

INTERNATIONAL REPORTS



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Editorial

Dear Readers,

From football to road construction – corruption has many faces. But the general rule is that the more opaque and unregulated decision-making processes are, the greater the risk of abusing power for self-enrichment. Arbitrary and unclear decisions, whether that be in dispensing justice, granting governmental contracts, or filling public offices, undermine the rule of law and swallow up additional resources. Corruption is a global phenomenon. But a panacea has yet to be found. Instead, various approaches have been tried worldwide.

The problem becomes ubiquitous when the central controlling function of the rule of law can no longer be trusted. Judges hold a prominent position in the state structure. Any corruption on their part affects all areas of political life. Worldwide, corrupt judges are not a rarity, as outlined by Franziska Rinke and the authors from the Konrad-Adenauer-Stiftung's Rule of Law Programmes in their global overview. When searching for effective measures to combat corrupt justice systems, it pays to look beyond regional borders.

Corruption can also influence everyday matters that are the basis for development, such as access to electricity, as Anja Berretta illustrates with the example of Sub-Saharan Africa. More than half of the population has no access to electricity. However, a large part of the funds that could be used to invest in expanding the energy supply system and the general infrastructure, disappear into the pockets of a few.

Political upheaval does not necessarily dismantle entrenched structures of corruption. Using the example of Ukraine, Isabel Weinger analyses the interplay between old structures and the reorganisation of political power. Efforts for reform taken over the past few years have achieved increased transparency and social awareness of corruption. Nevertheless, it remains to be seen in which direction the “most transparent corrupt country in Europe” will develop under President Zelensky. The change of power in Nigeria has not yet had the desired success either. There is currently insufficient political will to tackle individual cases of corruption, let

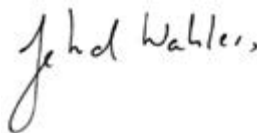
alone engage in far-reaching reforms affecting all areas of the state and the economy. Vladimir Kreck describes how politics is still perceived as a means of self-enrichment in Nigeria. When, due to corruption, there is a lack of funds in the security sector, the effects on the country's domestic security are devastating.

Opacity in political systems favours situational and structural corruption. Transparency measures are therefore an important element in the struggle against corruption and to establish trusting relationships between policymakers and the public. Morocco's freedom of information law is an example of how such mechanisms can be anchored in legislation. The royal family is attempting to regain the trust of its own people by instituting new legal mechanisms. Steffen Krüger's article is about the new right to access information. The foundation for more transparency has been laid. However, successful implementation will depend on the entire Moroccan administration.

There are many approaches to combatting corruption, from transparency initiatives to control mechanisms right through to changes in political power. Yet, there is often insufficient political will to actually improve conditions. When that is the case, anti-corruption measures are little more than a fig leaf. Structures of corruption are often intractable and deeply embedded in their environment. Raising awareness that corruption has negative consequences for everyone involved is the only way to provide any hope for change.

I wish you a stimulating read.

Yours,

A handwritten signature in black ink that reads "Gerhard Wahlers". The signature is written in a cursive, slightly slanted style.

Dr. Gerhard Wahlers is Editor of International Reports, Deputy Secretary General and Head of the Department European and International Cooperation of the Konrad-Adenauer-Stiftung (gerhard.wahlers@kas.de).

Corruption



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Corruption

Corrupt Judges – Threat to the Constitutional State

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Judges are at the heart of a functioning constitutional state under the rule of law, but unfortunately this does not mean that they are immune to corruption. Recent years have seen a number of high-profile cases, demonstrating that corrupt judges are a global problem. In the fight against judicial corruption, it is essential to seek solutions at the national level, but it is still valuable to gain a global perspective of this phenomenon.

Introduction

Franziska Rinke

Being a judge is more than just a profession. Judges are afforded a prominent position in the functioning of the state. They should be independent, i.e. free to make their own decisions, and bound only by law. They exercise an important oversight function and act as a vital counterweight to the legislative and executive branches. They form the backbone of a functioning constitutional state under the rule of law. Corrupt judges therefore represent one of the most serious threats to such a state. Laws – and particularly anti-corruption laws – are ineffective if they are enforced by judges who are themselves corrupt.

In order to determine the precise extent of judicial corruption, one must first define the term. This is no easy task. Even the United Nations Convention against Corruption,¹ which, with 186 ratifications, is the most comprehensive binding international treaty in the global fight against corruption, lacks a precise definition of the term. However, judicial corruption, as defined by Transparency International, should at least include: the misuse by judicial personnel of entrusted power for private benefit or personal gain, whether such gain be material or immaterial; any action relating to information or other exercise of influence on the judicial decision-making process; and political influence on the judiciary and its decision-making processes, in particular through politically motivated appointment and dismissal of judicial personnel.²

It is obvious that corruption undermines judicial integrity. However, the consequences in terms of maintaining an effective and impartial judicial system and judicial independence are much more serious. Many countries fail in their fight against corruption, not only in the justice system. What has been happening over recent years, and is there any hope that things could improve?

In 2015, the United Nations Office on Drugs and Crime (UNODC) adopted the Doha Declaration at the 13th Congress on Integrating Crime Prevention and Criminal Justice in Qatar.³ The Declaration is action-oriented and based on four pillars, one of which is judicial integrity. The Global Judicial Integrity Network was launched in April 2018 – a network of judges for judges that adopts a peer-to-peer approach. It promotes peer learning and support activities, and most importantly provides further training based on the Bangalore Principles of Judicial Conduct.⁴ The aim is to help judges strengthen judicial integrity and prevent corruption in the justice system. Its declared long-term aim is to build confidence in public institutions.

These global developments are to be welcomed but, first and foremost, it is national solutions that are needed in the fight against judicial corruption. Every country, region and continent is different – politically, economically, culturally and legally. There can be no one-size-fits-all solution. However, effective anti-corruption measures in one country can provide useful food for thought in other parts of the world. While highlighting specific examples of corruption

around the globe may be a painful business, they can provide practical solutions that serve as models for other regions to follow.

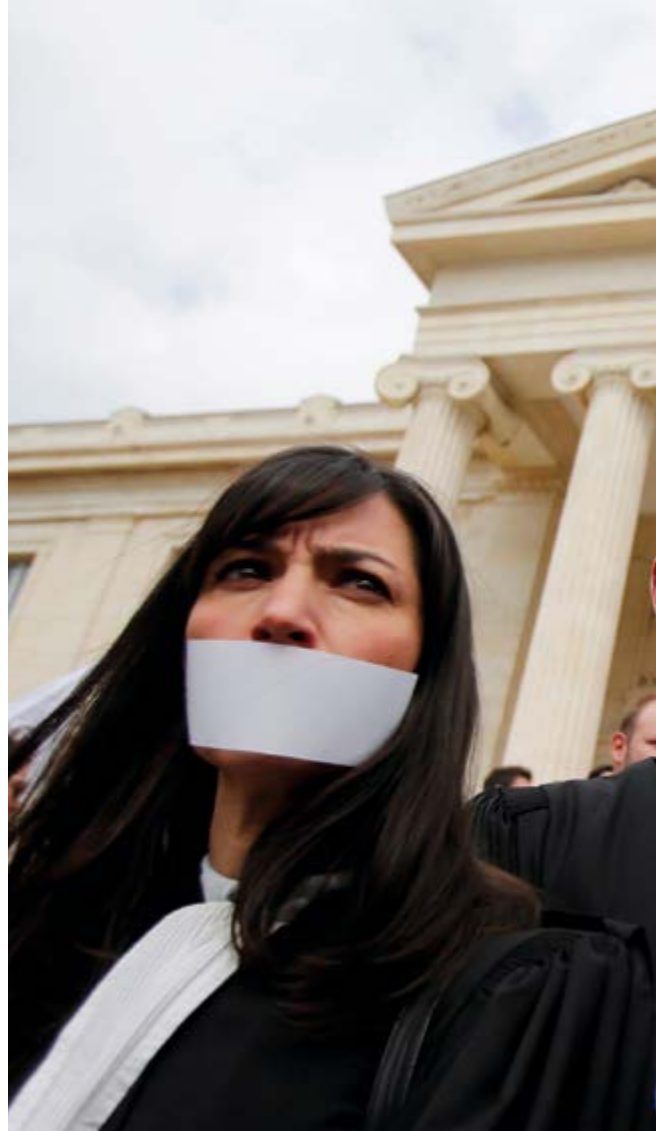
Latin America

Marie-Christine Fuchs

Judicial corruption is an everyday occurrence in Latin America and, for many decades, the government and public alike have viewed it as a minor evil. Those with money or power can easily secure the favour of corruptible judges by offering bribes or promising lucrative positions once their careers as judges come to an end. The fact that judges' salaries, particularly on the lower rungs of the ladder, are barely sufficient to feed a family heightens their susceptibility to taking illegal payments.⁵ Even bona fide judges who want to behave in a law-abiding manner can be brought to heel by threats to their physical integrity or even their lives. Fear drives them to make decisions that have little to do with the objective application and interpretation of the law. In extreme cases such as Venezuela, where the rule of law has de facto ceased to exist under the dictatorial rule of Nicolás Maduro, the judiciary serves merely as the long arm of the executive; there is no judicial independence whatsoever.

In summer 2018, Peru was plagued by a corruption scandal that forced many high-ranking judges, prosecutors, lawyers, judicial and administrative officials, including the justice minister, the attorney general, the head of judicial administration and the head of the Election Commission, to resign from their posts. In the end, the scandal even triggered constitutional reform, and Peru's justice system has been shaken to its very core. The case involved secret phone recordings, which revealed that the Peruvian judiciary had been tainted by morally and ethically reprehensible behaviour on the part of judges and officials for many years. This ranged from requests for favours and assistance within the judicial, administrative and political network to shady deals involving cash payments to get the right verdict in favour of leading

politicians, as was the case in the affair relating to the port of Callao near Lima.⁶ The summer of 2018 saw the almost daily publication of new, covert recordings that gradually revealed the scale of internal and external corruption in the justice system. The tapes were broadcast nationwide on local TV and radio stations. Thousands of people took to the streets. The judicial reform, initiated by plebiscite in response to the scandal, is to overhaul the judge selection process. In the past, appointments were made by a seemingly omnipotent council of judges much more prone to corruption. A newly created judge selection junta is to be filled with members whose most





Silent Judiciary? Judges exercise an important oversight function and act as a vital counterweight to the legislative and executive branches. [Source: © Jean-Paul Pelissie, Reuters.](#)

important selection criterion shall be their proven distance from politics. It is significant however that to date only one suitable candidate has been found. In addition, more than a year after the publication of the first tape recordings, only two of the eight planned legislative amendments have been implemented.⁷

Colombia has also had some sensational scandals in recent years, such as that surrounding the Constitutional Court judge Jorge Pretelt in 2015. It was proven that the judge unlawfully dismissed a lawsuit after receiving a considerable sum of money from the company *Fidupetrol*, which

would have been fined 7.5 million US dollars, had the case gone ahead.⁸ Pretelt was removed from office and convicted of criminal offences.

Long-term success against corruption requires the justice system to democratise from within.

However, unlike in many other countries where corruption regularly goes unpunished in the

highest judicial circles, the fact that Colombia has carried out large-scale convictions of those involved provides grounds for hope.⁹ Additionally, the Colombian system for allocating court cases, which was previously prone to abuse, has also been reformed. It is now more transparent and accessible to the public.¹⁰ Although the detection and prosecution of corruption cases has not yet had a deterrent effect across the board, it still provides the country's citizens and honest judges with a glimmer of hope that, in future, bribery in the justice system will be less likely to go unpunished. However, long-term success in this respect requires the justice system to democratise from within. Judges must be selected strictly on merit as part of a transparent process. Judges have to be more conscious of the dignity of their office. This is the only way that the lost trust in the judiciary in Latin America can be gradually restored.

Asia

Gisela Elsner / Aishwarya Natarajan

In Asia too, the ability to secure justice can often be a question of who you know and how much you can pay. The countries of this region are extremely heterogeneous in terms of their politics, religion, culture and society. This also has an impact on how people view justice and the rule of law. There is widespread corruption in the judiciary, as well as a lack of accountability and inadequate procedural rules, such as for investigating irregularities or appointing judges. This is illustrated by the following examples from Indonesia, India and Malaysia.

Akil Mochtar, a former member of Indonesia's House of Representatives, was appointed to the Constitutional Court of the Republic of Indonesia in 2008 and elected its president in 2013. His rise to the highest judicial position in the country came as something of a surprise, as he was not known as a legal luminary or a leading expert.¹¹ But, after just six months as president of the Constitutional Court, Mochtar was removed from office by then Indonesian President, Susilo Bambang Yudhoyono.¹² Mochtar

was arrested by the Anti-Corruption Commission and found guilty of accepting bribes to the tune of several million US dollars in relation to a pending lawsuit.¹³ In 2014, for the first time in its history, the Anti-Corruption Court handed down a life sentence.¹⁴ Even after Akil Mochtar was removed from office and convicted, the issue of judicial corruption continued to call into question the legitimacy of the Constitutional Court. Another scandal erupted in 2017 when Indonesia's anti-corruption authority arrested Constitutional Court Justice Patrialis Akbar on suspicion of bribery.

The then Chief Justice of the Supreme Court in India, Dipak Misra, also faced allegations of impropriety in 2017. He attempted to allot pending court cases in which he was an interested party to his own court. Despite an order for the establishment of a committee of inquiry, Misra used his powers as the Chief Justice to reverse it and refer the case to the Chamber, which he himself chaired as presiding judge. He should have declared a conflict of interest, which would have prevented him presiding over the case or assigning it to a panel of judges. The case highlights the lack of clear rules governing the powers of the Chief Justice. It also reveals the lack of procedures for filing and investigating allegations of corruption against high-ranking judges.¹⁵

The Malaysian example is characterised by the buzzwords trial fraud, embezzlement and political influence. More specifically, a scam was carried out by nominees of politicians getting into contracts with the government, but once the government withdrew from the contracts, the private parties sued the government for compensation. If this was awarded by a sympathetic court, the money came from the public purse. What is particularly striking is the interplay of several powers that are actually responsible for maintaining checks and balances in a country. All too often, court officials stay silent about such allegations in order to further their careers. However, the Malaysian case was different. An appellate judge exposed the scam in an affidavit.¹⁶



Cases such as these not only damage the reputation of a court but also compromise its legitimacy. Ultimately, this leads to a lack of public confidence in the judiciary. In order to address these challenges, there is an urgent need to introduce institutional reforms and monitor their implementation. It is also important that senior figures in the judiciary gain greater awareness of their key role as exemplary and honest actors in a constitutional democracy. For judges, prosecutors and everyone involved in judicial administration, this awareness-raising process needs to

begin during their law studies and continue as part of an ongoing professional training.

Sub-Saharan Africa

Arne Wulff/Nils Seidel

148 billion US dollars is a lot of money: it could pay for around 20 Berlin airports,¹⁷ 13 budgets of the Federal Ministry for Economic Cooperation and Development,¹⁸ and represents about one quarter of the average GDP of all African



Against corrupt judges: In Asia too, the ability to secure justice can often be a question of who you know and how much you can pay. Source: © Cheryl Ravelo, Reuters.

countries. According to an estimate by Vera Songwe, Executive Secretary of the United Nations Economic Commission for Africa, this is the amount that the continent loses every year due to corruption.¹⁹ Corruption transcends geographical and linguistic boundaries and permeates every political, social and economic sphere on the African continent, but its extension to the judiciary is of particular concern.

It is difficult to estimate the true extent of judicial corruption in Sub-Saharan Africa because there are no precise figures on the cases involved. As Mario Fumo Bartolomeu Mangaze, Chief Justice of the Supreme Court of Mozambique, stated: “Although statistical surveys of corruption cases processed by courts are not available, it is not difficult to see that such figures are too low, because judicial corruption is a grey area.”²⁰ These days, it is increasingly difficult to uncover evidence of corruption. Bribes are often no longer paid in cash or by cheque but transferred electronically to accounts abroad or via the internet. Allegations of judicial corruption are often kept out of the public gaze because those accused are not prosecuted. However, the lack of official figures does not mean the problem is fictitious. Individual disclosures have repeatedly shed light on the actual extent of judicial corruption.

This is exemplified by a case in Ghana in 2015. Over the course of two years, the investigative journalist Anas Aremeyaw Anas posed as a friend or relative of accused individuals. He filmed 34 judges accepting bribes – and, in one case, a goat – in exchange for shorter sentences. The footage was finally published as a film, *Ghana in the Eyes of God*, and led to the dismissal of 13 high court judges, 20 lower court judges, and 19 court officials and interpreters.

However, the independence of the courts is not only threatened by private individuals and companies, but also by organs of the state in the form of political influence. That is why the spotlight regularly turns to the judge nomination process. In Ethiopia, for example, there is a growing tendency to recruit public prosecutors and judges

from active members of the ruling party or its regional affiliates.²¹ This phenomenon is even more evident in the countries of Sub-Saharan Africa, which either lack judicial councils to make binding decisions on candidates for judicial office, or have councils that are not sufficiently independent in their decision-making. For example, Tanzania’s Judicial Council makes the final decision on candidates, but all its members are appointed by the country’s president.²² What is more, the president is not bound by the recommendations of the Judicial Council when appointing judges.

Trust in the flawlessness of judicial decisions is precisely the origin of legal authority.

According to a representative survey conducted by the Gallup Institute, 52 per cent of respondents from all African countries stated that they had no confidence in their judicial systems.²³ Trust in the flawlessness of judicial decisions is precisely the origin of legal authority. The judiciary itself has no means of legislation and enforcement; its power lies solely in its public acceptance as an arbitrator over the powers, and as a peaceful mediator of all kinds of disputes. Ultimately, confidence in the justice system and in the integrity of its decision-makers can only be engendered by combatting judicial corruption.

South East Europe

Hartmut Rank/Mahir Muharemović

If one is to believe the media and public perception, judges in most of Southeastern Europe are politically dependent and corrupt. For example, in recent years the Serbian media²⁴ has reported on how criminal proceedings have been instituted against judges in individual cases and how they have been convicted of corruption. Amnesty International also confirms that the judiciary in these countries is perceived as dependent and corrupt, a trend that is set to

worsen.²⁵ However, apart from the individual cases in Serbia, which are low-profile cases of corruption with no political context or relevance to the system as a whole, isolated charges against judges have been made, but these did not lead to final convictions.

How can this discrepancy be explained? It could be that the media artificially inflated the scale of corruption in the judiciary in order to exert pressure on it. There is certainly a grain of truth in this, as the region's media are not renowned for their independence. However, corruption in the judiciary has deeper roots than can be discerned objectively (in the sense of final convictions).²⁶

A recent case in Bosnia and Herzegovina provides a good example of this. A local businessman secretly filmed a meeting with the president of the High Judicial and Prosecutorial Council (HJPC), Judge Milan Tegeltija, and a police inspector in a bar. It shows Tegeltija promising to "review" his case with the chief prosecutor. The public prosecutor's office was not effectively investigating the allegations of the businessman who has previously pressed charges against some influential people. Later, the video shows the police inspector accepting a substantial sum of money from the businessman. Tegeltija was not with them at this point, but the businessman says the money should be passed on to him. Shortly afterwards, Tegeltija was acquitted of any wrongdoing by his colleagues on the HJPC.²⁷ In the criminal proceedings, he is not even listed as a suspect. In Romania, on the other hand, several judges (up as high as the Supreme Court) have been convicted of corruption over recent years, and some have been given long prison sentences.²⁸

It is difficult to prosecute judges when corruption has reached the highest levels of the judiciary. What is rather needed, is the dissolution of existing interdependencies. Many countries in Southeastern Europe have a culture of cronyism that extends far beyond the judiciary. Clientelism is rife and sometimes openly practised at the very top of the justice system. This has serious consequences, such as lack of competence, dependency, impunity and loss of trust. The

only way to counter this is through a profound lustration, as is currently the case in Albania. In 2018, a comprehensive review of all public prosecutors and judges was initiated, known as a vetting process. In May 2019, after 140 judges or prosecutors had been vetted, only 53 were confirmed in office.²⁹ Most of the dismissals were due to the fact that the judges and prosecutors concerned could not plausibly prove how they had acquired their assets.

In future, what can be improved in the face of corruption that has become public knowledge, patently wrong decisions by judges, and a limited legal process? Strict transparency and the disclosure of all financial circumstances are undoubtedly instruments that can partially restore the public's lost confidence in the justice systems of Southeastern Europe. There is probably no way around a profound lustration that should result in unencumbered lawyers with a better professional ethic who are immune to third party influence.

Middle East and North Africa

Anja Schoeller-Schletter

In January 2017, a deputy supreme judge at the Egyptian Administrative Court made the headlines when he was arrested and charged with accepting bribes.³⁰ However, there was no media coverage of the legal details of the case.³¹ In May 2017, a Moroccan judge was sentenced to one year in prison for bribery, and his trial was also held in camera.³² Several high-ranking members of Iran's judiciary were recently arrested as part of an internal anti-corruption campaign.³³ A campaign to curb corruption was also launched in Lebanon earlier this year.³⁴ Along with the few other known examples of corruption in the MENA region, these anti-corruption cases all have one thing in common: the public is generally kept in the dark about specific charges, the outcome of investigations and legal proceedings.

In the countries of the MENA region, a growing sense of solidarity and political affiliations

play an important role. A Lebanese judge has described the three greatest risks faced by judges in his country as follows: “Firstly, judges’ attempts to further their careers by trying to gain the goodwill of influential people. Secondly, trying to become part of the elite, forgetting about the judicial restraint that is required in the judicial function. And thirdly – and most dangerously for decision-makers in the judiciary – abandoning the neutrality required by their position in favour of old loyalties, thereby countering political ambitions that seek to invade the legal area.”³⁵

In the MENA region, the public is generally kept in the dark about specific charges, the outcome of investigations and legal proceedings.

Widespread scepticism within the judiciary about the requirements of transparency, the traceability of decisions and accessibility of information do not exactly help to promote public confidence in the judiciary. There are also deeper structural issues that make it difficult for judges to remain free of external pressures or undue influence when reviewing cases. Furthermore, the fundamental challenge within the MENA region is that most countries have a very strong executive, which predominates over the legislative and judicial branches.³⁶

The main areas of concern are the processes of nomination and promotion. The candidates’ suitability for the role is either not reviewed in a transparent way, or it is not done according to defined, verifiable criteria. This paves the way for members of the government or political interest groups to push certain candidates. Financial dependencies also play a role. This includes insufficient funding of the judicial system, whether deliberate or through neglect.

Conscious of the need for a functioning, professional, independent and predictable judiciary,

many countries in the region have instigated reforms. Based on the experience of the region’s countries, these will involve structural guarantees of judicial competence and independence, increased transparency and greater traceability. Depending on their circumstances, each country will find different ways of achieving these aims. This could be helped by drawing up fixed business allocation plans; establishing nomination and promotion procedures based strictly on traceable criteria; developing press and PR strategies; and providing constructive support for the increasing numbers of professional associations and federations of judges that are springing up in the region.

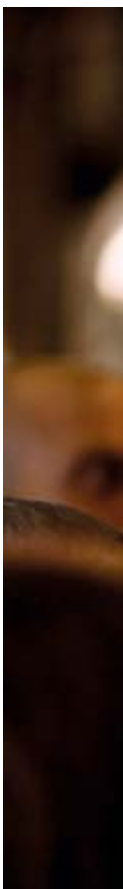
Outlook

Franziska Rinke

Unfortunately, corruption in the judiciary is not an isolated phenomenon. Rather, these flamboyant examples suggest that this is but the tip of the iceberg. The legal, historical and cultural backgrounds in the various regions examined may be very different, but it is still possible to draw some clear parallels.

Firstly: the uncovering of corruption among judges usually takes place, if at all, in camera. There is very little media coverage, indeed they deliberately act behind closed doors. Greater transparency is needed – both as a deterrent and in order to regain public confidence. It remains to be seen whether it is necessary to go as far as some Latin American countries have done by broadcasting court proceedings live on TV.

Secondly: Cronyism and clientelism are toxic for judicial independence. These kinds of networks have to be destroyed. An example of best practice could be the vetting process adopted in South East Europe, which reveals whether judges have disproportionately high assets – a sign of corruption. The UN Special Rapporteur on the Independence of Judges and Lawyers, Diego García-Sayán, goes even further when he calls not only for strict checks on the income and assets of judges themselves, but also on those of their families.³⁷ This cleansing needs to come



from both within and without. However, it is not advisable to instigate general background checks which go beyond potential past criminal activity or financial circumstances, or at least these should be linked to clear procedures.³⁸ The justice system needs judges who are immune to third party influence. This presupposes a self-image that is aware of the dignity of their office. This awareness-raising process should begin during their law studies and continue throughout their career. On-the-job-training would seem to be a sensible option. This could be carried out through mentoring programmes for young judges, i.e. by establishing trusted mentors among their peers in the court itself. This encourages the sharing of confidences and individual judges feel less alone when confronted with a case of corruption. It can also be helpful to

draw up codes of conduct for judges, but guidelines on paper are not enough. Judges have to put them into practice, and to do this they require ongoing training.

This leads us seamlessly to the *third point*: the need for democratisation from within. The procedures for selecting and nominating judges play a key role here. They must be transparent and based strictly on the principle of merit. It is vital to shield them from political influence. Seventy per cent of countries around the globe rely on establishing judicial councils.³⁹ These are self-governing bodies of the judiciary. However, they cannot be a panacea. Other methods are also possible, as there is no one-size-fits-all solution. Every system has historical roots and must be embedded in the country's legal culture.



Mistrust: The most important aspect to fight corruption is restoring and strengthening public confidence in the judiciary. Source: © Darrin Zammit Lupi, Reuters.

However, these contributions show that it is still valuable to look beyond national or even continental borders in the search for effective measures to combat corruption. Global initiatives such as the aforementioned Global Judicial Integrity Network can provide a useful platform in this respect. But the most important aspect is restoring and strengthening public confidence in the judiciary. This can only be achieved by taking the actions mentioned above. Judges speak through their verdicts. Trust can only be generated if their decisions are beyond reproach. And this is the only way that they can be truly worthy of their office and its intrinsic position within the rule of law.

-translated from German-

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- 1 The United Nations Convention against Corruption entered into force at the end of 2015. It is the first and only legally binding international anti-corruption treaty. 186 states have ratified the Convention to date, in: UNODC 2018: UN Convention against Corruption – Signature and Ratification Status, 26 Jun 2018, in: <https://bit.ly/2NlVrP5> [4 Apr 2019]; UN 2004: United Nations Convention against Corruption, in: <https://bit.ly/32Ti44d> [4 Apr 2019].
- 2 Transparency International 2007: Global corruption report 2007 – Corruption in Judicial Systems, p.21, in: <https://bit.ly/2Nk5LHn> [26 Aug 2019].
- 3 UNODC 2015: Doha Declaration on Integrating Crime Prevention and Criminal Justice into the Wider United Nations Agenda to Address Social and Economic Challenges and to Promote the Rule of Law at the National and International Levels, and Public Participation, 12 to 19 Apr 2019, in: <https://bit.ly/2MXWsOP> [5 Apr 2019].
- 4 In 2000, a group of high-ranking constitutional judges joined forces to form the Judicial Integrity Group, with the aim of promoting judicial integrity worldwide. The Bangalore Principles of Judicial Conduct were published in 2002. They set out globally accepted standards for the ethical conduct of judges. Cf. Round Table Meeting of Chief Justices 2002: The Bangalore Principles of Judicial Conduct, in: <https://bit.ly/31U6dBq> [4 Apr 2019].
- 5 The average gross monthly salary of Peruvian judges amounts to 7,405 Peruvian soles (approx. 1,950 euro); cf. La Ley 2018: Aprueban escala remunerativa de trabajadores del Poder Judicial sujetos al 728, 26 Nov 2018, in: <https://bit.ly/343HYIK> [1 Aug 2019]; The average salary of Colombian judges is 8,152,944 Colombian pesos (approx. 2,100 euro); cf. Función Pública 2019: Decreto 997 de 2019, 6 Jun 2019, in: <https://bit.ly/2PmL9AW> [1 Aug 2019].
- 6 For example, a phone conversation between the chairman and the lawyer of a defendant accused of sexual abuse of a minor involves them haggling over a drastic reduction of the sentence or acquittal in return for a substantial cash transfer. Infobae 2018: El audio que indigna a Perú: un juez acuerda liberar al violador de una niña y devela la corrupción en el sistema judicial, 14 Jul 2018, in: <https://bit.ly/2pj5OLK> [20 Jun 2019].
- 7 Villarroel Zurita, Alexander 2018: Cinco proyectos de reforma del sistema de justicia aún se define en el pleno El Comercio, 27 Mar 2019, in: <https://bit.ly/2NefWQg> [20 Jun 2019].
- 8 La Semana 2016: Fidupetrol y Jorge Pretelt: un proceso sin precedentes, 27 Aug 2016, in: <https://bit.ly/31QNOFU> [20 Jun 2019].
- 9 El Espectador 2019: El panorama del cartel de la toga en 2019, 3 Jan 2019, in: <https://bit.ly/2piiG4E> [20 Jun 2019].
- 10 Corte Constitucional de Colombia 2015: Acuerdo 02 de 2015, Chapter XIV, Section I, Article 51, Jul 2015, in: <https://bit.ly/34PXYbA> [12 Nov 2019].

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[Corruption](#)

When the Lights Go Out

The Impact of Corruption on the
Electricity Supply in Sub-Saharan Africa

Anja Berretta

More than half of the population in Sub-Saharan Africa has no access to electricity. This is partly due to endemic corruption, the cost of which hampers the expansion of energy infrastructure. In the fight against corruption, it is vital to strengthen good governance and build effective, accountable state institutions as set out in Goal 16 of Agenda 2030.

Introduction

Corruption is considered “the single greatest obstacle to economic and social development” throughout the world.¹ Estimates show that the financial damage suffered by the world’s poorest countries owing to bribery and other forms of unfair advantage, is ten times higher than the total amount of development aid disbursed.² With sad regularity, statistics reveal that the Sub-Saharan Africa region occupies first place when it comes to worldwide corruption. According to Transparency International’s latest Corruption Barometer, ten of the world’s 20 most corrupt countries are located in Sub-Saharan Africa.³ This is consistent with the results of similar statistics, such as the World Bank Enterprise Survey.⁴

It is reasonable to assume that countries with high levels of systemic corruption⁵ will experience corruption in the energy supply sector, too.⁶ In addition, the energy sector in Sub-Saharan Africa is prone to an exceptionally frequent amount of corruption payments compared to other sectors. Hence, it is hardly surprising that 23 per cent of Sub-Saharan Africans claim to have paid bribes⁷ in the last twelve months in order to secure their access to utility services such as electricity and water.⁸ In addition to this kind of petty corruption, illegal cash also flows into the investment sector, sometimes to the tune of several million. Regardless of whether it is on a large scale or simply affects end users, the fact that so many people in Sub-Saharan Africa still have no access to electricity is partly due to endemic corruption, the cost of which hampers investments to expand the energy infrastructure. According to estimates by the International

Energy Agency (IEA), 590 million people in Sub-Saharan Africa, i.e. some 57 per cent of the population, still have no access to electricity. This means that Sub-Saharan Africa has the world’s largest supply gap, and the IEA expects it to widen even further. By 2030, around 90 per cent of the world’s population with no access to electricity will be living in Sub-Saharan Africa.⁹ This adversely affects health, education, and life expectancy, and thus significantly increases the indirect costs of corruption. This lack of a reliable and affordable energy supply stunts the economic growth that Sub-Saharan African countries so urgently need, and this lack of economic opportunities is the main motivation for migration within the African continent and abroad.¹⁰

Corruption in the Electricity Sector: Potential for Illicit Cash Flows at the Highest Level

Corruption in the electricity sector can take place at the highest level of government, for instance when investments in energy infrastructure are taking place. Firstly, the sheer scale of these investments makes Sub-Saharan Africa’s energy sector vulnerable to illegal payments. Investment in the electricity infrastructure generally constitutes large projects worth several hundred million euros along with highly complex tendering procedures. This provides a number of opportunities for manipulation, such as in the area of labour and material costs. Furthermore, maintenance expenses can be overestimated and these additional costs hidden in the overall cost estimate.

Proving that an estimate price has been inflated by a few million for design or maintenance, with

money flowing back to the person who awarded the contract in form of kickbacks, is no easy task. Moreover, many African countries lack the necessary independent regulatory authorities and expertise in order to handle these kinds of complex tenders or to accurately estimate the price of large-scale projects. As a result, the cost of completing projects is regularly higher than originally estimated, with additional costs potentially indicating that illicit payments were made in the course of the project.¹¹

For example, in July 2019 Kenya's Finance Minister Henry Rotich was arrested on more than ten charges of embezzlement. It was alleged that illegal payments were made in connection with the construction of a hydropower plant. The Ministry of Finance had estimated the cost to be 607 million US dollars; however, the approved contract value was merely 450 million US dollars. It is reported that more than 200 million US dollars have already been spent on the project, but there is still no sign of the hydropower plant.¹²

Everyday Corruption and Public Acceptance of Corrupt Practices

However, corruption is not merely restricted to large-scale illicit payments in the context of investment and contracts. Petty corruption is also prevalent in relations between utility company employees and consumers. For example, employees on-site may be given small bribes to tamper with meter readings or bills, or even to take the electricity meter out of service so that users pay nothing for their electricity. This type of petty corruption is rarely reported, but even these small amounts add up and cause considerable damage. They deprive energy suppliers of the money needed to maintain and repair transmission networks and power plants. While experts estimate corruption in the energy investment sector in developing nations to cost around eight billion US dollars each year, the industry loses some 33 billion US dollars through bill tampering and electricity theft in connection with corrupt practices.¹³ In many cases, this sum would suffice for closing gaps in the electricity supply and upgrading inefficient transmission networks.



The extent of this daily, petty corruption, often played down as mere bribery, is a striking demonstration of how corruption has permeated everyday life in Sub-Saharan Africa.¹⁴ It is, therefore, worth observing the social and societal factors that favour corruption in the electricity sector. This may help to understand the large



Out of reach: Almost half of the population of Sub-Saharan Africa has no access to electricity.
Source: © Mike Hutchings, Reuters.

scale of corruption without legitimising or justifying corrupt practices in any way.

The governments of many Sub-Saharan African nations benefit from capitalising on the realisation of infrastructure projects, while the public remains unaware that the state has a duty to

provide energy infrastructure. This allows politicians to kill two birds with one stone: they sell the project's completion as a political success while simultaneously lining their own pockets.

What is more, many people do not differentiate between energy infrastructure and private

electricity consumption, with many parties reflecting this perception in their political campaigns.¹⁵ This leads people to view electricity as a public good, therefore promoting the idea that it should be provided at very low cost or, even better, free of charge.

The absence of regulatory mechanisms favours a state monopoly.

On the other hand, the state monopoly of the electricity sector prevailing in many countries could also be responsible for the perception of electricity as state property.¹⁶ Many Africans have a negative view of the state and government, with more than half the population considering the political elite to be corrupt.¹⁷ If the state is perceived to be exploitative and unjust, then many people regard the corrupt practices that result in electricity theft as simply taking what is theirs.

Ultimately, the social risks of corruption in the electricity sector are minimal. The complexity of the investments described above and the lack of control mechanisms mean there is little risk of discovery, which may in turn provide an incentive for illegal actions.

The Nature of Africa's Energy Supply Facilitates Corruption

In the African context, the high cost of constructing power grids often means only the state is able to make these investments, and hence assumes a natural monopoly position. At the same time, operating costs tend to be low, so the holder of this natural monopoly can satisfy the overall demand more cheaply than other suppliers. The reason for this is that establishing parallel transmission networks does not pay off. However, an absence of regulatory mechanisms to ensure free and fair competition bears the risk of states abusing their monopoly position and denying private energy suppliers

access to the market. In addition to the power grid, supplying electricity depends on two other, technically separate, elements: electricity generation and electricity sales. The latter are lucrative areas for private suppliers, too. However, in many Sub-Saharan African countries, these three activities are carried out by vertically integrated state monopolies. In 2014, in 21 out of 48 countries in this region, all three elements of the power supply were completely government-controlled with no involvement from private companies.¹⁸ This monopoly facilitates opportunities for dishonest personal gain.

In terms of the overall budget, state-owned electricity companies are of vital importance in many Sub-Saharan nations. Conversely, however, this also means that the potential harm inflicted upon the state by corruption in these utility companies not only affects its energy supply, but has serious repercussions on the national budget as well.

Investments in the electricity infrastructure come from state coffers. In fact, in Sub-Saharan African countries where the level of electrification is low, this kind of investment is explicitly expected. Energy security is a key policy objective, however, the level and benefits of investment in large parts of the region are seldom subject to scrutiny as few institutions are in a position to hold the government accountable for the allocation of investments. It also means there are rarely functioning regulatory authorities or supervisory bodies with the ability to examine the meaningfulness and necessity of subsequent cost increases. On the other hand, financial difficulties are conveniently avoided by dipping into the public purse when additional costs arise.

Moreover, the sheer volume of investment is seen as an indicator of success, without the need to track whether investments improved the population's access to electricity or the quality of the electricity supply. This inadequate performance monitoring may even increase corruption because the more money a government spends, the more it can create the

impression that it looks after its citizens' needs. State monopolies also make it extremely difficult for consumers to find another supplier due to poor supply services.

In Sub-Saharan Africa, the level of investment is often perceived as an indicator for success in achieving the political goal of “energy security”.

The consequences of corruption within the state's electricity monopoly are clear to see in the example of South Africa's publicly owned electricity supplier *Elektrisiteitsvoorsieningskommissie* (Eskom). This company holds the monopoly as it supplies roughly 90 per cent of the country's power. Earlier this year, South Africa – despite being a member of the G20 group of leading industrial nations and emerging economies – was subjected to load shedding (scheduled power outages). This was attributable to a delay in commissioning two new power plants, which, even before construction was completed, were twice as expensive as originally planned. At the heart of the Eskom crisis lies the Gupta family, who secured a refinancing of their power plants by the African National Congress (ANC) government under former President Jacob Zuma involving highly lucrative purchasing guarantees. This powerful family with its extensive business interests owns the mines that supplied the over-priced coal. Eskom's largest item of expenditure is the procurement of primary energy. Gupta coal doubled in price from the equivalent of twelve US dollars per tonne in 2011 to the equivalent of 26 US dollars in 2017. During the same period, electricity prices in South Africa rose by more than 400 per cent, while the country's energy supply deteriorated. For years, the family have been securing lucrative contracts to purchase coal – contracts that were never put out to public tender. The government suspended independent experts who criticised the quality of the coal.

The fact that the agreed quantity of coal was not delivered to power stations merely exacerbated the aforementioned supply bottlenecks. The Gupta network, together with the willingness of members of the ANC government to engage in corruption, even went so far as to systematically undermine governing and supervisory bodies by allocating key positions to corrupt officials. This opened the door to widespread corruption at the highest level and throughout the whole of the state-owned company Eskom.¹⁹ The current situation in South Africa has been dubbed as state capture.

Recently, Eskom announced a loss for 2018/2019 that was 800 per cent higher than last year's (reported) loss. Against this background, rating agencies believe Eskom, with a debt that corresponds to some 15 per cent of the national budget, poses the biggest risk to the South African economy. As is often the case, the costs are being externalised: Eskom recently asked the state regulatory authority to approve a 17 per cent hike in electricity prices.

Privatisation of the Electricity Market in Sub-Saharan Africa: a Blessing or a Curse?

Almost half of the population of Sub-Saharan Africa has no access to electricity, and in 13 countries, more than 75 per cent of the population live without electricity. The only way to close this enormous supply gap is through private investment, which is why independent power producers (IPPs) have been increasingly penetrating the African market over recent years. IPPs are private operators of power plants that generate electricity and feed it into the national grid. They either directly sell it to end users (with the state being paid a fee for the use of the transmission lines), or they receive a set feed-in tariff directly from the state. IPPs play a vital role in supplying electricity to African countries, however, partnerships between government and IPPs can have devastating consequences unless the appropriate framework is in place. The example of Tanzania provides a worst-case scenario, as strikingly portrayed by the Africa Research Institute.²⁰

The energy plan announced by the Tanzanian government in the 1990s envisaged that natural gas should play a more dominant role in the country's future power supply to reduce dependence on unreliable hydropower and costly diesel fuel. When the country was hit by an acute energy crisis in 1994, the government received an offer from the Malaysian investor *Mechmar* to supply power at short notice by constructing a power plant – despite the fact that the government had not put the construction of a power plant out to tender and that the power plant was

to be run on imported diesel fuel thus contravening the agreed energy plan. One year later, even though the energy crisis had been alleviated, the Tanzanian government still signed a 20-year power purchase agreement with *Mechmar* that provided for state-guaranteed purchase prices. Already at that early stage, it was clear that *Mechmar* had managed to wrest a ruinous, uneconomical agreement from the state-owned Tanzania Electric Supply Company (TANESCO), which produced overpriced electricity using overpriced imported fuel. Furthermore, the power plant



By candlelight: Electricity prices in South Africa rose by more than 400 per cent, while the country's energy supply deteriorated. Source: © Mike Hutchings, Reuters.

used cheaper generators than originally agreed, leading to shortfalls in energy generation. A string of disputes meant that the power plant – which was supposed to supply energy in a timely manner – was not connected to the grid until seven years later. During the judicial investigations that continued until 2017, it came to light that *Mechmar* and its local partners had overcome ministry resistance by paying out millions in bribes. In 2006, the drama unfolded a second time with the signing of a non-transparent, ad-hoc contract in order to combat an acute energy crisis. Once again, the commissioning of the power plant, which supplied overpriced electricity against government guarantees, was delayed. Shortly afterwards, it emerged that the private investor had no experience whatsoever in electricity generation and that the considerable delays in completion resulted from the operator's inexperience. It was the people of Tanzania who bore the brunt of the disaster, and who then had to suffer soaring energy prices and power cuts for many years. The Africa Research Institute estimates the direct damage of the IPP disaster alone to be in the region of 1.5 billion US dollars. TANESCO is also under permanent threat of insolvency and needs regular injections of cash from the government. The indirect costs include lost chances for growth and missed opportunities to improve citizens' quality of life.

The cooperation between state-owned and private companies to close supply gaps is not easy.

This is a striking example of how a lack of transparency and poor planning in private power procurement can have far-reaching and lasting consequences.²¹ Without fair and transparent competition, accurate project planning is difficult, if not impossible, leaving it open to operational risks. Internal costs are externalised – in the case of the electricity sector by increasing prices. This is another reason why corruption is so widespread in this sector.

Tanzania is not the only country that allows IPPs to sign direct agreements with governments. In Sub-Saharan Africa, in fact, more IPP agreements are signed through direct negotiations with governments than through fair competition procedures. In most of these cases, suppliers directly approach the government without a tendering process.²²

The Impact of Corruption in the Electricity Sector on Sub-Saharan Africa

Corruption has a devastating effect on the energy supply. According to estimates, the total damage caused by corruption in the energy sector in developing nations worldwide amounts to some 41 billion US dollars each year.²³ One of the direct consequences of this is the lack of investment in network maintenance, which on average cuts total electricity output in Sub-Saharan Africa in half.²⁴

Therefore, it is hardly surprising that there is a direct link between corruption and efficiency in the electricity sector: less corruption in a country means a more efficient power grid and lower losses in electricity transmission.²⁵ Numerous studies have also demonstrated the positive correlation between a reliable, affordable, and stable electricity supply on the one hand, and economic and social growth on the other. Access to energy not only brings economic opportunities, but also leads to reduced child mortality, improved primary health care and better access to education. Corruption, on the other hand, means wasted resources and inefficiency. Corruption in the energy sector also represents a business risk that discourages many private investors. In Sub-Saharan Africa, 80 per cent of the electricity supply continues to be state-owned, while in OECD countries public ownership stands at around 50 per cent.²⁶ Nevertheless, private investment in the energy sector is vital in order to achieve electrification across the whole of Africa, and to ensure that opportunities for economic and social development are not wasted. Transparency, an independent judiciary, efficient and effective state institutions and the responsible handling of political power are all criteria that characterise

good governance, but they are in short supply in the energy sector in Sub-Saharan Africa.²⁷ If these criteria were enforced, they would play an effective part in the fight against corruption, make the sector more attractive to foreign investment, and result in profits being invested in the maintenance and improvement of grids and lines. Regulatory instruments also need to be strengthened in order to combat corruption in the energy sector. Specifically, this includes ensuring greater transparency in the tendering process with an independent evaluation of bids, clear criteria for awarding contracts, independent monitoring of project implementation and accurate costing of major infrastructure projects. Clear rules need to be adopted to prevent corruption and their implementation monitored by independent institutions and regulatory authorities.

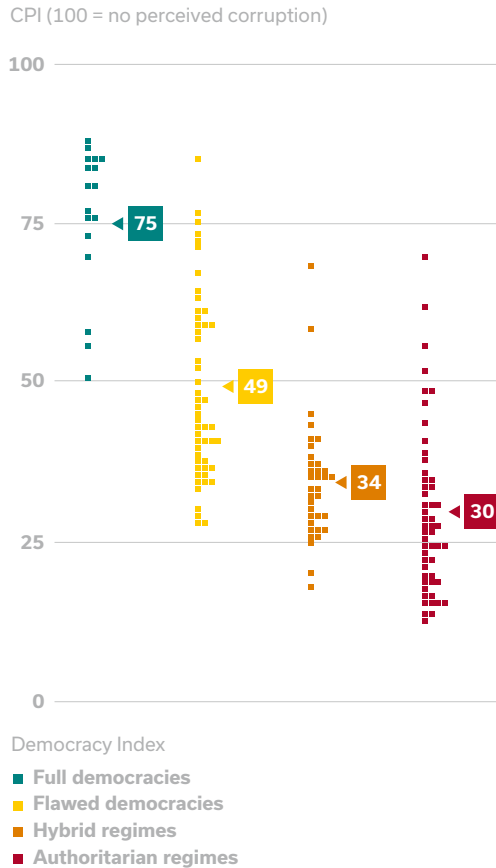
More Democracy for a Better Electricity Supply

The example of corruption in the electricity sector and its repercussions in Sub-Saharan Africa show that corruption is widespread where weak institutions and poor governance prevail, and where there are no independent control mechanisms to monitor government actions efficiently and effectively. The state often has a monopoly, not only in all areas of energy supply, but also in the political opinion forming process. As a result, the government does not need to fear that misconduct and poor utility services will have consequences at the ballot box.

Corruption and inefficiency in the public sector are, therefore, not the cause of poor energy supply; corruption and inefficiency are symptoms of poor governance and weak institutions. It is no coincidence that there is a negative correlation between countries with poor governance and levels of corruption, as is shown by analysing the data in the Transparency International Corruption Index and the 2018 Democracy Index.²⁸

At the same time, there is a connection between the quality of democracy and access to electrification: the more effectively democratic

Fig. 1: Corruption Perceptions Index (CPI) compared to Democracy Index 2018



Every dot represents a country's CPI score. The numbers in the squares represents the average CPI score for the respective political system.

Source: Own illustration based on Pring/Vrushi 2019, n. 28.

processes and institutions function, the more successful nationwide electrification has been in Sub-Saharan Africa and the narrower the gap between urban and rural access to electricity.²⁹

If corruption in the energy sector is to be curbed and effectively countered, it is important to address the causes. This is clearly enshrined in Agenda 2030, and more specifically in Goal 16 of the UN Sustainability Agenda. Goal 16 stresses the need to strengthen democratic institutions, to promote good governance and transparency in the public sector, and hence effectively

contributing towards the fight against corruption. Some of the aspects that may improve the quality of democracy include government accountability, freedom of the press, freedom of expression, the ability to participate in political opinion formation, and an independent judicial system. All these issues also have a positive impact on reducing corruption. Only by addressing the root causes of corruption can it be ensured that the energy sector in Sub-Saharan Africa plays its part in allowing everyone to participate in social development and economic growth.

-translated from German-

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Corruption

Ukraine: Transparent but Corrupt?

Isabel Weinger

Ukraine is the most transparent corrupt country in Europe. Corruption, oligarchy, and some mafia-like structures continue to be part of everyday life for people in Ukraine – in healthcare, education, business, customs, or the media landscape. Nevertheless, the reform efforts of the past few years have achieved increased transparency and social awareness of corruption. The German government and the European Union are providing substantial support to Ukraine; justice reform and combatting corruption are priorities.

In Transparency International's 2018 "Corruption Perceptions Index", Ukraine ranks 120 out of 180, alongside African countries such as Mali, Malawi, and Liberia, with 32 of 100 points. Overall, the country ranks third among the most corrupt countries on the European continent; only Azerbaijan (152nd place) and Russia (138th place) rank lower.¹

If Germans are asked about their image of Ukraine, their response will focus on the four C's: Crimea, conflict, crisis, and corruption.² Ukrainians themselves also view peace in Donbas (32.1 per cent) and the fight against corruption (34 per cent) as priorities and central tasks of the new parliament, according to a survey by the *Razumkov* Centre published in July 2019. Only increases in salaries and pensions, and a reduction of utility costs, 38 per cent and 38.8 per cent respectively, achieve greater support among respondents.³ Corruption appears to be an endemic, structural problem that arises hydra-like in nearly all areas of life and society.

Nevertheless, much has been accomplished in the five years since the "Revolution of Dignity". Of particular note is the fact that, in many areas, corrupt dealings have become more transparent and been hemmed in by preventive measures. One example is the mandatory electronic declaration of assets (e-declarations). Since 2014, all officials in public service have been required to submit an electronic list of all income and property, much more detailed than those in other European countries, and accessible online

for any citizen to see. In many cases, these lists reveal that an official with a monthly salary of several hundred euros probably cannot afford fancy real estate, expensive cars, or Swiss watches with his legal income. The declarations are reviewed by Ukraine's National Agency on Corruption Prevention (NACP), and investigations are handed off to the National Anti-Corruption Bureau of Ukraine (NABU). According to the United Nations Development Programme (UNDP), the publication of income and assets via a public, directly accessible digital system was the ground-breaking instrument Ukraine has employed to prevent corruption. The system is an important step in the direction of more transparency and a springboard for a cultural shift.⁴ This instrument thus enables civil society, international organisations, and state institutions to track, monitor, and uncover corruption in many areas. But because there is a lack of consistency in the prosecution of cases of obvious corruption, Ukraine can be very accurately described as a transparent but corrupt country. Prevention and transparency are only the first step, and there is a need for independent institutions dedicated to criminal prosecution and conviction.

The Poroshenko government created the basic institutions for this effort: NABU and NACP, mentioned above, and the National Agency for the Return of Stolen Property (NASAR), the Specialised Anti-Corruption Prosecutor's Office (SAPO), the National Council on Anti-Corruption Policies (NCACP), and finally the High

Anti-Corruption Court (HACC). Unfortunately, these newly created institutions have not always functioned efficiently, and have not resulted in any convictions until this year. This was one reason for the Ukrainian population's dissatisfaction with the former president.

The political change in early 2019 brought a breath of fresh air to the fight against corruption in Ukraine.

Not least due to this, the people opted for fresh faces and different rules in politics, electing Volodymyr Zelensky to the presidency, and electing a parliament, the *Verkhovna Rada*, composed of 80 per cent political neophytes. The new government is proceeding rapidly and has already ratified a number of changes to laws in the anti-corruption area. For instance, criminal liability for unlawful enrichment was re-introduced, the national anti-corruption offices were rebooted, improvements have been made to the Code of Criminal Procedure, and a reform of the public prosecutor's office has been set in motion. The new appointments of the heads of the justice and anti-corruption offices, the participation of international experts in the selection of judges, and a new ethics commission indicate a great deal of potential for finally making substantial progress in the fight against corruption.⁵ The replacement of the old political elites by progressive, new, young political actors appears to be an opportunity for Ukraine. The political pressure to combat corruption effectively is high – also on the part of civil society and international partners. Decision-makers in Ukraine must tackle this problem – not only to comply with the conditions of the Association Agreement with the European Union, but also to increase the standard of living for Ukrainian citizens, and restore their faith in institutions. Most Ukrainians trust neither the executive, legislative, nor judicial branches, but instead the church, volunteer organisations, and the army.⁶ This is a big problem that endangers

the long-term functioning of what is still a very young democracy. The previous governments failed to win back this trust. In 2018, the average income was 340 euros per month (gross), which is only about 20 per cent of the European average, making Ukraine the poorest country in Europe, although positive trends are emerging.⁷ However, the population's socioeconomic conditions can only improve sustainably if the investment climate becomes more attractive, and that, too, is largely dependent on reducing corrupt dealings and ensuring a functioning, independent justice system.

During her visit to Ukraine in November 2018, German Federal Chancellor Angela Merkel emphasised that the struggle against corruption was one of the most important reforms, along with decentralisation and privatisation.⁸ During the 21st EU-Ukraine summit in July 2019, the European Union explicitly listed combatting corruption as one of four priorities for the new government, and warned of the danger of a roll-back in that struggle.⁹ The German government and the European Union are thus supporting Ukraine on its path to reform. Recent figures from the Organisation for Economic Co-operation and Development (OECD) in autumn of 2019 confirm that Germany is Ukraine's third largest donor after the US and the EU. Of the 15 billion euros that the EU has mobilised for Ukraine since 2014, 15 million euros went to an anti-corruption initiative in each of the years 2016 and 2019.¹⁰ The following article shows why this substantial support is needed, especially in the fight against corruption, and why it is in line with European values.

The Fruits of the *Euromaidan*

In its Revolution of Dignity (*Euromaidan* or *Maidan* revolution, named after the Kyiv's central Independence Square) in 2014, Ukraine decided to take the European path. The people fought hard for this choice, and many even paid for it with their lives. "*Maidan* has united and strengthened civil society. Even though we did not know what will happen afterwards, we felt this empowerment," said Anastasia Kozlovtseva,



Living like royalty? The new anti-corruption offices are having a difficult time, especially in their investigations of high-ranking members of government and administration. [Source: © Konstantin Chernichkin, Reuters.](#)

Head of the International Relations department at Transparency International Ukraine.¹¹ She emphasises that transparency can only be the first step, and that the implementation of reforms must follow.

Since *Maidan*, one of the primary achievements of the reforms has been in the area of public procurement: the “ProZorro” online portal is an excellent example of transparent handling of public funds. This online platform for awarding public contracts was set up by an alliance of civil society and the private and public sectors,

and ensures free access to all public contracts. “ProZorro” is considered “one of the most innovative public procurement systems delivering government services in a stakeholder-focused, transparent, effective, fair, and low-cost way”.¹² Anyone can view the public calls for tenders online, so the portal not only ensures open competition between companies that provide goods and services to the state, but also improves civil society’s capability of monitoring contract awards. It is estimated that “ProZorro” has already saved up to ten per cent in public expenditure.



suspects and 369 indictments. It is, thus, all the more conspicuous that there have so far been no final convictions.¹³ The new anti-corruption offices are having a difficult time, especially in their investigations of high-ranking members of government and administration. The NABU was created in 2014, also with the aid of EU funds. However, the investigators are making slow progress, hindered at times by old structures and powerful interest groups. The SAPO has so far suffered from mismanagement, as has the NACP. Moreover, there has until recently been no special court – the HACC was founded in 2019 and only began work in September. It is now hoped that the first convictions will occur in spring 2020. The appointment of the HACC judges was a great success, since an international council of experts was able not only to advise on selection, but also to have a say in it. Upon adoption of the law in the *Rada*, then President Petro Poroshenko, said that there is no comparable anti-corruption legislation in any other country in the world.¹⁴ The new appointments of President Zelensky have initially confirmed positive signals. Anastasia Krasnosilka, who previously worked for the Anti Corruption Action Centre (AntAC), assumed the chairmanship of the newly founded Anti-Corruption Policy Council in parliament. Ruslan Riaboshapka, a respected reformer and anti-corruption expert, was appointed Attorney General. In addition to creating transparency via monitoring and prevention mechanisms, the necessary institutions for criminal prosecution were set up, and a new start was made in terms of personnel.

In addition, successful reforms have been carried out in the banking and gas sectors, where large-scale money laundering used to be the order of the day. The mandatory electronic asset declarations for public officials and employees also ensure transparency and traceability for money flows, allowing civil society and international organisations to report abuses and uncover cases of corruption. Despite this transparency, there has so far been little systematic prosecution of reported cases. For instance, NABU and SAPO announced in August 2019 that 751 criminal investigations were under way, involving 133

Old power structures and influential interest groups remain present in Ukraine, slowing the fight against corruption.

Yet, why do rankings still show Ukraine to be one of the most corrupt countries if so much has been done? The examples above show that Ukraine has had very successful reforms since

Maidan. But endemic corruption is still pervasive, and some of the anti-corruption initiatives have been implemented only partially, according to a Freedom House report, which indicates that the country is only “partially free” (60 of 100 points).¹⁵ But there has been one more achievement: the education and lobbying work in the area of anti-corruption financed by the West has contributed to increasing public pressure on the government to carry out anti-corruption reforms effectively. The more corruption is uncovered, the greater the social awareness of the problem.¹⁶ This became obvious again during the weeks of public discussions, both in Ukraine and internationally, about the leaked telephone conversation between US President Donald Trump and Ukrainian President Zelensky – but the consequences for Ukraine are still unclear.

It would be a terrible mistake to overlook the public discourse on corruption, and the many years of work on the part of grass-roots initiatives in this area, which are signs of democratic development in the country and among its inhabitants. This shift in people’s thinking thus happened even before Zelensky was elected. The free and democratic elections in 2019 that led to a peaceful change of power are also a good sign. Such a development has so far been possible in not many other post-Soviet countries outside the EU.

Economic Success or Roll-Back?

The quick and numerous reform efforts on the part of the newly elected Zelensky government are, first of all, a confirmation of Ukraine’s westward orientation. Despite numerous hazards, there is at least reason to hope that the right reform priorities will be pushed forward with political will and an absolute majority in parliament. Since parliament plays an important role in implementing reforms by passing the necessary legislation, the president has a unique opportunity to push through these reforms with his own party, *Sluha Narodu* (“Servant of the People”, named after a television series of the same name in which the president, a former actor, once starred) without resistance from parliament.

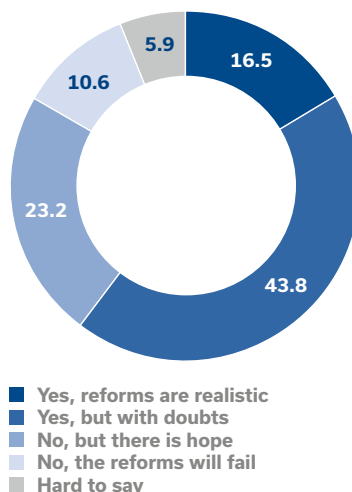
Earlier struggles between coalition partners and between the government and parliament can no longer be used as an excuse. The government party holds 254 of 450 seats, giving it an absolute majority in the *Verkhovna Rada*. The president and his team have announced important reforms in the area of justice and anti-corruption, but are also striving to achieve a better climate for investment. There is to be privatisation of the 3,500 or so state-owned companies; monopolies are to be broken up and access facilitated for international investors. The repeal of the moratorium on sale of agricultural land, which international donors demand, passed the first reading on 13 November and is supposed to enter into force on 1 October 2020. In October, the Cabinet of Ministers decided that the “ProZorro” platform would, in future, also be used to offer the assets of insolvent companies for public sale. There have already been economic successes: in the second quarter of 2019, Ukraine’s economic output rose by 4.6 per cent, and the hryvnia (Ukrainian currency) gained significant value. The markets developed positively at the beginning of the second half of the year; the reasons for this were the new government, the good agricultural harvest, rising wages, and remittances from emigrants.¹⁷ The International Monetary Fund (IMF) emphasised in a press release at the end of September that the solid fiscal and monetary policy of the last few years, the correction of the deficit in the energy sector, and the restructuring of the banking system have pulled the economy out of the 2014 crisis back to growth and restored macroeconomic stability. But the current growth rate (between two and three per cent) is still too low to close the income gap between Ukraine and its European neighbours. Greater sustainable growth will be achieved only through the implementation of ambitious reforms. “This includes most of all firmly establishing the rule of law – including through judicial reform – and decisively tackling corruption,” the IMF said.¹⁸

But a functional, independent justice system and success in the struggle against corruption is also necessary for economic prosperity. Only when they are in place will foreign donors be willing to make long-term investments. In 2014,

Fig. 1: The Ten Most Important Reforms Following a Survey in June 2019 (in Per Cent)



Fig. 2: Opinion of the Population on the Success of Reforms in June 2019 (in Per Cent)



Source: Own illustration based on Razumkov Centre 2019, n. 3, pp. 74/79.

Ukraine signed an Association Agreement with the European Union – including a free-trade agreement (Deep and Comprehensive Free Trade Agreement, or DCFTA). Amongst other things, the EU supports Ukrainian economic reforms, and has invested 110 million euros since 2014 in the development of the private sector, especially promoting small and mid-sized companies. Since the DCFTA came into force in January 2016, bilateral trade between the EU and Ukraine has increased by 49 percentage points, making the EU Ukraine’s largest trading partner (accounting for 42 per cent of Ukraine’s total trade).¹⁹

So, what are the hazards that could hamper economic reforms, and that Ukraine, together with its international partners, must face?

Even among the new “Servant of the People” members of parliament, there are connections to the Ukrainian oligarchy.

Among those often cited are lack of party discipline, oligarchy, and concentration of power. Party discipline is not particularly well developed in Ukrainian political culture. In Zelensky’s team, too, various interest groups within the parliamentary faction “Servant of the People” have emerged from the outset. The elected officials, some of whom are young and inexperienced, form a very diverse group of reformers and young businesspeople – some of them with ties to Igor Kolomoisky, a well-known Ukrainian oligarch who is often associated with President Zelensky. Many members of the Sluha Narodu party in parliament were elected via direct mandate, and may have issued local promises ahead of the election, or entered into shady relationships, or may be pursuing their own interests. There is little doubt that some of the new members of parliament are backed by oligarchs, who still dominate politics, business, and media. In addition to the rich, who will not give up their influence without a fight, there is resistance from the system itself. The necessary reforms are not always popular, and administrative capacities at the local and national levels are still limited – not only with respect to good governance, but also concerning complex transformations and reform

legislation. The greatest hazard, however, is the concentration of power, which the president wields jointly with his absolute majority in parliament. The weak system of checks and balances in the Ukrainian political system – the parliament is supposed to check the president – has de facto been negated. Both the media and civil society appear to have a difficult situation with the new government. Mykhailo Zhernakov, a lawyer and head of the DEJURE Foundation, said at the beginning of the legislative period in the late summer of 2019 that the preparation process for the first reform initiatives and legislative proposals by the new government team could unfortunately not be described as open or inclusive. The situation improved slightly in autumn, when the parliament began to concern itself more deeply with reform legislation.²⁰ With the Poroshenko government, this was a well-practiced consultation process in which civil society and experts were involved. Precisely because of the hazards that have been indicated, it is important to counter any backsliding from the *Maidan* democratisation process, and to refuse to countenance any authoritarian or populist tendencies. The G7 countries should continue to display a united front and agree with Ukraine’s civil society on joint priorities for the reform agenda. Both economic and reform successes are necessary if a slide back into an authoritarian scenario is to be avoided.

A final point why Europe has to continue to support the fight against corruption in Ukraine is that corruptly gained money is often spent in European countries – whether in Austria, the United Kingdom, or the Baltic States. Ukrainian corruption is thus also perceptible in Western Europe, where dirty money is most often spent. Olena Galushka of the AntAC office argues as follows: Europe is partially responsible when no questions about the origin of large sums of money are asked; such practices contribute to the success of money laundering for Ukrainian oligarchs and enhance their influence in Western Europe.²¹

Finally, Germany and Europe have interests in the sustainable economic development of Ukraine, a country whose land area is almost as

great as that of France, with around 45 million inhabitants in the immediate neighbourhood. This great economic potential and the achievements to date provide hope for the continued positive economic development of Ukraine.

Corruption Under Conflict Conditions

A position paper for the CDU/CSU parliamentary party in Germany’s Bundestag written in November 2018 begins as follows: “The future of the European Union will be decided in Ukraine: if Russia’s increasing anti-Ukrainian activity allows it to destabilise the country or even return it to the Russian sphere of influence, there would be grave consequences for European security, the attractiveness of Western values as a model, and the effectiveness of the European Union as an agenda-setting power.”²²

The ongoing conflict in eastern Ukraine continues to be a significant component of regional political and societal relationships.

From a Ukrainian point of view, this argumentation requires no further explanation. However, not many Europeans are aware that since the beginning of the conflict in eastern Ukraine, more than 13,000 people have been killed, a quarter of them civilians, or that borders are once again being shifted and mines laid in Europe. Just as worrisome is the Russian annexation of Crimea in 2014 in violation of international law, which often recedes into the background in the discussion on Ukraine. Ignoring international law is a threat not only to the international liberal world order and system of justice, but also very concretely to Europe’s security. The plausible challenge to the Russian system of power posed by Ukraine and its free elections was recognisable in the summer of 2019. At first, the Russian media peered almost enviously at their neighbouring country, where



Crowd favourite: President Zelensky paid attention to sociological surveys during the campaign and made the popular societal demands part of his platform. [Source: © Valentyn Ogirenko, Reuters.](#)

there were various candidates during a presidential election and the results of elections were not pre-determined. It was unthinkable for many Russians that in their own country a well-known actor without political experience could

not only become president, but also win the majority in parliament. According to Russian experts, this was one of several reasons for the demonstrations in the summer of 2019 for free and fair elections in Russia.

One of Zelensky's campaign promises was a solution to the conflict, and there have been minor advances in relations between Kyiv and Moscow in the past half year. The disengagement process started at a bridge on the contact line and a fragile but effective cease-fire in the summer of 2019, and the so-called Steinmeier Formula²³ was signed in Minsk. A meeting of Normandy Format heads of state has been scheduled, and disengagement in other zones on the contact line are intended. A special concern of Zelensky's is improving the living conditions for those on both sides of the contact line. The grey zone on the contact line is a breeding ground for new sources of corruption, such as black-market operations and trade with coal from the occupied areas.²⁴ In March 2019, a new corruption scandal came to a boil in the defence sector. In 2018, Ukraine spent around five per cent of its GDP on defence. The state-owned Ukrainian defence company, *Ukroboronprom*, was accused of embezzling Ukrainian arms and equipment worth around eight million euros. The call for tender was not public, and NABU investigated.²⁵ But the scandal has had a positive effect: in this sector, too, preventive measures are being taken against corruption. Prime Minister Oleksiy Honcharuk has also made the fight against corruption in the defence sector a part of his government programme. This is not the only case of corruption in the area of security and defence policy, and the EU has given the European Union Advisory Mission (EUAM), which has been active in Ukraine since December 2014, a comprehensive mandate for security sector reform. The aim is the support of Ukrainian agencies in implementing reforms in the civil security sector according to international standards. Primary among these reforms is ensuring efficiency and rule of law, and enhancing public trust in state institutions. In the period from June 2019 to May 2021, 54 million euros will be available to the EUAM for completing this task.²⁶ The struggle against corruption is part of these reforms as well, and is being pursued in the interest of winning back the people's trust in public institutions, especially the security agencies. The military struggle in eastern Ukraine could also be won by non-military

means if Ukraine reforms its domestic policy in a manner that is attractive to all Ukrainians on both sides of the contact line.

Outlook

So far, the oft-mentioned "sandwich" of international partners and Ukrainian civil society have joined forces to fight for reforms in the areas of justice and corruption. The visa liberalisation agreement between Ukraine and the EU was considered a major success and a reward for the reforms. Since it came into force in June 2017, around three million Ukrainians have travelled to the EU on biometric passports. A specific prerequisite for this measure was progress in anti-corruption legislation. This "carrot and stick" policy has so far led to the biggest reform successes, and should continue to be applied in future. The EU mentioned at its summit in July 2019 that Ukraine needs to do more to fight corruption and to reform justice if it is to ensure the full implementation of the Association Agreement. No repeal of the visa liberalisation measure has so far been considered.²⁷ Macrofinancial assistance from Europe and the IMF, but also from the World Bank, is similarly dependent on progress in Ukraine's reform process. The fight against corruption has been repeatedly brought up as an especially important condition for further financial aid. When reforms in this area ground to a halt at the end of Petro Poroshenko's presidency, and the law on illicit enrichment of officials was struck down by the Constitutional Court, instalments were held back and a termination of cooperation announced.²⁸ These alliances and incentives should continue to be used to push forward pending reforms.

The *Razumkov* Centre survey also addressed voter intention with respect to particular election programme positions.²⁹ It showed that most respondents support introduction of mandatory confiscation of the property of corrupt officials (90.9 per cent) and limits on the ability of oligarchs to monopolise sectors of the economy, appoint their people to public office, and control the media (91.8 per cent). Moreover, 64.5 per cent favoured the introduction

of a system for financial compensation for citizens who uncover corruption. A draft bill “On the Protection and Financial Compensation of Whistleblowers” was introduced to parliament in September 2019.³⁰ 87.3 per cent thought that rebooting all courts and completing the reform of the justice system was important. Vita Dumanska of CHESNO, an NGO, said that Zelensky paid attention to sociological surveys during the campaign and made the popular societal demands part of his platform. After the elections, however, it became clear that some promises, such as lowering gas prices, could not be kept. Voters were also still waiting for the campaign slogan to be realised: “Spring will come, and we will put corrupt officials behind bars.”³¹

The greatest risk for the new Ukrainian government is disappointing the public. Zelensky’s promises to end the war in eastern Ukraine, and create a country without corruption cannot be accomplished within five years. Corruption can never be stamped out completely, and the end of the conflict is also dependent on Russian President Vladimir Putin.

What can Europe do? Unlike the period after *Maidan*, Ukrainian civil society currently has no common reform agenda, as it has diversified and works in different sectors. This situation thus requires new coordination among actors in civil society, and with international partners in Kyiv, and the establishment of new tangible goals to constructively support the new Ukrainian government in the full implementation of the Association Agreement. Reforms will proceed only if international partners continue to work together with Ukrainian civil society so as to maintain pressure on the Ukrainian government. Current reform laws, that the new government ratified so fast over recent months that experts have named it the “turbo regime”, must be in line with the obligations under the EU Association Agreement. The international partners should clearly communicate what has already been achieved, what steps remain to be taken, and what advantages they will mean for the country. The EU must also continue to emphasise its values of

territorial integrity and the freedom of sovereign states. The annexation of Crimea, which violated international law, must be continuously condemned, as must Russian support for the so-called people’s republics in eastern Ukraine. As long as there are no constructive steps from the Russian side, the EU must credibly underscore its position by extending sanctions.

Europe can and will contribute and provide support, but the Ukrainians themselves must reform their country. This window of opportunity is now open in the fight against corruption as well. This is the only way for Ukraine to permanently escape the constraints of post-Soviet cronyism, become a beacon of democracy, rule of law, and European values, and radiate these values to the entire region, including to its neighbour, Russia.

-translated from German-

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[Corruption](#)

Nigeria's Hopeless Fight Against Corruption

Vladimir Kreck

Nigeria could be one of the richest countries in Sub-Saharan Africa. Thanks to its oil and gas industry, billions of dollars flood into the state's coffers every year. Yet, the country faces immense challenges. Extreme poverty, a weakening economy, a dilapidated infrastructure, terrorism, and organised crime are all part of the everyday life of the population. Corruption, which has been depriving the country of the resources it needs to develop, is largely to blame for the current state of affairs.

Immense Challenges in Nigeria

With almost 200 million inhabitants, Nigeria is Africa's most populous country. It is also one of the world's largest oil exporters, and has been the continent's leading economy for several years. Nevertheless, the country faces immense challenges. Today, about 87 million people in Nigeria live on less than 1.90 US dollar a day, making it the country with the world's highest number of people living in extreme poverty.¹ To make matters worse, the country's economy is only slowly recovering from a severe crisis that began in 2014 and bottomed out in 2016. The unemployment rate has risen annually since the onset of the economic crisis, reaching a provisional high of 23.2 per cent in the third quarter of 2018.² However, the number of unreported cases is probably much higher. In addition, the country's birth rate is around 5.2 children per woman, leading to a rapid population growth over recent decades that is set to continue in the future. The country would need to achieve double-digit economic growth in order to develop and offer its people prospects for the future.

Other indicators that shed light on the difficult situation in Nigeria include the fact that around 60 per cent of the population is not connected to the electricity grid, 13.5 million children do not attend school, and according to the World Health Organization's latest 2015 estimate, around 58,000 women die in childbirth every year³. The country's power supply and education system are as underdeveloped as its health

care system, and its dilapidated roads are in desperate need of an upgrade.

On top of this, the security situation throughout the country has deteriorated significantly over the past decade. The Islamic terror militia *Boko Haram* and the splinter faction Islamic State West Africa Province have been destabilising the northeast for the last ten years. In central Nigeria, deadly clashes are escalating between ethnically mixed but predominantly Christian farmers and Muslim Fulani herders. Organised banditry in the northwest and the oil-rich south, along with daily kidnappings and robberies throughout the country, are all aggravating the security situation. The conflicts claim thousands of lives every year and have driven more than two million people from their homes.

The current situation in Nigeria is largely due to the scale of corruption that has deprived the country of vital development capital for decades. Corruption pervades the whole of society, is systematically practised by the ruling elite and comes in many guises, including: embezzlement of state funds, clientelism, nepotism, fraud, bribery and, as a result, large-scale money laundering at home and abroad. It permeates every level of society, from high-level politicians and civil servants to the security forces, businesspeople and the country's poorest citizens. So it is hardly surprising that Nigeria has languished in the lower quarter of Transparency International's "Corruption Perceptions Index" for many years. In 2018, the

country was ranked 144 out of 180, alongside countries such as the Comoros, Kenya and Mauritania.⁴

There is no reliable data on the damage caused by corrupt practices in Nigeria, but experts estimate that from the country's independence in 1960 until the end of Sani Abacha's military dictatorship in 1999, more than 400 billion US dollars in state funds were misappropriated, and that a further 182 billion US dollars left the country illegally between 2005 and 2014.⁵ At a meeting of the "African Union High Level Panel on Illicit Financial Flows" in Abuja in October 2018, former South African President and panel chairman, Thabo Mbeki, stated that the outflow of illegal funds from Africa had increased from 50 billion US dollars in 2015 to 80 billion US dollars per year, and that the share of Nigerian funds was by far the highest.⁶

The scale of corruption in Nigeria is pervasive and permeates every level of society.

Multinationals, particularly in the oil and gas industry, as well as banks and financial service providers are also guilty of systematic fraud, bribery and illegal funnelling of money abroad. A case that has been the concern of European courts for years, and has therefore repeatedly attracted international attention, provides an insight into the potential scale of corrupt practices and networks. In Milan, London and soon also in the Netherlands, Royal Dutch Shell PLC and the Italian company Eni S.p.A. are being prosecuted over alleged corruption in Nigeria.⁷ With the knowledge of senior executives, the two companies are accused of paying some one billion US dollars in bribes in 2011 in order to acquire a profitable offshore oil production licence for the Gulf of Guinea. According to accusations laid out by the Nigerian government in the indictments, it was not only Nigerian government officials, all the way up to then President Goodluck Jonathan,

who benefitted from such payments, but also senior executives from the two large corporations. Major US bank JPMorgan is also accused of having been significantly involved in the illegal transaction of the bribes.

Buhari Brings New Hope

When Muhammadu Buhari was elected president in 2015, large swathes of the population were hoping for a turning point in the fight against endemic corruption. Buhari, a former general and Muslim from the north had already led the government from 1983 to 1985 in the wake of a military coup. The media trumpeted his "integrity" in the run-up to the elections. During his election campaign, he not only promised to swiftly defeat *Boko Haram* and boost the economy, but also to take decisive action against corruption.

Buhari's election was historic in the sense that, for the first time since the country's independence, an opposition politician was able to take power via a democratic process. However, as Heinrich Bergstresser, a German expert on Nigeria, rightly notes, the vast majority of voters were not voting *for* the former junta leader but *against* President Jonathan and the People's Democratic Party (PDP) when they went to the polls.⁸ The PDP had ruled the country without interruption since its return to democracy in 1999, and ultimately led it to the brink of ruin in Jonathan's five-year term.

At the point when Jonathan relinquished his government role, *Boko Haram's* terrorists controlled large parts of the north east, the economy was on the verge of deep recession, and corruption had reached unprecedented proportions. One of the reasons why Jonathan was so resoundingly defeated at the polls was a corruption scandal, which caused a sensation because of its sheer scale. About a year before the presidential election, the head of the central bank, Lamido Sanusi, publicly accused the Nigerian National Petroleum Corporation (NNPC), i.e. the state oil company, of having defrauded the state out of some 20 billion US dollars in 2012



Voted out of Office: In Jonathan's five-year term, Nigeria was ultimately led to the brink of ruin.
Source: © Akintunde Akinleye, Reuters.

and 2013. Sanusi was then relieved of his post by Jonathan, but the evidence presented clearly weighed heavily.⁹

It was not until 2015, after Buhari was elected, that Jonathan's oil minister and former OPEC president Diezan Alison-Madueke was arrested in London on charges of fraud. In 2017, a Nigerian court ordered the seizure of 21 million US dollars from her bank accounts and the forfeiture of 56 houses, with a total value of nine million US dollars.¹⁰ Nigeria's national anti-corruption agency, the Economic and Financial Crimes Commission (EFCC), had already confiscated land and real estate worth 44 million US dollars from the former minister, allegedly

purchased with the proceeds of corruption.¹¹ Meanwhile Sanusi – the current Emir of the state of Kano – finds himself facing serious allegations of corruption.

Doubts about Buhari's Anti-Corruption Campaign

Buhari's administration and the EFCC in particular have tried to convict many of the country's politicians and influential elites on charges of corruption. The Alison-Madueke case is one of the few success stories in the fight against corruption. Many of those investigated were also part of the government circle of former President Jonathan or PDP members. As a result,

Buhari has had to defend himself against accusations that his anti-corruption campaign is merely an attack on members of the former ruling party.

This impression intensified in the run-up to the last presidential and parliamentary elections, which took place in February 2019. Buhari was once again the presidential candidate for his party, the All Progressives Congress (APC), and in the elections he claimed victory over his fiercest rival Atiku Abubakar, a former vice president of the country and candidate of the PDP. The run-up to the elections saw a brisk flow of people crossing over from the APC to the PDP, and vice versa. This was due to the fact that the two main Nigerian parties are ideologically not distinguishable, and are therefore interchangeable in terms of providing “platforms” for political careers. Therefore, these crossovers were not so much motivated by ideology as a consequence of personal differences within the parties, and often linked to the hope of being considered for political office in the next legislative period. The chairman of the APC, Adams Oshiomhole, a former governor of the state of Edo, had already been forced to defend himself against serious allegations of corruption. He wanted his party to capitalise on this lack of ideology by indirectly – albeit publicly and very obviously – offering PDP members who were willing to join his party immunity from prosecution for crimes committed.¹²

Also in the cabinet of Buhari are politicians who were or are suspected of corruption.

The composition of the cabinet is another issue that calls the Buhari regime’s determination to consistently fight corruption into question. Newly appointed ministers include at least three who are or have been suspected of corruption, including Godswill Akpabio, who was made Minister of Affairs of the oil-rich Niger Delta. He was the PDP governor of the state of Akwa Ibom in the Niger Delta from 2007 to 2015, and was a PDP senator and Senate Minority Leader

during the last legislative period. In August 2018, he was in the spotlight when he left the PDP and joined the APC. Before his nomination was announced, the EFCC refused to respond to press queries relating to ongoing corruption investigations against him and his wife.¹³

Nigeria’s History of Corruption

Corruption is certainly not a new phenomenon of the last ten years for Nigeria, but has long been an intrinsic element of Nigerian society. US anthropologist Daniel Jordan Smith even argues that corruption in Nigeria is culturally sanctioned if family members, the tribe or members of the ethnic group benefit from an individual’s ill-gotten gains.¹⁴ Many experts like Smith believe this cultural acceptance of corrupt practices has its roots in the country’s pre-colonial period. They refer to the ancient custom of giving gifts to ruling elites, often associated with the expectation of special consideration or favour. Smith describes this transactional relationship as a patron-client relationship that, to this day, continues to shape the country’s politics and economy along family, ethnic and religious lines.

However, initial instances of extreme corruption emerged among the first military dictators to rule the country after independence. In the late 1980s, the US political scientist Richard Joseph described this new form of corruption as prebendalism.¹⁵ Referring to the medieval prebends in the Catholic Church in Europe, the term describes a widespread sense of entitlement and refers to the behaviour of leading politicians and civil servants who believe they have the right to claim their share of government revenues and use them to benefit the people and groups who are closest to them. This behaviour was particularly encouraged by the fact that the modernisation of the state was left unfinished under British hegemony. This led to the emergence of weak institutions and inadequate control mechanisms.

However, corruption in Nigeria only assumed its extreme and rampant form under General Ibrahim Babangida and General Sani Abacha,

whose military regimes followed each other almost seamlessly between 1985 and 1998. This period in Nigeria's history was characterised by clientelism, nepotism and unscrupulous self-enrichment at the expense of the state and its people. When he took office, Babangida immediately pardoned a number of people who had previously been convicted of corruption by the first Buhari government. When Abacha took power, he continued the deregulation of the oil, telecommunications and media industries that began under Babangida.¹⁶ Abacha's loyal followers were rewarded with licences that enabled them to earn money from public and private enterprises. Abacha himself, whose power was underpinned by a violent regime from 1993 until his death in 1998, cultivated a luxurious lifestyle and used state-owned goods and money without scruple. It is estimated that he and his closest circle illegally remove three to five billion US dollars from the country in just five years.¹⁷

Politics as a Democratically Legitimised Business Model

After almost 20 years of dictatorship, Nigeria returned to democracy in 1999. The first presidential and parliamentary elections were won by Olusegun Obasanjo, also a former general who had ruled the country as junta leader in the 1970s and was imprisoned under Abacha, and the then newly founded PDP. Atiku Abubakar, a former senior Nigerian customs official who had made his fortune in the logistics and oil sectors, was appointed vice president and stood against Buhari in the 2019 elections.

Obasanjo and Abubakar allowed the continuation of many corrupt practices, including the clientelism and nepotism that had been so rife in previous years. But now these practices, cronyism and the sharing out of influential positions and pecuniary advantage were cloaked in democratic legitimacy. The democratic practices of politics was transformed into a business model. Today, this model provides not only opportunities for members of the military and security forces, appointed officials, senior civil servants but also for elected representatives of the people

to personally enrich themselves from the state's coffers, which should be subject to parliamentary control. The high salaries and allowances received by MPs – said to be some of the highest in the world – do not present a moral obstacle.

Political offices are financially attractive as they offer opportunities of self-enrichment.

One of the consequences of the monetary incentive to work in Nigeria's parliament is a high turnover of MPs, something that is deliberately encouraged. At the national level, between 60 and 70 per cent of elected representatives, and at the state level up to 90 per cent, do not stand for re-election. Influential people in the parties nominate new candidates with no parliamentary experience to replace previous MPs. This practice guarantees that positions of power and access to state funds are rotated from one person to the next, and often from one social, ethnic or religious group to the next. Nigerians call this principle "zoning", a system that aims to give people their turn to have a say in multi-ethnic and multi-religious Nigeria. However, it is also used to pay back favours and buy loyalties. It can also be assumed that the high fluctuation of deputies serves the interests of the ruling elite. The large-scale turnover of MPs ensures that experience and knowledge are lost at the end of each legislative period, interrupting the continuity of parliamentary work. Once a new parliament is assembled with inexperienced MPs, it usually takes a long time to become operational again. This significantly weakens parliament and its ability to fulfil its oversight function.

The monetary incentives associated with gaining political mandates also explain why election campaigns in Nigeria are so bitterly contested. Moreover, since the country's re-democratisation in 1999, its elections have been overshadowed by violence and extreme forms of electoral fraud. There is one key principle: the winner takes it



For a handful of dollars: In Nigeria, politics is also a business model which provides opportunities for elected representatives of the people to personally enrich themselves from the state's coffers. [Source: © Mike Segar, Reuters.](#)

all. Supporters and members of the same ethnic group are thus prepared to take all kinds of risks, including illegal action, in order to guarantee their candidate's success at the polls. However, they expect their efforts to be rewarded with a share of the legal and possibly illegal income once their candidate is elected.

Corruption Endangers National Security

Under Obasanjo and Abubakar, security votes developed into a key instrument for maintaining power. Security votes are government allowances paid out to political stakeholders for the purpose of countering unexpected security

threats. In a report for Transparency International, Matthew Page, an American expert on Nigeria, estimates that 670 million US dollars is paid out every year in security votes. He claims that this amount is nine times what the US has paid in support of the security sector in Nigeria since 2012 (about 68.6 million US dollars), and twelve times the UK's aid in the fight against *Boko Haram* (about 53.5 million US dollars).¹⁸ Page states that this amount corresponds to some 70 per cent of the cumulative budget of the chronically underfinanced Nigerian police, army, navy and air force. The problem with security votes, however, is that they are usually allocated in cash and the recipients are not required to account for how they use the funds. The latter is justified, inter alia, by the fact that measures in the security sector are particularly sensitive and must therefore be subject to secrecy. As a result, however, this provides a strong incentive to use the allocated funds for other purposes.

Security votes are perceived as suspect of corruption, as the use of this money intended to counter acute security threats must not be proven.

Security votes are a relic from the time of the country's numerous military dictatorships; today, the Nigerian public widely associates them with corruption. The first military dictator to make use of them was General Yakubu Gowon. In the late 1960s, he provided his military administrators in different parts of the country with small budgets that they could use without accountability in order to buy the loyalty of civilian elites.¹⁹ The regimes that preceded Babangida and Abacha were already abusing security votes as instruments of self-enrichment, but under the latter two dictators the practice took on a whole new dimension. When Obasanjo took power in 1999, he ensured that the practice was extended beyond the military sector to the civilian public sector. Since then, the main recipients of security

votes have been the governors of federal states, who use this government money to enrich themselves and strengthen their positions of power. Security votes play a particularly key role in the run-up to elections, as they are used to fund campaigns and manipulate elections. Buhari's party may have also made extensive use of this practice recently. In 2018, just twelve months before this year's presidential, parliamentary and gubernatorial elections, there was a sharp increase in the number of security votes.²⁰

However, security votes are just one way of depriving the security sector of urgently needed resources for reform and the fight against terrorism and organised crime. In the wake of the threat posed by *Boko Haram* and the rise in organised crime in the country, government spending on security, and hence the budgets of the security agencies, have soared. As a result, the procurement and awarding of contracts to security forces has become a profitable field for criminals over the last decade. Two independent commissions that were set up by Buhari, which have also investigated corruption offences in the security sector, revealed that nine billion US dollars disappeared in the space of just seven years – mostly during Jonathan's presidential term.²¹ However, Buhari's initiative to expose the corrupt practices of the Jonathan government and to bring those responsible to account has done little to change the extent of the misappropriation of funds in the security sector. In April 2019 the renowned Chatham House published a report on security sector reform in Nigeria.²² It states that even since Buhari came to power, the biggest problem in the security sector remains the systematic, illegal theft of funds.

Conclusion

With its billions of dollars in government revenues from the oil and gas industry, Nigeria could probably solve its serious development problems in the foreseeable future. However, for decades, the country has been ruled by corrupt elites who have deprived the country of its capital. President Buhari, who spectacularly prevailed over his predecessor in the 2015

elections and was re-elected this year, promised to clamp down on corruption. But even he, who is still described by the international media as having “integrity”, seems to have to bow to the mechanisms of the corrupt system in order to remain in power. Decades of clientelism, cronyism, weak institutions and opaque practices supported by the ruling elite have created an environment in which corruption is rife. The country is slowly but surely bleeding out.

There is no shortage of proposals on how to counteract the rampant corruption in Nigeria, such as calls for the introduction of transparent procurement rules for public contracts, and the establishment of an independent commission to monitor compliance with the rules. Other proposals include closing legal loopholes and providing more staff for national anti-corruption bodies. For many years there have also been calls to abolish budgets with no accountability, such as security votes. There has also been long-standing criticism of the inadequate numbers of people who are investigated or convicted of corruption. This figure would have to be massively raised via more systematic action on the part of authorities. However, many of those who are accused and presumably guilty seem to stand above the law. This is also due to the fact that the authorities and courts are open to bribery, or simply follow the instructions of the political elites. These institutions would also have to undergo a cleansing process and establish internal control mechanisms.

There is no doubt that most of these proposals are well-founded in that they aim to establish and strengthen institutions that can fight corruption in the long term. But there is a fundamental problem: Nigeria needs the political will to act not selectively but comprehensively against corruption within its own ranks, the government, parliaments, the security sector and the economy. And even then, it would be a long path before people’s attitudes towards corruption, which are often culturally rooted, would effectively change. There seems little prospect that things will indeed change for the better. The political elite that governs the country today,

and will very probably govern it tomorrow, is the political elite of yesterday. A long history of corruption has embedded it in society, and we cannot expect to see it take any serious interest in making a clean break with the past. The business of politics is too lucrative in a country that otherwise offers its people little prospect of prosperity.

-translated from German-

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Corruption

The Right of Access to Information

An Important Step in the Fight Against Corruption in Morocco?

Steffen Krüger

Morocco is no stranger to the global problem of corruption and the associated lack of public trust in the country's administration. Public pressure, especially during the Arab Spring, resulted in a constitutional amendment in 2011 and people being given the right of access to information. Citizens now have the right to request non-public information held by the administration, while at the same time public bodies are required to proactively provide citizens with more information. Morocco's Access to Information Act has been in force since March 2019, however, its adoption has been postponed until 2020.

Corruption – A Far-Reaching Problem in Morocco

In Morocco, the media and public discourse often report instances of bribery and fraud. Whether that be in the health care sector, where people often have to make additional payments in order to get vital treatments, or the traffic police, which freely hands out arbitrary fines. According to Transparency International's Corruption Barometer 2013, 61 per cent of Moroccans surveyed rated health care and the police as the country's two most corrupt sectors.¹ Other areas that are severely affected are the judiciary, the education system, and the military. There have been cases when revelations of corruption have led to public protests, but all too often, it is simply accepted. This is primarily due to people's lack of knowledge about their rights and the duties of the state, for example when it comes to services that, by law, should be supplied free of charge. The question of tips, quite simply called *qahwah* (coffee), concerns a large part of the population when it comes to obtaining justice or benefitting from a privilege.

On top of this, public authorities have embraced neo-patrimonial ideas that encourage nepotism and favouritism. It is no longer simply a question of authoritarian rule through tradition, but formal laws are also applied, albeit arbitrarily. Citizens find themselves in a constant state of uncertainty as to whether the rules set by an

impersonal bureaucracy or authoritarian power will be applied. State officials are entangled in a complex network of loyalties, which enables them to change or circumvent rules in order to exploit their position for personal gain.

People are often both perpetrators and victims of corrupt practices. Many deny being involved, trivialise the problem, or are unaware of any wrongdoing.

Corruption is the "misuse of entrusted power for private gain".² In reality, its practices are more complex and often difficult to define. Four frequently cited forms of corruption or abusive practices in Morocco are conflict of interest (Article 65 of Organic Law 113-4 on municipalities), abusive influence (Article 250 of the Moroccan Penal Code), favouritism (Article 254 of the Penal Code), and insider trading (Article 25 of Law 1-93-212 on Securities Trading). Articles 248 ff. of the Moroccan Penal Code distinguish between an active demand for payment, and a passive acceptance of benefits and privileges. The amount of the bribe is also decisive, along with whether state officials will only perform an activity they are required to do by law for *bakshish* (tip), or whether they are also violating the law. The risk of corruption is particularly high at the interface between the public and private sectors, and above all when awarding public contracts, licences, authorisations, tax concessions, and providing public services.



Public participation? The dwindling trust in the state is clear to see in many areas, among them low turnouts in elections. Source: © Youssef Boudlal, Reuters.

Moroccan criminal law has sufficient legal instruments for combatting corruption. According to Article 243 of the Penal Code, any judge or official who solicits, receives, or mandates a payment to which they are not entitled, is guilty of bribery. What is more, there are the offences

of fraud, forgery of documents and falsification of signatures, data or facts (Articles 351ff. Penal Code).

During a speech in July 2018, Moroccan Prime Minister Saad-Eddine El Othmani estimated



that the cost of corruption amounted to some seven per cent of the country's GDP, or approx. 6.7 billion euros per year.³ This annual shortfall is roughly equivalent to the cost of building 300 hospitals,⁴ and placed Morocco in 73rd place (of 180) on Transparency International's 2018

“Corruption Perceptions Index”. It may be an improvement on previous years, yet the country still fell well below the global average.⁵ The main problems lie at the interface between the public and private sectors, such as the sale of public goods, licences for private educational institutions, and the award of public contracts.

The country's corruption not only has a direct impact on its citizens, but also damages the general investment climate.

According to political assessments, the damage caused by corruption poses the greatest obstacle to Morocco's economy. A United Nations guideline on combatting corruption describes the impact of global corruption as follows: “Corruption hinders economic development, reduces social services, and diverts investments in infrastructure. Moreover, it fosters an anti-democratic environment characterised by uncertainty, unpredictability and declining moral values and disrespect for constitutional institutions and authority.”⁶

Morocco's strong economic and political ties with the European Union and its geostrategic position mean that the damaging impact of corruption is felt not only at home, but also abroad. Foreign investors often cite problems with bureaucracy and corruption as reasons for their lack of interest in Morocco, despite the massive expansion of infrastructure in recent years and the government having drawn up some promising development plans. Certain problem areas, such as the fight against money laundering around Casablanca, the country's financial hub, have already been addressed, however the general framework for an investment-friendly business climate is not yet in place.

Corruption is contributing towards current weaknesses in the Moroccan economy, too. The low number of business start-ups, which could play an important role in the labour market and

encourage competition, are a reflection of the uncertainty caused by corruption. Moreover, few entrepreneurs dare to enter the formal sector, despite the creation of investment centres and a favourable legal environment.

Is Good Governance in Trouble?

Corruption exists in almost every country around the globe, irrespective of their level of economic and social development. No government or political system has yet managed to abolish corruption altogether. In addition to economic problems and the rising cost of living, especially for the poorer sections of the population, corruption plays a major role in people's mistrust of the state and its representatives.

This dwindling trust in the state is clear to see in many areas. An Afrobarometer survey found that merely six per cent of Moroccans surveyed had experienced improvements in health, police, and education during the past few years.⁷ Local media often report cases of corruption, most recently when the Moroccan Court of Auditors published its 2018 Annual Report. It attracted a great deal of attention when it criticised government projects in the agricultural sector.⁸ Low turnouts in elections and high numbers of spoilt ballot papers are another sign of corruption. Only 42 per cent of the electorate voted in the last parliamentary elections in 2016. Surveys point to public dissatisfaction due to the numerous corruption scandals in particular.

When the government does take action, all too often the public believes it is simply fighting fires as opposed to initiating forward-looking policies. One example is the tax reform introduced at the beginning of 2019, whose original intention was to facilitate accounting for small businesses. The government justified the reforms by claiming they were part of the fight against general tax evasion and the containment of the informal sector. When the reforms were implemented, small businesses found themselves faced with a significant increase in checks and financial penalties, however. Strikes broke out on an unprecedented scale, especially in

larger cities like Agadir, Casablanca, and Rabat. Small business-owners criticised their unequal treatment compared to larger companies and the fact that they had not been sufficiently involved in the decision-making process.

The political power structure is difficult for the population to penetrate. First and foremost, there are the efforts to balance the royal household, the government, and the people – efforts that have not always borne fruit over recent years. On 20 April 2018, it all culminated in a social media boycott of three brands: *Danone* (dairy products), *Sidi Ali* (mineral water), and *Afriquia* (petrol stations) as a protest against the high cost of living in Morocco. In the background, the three brands were denounced for their excessively close links to politicians. Morocco has recently introduced a number of reforms to its public administration. The main focus was to strengthen trust between citizens and the administration as part of establishing good governance. Morocco ratified the UN Convention against Corruption in 2007 and aligned its reforms with the strategies of the OECD, the World Bank, and other international organisations.

In 2010, the government drew up an action plan aimed at both improving relations between the administration and the people, and at creating new internal control mechanisms. For example, there was a reform of public goods procurement in 2013, and the offences of corruption and fraud were defined in more detail. In 2015, it also set up a national anti-corruption authority: *Instance nationale de la probité, de la prévention et de la lutte contre la corruption*. At national level, Morocco has a central auditing authority (Court of Auditors), along with regional audit offices for decentralised services. What is more, it introduced a system of internal control and monitoring mechanisms; internal audits; financial reports on the part of public bodies, audited by the Court of Auditors; an obligation for certain public officials to declare their income; the introduction of the *chikaya* (complaints) telephone hotline⁹ and other measures to prevent and combat corruption.¹⁰

More Transparency Creates More Trust

The Arab Spring protests that shook the region reached the streets of Morocco on 20 February 2011. Tens of thousands of people demonstrated, whose demands included greater freedom of the press, a halt to corruption, and the right to co-determination. On 9 March 2011, King Mohammed VI and the government responded with a high-profile speech, in which he announced a raft of reforms. One of the most important projects was constitutional reform and the introduction of additional basic rights and rights to political participation. Following four months of consultation between political parties, trade unions, and associations, the new constitution entered into force after a referendum on 29 July 2011.

In response to the protests of the Arab Spring in 2011, King Mohamed VI took a number of steps, including strengthening the independence of the judiciary.

In essence, the amended constitution strengthens the role of parliament vis-à-vis the king, guarantees the independence of the judiciary, and introduces new basic rights and rights to political participation for Moroccan citizens.

The right of access to information from public administration and the elected institutions has been newly introduced in Article 27 of the current constitution, adopted in 2011.¹¹ It states that citizens have the right of access to information from the public administration, selected institutions, and bodies mandated to provide public services.

Discussions had begun in Morocco on the introduction of a new information law a few years before the Arab Spring even broke out. The trend towards greater transparency in public

administration began in a number of countries during the 1990s. In 2004, the World Bank published its annual development report focusing on “Making Services Work for Poor People”. One of its concerns was the situation of poorer sections of the population, particularly in rural areas, who find it difficult to obtain documents or services from the state. Examples that also apply to Morocco include the issuance of birth certificates and property titles as well as access to health services. The World Bank report focused on how to improve public services, particularly for these groups. It identified approaches for consideration and examined the relationships between citizens, the state and public service providers.¹² Within this triangle, citizens should ideally have control over public services – directly or indirectly – through politics.

As a result, in July 2015 new rights of co-determination and participation were created, and particularly in the context of regionalisation and strengthening municipalities. The following rules have been introduced in the organic laws relating to regions, provinces, prefectures and municipalities:

1. Article 119: Creation of participatory mechanisms for dialogue and participation, so that citizens and associations can be involved in the development, monitoring, and evaluation of action plans;
2. Article 120: Establishment of a body for justice and equal opportunities;
3. Article 121: Exercise of the right of petition for citizens and associations with regard to municipal decisions.¹³

In theory, there should even be a degree of participation in decisions on the municipal budget, but in practice, such participation mechanisms are very difficult to adopt without access to information and data.

The World Bank also argues that this information and these mechanisms may make it easier to expose corruption.¹⁴ The United Nations, too, has examined ways of fighting corruption. Between 2002 and 2003, a committee

met to deal with the following five issues: preventing corruption, law enforcement, and international cooperation, recovery of goods and exchange of information. On 31 October 2003, the United Nations General Assembly adopted the Convention against Corruption (Resolution 58/4).¹⁵ The Convention contains provisions on preventing corruption, criminal law on corruption, provisions on international criminal law cooperation, provisions on the recovery of assets gained through corruption, and rules on mutual technical assistance between State Parties. It also lays the foundation for an interim mechanism to review the implementation and application of the Convention in the State Parties.

Article 10 on Public Reporting was inserted into the Convention as one of the prevention mechanisms. According to this Article, the signatory states should take such measures within legislation as may be necessary to enhance transparency in their public administration. Such measures may include adopting regulations and simplifying procedures in order to facilitate public access to information. It also calls for the regular publication of information on the risks of corruption in public administration.

In 2007, the Moroccan government ratified the UN Convention, thereby committing itself to establishing a procedure for providing free access to information. When Morocco adopted its constitutional reforms in 2011, Algeria had already had an information law in place since 1990, but it contained so many hurdles that it was virtually never applied. Other countries in the region, such as Tunisia and Mauritania, possessed no such laws. At present, 129 countries around the world have laws or mechanisms to provide access to information. Sweden's legislation in this respect is over 250 years old, while the US passed its Freedom of Information Act in 1966. EU citizens have had access to the documents of the European Parliament, Commission, and Council since 2001. In Germany, the Freedom of Information Act has been in force since 2006.

The Right to Information in Morocco

Deliberations about how to draw up a law on access to information began following Morocco's ratification of the UN Convention in 2007. The first task was to examine the existing statutory regulations. Provisions relating to access to or restrictions on information were laid down in press law, regulations on state archives, public procurement law, and consumer law. Especially problematic were Morocco's general



civil service regulations dating back to 1958. Article 18 stipulates that all public officials are bound by the obligation of professional discretion and only allowed to disclose information if instructed to do so by the relevant minister. The (translated) wording of the text is as follows: “Irrespective of the rules laid down in the Penal Code on professional secrecy, all public officials are bound by the obligation of professional discretion with regard to all facts and information of which they become aware

in the course of or in connection with the performance of their duties. Any misappropriation or communication of information or administrative document to third parties is strictly prohibited. Only the authority of the overseeing Minister can release the public official from this non-disclosure obligation.”¹⁶

However, certain public institutions already had a mandate to actively provide citizens with information and data. These included



More transparency: Information may be obtained from parliaments upon request. Source: © Reuters.

the National Archive, the Statistical Office, the National Council for Human Rights (*Conseil National des Droits de l'homme*) and the Media Council (*Conseil supérieur de la communication audiovisuelle*).

Three key questions were considered prior to drafting the new law:

1. What is the current situation regarding the right to information for the applicant and the competent authority?
2. What exceptions should there be?
3. Who mediates in the event of disputes?

The Access to Information Act was adopted in February 2018 and entered into force on 12 March 2019 pursuant to Article 27 of the 2011 Moroccan Constitution.¹⁷ The Ministry of Administrative Reform and the Civil Service are responsible for its implementation.

The following points are reflected in this new law: Information, including in the form of laws, regulations, reports, letters, emails, evaluations, films, drawings, etc., may be obtained from the following institutions upon request: parliaments, public administration, courts of law, local administrative authorities, and public or semi-public entities. Applications are submitted directly to the relevant authority and are to be answered within 20 days. In urgent cases, a shorter processing period may be requested according to the law. However, the competent authority can also extend the period to 40 days. Ideally, the authority that receives the request should provide information. If it rejects the request based on exceptions mentioned in the law, it must submit a statement of reasons. In this case, the Commission acts as mediator on the Access to Information Act. The information should normally be free of charge, though the law allows the authorities to charge a handling fee for processing the relevant documents. It has yet to be clarified how illiterate people should contact the authorities. It is expected that the authority in question provides support in this respect; however, it is still not clear to what extent.

The exceptions in the Access to Information Act fueled a great deal of debate in civil society.

It was already clear during the constitutional reforms of 2011 that it is especially difficult to implement fundamental rights and freedoms when they touch on particularly sensitive areas of government or society. Article 7 of the Access to Information Act contains a list of exceptions, including information on internal and external state security, information on relations with other states or international organisations, monetary and economic policy, financial rights of the state, copyright and related rights.¹⁸ These exceptions in the law were the subject of extensive debate by civil society prior to its adoption.

The exceptions were based primarily on Article 19 of the UN Covenant on Civil and Political Rights.¹⁹ It restricts certain information rights as provided by laws created to protect individuals, national security, public health and morals. The fact that the relevant authority interprets exceptions and that public officials may be liable to prosecution for infringement of the aforementioned civil service regulations, are problematic however. In a statement, the National Human Rights Council called for the exceptions to be formulated more clearly.²⁰ Nevertheless, their demands were largely ignored, and the legislators left these issues to an arbitration committee.

Article 10 of the Access to Information Act provides a detailed list of the information, which should be published independently. This means that, as set out in the UN Convention, the bodies concerned are obliged to publish as many documents as possible, such as legislative texts, reports, and statistics.

Article 22 of the Access to Information Act calls for the establishment of a Commission on the Right to Information to act as a mediating and monitoring body. The Commission is expected

to advise public authorities and applicants alike, and arbitrate on disputes. On 16 March 2019, its inaugural meeting was held in Rabat under its new president, Omar Seghrouchni. The Commission consists of two representatives of the public administration and one representative of civil society, appointed by the head of government. In addition, the two chambers of parliament, the anti-corruption authority, the National Archive, the National Human Rights Council, and the ombudsman's office each supply one representative. The representatives are appointed for five years and may be re-elected once. Excluded from this Commission is the competent Ministry of Public Administration. As regards the composition of the Commission, civil society has levelled criticism against its close ties to the government, and hence its lack of independence. The lack of sanctions available to the Commission has also faced criticism.

The agreed measures will not be adopted before 2020 since the authorities concerned need time to train their personnel, both in Rabat and in the decentralised municipalities. These personnel should have already been appointed in December 2018, but the Ministry of Public Administration is still unable to say who is currently being trained in which subject area. However, the ministry points out that this newly created position involves a range of important responsibilities, so it is vital that these public officials receive extensive training. Law 31-13 also stipulates that a guideline needs to be developed for these officials. According to Article 30 of the law, the authorities have one year to do this.

Outlook and Criticism

Morocco still lacks practical experience with the right of access to information. The process to date has revealed the complexity of the issue in Morocco, and this is why so many unanswered questions remain. In particular, the role of the Commission on the Right of Access to Information continues to be vague. Experts on the ground fear that this body will have little power to assert itself against the strong administration

in Morocco, and will merely serve as a pretence that the government is serious about combatting corruption in Morocco. The Act and the Commissions are not enough in themselves to deal with the corruption that is so rife in the country's administration.

Actions taken to date do not penetrate far enough into the public administration to be able to call it a true culture of transparency.

Most importantly, large sections of the population are ignorant of the rights and obligations that are enshrined in the constitution. This is particularly problematic in areas where representatives of the state exceed their authority and act in very authoritarian ways. We can assume that it will take some years before Morocco develops a true culture of transparency.

According to the Centre for Law and Democracy's Global Right to Information Rating, the basic conditions in Morocco are fulfilled with regard to the normative design of the Access to Information Act.²¹

The best way to measure the implementation of the respective freedom of information laws is by the number of queries processed. Other relevant criteria for the implementation of freedom of information are the processing period and the hurdles encountered by applicants. In Germany, for example, approximately 10,000 inquiries are made every year.²²

Therefore, the Ministry of Public Administration, which is responsible for providing training in this respect, plays a key role. In addition to providing the required guidelines for implementation and technical aids, it is particularly important that public officials at all political levels receive adequate training to ensure greater legal clarification about their rights and duties.

Eight years after the Arab Spring, Morocco continues to witness protests on social issues on the part of professional organisations, student associations, trade unions, and other groups. According to World Bank estimates, 20 per cent of Moroccans live below the poverty line of two US dollars per day. Despite a strong middle class, the country faces some enormous demographic and social challenges, with high youth unemployment posing a particular problem. A recurring demand is for the authorities to fight corruption in the country. This suggests that corruption is becoming increasingly unacceptable in Moroccan society, and that old patterns no longer apply. Over the last few years, Morocco has demonstrated its ability to implement political reforms. For example, the country has made progress in the areas of family law and decentralisation. Now is the time to seriously tackle the problems of corruption, competitiveness, and the climate for direct investment. The right of access to information could play a key role in increasing transparency in the country. However, it is important to ensure the law is implemented with a strong focus on citizens, rather than simply involving the creation of a new institution.

—translated from German—

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New Great Games

Regional Interests in the Afghan Peace Process

[Ellinor Zeino](#)

The first official peace talks between the US and the Taliban, held in 2019, and the possible withdrawal of US troops announced by President Trump could end what has been almost 20 years of NATO presence in Afghanistan. For regional countries – Pakistan, India, Iran, Russia, and China – the developments offer an incentive to restructure the regional peace and security order.

When the US began official peace talks with the Afghan Taliban for the first time in Doha, Qatar in February 2019, there was great optimism that a new chapter in the 18-year conflict between the Taliban, the Afghan government, and NATO forces might be beginning. This is the closest the region has come to a political solution since 2001. A peace treaty with the Taliban would allow not only Afghanistan's political order, but also international involvement, the regional security architecture, and Afghanistan's position as a Western ally to be re-negotiated.

At the beginning of September, the US suddenly broke off negotiations after nine rounds of peace talks and refused to sign a framework treaty. Yet, now the US is showing renewed interest in resuming the process.¹ To engage in peace negotiations, the Taliban would, however, have to accept the Afghan government as a negotiating partner, which it currently views as a puppet regime, unlawfully set up in 2001.²

In February 2018, President Ghani had indicated as part of his peace initiative (the so-called Kabul Process) that the Taliban could be removed from international sanctions lists and recognised as a political party if it renounced violence. In the Doha process, the Taliban continued to advocate for an Islamic emirate. The question for the Afghan government and civil society is whether the Taliban will agree to minimum standards of liberty and pluralism and accept democratic transfers of power.

The course of the peace process, however, will be influenced not only by in-country developments,

but also by external dynamics. Afghanistan is a geostrategic interface between Central Asia, South Asia, and the Middle East, making it the playing field for regional and great power conflicts, such as

1. the India-Pakistan conflict,
2. Iran's nuclear showdown with the US,
3. Russia's rivalry with the US order, and
4. the conflict surrounding China's economic hegemony.

Regional countries and non-NATO members have gained influence and confidence since 2001. Particularly Russia and China are eager to shape developments by hosting regional or intra-Afghan dialogues with the Taliban. To assess to progress of the peace process and future regional relationships, it is worth considering the threat perceptions, strategies, interests and security dilemmas of the countries in the region. How do they define their interests in Afghanistan and the region? What is their scope of action? What roles do they play in the peace process? What powers might emerge as "winners", and how can the "losers" be engaged?

Pakistan: Killjoy or Key to Peace

International observers consider Pakistan a "key country" for sustainable peace and stability.³ After 2001, Afghan-Pakistani relations were characterised by mistrust, mutual accusations of sponsoring terrorism, and unresolved territorial questions. In the 1980s, Pakistan joined the US and Saudi Arabia to play a key role in the rise of the Afghan Mujahideen in the struggle against

Soviet occupation. Later, Pakistan's intelligence service, the Directorate for Inter-Services Intelligence (ISI), assisted in training and radicalising Taliban members in Pakistani religious schools. The Afghan Taliban movement is viewed as a group that is sponsored – and used – by the Pakistani state. Important parts of its leadership are located in Pakistan. The links that developed in the 1980s in the Afghan-Pakistani border region between the Taliban, criminal networks, and the Pakistani state continue to be felt today. Taliban leaders enjoy deep ties to Pakistan's state institutions, political parties, and economic lobby groups.

Afghan-Pakistani relations are tense, and one reason for this are Pakistan's ties to the Taliban.

Since the publication of President Trump's National Security Strategy (NSS) in 2017, Pakistan has been under pressure to engage with the Taliban constructively. Pakistan was expected to prevent indirect financing of terrorism and terrorist operations from its territory.⁴ At the same time, the US announced that it would strengthen its strategic partnership with India. Since then, a reorientation has taken place in Pakistan, which needs security guarantees from the US on the one hand, and on the other is dependent on financial support from Saudi Arabia and China – countries that now wish to push the peace process forward.

Despite these links, the Taliban movement is difficult for the Pakistani state to control, and also integrates elements that are critical of Pakistan. The young Taliban generation is thought to be more independent.⁵ Observers have long

viewed Pakistan not only as a beneficiary, but also a victim of the movement, part of which has been radicalised against the Pakistani state. Instead of “strategic depth” for the Pakistani state, “religious depth” has been created in Pakistan for Afghan fighters.⁶

Pakistan's influence on militant groups such as the Taliban is part of the principle of “strategic depth” postulated by the Pakistani military. It serves as insurance in the event of military escalation with India. However, criticism has been voiced on the Pakistani side that promoting



No negotiations: For India, the Taliban remain a pro-Pakistan force and a Pakistani instrument for promoting its interests.
Source: © Mohammad Shoib, Reuters.

militant groups has not created any lasting advantages.

While Pakistan is putting pressure on the Taliban to motivate them to negotiate, Afghanistan remains sceptical of how sincere and sustainable those efforts are. A large part of Afghanistan's population and political elite believe that Pakistan has an interest in an "unstable" or "susceptible" peace. The accusation is that Pakistan has adjusted its tactics, but not its goals. The idea being that Pakistan encourages the old Taliban leadership, which is now prepared

to compromise, to engage in peace talks, while retaining the young, pugnacious Taliban as a "war machine".⁷ Meanwhile, Pakistan feels that it is being confronted with exaggerated expectations of its ability to influence the Taliban and blamed when there are setbacks in the peace process; it demands that Afghanistan be held more responsible.

The task is now to constructively involve Pakistan with its established relations to the Taliban, and to use these contacts to achieve a treaty. Pakistan can continue to play the killjoy



if it perceives its interests to be threatened. It is therefore necessary to decouple the Afghan peace process from the India-Pakistan conflict. Moreover, the intra-Afghan process must be complemented by a trilateral dialogue involving Afghanistan, Pakistan, and India.

India: Soft Power with Strategic Interests

India is taking a low-profile approach to the Afghan peace process and exercising great security policy restraint. It has instead established itself as a solid partner in development cooperation. India is the fifth largest bilateral donor in Afghanistan; in the region, it ranks first, ahead of China and Iran. After 2001, India sent no troops to Afghanistan, but has trained members of the Afghan army in India since 2011. India's Afghanistan policy remains a cautious balancing act against Pakistan as a political – and China as an economic – rival.

Since 2011, the country has had a strategic partnership treaty with Afghanistan and, of all states in the region, has shown the greatest loyalty to the Afghan government, its most important ally against their common enemy, Pakistan. Indeed, India enjoys a good reputation in the Afghan society. It is one of the most popular destination countries for study or medical stays, and one of the few countries for which Afghans can still easily receive a visa.

India is one of the strongest proponents of the Afghan government in the peace process. India insists on an Afghan-led, Afghan-owned, and Afghan-controlled peace solution, expressing its dissatisfaction that the Afghan government was left out of the Doha process. India is a strong supporter of the Afghan constitution; any treaty with the Taliban would thus have to protect the democratic order. Behind this lies the concern about the restoration of a pro-Pakistan Taliban emirate.

The country is one of the few countries that still refuse official negotiations with the Taliban. For India, the Taliban remain a pro-Pakistan force and a Pakistani instrument for promoting its interests. In the Indian military and in

think-tanks close to the government, there is a widespread view that the Taliban should be fought more militarily. The international courting of the best channels of communication with the Taliban has prompted the Indian leadership to reconsider starting official negotiations with the Taliban's leadership.

As the Taliban's sharpest critic, it may well be difficult for India to reap strategic benefits from a dialogue with the Taliban beyond information gathering. Taliban involvement could mean serious loss of influence for India. The country does not share the distinction between "good" and "bad" Taliban introduced by the West at the 2010 London Conference. On the other hand, Indian leadership has developed a differentiated understanding of the Taliban over the years; for instance, the Taliban is no longer viewed as a monolithic pro-Pakistan bloc.⁸

The Indian government is concerned that Pakistan is supporting the Taliban to frustrate Indian efforts in Kashmir, India, and Afghanistan. India suspects Pakistani interference in numerous attacks both in India and abroad. Moreover, Afghanistan is also potentially interesting with respect to India's energy security. India desires access to Central Asian energy resources, especially since Iran ceased to be its most important source of oil due to increased US sanctions.

To the outside world, India propounds a purely development policy strategy. India maintains infrastructure and education projects throughout Afghanistan, as well as diplomatic missions in Kabul, Mazar-i-Sharif, Herat, Jalalabad, and Kandahar, prompting accusations of espionage from Pakistan. The stationing of troops has been discussed repeatedly in Indian politics, but has so far been ruled out. Military involvement would be too expensive and would needlessly irritate Pakistan. It could also cause some to accuse India of being an occupying power, and exacerbate Hindu-Muslim tensions at home. India's foreign policy discussion, however, includes vocal criticism that the soft power approach has given India no strategic advantages

and does not adequately consider its interests.⁹ The Afghan-Indian friendship is also becoming increasingly strained as Afghan society no longer desires to be a pawn in an Indo-Pakistani proxy war.

Iran: Foreign Neighbour in the Security Dilemma

A direct neighbour and Afghanistan’s largest trading partner, Iran is pursuing an increasingly proactive strategy. As the American-Iranian conflict has escalated and the US sanctions tightened, Iran has become critical of Western stabilisation efforts in Afghanistan and of the Doha peace process. The country therefore supports alternative approaches to peace and hopes for a “post-American stability” that provides sufficient security guarantees for Iran and the region. In Afghan society, Iran remains a neighbour that is viewed with some suspicion, and about which political opinions diverge.

Iran is critical of US involvement in Afghanistan and calls for more Afghan independence.

Iran has an interest in a stable Afghanistan as an economic partner that does not join an alliance that opposes Iranian interests, and does not represent an extremist danger. The 900-kilometer-long Afghanistan-Iran border makes Iran vulnerable to transnational terrorist groups and drug trafficking. Since 2015, the Islamic State (IS), an anti-Shiite terrorist organisation, has posed a potential threat with its regional offshoots and has executed isolated attacks in Tehran and Iranian provinces. The NATO training and advisory mission in Afghanistan, for which the US provides more than 8,000 of the total 16,000 soldiers, and Operation Freedom’s Sentinel (OFS), an American anti-terror campaign, are double-edged operations from

Table 1: Troop Contingents by Countries as Part of NATO Mission Resolute Support (as of July 2018)

Country	Troop strength (or upper limit)
1. USA	8,475
2. Germany	1,300
3. Italy	895
4. Georgia	870
5. Romania	693
6. UK	650
7. Turkey	506
Other countries	2,840
Total (39 countries)	16,229

Source: Own illustration based on NATO 2018: Resolute Support Mission, 6 Jul 2018, in: <https://bit.ly/2NjLCTI> [5 Nov 2019].

an Iranian perspective. Iran has no interest in a hasty withdrawal of US troops that would risk further destabilising the country. On the other hand, the country fears the establishment of a permanent anti-terror military base that the US hopes to negotiate with the Taliban.

Iran demands that the peace process be Afghan-led and not monopolised by individual countries. It also demands protection for the democratic and republican constitution. It may initially be surprising that Iran is concerned about democratic institutions and expressing worry that the values and rights achieved for women and minorities may be sacrificed in peace negotiations. But Iran has no interest whatsoever in having an Islamic emirate as a neighbour that might provide support to a pro-Sunni balance of power. In recent years, Iran has established contacts and direct communication channels with the Taliban, but refuses to establish permanent relations, or even cooperation. Their commonalities tend to be anti-Western, instead of political or religious.

Within Afghanistan, political opinion about Iran is divided. On the one hand, the country is an important regional investor. It has replaced Pakistan as Afghanistan's largest trading partner. It is influencing reconstruction with infrastructure measures such as the construction of clinics and a branch of the Iranian Payame Noor University. Working with Afghanistan and India, Iran has expanded its Chabahar port on the Indian Ocean into an alternative transport route. Only 170 kilometers from Pakistan's port of Gwadar, Chabahar opens a trade route for Afghanistan and India that is independent of Pakistan. Demand for Iranian visas for business trips, stays for medical treatment, or study is high among Afghan citizens. But there is also scepticism and distrust towards Iran among the Afghan public. Iran cultivates political, religious, and cultural relations with the Shiite minority in Afghanistan, especially the Hazara. The Fatimiyoun militia, which is fighting for Iran in Syria, is made up almost entirely of Afghan Hazaras.

Iran's behaviour is directed at the US. The greatest threat to the Iranian regime comes from the US and its allies in the Persian Gulf. As long as the US and its allies maintain or escalate sanctions and military pressure on Iran, the country will use any means of influence in the region, be it via Afghan Shiite mercenaries in Syria, or via tactical support of the Taliban, in order to counter the threat. Iran is thus a neighbour that is embroiled in regional conflicts, but whose participation is important for the success of the peace process.

Russia: Alternative Peace Partner despite a Spotty Record?

Russia's Afghanistan policy has shifted greatly over the past 20 years. After the heavy losses suffered in the struggle against the Mujahideen in the 1980s, Russia pursued a more cautious policy for a long time. Russia's intervention in Afghanistan in 1979 gave rise to international jihad in Afghanistan and the Muslim world and marked the end of the Soviet Union. In October 2001, Russia joined Pakistan, Saudi Arabia, and Iran as one of the non-NATO countries to support the US-led anti-terror coalition to oppose

the Taliban. Russia then supported the US in its stabilisation efforts and in its struggle against a resurgent Taliban. In the last few years, Russia has played a much more proactive role that is linked to its desire to establish a security architecture directly shaped by the regional actors.

Russia has a vital interest in Afghanistan's stability and territorial integrity. Russia does not want Afghanistan to become a new focal point for transnational terror groups and drug cartels that pose a threat to Russia and neighbouring Central Asian countries. Combatting terrorism and drug trafficking plays hence an important role.

The proclamation of the IS offshoot "Islamic State of Iraq and the Levant – Khorasan Province" (ISKP) in Afghanistan in January of 2015 prompted Russia to change its strategy towards the Taliban movement. In recent years, Moscow has established contacts with the Taliban and is now seeking a political solution with them. Tactical contacts began as early as 2006, when a military victory over the Taliban was proving increasingly difficult. The Russian leadership confirms channels of communication for information exchange, but denies cooperating with the Taliban, let alone arming them. Russian Ambassador Extraordinary and Plenipotentiary Zamir Kabulov confirmed that Russia and the Taliban share an interest in combatting the IS.

In the "Moscow process", a parallel effort to the US-led Doha process, Russia succeeded in bringing conflicting parties in Afghanistan to the table with the Taliban. Russian Ambassador in Kabul, Alexander Mantytskiy, emphasises Russia's support for an "intra-Afghan dialogue". Russia believes that this dialogue must include not only the Afghan government, but a cross-section of Afghan society. At the same time, Russia is not concerned about the US-Taliban negotiations.¹⁰ While the country has characterised the peace talks in Moscow as complementing the US Doha process, other observers view the Moscow format as an "alternative peace diplomacy".¹¹ The regional formats express the desire of the countries in the region to shape the process and ensure consideration of

legitimate regional interests. At the same time, behind such formats is a criticism of American influence and a concern about a permanent, albeit reduced, US military presence.

The Afghan government and critical voices are ambivalent towards Russia's role in the peace process. Following the Moscow negotiations in February 2019, local media accused the country of marginalising the Afghan government and upgrading the Taliban. Russia, on the other hand, considers the Afghan government to be too dependent on – and influenced by – the US and other foreign powers.

Russia's legacy in Afghanistan is mixed: while it introduced modern infrastructure, such as the Makryan housing quarter in Kabul, it also introduced the Kalashnikov. Now, Afghan actors are exhibiting an increasing openness towards Moscow's peace efforts. Bilateral relations are also less inhibited. On Russian national holidays, both former Taliban functionaries and former members of the Mujahideen can be seen celebrating in the Russian embassy.

What role will Russia play in the peace process? Western observers view its initiatives as a reaction to the US-led peace process. Russia sees Afghanistan as part of its own extended region and naturally wants to shape the security architecture there. Moscow welcomed the initial stabilisation efforts on the part of the US and NATO when it was not yet foreseeable that Western forces might remain permanently. After almost 20 years, Russia is promoting a security architecture shaped in the region and emancipated from the West. The country is betting on other political actors in the peace process. Russia's relations to former President Hamid Karzai were much closer than its relations to current President Ghani. Among Afghan supporters of Karzai, many of whom are extremely critical of both Ghani and the US, Russia continues to draw supporters. At the same time, Moscow has no interest in a hasty withdrawal of troops that might leave a security vacuum in its wake. Russia now sees involving the Taliban as one way of ensuring unity and governability in Afghanistan.

China: Pax Economica for Afghanistan

China has so far avoided taking a visible leadership role in Afghanistan. Its Afghanistan policy is driven by economic considerations for its “New Silk Road” project and focusses on safeguarding national security interests. Sharing an 80-kilometer-long border with Afghanistan along the Wakhan Corridor in Afghanistan's northeast, China is also interested in effective border controls to prevent passage of drug smugglers and terrorist groups.

China's focus in Afghanistan is not on nation-building or establishing political institutions, but on securing resources, markets, and transport routes. Afghanistan is an important transit country between Central Asia and the Indian Ocean, with a wealth of strategic resources, making it the ideal candidate for China's Silk Road project, the Belt and Road Initiative (BRI).¹² The vision initiated in 2013 by President Xi Jinping of an economic and transit route from the Pacific to the Mediterranean shaped by China and passing through more than 60 countries had previously omitted Afghanistan for security reasons. Official statements indicate that that will change as soon as possible.¹³

China is interested in Afghanistan in the context of its Silk Road project. The uncertain security situation is the only remaining difficulty.

The Chinese state and Chinese investors are prepared to expand their activities as soon as the security situation allows. China is Afghanistan's third largest trading partner, after Iran and the US. So far, the country has primarily imported a few strategic products such as saffron, pine nuts, marble, and carpets. It has invested in resources such as copper and oil rights and in the infrastructure necessary for its BRI project.



Presence of the US: After almost 20 years, the NATO-supported era of Pax Americana in Afghanistan may come to an end. [Source: © Goran Tomašević, Reuters.](#)

It envisions a “Five Nations Railway Corridor” from China through Afghanistan to the Mediterranean Sea. China’s most important link and showcase project for the “New Silk Road” is the China-Pakistan Economic Corridor (CPEC), initiated in 2015, with Afghanistan’s nemesis, Pakistan. Chinese leadership has announced, to Pakistan’s chagrin, that it would like to expand CPEC to Afghanistan.

China is currently attempting to create an image for itself as a development partner. In 2018, the country founded the National Development and Cooperation Agency. In the past ten years, the country has provided around 240 million US dollars in development aid, much less than India or Western donors. As Afghanistan’s neighbour, China also has vital security interests. The greatest threat it sees is its own domestic militant groups finding space to retreat, recruit, and radicalise in Afghanistan. The separatist group, East Turkestan Islamic Movement (ETIM), founded by Chinese Uyghurs, were long considered the biggest security threat. Due to concerns about Islamist extremism in the Xinjiang province, border trade was only hesitantly expanded. Since the infiltration of IS terrorist militias into Central Asia, China’s Afghanistan strategy has focussed more on security policy. China is concerned about links between ISKP and ETIM members. In February 2018, Chinese IS fighters threatened their country with attacks for the first time.

China has a vested interest in the success of the peace process and supports both the US and Russian negotiations. Starting in 2015, it entered the Quadrilateral Coordination Group (QCG) with the US, Afghanistan, and Pakistan to begin official negotiations with the Taliban. In May 2018, Beijing was once again issued invitations via the Shanghai Cooperation Group (SCO) to an Afghanistan Contact Group for peace and reconstruction.

Pakistan is one of China’s strategic partners; one could thus expect the country to have a pro-Pakistan stance in the peace process. However, some governments hope that China will have a “civilising” influence on Pakistan’s role in the

peace process, and a constructive influence on Afghan-Pakistani relations. China has an interest in reducing Afghan-Pakistani tensions – not least to advance its CPEC project. In December 2017, it invited Pakistan and Afghanistan to the first trilateral foreign ministers meeting in Beijing. While the EU hopes that China will keep Pakistan in check, China believes that the West overestimates its ability to influence Pakistan and that exerting too much pressure on Pakistan is counterproductive.¹⁴

Beijing opposes support for the Taliban and advocates military pressure, but at the same time favours politically involving the Taliban. China’s position on the Taliban has become more moderate over the years. In the 1990s, the Taliban was a political opponent that supported groups that were hostile to the Chinese state. Today, it is perceived as a national group whose agenda does not oppose China.

China’s political neutrality and military restraint are becoming increasingly difficult as its geo-economic interests develop. China will be forced to take on more security policy responsibility than it previously has if the US withdraws its military. In the last few years, Beijing has announced an enhancement of military aid to Afghanistan, closer anti-terror cooperation, and has invested in border security. China’s failure to send troops is considered “free-riding” in US circles. According to official statements, increased Chinese responsibility for border security and the fight against terrorism would also be in US interests.¹⁵

The Regional Order after the US Withdrawal

After almost 20 years, the NATO-supported era of Pax Americana in Afghanistan may come to an end. How will non-NATO states such as Iran, Russia, China, India, and Pakistan influence the future order and assume responsibility for regional security? And how will regional relations develop once the Taliban has been integrated politically? Despite current tensions with the US, the Ghani government stands for a pro-Western order. Integrating the Taliban politically would

strengthen non-Western voices that are critical of the US. The countries in the region that favour an alternative, post-American order, such as Russia, Iran, and China, could use their Taliban contacts for political and economic purposes. In exchange for removal from international sanctions lists, the Taliban must distance themselves from al-Qaida and extremist elements within its own movement and ensure that the fight against transnational terrorist groups in Afghanistan can continue. For Pakistan, rehabilitating the Taliban is not necessarily advantageous: the Pakistani leadership would then have to deal with the Taliban as an independent actor that plays by international rules. India, which has so far refused official contact with the Taliban, would lose influence in Afghanistan if the Taliban were legalised.

The interests of Russia, China, and Iran converge to a great extent. They all have a special interest in fighting transnational terrorism and drug trafficking, as well as in safer trade and energy transit routes. In Afghanistan, they are not pursuing nation-building or large-scale development policy strategies, but instead seek pragmatic alliances that will secure their foreign, energy, and security policy interests. They would accept the Taliban as an ally if it ensured that their interests were protected. This pragmatic approach to the stabilisation of Afghanistan differs from the Western model of nation-building and strengthening political institutions. These countries welcome US withdrawal, but demand that it be orderly and responsible.

The regional states, especially India, Iran, Russia, and China, are proponents of a peace process led by Afghanistan, but by this they really mean a security architecture that remains within the regional sphere of responsibility and safeguards their national interests. In future, they will have to be measured against their foreign policy actions.

—*translated from German*—

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- 1 The points addressed in the Doha process include (1) the withdrawal of foreign troops from Afghanistan, (2) the guarantee that Afghanistan will not serve as a safe haven for transnational terror groups, (3) a cease-fire, and (4) an intra-Afghan dialogue that includes the Afghan government. A draft formulation for the first two points had already been agreed to.
- 2 In June, there was a German-mediated intra-Afghan dialogue including the Taliban and government representatives in their functions as “private persons”.
- 3 Among them was German Minister of Foreign Affairs Heiko Maas during his visit to Afghanistan and Pakistan in March 2019.
- 4 The reference is primarily to the *Haqqani* network, which is based in Pakistan and has ties to al-Qaida. Since the peace process was begun in 2010, the Taliban has been designated an “insurgent” and no longer a “terrorist” group.
- 5 Comments by a former Taliban functionary in an interview on 3 May 2019 in Kabul. The old Taliban generation is characterised by large, polygamous family associations: wives and other relations usually find safe places to live only in Pakistan. The young Taliban generation is said to be more logistically and politically independent.
- 6 Pakistani decision-makers are conscious of the self-created danger posed by the Taliban, which now threatens their own country. See Ahmed, Mutahir 2014: *Pak-Afghan Security Dilemma. Imperfect Past and Uncertain Future*, Lahore, p. 152.
- 7 Cf. Yunus Qanuni, leading figure in the *Jamaat-e-Islami* party, in an interview in Kabul on 25 April 2019, and Ismael Khan, former governor of Herat Province, in an interview in Herat on 28 April 2019.
- 8 Paliwal, Avinash 2017: *My Enemy's Enemy. India in Afghanistan from the Soviet Invasion to the US Withdrawal*, Oxford, p. 251.
- 9 D'Souza, Shantie Mariet 2019: *The Limits of India's Soft Power in Afghanistan*, *Fair Observer*, 18 Mar 2019, in: <https://bit.ly/2FoY7sO> [30 Jul 2019].
- 10 Mantyskiy, Alexander 2019 in: *Afghanistan Times*, 28 Mar 2019, p. 12.
- 11 Cf. Glatz, Rainer/Kaim, Markus 2019: *Der Wandel der amerikanischen Afghanistan-Politik*, SWP-Aktuell 11, Feb 2019, German Institute for International and Security Affairs, in: <https://bit.ly/2CkxTW2> [6 Nov 2019].
- 12 The Afghan media are predicting an Indo-Chinese competition for Afghanistan's lithium reserves. *Afghanistan Times* 2019: *Who's Interested in Afghanistan's Lithium?*, 28 Mar 2019, p. 3.
- 13 Stone, Rupert 2019: *Slowly but surely, China is moving into Afghanistan*, in: *Afghanistan Times*, 20 Feb 2019, p. 7.
- 14 Stanzel, Angela 2018: *Fear and Loathing on the New Silk Road: Chinese Security in Afghanistan and Beyond*, Policy Brief, European Council on Foreign Relations, p. 6, in: <https://bit.ly/2JkKegw> [25 Oct 2019].
- 15 *Afghanistan Times* 2019: *Chinese Troops Sit on Afghanistan's Doorstep*, 20 Feb 2019, p. 3.



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Germany and the World: Global Trends and Future Challenges for German Politics

Peter Fischer-Bollin

In a globally networked world of ever closer connections between people, goods, capital and services, Germany's future depends on how early it identifies new trends and challenges. This is essential in order to lay the groundwork for political decisions that will positively shape Germany's and Europe's framework conditions for freedom and democracy, innovation, economic competitiveness and both internal and external security. The Konrad-Adenauer-Stiftung has, thus, surveyed its international network of staff posted in more than 100 countries around the globe. A number of trends were identified Germany needs to be prepared to respond to.

Between System Competition and Geopolitics

The **growing bipolarity between the US and China** is being felt all over the world. Under President Trump, the US is withdrawing from regional and global organisations and treaties, and seeking direct, bilateral confrontation with China and other powers. China, on the other hand, is expanding its economic, military and political influence in a soft power sense all over the globe to such an extent that it is at the very least perceived as a carefully planned strategy. The impression of a global competition between the democratic free-market economy and the system of state capitalism as run by the communist party (CPC) is largely undisputed, although it is not totally dominant, leaving room for multipolar constellations. Countries that identify with the values of democracy, freedom and human rights look expectantly to Germany and the EU as players in this global game. However, the EU and Germany are increasingly perceived as players who do not truly understand the challenges of the future.

These challenges lie in the increasing dysfunctionality of **multilateral systems**, as major powers regularly block each other and encourage others to follow suit. However, the multilateral, rules-based structures of governance have so far provided protection against the law of the jungle, particularly for mid-sized and smaller states.

The **international shipping routes** that are so vital to global trade, particularly in the Indian and Pacific Oceans, are coming under pressure due to the undermining of existing laws and threatening military backdrops. Appeals from Europe are not enough to counter this pressure.

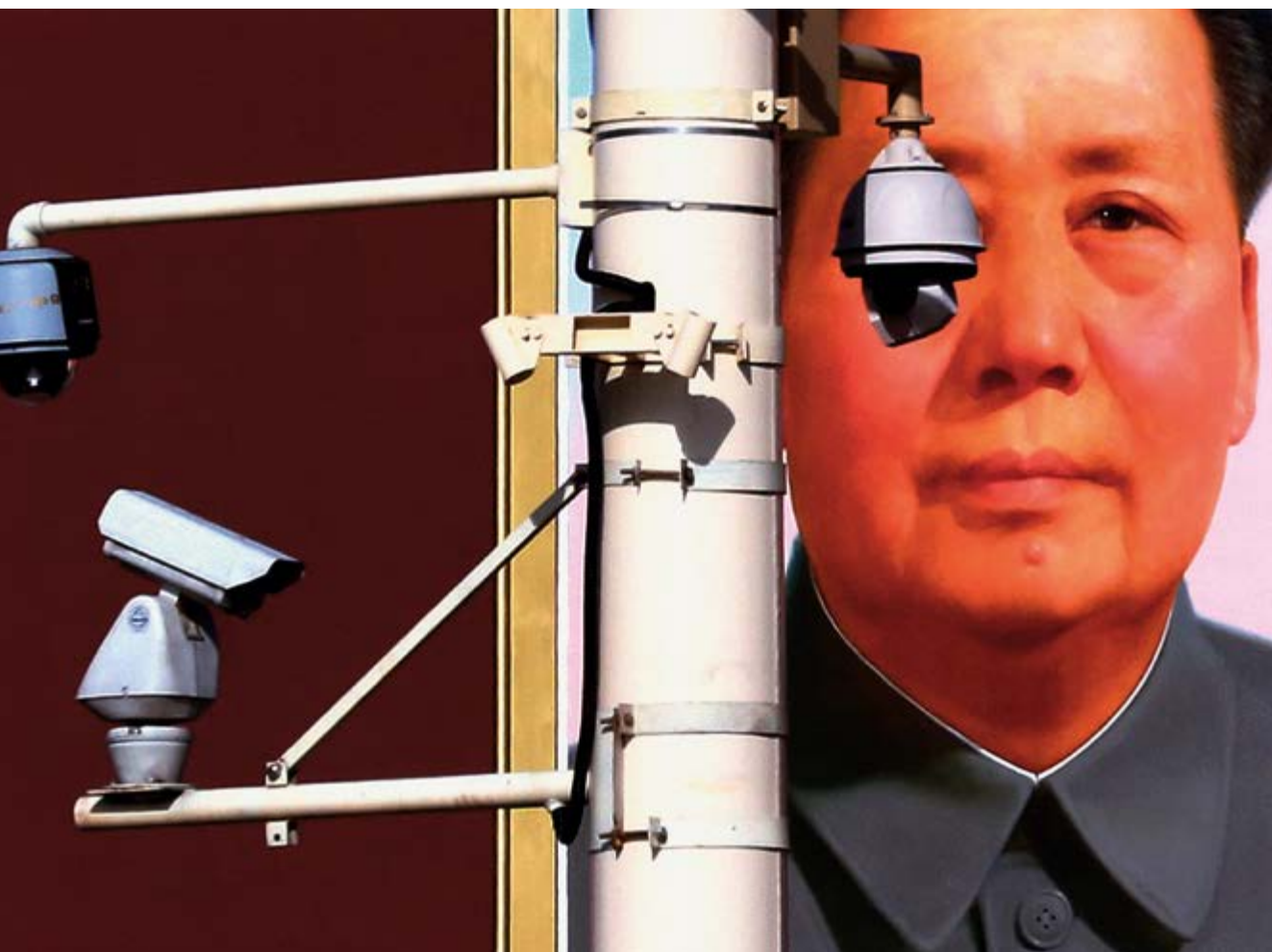
Competing powers such as China and Russia are increasingly using cyber strategies to exert influence on the political, economic and security spheres in Germany and Europe. This has been evident in their **interference campaigns** on social media, along with their espionage activities and attacks on the institutions and leaders of liberal democracies. There is, moreover, no sign of a decline in these persistent attacks.

Global conflicts over the **safeguarding of natural resources** are leading to new alliances being formed involving contracts, financing, technology and infrastructure. In many parts of Africa, Asia and Latin America this is perceived as a form of neo-colonialism. This regards resources such as fossil fuels, raw materials required for state-of-the-art technology (including 'rare earths'), lithium, foodstuffs, drinking water (70 per cent of which is in the Antarctic), and also data – the 'oil of the future'. This is why traditional regions, such as Central Asia and North Africa, as well as new ones, such as the global data space, the Arctic, Antarctic and outer space are now equally being embroiled in the geopolitical rivalry. In all

these areas, there is evidence of increased friction between the major world powers. In some cases, this has become a race and involves circumvention or even blatant violation of international law. With its General Data Protection Regulation, the EU has taken an initial step towards adopting a policy of “data geopolitics”, albeit a predominantly defensive one. Offensive steps are needed to ensure Europe’s survival as a global economic power based on the principles of democracy and freedom. German companies must also face up to the competition in other countries by offering higher social and human rights standards than, for instance, their Chinese or Russian competitors.

Along with outer space and the polar regions of the globe, it is likely that further steps will be considered for exploiting and controlling the Earth’s resources through interventions in the geochemical cycles of the Earth, i.e. geo-engineering. The anticipated growth of the world’s population to nearly ten billion by 2050, and the consequences of climate change, are making resources scarcer and fuel the return of geopolitics to the question of borders, power and access to territories.

Against this backdrop, there is an urgent need to address the **tensions in the Persian Gulf**, an area rich in fossil fuels, but surrounded by



Big Brother is watching you: In China, new technology is often used and developed in a way that is at odds with liberal attitudes. Source: © David Gray, Reuters.

countries with severe water shortages. The polarisation between Saudi Arabia and Iran, which is fuelled by religious ideology and affects the entire region, is set to intensify. In this global conflict, Saudi Arabia is supported by the US, while Iran tends to be backed by competing powers. The consequences are felt directly in Germany and Europe in the form of violence in Europe's neighbourhood, refugees, migration, terrorism, the scarcity of resources that are vital for its economies, and the disruption of trade routes to Asia.

Social Changes Caused by Digital Transformation and New Technology

By providing cheap, fast and direct access to information and communication, social media and other forms of electronic media have had a major impact on **political communication within democratic societies**. This has provided more participatory opportunities for citizens, and more information options, but also less reliable quality of the information now offered. Rational, factual debate has given way to emotional arguments in which facts and political processes are relativised – a trend that is clearly visible in the democratic nations of Europe, North and South America as well as in the freer countries of Africa and Asia. This increasing polarisation and loss of confidence in traditional political institutions – such as parties, parliaments, governments, courts and also traditional media – are challenging our basic structures of freedom and democracy. Strong pillars of a pluralistic society such as associations, clubs and churches are in retreat in many Western countries. Transparency of decisions in terms of both arguments and procedures seems to be the order of the day. Fundamental questions once taken for granted, such as the relationship between majority decisions and the procedures of the democratic constitutional state, arise. For instance, is a majority in a vote or even an opinion poll more important than judicial channels and decisions? Familiar areas of conflict such as human rights vs. security are being imbued with new meaning and call for democratic and broadly accepted decisions.



All over the world, people are feeling disconcerted by the unimagined possibilities opened up by technology. **Genetic engineering** makes headlines that are reminiscent of horror films or science fiction, and people are worried or even fearful in the face of different value systems combined with a sense of disappearing borders. Hopes and potential for progress require a legal framework based on socially accepted values. In the world order, these values need global rules in order to flourish. The debate about 'designer babies' in terms of gender, skin colour, height or other features has already highlighted the ethical problems and emotional potential. If brain doping and AI implants mean that even the human brain can be turned into an app for controlling the human body and its environment, this raises even further questions about



Flight and migration: Prospects at home can only improve through economic development, freedom, social security, education, health and political participation. Source: © Darrin Zammit Lupi, Reuters.

potentials and limits. It is no coincidence that many countries are seeing an **increase in spirituality** and radical forms of religion or natural religions, particularly in Latin America and Africa. This can and will be instrumentalised for political ends.

In many open societies, political leaders are finding it increasingly difficult to reach out to **young people**. This is partly due to changing means of communication, and partly to the fact that today's youth are less connected to their milieu, which also affects more established ties to political parties. At every election, young people have to be won over afresh, something that is already quite a challenge in the ageing societies of Western Europe and Japan. This is even more the case in Africa and Latin America, where

young people often make up a large proportion or even the majority of the population.

Germany has to tackle the specific question of the importance of using the **latest technology for the surveillance and monitoring** of security hotspots, schools, and workplaces. In China, new technology is often used and developed in a way that is at odds with liberal attitudes. Germany and the EU have to decide what limitations should be placed on the use of such technology in their own countries.

Demographic Change and Migration

The demographic change that is likely to affect the whole world presents a challenge for Germany on two fronts with significant interfaces:

the ageing population in Germany and many other European countries, plus Japan and China, and the simultaneous and rapid **population growth** in Latin America, Asia, and Africa. In particular, the expected doubling of the African population by 2050, i.e. in a single generation, has already had and will increasingly have a direct impact on Germany and Europe. The younger generation expects more opportunities, partly fuelled by the images and stories that they see on the internet that seem to promise better life in Europe and North America, sometimes thought of as being some imaginary land of luxury and idleness. Young people want this for themselves, so first they move to the ever more crowded megacities in their own countries, then to neighbouring countries, and often finally to Europe. Their prospects at home can only improve through economic development, freedom, social security, education, health and political participation. But this is precisely what is lacking in these countries, some of which are ruled by dictators, others riddled with corruption and others under the influence of foreign governments. They have become a playing field in the global competition for resources, which leads to violent conflict, habitat loss due to climate change and land use, as well as religious fundamentalism. Some states may collapse, with dire consequences for the security of their neighbouring countries and beyond.

All this gives young people the impression that a bright future can only be found elsewhere. **Migrants** are often young, educated people whose skills are required in Germany and the rest of Europe. This reinforces the negative effects in their home countries, where, for example, the quality of health care is declining due to a lack of skilled personnel.

Forest fires and other natural disasters:
Increasing climate change poses an enormous
challenge in terms of how to provide for
the world's rapidly expanding population.
[Source: © Dicarado Moraes, Reuters.](#)





Climate Change and Resources

The increasingly noticeable consequences of climate change present an enormous challenge in terms of how to provide for the world's rapidly expanding population. Its largely negative impact on **habitats** and hence also on agriculture for food production, combined with more frequent extreme weather events (natural disasters) exacerbates the existing risk of civil and interstate wars, with all the **migratory movement** that this entails. This applies especially, although not only, to Africa. On this continent, as well as in Asia and Latin America, cities are becoming megacities of ten or twenty million inhabitants or more, which leads to even more problems. City life is not synonymous with improved standards of living in terms of income, education, housing and services but is often a daily battle for survival in extremely polluted neighbourhoods where public utilities and services such as water, energy, security, education and health care are inadequately supplied. In such situations, it is difficult to enforce policies aimed at preventing or at least adapting to climate change.

Expectations for Germany are that it should reach its own goals regarding climate change, and ideally also financially support other countries.

For Germany and Europe, it will become increasingly important to meet the demands of developing and emerging economies for **financial assistance** in order to help them prevent or adapt to climate change. The moral pressure on wealthy countries to shoulder more of the cost is growing, and at the same time their failure to meet their own climate targets is increasing the challenge of at least contributing to a global reduction in greenhouse gases.

In the competition for the planet's dwindling resources, which are located in some of the

world's least developed countries, a conflict is emerging in the sense of the need for '**resource justice**'. If the exploitation of resources in poorer countries by the industrialised nations and China does not lead to any noteworthy boost to their development, this will have an impact on both the quest for global partners and on the development prospects of the people who live in these countries.

Individual Topics of the Future

In light of these trends, Germany and Europe need to consider the following issues:

The **relationship between the political process and its outcomes** (polity and politics – policy outcomes, or input legitimacy vs. output legitimacy) is of major significance for the global competition between democratic, constitutional states and those that have authoritarian structures but still demonstrate positive socio-economic outcomes. But it is also of enormous importance for the internal legitimation of democratic politics, which has suffered in the West in recent years despite the objective existence of positive development results (in terms of prosperity and freedom). Securing democracy – as a form of government and a way of life – both at home and abroad requires more effort to achieve legitimacy.

Europe needs to develop **its own position on the growing bipolarity between the US and China**, which should form the basis for possible scenarios such as 'decoupling' the two economic systems, similar to the former bipolarity between the US and the Soviet Union. The disputes over *Huawei* have provided a foretaste of the economic and practical consequences for citizens, and have also shown that the US could demand an alliance decision from Europe.

The question also arises as to whether alliances should be restructured in order to **create closer ties between Germany/the EU and countries with similar value systems and overlapping geopolitical interests**. If the G7 or NATO wish to include Asian nations (such as

India and South Korea) or Latin America ('West NATO'), then concepts such as 'the West' and approaches for opening up new constellations would have to be developed further.

Germany and the EU need to invest massively in **digital innovation, artificial intelligence** and the substantive **ideas and technology that are urgently needed to reduce greenhouse gases**. Along with state-directed industrial policies, as exemplified in China but also in some Western countries, **mobilising venture capital** is an important option. Especially in Germany, with its little-used capital and safety culture, this seems to be not only a legislative but also a psychological task. Current global trends are drawing attention to these enormous political challenges.

In this context, more attention should be paid to the diagnosed '**tribalisation**' of the **political debate**. The lines of conflict in societies no longer run along factual issues or ideologies, but rather on existing or perceived affiliations, such as globalists vs. nationalists, tech elites vs. digital illiterates, populists vs. multiculturalists, and identity politics in general. Parties and political elites need to gain a better understanding of these powerful forces if they are to overcome them, and garner sufficient support in the public debate and elections so as to make the policy decisions required.

-translated from German-

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