

# Halfway Home and a Long Way to Go: Russian and Kazakh Roads to Sectoral and Political Corruption

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*The law is like a horse cart; it will go whichever way you turn it.*

—Russian proverb

In 1997, Elena Bonner, human rights activist and widow of Nobel Peace Prize laureate Andrei Sakharov, made an observation that in many respects sums up the current state of affairs in Russia and many other countries of the former Soviet Union: “The intelligentsia seems to have abandoned its historic calling of compassion and assistance in the favor of grabbing crumbs dropped by the corrupt and powerful.”<sup>1</sup>

In this article, I focus on the causes of systemic corruption in Russia, Kazakhstan, and the successor states to the former Soviet Union and analyze how this omnipresent phenomenon makes many of the reforms of the last decade unsustainable, unimplementable, and unenforceable. With the tenth anniversary of the dissolution of the USSR fast approaching, the region is at a critical point. The roads those countries choose today will affect the region’s and the globe’s political and economic future for decades. Although the region encompassing the former Soviet Union is vast and diverse, the experiences of attempted reforms in two of the largest and wealthiest countries, Russia and Kazakhstan, vividly illustrate the myriad barriers to progress. The complexity and interconnectedness of the problems in the two countries illuminate the systemic corruption that is the region’s most serious problem.

My analysis shows two categories of countries or subregions at different stages of economic and political development. The first category includes Russia, Moldova, Georgia, and Armenia. Each of those countries has made significant

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progress in a relatively short time. They now can generally be viewed as quasi-democratic market societies, but they are only halfway home. The second category of countries includes Belarus, Azerbaijan, and the Central Asian republics of Kazakhstan, Kyrgyzstan, Uzbekistan, Turkmenistan, and Tajikistan. Those countries are still ruled by authoritarian leaders and have a long way to go before they can begin their democratic journey. The main conclusion drawn from the analysis is that until political and economic systemic corruption is addressed in a holistic manner, countries in the region will not become stable, market-based democracies and reforms will not be enforceable or sustainable. Corrupt informal networks or alliances involving policymakers, oligarchs, and law enforcement and security officers represent the biggest hurdle to enforcing reforms and developing the rule of law in the region.

An analysis of the causes and consequences of corruption in Russia and Kazakhstan is relevant, because their collective economic and political future has important regional and global ramifications. Russia and Kazakhstan's 200 million-plus well-educated people and their vast natural resources are important strategic assets. However, for the people in the region to realize their potential, they must move from a society ruled by men to one of laws. At the dawn of the twenty-first century, the most important issue confronting the international community from a security, economic, or democratic perspective is whether the rule of law will become globalized. Russia and Kazakhstan have an important role to play in that evolving process.

The Commonwealth of Independent State (CIS) countries—Russia, Ukraine, Turkmenistan, Uzbekistan, Kyrgyzstan, Tajikistan, Kazakhstan, Armenia, Azerbaijan, Georgia, Moldova, and Belarus—are still struggling to effect fundamental reforms in a monopolistic political and economic environment filled with secrecy, historical social undercurrents, and unusual power linkages. Both the pre- and post-Soviet governing networks at the country and regional levels depend on systemic corruption and secrecy for their very existence.

In Freedom House's 1998 *Nations in Transit*, journalist Stephen Handelman commented: "Corruption has replaced the command economy as the region's most conspicuous, and oppressive, feature."<sup>2</sup> He theorized that those governments' retention of the power to determine who can own what property and for how long may be the most significant factor in explaining systemic corruption. Handelman forecast that until attitudes of openness, honesty, and trust in government take root in popular culture there is little hope of short-term change and even less hope that outsiders can affect the outcome significantly.

Corruption is usually described as the abuse of public power for personal gain, although all acknowledge the existence of widespread corruption within the private sector as well. The practical result of systemic corruption is multifold, including distorted, nontransparent policy, revenue raising, and budgetary decisions; criminal infiltration and/or corruption of public officials, key government institutions, processes, and strategic business enterprises; ineffective or counterproductive technical assistance; a cynical press and public; rampant human rights violations; unenforceable or arbitrarily enforced laws, policies, and regulations;

an underdeveloped middle class; government and self censorship; capital flight; money laundering; increased national and transnational crime; decreased trade and investment; and poverty. It is the interaction of those factors that often leads to political, economic, and financial instability, as witnessed by recent events in Indonesia, Peru, and Russia.

As far back as 1994, the OECD Financial Action Task Force estimated that as much as \$85 billion annually was laundered from narcotics trafficking in the United States and Europe alone. Global laundering of money is now believed to be more than \$500 billion a year. Many scholars believe that money derived from criminal proceeds circulating globally has the potential to penetrate Western society and expose it to serious financial and societal risks.<sup>3</sup> They also note that money laundering has far more potential to control significant elements of society and business in transition countries, where democratic institutions, the economy, and financial conditions are much weaker. In such countries, public services such as education and healthcare suffer most, because autocratic leaders are accountable to no one, and many of their efforts go to protect the status quo and suffocate their political and economic competitors. Funding for core public services often loses out to theft, embezzlement, or fighting ethnic or political wars.<sup>4</sup>

A review of corruption literature and World Bank indigenous and international business community surveys, shows the interrelated problems of crime, corruption, and unpredictable judiciaries to be more acute in the CIS than in any other region of the world. Of the 3,600 indigenous and international businesses surveyed in 69 countries, approximately 80 percent of those in the CIS rated these three problems the highest barriers to economic growth.<sup>5</sup>

Perhaps more important, companion and subsequent public surveys in those countries indicate that crime and corruption reinforce public cynicism and are seen as by-products of democratic reforms; citizens also believe their new form of government is either incapable of protecting or refuses to protect their property rights and civil liberties.<sup>6</sup>

### **The Roots of Corruption**

Although corruption is usually grounded in a country's cultural, political, and economic history, customs, and policies, it often flourishes or becomes systemic when institutions are weak and economic policies distort the marketplace. In the late nineteenth century, during the reform era of Czar Alexander II, corruption had already been identified as a centuries-old problem that was a major deterrent to Russia's integration with the West.<sup>7</sup> The causes of corruption noted then are essentially the same as they are now:

- a society ruled by men not laws
- a secretive, restrictive bureaucracy that stifles justice, the press, and the development of strong state institutions
- a weak civil society unable to check government action
- a disdainful citizenry

Throughout Russia's history, the bureaucratic apparatus made it impossible to control bribery. A regional governor or Communist Party secretary held an absolute monopoly of power in the provinces. During the reign of the last czar, especially after 1912, the increasing influence of Grigory Rasputin, the "friend" of the imperial family, virtually destroyed an emerging rational system of civil service based on merit and industrial reform and instituted one based on patronage, behind-the-scene deals, and inside favors.<sup>8</sup> Historians have written that the Russian ruling elite has had a monopolistic lock on political and economic power since the eighteenth century. The last czar in 1917 and subsequently the last chairman of the Communist Politburo in 1991 were the omnipotent rulers of the elitist administrative network. Neither the 1917 Communist revolution nor the peaceful 1991 democratic revolution fundamentally altered that system of government and bureaucratic control.<sup>9</sup>

After formally eliminating the right to own property and effectively destroying the legal profession in the 1920s and 1930s, Communist Party officials proceeded to construct a lawless society grounded on well-organized, entrenched subordination to the rule of men not law. To accomplish this seemingly impossible geopolitical feat, they created a highly organized, well-trained security and police network. The security network allowed or encouraged its members to steal from the state and the public, within boundaries established by party officials, in exchange for monopolistic political power. By 1950, the Communists had eliminated the institutions of law and many of the foundations of civil society, institutions essential to holding government and business officials accountable and protecting citizens' liberties and property rights. All laws and party actions were then justifiable to achieve the "social ends" of the state.<sup>10</sup> After Stalin's death, a classic oligarchy emerged, structured in a rigid hierarchy within the Communist Party.<sup>11</sup>

Although many historians view Stalin as having built a lawless, repressive society in the 1920s, 1930s, and 1940s, Leonid Brezhnev is generally viewed as having established links between criminal networks and public officials.<sup>12</sup> During his reign in the 1970s, formal public institutions were camouflage for private gain, and key decisions were based on ethnicity and made by a small circle of friends. Cheating the state and rule by men not law became accepted practice and principle. In Soviet republics such as Uzbekistan, corruption permeated everything, and patronage networks developed strong ethnic characteristics and anti-Moscow attitudes.

In essence, the Soviet patronage system delegated authority to control others through a network of repressive police institutions. Those institutions took orders only from the Communist Party—not from the courts or local authorities. The party network in Moscow and the Soviet republics oversaw and tightly controlled the system, but it began to lose power during the tumultuous glasnost period under Gorbachev, as he attempted to reform the Communist Party. However, members of the network concluded that they had to resist Gorbachev's, and then Prime Minister Gaidar's, efforts to implement radical economic and political reforms because such reforms would ultimately deprive them of their power

base.<sup>13</sup> Their self-interested, collective decision led to the ouster of most of the real reformers, effectively ended glasnost, and enabled the network to consolidate more economic and political power.<sup>14</sup> When the party lost power in 1991, the intact network began to consolidate economic power by becoming secretly involved in the privatization process in Russia and other CIS countries.<sup>15</sup> Shortly thereafter, they joined a small group of intellectuals and market reformers, such as Yegor Gaidar, after concluding that the old administrative system they controlled was going to collapse.<sup>16</sup>

During the 1990s, Yeltsin's failure to build new institutions to replace the party and the nomenklatura oligarchy fatally weakened the state's ability to manage the complex reform process and to control crime and corruption.<sup>17</sup>

The police and the intelligence community (then the KGB), although themselves imploding, continued obedience to this network for a variety of reasons, including sharing in the transfer of vast state resources to party and nomenklatura insiders at bargain prices.<sup>18</sup>

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***“Ukraine had finally acquired its own elite, meaning that for the first time in its history the country is being governed by locals, the people who were born in the territory.”***

Ten years after the fall of the Iron Curtain, there is growing evidence that many of the patronage networks and political controls that existed under communism are more powerful than ever.<sup>19</sup> Large elements of the privileged ruling elite, or nomenklatura, continue to operate under the corrupt system at both the central and local levels. This form of lawless, meritless governance effectively prohibits the development of a strong civil society, democratic institutions, and effective law enforcement. Like the presidency itself in many CIS countries, organized bureaucracy is not accountable to the public or the legislature and continues to make decisions through autocratic processes controlled by secret networks.<sup>20</sup> The links between the old Communist nomenklatura in Moscow and the law enforcement and security communities they constructed and controlled for more than seventy years remain strong in many countries throughout the region.<sup>21</sup> The situation was exacerbated through the corrupt privatization process that occurred in Russia and many other countries during the 1990s.

Although the network of privileged elites has its roots in the Communist Party, today it extends to the new private sector and encompasses the globe. Studies of the new Russian elite in the 1990s show that the majority of its members are drawn from the second rank of the Soviet-era nomenklatura.<sup>22</sup>

Systemic corruption has deep historical roots and thrives on a monopolistic set of interrelated political and economic circumstances for sustenance and growth.<sup>23</sup> The oligarchy of political leaders, bankers, and media and business tycoons has a monopoly on economic and political power, stealing strategic state resources and engaging in capital flight and global money laundering.

### **The 1990s: An Unholy Alliance—The Nomenklatura, the Oligarchs, the Police, and the Law Enforcement and Intelligence Communities**

In the 1990s, the Russian bureaucracy became larger than ever and continued to suffer from the same ailments that existed under the communist system. Under President Yelstin, large parts of the bureaucracy were further demoralized by an all-controlling, ever-expanding, personal apparatus that operated out of the Office of the President.<sup>24</sup> Although this network remained largely under the control of the nomenklatura and the president's men, it now sometimes deals with competing forces, including new business oligarchs, organized crime, privatized security services, and the corrupt law enforcement community.

The form of government and the individuals and institutions in control at present are strikingly similar to those of decades past. The all-powerful Soviet bureaucracy, under the tutelage of the nomenklatura and the KGB, controlled the daily workings of the government. During the Communist and Yeltsin eras, the bureaucracy was encouraged to steal from the state with the permission and protection of the nomenklatura. The nomenklatura rewarded their loyalty by turning a blind eye to theft and bribery, guaranteeing personal protection and providing special government benefits and job security.<sup>25</sup> The Yeltsin government, composed largely of former high party officials and the nomenklatura, effectively held power by sharing the proceeds from newly distributed state property with the same network it controlled during the Communist regime—often through “insiders only” privatization, embezzlement, or theft. The network included bankers, intelligence officials, and police.

During Soviet times, key government decisions in the provinces were made by a troika composed of the police (MVD), the Procuracy, the KGB, and the Communist Party secretary.<sup>26</sup> Since 1991, those forces have largely retained control, but now they often operate under different titles—such as minister, governor, FSB (former KGB), general procurator, mafia boss, or director general (business enterprise chieftains).<sup>27</sup> These power institutions have never undertaken fundamental institutional reforms and continue to operate as a corrupt mutual protection network.

The emergence of extremely wealthy and powerful tycoons is one of the main differences between the old communist system and the new. Many have prospered by monopolizing Russia's most important natural resources. Under the Communist regime, one elitist network or clan controlled virtually everything. Today, the real power structures in countries such as Russia, Ukraine, and Kazakhstan are a mosaic of competing networks, clans, and forces vying for power and national resources. In many of the republics and regions, corrupt fiefdoms have been created. Local clans and networks rule freely, control the police, and are largely unaccountable because the central authorities are too weak to govern.

In sum, the new system that emerged in 1991 did not so much represent the birth of a new form of government as a transformation of the old one. In retrospect, the revolution that many believed occurred was more a chaotic effort by nomenklatura-centered power networks to maintain political control and accumulate economic power and valuable state assets. The KGB, the MVD, and the Procuracy were free from party control for the first time and became integral tran-

sition players. In essence, it was a transition from party-nomenklatura rule to rule by unrelated, unaccountable institutions and the nomenklatura—all with the support of a corrupt KGB and law enforcement community.<sup>28</sup> Russia's prime ministers during the 1990s came from the party/nomenklatura/KGB/MVD network.

Historically, the police in Russia have never been politically independent, and that is true today. An awesome troika, consisting of the procurator general (prosecutors), the minister of interior (MVD or police), and the FSB/intelligence community are accountable only to the presidents of countries or to powerful business oligarchs and criminal groups that have the resources to compensate them. Since 1991, the president of the Russian Federation and the presidents of virtually all of the CIS countries still effectively rule their respective countries through this unholy network. These patronage networks now also have the support of elements of the military.<sup>29</sup>

In the mid-to-late 1980s and continuing into the early 1990s, members of the police and the KGB left government service in droves to become involved in the newly privatized enterprises and to join private security services, which were needed to protect the oligarchs' economic power base and control financial flows through sham banks.<sup>30</sup> Streams of well-trained civil servants left their government positions to make more money in various legitimate and illegitimate areas of the emerging private sector. In the early 1990s, Vladimir Putin was among those who resigned from the KGB to work on trade and investment transactions with the mayor of St. Petersburg. During that time, those who remained in government service were underpaid, overworked, and demoralized. They did not understand why they should risk their lives or work for meager wages to protect the newly wealthy oligarchs, corrupt public officials, and expanding criminal networks. Some believe that the fate of Yeltsin's attempted law enforcement reforms was sealed in 1992 when he failed to raise the pay of the law enforcement community and undertake comprehensive civil service reform. That situation bred rampant bribery and created serious tensions and sometimes violent competition between the public and private security forces and the emerging oligarchs.

The police/security network has strong ties to transnational organized crime groups, various high-level political figures, and numerous business enterprises. The transition process in Russia and other countries in the region enabled the network to expand far beyond its pre-Soviet borders and traditional activities. In some cases, it has criminalized or corrupted important segments of the CIS economy and key state institutions.<sup>31</sup>

In 2000, Russian institutions are too weak to implement reforms and fairly and effectively enforce laws, because key institutions like the courts, the FSB, the MVD, and the Procuracy did not undergo fundamental reform during the 1990s.<sup>32</sup> Those institutions remain systemically corrupt; they are not politically independent; and telephone justice still prevails over the letter and spirit of the law. Thus, they all must undergo a comprehensive overhaul before reforms will begin to take root. Former president Yeltsin's efforts at reform in the early 1990s eventually failed, as he bargained with potent political forces inside and outside of government in exchange for political power and stability.

At that time, those promoting fundamental reform of the corrupt criminal justice system and democratic reforms aimed at public participation, institution building, the rule of law (through initiatives such as the Russian jury trial initiative), and comprehensive reform of the criminal procedure code lost their battle to a cadre of economists and lawyers who focused almost exclusively on market reforms. The latter group's political clout and resources were enhanced by a supportive donor community that was also focused on effecting market reforms as expeditiously as possible—without due regard for other important issues such as public participation and democratic processes.

### **Transnational Organized Crime Networks**

Up to one million people are now reported to be employed by newly privatized security services. Many are former police and intelligence agents or members of organized criminal networks. Public law enforcement has, in effect, been privatized or replaced with private security networks, most of which are unregulated and often linked to organized crime. Official Russian statistics indicate that around 8,000 criminal formations comprising an estimated 100,000 people now operate in Russia. About 20,000 crimes connected with corruption are recorded in Russia every year, but experts believe this figure is less than 1 percent of the real scale of corruption. A recent poll of businessmen in Moscow revealed that several thousand bribes are given and taken in just one day.

Corruption has a particular hold over strategic spheres of the economy such as oil, gas and aluminum. The Russian government estimates that one-fifth of the strategic raw materials exported in 1995 took the form of contraband. The motor vehicle business, banks, real estate, and land deals are also subject to significant corruption. Some specialists call Russia's economy mutinous and calculate that there is \$300 billion or more in Russian capital in foreign banks.<sup>33</sup>

Although an estimated 110 Russian mafia gangs now operate in more than 44 countries worldwide,<sup>34</sup> less than a dozen are believed to wield significant economic and political power inside and outside of Russia.<sup>35</sup> Those groups grew at an unusually rapid pace during the 1990s, both in the scope of their activities and their geographic reach. They are now better funded and organized and consequently are continuing to expand their traditional activities, such as human trafficking, contract murders/enforcement, and narcotics and weapons smuggling. In addition, they have gained control over the majority of financial institutions and have infiltrated large blocks of the parliament, the executive, the judiciary, and the legitimate and illegitimate economy. They have become key players in world financial crime.

Chechen gangs operate mainly in Germany, Austria, the UK, Poland, Turkey, Jordan, the Netherlands, Hungary, and the former Yugoslavia. Their main operations are banking, car smuggling, illegal oil deals, drug smuggling, and prostitution. Solntsevskaya is probably the largest Chechen gang and is involved in a wide range of activities, including drug production and smuggling, kidnapping, prostitution, extortion, arms and car smuggling, and banking and economic crime. They are particularly active in Germany, Austria, Poland, Belgium, the Czech



Republic, the United States, Italy, and the United Kingdom. The Podolskaya gang, while smaller, is well armed and violent. Estimates are that it controls about 25 percent of the street trade and prostitution in Moscow. Casinos, money laundering, drug and arms smuggling, and trademark piracy are among its staple illegal activities. Its main import-export activities are believed to be in the Netherlands. Another Russian gang, called the 21st Century Association, is an umbrella organization and one of the most powerful in Russia. It has wide-ranging mafia and business activity operations in eighteen Russian regions and seven countries abroad, including the United States and Western Europe. Traditionally active in the oil industry, in recent years it has been shifting its focus to economic crimes and high-level public corruption schemes.

Large sectors of the Russian Far East are reportedly controlled by organized crime networks that have established operations throughout Asia and Africa. Those groups are engaged in various activities, including human and narcotics trafficking, prostitution, weapons smuggling, and financial crimes. Latin American networks, such as those in Colombia, have also linked up with their Russian counterparts.

### **The 1990s—Movement Forward or Backward?**

After a decade of reforms and elections, it is clear that countries of the CIS have traveled only a short distance down the long and winding road to the rule of law.<sup>36</sup> Of these countries, Georgia, with all of its problems related to poverty and unrest in the Caucasus, has probably traveled the greatest distance, although it has only begun to address endemic corruption and institutional law enforcement reform issues.

As they did under Communist rule, many countries, regions, and republics in the CIS function along two parallel structures: the official institutions, such as the security chiefs, prosecutors, police chiefs, governors, and mayors; and the unofficial networks of the nomenklatura. Private property ownership rights are still not fully accepted, legally realized, or enforceable in many countries, regions, and republics, and the ruling network usually grants them only conditionally and for a price.

In a number of CIS countries, some of the promises made by the political leadership to undertake political and market reforms were simply smoke screens utilized to maintain power and protect their own interests. The smoke screen was needed to obtain popular support and financial support from the West. The abuses of the privatization process in many countries, the empty anticorruption campaigns, and unreformed law enforcement structures were not openly discussed until recently, when greater press freedom, fledgling democratic institutions and civil society, and global links through technology combined to create more openness.

During much of the 1990s, most countries in Russia's orbit did not have political, civil, or legal institutions strong enough to support revolutionary reforms. Criminals, corrupt public officials, and businessmen took advantage of that fact and colluded to perpetuate that reality. Others chose to undertake micro- "high-

priority” economic reforms with little regard for the fundamental rule of law issues at hand. The latter, narrow approach to fundamental economic and political reform was expressly supported by the Yeltsin administration and various influential members of the donor community, including the United States.<sup>37</sup> During that period, corruption facilitated by personal ties became even more important, formal structures disintegrated, and corrupt networks flourished and expanded in numerous directions.

Most in the middle and lower levels of the bureaucracy still resort to bribery because they otherwise do not make enough money to provide the bare necessities for themselves or their families. These economic and political realities

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***“The problem with the tax system in many post-Soviet states is that much of the money is in the so-called shadow economy, which is often outside the state’s formal control.”***

make it difficult to reform existing laws, create institutions, or change ethical behavior. Indeed, corrupt lower to mid-level bureaucrats and self-interested high-level public officials, organized criminal and intelligence networks, monopolistic oligarchs, and unreformed, for-hire law enforcement regimes character-

terize most CIS countries today. The tentacles of this network reach around the globe.<sup>38</sup>

Systemic corruption is a sign that political opposition and a system of checks and balances do not exist or are extremely weak.<sup>39</sup> Political elites and economic oligarchs make virtually all key policy and business decisions and control and pay off the police. They share the rewards of corruption and protect each other from the attendant risks, perpetuating the system they built by freezing out new entrants or charging them a high admission price.

### **Corruption in Kazakhstan and How It Compares with Corruption in Russia**

The oil sector reveals much about how systemic corruption works and shows the escalating cost to businesses and the public. Corruption explains why that sector is not globally competitive or more attractive to investors and why the people of Kazakhstan and Russia have reaped few benefits from the multibillion dollar oil deals effected in their countries over the last decade.

The political system in Kazakhstan is more like a benign dictatorship than a presidential democracy. In comparison with Russia, the political system of Kazakhstan is more centralized, less fragmented, and shows more continuity with the Soviet past. Kazakhstan’s first and only president, Nursultan Nazarbayev, rules without apparent constitutional constraints. Many newly passed, reform-oriented laws are not enforced fairly or effectively. In theory, key institutions—political parties, courts, media, and the parliament—are in place but they are not functionally independent of the president and his network. The two main opposition

parties are tolerated but only within limits that cannot be transgressed. Laws are still used to repress free speech and protect public officials; for example, a recent law makes it illegal even to discuss the property holdings of the president or his family. Under such circumstances, many find it difficult to take Kazakhstan's democratic and market reform efforts seriously.<sup>40</sup>

Serious opposition candidates such as former prime minister Akezhan Kazhegeldin were barred from the January 1999 presidential elections on the grounds that they were being investigated on charges of corruption. Critics charge that the president's selective prosecution of political opponents and journalists makes clear that the legal and political arenas in Kazakhstan, like the oil sector, are the exclusive domain of the president's men. A leader of the opposition party was beaten and arrested in a neighboring country. Another leader was barred from running in elections. Independent journalists are routinely harassed, censored, bankrupted, and silenced. Kazakhstan has preserved the infrastructure of authority inherited from the Soviet times, although most Russian elites have been replaced with Kazakhs who have close ties to the president. The Kazakh governing structure closely resembles the power structures in Ukraine, Azerbaijan, and the other four Central Asian republics.

During the 1990s, President Nazarbayev consolidated control over all of Kazakhstan's institutions, including the parliament, the media, opposition parties, and the courts. The president's political and constitutional maneuvers have rendered those institutions virtually powerless. To the extent that they exercise power, they do so largely at his direction or with his tacit consent. They are used to oppress, as they were under Soviet rule. In addition, the president has further consolidated power by balancing the interests of three distinct clans or hordes through government appointments and protection networks. In the Kazakh context, "hordes" is a historical term that implies a national subgroup distinguished by its own subnational identity, physical appearance, dialect, geographic concentration, and other affinities. President Nazarbayev belongs to the so-called Great Horde. To date, he has maintained a balance of power between the hordes' elites, but because of strong political forces operating in civil society, as well as significant underlying political unrest and poverty, there is no guarantee that that balance can be maintained. Although Kazakhstan has some of the world's most highly prized oil reserves, current and potential investors are becoming wary of systemic corruption there. Some are turning to more friendly, predictable markets where the long-term cost of business is calculable and the rule of law is more than just a constitutional theory.

In Russia, where government is more open, but corruption is also more chaotic and unpredictable, either indigenous and international businesses have not been permitted to make legitimate investments or they have decided that it was not politically wise or economical for them to do so. The international oil industry in Russia also has less leverage to negotiate with Russian officials and quasi-private oil barons than it has in Kazakhstan, where more significant investments have been made. Kazakhstan's primary source of internal revenue and external power is oil. From a global perspective, the long-term cost and risk of corruption are

unpredictable and often make a deal financially unattractive when compared to other, less-corrupt markets.

The Kazakhs and other Central Asians are somewhat different from the Russians in that they have traditionally relied on informal network negotiations to maintain power. In contrast, the Russians are more prone to be confrontational, examples being Lebed's harsh actions against the aluminum magnates in Krasnoyarsk and Yeltsin's bombing of the Russian Duma in the early 1990s. President Nazarbayev's network, on the other hand, are perceived as being negotiators par excellence. Their *modus operandi* appears to be to maintain order and become rich by brokering deals through delegating and sharing power with others in less-strategic sectors, and by widely distributing some of the proceeds of brokered deals to a well-organized, old-boy network. During the last decade, Nazarbayev sent packing many of the old Russian elite, without physically provoking them, while successfully negotiating deals with the United States and with European and Russian conglomerates. He has now turned his sights toward the Middle East and China.

One reliable intelligence source estimates that some of the president's top aides pay more than a thousand bureaucrats monthly stipends from the illegal proceeds of oil deals and related bribery. The bureaucrats protect the network's interest and resolve problems, which they basically created to extract more bribes. Over time, the ever-expanding network has become so expensive that companies cannot make the profits in Kazakhstan that they can make in other markets.

### **Nepotism and Family**

Nepotism is a standard feature of Kazakh governance. The chief of the Kazakh Tax Police, Rakhat Aliev, is President Nazarbayev's son-in-law; the president's stepdaughter runs the main television station, and the president's son-in-law, Timur Kalibaev, is vice president of KazakhOil. They and other relatives control the most important income-producing assets in Kazakhstan.<sup>41</sup> Kazakh observers have estimated that about 50 percent of the bureaucrats at government institutions have relatives working for the government.

Whether in Russia or Kazakhstan, retaining power is dependent on the distribution of favors. Under former president Yeltsin and President Nazarbayev, the national pie has been divided among network leaders, powerful regional magnates, ministries, and official and privatized law enforcement and intelligence communities. The situation in Russia is especially volatile because there are many players competing to redivide property. In Kazakhstan, the Nazarbayev clan dominates; it has only chosen to share its power and wealth with competing clans as a peaceful way to retain control over key sectors such as oil.

### **The State Sector after Soviet Rule**

When Kazakhstan became an independent state in 1991, many were dubious as to how long independence from Russia would last. President Nazarbayev, the Communist Party leader at that time, was an early champion of closer links with Russia and the CIS. The new state of Kazakhstan inherited enormous former

Soviet property and natural resources. However, no one knew what the market value of the property actually was or how private property was going to be divided, titled, and ultimately protected. What everyone did know is that market and democratic institutions, which were needed to manage and control the distribution of valuable state resources, did not exist. Unaccountable presidentially appointed networks quickly formed to fill the gap. The same happened in Russia as well.

In general, the early privatization process in Kazakhstan was less chaotic than in Russia, but in terms of outcome, they closely mirrored each other. The most valuable resources were apportioned among Yeltsin's and Nazarbayev's key political supporters and clans through insider deals.

One difference between the two countries' privatization processes related to Kazakhstan's reliance on numerous foreign investors as minority joint-venture partners. In Kazakhstan, the president's strategy had several ulterior, complementary purposes. First, by involving numerous non-Russian international conglomerates as partners and joint owners of its most valuable natural resources, Kazakhstan believed it was staking out political independence from Russia. Second, the country desperately needed foreign currency to pay its debt, much of it owed to Russia, and to provide essential services to the public. Third, Kazakhstan was seeking both internal and external political legitimacy. And last but not least, numerous deals meant numerous bribes. During the early 1990s, the oil and gas ministries were abolished in both countries, and quasi-private companies effectively controlled by Yeltsin's and Nazarbayev's networks emerged in their place.

A by-product of expedited privatization, Kazakh style, was the rise of rich and powerful men who were accountable only to the president and his entourage. As Martha Olcott testified before the Senate Foreign Relations Committee: "Kazakhstan could and should have an orderly political transition but the opportunity for personal enrichment that is afforded those who hold power is an enormous temptation for those close to President Nazarbayev."<sup>42</sup> The business and government career of Prime Minister Nurlan Balgimbaev is illustrative. In the early 1990s, Balgimbaev was an engineer and executive with the state-owned Aktiubinsk Oil Company. He later served as a consultant to Chevron during its landmark oil negotiations with the Kazakh government. In 1995, Nazarbayev appointed him the minister of oil and gas. When the ministry was abolished, Nazarbayev appointed Balgimbaev to head the country's new, quasi-private oil company, Kazkhoil. When the president abruptly dismissed Prime Minister Kazhedeldin in the late 1990s, he named Balgimbaev as his new prime minister.

### **The Legal System: Representations and Reality**

On the surface, the legal system of Kazakhstan appears to meet many Western legal and democratic standards. The country was among the first to pass a new criminal and civil code as well as laws that seemingly provide more property right protections than those in other CIS countries. Western donors, including USAID and the World Bank, played a key role in drafting legislation. In practice, however, the legal system works much like the oppressive, arbitrary system that exist-

ed under Soviet rule. Laws are still not being fairly enforced or implemented, and there is an ever-burgeoning, informal shadow economy.<sup>43</sup>

Kazakhstan's legal system is not based on the rule of law or an independent judiciary, even though those principles are clearly established in the constitution. In important cases, the president, not unlike the Communist Party general secretary during Soviet times, makes all of the final decisions. The prosecutors, courts, and police are subservient, and telephone justice continues to be the vehicle for dispensing justice. According to one critic, "Nazarbayev disposes of his country's vast natural resources as he sees fit and no one questions his judgment. . . . Laws mean little and neither does the constitution, but those who complain are hounded into silence. The official media meanwhile sings praises to the president."<sup>44</sup>

According to U.S. legal experts, the criminal justice system is fundamentally corrupt, particularly the police force.<sup>45</sup> As in the Soviet era, judges are not accountable to anyone but the president, who continues to appoint all of Kazakhstan's judges and prosecutors. Prosecutors continue to have enormous powers of investigation and are not supervised or monitored by the courts or an agency. The bar, as an institution of independent defense attorneys, is not allowed to exist. The legal system remains under the total control of the president and his regime and continues to be an oppressive instrument of power.

The police have close links to regional organized crime networks and are engaged in illegal moneymaking operations with neighboring countries. This includes the illicit export of raw materials, narcotics trading, and control over all major transportation routes in Kazakhstan. The cost of anything transported by rail or ship includes high fees paid to local mafia bosses and corrupt local politicians and bureaucrats.

In Kazakhstan, criminal charges, regardless of the crime committed, can be mysteriously dropped, and arrested persons can almost always be released for a fee.<sup>46</sup> Even President Nazarbayev's security chief, Alnur Musaev, once complained openly that "senior officials had blocked prosecution against their subordinates and that many judges had refused to open criminal probes against their colleagues regardless of the evidence his agency had collected against them."<sup>47</sup>

A 1997 *International Herald Tribune* article highlighted the issues for investors:

For investors, however, the real concerns are overzealous bureaucracies, lack of liquidity, insider dealings and corruption. A recent survey of foreign investors in Kazakhstan found that all of them considered bureaucracy to be a major barrier to investment, while 96 percent also blamed the tax regime and 92 percent found fault with the often cloudy legal system. Lack of information, exchange controls and poor infrastructure were also often cited. It is notable that Kazakhstan and Uzbekistan, the region's most important economies, also feature close to the top of a list recently published by the London-based consultancy Control Risks of the world's most corrupt countries.<sup>48</sup>

Another news article in 1998 summed up the situation succinctly:

Wealth from a series of big deals, mainly in the lucrative oil and gas sector has been slow to trickle down beyond top politicians and businessmen causing resentment among the less privileged as the gulf between the rich and poor widens. This resent-

ment is aggravated by the fact that many bureaucrats whose official monthly wages run only into hundreds of dollars, can be seen speeding along the streets of Almaty in sleek expensive cars and living in smart villas.<sup>49</sup>

### **Local Officials: A Cut for Themselves**

This raises the question of the extent to which President Nazarbayev and his clan control the political, economic, and legal activities at all levels of government. The answer appears to be that their primary concern relates to transactions involving national figures, large sums of money, or issues of high political importance. Other cases are left to regional and local officials without interference from the center. In either instance, virtually any decision can be bought for the right price.

At a 1999 foreign investors forum in Almaty, the president declared that the leader of any foreign company could contact him personally to discuss problems they were facing in Kazakhstan—especially if the problem concerned bribes.

Naïve Kazakh observers may interpret this to mean that the president is personally committed to treating investors fairly; however, more experienced observers interpret it to mean that presidential intervention is absolutely essential to resolving problems, representing yet another opportunity for negotiating another bribe. At the local level outside Astana or Almaty, lower-level bureaucratic regulatory decisions are likewise bought and sold with little fear of reprisal or oversight. As in Russia, regional and local leaders, often in collaboration with organized criminal networks and corrupt entrepreneurs, have considerable influence and control over disputes concerning regulations, land ownership, local taxes, licensing rental agreements, export procedures, and the transportation or provision of oil and gas, electricity, and water.

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***“The failure to expose and publicly discuss corruption feeds the public’s cynical view that anyone at a high level is not going to be punished for violating the law.”***

### **Foreign Companies**

As previously noted, during the 1990s Kazakhstan’s overall strategy was to attract as many foreign investors as possible. Initially, it developed a reputation as a country where foreign investors were welcome and protected. However, under Soviet rule, reform-oriented laws became only as relevant as the ruling elite allowed them to be. What often mattered more were the myriad government instructions, interpretations, directives, and normative acts by lower ministries or regional regulators.

Critics also point out that the Kazakh bureaucracy has remained very slow and Soviet-like in terms of style and substance. Even if a contract is legally and politically blessed, it can still encounter a host of problems from inherently inefficient

Soviet-era managers. On several occasions large contracts have been canceled without compensation to investors regardless of a seemingly valid contract. In a survey conducted by a well-known American Central Asian scholar, Nancy Lubin, pervasive corruption was found to exist throughout the Kazakh government:

In the mid 1990s, the vast majority of the survey's more than 2000 respondents in Uzbekistan and Kazakhstan accepted pervasive corruption in law enforcement and government as a matter of course. Close to two thirds of respondents said that, as a rule, high government officials are either themselves members of the "mafia" or closely tied to the mafia. Almost thirty percent of the police in our expert survey said that, as a rule, their fellow cops are closely tied to organized crime. And half of all survey respondents said that bribery occurs as a matter of course in the courts and procuracy.<sup>50</sup>

In both Kazakhstan and Russia, contract inviolability is an elusive concept. Local officials and bureaucrats at all levels still demonstrate their importance and power over contracts and property rights by exercising unaccountable discretionary power. Often, foreign investors are confronted with discriminatory taxation policies, unclear labor permit requirements and visa barriers, conflicting and unpredictable laws and regulations, and corruption at all levels of government.<sup>51</sup>

The problem with the tax system in many post-Soviet states is that much of the money is in the so-called shadow economy, which is often outside the state's formal control. Estimates are that 40 to 50 percent of the Russian GNP is in the untaxed shadow economy. Police reports from Almaty indicate that the shadow economy is booming in Kazakhstan as well. Kazakhs with money, like their Russian counterparts, have a reputation for evading taxes. The situation, seemingly countenanced by the state, leaves little money in the state budget for social programs and basic services such as health, pensions, and education. This creates increasing numbers of people living in poverty and makes many of them wish for social programs that had been provided to them under the Soviet regime. It also produces ongoing state budget crises and encourages state and bureaucratic dependence on bribes paid by foreign investors to fund programs and supplement salaries. Several disputes over taxes have tarnished investor relations with the Kazakh government over the years. The head of the tax police, the president's son-in-law Aliev, has a reputation for heavy-handed methods such as storming offices with automatic rifles in hand. As *Newsweek* reported:

Some of Aliev's tactics have been questionable. One of his first official acts two years ago was to handcuff a British oilman on national television. The man spent more than a week in jail until his company paid five million dollars. Aliev said the money was "back taxes." Many local experts called it ransom.<sup>52</sup>

Reliance on personal relationships raises further questions about the safety of investments in Kazakhstan. Many believe that even though Kazakhstan does not appear to be facing an immediate financial crisis, unless fundamental structural and institutional problems and systemic corruption are addressed, its political and economic future looks bleak.

It is clear that Kazakhstan has not progressed significantly in building a democratic market economy. It lacks a modern and efficient civil service, salaries are



substandard, and bureaucratic corruption is systemic. Shifting economic power to ethnic Kazakhs at the expense of the Russians has also fostered a system of clannish and tribal governance instead of the rule of law. Overdependence on income from natural resources makes the country's budget dangerously dependent on fluctuations in the global oil market. Most important, the vast majority of Kazakhs have been politically and economically disenfranchised and are barely able to survive at extreme poverty levels.

Those factors, combined with constant Russian interference and control over key energy transportation routes, have created a combustible political environment. So far, the government has successfully hidden its deficit and retained power by legally and surreptitiously selling interests in its natural resources, such as oil, to international investors. However, the potential for an economic or financial crisis and political instability is high.<sup>53</sup>

### **Corruption: How It Works and What It Costs in Kazakhstan**

An analysis of public records from the 1990s and conversations with individuals with experience in Kazakhstan reveal that corruption in strategic sectors is well organized and controlled by high-level officials and oligarchs. When deals are made, the initial costs of corruption are extremely high, from 30 to 50 percent or more of the total cost of the transaction. Based on this calculation, corruption in the oil industry alone during the 1990s would be in the billions. Corruption costs escalate even more after the initial investment, particularly at the ministerial and local levels of government, where companies have to negotiate with many layers of bureaucrats and mafia bosses. Foreign companies are often asked to bear the cost of social and public services. Western advisers to the Kazakh government sometimes play a key role in negotiating the official and unofficial terms of the initial transaction and in resolving subsequent problems. Foreign bank accounts, offshore financial centers, foreign real estate, and private foundations are frequently utilized to extract, hide, or launder bribes or to embezzle public funds—often with the assistance of Western advisers and law firms.<sup>54</sup> Because Russian officials, businessmen, and organized criminal networks effectively control most of the transportation routes and pipelines in the region, the Russian equation must be factored into any comprehensive business risk analysis.

### **Unpredictable, Unenforceable Laws and Weak Markets and Democratic Institutions**

Many economic and political reforms have been achieved on paper in post-Soviet countries, but most have not been effectively implemented<sup>55</sup> or enforced in practice.<sup>56</sup> Part of the reason is that fledgling democratic and market institutions remain weak. An independent judiciary and independent news media, the core institutions needed to support the development of a market-based democratic society, either do not exist or remain very fragile throughout the region. Without them, private property rights and civil liberties cannot be protected. Among those most affected are investigative journalists, human rights advocates, political opposition candidates, and whistleblowers, many of whom are threatened or are

confronted with prosecutorial action, economic pressure, or violence. Typically, the result of this type of environment is both self and government censorship; unenforceable, unpredictable laws, regulations and policies; increased organized crime; an uninformed and cynical public; distorted public policies; anemic economic growth and the perpetuation of a culture of secrecy.

During the 1990s, corruption was never clearly defined in the laws of most CIS countries, including Russia and Kazakhstan. Most criminal codes have not undergone comprehensive reform and lack provisions on money laundering and racketeering. Many reforms have been blocked by organized criminal groups, corrupt government officials, and oligarchic networks. As in the period of Communist Party rule, significant elements of the Russian and CIS economy remain largely dependent on the illegitimate shadow economy, which is believed to be growing and is larger than under the Communist form of governance.<sup>57</sup> The Russian minister of interior recently estimated that 30 to 50 percent of criminal income is used to bribe public officials and that 90 percent of businesses regularly pay bribes. In the upper echelons of the Russian government, including the Russian Duma, some have observed that crime and politics are often indistinguishable. Parliamentary immunity for central and regional Duma members, many of whom are known to have ties to organized crime, serves to reinforce the Duma's negative public image.

This situation inflicts considerable damage on the legitimacy and authority of the state and precludes the establishment of the rule of law. The penetration of organized crime in Russian government structures also has a corrosive effect on citizens' perceptions of democracy and market economics. Honest Russian prosecutors and police lack the legal tools to strike at the leadership of the criminal organizations. Defense lawyers and human rights advocacy groups lack the laws, procedures, and institutions needed to safeguard their clients' civil liberties and due process rights.

A society based on the rule of law is built around one fundamental principle: the fair and equal application of rules that are well known, understood, and accepted by the public. If the majority of people do not voluntarily comply with laws they accept, or if they know that breaking the law will go unpunished for a chosen few, the conditions for rule of law do not exist.<sup>58</sup>

The association between crime, public corruption, and private markets undermines public support for reform and fuels demand for repressive measures and authoritarian regimes. The linkage can be severed only by building a fair and effective legal system capable of enforcing the law and winning the confidence of the public. Without rule of law, honest entrepreneurs have no choice but to resort to illegal measures to enforce their contract rights or protect their civil liberties. At the same time, criminal activities such as money laundering and tax and customs evasion are aided by the lax or arbitrary enforcement of laws and procedures.

### **Independent Media and Investigative Journalism Are at Risk**

Over the last ten years, independent media, investigative journalism, and Internet use have generally gained ground in the former Soviet Union. People in virtual-

ly all CIS countries have access to more public and international information than ever before. But in the Central Asian Republics, the existence of independent news media is seriously threatened. In the area of media independence and free speech in general, Russia and other CIS countries are backsliding.<sup>59</sup> Independent media, investigative journalism, and high tech issues need more support from national and international organizations if they are to survive the current authoritarian trends. Russia and the Central Asian Republics are tightening the reins of control over information technology such as the Internet. Those countries have recently passed regulations that give corrupt law enforcement and intelligence communities the authority to monitor and censor the Internet with virtually no oversight.<sup>60</sup> This development has serious negative ramifications for the further development of free markets and democratic institutions, and it raises a number of international security concerns. Many issues transcend borders and need to be addressed through a combination of complementary formal and informal international, regional, and country programs. In countries such as Ukraine, Russia, and Kazakhstan, some of the problems are more acute, such as the number of journalists being injured, threatened, or killed.

A 1999 Freedom House regional media assessment report revealed that most journalists in the CIS and Central and Eastern Europe share the common problems of low salaries and lack of marketing and management skills.<sup>61</sup> They lack the technological support to work on complex, transnational issues and suffer the threat of punitive and arbitrarily enforced libel, slander, and insult laws.<sup>62</sup> Government or private monopolized control over major media outlets, which promotes self-censorship and corruption, was also identified as one of the most serious structural media problems in the region.

Many journalists interviewed stated that distrust and corruption within the law enforcement community and the media severely hampered their ability to engage in serious investigative reporting. They believed that the risk of criminal prosecution and fines for printing or airing stories about high-level political or business corruption was high and that their editors and media owners felt the same. The failure to expose and publicly discuss corruption feeds the public's cynical view that anyone at a high level is not going to be punished for violating the law. It also has resulted in minimal cooperation or information exchange between the media and the law enforcement community. A number of the journalists surveyed believed that one of the best ways to overcome some of the problems, particularly those related to media ownership and government censorship, is to enhance transnational information exchange and access to the international political and media communities through new technologies and regional training programs.

Although economic and political power is more diffuse than before the fall of the Berlin Wall and power structures are now more complex, the Communist legacy that has not changed is the culture of silence that was perfected and publicly engrained under Soviet rule. In 2000, systemic corruption has been joined by crony capitalism. These potent forces rule by manipulating new instruments of public power through both formal legal and informal criminal means, with no

regard for the law or the public interest. In fact, little can be learned about who is engaged in the policymaking or budgeting process through mere examination of the organization chart of most countries' bureaucracies. In general, the free flow of and access to information is still carefully controlled and stifled through both legal and illegal means.

One of the reasons why the public appears so cynical and unreceptive to Western integration may relate to the West's having turned a blind or very naïve eye toward crime and corruption during much of the 1990s. Only recently have world leaders, international financial institutions, and multilaterals begun to develop a serious anticorruption/anticrime policy dialogue. Western complicity has yet to be seriously addressed in most corporate or governmental quarters. It remains to be seen whether new laws on global bribery, such as the OECD Anti-Bribery Treaty, or international anticorruption rhetoric will lead to action on long-term strategies and institution-building.

### **Key Findings**

My two key findings are that many of the economic and political reforms of the 1990s are illusory, acting as smokescreens for informal decision-making networks, and that most of them have not been effectively or fairly implemented. The ruling regimes and the corrupt networks have chosen not to make a serious investment in state institution-building and have not allowed civil society to flourish. To do so would weaken their monopolistic political and economic power base. Technological innovation, a free press, and small business development have also been stymied. Systemic corruption has more similarities than differences throughout the region, including Russia and Kazakhstan, although there are some differences among a country's sectors and in the same sector in different countries. In any event, systemic corruption renders the CIS incapable of competing globally.

Annual surveys consistently rank the CIS regional corruption quotient as the highest in the world.<sup>63</sup> As under communism, corruption is the norm, not the exception. In contrast, the democratic and political reforms in many countries in the Baltics and Central and Eastern Europe are on the road to sustainability, with democratic institutions, market economies, and the rule of law emerging.

A significant amount of systemic corruption in the CIS is attributable to collusion among corrupt, high-level public officials and business oligarchs who have co-opted key elements of the nomenklatura, the Communist Party, the security and law enforcement communities, and transnational organized criminal networks. Those forces are stronger than ever because they now operate across strategic sectors and geographical borders and move or hide money at the speed of light. Former government officials of the Soviet period and their expanded network enjoy an even more economically privileged position in the successor states because they are no longer accountable to any ruling political party or organized form of governance.

A consensus has emerged among academics, policymakers, the business community, and the public that transnational crime and corruption in the region is sti-

fling trade, investment, and economic growth—particularly small business development and entrepreneurship; inhibiting the further development and reform of key democratic institutions required to sustain economic and political reforms, perpetuating poverty, and keeping those outside the ruling corrupt network locked out.<sup>64</sup>

In general, there is reason to be less than optimistic about the immediate future of many CIS countries. The countries in Central Asia, as well as Belarus and Azerbaijan, are generally seen as most at risk. At the other end of the spectrum, Georgia, Russia, and to a lesser degree Ukraine have made economic and political progress in a relatively short period of time; however, recent backsliding and authoritarian moves in all of those countries signal that they too are on a dangerous precipice. Clearly, the emergence of strong market and democratic institutions in those countries and throughout the region will require considerably more national and international resolve, strategic focus, and financial resources than have been marshaled to date.

### **What Is to Be Done?**

The best overarching strategy for CIS countries is to move from a culture of secrecy to a culture of openness and the rule of law. The question is how to do it. First, they must simultaneously but wisely balance many interrelated fundamental reforms, including the following:

- providing the public and business community access to accurate and timely information
- nurturing small business and public interest advocacy groups
- engaging the public in a participatory, transparent governance process
- undertaking comprehensive regulatory, technological, and administrative law reform
- promoting and protecting free speech and investigative journalism
- reforming the criminal justice system
- creating an independent judiciary and regulatory institutions essential to protecting private property rights and individual civil liberties

Second, institutional corruption, particularly within the police and law enforcement community, must be a high-priority reform.

Comparative lessons from the 1990s clearly reveal that the least corrupt and most economically and politically successful societies in Central and Eastern Europe are those in which the public and media can participate in, monitor, and report on government policies, programs, and decisions. Countries such as Hungary, Poland, and Estonia are creating independent judiciaries, independent media, and fair, effective law enforcement systems. Those key institutions promote the rule of law and protect property rights and civil liberties. They also protect investigative journalists, whistleblowers, human rights advocates, and anti-corruption organizations. Their reforms are now sustainable.

To promote a democratic law-based culture, it is essential to empower citizens with accurate and timely information through the media, school-based education

programs, public meetings/debates, civic organizations, business and professional associations, trade unions, and openness in government decision-making and processes. The potential role of new technologies such as the Internet cannot be underestimated.

Public and private collaborative leadership is also essential to a successful rule of law reform program.<sup>65</sup> Any effort should include a wide range of government and nongovernment players, including representatives of targeted government entities; parliament; multinational corporations; professional, women's, and business associations; universities; think tanks; advocacy and human rights groups; international and national donors; and private foundations. Many of the tasks are transnational in nature, and more creative avenues must be found to enhance and promote international cooperation and emerging global economic and governance standards. Countries that reject this good-government path will remain corrupt and globally uncompetitive politically and economically.

### **Independent Media and Investigative Journalism**

Investigative journalism is perhaps the most important tool for empowering the public and civil society in the battle against crime and corruption. Independent media and advanced technology have critical and fundamental roles to play in promoting the free flow of global information, linking small businesses, monitoring government action, exposing corruption, and keeping the public informed and engaged.<sup>66</sup> It also plays a key role in supporting the often dangerous work of law enforcement.

However, strengthening independent media and investigative journalism in the CIS will not be possible until a nurturing legal environment is created. Among other things, this means enactment and fair enforcement of internationally acceptable libel, slander, and insult laws and the creation of an independent judiciary and legal profession that can come to the legal aid of journalists.

Perhaps the most urgent long-term problem directly related to the media concerns the need to change the public's cynical attitude about their new form of democratic governance and market economics. Annual public surveys indicate that the public is becoming impatient.

Of high priority is the passage of freedom of information policies and laws needed to break the culture of secrecy that exists throughout the region. Although a number of constitutions now guarantee public access to government information, most countries have not adopted implementing legislation. Without those laws and policies, obtaining the information to expose corruption and to effectively monitor and report on government actions, or to undertake serious criminal and corruption investigations, will be extremely problematic.

### **Independent, Accountable Law Enforcement Institutions**

Most CIS countries have established separate branches of government only on paper; the ruling oligarchies have not been willing to share real political or economic power with other institutions. Thus, there are few checks and balances and little public accountability concerning government decision-making. In general, a purely technical, nonpolitical approach to anticorruption, legal reform, and law

enforcement issues has proved ineffective for promoting sustainable reform. Adopting formal laws and amendments to the civil and criminal codes without attention to the process by which they are developed or the broader context within which reforms are being undertaken has not resulted in strong institutions capable of addressing complex problems.

Many of the new rules often do not mesh with the realities of the legitimate and illegitimate markets and they are not appropriately harmonized with the existing legal framework and tradition. Too much reliance on presidential decrees or commissions, Western models, and small, select groups of elitist law reformers has limited utility and can be counterproductive. A related issue is the disproportionate investment by many countries and donors in technical drafting and perfecting the letter of the law, as opposed to supporting the development of independent institutions, public buy-ins, and well-trained, appropriately paid civil servants needed to implement and enforce the laws. In the 1990s, the United States alone spent upwards of \$50 million to support a Russian economic law- and decree-drafting process that many now see as overly technical, nonparticipatory, and misdirected. Minimal effort was made in this all-important initiative to develop a participatory legal reform process or a comprehensive strategy that included representatives of all three branches of government, academia, NGOs, and the public.<sup>67</sup> At the same time, relatively little has been invested, by the Russians or donors, to reform the criminal justice system in Russia, Ukraine, or other CIS countries or to promote the development of democratic institutions such as an independent judiciary.

### **Banking Reform and Privatization**

Unless the bank regulation and enforcement systems undergo fundamental reform, the prospects for preventing and addressing capital flight and financial crimes such as money laundering and high-level bribery are remote. The reforms touch on a wide array of issues and organizations, including government spending, business finance, securities markets, bank oversight, administrative law, know-your-customer rules, and the interrelated supportive roles of advocacy groups, academia, professional and business associations, and think tanks. Many of the crime and corruption problems facing CIS countries have transnational dimensions and pose serious financial risks. However, systemic corruption within the banking sector is particularly debilitating and dangerous. If left unaddressed, these problems will continue to stifle legitimate economic investment and breed crime and corruption both nationally and globally. A corrupt banking system coupled with a corrupt law enforcement system is a recipe for systemic corruption and organized crime.

The privatization of strategic assets also should be transparent, participatory, and carefully balanced with correlated legal reforms to protect both the integrity of the privatization process and the property rights of businesses and individuals.

### **Checks and Balances and Separation of Powers**

The lack of separation of powers is a major barrier to reform in the region. In many countries the executive wields largely unchecked power over significant portions of the economy, civil society, and public institutions and refuses to fund

and implement constitutionally mandated power-sharing reforms to effect the independence of the judiciary, the parliament, and regulatory agencies such as a securities and exchange commission. A cursory survey of the laws addressing white collar crime, public and private corruption, organized crime, and administrative violations reveals significant vagueness and gaps. In general, the current laws give bureaucrats too much discretion, which results in bribery and arbitrary action. Criminal activities such as money laundering, bribery, and racketeering are not clearly defined and conflict with other laws. Laws to address complex transnational crime and corruption problems, including international investigations, usually do not exist.

Even when there is a law or decree, such as those relating to corruption within the civil service system, the penalties and the risk of being prosecuted are so minuscule that the laws have minimal deterrent effect or they are so vague that bureaucrats can exercise unbridled administrative discretion without fear of recourse. At the same time, those subject to bureaucratic decisions have no administrative review rights because there are no comprehensive, enforceable administrative procedures.

### **Law Enforcement, Not Retribution**

Even the best written laws, rules, and policies are impossible to fairly implement or enforce without a noncorrupt judicial and law enforcement regime. CIS public opinion, government, and business surveys rank the law enforcement community as the most corrupt state institution.<sup>68</sup> The diagnostic surveys also indicate that comprehensive regulatory reform has yet to be implemented and that the judiciaries are corrupt and politicized.

In most CIS countries the “marshals service” has not been reformed since Soviet days; it still does not have the capacity, resources, or legal tools to enforce court judgments, foreclose, or seize assets. Moreover, most CIS countries are still debating fundamental concepts related to private property ownership and contract sanctity. Until such conceptual issues are legally resolved and until court judgments become enforceable, judicial decrees will have limited value; although they can help the winning party leverage his or her position during informal settlement negotiations. Usually, however, private parties do not rely on the court system. Instead, they increasingly rely on private security services or organized criminal networks to enforce a judicial decree or seek their version of justice through force. This helps to explain why there is such a demand for private security services in many countries and why organized crime, both national and transnational, is flourishing and often linked to these entities.

### **Civil Service Reform**

Corrupt officials, private sector players, and organized crime networks have no interest in developing a professional, honest civil service. In fact, their success depends in large part on their ability to control the civil service through a system of bribes, lack of training, and low pay. Because most civil servants do not make enough money to feed their families, they have little choice but to operate with-



in the rules of this corrupt system. For these reasons, most CIS countries have yet to address comprehensive civil service reform.

### **Promote Human Rights and Reform of the Criminal Justice System**

Because all CIS countries were police states until as recently as 1989, anticorruption initiatives should address both law enforcement and crime prevention issues with due regard for potential political abuse and human rights violations. Prosecution-oriented anticorruption strategies, with little emphasis on prevention or human rights, may be misguided or premature during the initial stages of a transition, when the law enforcement and judicial communities are corrupt and are not yet independent institutions and when free

speech and freedom of association are not fully protected. The reality is that the Procuracy remains the most powerful and unreformed institution in most CIS countries, although some countries, such as Georgia, have at least initiated the reform process on paper.<sup>69</sup> Until the Procuracy is reformed in the CIS, it will be impossible to

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*“Because most civil servants do not make enough money to feed their families, they have little choice but to operate within the rules of this corrupt system.”*

create an independent judiciary in any country. The Procuracy often answers to the call of the executive branch, wealthy oligarchs, organized crime, or itself, and it continues to intervene in court decisions throughout the region, often through informal communication. During Soviet times this was referred to as “telephone justice,” and it remains the prevailing way to administer justice today. The all-powerful Procuracy, which was historically designed to carry out the will of the Communist Party, is one of the Soviet Union’s most antidemocratic, antimarket legacies.

Fundamental steps to reform the criminal justice system, observance of international human rights norms, and support for independent news media should be preconditions to any serious anticorruption effort. Empowering a corrupt institution to investigate, prosecute, or judge individuals—particularly in autocratic environments—or investigating, prosecuting, or judging defendants under unreformed criminal laws and procedure codes, without regard for due process, breeds public skepticism and human rights violations. One of the key lessons from the Russian experience is that it is important to support institution building and simultaneously to reform the criminal justice system and the commercial law regime. Otherwise, property rights and individual civil liberties will not be fairly and effectively protected. Reforming the commercial laws in a legal vacuum without public participation results in unsustainable reforms.<sup>70</sup>

### **Support for Anticorruption Campaigns/Commissions**

Over the last ten years, virtually every country in the region has initiated anticorruption/anticrime campaigns of one form or another. However, a cursory review

of the programs and numerous public and business surveys over the years leads the observer to conclude that most campaigns lacked a comprehensive strategy, a prioritized, balanced action plan, high-level political will, or law enforcement and public community support. Indeed, public surveys throughout the region found that people saw the initiatives and special commissions as little more than public relations or political tools for entrenched corrupt officials and their networks. Anecdotal and public survey evidence suggests that the public sees little difference in the anticorruption campaigns of today and those during the Soviet era.<sup>71</sup>

Although it is too early to hold out an anticorruption initiative as a potential model, there is a consensus among global and regional anticorruption experts that systemic corruption should be addressed through a holistic strategy that emphasizes public education and participation as much as institutional, legal, regulatory, or private sector reforms.<sup>72</sup> The coalition-oriented, public/private, anticorruption initiative in Bulgaria, called Coalition 2000, contains many of those elements.<sup>73</sup> Coalition 2000 is an initiative of a prominent NGO that receives broad, sustained financial support from a number of donors such as USAID, Soros, the World Bank, and the European Community. Recently, it has broadened its scope to include regional activities, such as those related to the novel Southeast European Legal Development Initiative, which is charged with helping to implement and monitor reforms outlined in the Balkan Stability Pact.<sup>74</sup> It is the first significant indigenous anticorruption program in the region. Another noteworthy regional development relates to Georgia's consideration of legislation to create an Anti-Corruption Commission, similar to the successful Hong Kong Anti-Corruption Commission created more than two decades ago. However, it should be noted that the Hong Kong model succeeded under very different economic, political, and institutional conditions. It pertained to a small, foreign-controlled territory and was designed with a partially contemplated independent judiciary, a free media, high-level political will, and significant budgetary resources. Public education was one of the centerpieces of this initiative. It remains to be seen whether some version of this type of commission can be successful in the CIS, where resources are limited, high-level political will is often questionable, and democratic institutions are not yet in place. Most CIS watchers believe that the Hong Kong model would have to have more safeguards built into it to succeed in the CIS context and dispense justice fairly.

### **Comprehensive Public Procurement and Regulatory Reform**

Regulatory reform at the local and central levels is one of the best ways to promote transparency, accountability, and entrepreneurship, and to reduce corruption. Regulatory reform initiatives in transition countries during the 1990s, and some presently under way, demonstrate that the cost of corruption can be reduced by streamlining and eliminating unnecessary regulations and by undertaking comprehensive public procurement reform.<sup>75</sup> Advanced technology information systems that promote transparency and make information more widely and readily available, such as electronic public procurement, Internet government information, and electronic access to information laws and e-government networks,

will be critical tools in this process.<sup>76</sup> The use of third-party public procurement monitoring is another way to promote transparency and accountability and to ensure the integrity of regulatory reforms. Regulations compatible with international standards and emerging global norms are likewise needed, such as those relating to banking oversight, international financial and securities transactions, and accounting and auditing.

For example, a major component of the Ukraine anticorruption effort is streamlining regulations, particularly those related to business licensing and public procurement. Within a relatively short period of time, there is already some evidence that the cost of, and time required to obtain, a business license have been reduced at both the central and local levels in some parts of Ukraine.<sup>77</sup> It is still too early to measure the full impact of the reforms.

### **International Integrity**

One of the highest anticorruption priorities of the international donor and business communities should be to ensure the integrity of their own activities; they have the economic and political capacity, as well as the legal and ethical responsibility, to set the example for poorer, less-developed countries and fledgling indigenous businesses.<sup>78</sup> Although empirical research is sparse, numerous surveys, independent research, and examinations of business bribery prosecutions, donor scandals, and high-level public corruption cases indicate that the suppliers or givers of bribes in developed countries are a serious part of the global corruption problem.<sup>79</sup> There is also anecdotal and public opinion survey evidence that raises serious questions regarding the integrity of the donor community.<sup>80</sup>

Clearly, many of the laws, policies, and voluntary codes of business conduct in the developed or OECD world are not being properly enforced or observed. More creative and effective monitoring, law enforcement, and corporate compliance incentives are needed if these emerging global norms are to be taken seriously. In numerous countries, those laws, policies, and codes do not adequately address complex, interrelated corruption issues, such as those relating to civil service reform, donor transparency, independent media, judicial/regulatory reform, human rights, public accountability, campaign finance reform, tax evasion, offshore companies/banking, financial management, asset forfeiture, banking oversight/regulations, and money laundering. Further, in some countries the laws and regulations are not properly enforced for political or business protection reasons. Thus it is not surprising that the CIS and the transition world's perspective is that the rule of law is only selectively observed in developed countries and that international bribery and corruption are acceptable political, donor, and business norms.

### **Conclusion**

The requirements for countries seeking global economic and political integration and the rule of law are myriad and interrelated, including an independent judiciary, an independent media, an independent justice sector, free speech, balanced regulatory reform, transparent and accountable processes and corporate governance practices, civil society engagement, sound small business development and

trade and investment policies, observed human rights, enhanced international cooperation, public/private partnerships, free flows of information, basic social service policies, such as health and education policies and AIDS prevention policies, and technological access, privacy, and innovation. However, until each society breaks the culture of secrecy that continues to permeate governments around the world in both the developed and transition world, economic and political reforms will not be effected or sustainable. One of the lessons drawn from Senator Daniel Patrick Moynihan's book *Secrecy*<sup>8</sup> is that successful democratic market economies require the free flow of information and that the will of secrecy is its worst poison. At the dawn of the twenty-first century, advanced technologies provide our generation the greatest opportunity to break down these cultural walls.

The enlightened challenge confronting Russia, Kazakhstan, and the CIS, as well as other transition countries around the world, should be to choose the path necessary to bring their citizens and culture into the global community of nations. Not to do so will only perpetuate or exacerbate their current economic and political plight. The economic, political, and technological path they choose now, and how the global community responds, holds their future, and ours, and the future of democracy, as we all travel down the road to the rule of law.

#### NOTES

1. Keith Henderson, "Glasnost II—An Unfinished Russian National Anthem with an Emerging Democratic Chorus: Russian and Global Corruption Is at a Critical Crossroads," testimony before the Committee on International Relations, U.S. House of Representatives, 7 October 1999.

2. Adrian Karatnycky, Alexander Motyl, and Boris Shor, *Nations in Transit* (Piscataway, N.J.: Transaction Publishers, 1998), 21.

3. Louise Shelley, Keith Henderson, and Vladimir Brovkin, "Money Laundering/Transnational Financial Crime and Corruption: A High Priority for the 21st Century," testimony before the Banking and Financial Services Committee, U.S. House of Representatives, 21 September 1999.

4. Kimberly Ann Elliott, ed., *Corruption and the Global Economy* (Washington, D.C.: Institute for International Economics, 1997).

5. *1997 World Bank Annual Development Report* ([www.worldbank.org](http://www.worldbank.org)).

6. See *World Bank Anti-Corruption Assessment Reports* and public survey results in Albania (1998) and Georgia (1998), World Bank archives; "New Empirical Tools for Anti-Corruption and Institutional Reform" (July 1999), World Bank Institute; USIA Russian Public Opinion Survey, U.S. State Department archives (1997), [www.usinfo.state.gov](http://www.usinfo.state.gov).

7. Keith Henderson, "White Paper: Corruption in Europe and the Newly Independent States Has Historical and Contemporary Causes and Threatens Recent Democratic and Economic Reforms" (1997). The text of the White Paper can be found in Henderson's Congressional testimony, *supra* note 1.

8. Vladimir Brovkin, "The Emperor's New Clothes—Continuity of Soviet Political Culture in Contemporary Russia," *Problems of Post-Communism* (March/April 1996): 22, 23.

9. *Ibid.*

10. *Ibid.*

11. Thomas Graham, "From Oligarchy to Oligarchy: The Structure of Russia's Ruling Elite," *Demokratizatsiya* 7, no. 3 (summer 1999): 325–40.

12. Victor Luneev, "Criminality of the Ruling Elite," *Crime in the 20th Century: Criminological Analyses of World Trends* (Moscow: Norma, 1997).

13. Graham, "From Oligarchy to Oligarchy," 325–27.
14. "Memorandum for the Russian Government," *Nezavisimaya Gazeta*, 1 April 1992.
15. For an excellent discussion of the Gorbachev transition see David Satter, *Age of Delirium: The Decline and Fall of the Soviet Union* (New York: Alfred Knopf, 1996).
16. Donald Jensen, "How Russia Is Ruled—1998," *Demokratizatsiya* 7, no. 3 (summer 1999): 341–69.
17. Graham, "From Oligarchy to Oligarchy," 327.
18. Janine Wedel, "Rigging the U.S.–Russian Relationship: Harvard, Chubais, and the Transidentity Game," *Demokratizatsiya* 7, no. 4 (fall 1999): 469–500.
19. Virginie Coulloudon, "Elite Groups in Russia," *Demokratizatsiya* 6, no. 3 (summer 1998): 535–49; Peter Rutland, "The Boris Yeltsin of History," *Demokratizatsiya* 6, no. 4 (fall 1998): 692–701; O. Kryshtanovskaya, "Nomenklatura of Our Time," *Obshchaya Gazeta*, 23–29 January 1997; O. Kryshtanovskaya, "The Real Masters of Russia," *Argumenty i Fakty* 21 (May 1997); and Jensen, "How Russia is Ruled," 347.
20. Vladimir Brovkin, "Fragmentation of Authority and Privatization of State," *Demokratizatsiya* 6, no. 3 (summer 1998): 504–17; for an examination of the composition and autocratic workings of the Office of the President, which is the titular head of the nomenklatura network in many CIS countries, see Coulloudon, "Elite Groups in Russia," 545–46. In Russia, it should be remembered that during the early 1990s the president bombed the parliament, ordered troops to Chechnya, dismissed several procurator generals, and privatized—largely by presidential decree. Those actions were seen as highly questionable constitutional moves that illustrated, among other things, the closed decision-making process in many CIS countries. Ruslan Orekhov, one of President Yeltsin's chief legal advisors during the 1990s, was bureaucratically responsible for drafting and presenting all presidential decrees.
21. Amy Knight, "Is the KGB Still in Power?" *Washington Quarterly* 20 (winter 1997); Evgenya Albats, *The State Within a State: The KGB and Its Hold on Russia, Past, Present, Future* (New York: Farrar Straus & Giroux, 1994).
22. Coulloudon, "Elite Groups in Russia."
23. Michael Johnston, "What Can Be Done About Entrenched Corruption?" (paper presented at the World Bank Annual Conference on Developmental Economics, Washington, D.C., 1997).
24. Jensen, "How Russia Is Ruled," 349. Jensen noted that the central organ of the executive branch, the Presidential Administration, employed 1,500 people and that it had been reorganized seven times in its short existence. At the same time, the Administration of Affairs, under Pavel Barodin, employed more than 50,000 people and included 200 firms employing tens of thousands more people. It managed 2,000 dachas, used 3 million square meters of office space and buildings in Moscow, owned the Rossiya airline, a medical center, a restaurant chain, five motor transport depots, several construction complexes, and a consumer service center. The number of officials whose appointment had to be approved by the Kremlin was about 30,000—about seven times the number of appointees nominated by the president of the United States.
25. Alexander Lukin, "Electoral Democracy or Electoral Clanism? Russian Democratization and Theories of Transition," *Demokratizatsiya* 7, no. 1 (winter 1999): 93–110.
26. On the formation of the Soviet political system, see Vladimir Brovkin, *Russia after Lenin: Politics, Culture, Society* (New York: Routledge, 1998).
27. Thomas Graham, "From Oligarchy to Oligarchy," *Demokratizatsiya* 7, no. 3 (summer 1999): 325–27.
28. Peter Rutland, "Russia's Flawed Transition," *Problems of Post-Communism* (November–December 1997): 29–33.
29. Louise Shelley, "Kaleidoscope: The Diversity and Adaptation of Criminal Activities in the Soviet Successor States," *European Journal of Crime, Criminal Law and Criminal Justice* 3 (1996): 243–56.
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31. For a good discussion of this issue, see Kjell Engelbrekt, “Unfinished Democracy: Post-Communist Southeastern Europe,” *Problems of Post-Communism* (November-December 1997): 3–12.

32. Robert Sharlet, “Russian Constitutional Change: An Opportunity Missed,” *Demokratizatsiya* 7, no. 3 (summer 1999): 437–47.

33. For a discussion on the shadow economy in Ukraine, see V. M. Popovich, *Tin’ova Ekonomika* (Kyiv: Pravovi dzherela, 1998).

34. James O. Finckenauer and Elin J. Waring, *The Russian Mafia in America: Immigration, Culture, and Crime* (Boston: Northeastern University Press, 1998).

35. See Nikolay Modestov, *Moskva Banditskaya* (Moscow: Tsentr Poligraf, 1996); Phil Williams and Ernesto Savona, *The United Nations and Transnational Organized Crime* (London: Frank Cass, 1996), 1–46.

36. Thomas Carothers, *Aiding Democracy Abroad: The Learning Curve* (Washington, D.C.: Carnegie Endowment for International Peace, The Brookings Institution Press, 1999).

37. For a revealing discussion of the Russian privatization process, legal reform, donor support, and elitist reform cliques during the 1990s, see Janine Wedel, *Collision and Collusion: The Strange Case of Western Aid to Eastern Europe 1989–1998* (New York: St. Martin Press, 1998).

38. Vitaly Nomokonov, *Organized Crime: Tendencies and Perspectives of the Struggles Against It* (Vladivostok: Far Eastern University Press, 1999).

39. Johnston, “What Can Be Done about Entrenched Corruption?”

40. For an interesting discussion of Kazakhstan’s lame reform efforts, see Scott Horton, “Is Kazakhstan Taking Reform Seriously?” (paper delivered at Columbia University Conference, Kazakhstan’s Economic Development after the Russian Crisis, 29 April 1999, New York).

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67. "Harvard Institute for International Development's Work in Russia and Ukraine," GAO report NSIAD-97, November 1996, at [www.gao.gov](http://www.gao.gov). During my tenure at USAID, I was the first to raise serious questions related to the management and direction of the HIID Russia legal reform program. For more than two years, my ongoing questions were officially rejected before I was interviewed by the GAO. A U.S. Department of Justice investigation concerning several people involved with the HIID program is still underway.

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ious organizations. Most of the “perception” surveys are proving to be valuable tools for assessing specific problems, developing priorities, and measuring progress. They also serve to educate and engage policymakers, donors, businesses, nongovernmental organizations, and the public. See note 6.

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