruption strategies. Demand for anti-corruption information is also on the rise across Zimbabwe as citizens become more questioning about the shortages of basic commodities, foreign currency and bank notes experienced during the last 12 months.

Idaishe Chengu and Webster Madera (TI Zimbabwe)

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Notes

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2. Court records show that hundreds of thousands of US dollars were lost to asset managers who took deposits on the pretext of investing money in return for profits. The money was usually converted for personal enrichment.
3. Previously registration was the prerogative of the ministry of finance and economic development. The Reserve Bank only regulated banking.