6.3 Asia and the Pacific

Bangladesh

Corruption Perceptions Index 2008: 2.1 (147th out of 180 countries)

Conventions
ADB–OECD Anti-Corruption Action Plan for Asia Pacific (endorsed November 2001)
UN Convention against Corruption (acceded February 2007)

Legal and institutional changes

- The Anti-Corruption Commission (Staffs) Service Rules 2008 were approved by the government and came into effect on 15 June 2007. They were prepared by the commission in order to impose these rules upon the commission staff, while earlier efforts by the previous government were considered by stakeholders including civil society organisations to be detrimental to their independence.[1]
- On 15 July 2007 the Public Procurement Act (Amendment) 2007 was passed. The amendment brings procurement for any foreign or development/cooperative organisation under the jurisdiction of the act. On 28 January 2008 the Public Procurement Rules 2008 were enacted to ensure the transparency and accountability of the process, including project tender and approval, the execution of work and civil servant duties.[2]
- The Local Government Commission

1 *Bangladesh Gazette*, SRO no. 147-Act/2008, 15 June 2008.
2 *Bangladesh Gazette*, SRO no. 21-Act/2008, 28 January 2008.

Ordinance 2008 was promulgated on 13 May 2008 in order to institutionalise the decentralisation and empowerment of local government.[3] The ordinance establishes a permanent local government commission to oversee the decentralisation process while ensuring accountability and transparency in local government institutions.

- The National Identity Registration Authority Ordinance 2008 was promulgated on 15 May 2008 to facilitate the establishment of the national identity registration authority.[4] The main objective of the national identity card is to establish a digital database for preparing a credible voter list, in order to eliminate false voting and track the records of criminal offences. The national identity card will also facilitate transparency in transactions for various utility services.
- On 16 June 2008 the government amended the Supreme Judicial Commission Ordinance 2008.[5] Some years earlier, on 2 December 1999, the Appellate Division of the Supreme Court had given twelve directives to the government in a landmark judgment in the Masdar Hossain case on the separation of the judiciary (see the *Global Corruption Report 2007* and *2008*). The previous two governments delayed implementing the directives as many as twenty-eight times. This development represents the most significant step towards achieving full independence of the judiciary.[6]
- On 11 June 2008 the Anti-Terrorism Ordinance 2008 was promulgated.[7] Under this ordinance a wide range of crimes, including money-laundering, arms-running and financing terror attacks, have been made non-bailable offences.[8]
- On 8 June 2008 the government promulgated the Truth and Accountability Commission Ordinance 2008.[9] The ordinance provides clemency for corrupt individuals on the basis of voluntary disclosure and confession of guilt, subject to the confiscation of illegally amassed wealth and property. Those granted clemency are to be barred from election to public office for five years. The ordinance will not apply to those already convicted.
- To ensure transparency and accountability in local government elections, the Election Commission approved the City Corporation (Election Ethics) Rules 2008 and the Powrasava (Election Ethics) Rules 2008 on 17 June 2008.[10] The rules include provisions to disclose basic general information regarding candidates, such as sources of income, assets and liabilities, election expenses and their source, and any criminal records.
- On 18 June 2008 the Council of Caretaker Advisors approved in principle the Right to Information Ordinance 2008.[11] This ordinance would mark a significant victory for civil society organisations in Bangladesh, which have long advocated such a law as a prerequisite for ensuring transparency, accountability and good governance. The draft law was circulated for public discourse and response – a unique move in the Bangladeshi context, as laws have traditionally been passed with no engagement with citizens.[12]
- The Money Laundering Prevention Ordinance 2008 provides that the courts will not take into consideration any money-laundering case

3 *Bangladesh Gazette*, Ordinance no. 15/2008, 13 May 2008.
4 *Bangladesh Gazette*, Ordinance no. 18/2008, 15 May 2008.
5 *Bangladesh Gazette*, Ordinance nos. 6/2008 and 29/2008, 16 June 2008.
6 *New Nation* (Bangladesh), 1 November 2007.
7 *Bangladesh Gazette*, Ordinance no. 28/2008, 11 June 2008; *Daily Star* (Bangladesh), 19 May 2008.
8 *Daily Star* (Bangladesh), 13 June 2008.
9 *Bangladesh Gazette*, Ordinance no. 27/2008, 8 June 2008.
10 Election Commission Secretariat, Government of Bangladesh, *Bangladesh Gazette*, 17 June 2008.
11 *Daily Star* (Bangladesh), 19 June 2008.
12 *Daily Star* (Bangladesh), 24 March 2008.

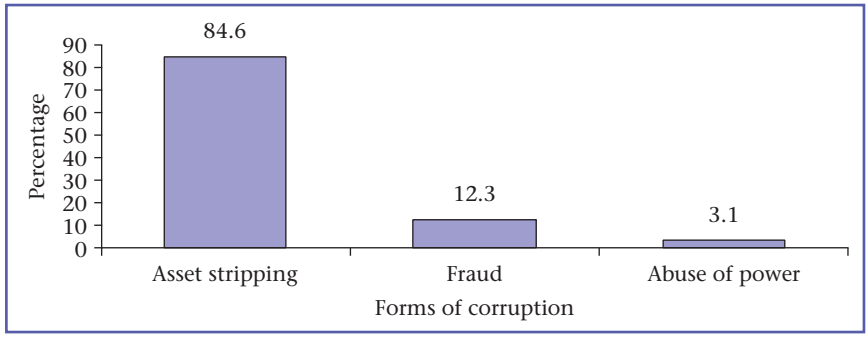

Figure 11: Forms of corruption in the private sector, 2007

without the sanction of the Anti-Corruption Commission. In addition, this ordinance will allow the Bangladesh Bank to seek cooperation with financial intelligence units of other countries or provide them with similar support.

Corruption in the private sector

Bangladesh's private sector is rapidly becoming a key source of economic growth and employment generation. In the fiscal year 2006/7 the private sector's share of investments in the economy was 23 per cent of a total Tk1137.3 crore.[13] The 2008/9 *Global Competitiveness Report* ranks Bangladesh 111th out of 134 countries, and 106th in terms of the efficiency of its market for goods.[14] The 2007 *Global Integrity Report* also ranks Bangladesh as being weak in business licensing and regulation.[15]

In common with every other sector, however, the private sector has been affected by widespread corruption. TI Bangladesh's Corruption Database illustrates the propensity of corruption in the private sector. In 2006 it was considered very corrupt, accounting for between 3.1 and 5 per cent of reported cases. In 2007 the private sector was a key actor in one-sixth of corruption reports published in the print media.[16] That year the most dominant form of private sector corruption was asset stripping (84.6 per cent), followed by fraud and abuse of power (see figure 11).

Despite the adoption of the Public Procurement Act 2006 and the Ordinance in 2007, the private sector has reportedly continued to engage in malpractices in the procurement process. According to the Planning Commission's Implementation, Monitoring and Evaluation Division, eighty-five contractors/companies/bidders faced punitive exclusion from the bidding process on account of fraudulent practices and collusive activities.[17]

In one case in 2008, a container handling contract was awarded at two container depots in Dhaka and Chittagong to a company favoured by politically powerful individuals, although

13 Ministry of Finance, *Bangladesh Economic Review 2007–08* (Dhaka: Ministry of Finance, 2007).
14 M. E. Porter and K. Schwab, *Global Competitiveness Report 2008–2009* (Geneva: World Economic Forum, 2008).
15 Global Integrity, *Global Integrity Report 2007* (Washington, DC: Global Integrity, 2008); available at report.globalintegrity.org.
16 Other key actors were government officials in 58.6 per cent of cases, and NGOs and others in 7.8 per cent.
17 Central Procurement Technical Unit, www.cptu.gov.bd.

it lacked both the experience and skills to do the job. The allegations included the violation of tender conditions through the misuse of power.[18] In another such case, the Barapukuria coal mine operation contract was awarded to a Chinese company that allegedly engaged in collusive bidding with politically powerful individuals, involving a financial loss of Tk1.58 billion to the public exchequer.[19]

Exports and imports

Chittagong port is Bangladesh's main gateway for exports and imports, dealing with 65 to 70 per cent of the country's export/import trade. It is mandatory for importers to have their goods inspected by a pre-shipment inspection (PSI) agency before or at the time of shipment.

Outsourcing of the PSI system through privatisation was introduced in 2000/1 to help the National Board of Revenue maximise revenue collection and reduce corruption and other forms of harassment prevalent in the clearing of goods.[20] The main tasks of PSI agencies are to verify the description, quality and quantity of goods as per invoices and packing lists supplied by the exporters. This determines the correct HS (Harmonized System) codes[21] of the goods, attributes the correct values to imported items and ensures compliance with shipment procedures. There are currently four PSI companies: OMIC (Overseas Merchandise Inspection Co.) Ltd, SGS (Société Générale de Surveillance) Bangladesh Limited, Bureau Veritas BIVAC (Bangladesh) Limited and Intertek Testing Limited. On 20 March 2008 the concerned port authority cancelled the agreement with Cotecna due to its involvement in 'massive irregularities'.[22]

Large-scale allegations of fraud and corruption by PSI companies have centred on allegations of incorrect declarations, under- and over-invoicing, the provision of HS codes for less than the valuation and the fraudulent certification of consignments.[23] In order to avoid higher tax liabilities, importers gain the assistance of PSI agencies to falsify the real value of imports by manipulating or hiding their real quality or quantity.[24] Between June and December 2007 the Customs Authority found that 7 per cent of the HS codes issued (out of 8,046) contained discrepancies.[25]

Problems arise because of the complex and time-consuming manual system of assessing imports and exports, shortcomings in the rules and regulations, the absence of a monitoring system of PSI activities, a weak inclination to investigate and penalise misdemeanours, and a poor auditing system.[26] In a system involving importers, clearing and forwarding agents, and PSI companies, all three parties take advantage by altering HS codes to their benefit, at the expense of government revenue.[27] Moreover, the penalty for PSI companies that violate the rules is nominal. The fines amount to merely Tk50,000 (US$715) to Tk100,000 (US$1,449), whereas anomalies in the Clean Report Finding

18 *Daily Star* (Bangladesh), 9 May 2008.
19 *Daily Star* (Bangladesh), 27 February 2008.
20 *Daily Star* (Bangladesh), 29 August 2008; 29 March 2005.
21 The six-digit HS code is part of the Harmonized Commodity Description and Coding System, which is maintained by the Customs Co-operation Council, an independent intergovernmental organisation based in Brussels with over 160 member countries.
22 *Daily Star* (Bangladesh), 29 August 2008; *Financial Express* (Bangladesh), 1 February 2008; *Daily Star* (Bangladesh), 29 April 2008.
23 *Financial Express* (Bangladesh), 1 February 2008.
24 TI Bangladesh, 'Study on Chittagong Customs', 21 June 2008; *Daily Star* (Bangladesh), 29 May 2008.
25 Chittagong Custom Authority; TI Bangladesh, 2008.
26 TI Bangladesh, 2008.
27 For example, see *Financial Express* (Bangladesh), 1 February 2008.

cost the government an average of Tk2.7 million (US$39,130) in revenue.[28]

Despite the fact that existing rules provide audit and monitoring systems to check irregularities, no audit of PSI companies has been conducted, nor has any specific monitoring activity taken place. For example, the government has not formed a central or local monitoring committee, as it has been mandated to do.

Corruption in private telecommunication through illegal VoIP

Telecommunication is a fast-growing sector in Bangladesh, the large investments it entails making a significant contribution to the country's economic development, and huge profits are generated. The revenue for private telecommunication service providers currently stands at approximately Tk15 billion each year.[29] With this growth, however, the revenues of the Bangladesh Telegraph and Telephone Board (BTTB) fell sharply from 2001/2 to 2005/6. In the fiscal year 2005/6 the BTTB recorded its lowest revenue in five years.[30] More importantly, the BTTB's earnings from international calls fell drastically from Tk3.79 billion in 2001/2 to Tk2.4 billion in 2005/6.[31] Among the reasons for this is the growth of illegal VoIP (Voice over Internet Protocol) operations by private cellphone operators, a trend facilitated by deliberate inaction to regulate or legalise the VoIP business.[32] Although no authorisation was granted to any mobile phone operators, they have used their equipment for 'internet telephony' by terminating incoming international calls.[33]

In the past, governments have not controlled illegal VoIP or 'internet telephony', allegedly because the powerful VoIP operators influenced the government to delay the process of awarding licences and/or legalising VoIP operations. In late 2003 the Bangladesh Telecommunication Regulatory Commission (BTRC) announced that there would be an award of licences in January 2004, but three years later this had still not come into effect.[34]

According to the BTRC, 30 million international calls enter Bangladesh every day. Of these calls, 53.3 per cent are controlled by illegal VoIP operators.[35] As a result, the government loses about Tk12 billion in revenue each year.[36] After the caretaker government took over in January 2007, it was revealed that most private cellphone operators were involved in illegal VoIP business.[37] A huge amount of VoIP equipment was seized and many businesspeople involved in the illegal business were arrested.[38]

The caretaker government's drive against illegal VoIP operations revealed that many operators

28 TI Bangladesh, 2008.
29 BangladeshNews.com, 9 November 2007; Ministry of Finance, budget speech 2008/9, www.mof.gov.bd/mof2/budget/08_09/budget_speech/08_09_en.pdf.
30 BangladeshNews.com, 28 January 2007.
31 Ibid.
32 Ibid.
33 *Daily Star* (Bangladesh), 28 January 2008; BangladeshNews.com, 1 September 2007.
34 LIRNEasia, 'Bangladesh Illegal VoIP Operators Make Fortune as Govt. Stalls Licensing', 27 December 2005.
35 *Daily Star* (Bangladesh), 28 January 2008.
36 *Daily Star* (Bangladesh), 16 May 2008.
37 *Daily Star* (Bangladesh), 16 May 2008; 9 September 2007; VoIP Central, 'Bangladesh Seizes Illegal VoIP equipment', 30 September 2007.
38 The seized equipment includes GSM (Groupe Spécial Mobile) fixed terminals, fixed wireless terminals, wireless local loops, quantum gateway equipment, voice finder, V-sats (Very Small Aperture Terminal), computers, server, SIM (subscriber identity module) cards of different mobile operators, channel banks, ethernet converters. BangladeshNews.com, 14 January 2008.

were involved, including the four biggest mobile companies. For the involvement in illegal call termination through VoIP, the BTRC fined the four biggest mobile companies, GrameenPhone, City Cell, AKTEL and Banglalink, a total penalty of Tk8.38 billion.[39] The BTRC also filed legal cases against them. All four mobile companies paid the penalties.

Against this backdrop, the caretaker government has taken initiatives to legalise VoIP. An International Long Distance Telecommunication Services Policy has also been adopted, in order to issue licences to Bangladeshi entities.[40] Clearly, the caretaker government has been less swayed by private companies in terms of its policy formulation, and as a result government revenues began to increase again in 2007.

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39 *Daily Star* (Bangladesh), 10 October 2007; 15 January 2008; 15 August 2008.
40 *Daily Star* (Bangladesh), 1 September 2007.

People's Republic of China

Corruption Perceptions Index 2008: 3.6 (72nd out of 180 countries)

Conventions

ADB–OECD Anti-Corruption Action Plan for Asia-Pacific (endorsed April 2005)

UN Convention against Corruption (signed December 2003; ratified January 2006)

UN Convention against Transnational Organized Crime (signed December 2000; ratified September 2003)

Legal and institutional changes

- On 30 May 2007 the Central Government Anti-Business Bribery Leading Group, which has the responsibility for combating bribery under the Central Committee of the Communist Party of China (CPC), circulated a document entitled 'Suggestions on Deepening the Fight against Business Bribery'.[1] The document proposed intensifying inspections and speeding up the processing of business bribery cases, strengthening market monitoring and improving areas vulnerable to business bribery, such as construction projects, the grant of land use rights, the purchase of medical technology and medicines, and other forms of government procurement.
- On 8 June 2007 the Central Discipline Inspection Commission (CDIC) of the Communist Party of China circulated the 'Regulations on Prohibiting the Use of Official Positions for Unjust Gains'. The document defined some new types of corrupt activity, and required all CPC officials to carry out a self-evaluation and report to their supervisors within thirty days if they had conducted any of those corrupt activities. The result of this measure has not been released yet.
- On 8 July 2007 the People's Supreme Court and the People's Supreme Procuratorate jointly issued the 'Suggestions on the Applicable Laws in Handling Some Bribery Cases'.[2] According to this new judicial interpretation, if any public servant takes advantage of his or her position to seek benefit for others or instructs others to give property to specified related parties (i.e. relatives, lovers, or those with whom he/she has a common interest), the person's activities shall be regarded as equivalent to accepting bribery. The document enlarges the scope of the individual by including the relatives and lovers of corrupt officials, not only corrupt officials and their spouses; provides a clearer definition of accepting bribes through intermediates; and closes the institutional loopholes created by the ambiguity of the criminal law in handling cases in which bribery has been accepted.
- Following four years' preparation, the National Bureau of Corruption Prevention (NBCP) was formally established on 13 September 2007.

1 *Procuratorial Daily* (China), 31 May 2007; www.jcrb.com/n1/jcrb1313/ca607979.htm.

2 Xinhua News Agency (China), 7 September 2007; www.lawinfochina.com/law/display.asp?id=6192&keyword=.

The vice-secretary of the CDIC and minister of supervision, Ma Wen, was selected as the director of the bureau.[3]

- On 6 November 2007 the 'Supplementary Regulations of the People's Supreme Court and the People's Supreme Procuratorate on Enforcing the Criminal Law and on the Determination of Some Criminal Terms' came into effect.[4] This judicial interpretation replaces the previous and out-of-date regulations on the 'crime of accepting bribery by company or enterprise staff' with the 'crime of accepting bribery by non-public official', and the 'crime of offering bribery by company or enterprise staff' with the 'crime of offering bribery by non-public official'. This represents a further improvement to the applicable scope of criminal sanctions with regard to bribery. As such, the crime of bribery is extended to all those with entrusted power.
- The State Council issued the 'Regulations on the Disclosure of Government Information' on 5 April 2008, which came into effect on 1 May 2008. The regulations set forth, among other things, the scope of the information to be disclosed, the forms and procedures for disclosure and the supervision mechanisms.

Corruption in the private sector: a new challenge for China

Corruption in the private sector in China has traditionally been severe and it remains one of the most commonly found forms of corruption. According to the statistics of the Ministry of Commerce, in the pharmaceutical industry, kickbacks for pharmaceuticals alone approach RMB772 million (US$110 million) of state assets every year, an amount equivalent to approximately 16 per cent of the tax revenue for the whole pharmaceutical industry.[5]

In 2003 the US headquarters of Lucent Technologies Inc. dismissed four senior management staff of its company in China suspected of offering bribes in China.[6] In 2005 a public report by the US Department of Justice claimed that a Chinese subsidiary of US-based Diagnostic Products Corporation (DPC Tianjin) had paid approximately US$1.6 million in bribes in the form of illegal 'commissions' to physicians and laboratory staff employed by China's state-owned hospitals and was accused of violating the Foreign Corruption Practices Act of 1977.[7] Ultimately, DPC Tianjin paid a criminal penalty of US$2 million, and DPC paid approximately US$2.8 million, to the US Department of Justice and the US Securities and Exchange Commission, respectively.[8] These cases attracted wide media coverage in China.

Following such revelations, corruption in the private sector has gradually become better recognised as a challenge to the further development of China's economy. Previously, China put emphasis on fighting the demand side of corruption – generally public officials – while ignoring the role of suppliers, which were often private and multinational enterprises. As a result, corruption between actors in the private sector did not receive adequate attention. This pattern was exemplified by the rate of prosecutions between 1998 and 2002, when China's prosecution authorities placed 6,440 cases of bribery on file for investigation, far below the number of 207,103 crimes of 'taking advantage of duty' (such as accepting bribery and derelic-

3 China.com, 13 September 2007.
4 People's Supreme Procuratorate of China, 27 August 2007; www.spp.gov.cn/site2006/2008-06-21/0002419095.html.
5 *Beijing News* (China), 28 February 2006.
6 CFO.com (US), 7 April 2004.
7 US Department of Justice, press release, 20 May 2005.
8 Ibid.

tion of duty) subject to investigation.[9] Among all the cases of economic crime on file for investigation by the police, business bribery cases amounted to fewer than 1 per cent between 2000 and 2005.[10]

Outdated legislation constituted a barrier to anti-corruption activities in the private sector. Prior to 2005 the legal bases for investigating and punishing corruption in the private sector were mainly the Law against Unfair Competition 1993 and the Provisional Regulations on Prohibition of Business Bribery Activities 1996. Neither of these two laws authorised criminal sanctions for business bribery, however. The criminal law also defined the crime of accepting bribery narrowly, including only public officials. As such, private sector staff were not covered by the law, and there was no legal basis to impose criminal sanctions on them.

In November 2007 the judicial interpretation on offering bribes was changed to include non-public officials.[11] Despite this, the discovery and prosecution of private sector bribery is still insufficient. This reflects the fact that business bribery is often well hidden and difficult to detect by agencies, as the powers of investigation are dispersed among many government authorities and the provision of resources is limited. Business bribery is often disguised as, for example, technical service fees, consulting fees, trips and research. The coordination required between the People's Procuratorate, the public security authority, the People's Court, the administration for industry and commerce, the tax authority, the discipline supervision authority and the auditing authority further complicates matters.

China's progress against business bribery

Since March 2005 the Anti-Corruption and Governance Research Centre (ACGRC) at Tsinghua University has been promoting research into business bribery. With support from the China Society of Administrative Supervision (CSAS) and Transparency International, the ACGRC translated and published TI's 'Business Principles for Countering Bribery' into Chinese in 2005, which spearheaded the national anti-commercial bribery campaign in 2006.

In order to coordinate the nationwide anti-bribery work, involving various industries and sectors, a Central Anti-Business Bribery Leading Group was established with top leaders of twenty-two ministries. The group decided to focus on the areas most vulnerable to business bribery, such as construction projects, the grant of land use rights, the purchase of medical equipment and medicines, and government procurement.

Many ministries and provisional governments have followed the initiative of the group, by forming their own work plans to counter business bribery and facilitating anti-business bribery at various levels from policy to legislation to enforcement. The Ministry of Commerce established the United Supervision System on Business Credit. The State Administration for Industry and Commerce put its emphasis on business bribery in medicine procurement. The State Audit Office also prioritised business bribery in its annual audit work for 2006. All these have made business bribery a high-risk adventure. Given that, in the past, bribery receivers were subject to more stringent punishment than bribery suppliers,

9 Work Report by the Supreme People's Procuratorate to the tenth National People's Congress Standing Committee, March 2003; China.org, 11 March 2003.
10 *Beijing News* (China), 28 February 2006; www.bjreview.cn/EN/06-21-e/bus-1.htm.
11 See the legal and institutional changes section.

some local governments formulated their own blacklists for bribery suppliers.[12] Suppliers on the blacklists will be forbidden from participating in public bidding.

Since 1 January 2006 the database of crimes of bribery-offering, established by the procuratorate authorities, has been open to the public. Anyone can search the records of bribery-offering companies in the system.[13] The Bureau of Health in Beijing municipal government even established a system to denounce publicly those bribery suppliers in the course of medicine procurement, and as of 26 November 2007 twenty-one medical companies were blacklisted. For a period of two years those blacklisted medical companies would not be allowed to enter into the medicine procurement market in Beijing, and hospitals would not be able to purchase any products from them.[14]

Investigating and prosecuting business bribery cases has also become a focus for the discipline supervision authorities and the procuratorate authorities at all levels. The procuratorate authorities completed investigating over 31,119 business bribery cases, involving around US$7.08 billion, in the first eight months of 2007.[15]

Legislation applicable to business bribery has undergone continuous amendment. On 29 June 2006 the Standing Committee of the National People's Congress passed the 6th Amendment to the Criminal Law.[16] This amendment expanded the reach of the crime of business bribery from public official, company and enterprise staff to all people. On 6 November 2007 the 'Supplementary Regulations of the People's Supreme Court and the People's Supreme Procuratorate on Enforcement of the Criminal Law on the Determination of Some Criminal Terms' came into effect.[17] This judicial interpretation replaces the 'crime of accepting bribery by company or enterprise staff' with the 'crime of accepting bribery by non-public official', and the 'crime of offering bribery by company or enterprise staff' with the 'crime of offering bribery by non-public official'. This represents a further improvement in the applicable scope of criminal sanctions regarding bribery. Those who can be accused of the crime of bribery are no longer limited to public officials, but all persons who may hold entrusted power.

China's anti-business bribery work shows that it has begun to fight against corruption from both the supply side and the demand side, and in a more balanced way. This new development has important strategic value for the prevention of corruption.

Integral social responsibilities as a common objective of Chinese enterprises

Fighting all forms of corruption (including extortion and bribery) is an important part of corporate social responsibility (CSR). In November 2005 the UN Global Compact summit was held in Shanghai. By 1 May 2008 ninety-one Chinese enterprises had signed the Global Compact, promising to fight against business bribery.[18] On 29 December 2007 the state-owned Asset Supervision and Administration Commission released the 'Guideline on Fulfilling Social Responsibility by Central Enterprises', requiring

12 Xinhuanet (China), 11 March 2006.
13 TI, 'National Integrity System Country Study Report: China' (Berlin: TI, 2006).
14 Jinghua Times (China), 27 November 2007; China.org, 29 November 2007.
15 *People's Daily* (China), 15 January 2008.
16 Xinhua News Agency (China), 29 June 2006.
17 People's Supreme Procuratorate of China, 27 August 2007; www.spp.gov.cn/site2006/2008-06-21/0002419095.html.
18 See http://gcp.cec-ceda.org.cn/joinin.html.

central government managing enterprises to take the lead in implementing their CSR, combating unfair competition and eliminating corrupt activities in business.[19]

On 16 May 2006 ACGRC and GE China hosted the Tsinghua/GE China Forum on Integrity Symposium on Controlling Business Bribery. The symposium addressed strategies for enterprises to combat business bribery and improvements to the relevant laws and regulations. The International Forum on China Corporation Social Responsibility has been held four times. In the third forum, on 16 January 2008, China Construction Bank, China Minmetals Corporation and Volkswagen Group (China) were named the Most Responsible Enterprises for 2007. The 2007 Golden Bee Ranking on Corporate Social Responsibility, which was organised by China Ocean Shipping (Group) Company (COSCO), BASF Corporation and *China WTO Tribune*, was released on 25 April 2008. Sixty of the 205 enterprises in the ranking stood out for their good quality.

One of the companies, COSCO, as a diversified cross-border service enterprise focusing mainly on shipping and modern logistics businesses, and one of the most responsible enterprises in China, took the position that fighting corruption would gain its customers' trust, contribute to a society with integrity and strengthen its employees' sense of belonging.[20] In 2005, COSCO joined the UN Global Compact and took various measures to prevent corruption. It established a department of supervision to strengthen administration over project evaluation, construction and public procurement. To create an integrity culture, COSCO kept a special anti-corruption volume on its website and invited the relatives of its middle-level management staff to join as 'part-time integrity supervisors'. The number of corruption cases discovered in COSCO decreased sharply, from 112 in 1997 to eleven in 2006.[21] This shows the impact of CSR on the creation of a society with integrity. With the deepening of China's economic reforms, more and more Chinese enterprises realise the importance of corporate social responsibility and, in particular, its role in the fight against corruption.

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19 State Owned Assets Supervision and Administration Commission of the State Council, 29 December 2007.
20 *China WTO Tribune*, May 2007.
21 Ibid.

India

Corruption Perceptions Index 2008: 3.4 (85th out of 180 countries)

Conventions

ADB–OECD Anti-Corruption Action Plan for Asia-Pacific (endorsed November 2001)
UN Convention against Corruption (signed December 2005; not yet ratified)
UN Convention against Transnational Organized Crime (signed December 2002; not yet ratified)

Legal and institutional changes

- Although the Competition Act[1] was enacted by parliament in 2002, it remained largely a non-starter because of court cases filed by lawyers, mainly over the composition of the Competition Commission. The Supreme Court of India stayed the implementation of the provisions of the act in January 2005 and asked the government to amend the law. The government, after much deliberation and delay, amended the Competition Act in August 2007. With the passage of the amendments by parliament, it is expected that the commission will become fully operational by the end of 2008 or early 2009. In addition to its advocacy role,[2] which it already performs, the Competition Commission will be able to check corporate malpractice and abuse, the misuse of dominant positions and cartelisation. It will also have the power to enquire into mergers and acquisitions and prevent the formulation of conglomerates to the detriment of consumers. The act will assist the government in probing cartel-like behaviour. It will put pressure on industry groups not to raise or lower prices for goods and services to their benefit in a pre-determined manner that incurs costs to consumer or user groups. The law will empower the government to refer complaints to the commission for enquiry and necessary action and it will have the power to investigate complaints, pass orders against companies and impose monetary penalties of up to Rs100 million (US$2.2 million). There is also a provision for three years in jail for offenders.
- In 2008 the country's central bank, the Reserve Bank of India (RBI), published guidelines for recovery agents.[3] They prescribe a code of conduct and procedure for recovery agents' training, and are intended to ensure that banks refrain from hiring disreputable people to recover debts and to prevent bad practice in the offering and management of loans by banks. They require the banks to follow the procedure prescribed by the law to recover loans and warn that, if the banks fail to mend their ways, the RBI as regulator will take action against the erring banks.

1 See www.cci.gov.in/.
2 As part of the advocacy role, the commission educates the stakeholders, including the federal government, states, corporations and chambers of commerce, about the provisions of law with regard to cartels, bid-rigging, intellectual property rights, abuse of dominance and compliance requirements for enterprises.
3 Circular on 24 April 2008; see www.rbi.org.

Stock market fraud: is SEBI consenting too freely?

India has witnessed stock market fraud by brokers in collusion with corporations that aim to cheat investors and circumvent the regulator, the Securities and Exchange Board of India (SEBI).

Two major securities scams have been publicised: the Harshad Mehta securities fraud and the Ketan Parekh scam.[4] Both scams were quite simple: brokers pushed up the prices of selected shares through artificial trade to attract retail investors and then suddenly withdrew from the trade. In several cases the share prices of bogus or paper companies were raised to very high levels.[5] Once the scandals had been exposed the share prices collapsed, resulting in huge losses to investors.

Another type of stock market fraud was exemplified by an initial public offering (IPO) scam. SEBI devised a formula for the allocation of shares, so as to encourage the participation of small investors in the market.[6] In order to corner the shares earmarked for small investors, however, some large companies and brokers opened fictitious bank accounts in large numbers and made applications through them.[7] SEBI enquired into the allocation of shares during IPOs, and a later formal investigation found that large numbers of multiple dematerialised accounts with common addresses had been opened in the name of *benami* (fictitious entities), with a view to taking the shares meant for smaller investors.[8]

On discovering the irregularities, the regulator passed an interim order in April 2006 directing the entities/persons who were alleged to have been responsible for the irregularities not to buy, sell or deal in the securities market, including in IPOs, directly or indirectly, until further notice. Through a consent order, however, the regulator dropped the proceedings against one financer after he had agreed to return the ill-gotten money and pay a consent fee of Rs100,000 (about US$2,200).[9]

Consent orders are one of the ways in which SEBI aims to tackle fraud and corruption. The consent order guidelines allow individuals, organisations and companies to pay monetary penalties for financial crimes, thus reducing SEBI's already strained workload. As such, consent orders achieve 'the twin goals of an appropriate sanction and deterrence without resorting to a long drawn litigation before SEBI/Tribunals/Courts. Passing of consent orders will also reduce regulatory costs and would save time and efforts taken in pursuing enforcement actions.'[10]

There is little inherent objection to the idea of SEBI deciding petty cases involving minor violations by means of consent orders. In theory, they would help the regulator to concentrate on bigger cases in which the violations are more serious. The reality is different, however. In some cases, it appears that SEBI has used its discretion to grant consent orders inappropriately.

For example, in the Ballarpur Industries Ltd scrip[11] case, SEBI passed a consent order in

4 D. Basu and S. Dalal, *From Harshad Mehta to Ketan Parekh: The Scam* (Mumbai: Kensource Information Services, 2005).
5 Meri News (India), 24 January 2008.
6 SEBI, 'Disclosure and Investor Protection Guidelines', 2000; available at www.sebi.gov.in.
7 *Hindu Business Line* (India), 13 January 2006. The findings of the investigation can be viewed at www.sebi.gov.in.
8 *Hindu Business Line* (India), 12 January 2006.
9 SEBI, consent order on the application submitted by M/s Pratik Pulp Pvt Ltd in the matter of irregularities relating to initial public offerings.
10 SEBI circular on consent orders, April 2007.
11 Scrip is a substitute for currency. It is not legal tender and is often a form of credit.

favour of a dealer of UTI Securities Ltd. The dealer was accused of 'passing on information to certain individuals regarding the impending large sales to be carried out by an institutional client. These individuals, in turn, short sold the scrip in large quantities prior to the large sale orders and bought them subsequently at lower prices.'[12] As a result of these serious accusations, in April 2008 the dealer was required to pay only Rs100,000 (US$2,200) for the consent order.[13]

Consent orders were also approved in cases involving the Adani Group. The gravity of the charges, which were washed away as a result of the consent order, can be ascertained from the order itself. According to the Securities Appellate Tribunal, which approved the consent order in the Adani case, '[I]nvestigations . . . revealed that there was an association between Ketan Parekh group of entities and Adani group . . . [T]here was a movement of shares from Adani Group to Ketan Parekh and vice versa and . . . there was also movement of funds from Adani Group of companies to Ketan Parekh entities.'[14] Furthermore, a detailed enquiry 'established that various market irregularities/illegalities had been committed during the course of the trading in the scrip of the company'.[15] On 25 May 2007 SEBI prohibited Adani Properties Ltd from accessing capital markets for two years. In May 2008, however, one appellant paid Rs1,050,000 (US$23,100) and others paid Rs750,000 (US$16,500) each to the regulator under the terms of the order. Since the Adani Group is a major consortium managed by a billionaire, Gautam Adani, the monetary penalties are not significant to the company.[16]

During the course of the last year SEBI has issued many consent orders. It is deciding cases pertaining to the Ketan Parekh securities scandal, the IPO scam and insider trading. According to the guidelines, consent orders should be reserved for cases that do not require fuller investigation and enforcement. It is questionable, however, whether all these cases fit this description.[17]

Stealing certificates: corruption in private education

Strong economic growth in recent years has resulted in the proliferation of institutions for technical education in India. Their conduct is not always above board, however. Some institutions, particularly those managed by private individuals or trusts, use the absence of adequate regulations in this area to exploit the situation of students by adopting unethical and coercive methods.

The problem with these institutions arises when they admit students to their courses well ahead of the beginning of the academic year and charge them the full tuition fee in advance. Students then may achieve better grades than predicted, thus entitling them to attend school elsewhere, or they may simply change their minds and wish to attend an alternative institution. In this case, the institutions are reluctant to refund the fees. Moreover, institutions often ask students to deposit their original educational certificates so as to prevent them from joining other institutions.[18]

As a result of such coercive actions, students are stuck with one institution. These prac-

12 Consent order, Ballarpur Industries Ltd, 17 April 2008. The consent order was submitted by Shri Raajeev Kasat.
13 Ibid.
14 *Adani Properties* v. *Securities and Exchange Board of India*, Securities Appellate Tribunal, Mumbai, 24 April 2008.
15 Ibid.
16 Draft Red Herring Prospectus (DRHP) filed by Adani Power Ltd with SEBI on 5 May 2008.
17 See www.sebi.gov.in/Index.jsp?contentDisp=WhatsNew. SEBI has laid down the procedure, but not the criteria, for the selection of cases in connection with the issuance of consent orders.
18 *The Hindu* (India), 30 June 2007.

tices amount to trapping students and making unlawful gains, as the students forfeit full course fees amounting to hundreds of thousands of rupees. In a recent case, for example, a student sought admission onto a course only to learn later that it was not recognised by the government. The student did have the fees refunded, however, after the case moved to the consumer court.[19]

In order to prevent the exploitation of students by technical institutes, the regulator, the All India Council for Technical Education (AICTE), issued a public notice asking institutes to refund fees if a student decides to leave an institution before beginning the course.[20] Similarly, the AICTE asked the institutes not to keep students' original certificates in order to 'force retention of admitted students'.[21]

The public notice, which was issued with a view to checking the commercial practices of technical education, would prevent institutions from adopting unethical methods to confiscate fees and force students to join a particular institute. Students already have the right to seek redress in court. Often it is not possible for students to seek legal recourse, however, as the process is cumbersome. Many students therefore forgo their claims, resulting in financial gains for the institutions.

TI India

Additional reading

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K. N. Gupta, *Corruption in India* (New Delhi: Anmol Publications, 2001).

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S. M. Joshi, *Corruption in India: Ramifications and Remedies* (Mumbai: Popular Prakashan, 2005).

N. Vittal, *Corruption in India: The Roadblock to National Prosperity* (New Delhi: Academic Foundation, 2003).

TI India: www.tiindia.in.

19 *Hindustan Times* (India), 22 July 2007.
20 The public notice was issued on 14 September; see Indiaedunews.net, 14 September 2008.
21 *Hindustan Times* (India), 15 May 2008.

Indonesia

Corruption Perceptions Index 2008: 2.6 (126th out of 180 countries)

Conventions

ADB–OECD Anti-Corruption Action Plan for Asia-Pacific (endorsed November 2001)
UN Convention against Corruption (signed December 2003; ratified September 2006)
UN Convention against Transnational Organized Crime (signed December 2000; not yet ratified)

Legal and institutional changes

- With the 2009 general election in sight, a set of regulations is being developed to amend and regroup five different laws under a package law (paket UU Politik). The five laws relate to political parties (Law no. 31/2002), general elections (Law no. 12/2003), tools and procedures (Law no. 22/2003), presidential elections (Law no. 23/2003) and local government and local elections (Law no. 32/2004).[1] The House of Representatives (DPR) ratified the law on political parties on 19 January 2008.[2] Another law covering local and general elections was ratified on 31 March 2008.[3] The amendment of the law on local government and local elections was adopted by parliament in April 2008 and will take effect one month after it has been signed by the president.[4] The laws on presidential elections and on tools and procedures are currently being discussed in parliament.[5] Although such laws are urgently needed to clarify election and political party regulations, several anti-corruption organisations have voiced concerns about the loophole left in political parties' financing.[6]
- The new law on political parties allows for increased individual and corporate contributions to political parties. Individuals are now allowed to donate up to R1 billion (over US$107,000), a tenfold increase from the previous limit. A significant increase was also approved for corporate contributions, from R750 million to R4 billion – R5 billion for a general election campaign. This is of particular concern, given that the law does not prevent different companies from the same group, or employees of the companies, from donating to political parties. Indeed, previous civil society monitoring initiatives revealed that the corporate financing of political parties through employees' accounts or through fictional companies set up by a holding company

1 Kompas (Indonesia), 'Paket UU Politik Jadi Prioritas Utama 2007', press release, 13 October 2006.
2 Law no. 2/2008 (UU no. 2 tahun 2008).
3 Law no. 10/2008 (UU no. 10 tahun 2008). The general election law covers the election of the National and Regional House of Representatives and the regional representative council (DPD).
4 *Tribun Jabar* (Indonesia), 2 April 2008.
5 Suara Karya Online (Indonesia), 28 October 2008.
6 Civil society coalition *Koalisi Ornop untuk Perubahan Paket UU Politik,* composed of PSHK-CETRO-LSPP-IPC-DEMOS-YAPPIKA-GPSP-PERLUDEM-ICW-TII-FORMAPPI-KRHNJPPR-LP3ES-DEL Inst.

was a common practice.[7] Donations by party members are unlimited, which some argue could have the effect of paving the way for seat-buying.[8]

- According to the same law, financial management and reporting procedures now depend on the parties' own internal regulations. An external audit by a public accountant is imposed only in the case of government funding to political parties, and does not cover private donations. The law on general elections requires all candidates and political parties to open a single account for donations within three days of their official nomination. Although political parties are obliged to submit a financial report to be audited by public accountants, there is no standard reporting format.[9] The lack of available accredited accountants, coupled with the absence of a standard reporting format, raises concerns about the capacity of the General Election Commission (KPU) to monitor and detect irregularities in political party financing efficiently.[10] Moreover, it is still unclear how donations made before the opening of the special account or outside the campaign period can be accounted for.
- The long-awaited law on freedom of information was ratified on 3 April 2008, almost five years after the first draft was submitted to parliament. This is the first comprehensive law regulating the public's right to information and outlining the obligations for public agencies in terms of information disclosure. The law regulates the kind of information to be disclosed as well as the type of information that can be exempted and for how long. The law has institutionalised the Information Commission as an independent regulating agency mandated to handle disputes related to disclosure obligations defined by the law. Several limitations have been identified, however, including the fact that state-owned companies, notably national oil and mining companies, are not subject to the obligations. There is also an article on the criminalisation of misuse of public information that is perceived as an attempt to restrain the freedom of the media, as it does not clearly define what would constitute 'misuse'. Nevertheless, the law has set in motion moves towards increased transparency, and it also has a strategic role to play in complementing existing anti-corruption laws.
- A new Presidential Instruction was issued in December 2007, under Presidential Decree no. 80/2003 on public procurement, to establish an independent National Procurement Policies Office (NPPO). The NPPO is mandated to regulate public procurement and address inefficiency and under-spending of national and local budgets. According to the Commission for the Eradication of Corruption (KPK), around 30 per cent of the national procurement budget is lost to corruption each year,[11] while officials' lack of understanding of procurement regulations and tender procedures causes significant delays in budget implementation (20 per cent of 2007's national procurement budget

7 TI Indonesia, 'Laporan Studi: Standar Akuntansi Keuangan khusus partai politik' (Jakarta: TI Indonesia, 2003); TI Indonesia and Indonesia Corruption Watch (ICW), 'Modul Pemantauan Dana Kampanye' (Jakarta: TI Indonesia/ Indonesia Corruption Watch, 2004). TI Indonesia and ICW found out about such irregularities while monitoring the 2004 elections.

8 T. Friend, 'History, Destiny, Ballots: Indonesia and East Timor', E-Notes July (Philadelphia: Foreign Policy Research Institute, 1999).

9 Article 39 of Law no. 2/2008 on political parties.

10 Indonesia Corruption Watch and Union of Indonesian Public Accountants (IAPI), 'Audit Dana Kampanye Rawan Pelanggaran', press release, 17 October 2008.

11 See www.majalahkonstan.com/index.php?option=com_content&task=view&id=844.

was still unspent by November 2007).[12] The National Development and Planning Agency expects that improved regulatory and supervisory frameworks could help curb corruption and increase the efficiency of public procurement by 30 to 40 per cent.[13] The NPPO, however, has not been granted the authority to handle complaints and arbitrate litigations. Complaints are instead submitted to the head of the relevant public department for arbitration. The National Ombudsman Office welcomes complaints, but can issue recommendations or report cases only to relevant authorities.

Corruption and environmental destruction

Indonesia is known as one of the most biodiverse countries in the world. Unfortunately, it also tops the list of the fastest destroyers of forests, clearing 1.87 million hectares of forest annually between 2000 and 2005. Indonesia has already lost more than 72 per cent of its intact forest and 40 per cent of its forests completely.[14] At the current deforestation rate, the lowland forests of Sumatra and Borneo will be virtually wiped out by 2022. Illegal logging takes place in thirty-seven out of forty-one national parks. In addition to the tremendous ecological cost, illegal logging costs the nation up to US$4 billion a year.[15]

In 2007 the national media were flooded with reports of corruption related to illegal logging or irregularities in the issuing of licenses and concessions. Numerous controversial court decisions in this area have also raised concerns about the integrity of the judiciary. The website illegal-logging.info reported in November 2007 that seven illegal logging cases were dismissed in West Sumatra in the previous year, fourteen suspects were freed in Papua and several others were acquitted in Aceh and West Kalimantan. In most instances, moreover, the suspects were freed by the courts despite what many officials said was 'compelling evidence they were involved in illegal logging'.[16]

On 5 November 2007 timber baron Adelin Lis was acquitted of corruption and illegal logging charges, despite 'a strong government case against him, including nearly forty eyewitnesses'.[17] This affair shed light on the links between environmental destruction, judicial corruption and political interference. In the case of Adelin, the controversy went as high as the forestry minister, M. S. Kaban, who issued a letter – later used by Adelin's defence team – stating that Adelin's activities were not a crime but an administrative error.[18]

Speculation about judicial corruption was fuelled by the Supreme Court's decision to promote four of the five judges who acquitted Adelin. Local media also reported that the police had been trying to work out why Adelin was released on the basis of an executive order dated 1 November, while the court did not hand down its judgment until four days later.[19] This early release allowed him to escape arrest on new charges of money laundering, scheduled for 6 November. Adelin

12 *Kontan* (Indonesia), 26 December 2007.
13 *Pikiran Rakyat*, 'LKPP Harus Jadi Alat Kontrol Jadi Acuan Daerah Dalam Tender Pembangunan', 2 January 2008.
14 Greenpeace Southeast Asia, 'Indonesia, a Great Country?', 30 August 2005; available at www.greenpeace.org/raw/content/seasia/en/press/reports/indonesian-deforestation-facts.pdf.
15 Telapak and Environmental Investigation Agency (EIA), 'The Thousand-headed Snake: Forest Crimes, Corruption and Injustice in Indonesia' (London/EIA: Telapak, 2007).
16 Illegal-logging.info, 'Red Faces over Lumber Boss' Acquittal', 16 November 2007.
17 *Jurnal Nasional* (Indonesia), 27 November 2007.
18 *Jakarta Post* (Indonesia), 19 July 2007.
19 Illegal-logging.info, 2007.

has since disappeared and is believed to have fled abroad.[20]

Political corruption in the issuing of licences and concessions for logging activities was also revealed after Bintan (Riau province) regency secretary Azirwan and House of Representatives lawmaker Al Amin Nasution were arrested by the KPK on 9 April 2008. Al Amin Nasution was caught receiving R4 million (US$430) from Azirwan, while R67 million (US$7,200) was seized from Nasution's car. Furthermore, KPK deputy chairman Mochammad Jasin said Azirwan promised Nasution an additional R3 billion (US$320,000) for a deal to convert about 200 hectares out of 7,300 hectares of conservation forest in Bintan, Riau Islands, into an administration office complex.[21] Nasution, a member of the House's Commission IV overseeing forestry, was being held and awaiting trial at the time of writing.

The building of political connections between illegal-logging syndicates and local officials has become obvious, highlighting the direct involvement of unscrupulous officials in the trade of illegal logs. The case of Marthen Rumadas in Papua is a telling example. Although he was removed from his position as senior local forestry official in Sorong, Papua, charged with the illegal smuggling of timber, Rumadas forged political alliances with powerful forces involved in creating the new province of Irian Jaya Barat. Despite being tried in another case of timber permit violation, he rose to the position of regional secretary, making him the third most powerful figure in the provincial government.[22]

Airline passengers' safety for sale

Deregulation of the airline sector in the late 1990s allowed a rapid expansion of the industry. The number of airline passengers tripled between 2000 and 2006, while the number of airlines increased from five to twenty-five. Such a rapid expansion generated many safety issues as well as opportunities for corrupt practices.[23]

According to official statistics, an aircraft incident was recorded in 2006 every nine to ten days in Indonesia, and the situation has not improved.[24] The crash of an Adam Air aeroplane in Batam on 10 March 2008 was the latest of a worrying series of incidents. Fourteen months earlier Adam Air flight 574 had crashed in the waters of Majene, West Sulawesi, killing eighty-five people.[25] An investigation then revealed serious deficiencies in maintenance and safety procedures, leading to a three-month suspension of the airline's licence. This had raised considerable public attention about the condition of the airline's fleet and irregularities in licensing, inspections and safety procedures in one of the fastest-growing aviation markets in the world.

The definition of a flightworthy airliner is not strictly regulated[26] and there is no minimum investment for starting up an airline company. Although the Civil Aviation Safety Regulations set minimum conditions, anyone can become the director of an airline.[27] According to a *Tempo* source, 'It is usually R500 million (US$53,000) per airline business license'.[28] As such, many directors lack experience, contributing to a situation in which, according to National Transportation

20 *Jurnal Nasional* (Indonesia), 27 November 2007.
21 Coordinating Ministry for Economic Affairs, *Trade and Investment News*, 14 April 2008.
22 Telapak and EIA, 2007.
23 *Tempo* (Indonesia), 1–7 April 2008.
24 BBC (UK), 18 January 2007.
25 *Tempo* (Indonesia),1–7 April 2008.
26 Ibid.
27 Samudra Sukardi, former deputy chairman of the Indonesian National Air Carriers Association, quoted from *Tempo* (Indonesia), 2008.
28 *Tempo* (Indonesia), 2008.

Safety Committee member Captain Prita Wijaya, 60 to 70 percent of airline accidents are due to management's lack of attention.[29]

In a country in which about a half of the 262 airliners are at least twenty years old, maintenance and compliance checks with safety standards are critical. The National Transportation Safety Committee's investigation of the Majene tragedy revealed that the malfunction of a navigational instrument was one of the main causes of the accident. Records show that this device had malfunctioned 154 times in the previous three months, but there was no record of repairs or maintenance.[30]

Following the publication of the investigation report, several former Adam Air pilots reported being pressured by management to put safety considerations aside.[31] Airlines are responsible for the expenses related to inspections, 'including daily expenses, air tickets, and accommodation'[32] for the inspectors, which can potentially lead to conflicts of interest and put the quality of inspections in doubt. In addition, it is alleged that 'all matters regarding certificates, which include operating permits, pilot license extensions, increasing pilot ratings and even airplane flightworthiness, can be resolved by paying money. Even if all the conditions are met, you still have to fork over some money.'[33] The institutionalisation of such bribery acts as a disincentive to invest in maintenance and training costs, as money is needed regardless of standards in order to obtain licences.

The investigation also revealed insufficient pilot training. Even the testing and certification of graduating students appears subject to corruption. According to a *Tempo* source at the Inspectorate General of the Transportation Department, considerable amounts have to be paid for a pilot's licence: 'At the very least, be ready with R500,000. More, if he doesn't meet the requirements.'[34]

In order to address some of these issues, the director of the Air Transportation Department suggested establishing a non-tax state income to be paid by airlines or aviation factories.[35] This money would allow inspectors to be dispatched to validate newly acquired aeroplanes without the intrinsic relationship present when airlines pay for inspections directly. Furthermore, the withdrawal of Adam Air's licence is an encouraging sign that the authorities are taking a stricter stance towards enforcing air safety regulations. It is the first time the administrative sanction of Government Regulation no. 3 on Air Transport Security and Safety has actually been implemented for a major company.[36] Besides Adam Air, six other companies were listed in the same category in 2007.[37]

It can only be hoped that sanctioning Adam Air signals a government commitment to enforcing safety regulations more strictly, and that Indonesian airlines will realise it is in their best interest to invest in developing their human resources, maintenance and supervision procedures.

TI Indonesia

29 National Transportation Safety Committee member Captain Prita Wijaya.
30 National Transportation Safety Committee; www.dephub.go.id.
31 *Asia Times* (Hong Kong), 24 January 2007.
32 *Tempo* (Indonesia), 1–7 April 2008.
33 Ibid.
34 Ibid.
35 Ibid.
36 On 26 June 2007 the licence of Jatayu Airlines, a small airline operating domestic flights, was revoked.
37 ANTARA (Indonesia), 'Tak Satu Pun Maskapai Penuhi Syarat Keselamatan Penerbangan Sipil', 22 March 2007; 'Arisan Maut!', Edisi cetak harian Surya Surabaya, 23 March 2007. Besides Adam Air and Jatayu Airlines, all five other airlines listed in category III are still operating.

Additional reading

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ICW, *Corruption Assessment and Compliance – United Nations Convention against Corruption (UNCAC) 2003 in Indonesian Law* (Jakarta: ICW, 2008).

KPK, *Identification of Gaps between Laws/Regulations of the Republic of Indonesia and the United Nations Convention against Corruption* (Jakarta: KPK, 2006).

Partnership for Governance Reform in Indonesia, *Fighting Corruption from Aceh to Papua* (Jakarta: Partnership for Governance Reform in Indonesia, 2006).

TI, *Corruption Perception Index* (Berlin: TI, 2006).

Curbing Corruption in Public Procurement: Experiences from Indonesia, Malaysia and Pakistan (Berlin: TI, 2006).

TI Indonesia: www.ti.or.id.

Japan

Corruption Perceptions Index 2008: 7.3 (18th out of 180 countries)

Conventions

ADB–OECD Anti-Corruption Action Plan for Asia-Pacific (endorsed November 2001)

OECD Convention on Combating Bribery of Foreign Public Officials (signed December 1997; ratified October 1998)

UN Convention against Corruption (signed December 2003; not yet ratified)

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

Legal and institutional changes

- The Act on Prevention of Transfer of Criminal Proceeds came into force partially in April 2007 and fully in March 2008. The act obliges financial institutions, leasing and real estate businesses, and other operators except for lawyers to ensure client identification and secure transaction records, as well as to report any suspicious transactions to the financial authorities.[1] Legal and accounting professionals are subject to the former obligations but not the latter. An original draft covered all these professions, but, faced with strong

1 See www.npa.go.jp/sosikihanzai/jafic/horei/Lawptcp.pdf#search='Act on Prevention of Transfer of Criminal Proceeds' and www.mofa.go.jp/announce/announce/2008/4/1179305_1000.html.

opposition especially from bar associations, the Diet (parliament) enacted a final version that relieves legal and accounting professionals from the reporting obligations.[2] The legislation therefore is a step forward, even though the complicated issue of lawyer and accountant disclosure was not resolved.

- A bill for revising the Political Funds Control Law, aimed at increasing the transparency of funding flows to lawmakers, was enacted in January 2008. The amendment mainly addresses political organisations related to Diet members. The law as amended requires 'Diet member-related political organisations' to submit receipts for expenditures greater than ¥10,000 (US$100), along with a political funds report, to the Ministry of Internal Affairs and Communications and to prefectural election commissions. Beginning in 2009 those political organisations will be obliged to keep receipts for expenditures of ¥10,000 or less, and these receipts in principle are subject to disclosure if a request is filed. The law introduces an audit system for the financial reports of political organisations that will start in fiscal year 2009, and it sets up an expert committee to study and review the audit system.

Falsifying product quality

It was revealed in October 2007 that Nichias Corp. had fabricated data related to the performance of its fire-resistant construction material.[3] Despite an in-house inspection conducted a year earlier that detected the problem, Nichias's president ordered it to be covered up because of concerns that it would cause trouble for its clients, which are major housing builders.[4] Only after receiving an anonymous letter warning that the wrongdoing would be revealed unless it was appropriately addressed did the company feel compelled to report the data fabrication to the Ministry of Land, Infrastructure and Transport. The company admitted that the fabrication had begun in 2001, in order to gain a competitive edge against rival manufacturers by making it easier to pass fire resistance tests that the government had started in 2000.[5] The housing materials at issue are fire-resisting panels for the interior side of roofs. Nichias admitted it had subjected the materials to two to six times more water than normal in order to enhance the fire-resistant quality and pass the government's test.[6] There is no report on possible bribery or collusion between the company and the testing or inspecting company, but the fabrication continued for nearly fifteen years, leading to a loss of integrity and deceiving many clients and markets.

Nichias's announcement prompted another manufacturer to reveal its own data fabrication. Toyo Tire & Rubber Co. stated one day after the Nichias statement that it too had fabricated data concerning urethane fire-resistant panels used for housing walls and ceilings.[7] The panels, found to be three times more flammable than government certification allowed, were shipped to housing builders nationwide and used in at least 176 buildings across the country, including two public school buildings.[8]

Following these revelations the land ministry conducted a nationwide survey of building materials, covering some 14,000 items. The ministry announced in January 2008 that, among those checked, forty-five companies had submitted false specifications for government inspection

2 *Japan Times*, 7 March 2008.
3 *Nippon Keizai Shimbun* (Japan), 31 October 2007; 2–3 November 2007.
4 *Daily Yomiuri* (Japan), 1 November 2007.
5 *Kyodo News* (Japan), 2 November 2007.
6 *Daily Yomiuri* (Japan), 3 November 2007.
7 *Nippon Keizai Shimbun* (Japan), 6 November 2007; *Kyodo News* (Japan), 5 November 2007.
8 *Daily Yomiuri* (Japan), 7 November 2007.

or sold products that did not meet government certification, and three major building materials manufacturers sold products with substandard fireproof capabilities, leaving 786 houses in need of repair. Among the companies are three Tokyo-based construction material manufacturers: Nippon Light Metal Co., YKK AP Inc. and Nichibosai.[9] The findings resonated strongly in an earthquake-prone nation that still clearly remembers a 2005 case in which an architect and other collaborators fabricated earthquake-resistant data in building designs.[10]

Besides the fireproof scandals, early 2008 witnessed a different kind of product quality falsification. In January Nippon Paper Group Inc., the second largest paper manufacturer in Japan, revealed that it had sold recycled paper products containing smaller than the claimed amounts of used paper. Following the announcement, major manufacturers of electrical appliances, including Fuji Xerox Co., Konika Minolta Holdings Inc. and Ricoh Co., which Nippon Paper supplied with paper, announced that they would stop selling Nippon Paper's recycled copy and printer paper.[11] Suspicions had first been raised after recently privatised Japan Post Holdings Co. alleged that major paper manufacturer Oji Paper Co. misrepresented the amount of recycled paper in New Year's greeting cards.

Among paper products subject to the law requiring central and local governments to consider environmental protection when making purchases, the actual ratio of waste paper used by Nippon Paper was 59 per cent for copy paper, compared with the company's claim of 100 per cent; 35 per cent for notebook paper, against 80 per cent; and 50 per cent for printing paper, against 70 per cent.[12] The practice had started in 1992, with the company explaining that it falsified used paper ratios to make the products look more environmentally friendly, since it was difficult to raise the ratios without hurting product quality.

Oji Paper, Japan's largest paper-maker, and three other major paper manufacturers admitted to similar falsifications.[13] Another paper manufacturer joined the group a few days later. Analysts say falsifications are a widespread practice in the industry, reflecting the fierce competition to produce higher-quality recycled products.[14]

These cases of fabrication and falsification indicate that some, though not all, Japanese businesses still exhibit a traditional convoy mentality, in which they do not feel safe unless they maintain equality with their competitors, leaving themselves insensitive to any harm they might cause their clients and consumers. One of the laws related to fireproofing fabrications is the Building Standards Act, though it does not impose a penalty on violators in such fire resistance quality cases. Amending legislation to introduce penalties could be effective if passed and relatively easy to realise, potentially preventing recurrences of similar wrongdoing.

Suspicions of foreign bribery

The Japanese government has been criticised by civil society for not putting enough energy into enforcing laws against foreign bribery, despite its ratification of the OECD Anti-Bribery Convention of 1997. Although there have been sporadic reports of Japanese companies' dubious transactions abroad, the law enforcement authorities have not taken enough action. Only in March 2007 did police bring one minor case of foreign

9 *Japan Times,* 26 January 2008.
10 *Nikkei* (Japan), 26 December 2005.
11 *Japan Times,* 18 January 2008.
12 Ibid.
13 *Japan Times,* 19 January 2008.
14 *Japan Times,* 21 January 2008.

bribery into summary court indictment. Officials of a subsidiary of a major power company in western Japan were charged with paying for Filipino public officials' golf sets in return for awarding a contract. The company officials were ordered to pay US$7,500 in fines.[15]

The tide began to turn in 2008. In February a major tyre manufacturer, Bridgestone Corp., admitted its involvement in improper payments to foreign agents, including foreign governmental officials,[16] and that it had set up an investigative committee including outside lawyers and experts. Analysts say that suspicions emerged during a Fair Trade Commission investigation into a cartel allegedly formed on sales of rubber marine hoses, and Bridgestone was one of the parties.[17] The company said that it has cooperated with the relevant authorities, including the US Department of Justice and the Japanese Public Prosecutor's Office. At the time of writing, no arrests or indictments had been reported.

Another allegation of a Japanese company involved in overseas bribery emerged in April 2008.[18] The case has been widely reported subsequently, and it could develop as the first major prosecution of foreign bribery in Japan. Suspicion reportedly surfaced with a confession by a former executive of construction consultancy Pacific Consultants International (PCI). Prosecutors were questioning him on suspicion of swindling the government out of hundreds of millions of yen by overcharging for a government project to dispose of chemical weapons abandoned by the Imperial Japanese Army in China at the end of World War II.[19] The former executive reportedly told prosecutors that he bribed a Vietnamese official twice between 2003 and 2006 – under instructions from his superior, the company's then president – to get a contract for a government road construction project in Ho Chi Minh City.[20] The city undertook the project with financing from Japan's official development assistance. The bribes allegedly paid by the former PCI executive may have totalled about ¥90 million (US$870,000). Four former executives and PCI as a legal person were indicted in August 2008 on charges of foreign bribery under the Unfair Competition Prevention Act.[21]

The Japanese Ministry of Justice has asked the Vietnamese government for mutual legal assistance, but in vain to date.[22] The prosecutor's office tried to establish the case without obtaining confessions from the recipient side – an unusual step.

Toru Umeda (TI Japan)

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TI Japan: www.ti-j.org.

15 *Japan Times*, 2 March 2007.
16 Bridgestone Corp., 'Investigations on Improper Payments to Foreign Agents and an Interim Report', press release, 23 May 2008.
17 *International Herald Tribune* (US), 12 February 2008.
18 *Japan Times,* 25 April 2008.
19 Japan Times Online, 16 May 2008.
20 *Japan Times* 16 May 2008; 26 August 2008.
21 *Japan Times,* 26 August 2008.
22 *Yomiuri Shimbun* (Japan), 26 August 2008.

Malaysia

Corruption Perceptions Index 2008: 5.1 (47th out of 180 countries)

Conventions
UN Convention against Corruption (signed December 2003; ratified September 2008)

Legal and institutional changes

- The twelfth general election in Malaysia, held on 8 March 2008, sent shock waves throughout the country.[1] For the first time since 1969 the ruling party, the Barisan Nasional (National Front) coalition, lost its two-thirds parliamentary majority. In addition, it lost four more states to the opposition compared to the 2004 election, to make it five in total. In 2004 the administration headed by Abdullah Ahmad Badawi had been voted in with the strongest ever mandate for an incumbent, specifically to clean up the decaying state of Malaysian institutions.[2] It has failed in many areas, however, especially in addressing corruption. The 2008 election results sent a very clear signal to the ruling party about the level of popular dissatisfaction with, among other things, the unbearable effects of corruption. The main opposition parties (which have subsequently restyled themselves as the Citizens' Coalition – Pakatan Rakyat)[3] ran on the platform of transparency, accountability and good governance and were able to capitalise on the discontent of the people.
- The Malaysian Anti-Corruption Academy (MACA) was launched by the prime minister on 12 April 2007. The MACA is intended to be the regional hub for anti-corruption capacity and capability building to fight corruption, by promoting best practices in investigation, monitoring and enforcement and by venturing into new areas such as forensic accounting and forensic engineering.[4]
- In a speech given at the ASEAN (Association of South East Asian Nations) Integrity Dialogue[5] on 21 April 2008, Badawi proposed the following measures to address public concerns. First, the Anti-Corruption Agency (ACA) would be restructured to become a fully fledged Malaysian Commission on Anti-Corruption (MCAC). The MCAC would report to a newly set up independent Corruption Prevention Advisory Board, to be appointed by the Supreme Ruler (head of state) on the advice of the prime minister. The board would advise the MCAC on administrative and operational matters. Second, the prime minister proposed setting up a Parliamentary Committee on the Prevention of Corruption. Finally, he introduced a proposal to protect whistleblowers

1 See www.asli.com.my/DOCUMENTS/An%20Analysis%20of%20Malaysia.pdf.
2 J. Liow, 'The Politics behind Malaysia's Eleventh General Election', *Asian Survey,* vol. 45, no. 6 (2005).
3 Global Information Network, 'Malaysia: Opposition Parties Form Formidable Coalition', 8 April 2008; accessed at www.proquest.com/ (accessed 9 October 2008).
4 See www.bpr.gov.my/maca/cda/m_about_us/about_maca.php.
5 See www3.pmo.gov.my/?menu=speech&page=1676&news_id=71&speech_cat=2.

and witnesses. All these reforms have yet to be implemented, however.

- The Malaysian Institute of Integrity (MII – Institut Integriti Malaysia) also stepped up its efforts when it launched two major publications, *National Integrity System: A Guiding Framework* and *Corporate Social Responsibility: Our First Look*.[6] This was part of its ongoing collaborative effort with UNDP Malaysia to develop the necessary human capital and knowledge resources within the institute.
- Penang state has introduced several measures to improve the regulatory environment with regard to government procurement,[7] in what is referred to as a CAT – a Competent, Accountable and Transparent – government. It is the first state government to implement the open tender system for government procurement and contracts. As an example, in civil works, contractors are able to bid in an open tender process and to review the successful contractors and object if they are not satisfied. Furthermore, the Penang government has issued a directive whereby all administrators and state executive councillors are not allowed to make any new land applications. It has also invited professionals to serve on various boards, such as the Penang State Appeals Board, and has established a Working Professional Committee comprising individuals from five different professional bodies to improve land procedures.
- The implementation of the watered-down Independent Police Complaints and Misconduct Commission (IPCMC) to a Special Complaints Commission (SCC) indicates the inability of the government to regulate gatekeepers.[8] The IPCMC, which was the recommendation of the 2005 Royal Commission, was diluted after open revolt[9] from the top brass of the Royal Malaysian Police. The bill that was subsequently produced prompted concerns that the recommendations of the Royal Commission were not adequately reflected, particularly with regard to the proposed SCC's independence and investigative powers. Not only did the bill grant the prime minister broad powers to appoint and dismiss commissioners, it also included the Inspector-General of Police as a permanent SCC member. In addition, the SCC did not have the power to oversee police investigation of complaints. The bill has yet to be debated, however, as it was deferred at the end of 2007 to the new parliamentary sitting.

Looks like me, talks like me, sounds like me

PEMUDAH, the government's special task force to facilitate business, citing a World Bank study, estimates that corruption could cost Malaysia as much as RM10 billion a year – an amount equivalent to 1 or 2 per cent of GDP. PEMUDAH also notes that the ACA investigated only 10.1 per cent, or just 7,223 cases, of the total 71,558 reported between 2000 and 2006. The number of people successfully convicted was only 0.7 per cent, or 524, of those suspected of corruption.[10]

PEMUDAH also notes that, per capita, Malaysia spends only RM5 (approximately US$1.5) on anti-corruption efforts.[11] This illustration of the Malaysian government's inaction in the light of the serious corruption allegations, along with its seeming inability to catch the

6 MII, 'Launching of 'National Integrity System & CSR: Our First Look'', press release, 8 May 2007.
7 'Reinventing Penang State Administration', summary of speech by Lim Guan Eng at the TI Occasional Talk in Corus Hotel, Kuala Lumpur, 11 September 2008.
8 Malaysiakini, 27 December 2007.
9 See www.jeffooi.com/2006/05/post_20.php.
10 Sun2Surf (Malaysia), 6 July 2008.
11 Ibid.

'big fish', instead focusing on the 'small fry', suggests that what anti-corruption efforts exist are mere tokens.

Weaknesses in the system for fighting corruption in all sectors were exemplified in 2007. The ACA came under fire when the director of Sabah ACA made a police report against the national director for corruption.[12] It was the first time in the ACA's forty-year history that the head of the agency itself had come under investigation. The prime minister refused to take any action until public pressure was put on him,[13] but the national director was subsequently investigated and cleared by a team from the ACA itself.[14]

The ACA rallied after the general election in early 2008, however, finally showing some effectiveness by smashing a long-standing corruption racket operated by staff of the privatised government agency tasked with ensuring the roadworthiness of vehicles.[15] More than thirty members of staff of Puspakom were arrested for accepting bribes in order to certify unworthy vehicles. It was a systematic operation in which junior and senior officers alike were involved, and it had a nationwide reach.[16]

Other failings in the system of gatekeeping were exposed by a Royal Commission[17] that had been set up at the end of 2007 to investigate alleged tampering in the appointment of judges. The V. K. Lingam case showed the extent of corruption, in which prominent businesspeople and their agents linked to political parties colluded to fix judicial appointments. More startling, however, was the initial non-committal response from the government, even with audio-visual evidence.

Only after an extreme public outcry, as well as pressure from the opposition and the Malaysian Bar, did the government form the Royal Commission – and only then to verify the authenticity of the video. During the investigation by the commission, V. K. Lingam was quoted as saying of the character in the video that he '[l]ooks like me, talks like me, sounds like me, but it's not me'. The Royal Commission concluded that the video was authentic, however, and also recommended that appropriate action be taken.[18] Following this, the Malaysian Cabinet ordered the Attorney General to investigate[19] six of the prominent people in the case, including V. K. Lingam, two retired chief justices, Tun Mohd Eusoff Chin and Tun Ahmad Fairuz Sheikh Abdul Halim, and the former prime minister Tun Dr Mahathir Mohamad.[20] Importantly, however, as of November 2008 no formal criminal charges have been made.

While this case exposes severe flaws in the judicial system, including the inappropriate involvement of both politics and business in the judiciary, it also indicates the reluctance of the government to go after the 'top brass' when faced with corruption. It was only after being confronted with public pressure, and following disappointing results in the recent election, that there was any movement; and even then, with no convictions, it is difficult to see how justice will be served.

12 Bernama.com (Malaysia), 30 March 2007.
13 Malaysiakini, 21 April 2008.
14 Malaysiakini, 21 March 2007.
15 See www.nst.com.my/Current_News/NST/Friday/Frontpage/2335144/Article/index_html.
16 The Star Online (Malaysia), 28 August 2008.
17 Malaysiakini, 24 September 2007.
18 See www.malaysiakini.com/doc/lingam_tape_report.pdf.
19 Technically, this is not within the remit of the Cabinet, but in Malaysia the executive has sway over all other state apparatus. ABC (Australia); see www.radioaustralia.net.au/programguide/stories/200805/s2249493.htm.
20 Bernama Daily Malaysian News, 12 December 2008.

Revolving doors: the interrelationship between the government, the civil service and the private sector

A common thread running through politics, the civil service and the private sector is the revolving door, through which individuals move from government to business, or business to politics, and back again. In this way, significant government participation in the private sector and considerable business participation in politics means that the movement of gatekeepers to players and players to gatekeepers has a negative influence on the concept of checks and balances.

One of the biggest scandals of the year, was the fiasco involving the Port Klang Free Zone (PKFZ). This was a case involving politicians, government officials and businesspeople, and it resulted in a loss to taxpayers of RM4.6 billion.[21] The project was to have the following features: a 405-hectare facility comprising 512 warehouses, 2,000 covered parking bays, four office buildings, an exhibition centre and a four-star hotel.[22]

The project is owned by a government agency, the Port Klang Authority (PKA), and headed by O. C. Phang.[23] The land was bought by the PKA in 2002 for RM1.8 billion from Kuala Dimensi, which had bought the land in 1999 for RM95 million from Pulau Lumut Development Cooperative Bhd (PLDCB), a local cooperative of fishermen. The land price 'appreciated' more than nineteen times in three years.[24] Kuala Dimensi was also the private company that was subsequently given the contract to develop the PKFZ.[25]

In 2006 enormous cost overruns were reported: the costs had risen from an estimated RM1.1 billion (US$315 million) to RM4.7 billion.[26] The extraordinary jump in the costs of the project was reported in a Cabinet meeting in July 2007, and it was found that the increased costs did not have the correct approval from government agencies.[27] The case involved 'serious regulatory and procedural lapses' – for example, Ministry of Finance procedures were bypassed when the Transport Ministry provided backing for the funds to buy the land from Kuala Dimensi, which was considered to be 'against normal government practice'.[28] There were also allegations that the political, government and business nexus was at fault.[29] Jafza, the operator of the Jebel Ali Free Zone, pulled out of a fifteen-year contract to manage the zone after claiming to have been constantly misled by PKA management, but the PKA claimed that the split had been amicable.[30]

Despite the debacle, the government decided to bail out the company to the tune of RM4.6 billion. Furthermore, there have been no criminal cases arising from this scandal, and no individual has been held accountable for the overrun in costs. There were calls for an investigation, and a report by PricewaterhouseCoopers is being prepared on the case, but the results are yet to be published.[31]

21 *Asia Times* (Thailand), 31 August 2007.
22 Malaysiakini, 25 June 2007.
23 The Star Online (Malaysia), 19 July 2007.
24 See www.parlimen.gov.my/hindex/pdf/DR-03092007.pdf (Hansard from the Malaysian parliament); see also *Asia Times* (Thailand), 31 August 2007.
25 *Asia Times* (Thailand), 31 August 2007.
26 Ibid.
27 Ibid.
28 The Malaysian Bar, quoting from *The Straits Times* (Singapore), 13 August 2007.
29 Malaysiakini, 15 August 2007.
30 Malaysiakini, 25 June 2007.
31 See *Daily Express* (Malaysia), 25 August 2007; *New Straits Times* (Malaysia), 22 December 2007; *Financial Express* (India), 7 September 2007.

What is interesting is the complex network of individuals involved, including politicians from the United Malay National Organisation (UMNO), officials at the Transport Ministry, Port Klang Authority officials and Kuala Dimensi.[32] Kuala Dimensi's chairperson is UMNO treasurer Azim Zabidi.[33] The legal firm that drafted the development agreement between the PKA and Kuala Dimensi is headed by the local UMNO branch vice-chief, Abdul Rashid Asari. Another local UMNO youth chief, Faizal Abdullah, is deputy CEO of the property development and investment firm behind the sale and development of the PKFZ. Faizal Abdullah's father-in-law, Onn Ismail, is the local UMNO branch permanent chairman as well as the former chairperson of the fishermen's cooperative that sold the land to Kuala Dimesi.

The complexity of the relationships between politics and the public and private sectors means that corruption may take place with impunity. Under the circumstances, therefore, the practice of revolving and rotating doors and active government participation in the economy creates an appearance of impropriety, and, with the weak oversight of public–private relationships, increases corruption risks. Until drastic action is taken to separate the cosy relationship between government, business and politics, the anti-corruption effort will remain no more than a token gesture.

Gregore Pio Lopez and TI Malaysia

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TI Malaysia: www.transparency.org.my.

32 *Asia Times* (Thailand), 31 August 2007.

33 The Malaysian Bar, quoting from *The Straits Times* (Singapore), 13 August 2007.

Nepal

Corruption Perceptions Index 2008: 2.7 (121st out of 180 countries)

Conventions

ADB–OECD Anti-Corruption Action Plan for Asia-Pacific (endorsed November 2001)
UN Convention against Corruption (signed December 2003; not yet ratified)
UN Convention against Transnational Organized Crime (signed December 2002; not yet ratified)

Legal and institutional changes

- The Right to Information Act 2007 seeks to give free public access to any information related to the public interest, thereby maintaining transparency, accountability and respect for the people's right to be informed. With the exception of information specifically categorised as confidential, all Nepalese are guaranteed free access to public information. Five categories of information are exempt from disclosure requirements: security and foreign policy, criminal investigations, commercial and banking privacy, ethnic or communal relations, and personal privacy (including that which threatens life, property, health and security).
- The Special Court in Nepal was established in 2002 to handle corruption cases. Due to the slow pace of legal proceedings, however, cases are piling up in the court. In order to speed up the process, amendments were made to the Special Court Act 2002 allowing the court to be flexible in determining the number of sitting judges required instead of being limited to the existing three.
- The Banking Offence Act 2007 was promulgated to control and mitigate the risks and impacts associated with, and to enhance public trust in, banking and financial transactions. Offences punishable under the act include unauthorised involvement in banking transactions, fraud in electronic transactions, the misuse of bank loans and credits, tampering with accounting books, fraud in the valuation of assets, and irregularities in banking and financial transactions. Depending on the scale of the transaction, penalties range from three months' to four years' imprisonment.
- The Anti-Money Laundering Act 2008 was enacted in January 2008. The law opens up avenues to combat corruption cases involving property amassed through illegal means, including tax evasion, smuggling, investment in terrorist acts and other crimes punishable under international treaties and conventions signed by the government. The act lays the groundwork for ratifying the UNCAC. Nepal is a signatory to the UNCAC but ratification has been pending due to the country's political situation.
- The Good Governance Act 2008 was enacted in February 2008. The law's objective is to make public administration more people-oriented, accountable, transparent and participatory. Some of the good governance and anti-corruption clauses include the development of a code of conduct for public servants, methods for resolving conflicts of interest, mandatory public hearings and social audits, complaint-handling

procedures and establishing Good Governance Units within each ministry.

- As provided for by the new Procurement Act 2007, the government has established a Public Procurement Monitoring Office (PPMO). The PPMO is a high-level policy-making body designed to streamline the public procurement system. Among several areas prone to corruption, public procurement is said to be the most susceptible. With a score of 2.8 on a scale of 1 to 7, Nepal ranks 116th among 125 countries assessed by the OECD for integrity in public procurement.[1]
- Despite several new good governance and anti-corruption laws, there have been many instances of indecision and setbacks. Initiatives not implemented or followed up include provisions in the interim constitution to broaden the mandate of the Commission for Investigation of the Abuse of Authority (CIAA) to cover corruption cases in the army and the judiciary, and the preventive and curative anti-corruption strategy mentioned in the Interim Development Plan (2008–2010). Other problems include: the operation of the CIAA without a chief commissioner since October 2006; the acquittal of high-profile corruption cases by the Special Court; a sharp drop in corruption complaints lodged at the CIAA (indicating fading public trust in the agency); the controversy over filing corruption charges against the central bank governor (on which the two remaining CIAA commissioners differed in their views); and donors shying away from investing in anti-corruption activities in Nepal.

Political transition affects anti-corruption activities

The nineteen-day-long political movement took down the royal government and reinstated parliament in April 2006. It ended more than a decade of Maoist conflict and paved the way for elections to the Constituent Assembly (CA). The political changes took a toll on anti-corruption initiatives, however. Political parties were consumed with the election to the CA, which after a number of delays finally took place on 10 April 2008. Following the election, political parties concentrated on managing the political transition, resolving regional and ethnic conflicts, and maintaining law and order. As a result, the anti-corruption agenda could not become a priority issue, despite the fact that it had featured in all the major political parties' manifestos.[2] In the absence of effective political will to combat corruption, donors too shied away from supporting anti-corruption activities. With a weak and unstable coalition government in power, increased competition in the election to the CA and post-conflict spending imperatives, corruption opportunities must have increased in Nepal during the transition phase.

The private sector has also played a part, as both a cause and effect of corruption. The ever-oscillating positions of businesspeople in their attempts to build rapport with centres of power have cost them greatly in terms of donations and contributions to political parties and their sister organisations, such as trade unions, youth wings and student unions. Addressing the whole issue of how corruption is institutionalised in private business, *New Business Age* reported in 2004 that 'all the business houses or big companies have at least one person believed to have good contacts in the power centres whose only real job is to deal with the government bureaucracy'.[3]

The private sector had a rude awakening with the discovery of massive amounts of bank defaulting. In 2004 it was estimated that the loan defaulting exceeded Rs40 billion, representing

1 OECD, *Integrity in Public Procurement: Good Practice from A to Z* (Paris: OECD, 2007).
2 *Kathmandu Post* (Nepal), 22 March 2007.
3 *New Business Age* (Nepal), August 2004.

30 per cent of all credit flows into the country. Nepal's Credit Information Bureau still carries a list of 2,144 bank defaulters.[4] The massive bank defaulting is one among several factors that pushed the government to opt for foreign management contracts of the two state-owned commercial banks in Nepal. The recent promulgation of the Banking Offences Act, in 2007, is intended to improve the situation, as it is mainly directed at controlling the cases of bank fraud and the misuse of commercial loans.

State capture: business as politics and politics as business

Corruption can thrive at the nexus of the private sector, the bureaucracy and politicians. Politicians can provide security or camouflage for corrupt deals between private parties and bureaucrats. The spoils are shared among the three groups while the costs are passed on to the general public. Corruption in Nepal can be explained by looking into the behaviours and interrelationships among these three primary actors.

A 2006 study by TI Nepal found that the most profound influence of the private sector on government policy is in the realm of income tax. Other laws frequently amended to favour the private sector are those related to customs duties and budget provisions in fiscal acts.[5] While this is an extreme case of state capture and abuse of power for private gain, it is not the only one.

One of the biggest problems is that businesspeople can pay their way into politics by giving large donations to political parties.[6] Political donations became a major issue during the recent elections for the Constituent Assembly. In 2007 the Interim Parliament floated the idea of enacting a law on political party financing, but as the general election approached the scheme simply evaporated. Furthermore, the code of conduct prescribed by the Election Commission talks only of keeping limits on campaign expenditures. It is silent on the income side, leaving the door wide open for unlimited donations from powerful businesspeople. The July 2008 nomination of business tycoons by major political parties to the CA clearly signals the extent of the closed-door, hush-hush rapport between political parties and businesspeople in Nepal.[7] Once in positions of political power, businesspeople can influence decisions to their benefit, such as manipulating laws and interfering with the public procurement process.

Following five years of consultation, Nepal introduced a new public procurement law in 2007 that is in line with international standards and has provisions to combat corruption in public procurement. While the PPMO will assist in streamlining the public procurement system, the new law seeks to penalise active corruption, such as the offering of bribes. Nepal's previous law penalised only passive corruption, whereby public officials solicit or accept bribes.[8] The private sector's influence on public procurement is still strong, but the new law offers some reason for hope.

Nepal as a safe haven: corruption at the borders

Nepal has more than 1,700 kilometres of open and relatively unregulated borders with India. This stretch has long provided a safe haven for businesspeople engaged in illegal trade. There is limited regulation of the movement of people and goods over the border, which encompasses large amounts of informal trade not accounted

4 See www.cibnepal.org.np; see the blacklist; last accessed January 2009.
5 K. Subedi, *The Influence of the Private Sector on Policy Decisions of the Government* (Kathmandu: TI Nepal, 2006).
6 eKantipur.com (Nepal), 7 April 2008.
7 *Kathmandu Post* (Nepal), 5 July 2008.
8 *Kathmandu Post* (Nepal), 19 February 2008.

for in the official records of trade between the two countries.[9]

With increased globalisation and the opening of markets in China, illegal trading activities are also flourishing across the northern border with China. Not only are low-cost Chinese goods smuggled into Nepal and then India, contraband items are smuggled into China from Nepal.

Throughout 2007 the media in Nepal were rocked by regular news reports of the authorities confiscating truckloads of red sandalwood. International trade in this wood is banned under the Convention on International Trade in Endangered Species of Fauna and Flora (CITES), to which Nepal is a signatory. Much of the wood is smuggled more than 2,000 kilometres from southern India, unhindered despite the fact that there are numerous checkpoints along the way manned by the departments of forests, transport and trade tax. According to the World Wide Fund for Nature (WWF), more than 400 tonnes of red sandalwood logs were seized in Nepal in 2007 and 2008.[10] This is a lucrative business, as a kilogram of red sandalwood, worth about Rs300 (US$4) in Nepal, could easily fetch more than (Indian) Rs2,000 (US$45) in Tibet. Moreover, processed products such as a kilogram of sandalwood powder could sell for more than US$50 in European or US markets.

Many believe the discovery of this contraband is due to the regime change in 2006, as no such reports were made earlier. There are concerns that these reports are just the tip of the iceberg.

Narayan Manandhar (TI Nepal)

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TI Nepal: www.tinepal.org.

9 The amount of formal trade recorded in India (exports plus imports) is US$396 million, while informal trade is US$408 million. In Nepal, formal trade recorded is US$973 million, while informal trade is US$368 million. The discrepancy in the figures is due to differences in recording trade coverage in the two countries. B. K. Karmacharya, 2005.

10 *India Today*, 24 September 2008.

Pakistan

Corruption Perceptions Index 2008: 2.5 (134th out of 180 countries)

Conventions
ADB–OECD Anti-Corruption Action Plan for Asia-Pacific (endorsed November 2001)
UN Convention against Corruption (signed December 2003; ratified August 2007)

Legal and institutional changes

- In a meeting with a delegation of TI Pakistan on 17 July 2007, the former prime minister, Shaukat Aziz, gave assurance that the Public Procurement Rules of 2004 would be implemented in all the federal government ministries. He also claimed that transparency was the 'hallmark' of government policy and that the government was promoting e-governance as a tool for more openness and in order to make processes more efficient.[1] He claimed that the 'government had made it mandatory that integrity pacts are signed for all government contracts over Rs10 million'.[2] Moreover, the adoption of the rules 'minimises discretion, gives priority to technical competence and ensures that award of contract is on the basis of lowest evaluated responsive bidder in the shortest possible time'.[3] He also agreed with TI Pakistan that the Election Commission should 'hold the elections in the most transparent manner'.[4] These commitments were undermined after the departure of the former prime minister in 2007. Under the caretaker government in 2008, complaints to the Public Procurement Regulatory Authority board were not acted upon.
- The former president, General Pervez Musharraf, issued the National Reconciliation Ordinance (NRO) on 5 October 2007, fifty-six days after the ratification of the UN Convention against Corruption.[5] In many ways this was a setback for anti-corruption measures in Pakistan, as all proceedings under investigation or pending in any court that had been initiated by or involved the National Accountability Bureau (NAB) prior to 12 October 1999 were withdrawn and terminated with immediate effect. The NRO also granted further protection to parliamentarians, as no sitting member of parliament or a provincial assembly can be arrested without taking into consideration the recommendations of the Special Parliamentary Committee on Ethics or the Special Committee of the Provincial Assembly on Ethics.[6]

1 *Business Recorder* (Pakistan), 19 July 2007; see www.transparency.org.pk/news/news.htm.
2 Associated Press of Pakistan, 19 July 2007; see www.transparency.org.pk/news/news.htm.
3 Ibid.
4 Ibid.
5 *Business Recorder* (Pakistan), 8 October 2007; see www.transparency.org.pk/news/news.htm.
6 Ibid.

Public ills, private woes: the survival of the private sector during political instability

Corruption is a serious problem in Pakistan, and this position is corroborated by a number of recent studies and reports. An assessment of Pakistan's infrastructure implementation capacity was carried out at the request of the government, and the resulting report was published in November 2007 jointly by the World Bank and the Planning Commission of Pakistan.[7] It states that approximately 15 per cent of the cost of corruption lies in procurement, costing the Pakistani development budget (2007/8) over Rs150 billion.[8] Furthermore, the World Bank's Control of Corruption Indicator in 2007 ranks Pakistan a mere 21.3 out of 100.[9]

In terms of the business sector, there are a number of measures that indicate that there is a serious issue of corruption. TI's Global Corruption Barometer 2006 reported that the impact of corruption on the private sector was perceived as almost equal to corruption in the public sector; and *The Global Competitiveness Report 2008–2009* ranked Pakistan 101st out of 130 countries and found that respondents pointed to corruption as the second most problematic factor for doing business in the country, after government instability.[10]

The instability of the political situation in Pakistan cannot be underestimated as a factor in permitting corruption in the private sector to flourish. Despite Musharraf's claim to be committed to fighting corruption, little headway has been made, and it is still considered to be 'pervasive and deeply entrenched'.[11] Musharraf relinquished military power in November 2007, and his supporters were defeated in the February 2008 general election by a coalition of the Pakistan People's Party and Nawaz Sharif's Muslim League. Musharraf resigned in August 2008, facing impeachment for alleged crimes including gross misconduct and violation of the constitution.[12]

The inauguration of the new president, Asif Ali Zardari, on 9 September 2008 ushers in a new era, but not one without challenges. The new democratically elected government will, therefore, require the immediate enforcement of good governance and transparency standards to counter the various dire problems facing Pakistan. There is an increased threat of terrorism, hyperinflation, a reduction in the Karachi Stock Exchange 100 Index, a sizeable depreciation of the currency,[13] a substantial reduction in foreign currency reserves[14] and a huge trade deficit inherited from the previous government.

Banking fines for cartels: the new Competition Commission

In Pakistan, monopolistic practices and cartels are perceived to hold sway in such businesses as banking, cement, sugar, automobiles, fertilisers and pharmaceuticals, to name a few. Although

7 World Bank, *Pakistan Infrastructure Implementation Capacity Assessment* (Washington, DC: World Bank, 2007).
8 *Business Recorder* (Pakistan), 24 September 2008; see www.transparency.org.pk/news/news.htm.
9 Control of corruption is one of the indicators used in compiling the Worldwide Governance Indicators (WGI) project. The indicator measures the extent to which public power is exercised for private gain, including petty and grand forms of corruption, as well as 'capture' of the state by elites and private interests. See http://info.worldbank.org/governance/wgi/sc_chart.asp#.
10 TI, 'Global Corruption Barometer 2006' (Berlin: TI, 2006); World Economic Forum, *The Global Competitiveness Report 2008–2009* (Geneva: World Economic Forum, 2008).
11 See www.business-anti-corruption.com/normal.asp?pageid=464.
12 Welt Online (Germany), 17 August 2008.
13 See www.fxstreet.com/fundamental/analysis-reports/emerging-markets-weekly/2008-11-17.html; 'Lost 23 Percent against the Dollar This Year as a Balance of Payments Crisis Developed'.
14 US$16.4 billion foreign country reserves for October 2007; see *The News* (Pakistan), 13 June 2008; US$4.7 billion for October 2008; see *Daily Telegraph* (UK), 14 October 2008.

cartels distort market prices, they also create other anomalies. Existing players in an industry may firmly block the entry of new entrepreneurs through cartels, in order to ensure their own market dominance. This practice acts as a clear disincentive for the much-needed expansion of Pakistan's industrial base.

In October 2007 a new Competition Commission was set up under the Competition Ordinance 2007, in order to 'provide for a legal framework to create a business environment based on healthy competition towards improving economic efficiency, developing competitiveness and protecting consumers from anti-competitive practices'.[15]

It was also meant to 'restrict the undue concentration of economic power, growth of unreasonable monopoly power and unreasonably restrictive trade practices', which are perceived to be 'injurious to the economic well-being, growth and development of Pakistan'.[16]

In one of its first initiatives, the Competition Commission challenged the Pakistan Banks Association (PBA) on its decision to 'collectively decide rates of profit and other terms and conditions regarding deposit accounts'.[17] The PBA is a membership association to which only banks in Pakistan can be affiliated, and it advertised its decision openly in a daily newspaper on 5 November 2007. The terms of the agreement included a number of its member banks imposing 'a 4 percent profit on Rs20,000 deposits and a Rs50 charge on less than a Rs5,000 balance' on bank accounts included in the new Enhanced Savings Account (ESA) scheme.[18] Furthermore, holders of basic accounts that met the criteria would have their accounts changed to ESAs without the prior instruction or agreement of the account-holders.

The Competition Commission considered this move by the PBA to be in violation of section 4 of the Competition Ordinance 2007, and, moreover, in acting as a cartel, the banks were alleged to have behaved anti-competitively. The implications of the changes included customers with balances of less than Rs5,000 having to pay Rs50 each month and the transfer of accounts without the account-holders' prior permission. On 24 December a 'show cause' was issued to the PBA and the banks, and they were asked to provide justification of their behaviour to the commission by 10 January 2008.[19]

Both the PBA and the banks issued responses on 9 January, denying the charges of cartelisation, and on 28 February 2008 a further statement was issued, arguing that the commission did not have jurisdiction in this area and that, furthermore, the changes had been made 'at the behest of the regulator [the State Bank of Pakistan] in the larger public interest'.[20] The PBA also argued that it could not be considered to be stifling competition as the deposit amounts affected by the ESA scheme amounted to only 2.25 per cent. The commission found later, however, that in terms of the number of account-holders affected the impact was much higher, constituting 45.12 per cent.[21]

The final decision of the Competition Commission was made on 10 April 2008. The commission argued that the 'PBA has acted beyond its mandate . . . and has been instrumental in the formation of a cartel'.[22] As a

15 See www.mca.gov.pk/.
16 See www.mca.gov.pk/law.htm.
17 See www.mca.gov.pk/Downloads/Order_of_Banks.pdf
18 *Business Recorder* (Pakistan), 13 February 2008.
19 Competition Commission of Pakistan; see www.mca.gov.pk/Downloads/Order_of_Banks.pdf.
20 Ibid.
21 Ibid.
22 Ibid.

result, it had deprived small account-holders of the benefits they were otherwise earning on their savings accounts. The PBA and the culpable banks were ordered to discontinue the practice, not to repeat it and to pay considerable fines. The PBA was fined Rs30 million, and the seven banks involved were fined Rs25 million each.[23]

The penalised institutions did have recourse to appeal to the appellate bench of the Competition Commission, but they failed to do so within the stipulated time. On 27 May the PBA did, however, appeal against the decision of the commission with the Sindh High Court, which ordered the commission not to take any action against the PBA before the decision had been adjudicated in court.[24]

The commission appealed against the High Court's decision, and on 15 September 2008 the Supreme Court allowed the commission to proceed against the banks.[25] The Competition Commission's move against the banking cartel, as well as the support provided by the Supreme Court, is encouraging. It has sent the message that such practices by the private sector, including the maintenance of unreasonable power by monopolies and restrictive trade practices, will not be tolerated and that the institutions in charge of monitoring such practices have the power to act.

Privatisation: Pakistan Steel Mills

Corruption in privatisation in Pakistan is endemic: manipulation of the process can be found at all stages, from the evaluation of profits and assets of a company to the provision of kick-backs on completion of a settlement.

One of the most famous cases relating to privatisation involves the attempted privatisation of Pakistan Steel Mills. As Pakistan's largest and only integrated steel manufacturing plant, it is a private limited company, and 100 per cent of its equity is owned by the government.[26] The plant is the biggest producer of steel in Pakistan and was installed in 1981, with the collaboration of Russia, by the Ministry of Industries, Production and Special Initiatives. In 1997 the government of Pakistan decided to privatise it, and, following the rules, secured approval from the Council of Common Interests.[27]

In 1998 the privatisation of Pakistan Steel Mills was abandoned, and to make it profitable the labour force was reduced from 20,000 to 15,000. As the steel mill had been designed, constructed and fitted out entirely by the Soviet Union, in February 2003 General Musharraf visited Moscow and signed an agreement to expand the production of the plant's steel from 1.1 million to 1.5 million tonnes. By December 2004, less than two years later, the privatisation of the plant was being discussed again, and by 10 February 2005 the decision to privatise the mill was taken by the government. The corporation, assessed at Rs72 billion, was sold to a consortium for Rs21.58 billion on 24 April 2006.[28]

On 23 June 2006 the Supreme Court ruled against the privatisation, and Chief Justice Chaudhry prevented the sale of the state monopoly to the

23 Ibid.
24 Dawn.com (Pakistan), 16 September 2008.
25 Ibid.
26 Judgment of the Supreme Court in Pakistan Steel Mills Privatisation Case, 9 August 2006; see www.dawn.com/2006/08/09/tab.pdf/.
27 This is a constitutional body, with a mandate for resolving inter-provincial inequalities and potential disagreements. The members are made up of the chief ministers of the provinces and a number of members nominated by the federal government. The council did not function between 1998 and 2006, when it resumed its work to decide on the privatisation of Pakistan Steel Mills.
28 *Business Recorder* (Pakistan), 18 August 2006.

private investors.[29] The Supreme Court concluded that approving the award of the contract reflected disregard for the mandatory rules, as well as the information necessary for arriving at a fair sale price.[30] The unexplained haste of the proceedings also cast reasonable doubt on the ethics of the whole exercise. While Chief Justice Chaudhry acknowledged that it was not the function of the court to interfere with the policy-making of the executive, the privatisation of the mills was 'vitiated by acts of omission' and violated the mandatory provisions of laws and rules.[31] The valuation of the project and the final terms offered to the consortium were not in accord with the initial public offering given through the advertisement.[32]

This case had implications that still resonate today, as it is considered one of the causes of the dismissal of Chief Justice Chaudhry in March 2007, who was not reinstated until July 2008. It is, therefore, partially responsible for a great civil society movement in Pakistan, which called for the restoration of an independent judiciary. There are also unanswered questions that still need resolution. In October 2006 a case was filed against the then prime minister, Shaukat Aziz, and ten other ministers, as well as the governor of the State Bank of Pakistan, alleging misuse of power – corruption as defined in section 9 of the National Accountability Bureau Ordinance 1999, which covers corruption and corrupt practices.[33] If found guilty, they would be subject to punishment, up to fourteen years' imprisonment, under section 10 of the ordinance for their involvement in the attempted privatisation of Pakistan Steel Mills.[34] At the time of writing this report it was yet to be seen how the NAB, under the jurisdiction of the current government, will proceed with this case.[35]

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Additional reading

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M. Iqbal, *Global Integrity Scorecard: Pakistan* (Washington, DC: Global Integrity, 2008).

S. Nishtar, *Pakistan's Health Sector: Does Corruption Lurk?* (Islamabad: Heartfile and TI, 2007).

M. Sohail and S. Cavill, 'Does Corruption Affect Construction?', paper presented at the Developing Countries International Symposium 'Construction in Developing Countries: Procurement, Ethics and Technology', Port of Spain, Trinidad and Tobago, 16 January 2008.

TI Pakistan: www.transparency.org.pk.

29 Ibid.

30 Judgment of the Supreme Court in Pakistan Steel Mills Privatisation Case, 9 August 2006; see www.dawn.com/2006/08/09/tab.pdf/.

31 Ibid.

32 Ibid.

33 See www.sbp.org.pk/l_frame/NAB_Ord_1999.pdf.

34 Ibid.

35 See www.ppp.org.pk/refs/ref0613.html. According to *The News* (Pakistan), 19 January 2009, the NAB will be replaced by a new independent accountability commission, which will pursue all cases filed with the NAB, including those relating to Pakistan Steel Mills. See also *The News* (Pakistan), 12 January 2009.

Papua New Guinea

Corruption Perceptions Index 2008: 2.0 (151st out of 180 countries)

Conventions
ADB–OECD Anti-Corruption Action Plan for Asia-Pacific (endorsed November 2001)
UN Convention against Corruption (signed December 2004; ratified July 2007)

Legal and institutional changes

- The police commissioner and the chief ombudsman signed an agreement in June 2007 to establish a police complaints ombudsman.[1] This gives the Ombudsman Commission (OC) oversight responsibility for high-profile cases. It will also shield police internal investigators from being influenced or interfered with and will ensure that officers comply with given actions. Under the agreement, the police will conduct investigations while OC officers will ensure that they are carried out professionally and transparently and that the process of dealing with police personnel is in accordance with the laws and police procedures. The agreement is being applied and is working.
- In October 2007 the Department of Personnel Management (DPM) delegated three key human resource management (HRM) powers to the heads of government departments, provincial administrations and government agencies.[2] The Public Services (Management) Act 1995 allows the department to delegate the powers of hiring, firing and the creation of new service positions.[3] The HRM Devolution Project was trialled through June 2008 with twenty-two sites. Following training and audits, most agencies have demonstrated the capacity to exercise the new powers, although in a few cases the DPM has revoked the powers after its audits showed non-compliance.[4] With regard to corruption, delegation provides the provincial and national agencies with the

1 Memorandum of Agreement between Commissioner of Police Gary Baki and Chief Ombudsman Ila Geno, Port Moresby, 1 June 2007.
2 Department of Personnel Management, Minute from Secretary Margaret Elias, Port Moresby, 5 October 2007. The powers and responsibilities of Part VII – Creation of Offices (sections 33, 34 and 35); Part IX – Recruitment (sections 36 and 37); and Part XII – Training (section 44) are those delegated. These powers have some limitations. First, they are limited to deputy secretary level; second, they must remain consistent with the parameters established in the new General Orders and Budgetary Ceilings; and, third, they must remain consistent with the provisions of the Public Services (Management) Act 1995.
3 The powers and responsibilities delegated are Part VII – Creation of Offices (sections 33, 34 and 35); Part IX – Recruitment (sections 36 and 37); and Part XII – Training (section 44). They are limited to deputy secretary level; they must remain consistent with the parameters established in the new General Orders and Budgetary Ceilings; and they must remain consistent with the provisions of the Public Services (Management) Act 1995.
4 Department of Personnel Management, 'HRM Devolution Project Post Implementation Review Report', Port Moresby, 21 May 2008.

power to sack dishonest or ghost staff more quickly. At the same time, however, these powers could be used for nepotism if not adequately monitored and audited by the DPM, and the payroll system's integrity could be at risk if it is not protected.

- In December 2007 parliament passed two sets of amendments to the Forestry Act 1991 without debate: the Forestry (Amendment) Act 2007 and the Forestry (Timber Permits Validation) Act 2007.[5] In the view of NGOs such as the Papua New Guinea Eco-Forestry Forum, this change legitimises illegal and unsustainable logging.[6] Non-governmental observers concur that the amendments were drafted without broad stakeholder consultation.[7] The legislation appears to serve the interests of the logging industry more than the community landowners (see below for further information).
- The Financial Intelligence Unit (FIU) was established in July 2007 and is working from the National Fraud and Anti-Corruption Directorate. The role of its team of specialists is to receive reports from financial institutions that handle cash transactions, identify and provide training to these cash dealers, analyse trends and statistics, and investigate financial crimes. The directorate can also arrest and charge offenders, as well as retain assets in collaboration with the Public Prosecutors' Office and issue guidelines to cash dealers, conduct on-site inspections and penalise cash dealers for non-compliance. In 2008 training on the Proceeds of Crimes Act 2005 was provided to police investigators and cash dealers. Suspicious Transactions Reports have been sent from commercial banks to the FIU since December 2007. The reports give the police a means to identify emerging trends and patterns associated with financial crimes, as well as the ability to initiate investigations or supplement criminal cases. The unit does not have the capacity to carry out all its responsibilities, however, due to a lack of resources, skills and manpower. For example, there is an acute lack of capacity in the area of forensic auditing. Australia's Anti-Money Laundering Assistance Team is providing training and support for the staff of the FIU, and is planning further assistance for prosecutors and the judiciary.[8] Over time, the FIU is expected to increase the police's capacity to prosecute increasingly complex financial crimes successfully.
- The Intergovernmental Financing Act is based on a proposal developed by the National Economic and Fiscal Commission (NEFC). A bill was tabled in the first half of 2008 and passed in July 2008.[9] The reform is based on extensive empirical research carried out by the NEFC in each province to calculate the actual cost to deliver services, taking into account factors such as the physical distance between administrative centres, schools and health clinics.[10] The new legislation lays out an intergovernmental financing system for recurrent goods and services budgets. The formula-based funding system is expected to increase accountability.[11]

5 Available at www.fiapng.com/fia_library_acts.html.
6 See, for example, the media release in *Eko-Forestri Nius*, vol. 9, no. 3/4 (2007), at www.ecoforestry.org.pg/ikoforestri/Vol.%209%20Iss.%203-4.pdf.
7 Personal communication by the author with staff from PNG environmental organisations, 17 October 2008.
8 See www.ag.gov.au/www/agd/agd.nsf/Page/InternationalDevelopmentAssistance_Anti-MoneyLaundering AssistanceTeam_Countryprojects#PapuaNewGuinea.
9 *Post-Courier* (Papua New Guinea), 17 July 2008.
10 National Economic and Fiscal Commission, 'It's More than Numbers', Port Moresby, September 2008.
11 National Economic and Fiscal Commission, 'Explanatory Memorandum for Organic Law on Provincial and Local-level Governments', Port Moresby, 2007.

Corruption and the private sector in Papua New Guinea

As reported daily in the media, corruption profoundly affects business operations, yet businesses are reluctant to speak out against it because of fear of losing state contracts or licences, or simply being shut down.[12] Overall, corruption in Papua New Guinea (PNG) is characterised as more political than bureaucratic in nature. That said, bureaucratic corruption is a significant concern to the private sector. Although businesses are not likely to find themselves paying small bribes on a daily basis, they may assume large entrance costs at the time of entering or expanding their operations in a given market, and may make side payments to bureaucrats to secure public contracts.[13]

Public–private partnerships

In late 2007 the government started working on a public–private partnerships (PPP) policy, which led to the formation of a PPP Task Force in June 2008.[14] The task force drafted a policy framework for the procurement and delivery of infrastructure and services of over K50 million through cooperation between public institutions and public enterprises.[15] While a positive development in principle, it raises concerns regarding how transparency in the tendering process will be monitored and ensured. In addition, the policy allows for the government to sound out the private sector for interest in certain projects, which may give consulted firms an unfair advantage in the eventual bidding process.

There is certainly reason for concern about the potential for corruption in the PPP projects, given instances of corruption in other public–private interactions. For example, in May 2008 an interim report by the Commission of Inquiry on the Department of Finance revealed that over US$100 million in public funds had disappeared between January 2000 and July 2006.[16] It is widely held that the missing funds have been paid to businesses and consultants holding bogus contracts with the state, but the final report is still pending. The on-again off-again inquiry was initiated in 2006, but its mandate and funding lapsed and were not renewed due to questions regarding the integrity of its members in May 2007.[17] It was reconstituted and relaunched by the prime minister in December 2007, and functioned through April 2008, when it lapsed again on account of a lack of funding and political will to pursue the inquiry.[18]

While the inquiry was taking place, civil servants as well as a prominent businessperson based in Port Moresby spoke publicly about the practice of bureaucrats and politicians extracting payments from businesses after a contract with the state has been awarded but before it is paid out.[19] Media reports suggest that parts of the private sector are complicit in an elaborate network within the bureaucracy, by which a percentage of some of the cheques produced by the Finance Department is taken out before payment is made to the private contractor.[20] Moreover, the private sector in collusion with the state may use

12 Based on comments by participants in the National Research Institute's Leadership Summit on Good Governance, Parliament House, Port Moresby, 12–28 August 2008.
13 Ibid.; *Post-Courier* (Papua New Guinea), 20 June 2007.
14 Public–Private Partnership Task Force, 'Draft National Public–Private Partnership Policy', Port Moresby, 2008.
15 Ibid.
16 *Post-Courier* (Papua New Guinea), 24 April 2008. The prime minister made some aspects of the report public on 13 May 2008.
17 *The National* (Papua New Guinea), 18 May 2007.
18 Prime Minister's Office, press release, December 2007.
19 *Post-Courier* (Papua New Guinea), 11 March 2008.
20 Doriga Henry, Finance Department deputy secretary, quoted in *The National* (Papua New Guinea), 19 November 2007; *Post-Courier* (Papua New Guinea), 11 March 2008.

litigation to extract out-of-court settlements for bogus claims.[21]

Forest governance

Forestry in Papua New Guinea has reached a critical juncture. The current levels of logging are said to be unsustainable, and the legality of many current concessions is in doubt. Although almost all operations have valid licences, logging is generally not considered by NGO watchdogs to be sustainable, and there are human rights abuses of the forest communities and local labour. A review of fourteen logging operations from 2001 to 2006 for instance, was highly critical of these, with the exception of the Japanese company that runs the Open Bay timber project.[22] Until recently, however, they were allowed by the government to continue, apparently with little oversight from public authorities.

In the first admission of its kind by a PNG government, the country's new forest minister, Belden Namah, told parliament in 2008 that logging companies routinely flouted the law with the help of corrupt officials.[23] He found that most of his departmental officers responsible for monitoring forestry operations had ignored the law and that many were 'in the pockets' of logging companies. The minister then suspended two forestry licences and announced that no permits are to be issued for log exports after 2010.[24] More recently, the *Post-Courier* newspaper linked unnamed PNG politicians to US$45 million in a Singapore bank account, allegedly money earned through secret logging deals.[25]

By most accounts, this sad outcome has its roots in the convoluted system for forestry licences. In this view, the government's regulatory and taxing system for logging companies offers incentives and opportunities to bribe public officials to get logging licences and to undervalue logs for export. While current official log export prices suggest that the industry has been unprofitable for a number of years and therefore not economically viable, logging continues and companies still seek access to new forest areas.[26] This suggests that timber exports are grossly undervalued, and represent a significant loss of revenue for the government.[27]

The logging industry wields influence in Papua New Guinea through political donations, public sponsorship, lobbying and media ownership.[28] In other instances, companies simply 'buy' the rights to log outright from corrupt government officials.[29] Nonetheless, recently the courts seem to have become an effective vehicle for NGOs to challenge such corrupt practices. For example, in September 2007 the Supreme Court granted the Eco-Forestry Forum's application for an injunction to halt the Kamula Doso logging concession in Western Province pending judicial review of

21 *The National* (Papua New Guinea), 3 January 2007; *Post-Courier* (Papua New Guinea), 26 July 2006.
22 Forest Trends, *Logging, Legality and Livelihoods in Papua New Guinea: Synthesis of Official Assessments of the Large-scale Logging Industry*, vols. I, II and III (Washington, DC: Forest Trends, 2006).
23 *The Australian*, 23 April 2008.
24 Ibid.
25 *The Australian*, 20 August 2008.
26 Forest Trends, 'External Reviews Find Most Logging in Papua New Guinea Illegal, Unsustainable and Providing Little Benefit to the State and Forest Community', media release, 1 March 2006.
27 Overseas Development Institute (ODI), *Issues and Opportunities in the Forestry Sector in Papua New Guinea*, Papua New Guinea Forest Studies no. 3 (London: ODI, 2007).
28 Centre for Environmental Law and Community Rights and Australian Conservation Foundation, *Bulldozing Progress: Human Rights Abuses and Corruption in Papua New Guinea's Large-scale Logging Industry* (Carlton, Vic: Australian Conservation Foundation, 2006).
29 Ibid.

the case.[30] Kamula Doso contains 790,000 hectares of virgin rainforest.[31] In a not so distant past, similar forest settings around the country have disappeared through unsustainable logging activities.[32]

In an earlier decision, the Supreme Court in June 2007 also granted a stay on a decision of the National Court that had upheld the National Forestry Authority's agreement to grant logging rights in Kamula Doso to Wawoi Guavi Timbers, a subsidiary of Rimbunan Hijau. In granting the stay, the court argued that the National Forest Authority has a duty to comply with the requirements of the Forestry Act 1991.

Private sector action

To increase competitiveness in Papua New Guinea, small to medium-sized firms as well as large multinationals have an economic interest in taking collective action to reduce corruption. Some businesses have realised that it is in their interests to foster a more stable business environment, and on an individual basis have instituted business principles for countering bribery, including policies, strong internal controls and feedback mechanisms.

An example is NASFUND, the superannuation fund that was transformed from a corruption-ridden state enterprise to a highly profitable privately held one. Having inherited a debt of K 154 million, NASFUND assets have reached a record of K 1 billion (US$380 million), which its CEO attributes to finance sector reforms and a strong corporate governance platform.[33] Most public and private firms operating in the country have not been forced by crisis and public scrutiny to adopt similar corporate governance policies, however.

To their credit, businesses in Papua New Guinea have contributed financially to the work of non-profit organisations that fight corruption. A number of companies fielded teams of employees to participate in the Walk Against Corruption on 30 May 2008. Although individual firms are unlikely to speak out about corrupt practices and systems, the heads of chambers of commerce and business councils are in a safer position to make pointed public statements. To reduce the repercussions for firms for speaking out on such issues, business could take collective action through existing associations, such as the Port Moresby Chamber of Commerce, and business or industry councils.

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Additional reading

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TI Papua New Guinea: www.transparencypng.org.pg.

30 *Eko-Forestri Nius*, vol. 9, no. 3/4 (2007).
31 Figures from Papua New Guinea Forest Authority; see www.forestry.gov.pg/site/page.php?id=56.
32 *Eko-Forestri Nius*, vol. 9, no. 3/4 (2007).
33 T. Baeau, 'Interview: Rod Mitchell'; available at: www.islandsbusiness.com; Radio Australia, 11 September 2008.

Philippines

Corruption Perceptions Index 2008: 2.3 (141st out of 180 countries)

Conventions

ADB–OECD Anti-Corruption Action Plan for Asia-Pacific (endorsed November 2001)
UN Convention against Corruption (signed December 2003; ratified November 2006)
UN Convention against Transnational Organized Crime (signed December 2000; ratified May 2002)

Legal and institutional changes

- Several anti-corruption bills have been filed in the Philippine Congress. Among the notable are the following.[1]
  - An amendment to section 11 of Act 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, to increase the prescription period for its violation from fifteen to thirty years.
  - An amendment to section 13 of Act 3019, on its non-application to impeachable public officers: officers, including those who can be removed only by impeachment, members of congress and members of the Supreme Court and appeals court, are now exempt from the Anti-Graft and Corrupt Practices Act.
  - An amendment to section 6 of Act 1379, otherwise known as the Forfeiture Law, allows 10 per cent of the value of forfeited properties in corruption cases to be allocated to the office of the ombudsman and for other purposes.
- In order to enhance transparency in public procurement, President Gloria Macapagal-Arroyo signed Executive Order 662-A, amending Executive Order 662, to create the Procurement Transparency Group, headed by the Government Procurement Policy Board. The group will evaluate, comment on, record and monitor the procurement activities of national government agencies, government-owned and -controlled corporations, government financial institutions, state universities and colleges and local government. The group will be interested in the mode of procurement, budget, volume, susceptibility to problems or anomalies and the importance of the project to the development activities of the Philippines.[2]
- On 27 August 2008 a memorandum of understanding was signed by the ombudsman, Meceditas Gutierrez, to establish a Center for Asian Integrity in the Philippines, the first of its kind in Asia.[3] The virtual academy will be incorporated into the Philippine Ombudsman Academy, which trains trainers, investigators and prosecutors about integrity. It will also incorporate a research programme to provide qualitative and quantitative research into corruption and include a virtual library to provide access to information on corruption

1 See www.senate.gov.ph/lis/leg_sys.aspx?congress=14&type=bill&p=1.
2 Executive Order no. 662-A**.**
3 *Philippine Daily Inquirer*, 27 August 2008; 9 September 2008.

and curricular support for the development of integrity courses to be accredited by the University of the Philippines. It will be funded by the Millennium Challenge Corporation – Philippine Threshold Programme through the Asia Foundation.

Corruption and the private sector in the Philippines

Graft and corruption are a fact of life in the Philippines; since liberation almost every administration has suffered its sensational graft cases.[4] Moreover, the private sector has cultivated various corrupt practices in order to obtain significant and continuing concessions and advance its private interests.

A recent study by the Social Weather Stations social research institution, based on its 2007 'Survey of Enterprises on Corruption', supplements anecdotal evidence and paints a picture of corruption through the eyes of private sector managers.[5] In terms of the extent of corruption in the sector, the survey found that three out of five managers saw 'a lot' of corruption in the public sector, compared to only one in twelve who saw 'a lot' of corruption in the private sector. Bribery was highlighted as a particular issue, with roughly half the managers revealing that 'most' or 'almost all' firms in their line of business give bribes to win government contracts, compared to only one-fifth giving bribes for private sector contracts.

The survey found that, while 'only a minority of companies follow the basic honest business practices of demanding and issuing receipts, keeping only one set of books, and paying taxes honestly', there was a willingness of managers to contribute to the fight against corruption. The survey measured managers' readiness to donate money to an anti-corruption fund and found that, although in practice the amount donated has decreased in recent years, a half intended to donate for these purposes over the next two years.

Finally, the survey found that in the National Capital Region (Metro Manila) bribing for government contracts has declined and best practices in record-keeping have improved. It seems, therefore, that, while corruption in the private sector is still a big problem, the private sector is showing some willingness to become part of the solution.

Foreign-assisted projects: double standards and collusion

A big issue related to private sector corruption is the dynamic that is created when foreign investors and contractors enter the market. In February 2008 the issue was highlighted in an investigation by the Philippine Center for Investigative Journalism (PCIJ). According to the report, '[E]xcessive bids and cost overruns are quite common for projects funded by bilateral lenders – notably Japan, Korea, and China – that still tie up sizable portions of their foreign aid to the purchase of goods or services, including consultants, from companies based in their respective countries.'[6]

There is no ceiling or cap on costs for projects funded by foreign donors, leaving them open to collusion and bid-rigging. Although the Philippines sought to impose caps on bids, international financial institutions have 'insisted on exempting foreign-assisted projects from new

4 *Philippine Daily Inquirer*, 12 February 2008.

5 Social Weather Stations (SWS), 'Transparent Accountable Governance: The 2007 SWS Business Survey on Corruption', presentation to the Philippine Cabinet, 21 August 2007 (Quezon City: SWS, 2007).

6 R. Landingin, 'Bids Sans Caps, Tied Loans Favor Foreign Contractors' (part 2 of a three-part series on a PCIJ review of official documents covering seventy-one official development assistance (ODA) projects funded by the Philippines' biggest ODA lenders), 12 February 2008; available at www.pcij.org/stories/2008/oda5.html.

Philippine procurement rules that disallow bids above the so-called approved budget contract (ABC), an estimated cost that is calculated by third party consultants at considerable expense'.[7]

In its 2007 review of ODA, the National Economic and Development Authority (NEDA) reports that twenty-one of the 123 ongoing projects incurred cost overruns amounting to almost US$698 million.[8] While this had benefits for the contractors in terms of more lucrative contracts, it entailed considerable costs to the Philippines, as counterpart funding would have to be raised to pay back the loans.[9]

Collusion between foreign contractors has been seen in the multimillion-dollar foreign-funded infrastructure projects in Visayas and Mindanao. Large foreign contractors allegedly colluded with each other and rigged bidding processes, and, in doing so, dictated the terms of the bids in violation of 'government rules and policies'.[10] As such, it is clear that the recent slew of grand infrastructure projects involving foreign companies poses significant corruption risks. Furthermore, the involvement of foreign companies apparently decreases the access of Filipinos to information on the deals, while at the same time incurring potential loses to the state budget.

Broadband, deep pockets: China's funding of the national broadband network project

One of the most high-profile private sector corruption cases in 2007/8 involved the National Broadband Network (NBN) project. The NBN deal involved contracting a China-based telecommunications company to set up a broadband network connecting government offices throughout the country.[11] It was just one of many investments, however, that were agreed in a July 2006 memorandum of understanding between the Department of Trade and Industry and Zhong Xing Telecommunications Equipment International Investment Ltd (ZTE). On 21 April 2007 the US$329.5 million NBN contract was signed between the Department of Transportation and Communications and ZTE, funded by the Export-Import Bank of China.[12]

Controversy began to surface when Representative Carlos Padilla disclosed in a privilege speech on 29 August 2007 that the then chairman of the Commission on Elections, Benjamin Abalos, had allegedly served as a broker for the Chinese company, playing golf and meeting with ZTE executives several weeks before the NBN contract was signed in China. Abalos admitted to travelling to China and playing golf, but he denied playing middleman for the firm.[13]

On 5 September 2007 Senator Aquilino Pimentel filed a resolution calling for an investigation into the circumstances leading to the approval of the broadband contract with ZTE.[14] Moreover, on 10 September José de Venecia III, son of the House Speaker José de Venecia Jr., a majority shareholder in Amsterdam Holdings Inc. (AHI), one of the companies that stood against ZTE in the bid, claimed that he had overheard Abalos demand money from ZTE officials in China.[15]

7 Ibid.
8 NEDA, *Sixteenth Annual ODA Portfolio Review* (Pasig City: NEDA, 2007).
9 R. Landingin, 2008.
10 Ibid.
11 *Financial Times* (UK), 26 September 2008.
12 See www.newsflash.org/2004/02/pe/pe004246.htm.
13 Newsbreak Online (Philippines), 'Timeline: Exposing the ZTE Overprice', 8 February 2008.
14 Ibid.
15 Ibid.

The Senate investigated the charges of bribery. There were two Senate hearings, at which de Venecia III accused Abalos of offering him US$10 million to withdraw his bid, and claimed that the First Gentleman, José Miguel Arroyo, had personally told him to 'back off' from pursuing the NBN project.[16] The Supreme Court issued a temporary restraining order on the contract, and eleven days later, on 22 September, President Macapagal-Arroyo suspended the deal.

Despite the project's suspension, on 26 September 2007 Secretary Romulo Neri, the economic planning secretary at the time of the bidding, accused Abalos of offering him P200 million (US$4.36 million) for facilitating the approval of the project.[17] In a counter-attack, Abalos accused Neri of lying, and suggested that he might be in cahoots with José de Vencia III.[18] Neri later invoked executive privilege in response to questions regarding his conversations with President Macapagal-Arroyo on the bribe attempt.[19] In November the president cancelled the contract.[20]

In the meantime, the fallout from this case has been dramatic. In recognition of the growing public unease, in September the president set up the Chinese Projects Oversight Panel to oversee Chinese projects.[21] Nevertheless, in February, former Senator Jovito Salonga filed a criminal complaint against the president in relation to her involvement in the case.[22] This was only weeks after Macapagal-Arroyo had faced calls for her resignation, following testimony before the Senate that 'implicated former and current senior officials'.[23] In response, in February 2008, the president halted all 'fresh borrowings from China and other lenders of big infrastructure projects'.[24] As a result, alternative sources of funding would have to be sought for the eleven outstanding projects for which no contract had yet been signed.[25]

This case illustrates how the involvement of foreign companies, often supported by state loans and guarantees, can pose substantial corruption risks. Although it is encouraging that the Philippines has conducted extensive investigations into the allegations of bribery, it is disconcerting that the company at the centre of this debacle has not been held accountable for its part in the activities. When funding is sought from abroad and foreign companies are used in contracts, this apparently decreases the Philippines' ability to manage its affairs openly and transparently.

The Northrail Project: the corruption risks continue

The foreign assisted Northrail Project, also funded by the Export-Import Bank of China, threw up its own issues of corruption, including 'alleged onerous terms and conditions imposed upon the Philippine government in the contract'.[26]

During a December 2003 state visit to China, President Macapagal-Arroyo signed a memorandum of agreement between the North Luzon Railways Corporation and the China National Machinery and Equipment Corporation

16 *Financial Times* (UK), 26 September 2007.
17 *Financial Times* (UK), 19 February 2008.
18 Ibid.
19 Newsbreak Online (Philippines), 7 February 2008.
20 *Financial Times* (UK), 21 November 2007.
21 *Financial Times* (UK), 26 September 2008.
22 *Financial Times* (UK), 28 February 2008.
23 *Financial Times* (UK), 8 February 2008.
24 *Financial Times* (UK), 19 February 2008.
25 Ibid.
26 PinoyPress.com (Philippines), 21 November 2007.

(CNMEC). On 26 February 2004 a buyer credit loan agreement was made between the Export-Import Bank of China and the government, in order to fund the Northrail Project. The bank agreed to lend US$400 million of the total US$503 million, the remainder to be funded by the Philippine government.[27]

Allegations of corruption flew about the project, however. Protests began when it was found that the contract had been awarded without a competitive bidding process. In November 2007 Senator Aquilino Pimentel formally asked for the resumption of the Senate inquiry into the project, on the grounds that it was overpriced, it had been contracted without the approval of the monetary board and it burdened the Philippines with 'onerous conditions especially in case of default in the payment of the loan'.[28]

Notwithstanding the serious infirmities in the agreement, billions of pesos in public funds will be spent by the government pursuant to agreements in the contractual implementation of the Northrail Project when the project is resumed.[29] Meanwhile, the government continues to pay interest charges for the Northrail Project loans to the tune of P1 million (US$21,250) a day.[30] Despite these alarming issues, reasonable requests from media organisations such as the PCIJ for certified copies of the Northrail contract from the Philippine National Railways have been declined. Sadly, according to a PCIJ study, before scandals involving state projects began erupting late in 2006, the government seemed headed towards transparency;[31] this trend may be reversed by recent events.

Segundo Romero, Aileen Laus and Dolores Español (TI Philippines)

Additional reading

P. Lacson, 'Legacy of Corruption', speech delivered before the Philippine Senate, 11 September 2007.

R. Landingin, 'Bids Sans Caps, Tied Loans Favor Foreign Contractors', 12 February 2008; available at www.pcij.org/stories/2008/oda5.html.

SWS, 'Transparent Accountable Governance: The 2007 SWS Business Survey on Corruption', presentation to the Philippine Cabinet, 21 August 2007 (Quezon City: SWS, 2007).

TI Philippines: www.transparencyintl.org.

27 Petition (For Certiorari and Prohibition with Prayer for the issuance of a Writ of Preliminary Injunction and/or Temporary Restraining Order) of the Northrail Contract. Supreme Court of the Philippines. Manila, Philippines.

28 PinoyPress.com (Philippines), 21 November 2007.

29 Senate of the Philippines, press release, 20 October 2008; see www.senate.gov.ph/press_release/2008/1020_pimentel2.asp.

30 Senate of the Philippines, press release, 14 July 2008; See www.senate.gov.ph/press_release/2008/0714_pimentel1.asp.

31 K. Ilagan, 'Government Curbs Access to Information Amid Senate Scrutiny of Projects', 30 March 2008; available at www.pcij.org/stories/2008/access-to-info.html.

South Korea

Corruption Perceptions Index 2008: 5.6 (40th out of 180 countries)

Conventions

ADB–OECD Anti-Corruption Action Plan for Asia-Pacific (endorsed November 2001)
OECD Convention on Combating Bribery of Public Foreign Officials (signed January 1999; ratified March 1999)
UN Convention against Corruption (signed December 2003; ratified March 2008)
UN Convention against Transnational Organized Crime (signed December 2000; not yet ratified)

Legal and institutional changes

- On 26 February 2008 the Special Act on Confiscation and Recovery of Corrupt Assets[1] was passed at the Assembly plenary session in order to implement the UNCAC. The law's essentials include international cooperation on corrupt crimes, special regulations on confiscation, and additional resources and staff focused on the recovery of corrupt assets. By incorporating the UNCAC into law, it is expected that international cooperation on corruption cases will be strengthened and more assets derived from corruption will be recovered from abroad. Nevertheless, the law has some shortcomings, including the lack of a comprehensive definition of corruption that covers, in particular, the private sector. Furthermore, it does not encourage the development of anti-corruption policies with the explicit involvement of civil society.
- Parallel to the ratification and implementation of the UNCAC, a contradictory and unconstructive law was passed on Anti-Corruption and the Establishment and Operation of the Anti-Corruption and Civil Rights Commission (ACRC).[2] This law aims to integrate three different government institutions: the Korean Independent Commission Against Corruption (KICAC), which is responsible for preventing corruption; the Ombudsman of Korea, which handles civil complaints; and the Administrative Appeals Commission, which is in charge of administrative adjudication. In addition to merging roles, which will affect the commission's ability to focus on corruption issues, the independence of the anti-corruption function of the new commission is seriously jeopardised. Whereas previously the KICAC was composed of nine commissioners recommended by the president, parliament and the Supreme Court, the new commission is almost entirely appointed by the president.[3] Moreover, although the KICAC was formerly

1 Act no. 8993, enacted on 28 March 2008, enumerates twenty-nine kinds of crimes regarded as corruption crimes from existing laws, but does not give any comprehensive definition on private corruption.
2 Act no. 8878.
3 Article 13 of Law on Anti-Corruption and the Establishment and Operation of the Anti-Corruption and Civil Rights Commission, enacted 29 February 2008.

under the auspices of the president, the ACRC is now under the control of the prime minister. A further indication of the commission's lack of commitment to corruption is that, while it calls itself the Anti-Corruption and Civil Rights Commission in English, the Korean name for the ACRC is simply Civil Rights Commission.[4]

- The Korean Pact on Anti-Corruption and Transparency (K-PACT) Council[5] is facing serious challenges. It made impressive developments as an active movement following its launch, spreading to several sectors including construction, education, social welfare, finance, forestry and health care, and also to several regions in South Korea. On 30 May 2008, however, the ACRC officially suspended the public sector's contribution to the K-PACT's expenses. The reasoning that was given included the need for the 'establishment of an efficient paradigm for government-civilian cooperation corresponding to the administrative philosophy of the new administration'.[6] Based on this decision, the public sector officially withdrew from the K-PACT, and as such the agreement on K-PACT between the four sectors (public, private, political and civil society) is facing crisis.

New government and pro-business policy

Following the introduction of a new government, South Korea is undergoing a change in policy that has influenced almost all fields related to corruption. Ten years of so-called 'left-wing' (progressive) government ended and power was moved to the 'right wing' (conservatives) at the end of 2007. Tackling the corruption problem should be an obligatory task for every government regardless of its leaning, but several examples illustrate what has become known as the 'setback' phenomenon, whereby the current government has introduced 'business-friendly' policies, sometimes at the expense of anti-corruption initiatives.

The new government's pro-business policy can be seen as reneging on previous governments' anti-corruption commitments and achievements. The closure of the KICAC, its merger with two other organisations (forming the ACRC) and the restructured composition of the new commission have undermined both the focus on corruption and the commission's independent decision-making processes. Now thirteen out of the fifteen commissioners are appointed by the president, making independent decision-making impossible.[7] Furthermore, the ACRC's subsequent withdrawal of funding to the K-PACT and its request to the Board of Audit and Inspection to assess the K-PACT Council's accounting records has further damaged this authority and questioned its ability to continue as a legitimate council.[8]

There has also been a setback directly related to the defence sector. In an attempt to reform the defence industry, former President Roh in 2003 organised a special committee under the prime minister to ensure transparency, fairness and efficiency. It proposed creating a new system of defence acquisition by establishing a

4 See www.acrc.go.kr/eng_index.jsp.

5 The Korean Pact on Anti-Corruption and Transparency is a voluntary agreement proposed by civil society and concluded on 9 March 2005 to form an anti-corruption system through alliances between public, political and private sectors and civil society. To support implementation and spread of K-PACT, each sector made an appointment to establish the K-PACT Council as the secretariat and has been submitting a share of expenses. See www.pact.or.kr/english/sub/menu_01_01.php.

6 *The Hankyoreh* (South Korea), 1 October 2008.

7 See footnote 3.

8 *The Hankyoreh* (South Korea), 1 October 2008

new national agency, the Defense Acquisition Program Administration (DAPA), which was set up in January 2006.[9] This new programme is facing crisis, however, as the Ministry of Defense contends that it undermines its decision-making power.[10] The provisional alternative proposed by the ministry is to return to it the main functions of DAPA related to strategic, medium- and long-term decision-making. As such, civil society has expressed deep concern this move could lead to a backward step for transparency.

Finally, in terms of monitoring private sector corruption and financial crimes, the system is likely to be further weakened. While the ACRC, as was the case for KICAC, covers only public sector corruption, the Fair Trade Commission has influence over the private sector, in terms of being able to restrict unfair transactions. While it focuses mainly on the transactions of conglomerates, it has the power to impact positively on anti-corruption efforts, as it has not only investigation rights but also exclusive accusation rights for law enforcement. There are concerns that this may change, however, because under the government's 'business-friendly' policies all previously enacted laws and ordinances are being amended under the new principle of easing regulations. The sanctions applying to the private sector do not constitute an adequate deterrent. The judiciary is widely considered to be generally lenient on white-collar crime, and the president, in celebration of Liberation Day in August 2008, granted an amnesty to 341,000 executives, politicians and bureaucrats convicted of crimes including fraud and embezzlement.[11]

As such, the new government's stand has damaged some of the most important anti-corruption institutions, on the premise that it desires a more business-friendly environment, thereby undermining the basic proposition that corruption harms business, and taking a step in the wrong direction in terms of fighting it.

Samsung, slush funds and succession

On 29 October 2007 former prosecutor and attorney Kim Yong-Chul, who had headed Samsung's legal advisory team, made a declaration of conscience to the Catholic Priests' Association for Justice in Korea[12] that Samsung had amassed a huge illegal slush fund and offered bribes to high-ranking officials.[13] The corruption scandal sent a shock wave through South Korean society.[14]

In his disclosure, Kim alleged that Samsung had amassed billions of won in slush funds by using borrowed bank accounts of company executives and employees. He also said that Samsung routinely offered bribes to high-ranking officials and public administration staff, including the public prosecutor-designate, the chairman of KICAC and the incoming head of the National Intelligence Service, all of whom were ex-prosecutors. He also said that Samsung

9 The committee also proposed many policies regarding enhancing competitiveness for the construction of a basis of self-reliance of national defence. The Defense Acquisition Program Act was enacted on 2 January 2006 (act no. 7845); see www.dapa.go.kr/eng/index.jsp.

10 The Ministry of National Defense (MND) is talking about closing DAPA but its real intent is to move the key functions of DAPA back to the MND, such as strategic, medium- and long-term decision-making, budget planning and questions relating to arms exports. The only acceptable reason for this trial is that, following the establishment of DAPA, the level of cooperation between each corps and DAPA has not been satisfactory. This objection pales into insignificance alongside the achievements of DAPA, however. Corruption cases numbered twenty-six in 2004 and sixteen in 2005, but after DAPA there were no corruption scandals in 2006 and 2007. See www.sisapress.com/news/articleView.html?idxno=46562 (Korean); *Korea Times*, 30 October 2008.

11 Reuters (UK), 11 August 2008.

12 This was one of the representative democratisation movement NGOs in the 1970s and 1980s.

13 'Whistle-blower lashes out at Samsung', Naver, 6 November 2007.

14 'Corruption charges', Naver, 7 November 2007.

had systematically and illegally transferred the right of management from chairman Lee Gun-Hee to his son Lee Jae-Yong, and that during this process many crimes had been committed, including huge amounts of tax evasion.

Despite the many political disputes, lawyer-turned-whistleblower Kim Yong-Chul made his disclosure in order to catalyse a special prosecutor to investigate the scandal. On 23 November 2007 the Assembly passed a special prosecutor law to investigate the Samsung scandal. A special prosecution team was formed, and investigations began on 10 January 2008. The three-month investigation included locating and seizing details of the borrowed bank accounts from Samsung's main building. On 17 April 2008 the special prosecutor announced that ten Samsung executives would be prosecuted, including the chairman and his son, yet no one was arrested. Five days later the chairman announced a reform plan, which included his resignation.[15]

The investigation found that a great deal of Kim Yong-Chul's disclosure was accurate.[16] The core of the case consisted of the illegal succession of the right to management from father to son and allegations of tax evasion. According to the investigation, the chairman's secretary's office had allowed affiliate companies of Samsung to issue convertible bonds and bonds with a warrant at a low price to the chairman's son. Through this process the son became Samsung's largest shareholder, and as such was assured his status as his father's successor. The investigation also revealed that slush funds of at least US$4.5 billion had been hidden by using 'borrowed name' bank accounts. Through the use of these 1,199 stock accounts the chairman is thought to have bought and sold the shares of Samsung group companies, including Samsung Electronics. By means of this process, it was alleged, he had made profits of US$564.3 million and evaded taxes to the tune of US$112.8 million.[17]

Disappointingly, from the perspective of anti-corruption efforts, the bribery allegations were not upheld by the public prosecutor. The reasons given included, in some cases, that there was not sufficient evidence to support bribery accusations and that the statute of limitation had expired.[18] In other cases, the prosecutor accepted the denial of the persons concerned. In October 2008 Lee Gun-Hee was convicted of evading a tax bill of only US$45.6 million related to the proceeds of covert stock trading using 'borrowed name' accounts.[19] Appeal judges dismissed the other charges related to the wealth transfer to his son.[20]

A number of lessons can be learnt from the Samsung case. First, it is significant that Kim Yong-Chul chose to bring his case to civil society rather than going down the official routes of the national audit or inspection institutions. This reveals a high level of distrust in national institutions and their ability to address issues of corruption.

The results of the official investigation were duly criticised by civil society.[21] Five important criticisms were raised in particular.

15 *Korea Times*, 10 July 2008.
16 The full text of the special prosecutor's investigation report can be downloaded in Korean at www.moneytoday.co.kr/view/mtview.php?type=1&no=2008041713484052141&outlink=1.
See a brief report in English at www.koreatimes.co.kr/www/news/nation/2008/04/117_22685.html.
17 *Korea Times*, 17 April 2008.
18 *Economist* (UK), 26 April 2008.
19 Agence France-Presse, 10 October 2008.
20 Ibid.; *Jakarta Post* (Indonesia), 16 July 2008.
21 Through the temporary network organisation 'People's Actions for Investigation of Illegality of the Actions of Samsung and Lee Gun-Hee'.

- Through the low valuation of the convertible bonds, the valuation of the illegal profits and amount embezzled was too conservative.
- The special prosecutor reduced the amount of the illegal slush funds taken into account and did not uphold the accusation of fraudulent accounts.
- Although a witness to bribe-paying should be a high enough level of proof, the special prosecutor cleared high-ranking officials of the suspicion of bribe-paying, citing a lack of sufficient evidence.
- Despite there being a high risk of the suspected persons destroying evidence or fleeing the country, none of them were arrested.
- By clearing Lee Jae-Yong of any criminal involvement, the prosecutor legalised the succession of management rights from father to son.[22]

There are further concerns arising from the fact that just one large company could have routinely controlled so many of the most important national institutions and high-ranking officials. For the first time in South Korea's history, there was a real feeling this was a case of state capture. The problem of how to achieve the rule of law emerges as significant, as the judiciary has historically been lenient on the criminal activities of big conglomerates. In 2006, for example, Hyundai chairman Jung Mong-Gu was found guilty of retaining illegal slush funds of up to US$100 million and embezzling US$70 million, and former Daewoo chairman Kim Woo-Jung was found guilty of keeping fraudulent accounts of up to US$23 billion.[23] Both were released or pardoned after very short terms in prison.[24]

While the Samsung case highlights serious deficiencies in the way corruption in large conglomerates is handled, there are also signs that the private sector in South Korea is beginning to address business ethics and starting to align with global standards of corporate social responsibility. Although it is clear that this is mainly due to civil society initiative and pressure, voluntary efforts are increasing. By July 2007 124 South Korean companies were participating in the UN Global Compact, and on 17 September 2007 the UN Global Compact Network Korea was established.[25]

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DAPA, *Pangwisaopch'ong kaech'ong paekseo* [*Defense Acquisition Program Administration Opening Report*] (Seoul: DAPA, 2005).

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J. Yi, *Naebu sin'go paekseo* [*White Paper of Whistleblowing*] (Seoul: KICAC/Friends of Whistleblowers, 2007).

TI Korea: www.ti.or.kr.

22 See blog.peoplepower21.org/Economy/23088 (in Korean); *Korea Times*, 18 April 2008.

23 *New York Times* (US), 31 May 2006.

24 Mr Jung Mong-Gu was sentenced on 28 April 2006; *International Herald Tribune* (US), 28 April 2006. Mr Kim Woo-Jung was sentenced on 30 May 2006; *Financial Times* (UK), 31 May 2006.

25 See www.unglobalcompact.kr/eng/index.php.

Sri Lanka

Corruption Perceptions Index 2008: 3.2 (92nd out of 180 countries)

Conventions

ADB–OECD Anti-Corruption Action Plan for Asia-Pacific (endorsed March 2006)
UN Convention against Corruption (signed March 2004; ratified March 2004)
UN Convention against Transnational Organized Crime (signed December 2000; ratified September 2006)

Legal and institutional changes

- The new Companies Act introduced in 2007 strengthens governance within companies. The act provides, *inter alia*, that directors must act in good faith and in the interests of the company and not in a manner that is reckless or grossly negligent. Furthermore, their interests should be registered in an Interests Register, and failure to register interests will result in a fine not exceeding Rs 200,000 (approximately US$1,800). Directors should also disclose their shares in the company, whether they are held directly or indirectly. The aim of the act is to codify directors' duties, create greater transparency and enable shareholders to compel the board to comply with the duties. Another unique feature in the act is that it has provisions for rewarding whistleblowers by entitling them to the reimbursement of legal expenses from the fines levied in the action.[1]
- In February 2008 the director general of the Commission to Investigate Allegations of Bribery or Corruption (CIABOC) was removed and transferred to the Presidential Secretariat. By the time of writing of this report no permanent director general had been appointed, thus paralysing its work. In August 2008, in consultation with the CIABOC, the president directed the Attorney General's Department to take over all the 'important cases', and to set up a special Bribery Unit in its department. The huge stockpile of cases, incomplete investigations and failed prosecutions of CIABOC were given as justification for this transfer.[2]
- In March 2008 the National Public Procurement Agency (NPA) merged with the Treasury as the result of a presidential directive. This brought the plans of the previous government to establish the NPA as an independent body with powers to supervise all tender processes to the end. As the Treasury is under the purview of the Ministry of Finance, there will henceforth be no independent control of national procurement.[3]
- In May 2008 the president prorogued parliament, thus bringing all activities of parliamentary committees, including the Public Accounts Committee (PAC) and the then

1 Information provided by Dr Arittha Wickramanayake, attorney-at-law.
2 *Sunday Times* (Sri Lanka), 13 July 2008.
3 Interview with M. D. A. Harold, chairman of Transparency International Sri Lanka, 23 May 2008.

effective Committee on Public Enterprises (COPE), which had exposed large-scale corruption in 2007, to a halt. When parliament resumed work in July 2008, two government ministers were appointed to head these oversight committees. This was seen as a violation of democratic parliamentary norms and traditions of oversight committees being headed by members of the opposition, and an attempt to weaken the legislature further.[4]

- As of January 2008 a new Mandatory Code of Corporate Governance for Licensed Banks came into force.[5] The code was set up by the Central Bank of Sri Lanka. The implementation of the code is expected to improve the soundness of the banking system, which is vital to the maintenance of the financial system's stability.
- Following the passing of a new Prevention of Money Laundering Act in 2006, a separate Anti-Money Laundering Authority has been set up, and banks and financial institutions are required to report large-value transactions and adopt 'know your customer' rules[6] and best practices.
- The seventeenth amendment to the constitution, which was intended to re-establish an independent public service, continued to be ignored, leading to a further decline in public confidence in the rule of law and good governance.[7] Moreover, the Constitutional Council, a body created in 2001 to bring about transparency and accountability in public institutions, has not been appointed since its last term lapsed in March 2005. While parliament finally nominated all appointed members to the Constitutional Council in February/March 2008, formal appointments had not been made by the president at the time of writing this report. In the absence of the Constitutional Council, appointments to key institutions are made by the president unilaterally without any scrutiny of the appointees.[8]

Defence sector corruption

Since the abrogation of the Norwegian-brokered ceasefire agreement between the Liberation Tigers of Tamil Eelam (LTTE) and the Sri Lankan government in January 2008, the civil war has intensified further and military spending has reached unprecedented levels. According to the budget proposal for 2009 presented by the president on 6 November 2008, 'security related expenditure to counter terrorism and protect public life and property' has increased from Rs 63 billion (US$500 million) in 2007 to Rs 117 billion (US$1 billion) in 2008.[9] Defence spending will increase again in 2009.[10]

Military expenses are not subject to control by the auditor general, and laws such as the Official Secrets Act of 1955 prevent any irregularities from being investigated. As a result of the existence of a mega-Cabinet (approximately a half of the Members of Parliament are in the Cabinet), effective parliamentary control of executive expenditure has become extremely weak. There is virtually no public oversight of

4 TI Sri Lanka, 'Resign from Chairmanship of COPE & PAC, Urges TSL', press release, 24 July 2008.
5 See www.cbsl.gov.lk/pics_n_docs/09_lr/_docs/directions/bsd/2007new/Direction_No_11_LCBs.pdf.
6 Government of Sri Lanka, 'Central Bank Warns against Unlawful Financial Transactions', press release, 19 February 2008.
7 For further discussion, see www.humanrightsinitiative.org/publications/nl/newsletter_summer_2006/article4.htm.
8 A detailed list of presidential appointments to high positions since 2006 is available in TI Sri Lanka, *The Forgotten Constitutional Council: An Analysis of Consequences of the Non-implementation of the 17th Amendment*, position paper (Colombo: TI Sri Lanka, 2008).
9 See www.treasury.gov.lk/docs/budget2008/speecheng.pdf.
10 Agence France-Presse, 4 November 2008.

military expenditure, and the media are systematically prevented from reporting on it.[11] There is a strong perception, however, that weapons deals are rigged, with key public figures playing a central role.[12]

The controversial multimillion-rupee Mikoyan MiG-27 deal was in the spotlight throughout 2007 and 2008. It involved the Sri Lanka Air Force (SLAF) and the Ukrainian company Ukrinmash, a subsidiary of the Ukrainian government-owned trading arm Ukrspetsexport.[13] The deal concerned the payment of US$14.6 million to offshore company Bellimissa Holdings Ltd, registered in London, for four old MiG-27 fighter jets and the overhaul of four others. The very same aircraft had been rejected by the SLAF in 2000, because of their age. In 2006, however, a much higher price was paid for the same jets, which by then were even older.[14]

Following revelations by the Sri Lankan *Sunday Times*, on 12 August 2007, the government announced the appointment of a parliamentary select committee to look into the deal.[15] With the prorogation of parliament in May 2008, however, the committee was dissolved, and the select committee has not been reappointed subsequently. The defence journalist who revealed the involvement in the deal of the then Sri Lankan ambassador to Moscow, a cousin of a powerful politician, received threats and subsequently withdrew from following up his investigation.[16] Investigations by the CIABOC were also halted in February 2008 with the removal of its director general.[17]

In a similar pattern, just a day before the MiG-27 deal was signed in July 2006, a state-owned company, Lanka Logistics & Technologies Ltd, was set up to procure all military goods and services. This arrangement allows the government to hold the monopoly over the procurement of all military hardware for the security forces and the police, and effectively debars the private sector from dealing with the government on any of the military items listed in the regulations.[18] In the absence of a tendering process and given the high secrecy for purchases, the final say on military procurement will remain in the realm of a select handful in the state-owned company. Allegations of corruption and fraud in connection with Lanka Logistics have contributed to the further erosion of public confidence in the government.[19]

VAT fraud

Tax fraud is widespread in Sri Lanka. Capacity problems in tax administration, the coexistence of parallel regimes and the existence of legal provisions enabling the Board of Investment (BOI) to override Inland Revenue and Customs laws in granting tax concessions provide an enabling environment for fraud and corruption at the expense of the Treasury.[20]

A highly publicised case in 2007 was the VAT (value added tax) scam, a blatant case of collusion between the private and public sectors. This scam, first revealed by Sri Lanka's auditor general in 2005, is Sri Lanka's – and probably Asia's – biggest alleged tax scandal, involving the loss

11 Independent reporting is discouraged by means of verbal threats and physical assault on journalists and their relatives. See www.rsf.org/print.php3?id_article=20798.
12 See www.business-anti-corruption.com/normal.asp?pageid=352.
13 *Sunday Times* (Sri Lanka), 12 August 2007.
14 *Sunday Times* (Sri Lanka), 19 August 2007.
15 Ibid.
16 See www.wsws.org/articles/2007/oct2007/sril-o08.shtml.
17 Sunday Times Online (Sri Lanka), 24 February 2008.
18 *Sunday Times* (Sri Lanka), 14 October 2007.
19 See www.indi.ca/2007/10/the-corruption-of-war/; *Sunday Times* (Sri Lanka) 6 May 2007.
20 See go.worldbank.org/T7A1VI8GH0.

of more than Rs 4 billion (approximately US$40 million) in taxes between 2002 and 2004.[21]

In January 2008 eleven leading Colombo businessmen, mostly involved in the garment trade, and two officers at the Income Tax Department were charged with the criminal misappropriation of Rs 4 billion accruing from VAT, by producing false documents.[22] In Sri Lanka, exporters can claim a VAT refund (12.5 per cent of the export value)[23] from the Inland Revenue Department (IRD) by proving costs of production and investment. A report by the former auditor general, Sarath Chandra Mayadunne, in August 2007 found that twenty companies had defrauded the IRD of Rs 3.6 billion,[24] using fictitious documents fabricated in support of non-existent exports. All the 235 refund cheques had been collected from the Tax Department by the same person, either on the day the cheques were written or a day or two afterwards. The cheque collector had also allegedly used thirteen National Identity Cards with different numbers, all of which were later found to be false. Of the companies indicted, sixteen were found to have declared exports valued at Rs 20.5 billion without having made any exports whatsoever. The four other companies had declared exports valued at Rs 5.6 billion, but the actual exports confirmed by the export entries amounted only to Rs 0.3 billion, or 6 per cent of the declared amount.[25]

A report by the Public Accounts Committee launched in November 2007 found that the IRD had also entertained VAT declarations from two bogus companies in 2004. The report noted that the computer system of the IRD had been manipulated so that two VAT assessments amounting to more than Rs 200 billion did not appear on the computer screen for control and audit. Furthermore, the report found that 183 out of 235 documents relevant to the refunds had gone missing.[26]

Finally, in January 2008 a presidential commission tasked to investigate the fraud discovered another large-scale VAT fraud, to the tune of Rs 50 million, committed by a polythene manufacturer. This company also submitted falsified documentation on export production to obtain VAT refunds.[27] While the court case continues, many important suspects and witnesses have left the country.[28]

Successful initiatives by the private sector

In January 2007 the Institute of Chartered Accountants of Sri Lanka (ICASL) and the Securities and Exchange Commission of Sri Lanka, in consultation with the Colombo Stock Exchange, started a joint initiative with a view to formulating standards on corporate governance for mandatory compliance by companies listed on the exchange.[29] These standards were incorporated into the 'Listing Rules' of the exchange in April 2007. The standards were formulated by a select committee, which took account of corporate governance standards in several jurisdictions, including the United Kingdom and

21 See asiatax.wordpress.com/2007/12/02/sri-lanka-billions-in-vat-frauds-pac/. While the auditor general's report of 2005 is not available electronically, the 2006 report can be downloaded at www.auditorgeneral.lk/reports/English/Annual%20Reports%20_2006_English.pdf.
22 *Sunday Times* (Sri Lanka), 27 January 2008.
23 Ibid.
24 *Daily News* (Sri Lanka), 30 November 2007.
25 Corruption Watch (Sri Lanka), 26 August 2007.
26 *Daily Mirror* (Sri Lanka), 30 November 2007.
27 *Lankanewspapers.com* (Sri Lanka), 26 January 2007.
28 Interview with J. C. Weliamuna, attorney-at-law and executive director of Transparency International, 16 June 2008.
29 See corruptionwatch.ard-acp.com/index.php?q=2&t=resource&id=82.

the United States. They relate to the minimum number of non-executive and independent directors, the basis for determining 'independence', disclosures required to be made by listed companies in respect of its directorate and the minimal requirements to be met by listed companies in respect of the audit committee and the remuneration committee.[30]

In December 2007, the Central Bank of Sri Lanka introduced a Mandatory Code of Corporate Governance for Licensed Banks in Sri Lanka.[31] The code has been designed as a series of rules based upon fundamental principles to promote a healthy risk management framework for banks, with accountability and transparency being achieved through the policies and oversight of the boards of directors. The code regulates the responsibilities of the board and its composition, and puts up criteria to assess the fitness and propriety of directors, appointment mechanisms for board committees and the disclosure of information.[32] Measures are also being taken by them to introduce a similar code for finance companies.

(TI Sri Lanka)

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31 See www.cbsl.gov.lk/info/09_lr/_popups/_2008_new.htm; Central Bank of Sri Lanka, Bank Supervision Department, 'Draft Mandatory Code of Corporate Governance for Licensed Banks in Sri Lanka', press release, 7 December 2007.

32 See www.cbsl.gov.lk/pics_n_docs/09_lr/_docs/directions/bsd/2007new/Direction_No_11_LCBs.pdf.