

Corruption in Montenegro
Untangling the Knot

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Abstract

Corruption in Montenegro exists on various levels. The focus of this paper is high level corruption, particularly conflict of interest cases regarding privatization processes, spatial planning and the procurement of public contracts. The reason for this focus is that the abuse of power by the government is one of the largest obstacles to creating a democratic environment of trust and a society structured around the rule of law. These are the primary areas where the government of Montenegro continues to exert inappropriate influence. The first section of the paper will analyze the origins of corruption and attempt to simultaneously provide a sense of the systemic nature of corruption in Montenegro. The second section will outline some of the most pertinent elements of present day corruption practices. The third section will address some effects that corruption has in Montenegro; politically, economically and socially, and then I will conclude with an outline of the various anti-corruption strategies in place, including the proposed initiatives for the upcoming years.

It is my goal to demonstrate that tackling corruption is a multi-faceted undertaking, requiring the combined efforts of the government, civil society (NGOs and the media) and the international community. Corruption is not simply a fundamental quality of Montenegrin politics. Corruption is also one of the elements that shapes the way citizens understand their government. It must be realized that corruption is not only an obstacle to achieving the tangible statistical expectations required for European Union (EU) membership. Eradicating corruption is also an obstacle to forming a political culture of trust, and the civil society that is required for a functional democracy.

Introduction

Following the referendum on independence in May, on June 3rd 2006 the Parliament of Montenegro officially declared the status of Montenegro as that of an independent country. In the subsequent months the Prime Minister Milo Đukanović-- who had led the country in some form since his appointment in 1989--resigned. The first elections of the newly independent state were held in September 2006. The outcome was a majority in Parliament for the incumbent party, the Democratic Socialist Party (DPS), and the appointment of Zeljko Sturanović as Prime Minister. Sturanović, the former Minister of Justice, was confirmed along with his new government in November.

With the question of independence resolved, the rhetoric of the new government has already begun to shift towards the goal of EU membership. Recognized by both the government of Montenegro and the international community as a target issue, problems relating to organized crime and corruption will be one of the largest, and perhaps most difficult tasks of the coming years. This paper will attempt to describe the conditions of corruption specific to Montenegro, and demonstrate how they pose a significant obstacle to the ambitions for European Union (EU) membership and further democratization. This is not intended to be a thorough economic analysis of corruption and its mechanisms, because such an analysis is not feasible even by the bodies responsible for conducting studies of corruption specific to Montenegro. Instead, this study will examine corruption as a lens for viewing Montenegrin political culture. Corruption is a defining element of the political character of Montenegro, and thus will be viewed not only as an obstacle to EU integration but also as it effects the operation of the newly independent state.

Corruption in Montenegro exists on various levels. The focus of this paper is high level corruption, particularly conflict of interest cases regarding privatization processes, spatial planning and the procurement of public contracts. The reason for this focus is that the abuse of power by the government is one of the largest obstacles to creating a democratic environment of trust and a society structured around the rule of law. These are the primary areas where the government of Montenegro continues to exert inappropriate influence. The first section of the paper will analyze the origins of corruption and attempt to simultaneously provide a sense of the systemic nature of corruption in Montenegro. The second section will outline some of the most pertinent elements of present day corruption practices. The third section will address some effects that corruption has in Montenegro; politically, economically and socially, and then I will conclude with an outline of the various anti-corruption strategies in place, including the proposed initiatives for the upcoming years.

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Methodology

The research conducted for this paper was obtained through both primary and secondary sources. All primary sources were gathered in the form of interviews conducted in Podgorica, Montenegro. Information acquired through interviews will be treated as opinions that contribute to shaping the picture of Montenegrin politics and civil society. Additional research was conducted in attempt to double check any specific data that was obtained through interviewees, and where confirmation through a second source could not be obtained the facts will be cited to the primary source they were obtained from. This data, however, should not be disregarded because all of the sources interviewed were official representatives of NGOs or government agencies which are conducting the research themselves. In this way, the information obtained in the interviews was a spoken version of documents, which in some cases were not attainable either because they have not been published yet or are not accessible in English.

Corruption is a very difficult phenomenon to measure and consequently to assess. The inability to obtain some materials in English and the sensitive nature of some topics, particularly those regarding access to information about legal proceedings and government officials must be recognized. I will therefore present data as opinions, public perceptions, or critiques held by the civil sector where applicable. This, however, should not generate the assumption that all claims are merely opinion or that because a second source was not available indicates that the claims are not legitimate. Instead I ask that the collection of information presented be viewed simply as an attempt to generate a multi disciplinary picture of corruption in Montenegro, including the problematic nature of truly measuring and assessing its nature.

Introduction to Corruption

In Montenegro's Program for Combating Organized Crime and Corruption,¹ corruption is defined as "any form of abuse of authority for personal or collective gain, whether in the public or private sector".² The explanation goes on to clarify that there is no clear legal definition of corruption, however "conventionally the term has implied: infringement of equality in performance of business operations".³ In this way, the definition of corruption assumes that there are certain expectations regarding the equality of opportunity in the system in question. Corruption thus must be understood as an obstacle to the creation of a truly democratic state, in which the ultimate goal is generating an environment of equal opportunity.

Corruption is unique within each political situation it plagues. Some corruption theorists contend that in some ways systems of bribery have incentive properties, and that therefore some corruption can be a good thing. While this may be true on a very simplified and case based level, real increases in efficiency are rare due to the structure which develops as a result of the practices.⁴ For example, corruption in some areas which may be deemed acceptable with regards to efficiency may rapidly spread to other areas. Corruption also unarguably creates an unstable business environment which deters investors, hampers the growth of the economy and consequently reduces legal employment opportunities. So, although a parallel system of bribes may in some ways provide the illusion of efficient transactions, it does not result in a stable environment for economic growth. This reduces the general welfare of citizens and prospects for the improvement of their standard of living. For the purposes of this study, the most important repercussion of corruption is that when it is

¹ Adopted by the government of Montenegro, July 2005

² Program for the Fight on Organized Crime and Corruption, 2006, 5

³ Ibid, 5

⁴ Rose-Ackerman, 1999. 16

ingrained in an economic system it impedes reform and delegitimizes the government to its citizens. The consequences of corruption are far reaching, and as a result the practices must be viewed as they affect all elements of social, economic and political life.

Corruption which occurs on a political level maintains the existence of system where there are incentives for bribery and a lack of legal enforcement. For various reasons grand corruption and petty corruption are generally concurrent phenomena, and corruption at a political level must be curbed to successfully combat other corruption. In addition, corruption of officials is certainly harmful to public opinion. Therefore the fight on petty corruption really cannot be effectively conducted where high levels of grand corruption exist. Grand corruption consists of the abuse of insider information and cutting of deals for the benefit of individuals. Some areas that are particularly conducive to corruption are the procurement of public contracts, the transfer of monopoly rents, and in the process of privatizing industries.⁵

In Montenegro the post-socialist political structure and economic transition have been and continue to be favorable to high levels of grand corruption. A further understanding of the history and political structure are necessary to demonstrate the nature of high level corruption specific to Montenegro.

⁵ Rose-Ackerman, 1999, 27

Origins of Corruption

The current shape of corruption practices in Montenegro is derived from a combination of historical sources. Any understanding of corruption in Montenegro today requires a brief analysis of the last two decades, and particularly the centralized political structure which has been inherited from socialism. The socialist legacy generates a mentality where one party rule is acceptable. In many ways, this attitude is still present, demonstrated by the effective political monopoly of the DPS for the last 17 years. Under the socialist system, however, there was at least some basis of rule of law. Limitations on freedom of speech and opposition existed and the decision making of officials was generally independent of the legislation, but there was at least some system in which criminal offenses were prosecuted and punished.

The basic foundations of rule of law were badly hurt by the sanctions imposed by the West during the Balkans War of the 1990s. Sanctions were imposed first by the UN in 1992, and later by the US beginning in 1994. They were lifted completely in 1996 after the Dayton Accords were signed. While under sanction, the structural weaknesses of this socialist government were then compounded by smuggling, which expanded the grey economy that now permeates Montenegro. The time of sanctions allowed for a vast amount of nontransparent activity by many actors, including both members of the current government and the stakeholders of many large firms. The legal system which had existed during socialism began to erode. The first phases of privatization coincided with this nontransparent period resulting in irresponsible decision making which remains an area of public scrutiny. The absence of rule of law in this era generated high rates of the use of political power and insider information to acquire monetary benefits.

The Socialist Legacy and Sanctions

The pertinent history of corruption in Montenegro begins with a brief analysis of the political structure emanating from the period of socialism, because inheritances from this era are evident in the way the state is still operating. The most relevant factors are that socialism generates a society in which there is a high level of faith in the state and the government is generally the sole provider of information. In a centrally planned system the regime in power dictates all economic activity. There is generally little legal basis for decision making.

It is under these political pretenses that Montenegro faced the sanctions of the 1990s and has begun to privatize industry. It is under these modes of operation that those with power and connections have thus far been able to take advantage of smuggling operations and privatization procedures for personal monetary gain. The existing socio economic environment of Montenegro remains a result of the economic activity which took place during the 1990s and the destruction of the rule of law. The current political opinion of the war time economic activities in the young democracy of Montenegro is that such practices are fundamentally undemocratic. This was the beginning of a new era where political meddling in economics has become a norm.

It was in the previously described atmosphere of communist type autocratic rule that Milo Đukanović was put into power by Slobodan Milošević in 1989. He was appointed as part of a purge of the old communist leadership designed to solidify Milošević's power over the "Greater Serbia" he was attempting to design. From 1989 to 1992 Montenegro was an integral part of the operations of the Serbian forces in the Balkans War. Over the next few years, however, the union with Serbia began to cause Montenegro more harm than it had the capacity to handle, and Đukanović began to shift his alliances and cooperate with the West. After the Dayton Agreement it

became clear the Đukanović's allegiance no longer lay with Milošević, and he finally broke with him after the widespread protests throughout Serbia in 1996. This schism was the beginning of a long battle for independence waged by Đukanović and others. In these years Đukanović and Montenegro began to gain international democratic credentials by assisting in Western strategy and providing refuge to the Serbian opposition to Milošević. Montenegro began to receive large sums of Western monetary support as a symbol of their collaboration, becoming the second highest recipient of US aid per capita after Israel by 2001.⁶

Despite this facade of democratization, severe damage was done to the future of Montenegrin democracy by the period of cooperation with the Milošević regime. There are two significant processes that took place during this time that redefined the distribution of wealth and solidified the authority of those in power. These two phenomena are the large amounts of smuggling under sanctions, and the privatization of business that occurred during this incredibly nontransparent interval.

During the sanctions of 1992 to 1996, Montenegro responded as any state with an economy under duress might and began illegally trading and distributing goods. Because of the large coastline, the geography of Montenegro was particularly conducive to such activity. The illegal trade consisted most heavily of cigarettes and petrol, and recipients of illegal distribution included Serbia, Hungary and Albania.⁷ Many countries at war and under sanctions develop similar underground economies. While not all politicians were involved in these illegal activities, the individuals who orchestrated the smuggling held significant political power. The consequences are two-fold. A wealthy political elite was created, and public perception of that state was molded to accept this type of economic regime. The legacy of one-party power that

⁶ American Enterprise Institute for Public Policy, 2001, www.aei.org/research.nai.publications.pubID17724

⁷ Vejvoda Interview, 2006.

came from socialism was layered with an acceptance of illicit trade, bribery and lying as a norm for economic interaction. The rule of law was consequently destroyed, leaving a very powerful economic elite without a legal system that could effectively monitor their actions.

In November 2003 the Italian government issued arrest warrants for three Montenegrin men associated with international cigarette smuggling. All three were high profile businessmen. These arrest warrants were based on an arrest request document issued in Italy in June 2003 which included the names of eleven men who were allegedly involved in cigarette smuggling in the 1990s. Among the eleven names was then Prime Minister Milo Đukanović. This example serves to illustrate that smuggling operations were allegedly being orchestrated by some of the highest level government officials. Despite lack of prosecution and consequently evidence of those involved, it is a commonly held perception that politicians in Montenegro became very wealthy due to illegal activities associated with smuggling during times of sanctions.

It is clear that the duration of sanctions resulted in high levels of criminalization of society and economic activity.

“Where the powers that be, the secret services got involved in all sorts of illicit trading of cigarettes and other things because the country was under sanctions and so there was a kind of knot that was created which subsequently when Milošević fell had to be untangled”.⁸

In this way the sanctions which the West imposed in the 1990s resulted not only in the immediate impoverishment of civilians, but also in long term consequences for the infrastructure of Montenegrin political society. This knot remains to be untangled.

The lingering cost of the sanctions period is that both political and economic power is concentrated, generating a system in which the process of modernization is

⁸ Vejvoda Interview, 2006.

ridden with corruption. The wealthy are getting wealthier, the poor are getting poorer, and the prospects for developing a democratic political culture are being severely threatened by the lack of political legitimacy and the continued abuses of people in positions of political power.

The political actors who have gotten very rich as the result of illegal activity remain in power. Until Đukanović's recent resignation, he maintained a level of political support based on his pro-independence battle. There are many speculations as to the reasons for his resignation. Some believe that he recognizes that he lacks democratic credentials because of his long duration in power, and is resigning in to give his party the appearance of legitimacy. With the increased scrutiny of the international community that comes with EU membership negotiations, it may be that Đukanović thinks it will be better for his party and the country to have a clean slate. Others contend that with the pressures of the Italian courts he would like to be a bit less in the public eye. Many believe he is still pulling strings and running the show from behind the scene.

Whatever the reason is for his recent resignation, many citizens remain skeptical because he is only the first of many people who would need to step down in order to facilitate a real turnover of power. The reshaping of Montenegro's political culture into one that consists of true democratic dialogue will not happen overnight, and will be an arduous process. It has begun with the referendum on independence, the introduction of a new political party, the drafting of a new constitution and the beginnings of an active civic sector. There are many tasks to undertake, and perhaps one of the most important will be the continued fight on corruption.

Montenegrin politics are still largely dictated by a highly centralized and bureaucratic administration. Many politicians engage in multiple professional

enterprises in both the public and private sector. Due to the political history of Montenegro and the small size of the country, this type of multi tasking is commonly accepted by the public. In addition, the majority of Montenegro's public officials have been dominating the political arena since prior to transition. It is thus not only the same small number of people engaging in politics and business, but they are the same people who have been in these roles for nearly two decades.

For the last decade the opposition has had little civic agenda, and has been strictly defined by the independence question. Until 2006, the opposition coalition consisted solely of those who were in favor of maintaining the union with Serbia. The question of identity and nationality has dominated the political rhetoric due to the critical issue of country status, and opposition to the majority coalition really has no history in any other form. As of the May 2006 referendum on independence, the political structure has seen only slight changes. The dialogue is still dominated by this question of national identity in regards to the composition of the new constitution. There is still substantial contention over whether the constitution will detail a civic state or a nation-state. In this way the debate over national status will continue, despite the resolution of the independence status.

The shift in rhetoric for Montenegro's political elite will likely be gradual, and largely defined by the ambitions of EU membership. There has already been a hopeful shift signified by the addition of a new party, The Movement for Change (GzP),⁹ which entered Parliament in September 2006 with eleven seats out of eighty-one. It is anticipated that with the drafting and ratification of the new constitution, there will be a growth of political dialogue founded in concrete social and economic matters.

Montenegro, however, is in the early stages of generating a genuine democratic

⁹ The Group for Change is the newest political party which entered the Montenegrin Parliament for the first time in 2006. It was formally the recognized NGO the Movement for Change, which worked in a number of policy areas, one of which was examining corruption.

political discourse. For now political society remains subject to the whims of the DPS and the centralized power of a political and economic elite.

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Corruption Today

In 2004 the Montenegrin government first recognized that corruption exists, and in the subsequent years with the pressure of the international community has come to vocalize that it is a substantial problem. Today, the nature of corruption in Montenegro is all encompassing. Data for 2005 indicated that the grey market generates thirty percent of GDP, and constitutes twenty-seven percent of total employment.¹⁰ There is corruption on all levels of the judiciary; police, prosecutors and judges. There is petty corruption¹¹ consisting of both bribery and more sophisticated negotiations in areas including health care and education. Research on petty corruption, however, is sparse as it is a very difficult phenomenon to measure and assess. There is therefore no real understanding of how petty corruption is operating in Montenegro based on studies or analysis of the situation.

The largest areas in which grand corruption¹² remains a problem are the ongoing process of privatizing industry, the procurement of development contracts and the subsequent regulation of construction. In these areas there is some analysis, primarily conducted by the Network for the Affirmation of the NGO Sector (MANS)¹³ and the GzP. The long term consequences of the way in which privatizing and infrastructure development are carried out will be critical for the future economic and political development in Montenegro. In this paper, examination of illegal activity in

¹⁰ 2005 World Bank Report, 2005, 58.

¹¹ Petty corruption is that which does not occur among high level officials and does not pertain to large projects. Petty corruption includes bribes in everyday interactions, inappropriate gift giving and evasion of taxes and other regulations on an individual scale.

¹² "Grand corruption occurs at the highest levels of government and involves major government projects and programs. Governments frequently transfer large financial benefits to private firms through procurement contracts and the award of concessions". Rose-Ackerman, 1999, 27.

¹³ "MANS is a non-governmental organization that supports the development of Montenegro and poverty reduction by promoting good governance and strengthening citizen's participation in the decision making process" – excerpt from MANS mission statement

privatization and development will serve as examples of the specifics of how high level corruption operates in Montenegro.

The Program for Fighting Corruption and Organized Crime cites that in data from 2004, the public of Montenegro expressed that they perceive corruption as the largest social problem, followed by poverty and unemployment.¹⁴ The three categories are inextricably linked. Petty corruption is an accepted part of basic economic interactions.

“For people it is completely normal to go, you know, to a doctor, and to bribe someone in order to get a bed in a hospital or something like that. I am not saying that they like it, obviously they don’t, but it is widely accepted because it is present for quite a long time. And no one is really doing anything about that”.¹⁵

Over the years, however, very few criminal proceedings on cases of corruption have been brought forth and prosecuted. The Montenegrin judiciary is generally inefficient. Many cases are just postponed until they expire, with the example that in 2001, 152 general cases expired in the Basic Court of Podgorica.¹⁶ Prosecution of high level corruption is an even rarer occurrence. Thus far only one case pertaining to conflicts of interest in privatization procedures has actually been accepted by the state prosecutor. It is the case pertaining to the privatization of the Yugo Petrol company. Currently, the two accused men remain in their positions because at the time that the case came to trial they could not be present because they were both abroad negotiating on behalf of their company. The GzP began working on this case in 2003, brought it before the state prosecutor in 2004, and now in 2006 the state prosecutor’s office has finally begun working on the case. Both men remain high level members of the Privatization Council, and continue to be the key players in the process of privatization in Montenegro.

¹⁴ Program for Fighting Corruption and Organized Crime, 2005, 6

¹⁵ Vanja Čalović Interview, 2006

¹⁶ MANS- “Corruption in Montenegro”, 2006

The issue of judiciary reform has been identified, and is being tackled on multiple fronts. The proposed reform, however, has yet to be implemented in an effective manner, and thus can not be the topic of analysis. Instead, I will present the basic problems pertaining to the judiciary as they are connected to and promulgate the continuance of high level corruption.

The Judiciary

It is commonly recognized that judicial and police reform is a critical task which must be undertaken both to combat corruption and to become eligible for EU membership. One of the few areas of consensus among the individuals I interviewed was that in most areas the legislation exists, but is not being properly implemented. The Minister of Interior has stated publicly that there is corruption in the police, prosecution and judiciary. The Action Plan for the Program for Fighting Organized Crime and Corruption¹⁷ outlines new legislation and a number of strategies for combating corruption in the judiciary. The actual implementation of these reforms and their effectiveness for deterring political corruption will largely be dependent on the shape which the judiciary takes in the new constitution, which is currently being drafted.

Increased autonomy of the judiciary is a target structural issue. There is currently extreme politicization of judges, on the highest levels. Judges are nominated by the Judicial Council of Montenegro, which is composed of experts from the judiciary and the Association of Lawyers of Montenegro. The Parliament, however, still exercises a significant veto power over all nominations, and because of the one-party nature of the Parliament this results in very high levels of politicization in the judiciary. The current President of the Constitutional Court was previously the

¹⁷ Adopted in 2006.

president of the executive board members of the majority ruling party the DPS, and the current President of the Supreme Court in 1997 validated almost 14,000 names on election lists in the three days before the presidential election. In addition to this nomination process, the government has control of the distribution of housing benefits for judges.

Within the judiciary, there are extreme inefficiency problems rooted both in structural problems and insufficient salaries. Lack of capacity is also a substantial obstacle to prosecution. Many cases are not heard, and many important cases are extended until they are expired to avoid reaching a decision. In addition, the monthly salary of judges is too low to be their sole source of income. The consequence of low salaries and politicization of the courts is that people no longer want to be judges. Many judges are resigning to become lawyers where pay is better and there is less pressure to operate illegally in order to gain supplemental income. Similar problems exist for state prosecutors and investigators, particularly on the sensitive issues of organized crime and corruption. The consequence of such low salaries is that people who actually want to change the system without giving in to bribes cannot afford to stay in their positions and do their jobs effectively.

A recent survey of public opinion in Montenegro suggests that in the category of Rule of Law, confidence is particularly low in the area of “Efficiency and Professionalism of the Judiciary”.¹⁸ The survey attributed these problems to corruption within the judiciary, particularly “the influence of ‘untouchables’ on the court proceedings”.¹⁹ The history of one party control in Montenegro and the extreme concentration of wealth have thus far prevented progress in reforming the judiciary. With the goal of EU accession on the agenda, these changes will have to occur. It is

¹⁸ Center for Democracy and Human Rights (CEDEM), 2006, 27

¹⁹ Center for Democracy and Human Rights (CEDEM), 2006, 28

now a question of whether there is real political will to implement new legislation, or whether politicians will continue to evade new laws in the future rounds of privatization and development to a point where the economic damage becomes irreversible.

Grand Corruption: Privatization

“Now the business just changed. Before it was smuggling of oil and cigarettes and things, now it’s with privatization, and selling land and things like that” (Calovic, 2006).

Across post-socialist transition economies, the process of privatizing has been executed using diverse tactics. While it is not within the bounds of this paper to provide a thorough cost-benefit analysis of privatization strategies, it is necessary to provide some background to demonstrate how harmful current procedures in Montenegro are. The general goal of privatizing is to liberate modes of production from the inefficiency of central planning, and generate a business environment characterized by good corporate governance. To breed such an atmosphere requires a combination of effective legislation and privatization programs which create genuinely independent management. Evidence from the last decade suggests that the critical element in the success of privatization processes is not exclusively the method, but the degree to which firms are transformed into independent decision making entities.

In the case of Montenegro, privatization processes have maintained a problematically close relationship between industries and the government. As of 2005 the Privatization Council of Montenegro has reported that 60% of businesses have been privatized, and additional key industries have been privatized since.²⁰ Unfortunately, this transfer of ownership does not necessarily indicate a shift towards

²⁰ 2005 World Bank Report, 2005, 57

competitive market practices. The reason for the still uncompetitive business environment in Montenegro is two-fold. First, much of privatization has been jaded by the exchange of insider information and dictated by political interests. Tender processes are not truly competitive and therefore do not result in carefully selected ownership. The repercussions of the continuously close relationship of government and enterprise are various, but they clearly contribute to the persistence of an unfavorable environment for certain types of foreign direct investment (FDI) and hindering of other factors that would enhance the general economic prosperity of Montenegro.

Second, certain key firms are continually able to evade regulation due to lack of monitoring and political favoritism. Many firms continue to underreport activity in order to evade taxes and regulations, and are therefore partially operating in the grey economy. In 2003 Montenegrin firms reported that they perceived that their competitors were only reporting seventy percent of their business activities.²¹ This perception and its degree of reality are due to poor law enforcement and regulation by government offices. Evasion of taxes, environmental standards and other regulations further undermines the potential for generating an environment in which business is conducted most efficiently. The repercussions of this type of economic activity are continually high unemployment rates and the reinforcing of the informal sector as a norm for economic activity. This lawlessness of firms poses a significant obstacle to generating a democratic society characterized by the rule of law and equal opportunity.

With this basic understanding of how businesses are continuing to suffer from inefficiency, I will now provide an examination of the specifics of privatization in

²¹ *ibid*

Montenegro. The goal is to demonstrate the continuing prevalence of the exchange of insider information, lack of transparency, and violation of legal regulations. This examination should make it apparent how dominant some political influences remain in the public sector.

Privatization in Montenegro

The war of the 1990s brought the period of sanctions, non-transparency, erosion of the rule of law and simultaneously the beginning of the arduous process of privatization. Privatization in Montenegro represents one of the principal areas where insider information has been and continues to be abused by the highest level political officials. One basic problem is there is no single strategy for transferring ownership, and the processes have been conducted using a variety of schemes. The trouble with privatizing this way is it allows a great deal of flexibility for those in power to influence the sale of industries. The manipulative abilities of those in power are enhanced by the political nature of Montenegro where obvious violations of conflict of interest legislation by those on the Privatization Council are common knowledge.

In many large cases, most notably the aluminum industry, there are allegations that insider information was abused and deals were made in the background. Marija Novković from the Directorate for Anti-Corruption Initiatives²² explained that

“It is the obligation for Privatization Council to comply with the Law on Free Access to information, and respond to requests for information which are made when they are not regarded as state, business or military secrets”.²³

Despite these purported goals, corruption in privatization continues to be a problem with questions of money laundering and conflict of interest prominent targets of debate. Information about both past and current privatization are hypothetically

²² The Directorate for Anti-Corruption Initiatives is the government body responsible for coordinating corruption prevention strategies.

²³ Marija Novković Interview, 2006.

available but in practice confidential, despite the Law on Free Access to Information passed in November 2005.²⁴

Privatization in Montenegro is being conducted using a variety of methods. The law for privatizing industries outlines that privatization will be conducted using “1) sale of shares 2) sale of business assets of the company 3) issue of the shares to the employees in the company 4) exchange of shares for the privatization vouchers 5) subscription of new shares by capital increase 6) debt - equity swap 7) joint venture in which the company under privatization invests its business assets 8) combination of methods from items 1 to 7 or 9) other modes stipulated by this law and privatization plan”.²⁵ In effect, there is no set rule for the way in which privatization of industries is executed, and there is significant space for the discretion of politicians to be invoked. Designing the process in this way is inherently problematic and further complicated by the array of political and business positions held by many of the actors involved in the procedure. Most notably, the tender commissions are often disregarded, and instead personal interests dictate ownership decisions.

The Privatization Council of Montenegro has been challenged by the NGO sector as being in direct violation of the Constitution with regards to the Law on Conflicts of Interest.²⁶ In 2005 MANS submitted a request to review the decision which determined membership on the Council. The decision was made by then Prime Minister Milo Đukanović also President of the Privatization Council. Additional members on the council included then Ministers of Finance, Economy and Tourism. MANS complaint was submitted based on two violations. The first is that the members of the council are public officials because they were appointed by the government, in violation of Article 93 of the Constitution which states that “...a

²⁴ See appendix

²⁵ “About Privatization” <http://www.agencijacg.org/englishver/homepage.htm>

²⁶ MANS, “Montenegrin Privatization process violates Constitution”, 2006

member of the Government cannot perform any other public function”. The second charge was that there is not substantial regulation of power because the action of the body is subject to review by the government. The claim of MANS was that regulation by the government is pragmatically worthless if the President of the Council is also the Prime Minister.

The composition of the council has not changed significantly in the last year. The current Vice President of the Council for Privatization is also the president of the Development Fund which takes part in the selection of companies for privatization. He is also member of the boards for both AD Plantaze and the Lovcen Osiguranje Insurance Company, two large companies that have been selected for privatization by the Council and the Development Fund.²⁷ This is the same man who is being charged in the Yugo Petrol case. Among the numerous charges against him are allegations that he has violated the Law on Public Procurements and the Law on the Conflict of Interest.²⁸ In the last year, the same accused man was responsible for amending the Law on Public Procurements and coordinating the implementation at of the Law on Conflicts of Interests. He was also responsible for development and enforcement of anti-corruption legislation. Montenegro is a relatively small country in which many elected representatives also hold positions in the private sector. Although only a relatively small amount of these individuals are involved in the types of abuses illustrated here, the effects of these abuses are considerable because they are historically the individuals with the most political power.

In addition to the conflict of interest abuses, there are problems derived from the lack of transparency of privatization contracts. Currently, all privatization contracts are considered business secrets so the public has no idea who is sold what, at

²⁷ MANS “Corruption in Montenegro”, 2006

²⁸ See appendix for both laws

what price, and who is involved in the decision making process. This is another situation that has been challenged without much success. MANS requested information pertaining to privatization contracts but access was denied. The courts deemed this refusal illegal, but upon a second request the information was again withheld on the premise that the contracts are business secrets. MANS has since issued a official query as to whether the contracts are as whole business secrets. If this is the case they argue that there are number of high level government officials who should be prosecuted for releasing some details of these secrets to the public in speeches about privatization. This method of trying to corner the government within the bounds of the different legislation seems to be one of the only ways of forcing adherence to the law.

These types of legal violation involving both conflicts of interests and withholding of information are indicative of the way in which much of privatization has been carried out thus far. In addition to the harm caused to the rule of law, the redistribution process has not been consistent with goals of generating a competitive market environment. Overall FDI to Montenegro has increased, but Montenegro remains the lowest per capita recipient of FDI in the region.²⁹ Most importantly, the actual nature of foreigners involved in enterprise remains the topic of much public scrutiny, with large concern over the presence of certain Russian interests and money laundering schemes. Although the legislation is in place, in reality select firms remain immune to real regulation and investigation of illegal activities. The mechanisms for monitoring obedience to privatization contracts are in practice non existent, and the prosecution of legal violations in privatization remains limited by the power of the government over the judiciary.

²⁹ 2005 World Bank Report, 2005, 58

Case Study: Privatization of the Aluminum Industry

Kombinat Aluminijuma Podgorica (KAP) is the national aluminum production plant, and Montenegro's largest company. It therefore represents a significant percentage of the country's GDP, and was one of the most strategically important industries to privatize. The official strategy for the privatization of KAP states that

“The target of the privatization of KAP for the Government of Montenegro is to ensure survival and long term development of Company. The objective is to attract a solid investor who will secure the position of KAP on international markets, improve its competitiveness and allow rehabilitation of production”.³⁰

Examination of the process by which KAP was privatized illustrates failure to meet these standards for successful transfer of ownership. From the initial process of issuing the management contract to the Swiss Company Glencore to the final sale of majority shares to the company Rusal, the privatization of KAP has been the object of multiple alleged violations of the law. In addition, there are suspected abuses of the fundamental rights of the citizens with regards to electricity pricing.

In 2004 criminal charges were filed by the Group for Change (GzP) against four individuals involved in the contracting of the Swiss firm Glencore for management of KAP in 1998.³¹ The document filed by GzP contains a number of charges regarding violations of the procedures outlined for privatization of KAP, and a lack of transparency in the process. One charge is that although the Privatization Plan for KAP states that the process shall be conducted solely by tender,³² the Management Contract was signed with Glencore after very brief direct negotiations. The charges also questioned the nature of the relationship between the company and the government, since Glencore subsequently nominated the Montenegrin official responsible for negotiating the contract as the director of KAP. The transaction

³⁰ Privatization Strategy for Kombinat aluminijuma Podgorica, 2004.

³¹ Criminal charges filed by Nebojša Batrićević, August 9, 2004

³² Privatization Strategy for Kombinant Aluminijuma Podgorica, 2004

suggests that there was some sort of background deal made which resulted in the quick decision. Another charge that would void the contract is that Glencore had yet to prepare the business plan required by law. The GzP charges suggested that the Management Contract with Glencore was invalid and the government should immediately void the contract and begin a new process through a tender committee. The contract was not voided.

The violations in the KAP privatization continue with violations of the Law on Conflict of Interests by the current Minister of Economics (then Vice Prime Minister). The Economics Minister is the President of the Board of Directors of EPCG (the national power company). He was also the President of the Tender Committee for the privatization of KAP, the company which is the number one consumer of energy in Montenegro. One government strategy used to attract buyers for KAP was to set lower electricity costs so the future owner would benefit from reduced production costs. MANS reports that both EPCG and KAP hired firms to assess electricity prices for KAP, and the serving President of the Tender Committee chose the lower of the two prices. This decision was highly irresponsible, however, in light of his obligations to EPCG as the President of the Board of Directors.

MANS alleges that the consequence of this decision will be the deepening of the energy deficit, and the hidden costs which will be distributed to the public in the form of higher prices for electricity. MANS reports that after the last year of operation the deficit has become so large that EPCG is threatening to shut off public electricity for certain hours during the day. KAP continues to pay only one third of what the general public does for electricity. The Government of Montenegro's acceptance of the new pricing on electricity condones the evident violation of The Law on Conflict of Interests committed by the President of the Tender Committee.

KAP also serves as an example of how privatized firms are able to continuously operate without adequate monitoring of their behavior. When MANS investigated KAP's report of investments related to environmental standards, they received two different official documents from the Ministry for the Environment and the Agency for Restructuring the Economy. MANS subsequently submitted this information to the state prosecutor, and as a consequence the Agency for Restructuring the Economy will no longer give them access to any information. This is not simply a violation of the Law on Free Access to Information, but also demonstrates the defensive behavior that government agencies exhibit when they are challenged in sensitive areas. Although it is natural and acceptable to dislike being critiqued, to revoke citizens' legal right to access information based on their persistence is certainly not conducive to generating a democratic society.

Corruption in Privatization: Conclusion

The state prosecutor has not yet followed through on any of the cases that have been filed by GzP and MANS. Although the process of privatizing industry is close to complete, the business environment of Montenegro remains hampered by the legacies of insider deals in privatization and current regulations of firm operations. To generate a truly competitive business environment which is conducive to stable growth, the government of Montenegro needs to take significant steps to separate itself from the private sector. The future prosecution of abuses of the Law on Conflicts of Interests will be vital to creating an environment in which individuals are no longer able to tamper shamelessly with public sector transactions. This type of regulation applies not only to past violations in the privatization processes, but also to continued exploitation in spatial planning and procurement of public contracts.

Corruption in Development: Contract Procurement and Regulation of Construction

The last five years of corruption in Montenegro have been characterized by privatization intransparencies, but another current and ongoing forum for grand corruption is in land development. The process of privatizing is nearly complete, but the process of developing has just begun. Because Montenegro is a modernizing country, for at least the next two decades there will be rapid growth in infrastructure, and the way in which public contracts are allocated will be a central issue. The 2006 Report on Montenegro by the European Commission recognizes the significance of this issue noting that in 2005 the value of public procurements in general amounted to about twelve percent of GDP.³³ The economic as well as environmental future of the country will be affected by the way that contracts are distributed and development is conducted. Past development projects suggest the existence of illegal arrangements, and it will be detrimental if the current high levels of corruption in procurement of contracts and lack of regulation of projects continue.

A recent report by MANS alleges that in Podgorica there are over 20,000 buildings which were constructed unlawfully.³⁴ As a proportion of total construction, it is estimated by MANS that in the last decade approximately eighty percent of construction projects have been conducted illegally.³⁵ The illicit development of lands relies on a variety of violations. The first problem is the lack of transparency in the process for procuring contracts, and the violations of legislation on this level. The procedure for procuring contracts is conducted through an open public tender competition, but these processes have allegedly been wrought with insider deals. The other area of concern is the lack of regulation of construction, and the evasion of taxes

³³ European Commission 2006 Report, 2006, 27

³⁴ MANS, "Corruption In Montenegro", 2006

³⁵ MANS, Corruption in Spatial Planning and Development, 2006

and guidelines. These types of violations generate petty corruption, evasion of environmental standards and higher profits for the law breakers. The violation of environmental regulations is particularly concerning because the future of Montenegro's economy will rely largely on tourism and the preservation of their ecological state.³⁶ A further examination of the interferences in development will further illustrate the nature of grand corruption in Montenegro.

With regards to procurement of contracts, problems arise from preferential treatment of favored companies and the large discretionary power enabling abuse by those responsible for tender processes. Despite Articles Thirteen and Fourteen of the Law on Public Procurement which detail anti-corruption measures and definition of conflict of interests respectively, both varieties of indiscretions remain prevalent.³⁷ One way that preferential treatment is granted is that a tender criterion is defined so that only one company meets the requirements. In other situations a company will submit lower prices and in return receive either direct or indirect payoffs. These come in the form of authorities turning a blind eye to violations in the construction process with regards to the stipulations of the contract, environmental regulations and labor standards. This leads to the proliferation of the second level of corruption in development which is violation of contracts and taxes. Such violations are evident in the differences between contract stipulations and actual construction, documented by MANS in their analysis of spatial planning and development in Montenegro.³⁸

The role of the citizens of Montenegro is also being skirted, despite the legal right provided by the Law on Public Procurement that public debate must be

³⁶ Article 1 of the Constitution of the Republic of Montenegro states "Montenegro is a democratic, social and ecological state". In this way Montenegro's development has been decidedly structured around the pursuit of democratic principles and ecological sustainability. This article is often noted in cases where interests of the environmental future are in question.

³⁷ See Appendix

³⁸ MANS, Corruption In Spatial Planning, 2006

orchestrated before development plans are adopted. Although there are commissions of citizens and experts which review plans, a draft of a plan has never been refused and not one complaint about violations of conflict of interest legislation has been filed. This indicates a lack of real dialogue on the commissions, considering the number of infringements of conflicts of interests that MANS has documented.³⁹ The commissions repeatedly consist of the same people, and plans are clearly being approved with haste. The municipality of Podgorica approved seventy plans from 2005 to 2006.⁴⁰ Considering the complexity of actually obtaining a construction contract, which requires visiting over twenty government offices,⁴¹ it seems likely that the dense bureaucracy is being circumvented to expedite the process of implementing profitable projects. These problems, however damaging, are supplementary to the target issue for this study, which is the conflict of interests apparent in the process of procuring contracts.

Case Study: Podgorica Municipality

The Deputy Mayor of Podgorica Municipality and also owns a number of construction companies. The potential for abuse of power involved in sharing these two roles is made worse by the large discretionary powers granted to the Mayor's office by the design of development planning. By law, the Mayor's office is responsible for drafting decisions regarding the creation and adjustments of spatial planning for his municipality. The Mayor is thus able to change the plans unconditionally, and this is a power that can be easily abused. In this way, the office of the Mayor is easily disposed to exploitation of authority through selection of plans that prefer certain projects of certain construction companies.

³⁹ Ibid

⁴⁰ MANS, "Corruption In Montenegro", 2006

⁴¹ MANS, "Corruption in Montenegro", 2006

Recently, construction companies owned by the Deputy Mayor of Podgorica have been involved in large collective housing projects in prime real estate locations throughout the city of Podgorica. At one point one of his construction projects was halted by inspectors because more floors were being constructed than the plan outlined. To demonstrate the power that lies in the Mayor's office and the ability to manipulate legislation, the Deputy Mayor allegedly ignored the orders and altered the plans to his convenience. The construction continued with little regard of the Inspector's orders, and the plan for that area was subsequently changed to allow the construction of additional floors. To further the image of the tight knit nature of those receiving preferential treatment, two of his close relatives are urban planners in Podgorica and also acting members of the Commission for reviewing urban plans.

Corruption in Development: Conclusion

Conflicts of interests and intransparencies of information regarding procurement of contracts and development regulations are incredibly problematic. In addition to the law evasion and the undermining of public trust there are tangible consequences. The way in which development is conducted will be crucial, particularly for the future of tourism in Montenegro, which relies on the preservation of the ecological endowment of the country. In addition, questions related to money laundering and trafficking of human beings have been associated with some cases of illegal development. Combating corruption and organized crime will require a focus on all areas of corruption in development. For the purposes of generating public confidence in government, the heavily layered duties of public officials must be eradicated.

Consequences of Corruption

A number of the consequences of corruption have previously been alluded to, because it is not possible to thoroughly discuss corruption practices without integrating their repercussions. It is important, however, before discussing initiatives to combat corruption, to clarify the ways in which corruption is damaging Montenegrin social and political culture. The three primary sources of concern caused by corruption practices are the economic repercussions, the effect which corruption has on the future of rule of law, and the hindrance it poses to democratization of society.

The concrete economic impacts of corruption are very difficult to measure because corruption is generally a guarded exchange between two parties. It is therefore impossible to provide a quantitative amount of corruption that exists in a country. The consequence of this illusive nature is that it is also impossible to provide a direct correlation between the existence of corruption and a country's economic tribulations. There is nearly universal consensus, however, that corruption is economically destructive. As was previously discussed the view that some corruption can enhance the efficiency of an otherwise impeded economic system has largely been discredited. The emphasis in international bodies dealing with corruption has shifted towards recognition of the economic harm caused by corruption. Recent reports by The World Bank and the European Commission identify corruption as one of the principle tasks that Montenegro must address.⁴² The consequences of corruption are included in analysis of economic progress, democratization and the rule of law.

⁴² 2006 Report of European Commission and 2005 World Bank Report

The primary conclusion of the 2006 Transparency International “Corruption Perception Index” is the existence of a strong correlation between poverty and corruption. This does not mean that poverty is caused by corruption. It seems both that corruption is more likely in regions where there is extreme poverty, and that the corruption reinforces and often worsens economic circumstances. The IMF’s 2004 Poverty Reduction Strategy Paper correlates the economic elite created during the war through corruption and the large amounts of impoverished citizens that remain today.⁴³

Public perception suggests that many people in Montenegro believe that these gaps are reinforced by the concentration of both political and economic power within a small elite. But corruption is not only the fault of politicians and the economic elite. Corruption must be tackled by dealing with the incentives for corruption which exist in all areas of society, coming both from low salaries and lack of punishment for offenses. The corruption of the political officials is only a piece of the economic dilemma. But because of their economic size and influence, privatization deals and construction programs are certainly a large contributor to problems of restructuring industry and creating employment.

In addition, high level corruption is directly influencing both the ineffectiveness of the rule of law and the level of democratization the society will be able to achieve. The problem posed to establishing rule of law is a relatively straight forward one. When it is a widely held opinion that high government officials are regularly breaking the law and evading prosecution, it does not set a precedent that the legal system is effective. Combined with the inefficiency of the legal system, the risk of penalty is not a means for deterring crime and corruption. Although in the last

⁴³ Serbia and Montenegro: Poverty Strategy Reduction Paper, 2004, 13

few years new legislation has been rapidly introduced, the capacity for implementing this legislation has been slow. Regardless of whether lack of implementation is due to capacity insufficiencies causing slow procedures or direct buy-offs of judges and prosecutors, the effect is that people have little faith in the law. This perception is enhanced by the knowledge that high public officials are engaging in criminal activities and escaping prosecution. The existence and public knowledge of high level corruption therefore reinforces the sense that there is no rule of law, which comes from judicial inefficiency.

The problems which corruption causes for further democratization of society are tied to the way the public views and relates to their government. Recent research conducted by the National Democratic Institute (NDI) collected a variety of very telling statements of individuals on the nature of corruption in Montenegro. The following excerpts represent a sample of the opinions NDI collected from Montenegrin citizens on the issue of corruption.⁴⁴

“There is a lot of crime, and we can expect more of it because those who should fight against it are in bed with criminals” (Female, Berane).

“I think that criminals control this country. At least, that is my opinion. Not criminals directly, but criminals control certain circles. That is what I think” (Male, Tuzi).

“Well, corruption exists everywhere. It is something that is unavoidable. No one can say how much there is because they don’t know” (Female, Bijelo Polje).

“In Montenegro? Nobody” (Male, Herceg Novi).

“But the problem is that because we are a small country it is in some of our traditions, in our consciences; it is passed from generation to generation; you know whose son that is, who’s his father, brother...I mean the problem is in

⁴⁴ Quotations were collected in discussion groups about corruption in Montenegro conducted by the National Democratic Institute. They were then assembled along with analysis in the General Report titled “A Glimmer of Hope- And Expectations”. All participants are identified here, as in the report, by their gender and place of residence. National Democratic Institute, 42-46

the mentality, deep in there, and it will be hard to change” (Male, Herceg Novi).

“Here, you get the same salary regardless of how much you work. Changing that would contribute to our fight against corruption” (Female, Bijelo Pole).

“Penalties are the only recipe for corruption. For everything. Punishment both for he who gives and for he who takes” (Male, Nikšić).

This research conducted by the Focus Group from the NDI reveals many things about the nature of corruption in Montenegro, but namely that the public perception that economic corruption is ingrained in social and economic interaction. The statements also demonstrate the awareness that corruption exists among the highest levels of government, and that although the problems are commonly recognized there is little political will to actually implement the legislation required to combat corruption.

Montenegrin political culture is still largely characterized by the control of one party and the associated problems of a government that structures policy around maintaining power. The new government which was confirmed in November 2006 has been dubbed the “Brussels Government”, a reference to the agenda of joining the European Union. This goal, however, will require changes in a number of areas related to the development of certain democratic standards. Weak areas were identified in the Center for Democracy and Human Rights’ (CEDEM) 2006 Democracy Index, which was a survey of public perception. These problematic areas include strengthening the rule of law, but also increased transparency of political activities and accountability of the government.⁴⁵ The primary aspect which the CEDEM Index identified as damaging the public perception of “Democracy of the Political Process” was the existence of crime and corruption within the government.⁴⁶ This demonstrates that despite officials’ public statements declaring the need for a

⁴⁵ CEDEM 2006 Democracy Index, May 2006, 20

⁴⁶ Ibid, 21

fight on corruption, the public perceives that they have done little to actually combat the problems.

The lack of transparency regarding corruption issues is indicative of a general trend in the way the government and civil society interact. Marija Novković from the Directorate for Anti-Corruption Initiatives⁴⁷ noted that “Citizens are not always aware of what corruption is. They take any problem they encounter as corruption”.⁴⁸ This sentiment may be true, but it is partially due to the way politicians treat the public. Dialogue surrounding all issues and policies is presented in a vague manner. For example, although the government has acknowledged the problem of corruption, at this point the extent of their discussion only really regards corruption as a problem which international authorities have recognized in their country. There is a lack of discussion of the concrete issues specific to Montenegro, and consequently citizens’ understanding is rhetorical rather than functional. Ms. Novković also expressed that

“It is a strong stand point of the government of the Republic of Montenegro to create a national consensus on the national front for combating corruption and it is where a strong and vibrant civil society comes in very handy, very useful, and the media which will do real investigative research”.⁴⁹

These remain ambitions, however, as Montenegrin civil society is not equipped to act as an effective partner to the government. This problem is not solely caused by, but is certainly perpetuated by the attitude of the government towards public inclusion in politics.

The lack of public debate surrounding the privatization of KAP is a typical example of how the government is avoiding its duty to the public regarding discussion and transparency of information. After complaints issued by the GzP and an appeal issued by Social Democratic Party (SDP) the government did hold a debate on the

⁴⁷ A body focused on prevention, particularly involved in initiatives to educate citizens and actively engage them in reporting corruption.

⁴⁸ Marija Novković Interview, 2006

⁴⁹ Ibid

Draft for Strategy for Privatization of KAP. The debate was deemed necessary by the requesting parties due to issues related to environmental regulations and because of the extent that the fate of the company affects many aspects of Montenegro's economy.

The public debate that did take place was characterized by extreme haste, the withholding of information and lack of real dialogue. Only sixty of the thousands of pages of information on the strategy for privatizing were released to the public.⁵⁰ Prime Minister Đukanović discredited the value of the dialogue, stating “I think that everybody who wanted to inform oneself about that document and with our preparations of that document, had the chance to do so even beforehand”.⁵¹ The Prime Minister did not take part in the dialogue, but was willing to discredit its value. This statement demonstrates a complete lack of value of public opinion, and is incredibly damaging to the ambitions of creating an environment for a strong civil society. Stevo Muk from the Center for the Development of Non-Governmental Organizations (CRNVO) expressed that “although cooperation between the government and NGOs seems to be on the rise, it is simply the illusion of inclusion” because the government views civil society as a “necessary evil, necessary because of the international community, but they need to protect their interests”.⁵²

Areas where the government has an interest in protecting information and maintaining their decision making authority are particularly guarded from public scrutiny. It is in these sensitive areas--privatization, public procurement and development contracts--where information is most protected. By conducting affairs this way the government is reinforcing the perception that they are not subject to the law or the scrutiny of their constituents. In this way the legitimacy of civil society

⁵⁰ CRNVO Annual Report, 2005, 35

⁵¹ Ibid, 35

⁵² Stevo Muk Interview, 2006

continues to be undermined, and the process of combating corruption is obstructed by the absence of an environment of cooperation.

Assessing Capacity: Anti-Corruption Strategies

Corruption in Montenegro has been demonstrated to be complex phenomena, affecting all aspects of political and social interaction. The next section will further elaborate on how the complex relationship of the government, NGOs, the media, and international organizations make the actual reduction of corruption a very difficult task. By examining what the initiatives have been thus far, it is apparent that much remains to be done to effectively reduce corruption. The task will require the cooperation of the government and civil society, but for this type of collaboration to become realistic requires some fundamental changes by both the government and civil society. These changes must begin with a demonstration that the government has the political will to revise its behavior with regards to high level political corruption, and generate a political structure with which combating all types of corruption is possible. It must be complemented by building the capacity of civil society to enhance the effectiveness of cooperation.

Government Initiatives

Concrete anti-corruption initiatives introduced by the government of Montenegro begin with the signing of the Stability Pact in 2000, which resulted in the creation of the Stability Pact Anti-Corruption Initiative (SPAI). SPAI is an interdisciplinary body composed of government officials, representatives of the NGO sector and international bodies including the Council of Europe, UNDP and USAID. Shortly after its creation, the Directorate for Anti-Corruption Initiatives was founded,⁵³ which is a government agency designed to focus on preventative measures. The Directorate is the coordinating government body responsible for anti-corruption work, and their responsibilities include advising the government, organizing domestic

⁵³ Also sometimes translated as the Agency for Anti-Corruption Initiatives. I will use Directorate throughout to avoid confusion.

programs to prevent corruption and managing relations with relevant international bodies.

Previously, the actions of the Directorate have primarily related to education of citizens and collaborating in the drafting of pertinent legislation. The main education project conducted thus far consisted of the establishment of a phone line by which citizens could report corruption. The goal was to encourage the recognition of corruption and dialogue about what measures could be taken to charge offenders. The role of this Directorate project was to create an intermediary body between the citizens and the judiciary. In December of 2006 the project was reviewed as a success, and the Directorate has decided to continue it for another year, pending funds. Such projects to actively engage citizens are a beginning, but education programs must be complemented by other methods that build public trust. This would include the effective prosecution of offenses, particularly high profile cases that are public knowledge. Encouraging citizens to report petty corruption only goes so far when the public perception is that the judiciary isn't effective and that illegal activity will go unpunished.

In the last six years the Directorate has also been involved in the drafting process of relevant legislation including the Law on Public Procurement and the Law on Conflict of Interests. Both laws were drafted as part of working groups which included international experts. In this way the Directorate has taken part in the rewriting of criminal legislature, contributing input for how to incorporate mechanisms to combat corruption. There have also been initiatives to introduce investigative measures to detect corruption including tools needed for secret surveillance. Both the Directorate and the government recognize, however, that although the new legislation and tools have been introduced there are still significant

shortcomings that must be overcome in the prosecution process. A representative of the Directorate attributed these weaknesses mostly to the “clandestine nature of corruption”⁵⁴ rather than to problems of bribery and corruption in the judiciary, or the lack of capacity to prosecute. One of the main objectives of the Directorate is to more thoroughly research the nature of corruption to try to provide tools for prosecution. While this element is important, it would also be valuable to identify the shortcomings in prosecution due to the lack of autonomy the judicial officials have from the government.

The most noteworthy product of the Directorate has been the Program for Combating Organized Crime and Corruption adopted in July 2005, and the Action Plan for implementing the Program adopted in April 2006. The recent adoption of the Action Plan represents Montenegro’s first comprehensive plan for both the evaluation and combating of corruption. The Program and Action Plan specify all the areas in which corruption initiatives are needed and goals for the next three years. The Action Plan is a strategy of implementation which outlines the bodies responsible for changes, the expected date by which reforms are expected, and provides an analysis of the budgetary obstacles for each task. It includes the creation of special prosecutor for organized crime and corruption, and the introduction of special unit in the police. Both the Program and the Action Plan were drafted by a multi-disciplinary body including representatives from MANS and GzP. Vanja Čalović from MANS and Marija Novković from the Directorate both agreed that a significant obstacle in constructing the plan was a lack of real concrete data on the conditions of corruption specific to Montenegro.⁵⁵ The Action Plan is a starting point.

⁵⁴ Marija Novkovic Interview, 2006.

⁵⁵ Interviews with Vanja Čalović and Marija Novković

Several individuals, including Ana Drakić from USAID, have suggested that the plan is perhaps too ambitious and not realistic. So far, progress for implementing the Action Plan has been slow. This can at least partially be attributed to the abundance of political activity including the referendum, elections, drafting of the constitution and all of the associated tasks of structuring the newly independent country. One stipulation of the Plan is the assembly of a Committee that will be responsible for monitoring its implementation. The Committee will consist of government officials from all relative bodies, and a NGO representative. Its membership should be determined in the coming weeks.

This formation of a strategy and a body for monitoring its impact is certainly a significant step forward in the fight against corruption in Montenegro. The body represents the first mechanism for identifying the concrete problems in Montenegro, and a means for making the fight on corruption more than rhetoric. The actual effectiveness of both the plan and its implementing body remain to be seen. Real changes will be dependent on the display of actual political will, which has not yet been demonstrated. Another source of consensus is that the widespread nature of corruption will require complete cooperation from the government, civil society and the international community. Unfortunately, significant obstacles remain both in the capacity of the NGO sector to act as an effective partner, and in the way international organizations are currently engaging in the process.

The Non-Governmental Sector

Anti-corruption initiatives in the civil society sector are essentially limited to the work of MANS and the GzP. There are a few other NGOs that are tackling more specific issues related to corruption like anti-trafficking and election monitoring. There are also a few networking NGOs that are monitoring civil society and general

indicators of democratization. MANS and GzP, however, are the two bodies which have been responsible for the bulk of the research. The breadth of their work includes bringing forth charges, and representing civil society on government bodies related to corruption. Although both groups are doing an admirable job, the task is far too large for their capabilities. Particularly now that the GzP has become a political party and has a new array of responsibilities, civil society needs to build its capacity to deal with corruption. For further progress in combating corruption, Montenegro needs significant development of the civil sector capacities.

Regarding the media, there is a fair amount of press coverage of corruption cases, but a lack of thorough investigative journalism. For example, when MANS or the GzP makes an appeal to the state prosecutor it will make the news the next day, but there is rarely follow up on the charges and relevant proceedings. There is still a degree of state control in the media, and it was expressed by a number of the NGO sources that NGOs do not have allies in the media the way the government does. In addition, the media has been primarily focused on the independence question, so there is certainly hope that with the state status resolved energy will shift to concrete economic and social problems including corruption.

Montenegrin civil society is relatively weak. The country lacks NGOs that are effectively working in the areas that are most in need of their support. In part this problem is due to the way in which NGOs are currently defined by the law. The law for registering NGOs is vague, and has allowed an array of businesses to register and reap the tax benefits. The unfortunate consequence is a general lack of understanding of the role of civil society, and a shortage of NGOs who are really engaging in social projects.

“Because you have people who, I don’t know, enter the café where it is NGO this and that, so it was a problem for me to explain what is an NGO. People say I was in that

café the other day, and is it also [an NGO]? Well, formally yes... [there is] entire confusion”.⁵⁶

So, Montenegro is in need of real NGOs that are dedicated to both cooperating with the government, and also acting to supplement areas where the government lacks objectivity or capacity.

With regards to anti-corruption work, at this point the relationship between the government and civil society is not characterized by partnered cooperation. One problem identified by MANS is that some government officials have puppet NGOs, which they abuse to influence public opinion.⁵⁷ Another obstacle is that while the government is friendly to some NGOs, they are generally uncooperative with those who critique sensitive issues. So while there are areas where cooperation is thriving, corruption is one of these delicate areas where the relationship remains strained. While it is reasonable that the government reacts negatively to criticism and dislikes an organization that issues public accusations that they are breaking the law, there is also truth behind a lot of the claims issued by the NGOs. The problem is that there is no forum for establishing truth, and the credibility of civil sector is weak.

On the other side, the Directorate perceives that the relationship is improving, noting the collaborative work on drafting legislation and the Action Plan.⁵⁸

Unfortunately, this inclusion has not been paralleled with responsiveness to criminal proceedings brought forward by the NGO sector. So despite these steps forward, what is still badly needed is dialogue between NGOs and the government where sensitive issues are addressed in a productive way. The progress which has been made thus far does not indicate a transparent dialogue where the NGO sector is able to effectively use the law to check the actions of the government. Getting to this point will not be an

⁵⁶ Stevo Muk Interview, 2006

⁵⁷ MANS, 2006, “Corruption in Montenegro”

⁵⁸ Marija Novković interview, 2006

easy task, but with the assistance of the international community and the recognition of common goals there is reason for some optimism.

The International Role

Historically the international community has played a critical financial role in Montenegro, providing mass amounts of aid per capita in the 1990s. Organizations including USAID and United Nations Development Project (UNDP) and the Council of Europe have provided some support in the area of anti-corruption initiatives. The primary role of international organizations in anti-corruption programs, however, has exclusively been funding. There is currently a program in the works with the cooperation of UNDP and the Directorate for Anti-Corruption Initiatives that will aim to coordinate activities with relevant NGOs. Hopefully, this will be the first of many programs coordinated by international bodies that encourage the cooperation of the government and civil society.

Nevertheless, there are some problems in the way the international community is currently engaging in Montenegro. In the last six years the amount of financial support has been significantly declining. USAID is phasing out of Montenegro, with the goal of leaving completely in 2011.⁵⁹ The shift away from US support and towards European funds is a natural change considering the beginning of EU membership negotiations, but unfortunately the European presence is not yet on the rise in substantial monetary terms. It is likely that in the next few years aid from Europe will begin to increase, with a focus on achieving EU membership goals. One future impediment identified by USAID is that with money coming from the European Union, there is an assumption that government agencies are capable of

⁵⁹ (USAID) Ana Drakić interview, 2006

applying for funding. The ability of the government to really take advantage of this type of funding will take some time and adjustment.

There are also significant shortcomings in the way funds are being distributed. At this point there has been a lot of progress in identifying areas not up to European standards, and educating Montenegrin officials and members of civil society as to what these expectations are. There is a general sentiment expressed that while the goal of EU membership is a shared ambition, there is a lack of understanding of the nuances of the changes required to reach that point. Consequently, the area that remains lacking is funding for conducting research of problems specific to Montenegro, and creating the civil society programs that Montenegro really needs. The majority of international money is oriented towards specific projects, the focus of which is determined by the organization and not by the needs of the country. So while an NGO may be able to conduct research, because it serves as the piece of a trans-national project its value to Montenegro is limited.

What is to be done?

The spokesperson from the Directorate for Anti-Corruption Initiatives recognized that achieving their goals will require the cooperation of a strong civil society. A MANS' representative identified the international community as the key player which will shift political will in the government and allow for the effective reduction of corruption. The opinion conveyed by USAID was that international influence is in the middle of a transition and that the type of support being provided needs reform to be effective. The conclusion is that there is consensus that there must be cooperation, and also that changes must be made in the way the three bodies are coordinating their activities. What is needed is an improvement in domestic assessment and the creation of a stronger stance by which NGOs and the government cooperate to put international aid to the best use possible. The Action Plan is a starting point for these changes in the sense that it is the first concrete government document outlining areas where corruption may be a problem. But the document's capacity for change is limited.

The Directorate is correct that much investigation must be done into the nature of corruption in Montenegro in order to combat it effectively. The other significant obstacle is the question of whether there is political will to actually make these changes a reality. The specific political circumstances of Montenegro are that there has thus far been no political dialogue regarding social and economic issues like corruption. The power to make changes is in the hands of people who are engaged in the same illegal activities, and continue to violate the newly drafted preventive legislation. To protect themselves they will continue to evade the law until their political opposition gains enough influence to force them to take responsibility.

The other body with the potential for significant sway is the EU, which can utilize the incentive of membership to apply pressure. But changes in response to the demands of the international community are limited by the broad nature of EU expectations. The majority of their standards apply to rewriting legislation, and the EU lacks effective mechanisms for monitoring implementation of laws and concrete change. The EU can definitely influence the government to reform its behavior through these types of structural changes, but the process will be slow and the crucial projects of privatizing and development will continue in the meantime. To avoid the repercussions of continuing transition and development under these corrupt pretenses, the political character of Montenegro must also change from within.

Although many recognize the new Prime Minister as the “most honest man in politics,” doubt remains as to whether his appointment by the party represents real change. As Ivana Gajović from the Nansen Dialogue Center pointed out,

“It is a question of how many people are really new. People were disappointed with the lack of new faces, lack of women, and lack of minority representatives. It’s unclear that this government has different motivations.”⁶⁰

Many believe that Đukanović is still running the government through his control of the DPS. It is impossible to know if this is true, but in any case, many of the officials who have previously been noted for conflict of interests and other legal violations remain Ministers in the government, members of parliament, and powerful officials on the Privatization Council and other relevant bodies. The impetus for real change is dependent on domestic changes in the political structure, and thus far the existence of real political will to combat corruption is not apparent.

Hope lies in the resolution of the independence question, and the opportunity for the opposition to begin to pursue issues pertaining to concrete social and economic

⁶⁰ Ivana Gajović Interview, 2006.

problems. The introduction of the GzP is one source of hope for political dialogues pertaining to issues not related to nation status. It is also likely that once the nature of the constitution has been decided the other existing opposition parties will be able to shift focus. The continued work of NGOs and the strengthening of civil society are also vital so that civil society can serve as a more effective partner. Corruption currently characterizes the way that people understand their government and the way that economic interactions are carried out in their country. To change this there must be a shift in the way the government acts with respect to the law, and the way that issues of corruption are publicly discussed. Genuine reform in the government remains to be seen, and the form that the fight on corruption takes will be largely dependent on political will.

Appendix

Interview Participants

Government

Marija Novković
Directorate for Anti-Corruption Initiatives

Non-Governmental Organizations

Vanja Čalović
Network for Affirmation of the NGO Sector (MANS)- Director

Stevo Muk
Center for the Development of Non-Governmental Sector (CRNVO)- Director

Ivan Gajović
Nansen Dialogue Center - Director

Ivan Vejvoda
Balkan Trust for Democracy - Director

International Organizations

Ana Drakić
USAID- Coordinator for Civil Society Sector, NGOs and Media

Academia

Professor Milan Popović
Political Science Faculty Podgorica, Montenegro- Professor of Political Science

Legislation

The following excerpts from pertinent legislation are provided to supplement discussions of them in the text.

Law on Conflicts Of Interest

(“Official Gazette of the Republic of Montenegro”, No. 42/04)

I GENERAL PROVISIONS

Article 1

In order to increase the level of confidence in legitimate and impartial performance of public functions, the present Law shall regulate the existence and manner of avoiding the conflict between public and private interests (hereinafter referred to as: conflict of interests), as well as other issues of importance for the implementation of the present Law.

Scope of the Law

Article 2

The present law refers to public officials and persons connected with them. For the purpose of the present Law, a public official shall be understood as the person elected by direct and secret vote, person elected or appointed by the Assembly of the Republic of Montenegro (hereinafter referred to as: Assembly), person appointed by the Government of the Republic of Montenegro and the local self-government bodies.

Article 3

A public official shall perform his or her duties impartially, in accordance with the Constitution, law and other regulations, taking into account the ethics of profession and the office he or she holds.

A public official shall not be allowed to give priority to his private interest over a public interest in a way that affects or may affect performance of the public function.

II DEFINITIONS

Article 4

Certain terms, as used in the present Law, shall have the following meaning:

Conflict of interests – there is a conflict of interests when a public official gives priority to a private interest over a public interest so as to gain material benefit or privilege (hereinafter referred to as: benefit) for himself or persons connected to him.

Persons connected with a public official – direct relatives of a public official, collateral relative up to the second degree, relatives through wife’s family up to the first level, a marital or extra-marital partner, adoptive parent or adoptive child, as well as other persons that a public official is personally or professionally connected with.

Gift of considerable value - money, securities or other item that is either received or given, the value of which exceeds the amount of EUR 50.

Service – doing by which conditions for obtaining a benefit are met.

III PROHIBITED CONDUCT

Article 5

A public official shall not be allowed to:

- accept a gift of large value, benefit or a service, except in cases envisaged by the present Law;
- favor citizens on the basis of their political or other affiliation, origin, personal links or links through immediate or broader family;
- abuse information he has acquired during his position in a public office, and
- exert influence over public procurement procedure.

Action to be taken by a public official

Article 6

Should a public official have doubts that the situation of the conflict of interests may arise, he or she shall have the right to report thereon to the Conflict of Interest Commission (hereinafter referred to as: Commission), which shall have to decide whether or not there is a conflict of interest.

Law on Free Access to Information

(Official Gazette of the Republic of Montenegro, No. 68/05)

Article 1

Access to the information filed with government agencies shall be free, whereas it shall be exercised in the manner prescribed by this Law.

Article 4

Particular notions in this Law shall have the following meaning:

- 1) **the right of access to information** shall encompass the right to ask for, receive, use and disseminate the information filed with government agencies;
- 2) **information** shall be any document in written, printed, video, audio, electronic or other form, including also a copy or a part thereof, regardless of its contents and source (or author) or the time of its composing or the system of its classifying;
- 3) **government agency** shall be any: state authority (legislative, executive or judicial); local self-government authority; local government authority; public institution; public company or other business entity that has been granted to perform public powers, which is founded by the State or a local self-government authority or which is funded from public revenues and with which the information are filed;
- 4) **the information filed with government agencies** shall represent physical possession of information by government agencies (their own ones, as well as those reported by other government agencies or third persons);

Article 9

Access to information shall be restricted if their disclosure would significantly endanger:

- 1) national security and defense or international relations, primarily through disclosing the information:
 - a. from security intelligence agencies and intelligence agencies for national security;
 - b. from military intelligence services;
 - c. of armed forces activities;
 - d. about buildings, installations and systems that are intended exclusively for the State defense purposes;
 - e. of importance for international tribunals or investigation bodies or other international authorities or organizations' work;
- 2) public security, through disclosing the information relating to:
 - a. the public unsafety and state of emergency;
 - b. the safety of individuals, the people and material properties;
- 3) commercial and other private or public economic benefits, through disclosing the information:

- a. relating to financial, monetary or commercial operations of the State with other states, international organizations or other legal or natural entities;
- b. that are business secrets;
- c. contained in a separate law on the confidentiality of data;
- 4) economic, monetary and foreign exchange policy of the State, through disclosing the information:
 - a. of national economy, financial policy initiatives, operational plans and other economic policy documents;
 - b. relating to the capital and financial markets;
- 5) prevention and investigation of and proceedings upon criminal matters, through disclosing the information:
 - a. contained in reports submitted to the authorities relevant for identifying and prosecution of criminal offenders, which reports include data concerning planning or commissioning such offences and the persons that have committed them;
 - b. of witness protection programs;
 - c. of juvenile criminal offenders;
 - d. in relation to investigation procedures;
 - e. relating to the fight against organized crime, related operational plans and to special forces for combating organized crime;
 - f. relating to anti-money laundering and anti-financial terrorism activities;
- 6) privacy and other personal rights of individuals, except for the purposes of court or administrative procedures, through disclosing the information:
 - a. concerning private lives of parties and witnesses in the procedures, as well as of victims and parties injured by criminal offences, and through disclosing the information of adjudicated persons;
 - b. contained in personal and medical files of individuals, findings obtained from psychiatric and psychology examinations and personal disposition tests;
 - c. relating to the establishment of parental rights, adoption of children and alike;
 - d. regarding individual employment, income, pension, relief and other social welfare benefits;
 - e. giving phone numbers, temporary or permanent residences of individuals and their families, if such individuals require a relevant authority to keep the information secret because they reasonably believe their and their families' safety is at risk;
- 7) the procedure of considering and passing certain official documents, through disclosing the information:
 - a. containing attitudes in connection with negotiations that are conducted by government agencies;
 - b. that are in the course of their processing, or the information that are not in any official document form, except for laws or other general documents.

The interests referred to in paragraph 1 of this Article shall be considered significantly endangered if disclosing such information would cause them damages considerably bigger than the public interest in publishing such information is.

Law on Public Procurement (Pertinent Articles)
(Official Gazette of the Republic of Montenegro, No. 46/06)

Anti-corruption rules

Article 13

All contracting authorities, tenderers and other participants in the public procurement procedure shall undertake efficient and effective measures preventing corruption, misuse of official position, conclusion of agreements for the purpose of deceiving third parties, provision of false data when submitting tenders, conflict of interest, lack of impartiality and transparency in the conduct of public procurement procedure and, to that end, shall promote high standards of transparency, efficient internal audit systems, and open public competition and in determining objective criteria of selection and decision-making.

The contracting authority shall reject a tender, cancel a public procurement procedure or withdraw from the conclusion of contract if it determines or has reasonable doubt to believe that the tenderer has tried to exert influence on, or has tried to give or has given or has agreed to give, directly or indirectly, to the public procurement officer, member of the Commission for opening and evaluation of tenders, or employee with the contracting authority or any other person, a reward or benefit in any form or any other value with respect to the decision or the conduct of the public procurement procedure, in order to exert influence on the contents of activities and decision of the contracting authority regarding the tender, as well as in the case of actions of concealing or misrepresenting data.

In the cases referred to in paragraph 2 above, the contracting authorities shall notify the tenderer and the administrative authority in charge of public procurement thereon in writing.

The contracting authorities shall provide access and adequate information on the decision-making organization and process in public procurement procedures to all interested parties.

Conflict of interest

Article 14

Participants in the public procurement procedure shall take any necessary action to prevent existence of a conflict of interest.

Public procurement officer, members of the Commission for opening and evaluation of tenders, members of authorities deciding upon submitted requests for the protection of rights in the public procurement procedure and other persons participating, directly or indirectly, in the public procurement procedure, shall notify the contracting authority and the administrative authority in charge of public procurement, in a timely manner, of the actual or potential existence of a conflict of interest.

The conflict of interest referred to in paragraph 2 above shall occur, inter alia, if such person:

- 1) is the tenderer itself or the tenderer's legal representative or attorney;
- 2) is a relative in the straight line of kinship, or in the lateral line of kinship up to the fourth degree, or is a marital or extra-marital mate or in-law up to the second degree, regardless of whether the marriage is terminated or not;
- 3) is a guardian, adopter or adoptee of the tenderer, his legal representative or attorney;
- 4) is a shareholder or member of management bodies of the tenderer;

- 5) has direct or indirect interest in the public procurement procedure, which enables personal acquisition of property, by exerting influence on the decision-making process; and
- 6) if there are other circumstances causing a doubt about such person's impartiality.

A person who has prepared tender documents and has any impact on the implementation of the public procurement procedure may not act as a tenderer or sub-contractor and may not cooperate with the tenderer in preparing the tender.

Persons who, on behalf of the contracting authority, perform some of the activities related to a public contract, shall submit a written statement on existence or non-existence of the cases referred to in paragraphs 3 and 4 above. The signed statement shall make an integral part of the documentation of the respective public contract.

In the case of existence of some of the cases referred to in paragraphs 3 and 4 above, or if the respective person fails to sign the statements referred to in paragraph 5 above, such person shall be excluded from conducting the public procurement procedure.

In case that the requests or tenders that the contracting authority has received during the tendering procedure cause or may cause any conflict of interest, the contracting authority shall take necessary actions to eliminate such conflict of interest.

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