



National Integrity Systems

Transparency International Country Study Report

Japan 2006

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The National Integrity Systems TI Country Study Report of Japan is part of a 2006 series of National Integrity System Country Studies of East and Southeast Asia made possible with funding from:

Sovereign Global Development

The Starr Foundation

The Council for the Korean Pact on Anti-Corruption and Transparency

United Kingdom Department for International Development



All material contained in this report was believed to be accurate as of 2006.

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Acknowledgements

Since 2005, TI has modified its operational definition of corruption as 'the misuse of entrusted power for private gain'.

This means that TI has broadened its conceptual framework not only from public-to-public and public-to-private nexuses but also to private-to-private relations including bribery, kickbacks and fraud as well.

TI Japan (TIJ), born in 2004 with a dozen original members and with an unimaginably weak financial foundation consisting of a handful of membership fees and generous provision of 'seed money' by TI Secretariat, started work as a non-profit organisation registered in Japan. Since then, TIJ has functioned as a regional centre for dissemination of ideas of integrity, accountability, transparency, fairness and so on, through organising seminars, publishing reports, holding lectures and translation from English to Japanese of basic materials on combating corruption.

Undertaking this project of compiling a review of the National Integrity System of Japan is in line with TIJ's aims and presents a wonderful opportunity for us to brainstorm.

The authors of the chapters are experts in their own domains in Japan.

I am proud that I could work with them all to accomplish this NIS report within the specified framework.

Some facets of the NIS are not covered in this report, mainly due to our lack of access to vital facts controlled by politicians and bureaucrats and the limitations of published sources.

But I think the authors did their best, contributing their time and energy with conscientious zeal to combat corruption.

Lastly, but not least, I should like to take this opportunity to express our sincere gratitude to TI, especially to Lisa P. Takeda, Nikola Sandoval and Sarah Repucci, who provided this opportunity and gave us very insightful and valuable advice. Also my personal profound appreciation goes to Professors Gerald and Naomi Caiden, who kindly shared their precious time in providing me with invaluable advice in the course of drafting the paper.

Minoru O'uchi

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Currency

The currency in Japan is the Japanese yen (JPY) and the rate of the yen to the US dollar in October 2006 was approximately JPY 100 to US\$0.8498.

Abbreviations

AML	Anti-Monopoly Law
CLCOPWRC	Central Liaison Council on the Operation of Public Work Related Contracts
CSO	Civil Society Organisation
CSR	Corporate Social Responsibility
IAA	Independent Administrative Agency
FTC	Fair Trade Commission
LAL	Local Autonomy Law
LCPBCRPW	Law to Correct the Process of Bidding and Contracts Related to Public Works (Law No.127 of 2000)
LDP	Liberal Democratic Party
LSPBCBRD	Law to Suspend and Prevent Behaviours Contributing to Bidding-Related Dango (Dango Prevention Law)
MIC	Ministry of Internal Affairs and Communications
MP	Member of Parliament
NGO	Non-governmental Organisation
NLTM	National Land, Infrastructure and Transport Ministry
NPA	National Personnel Authority
OBSA	Ordinance on Budgeting, Settlement and Accounting
WTO	World Trade Organization

About the NIS Country Studies

What Is the NIS?

The National Integrity System encompasses the key institutions, sectors or specific activities (the 'pillars') that contribute to integrity, transparency and accountability in a society. When it functions properly, the NIS combats corruption as part of the larger struggle against abuse of power, malfeasance and misappropriation in all its forms. Strengthening the NIS is about promoting better governance across all aspects of society.

The concept of the NIS has been developed and promoted by Transparency International as part of TI's holistic approach to combating corruption.¹ While there is no blueprint for an effective system to prevent corruption, there is a growing international consensus as to the salient institutional features that work best to prevent corruption and promote integrity. The country studies are based on an assessment of the quality of institutions relevant to the overall anti-corruption system.

Why Conduct NIS Country Studies?

The purpose of each country study is to assess the National Integrity System, in theory (law and regulatory provisions) and practice (how well it works). The studies provide both benchmarks for measuring further developments and a basis for comparison among a range of countries.

The studies provide a starting point for signalling areas requiring priority action. They also form the basis from which stakeholders may assess existing anti-corruption initiatives. NIS country studies help explain, for example, which pillars have been more successful and why, whether they are mutually supportive and what factors support or inhibit their effectiveness. Country studies also assess where the emphasis should be placed on improving the system and what factors are required to support the overall development of the NIS.

The country studies create a sound empirical basis that adds to our understanding of strong or weak performers. Within a region, in which several countries may function with similar economic, political or social frameworks, the results of the study can create a sense of peer pressure for reform as well as an opportunity for learning from those countries that are in similar stages of development.

For Transparency International, country studies are an important measurement tool. They complement TI's global indices and surveys, such as the Corruption Perceptions Index, Bribe Payers Index and Global Corruption Barometer, as well as national surveys, by exploring the specific practices and constraints within countries and providing qualitative empirical results about the rules and practices that govern integrity systems. More than 55 such country studies have been completed as of August 2006.

TI believes that it is necessary to understand the provision for and capacity of the NIS pillars, as well as their interaction and practices, to be able to diagnose corruption risks and develop strategies to counter those risks. NIS Country Studies are a unique product of Transparency International, as they reflect the systemic approach TI takes to curbing corruption and the independence of analysis that can be offered by the world's leading anti-corruption NGO.

Methodology of the NIS Country Studies

The NIS country studies offer a qualitative assessment of the integrity system in a country. The studies are based on both objective and subjective sources of data, which differ in quantity in each country evaluated. The studies therefore require both desk research and field research.

At least one focus group is convened as part of the country study. Focus group participants include anti-corruption and governance experts drawn from government (including donors, where relevant), the private sector, the professions (e.g. lawyers, accountants and engineers), media and civil society. The aim of the focus groups is for a broad base of stakeholders to evaluate the NIS and to comment on the draft NIS country study. The results of the meeting then inform further revision of the country study.

Each country study is reviewed by an external expert referee.

Executive Summary

Many of the corruption scandals which occurred in recent years in Japan have taken place in newly emerged social, economic and environmental policy fields in which bureaucrats can maintain various roles and functions. In the ministries whose influence is increasing in these contexts, a practice called *amakudari* (golden parachute) among senior officials is projected to remain in future despite some legislative efforts made in vain to get rid of the practice. Politicians, especially ex-bureaucrat politicians, are deeply involved in cooperation with bureaucrats and industries. What is called the 'rotten triangle of politics, bureaucracy and business' may be identified as characteristic of corruption in Japan.

Though the Japanese government has not announced or established to date any comprehensive strategy or scheme to combat corruption in the society, the reform programmes the government has implemented for the past 10 years, including deregulation measures adopted mainly for activating markets and privatisation of some major public corporations, have helped to a certain extent to curb corrupt practices in the public and private sectors. The business community meanwhile started to emphasise business ethics or integrity in management in the 1990s as businesses were increasingly expected to exercise self-control. It is hoped that the leniency system introduced through recent amendments to the Anti-Monopoly law will encourage general contractors to end the notorious practice of bid-rigging. Non governmental organisations have become more active in the past dozen years. In the late 1990s scandals involving bureaucrats facilitated the enactment of the National Public Service Ethics Law and the establishment of an Ethics Board, which had some impact on public servant patterns of behaviour.

In the executive, sectionalism, an attitude seen among public officials that prioritises a ministry's own interests over the national interest, seems to be a problem that prevents effectively addressing issues including corruption, whose main causes are identified as *amakudari* and bureaucrat-led bid rigging, so-called *kansei-dango*. The legislature, despite some laws enacted to improve transparency, is not transparent enough, leaving room for dubious flows of money. As for political parties, although political factions are weaker than they were a dozen years ago, the issue of politics and money remains the major concern of the nation. In contrast, electoral commissions have been independent in practice and are relatively clean.

The Japanese judiciary is the cleanest corner of public officialdom. Prosecutors are also credited with relatively high integrity. The moral standard of the Japanese civil service seems to be relatively high due to security of living, social expectations and their own self-discipline in following an art of living to survive in a rather closed society. Petty corruption, however, is a fact of life in Japan.

While the central government does not have an ombudsman office, some local governments have established them. But, as these are a part of the local governments they have great difficulty acting independently, and ordinary citizens are not especially aware of their existence. On the other hand, the so-called civil ombudsman plays a watchdog role. The Japan Citizen Ombudsman Network, comprising about 80 ombudsmen and 7,000 individual members across the country, is a successful case of coalition among civil ombudsmen.

Mass media in Japan enjoy freedom. But the existing "press club" system, in which reporters from major media outlets meet in a press room as passive recipients of information provided by the government and other public offices, has been cited as a problem. Some critics say that this can hinder free competition among media companies, which tend to make implied agreements to avoid being scooped by their competitors. Critics say it is a typical illness of Japanese media. Investigative journalism is also cited as very weak, especially among major media companies. As for civil society, thanks to a law enacted in 1998, citizen groups can achieve legal incorporation status. However, Japanese civil society organisations (CSOs) are financially very weak as there is no governmental grant aid programme for them. The advocacy or lobbying capability of CSOs is also very weak.

In the private sector, *dango* (bid-rigging) is a way of life, especially in the construction industries. A leniency system introduced in recent amendments to the Anti-Monopoly Law has begun to prompt signs of change in the attitude of major construction companies. It remains to be seen whether this will eradicate the damaging practice of *dango*, as well as *kansei-dango*, in which public officials play an active role in choosing the winner in a bid.

In general, the following three issues are top-priority areas for further attention in the National Integrity System: (1) strengthening enforcement capability, (2) taking a corruption-type-specific approach and (3) greater disclosure of information and an awareness-raising campaign. Specifically, three issues should be addressed in earnest, namely political finance, *amakudari* and *dango*.

Priorities and Recommendations

In general, the following three issues are identified as top-priority areas in the context of strengthening Japan's National Integrity System (NIS):

1. strengthening enforcement capability,
2. taking a corruption-type-specific approach and
3. greater disclosure of information and an awareness-raising campaign.

Strengthening enforcement capability depends on how well four elements – organisation, personnel, resources and rapport with stakeholders – are integrated and coordinated. In Japan, no independent anti-corruption act or commission has ever been established. Only ad-hoc-ism prevails.

This is symbolic of Japanese political leaders' weak political will to tackle corruption. Even when such measures are introduced, they are likely to be blocked by lobbyists, the parochialism of the ministries involved and failure to change employees' attitudes. To foster good rapport with stakeholders, the public should be encouraged to participate in the drafting processes of a comprehensive anti-corruption act and enforcement.

A corruption-type-specific approach realises that each of the five different types of corruption (see 'Corruption Profile' below) has different causes and effects, with different types of actors, modus operandi and economic, social, cultural and political backgrounds. Taking this into account means that this approach will most reasonably diagnose the causes and hit its targets effectively. So far in Japan no rational and systematic approach to tackling corruption type-wise has ever been undertaken, and this should be adopted post-haste.

Greater disclosure of information and raising public awareness is another important issue. Despite enactment of the Disclosure of Information Act there still exist visible and invisible bars to access to public information under the pretext of privacy protection, official secrecy and guarding national security. Access to important information can enhance people's political consciousness and motivate them to participate in strengthening governance and national integrity. In this context, whistleblowing in pursuit of the public interest, particularly that of the weaker sections of society, should be encouraged and legally protected. Japan has passed a whistleblower's protection act, but it has many loopholes, and there are constraints on its actual application. This should be remedied.

Accompanied by the disclosure of information, there should be a scheme that enables greater participation of citizens in the processes of formulation, monitoring and evaluation of an anti-corruption project. If a project fails, this should be publicised and the officials involved should be held responsible and accountable.

Information regarding the role and judgement of the official concerned in devising and managing a project should be disclosed as much as possible. Project performance should be properly monitored and evaluated, and accountability should be vigorously sought. Official secrecy should not be used for shielding failures of officials or departments or ministries.

Specific

Specifically, improvements in addressing the following three issues should be prioritised: (1) political finance, (2) *amakudari* (golden parachute) and (3) *dango* (bid rigging).

- **Political Finance**

The business-politician nexus through high-ranking public officials is a major cause of institutionalised corruption.² Some powerful special interests can capture the state through corrupt practices.³ These powerful firms are major contributors to politicians. In return for this, the firms tend improperly or unlawfully to seek private gains such as dubious subsidies, reduction of corporate taxes and de-regulation. Japan has the Political Party Finance Subsidy Act (PPFSA, 1994) whereby, in principle, political parties need not seek further donations from the business sector, but in practice they do (except for the Communist Party). The act should now be revised and the penalty for breach of the act should be made more severe. PPFSA should be rigorously applied; corporate donations should be totally banned and only individual donations with a set ceiling permitted.

- **Amakudari**

Although there has been no systematic analysis of *amakudari*, it appears to have done more harm than good for the general public. Retired high officials usually approach semi-government and private corporations two to three times or more after they first retire for post-retirement employment at much higher remuneration; each time, they receive high lump-sum retirement allowances, even higher than that of the prime minister. The power of scrutiny of the National Personnel Authority (NPA) in this regard is very much limited and de facto nominal. Full information concerning *amakudari* should be disclosed. In addition, at the time of the recruitment of retired government officials, the employing corporation should consult with the general meeting of its shareholders, because by nature *amakudari* is tantamount to bribery with promises of reemployment in return for favourable treatment of their corporation. It is necessary to end the practice of early retirement of high-ranking career officials, and the power of NPA should be strengthened in this regard.

- **Dango**

Despite measures to combat it, *dango* seems to be steadily and broadly practiced in Japan judging from the occasional disclosure of cases in the mass media. Because of *dango*, procurement prices and project costs are arbitrarily raised at the expense of taxpayers. Authorities have recently cracked down on bid rigging in public construction projects in which public officials have played an important part in awarding contracts while in office in return for post-retirement jobs. Further transparency in public procurement will depend on how effectively these practices are controlled or eradicated. Overhauling and strengthening the existing anti-*dango* measures is of the highest priority. Penalties on offenders against the provisions of the Anti-Monopoly Act should be made much tougher. It is expected that more Japanese private enterprises will accept TI's *Integrity Pact* and the *Business Principles* in order to facilitate fair management and competition. Japan's construction corporations in particular should adopt these.

Country Overview

Japan is a democratic nation with separation of the three powers of administration, legislation and judicature; it follows the parliamentary cabinet system. The emperor is the symbol of unity of the Japanese people according to the Constitution of Japan.

Its politics have for most of the 60 post-war years been dominated by the Liberal Democratic Party (LDP). Its policy decisions in Japan are believed to have been based upon influence peddling, mediation and policy intervention in favour of their constituency and supporting body.⁴ On the other hand, administrative officers (bureaucrats) are selected on the basis of the competitive national civil servant examination (there are also very tough municipal civil servant exams) and, once selected, are guaranteed lifetime employment. This bureaucratic organisation has performed a significant role in national and local policy making and its execution.

While politics and administration are appreciated for the significant role they have performed in both economic growth (efficiency) and social welfare (fairness), politicians and bureaucrats are unpopular for allegedly looking down on citizens and failing to elevate the quality of civil life. For example, officers at the windows of public offices are strongly criticised for being arrogant and not considering citizens' feelings; therefore the current system becomes an incubator for criticism of Big Government.

The Meiji Restoration in the 1860s collapsed Japanese feudal institutions, but in essence it was a power struggle among samurais (warriors), and the lower samurai class led the modernisation and industrialisation in the ensuing Meiji era. It is generally believed that Western-style civil revolution was not achieved. Moreover, in spite of some effective reforms such as agricultural land reform and the introduction of an inheritance tax, the democratic reforms imposed by the U.S. occupation army (GHQ) after World War II have been left largely unfinished. For example, *Zaibatsu* (monopolistic financial tycoon) that was supposed to have been dismantled merely changed shape and has revived.

From the devastation after the war, which resulted in the loss of one quarter of the national wealth, the Japanese economy quickly passed through reconstruction and entered a high-growth period (1955–1979). The industrial and financial policies led by industrious and sincere elite bureaucrats are said to have achieved certain results. Today, since industries have developed and matured, the role of economic bureaucrats in promoting growth is relatively smaller. On the other hand, important new social issues, such as preparation for an aging society, environmental policy, response to internationalised criminal activities, earthquake policy and the like, are emerging, providing bureaucrats with new roles and functions. Many corruption scandals in recent years have occurred in these new social fields. In such a context, ministries aiming for organisational protection and expansion have continued to secure posts for *amakudari* (golden parachuting) mainly by protecting declining industries through the exercise of discretion administration. Politicians who obtain donations and election support from certain industries and ex-bureaucrat politicians are deeply involved in linkages between bureaucrats and industries.

As a result, the rotten triangle of politics, bureaucracy and business has been formed and strengthened. Moreover, the depths of corruption are obscure; one foreign journalist calls this type of Japanese structural corruption an iron square consisting of 'politics, bureaucrats, business and gangsters',⁵ and a well-known consultant calls the structure a 'Corrupt Pentagon' that also includes media and scholars patronised by the government.⁶

The 15-year recession after the economic bubble burst in 1990–1991 caused an economic crisis. During this period the Japanese national debt reached 1,000 trillion yen (twice as large as GDP).⁷ This figure can be broken into two parts; the majority, 780 trillion yen, is public debts (total outstanding issued by the Japanese Government and municipalities). The other is several hundred trillion yen of hidden debts, i.e., bad debts of public corporations originally injected into the economy as fiscal policy by using funds from postal savings and the national pension plan outside the taxation system.⁸

The LDP, concerned with this national crisis, elected as the party president and prime minister Junichiro Koizumi in 2001, who was not powerful and lacked a political career but boasted popularity among the citizens. Prime Minister Koizumi, by using the catchphrase 'from public sector to private sector', oversaw the privatisation of public corporations such as Japan Highway and Japan Post by purging opposition factions within his own party and raising the prospect of ending the bad-debt problems in the banking sector. He has also energetically deregulated and promoted reforms to achieve smaller government.

However the results of his reforms will only be apparent in a few years, as organisational changes take time under the Privatisation Law (some government agencies have already been incorporated as

independent administrative agencies). Koizumi enjoyed nationwide popularity thanks to approval of his initiatives. Nevertheless, probes into the corruption structure rooted deeply in Japan have not yet started. Shinzo Abe, who succeeded Mr. Koizumi in September 2006, is expected to continue this effort.

Corruption Profile

Five Types of Corruption

The causes of corruption in Japan have changed in accordance with the stages of Japan's economic development and the changes in levels of governmental intervention.⁹ At present, five major types of corruption can be identified.¹⁰

The first is **administrative corruption**, in which lower-level government officials and private individuals are involved in small-scale malfeasance. Immediately after World War II there were several thousand cases of this type annually in Japan. But from the 1960s to the early 1970s, the number of arrests and indictments fell to an almost constant level of about 1,000 a year. During the 1970s those arrested for bribery and embezzlement annually numbered roughly 768; and during the 1980s, about 549. During the 1990s, the average was 263; but since then, from 2000 to 2004, the annual average has stood at 369 persons a year.

Among those arrested, about 80 per cent have been local government officials, 10 per cent national government officials and 10 per cent private individuals. Among the reported cases, the top three sectors to which those arrested belonged were construction and public works, licensing and sanctioning and examination and inspection.¹¹

The second type is **individual political corruption**, in which high-level government officials, politicians, businessmen or intermediaries are involved in secret collusion, with illegal donations and collusive bidding dominant. An example of investigation into illegal donations occurred in 2005, when the Japan Dental Association (JDA) was indicted for having illegally donated 100 million yen in 2001 to the then-largest faction of LDP, led by former Prime Minister Ryutaro Hashimoto, without being formally registered as required by the law. The chairman of JDA and the faction treasurer were arrested for this bribery.¹² Another example was the Sake Retailers Political League, which was alleged to have illegally donated more than 140 million yen to 21 incumbent and former Diet (Parliament) members during 2001 through 2003 for protecting the industry by raising a regulatory bar to new entrants.

An example of collusive bidding occurred when the top management of the Japan Highway Public Corporation (JHPC), including the vice governor, were indicted in July 2005 for initiating and arranging collusive bidding in favour of construction companies that had agreed to employ those officials on their retirement from JHPC. It is said that these practices have been common for decades mainly to reward the companies that give posts or jobs to retired government officials.¹³

The third type of corruption is **institutionalised or systemic corruption**, in which powerful political leaders and business interests try to personalise and manipulate the state organs and wealth in their own interest through close relationships with bureaucrats. This type of corruption is conducted legally on the surface, but legitimacy is lacking because of its arbitrary and unfair use of state organs and authority to convey rights and interests to a particular group of people (cronies, for example) and/or enterprises through such measures as special subsidies, tax-rate reduction or infrastructure construction. An example occurred in 2006, when high-level officials of the Defence Facilities Administration Agency were arrested for masterminding collusive bidding with suppliers of goods, services and facilities in return for their acceptance of the agency's retired officials for jobs and provision of bribes. This is a typical case of diverting public authority for personal and/or the group's gain.

Third-type corruption cases have now begun to surface in Japan thanks partly to the enactment of the Disclosure of Information Act and to people's growing concern about the widening gap between the rich and the poor and about their lives in the future. Secretly it can come into existence when political leaders abuse their power and authority to amass great fortunes, as in the case of Shin Kanamaru, who was in 1993 the deputy president of the LDP.

The fourth type is **corruption within the private sector**. In Japan, dealing with this type of corruption has long been left to the private sector, and only when its effect becomes very serious do civil and/or criminal courts come into picture. The most common examples of this type of corruption are:

- Bid-rigging by a supplier and a receiver in collusive agreement in an attempt to induce and share illicit profits at the cost of the trusting partners. Bid-rigging is said to prevail in most domestic as well as international transactions.
- Private-sector companies defrauding consumers, shareholders and/or regulators.

- Illicit disguise of commodities, as has occurred with deceptive reporting of imported beef/pork and defective diesel particulate filters (DPF).

The fifth type is **international (or externally induced) corruption**, which is committed by politicians, businessmen and their agents in collusion with government officials from both donor and recipient countries. There have been several suspected cases of corruption involving Japanese and foreign politicians, government officials and some multinational corporations. Japanese corporations are suspected of bribing their way into conclusion of contracts, speedily obtaining licenses or successfully exporting their commodities abroad.

Interrelations

The interrelations among the five types of corruption are as follows:

1. These five types of corruption can coexist on both the national and the international levels.
2. The relationship of the five types of corruption can be illustrated in the shape of a mountain: at the bottom, we see type four, corruption within the private sector; at the lowest elevation, type one; at the middle range, type two; and at the summit, type three; side by side, one sees the above four types of corruption in correspondence with the international dimension (type five).
3. In terms of seriousness of their impact on the Japanese NIS, institutional corruption ranks at the top, to be followed in the hierarchy and order of seriousness by individual political, within the private sector, international and petty administrative corruption.

Background of the Second and Third Types of Corruption

After World War II, the Japanese government developed numerous programs to promote Japan's economic and social development. Government intervention in the economy included such measures as sanctioning loans at subsidised rates; providing tax exemptions, grants and subsidies to developing industries; investing in public utilities; and purchasing private-sector goods and services.

The government also instituted protective measures to bolster certain industries such as steel, coal mining and ship-building in the initial stage of reconstruction from war damage and to promote new industries such as computers in the 1960s and 1970s, to cite a few examples. A side effect of these programmes was the spawning of political corruption as they tended to create opportunities for dishonesty.

As competition for markets remains severe, businesses try to win favourable treatment from the government by strengthening their ties with bureaucrats and politicians. The principal means of doing this have included hiring cooperative bureaucrats for attractive corporate posts upon their retirement from government service (*amakudari*), as well as giving donations to politicians and bribes to bureaucrats in return for the drafting and application of laws beneficial to a particular corporation or to an association of particular professionals.

Politicians require funds, and they try to seek donations from corporations to help cover the huge expenditure incurred in electoral campaigns and in the provision of services to their constituents.¹⁴ In Japan, political donations by corporations, individuals and other organisations are legal under certain conditions. This was upheld by the Supreme Court of Japan in 1970 in the Yawata Iron and Steel Company Political Donation Case. Since this verdict, corporations have few reservations, apart from internal financial considerations, in making political contributions, and this has no doubt encouraged further collusion between donor corporations and political parties and politicians.

Thus, businesses require the assistance of politicians to promote their interests, while politicians need corporate backing to collect political funds, and bureaucrats depend on politicians in getting their budgets and drafted bills passed in the parliament or, in the case of local government, in the local assembly.

Almost all important political corruption cases in Japan are directly or indirectly related to political donations, which can give rise to the arbitrary or unfair use of political power or influence in the disposal of public rights and interests in return for these donations. In order to reduce the number of cases of political corruption in connection with political donations, a system of public financing of electoral campaigns was introduced. The Political Party Assistance Act was passed in January 1994; under it, each party is entitled to receive political funding in proportion to the number of Diet members it has and the number of votes it gathered in the previous general election. The total amount of funds to be distributed through the Political Party Assistance Act is calculated based on the size of the population (national census figure) multiplied by 250 yen. The initial fund was 30,900 million yen in 1994. Only the Communist Party of Japan opposed the passage of the act and has

refused to accept its share from the fund. Despite the passage of this act and the handsome political party funding allocated, one major political party (the Conservative) has still indulged in soliciting funds from businesses and others, and corruption cases involving politicians, businesses and bureaucrats continue unchecked.¹⁵

Anti-Corruption Activities

Up to now the Japanese government has not announced any comprehensive strategy or scheme as such to combat corruption in the society, taking only haphazard measures when scandals involving public officials or politicians have emerged. But the reform programmes that the government has implemented for the past 10 years have been effective to a certain extent in curbing corrupt practices in the public and private sectors. The reform scheme was first launched by the government in late 1996. Then-Prime Minister Hashimoto announced in his policy address a six-pillared plan for socio-economic structural reforms: (1) administrative, (2) national budgetary, (3) social welfare, (4) financial system, (5) economic structural and (6) educational reforms.

Of those reform programmes, deregulation measures were promoted as part of the economic structure reform and the financial system reform. Subsequent cabinets have followed the same policy line and have implemented reform initiatives. The administrative reforms, although not aimed explicitly at reducing corruption, have had a strong impact on socio-economic structures in Japanese society, which somewhat helped promote integrity in organisations, both public and private, as described below.

More concretely, based on a ministerial reorganisation law enacted in 1998, the government managed to cut the number of ministries and agencies from 23 to 13. The year 1998 was also when a financial Big Bang took place in Japan. The Financial Service Agency (FSA) had been established in the previous year to take control over the nation's financial institutions, which had formerly been under the control of the Ministry of Finance. Major deregulation measures were implemented, allowing banks, securities firms and insurance companies to enter into other business fields, forcing them to face more competition at home and abroad. This drove them to seek merger and acquisition strategies.

The financial authorities, including a more independent securities and exchange commission, meanwhile have strengthened controls over financial institutions, which in turn have adopted compliance programmes to be regularly inspected by the FSA. Such globalisation and deregulation drives helped change government-business relationships that some Western critics had considered as paternalistic or even collusive. The business sectors, including the financial sector, which had pursued lucrative business under government protection, had to seek opportunities more independently in these changing circumstances. How much and how far government-business relationships have changed is a concern that needs assessment in future.

Deregulation measures have been in process in other business sectors. Among them, deregulation in telecommunications promoted the entrance of several new carriers into the market and lowered communications fees substantially. The entities privatised most recently include public highway corporations and the postal services. In addition, 70 or so state-run universities were reorganised as more financially independent entities. Under ex-Prime Minister Koizumi's leadership a decentralisation scheme was launched that promoted mergers among local cities, towns and villages; the number of local governments was slashed from 3,200 in 1999 to 1,820 as of April 2006, and another 700 will be eliminated in the next few years, according to the Ministry of Internal Affairs. This means the number of elected offices declined, but it remains to be seen how much this contributes to reducing corruption in society.

The business community started to emphasise business ethics or integrity in management in the 1990s as businesses were increasingly expected to exercise self-control, while competition among businesses became more severe due to deregulation promoted by the government. An increasing number of businesses had introduced compliance programmes with the formulation of ethical codes of conduct and the establishment of ethics committees by 2003 when the idea of corporate social responsibility (CSR) started to gain popularity in Japan. This did not, however, contribute to eradicating business malfeasance such as various frauds involving product data and information, falsifications of financial reports and cover-ups of problems and accidents. Global corporations should have been more aware of the importance of self-discipline at a time of growing CSR concern.

Most recently, efforts have been made to address bid-rigging practices that had been pervasive, especially among general contractors. While the government has struggled to address the problem of retired public officials entering businesses to carry on unfair business practices, recent amendments to the anti-monopoly law raised surcharge levels for violators. A newly introduced leniency system provides that the first few dropout parties to a bid-rigging ring would be exempt from penalty or receive a reduced fine. It is hoped that this leniency system will encourage general contractors to discontinue the practice.

Non-governmental organisations (NGOs) have become more active over the past dozen years. Among them an ombudsman conference, a nationwide network among local ombudsmen, launched in 1994, has played an important role in monitoring national and local governments' use of public money. In 1995 the network denounced entertaining practices continuing with impunity between local government and national government officials, and in 1996 it revealed insidious practices of fake business trips by local government officials left unchecked over a long period of time. These revelations helped lead to the enactment of an information disclosure law in 1999. The law, which came into force in 2001, has contributed to transparency in ministries and agencies.

Scandals revealed in 1997 and 1998 involving bureaucrats in the Ministry of Finance and Ministry of Education may have facilitated the enactment in 1998 of the National Public Service Ethics Law and the establishment of National Public Service Ethics Board. An anti-graft law was enacted in 2000 to punish lawmakers and heads of local government involved in graft. The issue of money in politics must be addressed in earnest. Former prime Minister Hashimoto was one of the political leaders recently suspected of having received about 100 million yen in dubious money from the nation's dentists' association without undertaking any accountability.¹⁶ It is ironic that he left this issue untouched when he had taken initiatives in promoting sweeping reforms.

Following the exposure of the scandal, the ruling parties proposed to amend the Political Funds Controls Law to prevent a recurrence. The amended law was enacted in 2005. It caps at 50 million yen the annual amount that a political organisation is allowed to contribute to a political fund organisation. Previously such contributions were not controlled at all. The law also newly mandates electronic remittance through banks or post offices for the purpose of accountability. However, the law fails to control circuitous contributions to politicians using political organisations for camouflage, thus leaving the loophole open.

The National Integrity System

Executive

The executive branch of the Japanese central government consists of a Cabinet Office and 12 ministries/agencies. The Cabinet Office was formed in 2001 under the reorganisation of the central government. Controlled by the chief cabinet secretary, the office deliberates and proposes the fundamentals of the important policies of the cabinet. The Fair Trade Commission, the National Public Safety Commission, the Defence Agency and the Financial Service Agency are the external bureaus of the Cabinet Office.

Ministries can be classified into two categories: policy-formulation-oriented and operation-oriented. Examples of the former are the Ministry of Finance and the Ministry of Economy, Trade and Industry. Examples of the latter are the Ministry of Land and Transportation, the Ministry of Health, Labour and Welfare and the Ministry of Agriculture, Forests and Fisheries. It was once generally understood that the officials of the former ministries tended to have more integrity than those of the latter, but these days it is hard to distinguish between the two because the former have declined.

The annual expenditure of the Japanese general account budget was approximately 82 trillion yen for the 2005 fiscal year. Net government expenditure – including the specific accounts, the sources of revenue of which are not taxes but annuities, postal savings and the like – was approximately 240 trillion yen for the same year. The parliament has not scrutinised the specific accounts, although they are three times as big as the general account and the main reasons for the large government deficits. More pressure needs to be exerted to make the specific accounts more transparent.

The national burden ratio of taxes and social insurances to Japanese GDP was 35.5 per cent in 2004), which compares favourably with other OECD countries. The number of officials in the executive branch is about 1.1 million. The ruling LDP has pledged to make government even smaller; it announced in October 2005 the intent to eliminate 5 per cent of the total number of officials in the next 5 years, and a further 20 per cent in the next 10 years.

The Board of Audit inspects documents to determine the efficiency and effectiveness of government offices as well as the behaviour of officials in order to prevent corruption. However, it normally ceases inspection after pointing out any misuse of the budget and does not go further to accuse and file a suit against organised corruption except in some cases of individual bribery.

The laws regulating administrative corruption are the Penal Code (Article 193-198) as well as the Public Official Ethics Act. The latter was put in force in 2000. However, the rule on reporting gifts in this act does not require the officials who are not in a high-ranking post to report receipt of gifts. This rule has been used as a loophole in the past. For example, in October 2004, a scandal of the Social Insurance Agency, an external organisation of the Ministry of Health, Labour and Welfare, revealed that officials in the lower ranks intentionally received gift money labelled as editorial supervision fees without reporting it and pooled it in a slush account that was distributed to all the agency's officials, including those of high rank.

The ministers, as well as senior vice ministers and parliamentary secretaries, are required to disclose their assets, including those of family members who live with them.

Ministries are very much independent; they protect their interests and do not cooperate with each other. Many highly ranked officials become the so-called Tribe of Parliamentarians (*Zoku-giin*), who lobby only for the interests of their own ministries and their constituencies. High-ranking officials, the Tribe of Parliamentarians and industrialists form the so-called rotten triangle and exercise great influence on politics. In Japan simple bribery of officials is rarely seen. Instead, each ministry has its own elite group, which does not come to the surface but carries out corrupt operations only for the benefit of the group.

Government officers are summoned to the Diet by parliamentarians and must account for what they have done. However, this is only how they fulfil their responsibilities officially. Media are expected to play a supplementary role in supporting accountability, but each ministry has its own press club with a small membership only for the major Japanese media, which seems to become an obstacle to the investigation of suspicious cases or corruption in depth. Each ministry supplies abundant information to its press club so that a kind of connivance between the executives and media is nourished.

The Freedom of Information Act came into force in 2001. However, *In camera* – a system in which the judges actually observe the subject document and decide if it should be disclosed or not – has not

been introduced. Because this act has not been well publicised to a wide public, the demand for information from the executive is still weak.

Amakudari (Golden Parachuting)

One of the main causes of corruption in the executive is the opportunity for bureaucrats to obtain executive posts in the business sector on retirement from the public sector, *amakudari* (parachuting). After the Meiji Restoration (1868), new bureaucrats were recruited not only from the ex-samurais (warriors) but also widely from among the common people. A system for recruiting officials was set up so that any person who passed a very difficult national civil service examination could become an administrative officer. These elite bureaucrats had very strong self-respect and a high spiritual eagerness to devote themselves to the nation. On the other hand, they came to have a tendency to look down on ordinary people, including those in the business sector.

When a ministry or agency asks elder officials to retire early and take up another job in private enterprise, it is called *amakudari* – bureaucrats who lived in a world high up in the sky parachute down to the lower world of the business sector. Ministries or agencies sometimes implicitly force private enterprises to accept high-ranking officials for executive posts in return for giving special consideration; this is called Golden Parachuting and hampers the fairness and efficiency of the Executive's activities.

Kansei-Dango

The most typical corruption is bureaucrat-led bid rigging, or *kansei-dango*. On 29 May 2006 the first trial for the case of the Defence Facilities Administration Agency-led *kansei-dango* was held at the Tokyo District Court. Three defendants, former highest-ranking officers, pled guilty to 259 charges of bid rigging during 2003–2004, the total orders of which amounted to 145 billion yen. These riggings had been plotted between agency officers at that time and ex-officers who had golden-parachuted down to executive posts in the concerned construction/engineering enterprises.¹⁷

Legislature

Japan's parliament, or Diet, comprises two houses: the House of Representatives, or the lower house, and the House of Councillors, or the upper house, with all the members democratically elected. The House of Representatives has 480 seats, of which 300 are allocated for single-seat districts and 180 for proportional representation. A lower house member can hold office for up to four years unless the house is dissolved by the Cabinet. The constitution gives the lower house some priorities over the upper house on issues such as deliberation on bills, annual national budgets, treaty approval and appointment of a prime minister and may take a no-confidence motion against the Cabinet. The House of Councillors has 242 members, of whom 146 are elected from each prefecture and the rest by proportional representation from across the nation. One-half of its members are to be elected once every three years. The term of the upper house members is a full six years.

Separation of powers is a basic principle of the constitution to the extent to which the legislature is independent of the executive and the judiciary. Although the legislative branch has constitutional power to reprimand or hold accountable the prime minister or other ministers, such an action has rarely been taken due to the political dynamics of the parliamentary Cabinet system. Instead, ministers tend to resign when they are suspected of involvement in scandals or corrupt practices. The constitution gives the parliament the power to impeach judges, but in practice few judges have been impeached.

Article 50 of the constitution stipulates that a member of parliament (MP) cannot be arrested when parliament is in session, which means that MPs are not immune from arrest by the police. MPs can enjoy impunity only for what they say, do or vote in parliament. An MP can, without agreement of the house he or she belongs to, be arrested for crimes committed outside of parliament (Article 33 of the Diet Law). A 1992 amendment to the Public Office Election Law gave effect to the automatic removal from office of an MP convicted of accepting a bribe.

In 1985 parliament adopted by resolution an Ethical Code of Conduct for Politicians, a compilation of ethical rules that politicians are expected to comply with. The same parliament set forth a more detailed code of conduct for politicians, which includes rules against conflict of interest. Both codes are incorporated into an MP's notebook for daily reference.

Nevertheless, the issue of money in the political world is one of the biggest problems in Japan. An MP's annual compensation from the state is around US \$170,000, plus US \$10,000 in expense fees for

transportation and communications. Dissatisfied with this amount to carry on their political missions, many MPs rely on money supplied by the political party or faction. While an increasing number of MPs make their flows of money accountable, such transparency is voluntary, and a vast majority of MPs have not yet disclosed their financial information. Despite some laws enacted to improve transparency in this field, it is not transparent enough, leaving room for dubious flows of money.

The disclosure of MPs' assets is regulated by the Parliamentarians Assets Disclosure Law of 1992. Every MP is obliged to submit within 100 days to the president of the house to which he or she belongs reports accounting for the assets he or she holds at the time of assuming the office. There is no punishment for failing to disclose or making a false disclosure. Three kinds of reports – on annual income, business-related activities and assets growth – are to be disclosed once a year. Summarised data are usually reported in newspapers. All the data are open to access in a reading room of each house.

There are 17 standing committees for both houses. Among them is a disciplinary committee, which deals with issues involving MPs' discipline and litigation. Each house has a panel of politicians' ethics. The panels can deliberate on MPs' behaviour and make recommendations if necessary. Each house has non-standing committees that include a Special Committee on the Establishment and Amendment of the Public Office Election Law, which also can deliberate on issues of politics and money.

The legislative branch has played an important role in revealing scandals of politicians, public officials and business leaders through their parliamentary power to seek files and documents. The most-often used forum is the Budget Committee of the lower house. The committee has the power to summon suspected individuals, public officials or private persons to testify before it as a witness or a perpetrator of a suspected offence. This is not a trial but can have a strong impact on the public because most sessions are televised nationwide. Many citizens wonder why a committee for deliberations on the national budget plays such a role. Some successful cases dealt with by the committee, however, have led to prosecutions of big names and the resignation of politicians and cabinet ministers. Another forum is the Political Ethics Review Committee. As its sessions are not open, politicians prefer testifying before it rather than before the Budget Committee. Another reason politicians suspected of wrongdoing choose this forum is that the committee seems to engage in a ritual of purification. It most often has not produced workable solutions or results tangible to the public.

Political Parties

Although there is no political party act in Japan, the definition of political party can be found in the Political Funds Control Act, which contains the definition: a 'Political Party is a political organisation which has at least five Diet members' (Subsection 1, Paragraph 2, Article 3). Similar phraseology is used in the Political Party Subsidies Act when the act vests legal personality in a political party capable of receiving a political party subsidy (Paragraph 1, Article 3). To obtain the status of a legal personality, the political party should be registered as counter effect against a third party after being recognised by the Central Election System Council.

At present, there are eight political parties: The Liberal Democratic Party (LDP), the Democratic Party of Japan (DPJ), the Komeito (Clean Government Party), the Socialist Democratic Party, the Japanese Communist Party, the New Party Japan, the Nation New Party and the New Party Earth. Only New Party Earth is a regional party, locally based in Hokkaido (the northern large island prefecture). Among the parties, the LDP and the DPJ are the two major forces. The LDP has 61 per cent of the seats in the lower house and 45.9 per cent of the upper house; the DPJ has 23.5 per cent and 33.9 per cent respectively. The LDP has ruled continuously since 1955 (the so-called 1955 set up), with the exception of the eight-month Hosokawa administration (non-LDP coalition, August 1993–April 1994) and the two-month Hata administration (non-LDP coalition, April–June 1994), although by necessity it has formed coalitions with other parties when it has lost a stable majority in Diet. The former Koizumi administration (April 2001–September 2006) and new Abe administration are coalition governments of the LDP and the Komeito, which is backed by the Soka Gakkai, an organisation affiliated with the Nichiren Shoshu sect of Buddhism.

The LDP is composed of several factions. In the past, to be a leader of a faction, it was said that one had to accumulate funds to aid faction members by contributing a substantial amount of election campaign costs. These money-collection and allocation processes were regarded as a hotbed of corruption. The Lockheed scandal revealed in 1976 was a typical case, in which Lockheed Aviation Production Company bribed then–Prime Minister Kakuei Tanaka with 500 million yen to push selling a new passenger plane; Tanaka was arrested in 1976. The Recruit Company scandal in 1988 is another

example. The founder of the company sold the unlisted shares of a subsidiary to influential persons in political, bureaucratic and business circles – benefiting them the difference between the face value of the unlisted stock (3,000 yen) and that after it was listed (5,270 yen) – to help continue an existing recruit agreement among companies that was favourable for its Recruit Information Magazine; the chairman of Recruit was eventually arrested. When this alchemy came into light, the public was furious, causing a setback for the Takeshita administration. The minister and the vice-minister posts of the Cabinet, as well as three high posts of the LDP, such as the secretary general, the chairman of the Policy Research Council and the chairman of the General Council used to be allotted among factions, based on recommendations of the faction leaders. The leader of a faction could be a candidate for the president of LDP and thus the prime minister. In the contest for LDP president of July 1972, in which Kakuei Tanaka prevailed, it was rumoured that an unprecedented amount of money had been distributed.¹⁸

But the situation has changed. Former Prime Minister was not the leader of any faction, though he belongs to a faction. Koizumi is a populist politician who has a definite agenda of reform. As a side effect of this, he succeeded in weakening factions in the LDP. Economically he aims to privatise governmental organisations and to transfer some government functions to the private sector. Recently factions have been declining. Koizumi nominates ministers and vice-ministers at his discretion, although still taking into some consideration a certain balance of factions. For one thing, since the Political Party Subsidies Act passed in 1994, the power of the headquarters of political parties seems to have become stronger, as the headquarters distribute subsidies to their members. This trend seems to continue under the Abe administration, judging from the choice of new ministers.

The laws regulating political funds are the Public Office Election Act, the Political Funds Control Act and the Political Party Subsidies Act. The Public Office Election Act, laying down rules for electoral systems, specifies a ceiling for candidates' campaign expenses, prohibition of door-to-door campaigning and regulations concerning the number and size of placards and posters (Articles 142–143). A candidate for the Diet should deposit 3 million yen; if the candidate does not receive 10 per cent of the effective votes the deposit shall be confiscated (Articles 92–93). To run for election is a great gamble for candidates.

The Political Funds Control Act sets rules regarding political funds for parties and other organisations. Several revisions of the act, motivated by scandals, have made the provisions stricter, although leaving some loopholes. For example, under a 2000 revision, donations to individual politicians were prohibited (Paragraphs 1, 2 of Article 21-2). To evade this revision, many political party chapters with individual politicians as their chairman have mushroomed, becoming loopholes for receiving political donations. As a result, it currently is too complicated to grasp the movements and flows of political funds. Motivated by the illegal donation by the Japan Dental Association to the Hashimoto faction in 2005 (See 'Corruption Profile'), another revision of the act was made in the same year. The ceiling for transfers of donations among political organisations was set at 50 million yen annually, and a donation to a political organisation is now to be remitted through a bank account or postal account.

The political parties are required to disclose their incomes and expenses once a year and to present their reports to the Minister of General Affairs or the Election Control Commission (Article 12), attaching the internal audit. Political donations were restricted to a maximum of 20 million yen a year for individuals and from 7.5 million yen (in the case of companies capitalised at under 1 billion yen) to 30 million yen (in the case of companies capitalised at under 5 billion yen) a year for corporations, labour unions and other organisations, with specific ceilings for organisations based on capital, number of union members and other factors (Subsection 1-4, Paragraph 1, 3 of Article 21).

According to the Political Party Subsidies Act, subsidies, which amount to 250 yen per capita each year for a total of about 30.9 billion yen, are distributed among parties according to their number of Diet seats and their proportion of the total vote (Articles 7–8). The treasurer of the political party is required to report the party's income and expenses from subsidies annually to the Minister of General Affairs, attaching an opinion letter issued by a certified public accountant (Articles 14–19). To take an example from 2006, the percentage of subsidies in party income was 22.3 per cent for the LDP and 47.7 per cent for the DPJ.¹⁹

According to Masako Oowaki, former Chairwoman of the Socialist Democratic Party's Policy Research Council, the independence of a political party is to be secured by the Political Party Subsidies Act, for it stipulates, 'The State respects the freedom of political activities of a political party, and does not make condition, nor limits on how to spend the subsidies.'²⁰ From the standpoint of the NIS, however, it may cause a lack of integrity.

Electoral Commissions

There are two types of electoral commission in Japan. One is the Central Electoral Commission, which supervises elections of the House of Councillors and the proportional constituency of the elections of the House of Representatives in national elections. The other is the local electoral commission in every local government, which supervises all types of elections.

Each local assembly appoints four members with four-year terms to its electoral commission under the 1955 Public Office Election Act. Commissions have been independent in practice and there has been no report of violation of election-related regulations by the members of electoral commissions. The National Police Agency and local police stations function as watchdogs and enforce the law in accordance with decisions made by electoral commissions.

Japan instituted universal suffrage in 1946, and in 1955 the electoral commission system was established. But in the beginning, fair election practices were not common. There were many reports of bribery, ballot selling and double voting. In 1964, the Diet amended the Public Office Election Act to start a public relations campaign promoting fair elections. All local electoral commissions campaigned for the voters in their district to observe the act. This campaign succeeded in wiping out major violations of election law.

In 2005 the general election was held on September 11. In the election, the Liberal Democratic Party led by ex-Prime Minister Junichiro Koizumi won a landslide victory, gaining two-thirds of the 480 seats in the legislature. The number of people arrested in violation of the Public Offices Election Law during the election campaign was 125, 51 fewer than during the previous general election in 2003.

The election system in Japan has been criticised as not accurately representing the will of voters because of its complicated combination of proportional constituencies and single-representative constituencies. The electoral commission is the decision-making body for election-related complaints, but it does not have power to make decisions concerning the constituency or seat system.

Local assemblies have been appointing their retired colleagues as their electoral members. Four seats are given in accordance with the balance of political parties in the assembly. All election-related work is carried out by local government officials. So far, there have been no reports on how the election commissions are functioning.

Monthly salaries for electoral commission members are:

- Tokyo Metropolitan Government: Chairman, 544,000 yen; members, 445,000 yen.
- Osaka City Government: Chairman, 365,000 yen; members, 290,000 yen.

Considering that elections are held only two to four times a year including small local elections, this amount of salary on a monthly basis is unreasonably high.

Supreme Audit Institution

The supreme audit authority in Japan resides in the Board of Audit. While the board belongs formally to the executive branch, its independence from the Cabinet is guaranteed as the Board of Audit Act stipulates that the Board of Audit must maintain a status independent of the Cabinet (Article 1). Such independence is needed to fulfil the board's mission without any interference, as the final accounts of the expenditures and revenues of the state are to be audited annually by the Board of Audit and submitted by the Cabinet to the Diet, together with the statement of audit, during the fiscal year immediately following the period covered (Article 90(1) of the constitution of Japan).

The Board of Audit comprises the Audit Commission and a General Executive Bureau. The Audit Commission, the decision-making organ, consists of three commissioners who have seven-year terms, appointed by the Cabinet with the consent of both houses of the Diet; the chairman is elected by mutual vote from among the three commissioners and appointed by the Cabinet. The General Executive Bureau carries out audit and other administrative tasks under the direction and supervision of the Audit Commission. The General Bureau is composed of the Secretariat of the secretary and five bureaus, the staff of which totals 1,300.

The Board of Audit is responsible for auditing the Cabinet Secretariat and 10 ministries, the National Personnel Authority, public prosecutors, courts, the Secretariat of the Diet, public organisations such as Nihon Hoso Kyokai (Japan Broadcasting Association or NHK) and Nihon Telecommunications and Telephones (NTT), as well as the prefecture and municipal governments to the extent they receive subsidies from the central government or their projects are financed by the national subsidy program.

The criteria for audit of the Board of Audit is to check: whether the annual budgets were spent appropriately and the results were reflected properly in the annual financial report (correctness); whether the accounting was handled in compliance with laws (legality); whether the operations were carried out efficiently (efficiency); and whether the administrative tasks as a whole accomplished their expected objectives (effectiveness).²¹ If a cashier or an administrator of assets loses money or assets in his charge, the Board of Audit is competent to examine whether it was intentional wrongdoing or an error and to determine whether the official should reimburse the damage or not.

The main role of the Board of Audit is not to prosecute corruption but to carry out audits. Nevertheless, if any corruption is found in the course of an audit, the board must report it to the public prosecutor. There have been nine cases in which the board reported suspected corruption to the prosecutor, all of which were related to embezzlement charges.²²

The Finance Audit Division of the First Bureau of the Board of Audit is responsible for auditing the Board of Audit as if it were another ministry. From the standpoint of an outsider, however, this is nothing but an internal audit. Furthermore, there is no system of allowing a whistleblower in the board itself.

Board of Audit officials, like those of other ministries, are subject to the National Officials Ethics Act. A second act restricts reemployment of those officials by private companies with conflicting interests for a certain number of years after retirement from public office.

The Annual Statement of Audit the board releases is huge and voluminous. It is available at outlets of the Government Publishing Centre across the nation. To this extent, the Board of Audit is transparent within certain limits. The points at issue for the Board of Audit are as follows: no surprise audits are conducted; no external audit of the Board of Audit by a third party is conducted; and the board tends to evade pointing out the problem of *amakudari* (golden parachuting) and its related *dango* (bid rigging), as retired officials of the Board of Audit also parachute to audited semi-governmental organisations.

Fair Trade Commission

The Act concerning Prohibition of Private Monopolisation and Maintenance of Fair Trade (so-called Anti-monopoly Act) was passed in 1947 as a part of the economic democratisation of Japan that began under the Allied Occupation. The act prohibits private monopolies, unreasonable restraint of trade (such as bid rigging) and unfair business practices. The Fair Trade Commission (FTC) is intended to enforce this act and other similar legislation.

The FTC is an external organisation to the Cabinet Office, and the chairperson and four members of the commission are nominated by the prime minister with the consent of the Diet. However, Article 27 of the Anti-Monopoly Act guarantees its independence from other authorities.

The number of FTC officials was about 670 as of March 2005. It has eight regional offices throughout Japan. The commission normally starts its investigations when it obtains information from a whistleblower who has encountered a violation of the acts.

Since its establishment it was argued that the FTC did not function as planned at the beginning due to pressure from the business sector. Some people called the FTC 'a watchdog that doesn't bark'. However, it began to bark gradually after the Hashimoto Cabinet started deregulation in 1996. It is generally understood that strong auditing by the authorities and strict penalties against lawbreakers must follow deregulation. Coincidentally, taxpayers' complaints grew loud against the huge waste of tax money caused by the notorious bid riggings widespread in public procurement and, as a result, the Anti-Monopoly Act was amended and enforced in January 2006. Some people argue that the sanctions are still weaker than those in other developed countries.

The main features of the 2006 amendments were:

1. The surcharge rate against bid rigging for large-size manufacturing enterprises was raised from 6 per cent to 10 per cent of the contract amount, and those for other enterprises were also raised respectively.
2. A special rate of 150 per cent of the normal surcharge was imposed on enterprises that repeat the same violation within 10 years of the previous offence.
3. A leniency program of immunity from or reductions in the surcharge payment was introduced to enterprises that have committed bid rigging but voluntarily disclose the existence of their violation to the FTC, but only 3 firms can take advantage of this leniency program.

4. Compulsory measures were introduced requiring criminal investigations when criminal accusations are raised.

In 2005, the FTC investigated several major bureaucrat-led bid riggings, such as those of the ex-Japan Highway Public Corporation (privatised in October 2005) and the Defence Facilities Administration Agency (see Executive, *Kansei-Dango*).

In April 2006 after four months of the enforcement of the amended Anti-Monopoly Act, the FTC started its first compulsory investigation into the manufacturers of processing equipment for toxic waste from the drainage in local public buildings.

In the past responsibility for compulsory measures for criminal investigation had been given to the National Tax Agency and the Securities and Exchange Surveillance Commission, which had wide powers of criminal accusation. Now the FTC has the same powerful measures in its hands. This amendment seems to have given increased influence to the business sector. In the six months since the act came into force, two private companies allegedly filed applications for leniency by disclosing their violations to the FTC. Improper traditional behaviour in the Japanese business sector – bid rigging – could be eradicated in the near future if some other relevant acts were also strengthened and the bidding system became more transparent and efficient. The introduction of the TI Integrity Pact into public procurement may be one of the tools to help achieve this.

Judiciary

The constitution vests all judicial power in the Supreme Court and in such inferior courts as the high courts, district courts, family courts and summary courts. The Supreme Court consists of a chief justice and 14 justices. While the chief justice is nominated by the Cabinet with ceremonial appointment by the emperor, the other 14 justices are appointed by the Cabinet. A Supreme Court justice can be removed by a majority of voters in a referendum taking place at the first general election following the justice's appointment and every 10 years thereafter. However, no justice has been dismissed under this system. As for inferior-court justices, the Cabinet appoints them from a pool that the Supreme Court selects. Inferior-court justices serve a 10-year term, which can be extended.

Except for Supreme Court justices, who sometimes include those who have served as ambassadors, attorneys or law professors, all judges are appointed from among graduates of the public Legal Training and Research Institute before which they must pass a highly competitive judicial examination. Upon graduation after two years of training in the Institute, those interested in a judicial career apply to the Supreme Court for appointment as assistant judges. Assistant judges are appointed to 10-year terms, at the end of which they are eligible for appointment as full judges, again for a 10-year term. Reappointment is routine. The vast majority continue to serve until they reach retirement age at 65.

The constitution guarantees the independence of the judicial branch, stipulating that 'all judges shall be independent in the exercise of their conscience and shall be bound only by this constitution and the Laws' (Article 76), and that judges cannot be removed from the bench 'unless judicially declared mentally or physically incompetent to perform official duties'. They cannot be disciplined by executive agencies (Article 78). The independence of the judicial branch has been respected in practice.

Judges are public officials but not under the application of the National Public Officials Law nor of the National Public Service Ethics Law. There are no rules or regulations purporting to control judges' ethical behaviour. It does not follow that judges are exempt from the same obligations that ordinary public servants have to support the public good; they are supposed to be prohibited from breaching trust and should pursue the duty of confidentiality and their office duty with due diligence, as well as comply with rules restricting politically motivated actions. An assets disclosure process has not been institutionalised, and there have been no actions seeking such disclosure.

Nevertheless, the media have rarely reported scandals or malfeasance involving judges. During the past 60 years since the end of World War II, only a handful of judges has been removed through impeachment, including three corruption-related dismissals. This figure shows that judges in Japan have relatively high integrity. John O. Haley, Law Professor at Washington University School of Law, writes: 'Japanese judges are among the most honest, politically independent and professionally competent in the world today. . . . Judicial corruption is virtually unknown. Judges do not take bribes'.²³

One reason for the relatively high standard of integrity among Japanese judges may be that judges do not have ties or relations to the general public; they lead so secluded a life that ordinary people do not have access to them. This relative seclusion, some argue, prevents people from approaching a judge if

they want to offer a bribe. Another explanation of their exceptional integrity is that judges enjoy relatively high remuneration and employment security.

Japan has not employed a jury system except during the pre-war period of 1928–1943. The parliament enacted a law in 2004 to launch a new criminal trial system by the end of this decade, in which professional and lay judges will deal with major cases on an equal footing. It remains to be seen whether and how what is called a citizen judge system will affect the NIS in the whole judiciary system and its culture, especially the reclusive nature of the judicial community.

As for relations to other branches of the state, the Supreme Court is given by the constitution the right to review the constitutionality of all laws passed by the legislature and actions taken by the executive branch. There have been so far only seven cases in which the highest court declared unconstitutionality. This statistic is often cited as a sign of the passiveness of Japan's judiciary. In the latest decision, in which it declared the Public Office Election Act unconstitutional, the Supreme Court criticised the legislature's long inaction in correcting the imbalance of vote weight among some constituencies. Experts see this as heralding the court's abandoning passivity, but it may be too early to make this judgement.

Civil Service

There are two types of government personnel: national and local. The national government has about 1.1 million employees, while local government has about 2.8 million. Government personnel are divided into those in regular service and those in specific service (such as ministers, parliamentary vice-ministers, heads of local government, assembly members, employees of the Diet and courts, Self-Defence Forces and so on.²⁴)

In line with Prime Minister Koizumi's pledge of administrative reform, the ruling LDP government has decided to reduce the number of civil servants by 10 per cent within five years, starting from April 2006, accompanied by the privatisation of the postal system and the reorganisation of public corporations and other public agencies.²⁵

Institutional arrangements for the ethics of Japanese public service are as follows:

- *Ethics Act and Ethics Code:* The National Public Service Ethics Act and the National Public Service Ethics Code took effect in April 2000 for all national public employees.
- *The Ethics Board:* Based on the act, the National Public Service Ethics Board was established within the NPA to determine the rules for maintaining ethics. It is composed of the president of NPA and four board members.
- *Prohibition:* Some examples of actions prohibited by the Ethics Code include the following: Employees (i.e., civil servants) shall not receive gifts (of money, goods or the like); employees shall not accept any hospitality (but dining is allowed if each pays his or her own expenses, although in some cases prior approval is required for night-time dining).
- *Standards for Ethical Behavior:* More comprehensively, the standards for ethical behaviour in accordance with Article 1 of the Ethics Code are as follows: Employees shall not give unfair, discriminatory treatment to the public and shall always engage in their duties fairly, recognising that they are servants of the whole nation and not of any group thereof; employees shall always distinguish between public and private affairs and shall not use their duties or positions for private gain for themselves or the organisation they belong to; employees shall not take any actions that create public suspicion or distrust of the fairness of public service while performing their duties; employees shall, in performing their duties, aim at increasing the public interest and exerting their utmost efforts; employees shall always behave with decorum even outside their official hours, recognising that their actions may influence trust in public service.

Three Institutions for the Maintenance of Ethics

Three institutions have been established: the Ethics Act, Ethics code and Ethics Board. The Ethics Act and Ethics Code determine the rules for upholding ethics for the purpose of maintenance of administrative discipline. The act and the code place restrictions on:

- Behaviour, including regulations with respect to interested parties and actions prohibited with persons who are not interested parties.
- Rules for reporting, which dictate mandatory reports on receipt of gifts and entertainment, on exchange of stocks and on income and others such as large property transactions.

- Gifts or rental use of facilities exceeding 5,000 yen for assistant directors and above at headquarters, which must be reported quarterly to the head of each ministry and agency. Gifts and entertainment exceeding 20,000 yen in value are subject to public disclosure, and copies of the reports submitted by employees at the designated rank and above must be sent to the Ethics Board. In practice, however, these rules and regulations seem to be seldom observed.
- There are some exceptions:
 - Attendance at a buffet-style party
 - Acceptance of provision of modest food and drink at an official meeting
 - Dining together with persons who have worked in the same section before or who have attended the same training course before, where each person pays their own bill
 - Attendance at class reunions when each pays his/her own cost
 - Receipt of condolence money or congratulatory gifts from childhood friends

The act also establishes an Ethics Board composed of ethics supervisory officers (administrative vice-minister and the like of the Cabinet Office and each ministry).

Training in Ethics

In order to reduce the number of cases of corruption and win public confidence in government, some training courses are conducted by the NPA and each office and ministry. These courses educate employees about the Ethics Act. The Ethics Board holds explanatory meetings regarding the ethics system and develops teaching materials for ethics training.

The Japan Association for Civil Service Training and Development in 2002 produced a pragmatic textbook in English, primarily for use by foreign trainees in ethics. It is titled *How to win public confidence as Government officials – 100 sheets* (one case study per sheet/page of the book) for *efficient public administration*. The usefulness of this textbook is still to be tested.

Practice

Training and learning is one thing; practice is another. How to internalise the ethics they have learned in a training session and apply them in their routine work depends on the individual official's sensibility and sense of commitment to his official duty. On average, however, the moral standard of Japanese civil servants seems to be relatively high.

Cases of type 1 corruption are relatively rare in Japan according to administrative statistics. For example, in the financial year 2004, the number of disciplinary actions against central government officials due to unlawful acquisition of public money or property (such as embezzlement) was 153, and due to illegal acceptance of benefits in connection with official duties (such as bribe-taking) was 24 out of the total number of central government officials of about 1 million.²⁶ With respect to the number of disciplinary actions taken against local government officials, as of fiscal year 2003 disciplinary actions due to illegal acceptance of benefits in connection with official duties (such as bribe-taking) numbered 164 persons out of a total number of local government officials of about 2.8 million.²⁷

High moral standards seem to be due to income security (a liveable salary and various allowances), social expectations and their own self-discipline from learning to survive in a rather closed society. According to Professor A. Kamiko of Kyoto University, 'The treatment in terms of working conditions alone does not seem to be enough to warrant their very correct behaviour in that they are not outstandingly well paid. It seems more likely that the sense of ethics inherited from the ruling class in the feudal era, which contains a rich element of noblesse oblige, plays a bigger part, albeit a little diluted these days'.²⁸ However, while this statement may have held true 100 years ago or at best up to the 1980s, the crux of the problem is not the self-discipline of an individual official but the general behaviour pattern of an employee as affiliated with the organisation either at section, department, bureau or ministerial level. Once they are employed in a particular ministry or agency, civil servants are doomed to be loyal to and serve the same ministry throughout their careers, although occasionally they may be asked to work at a different ministry on deputation for a limited time. This means that however self-disciplined employees may be, they are obliged to serve the interest of the organisation they belong to. This could even include creating a dubious and unlawful reserve of funds for social functions, of which several cases have recently been disclosed and roused public anger. Parochialism prevails over organisations. It is necessary therefore to distinguish between employees' behaviour patterns as ethical individuals and as loyal members of their organisation. The same is true

of the private sector in Japan, where loyalty to the organisation comes first and ethical behaviour as an individual employee second. Establishing a system of inter- and intra-ministerial exchange of personnel is necessary to overcome parochialism and corruption.

The dilution of the sense of ethics may partly be attributable to the relative decline in the government's role in economic development, which was tremendous during the 1950s through the 1970s, and even in the 1980s to a lesser degree. After the 1990s, when the economic bubble burst in Japan, the role and prestige of the civil service gradually declined. With their prestige fading, so has the sense of pride among government officials, particularly high-ranking officials, been diluted. Outstanding corruption cases (Types 2 and 3) have been on the increase, especially in the mid- to late 1990s. The relative decline of officials' prospects for future *amakudari* nowadays, due to growing public criticism, may also be responsible for the diminution of morale.

Law Enforcement Agencies

The National Public Safety Commission stands as a state police administrative body under the jurisdiction of the prime minister to supervise the National Police Agency (NPA), which exercises administrative supervision and control over the prefectural police organisation. The commission consists of a chairman, who holds the rank of a state minister, and five other members appointed by the prime minister with the consent of the parliament. The commission formulates basic policies and regulations, coordinates police administration on matters of national concern and appoints or dismisses senior police officers, operating independently of the Cabinet. Its mission is to guarantee the neutrality of the police from any political pressures.

In each prefectural organisation, a public safety commission supervises the local police headquarters, which directly controls local police stations. A local police station sets up many police boxes, or *koban*, in its community. They form a front line of police response to the public, serving as a base for foot patrols. There are approximately 260,000 police officers nationwide, out of which about 97 per cent are affiliated with the local police forces.

Senior officials for the NPA are recruited from successful candidates of the career examinations for state public officials, and secondary-level officials are recruited from among candidates of the non-career examinations. Each prefecture administers examinations to recruit for their own police force, while top officials of prefectural headquarters are seconded by the NPA. Promotion is achieved by examination and requires further course work.

In general, public attitudes towards the police have long been favourable. In recent years, however, trust in police has been declining. This may be because the arrest rate is lower than before, and perhaps as well due to scandals concerning police officers or even senior police officials of prefectures.

In the public prosecutor's office, the Supreme Public Prosecutor's Office is at the top of the hierarchy, followed by the high prosecutor's offices (8), the district prosecutor's offices (50) and ward prosecutors offices (438). The offices are staffed by two kinds of officials: prosecutors and prosecuting officials. Prosecutors are in principle selected from a two-year professional training programme in the Legal Training and Research Institute after passing a common competitive judicial examination with judges and lawyers, while prosecuting officials are selected from those who passed non-career examinations for state public servants. The Ministry of Justice plans to increase the number of prosecutors, currently 2,500, to 3,500 in the next 10 years; judicial system reforms require increases in the number of legal professionals.

The prosecutor's office is granted a high degree of independence from political influence because it is vested with a considerable authority, monopolising the prosecution power; it can have a crucial influence in criminal justice administration. While the prosecutor's office is formally under the administration of the Ministry of Justice, the Prosecutor's Office Law restricts the command power of the Minister of Justice over the office, permitting the minister to act only through the prosecutor general, or Supreme Public Prosecutor, if any authority over prosecutors needs to be exerted.

A prosecution review commission is established in each prefectural government to look into the validity of borderline cases of non-prosecution. Such a commission typically consists of 11 citizens selected from among the eligible voters. The decision of the commission is not legally binding; it cannot mandate prosecutors to file charges but can only recommend it.

A state commission, composed of 11 members, including 6 members of parliament and one Supreme Court justice, reviews the propriety of prosecutors' actions. The commission in principle does a regular review every three years. Prosecutors can be removed from office only for reasons of incompetence or impropriety.

There have been few revelations of corrupt practices or bribery cases committed by prosecutors. This shows that the prosecutors in Japan are credited with relatively high integrity.

Public Procurement

Many bidding-related laws and rules exist in Japan, but the number of news reports on corrupt bidding cases only seems to grow. One typical type of corruption is called *dango* in Japanese. *Dango* is a pre-bidding agreement over a target tender price concluded informally by the member firms of a closed inner circle. This is the most popular form of price cartel in the public procurement market in Japan. Not only the public works of the central government but those of most (or virtually all) of the local governments in Japan are infected by this *dango* disease. Although the government is a loser (or a victim) in the pure form of *dango* (because the government is forced to pay more than it should), very frequently during the process of competitive public tenders, public officials in charge of public bidding assist as coordinators in the process of informal pre-bidding agreement. This latter arrangement is called *kansei-dango* or government-assisted *dango*. *Dango* is rampant throughout the country.

Four main reasons for this can be identified. First, governments (both central and local) are not willing to put a genuine end to the problem. Second, punishment of violators of the rules is still weak. Third, there is no clear rule or regulation concerning the behaviour of the public officials in charge of public bidding. Fourth, law enforcement mechanisms are still underdeveloped (for example, there are no sufficient training courses on anti-corruption initiatives, no legal process to promote whistleblowing).

With respect to the first point, one major Japanese daily journal, *Mainichi Shinbun*, carried a shocking front-page article on 12 April 2006 on the complete and unabashed lack of willingness on the part of the Ministry of Land, Infrastructure and Transportation (MLIT, or *Kokudo-Kotsu-Sho*) to address the problem of *kansei-dango*. The news article pointed out that in response to the request from some construction firms including *Ishikawajima-Harima Heavy Industries, Inc.*, to terminate *dango*, MLIT officials allegedly solicited continuation of the illegal practice. The reason for this was that MLIT wanted to maintain job positions within the construction companies for senior officials for *amakudari*.

The government officials employed by the private companies (bidders) have long functioned as coordinators in the process of *dango* by secretly channelling confidential information concerning target prices of public projects from MLIT to the prospective bidders. Even if the incumbent officials in charge of public procurement and bidding would not disclose information by themselves, information on target prices still leaks out via retired officials now working for the construction companies.²⁹ As *dango* is a price cartel, target prices are vital information. Termination of *dango* means loss of such post-retirement job opportunities for senior officials of MLIT. Thus, they oppose the termination of *dango* requested by the construction companies, which are now more afraid of becoming involved in collusion than before because of increasing social criticism against it and more and more stringent regulations for preventing it.

Although the April 12 news article about MLIT's lust for continued *kansei-dango* is yet to be verified by harder evidence, the story strikes observers as unsurprising, perfectly fitting the Japanese reality of public procurement. *Dango* and *kansei-dango* are alleged to be persistent in all departments and ministries of the central government as well as in all of the approximately 2,000 local municipalities throughout the country.

Basic Laws

There is no prevailing law that governs procurement in Japan. The Law to Correct the Process of Bidding and Contracts Related to Public Works (Bidding Correction Law of 2000) is analogous to a single law regulating public procurement, but it applies only to bidding and contracts for public works. It targets not only the central government but also state corporations (special agencies) and local governments. Other laws concerning public bidding and public procurement include the Law to Prevent Delay in Payment for Governmental Contracts, the Law to Promote Procurement by the National Government of Environmental Goods (the so-called Ecological or Green Procurement Law), the Law to Suspend and Prevent Behaviours Contributing to Bidding-Related *Dango* (*Dango* Prevention Law) and the World Trade Organization's Governmental Procurement Agreement.

Meanwhile, the Anti-Monopoly Law (AML) and the Criminal Law are also important in the Japanese context. These two laws target not only public contracts but also illegal behaviours of business entities in general. Article 3 of the AML deals with prohibition of unjust restraint and control over transactions, and Article 7 of the same law stipulates conditions for orders to be issued by the FTC regarding

exclusion of illegal firms from the market and the imposition of penalties. Article 96 of the Criminal Law concerns crimes of auction block and bidding interruption. As to implementation of these laws, the FTC has had no authority to confiscate evidence during investigation, but from 2006 on, the commission can exercise this power. The commission has no power yet to make arrests; it must act together with the Special Investigation Department.

Many other important laws that contain articles related to corruption prevention also exist, but the core problem is the weakness of the political will to quench corruption and the lack of development of law enforcement mechanisms.³⁰

Enforcement Mechanism

None of the laws mentioned above contains rules concerning special qualifications for officials to be posted in public procurement positions. The Bidding Correction Law requires that the government make efforts to provide for a general education and training programme for public officials in charge of bidding and contracts (Article 20). Article 3 of the same law gives a general rule about transparency of the bidding process. No law prevents a public employee who has participated in a public bidding process from concluding an agreement with the individual or corporations who took part in the same bidding. The *Dango* Prevention Law addresses claims for damage against a public employee involved in a dishonest act. Some institutions make it compulsory for employees to report on their contacts with business firms and former members of the institution. A report published by the FTC in October 2005 entitled *Report on the Investigation into the Situation Regarding the Measures Taken by the Governments to Prevent Open-Bidding-Related Dango in Connection with Public Procurement (Dango Prevention Report)* shows that only 10.1 per cent of the government-financed institutions in Japan have provision for a compulsory report on such personal contacts. It appears that governments (central and local) so far have had little interest in making the public bidding process transparent despite the integrity initiatives on the part of the FTC.

No Japanese law explicitly addresses 'whistleblowing'. However, the new version of the Anti-Monopoly Law, effective as of 4 January 2006, promotes whistleblowing about *dango* and other illegal activities. The new AML offers an incentive to participants in public bidding to encourage them to report on *dango* agreements and other illegal behaviour (such as price cartels) prior to the on-site investigation undertaken by the FTC. The first whistleblower before the on-site inspection will receive a full exemption from the penalty, while the second reporter will gain a 50 per cent reduction and the third receives a 30 per cent reduction. Akinori Yamada, a senior official of the FTC, said in March 2006 that the FTC was not ready to disclose information about the impact of the revised AML on whistleblowing, but it would be able to provide some information in the near future.³¹

The FTC's *Dango Prevention Report* reveals that 33.3 per cent of government-financed institutions have prepared a manual specifying the procedure for handling information given by a whistleblower on *dango*. This report contains the results of the investigations covering all 47 *Todofuken* (mid-level, state-like) governments, 14 major cities (cabinet-order-designated cities), 'Core Cities' and cities (local governments) with more than 300,000 inhabitants (61 bodies), local governments with 50,000 to 300,000 inhabitants (198 bodies chosen out of 400 pertinent bodies) and 210 government-financed institutions (out of the total of 227 institutions). Only 53 per cent of them have set up a department or an office to conduct the necessary investigation when such a report on *dango* is submitted. Some 78.8 per cent of government-financed institutions are equipped with compliance manuals, but only 14.7 per cent of them possess a manual that contains an article on prohibition of public officials' acts of promoting or initiating bidding-related *dango*. These poor figures are a clear indication of the governments' lack of political will to develop enforcement mechanisms to eradicate collusion.

Ombudsman

Ombudsman

Only 20 cities and towns among about 2,000 local governments have governmental ombudsmen; the central government does not have one. The Local Autonomy Act lacks articles for municipal assemblies to set up an ombudsman system; the ombudsmen in cities and towns are all supplementary institutions of local governments, a part of the administration, and not a part of the legislature. Therefore, ombudsmen in Japan do not represent the citizens as they do in some European countries. The governor usually appoints the ombudsman, or in some cases the assembly approves the governor's appointment automatically, and so governmental ombudsmen have difficulty

maintaining their independence from the governor. All expenses of the ombudsmen are borne by municipal budgets, and municipal auditors periodically examine their activities and financial reports, which are open to the public on the municipal website.

The appointment of ombudsmen is usually fair and unrelated to nepotism. In the case of the Kawasaki City ombudsman, established in 1990 – the first in Japan – the mayor appoints three ombudsmen from among experts: knowledgeable persons such as scholars, judges and lawyers. By law the appointees are not protected from removal without relevant justification, but in practice no ombudsman has ever been removed. Ombudsmen are not subject to Local Autonomy Officials Ethics Regulation, and there is no rule or regulation that can control them, so the integrity system in the organisation is not established at all. However, there has never been a report of any misdeed committed by ombudsmen.

The ombudsman's office begins investigation when it receives complaints from citizens; generally it does not voluntarily investigate bribery or corruption. In the past the offices have mainly investigated inadequate services or rudeness of officials. The purpose of the ombudsman in the regulation is to handle citizens' complaints, not to investigate bribery or corruption.

The number of complaints from citizens is rather small because the ombudsman is not well known, and citizens do not expect very much from the ombudsman. The number of complaints that the Kawasaki City ombudsman accepted is less than 200 per year. This is a quite small figure compared with the whole population of Kawasaki City, 1,340 thousand as of September 2006.

Some observers argue strongly that a government ombudsman is not necessary from a cost/benefit standpoint and that a complaint window with a small staff in the city hall will do. At least in Japan, government ombudsmen are much inferior in usefulness and efficiency to the civil ombudsmen described below.

Civil Watchdogs

In Japan when people talk about ombudsmen they are usually referring to civil ombudsmen, which are administration watchdogs, a grassroots civic activity of volunteers. In 1980 a watchdog civil ombudsman was established in Osaka City. In 1994 the Japan Citizen Ombudsman Network was set up with about 80 ombudsmen and 7,000 individual members throughout Japan, who watch how their own local governments spend their tax money. When they find some misuse of funds or misdeed they usually sue in court. Since the network was established, the watchdogs have saved a significant amount of taxpayers' money. It is generally said that the network is the most successful coalition of civil ombudsmen in the world. The activities of civil ombudsmen are on a completely voluntary basis; ombudsmen do not accept outside donations. All expenses are borne by membership fees and donations from the network's own members.

In 1995, the network raised its first major issue – entertainment of central government officials by local government officials. At that time governors and officers of local governments were spending day and night entertaining central government officers in an attempt to obtain subsidies from the central government. After a tip from a whistleblower inside local government, the network uncovered enormous amounts of money spent on food supplies (i.e. entertainment) for central government officials in order to gain subsidies. According to a survey by the Asahi Shinbun newspaper, these outlays totalled 30 billion yen in 1995 for all 47 prefectures throughout Japan. The network called this plotting 'Officials to Officials Entertainment', and declared that this was a form of bribery. After they threatened to sue the governor for the crime of bribery, the entertainment practices were dramatically reduced.

Some consumer organisations also act as civil watchdogs. In 1948, one of the oldest consumer organisations, Shufuren, was established; in 1956 a Network of Consumer Associations (Shodanren) was set up with 43 organisations. This network includes the country's largest consumer organisation, COOP (Japanese Consumer's Co-operative Union) and Japan Consumer's Association, among other groups.

When business enterprises have damaged consumers' interests, their misdeeds relate to corruption. Through this, the consumer's organisations have fought against corruption. However, their fundamental aims are the relief of injured consumers and the establishment of consumers' rights, and so their activities for public integrity are very limited.

Media

Media industries in Japan are well developed. There are 5 major newspapers, 2 news agencies, 4 district-based papers and 60 prefecture-based papers. There are also 5 key TV stations that provide programmes to their affiliate network members widely in Japan and about 100 local TV stations. In addition, there are a number of satellite TV stations, radio stations and internet news companies.

Average salaries at media companies are relatively higher than in other sectors. In particular, those in TV companies are two to three times higher than in other sectors. The National Tax Administration Agency reported that the average salary in Japan was 4.48 million yen in 2005; a survey by the *Weekly Diamond* showed in November 2005 that average salaries at TV companies are 15.67 million yen (Fuji TV); 15.26 million yen (Asahi TV); 14.26 million yen (Nippon TV); and 14.43 million yen (TBS).

Freedom of speech and the press are guaranteed by the constitution. Clause 1 of Article 21 stipulates, 'Freedom of assembly and association as well as speech, press, and all other forms of expression are guaranteed.' However, no codified regulations to guarantee freedom of the press exist aside from this article. In addition, there are no laws or authorities to govern or exercise oversight of media companies.

Media in Japan do enjoy freedom of the press. But the existing press club system has hindered free competition among media companies. In Japan, press clubs are considered to be the places to gather first-hand information in every government organisation and other major institutions. But media companies tend to make implied agreements to avoid being scooped by their competitors. This discourages sound competition among them. Also, most press clubs exclude magazine companies and free-lancers. In addition, this press club system sometimes allows media companies to simply repeat the announcements of government agencies. This parrot-like repetition is a typical illness of Japanese media that is said to derive from its lifetime employment system.

In 2001, the government adopted the Freedom of Information Act for the purpose of disclosing public office information. However the act includes an ambiguous clause allowing the authorities to withhold information if it might affect national security or compromise diplomatic secrets. In some cases, authorities have cited these reasons in refusing disclosure of information.

Censorship is prohibited by Clause 2 of Article 21 of the constitution, which stipulates, 'No censorship shall be maintained, nor shall the secrecy of any means of communication be violated'. So far, the government has not violated this clause except through censorship of school textbooks. But media companies have restricted themselves in order to avoid touchy issues, afraid to be ostracised by club members or club owners.

Investigative journalism is very weak in major media companies. Big scandals, such as the Lockheed scandal of then-Prime Minister Kakuei Tanaka (see 'Political Parties'), are covered by freelancers who have no relation with press clubs. A rare exception was the scoop of wide-ranging police corruption through the investigative research of the *Hokkaido Shinbun* in 2003. To restore sound journalism, following the example of the *Hokkaido Shinbun* is very important.

Every newspaper company has its own code of ethics. But all of them are written in very short phrases like a slogan, compared with the detailed ethics standards of media companies in other developed nations. Because of their lack of ethics, media companies often create victims with their media blunders. Most such cases have been generated by journalists who carelessly report groundless rumours or assumptions with no evidence. One famous case involves Yoshiyuki Kono, who had been suspected as a nerve gas killer before others were arrested in 1995. Conservative parties have tried to impose restrictions on media coverage using these blunders as a pretext. Kono was released after it was proven he was innocent.

Civil Society

In 1998, the Act to Promote Specified Non-profit Activities (NPO Act) was passed. This legislation had a certain impact on civil society because citizen groups were able to gain legal incorporation status to fulfil their citizen-based goals. As of November 2005, 26,000 citizen groups among a total of about 99,000 civil society organisations (CSOs) had been granted non-profit status. But as few of them were given tax-exempt status under the act, the capacity-building capability of Japanese CSOs is still very weak.

Furthermore, there is no government grant aid program for CSOs. So-called governmental grant aid exists, but the Japanese government does not interpret this as other developed countries. The aim of Japanese grant aid is to 'implement the required programs free of charge by CSOs'. In practice, if a CSO is chosen by the government to send rescue materials for earthquake victims, the CSO pays all preparation and implementation costs for sending materials; the government pays only the price of the materials.

Public service corporations (PSCs) were established with government funds after World War II; there were 25,000 PSCs as of the end of 2005. They offer job opportunities for retired government officials and subsidiary work handled by ministries and local governments. PSCs have hindered civil organisations from participating in work for the public interest that requires considerable amounts of funds. Financially, CSOs cannot compete with PSCs to fulfil the required operations. Before the passage of the NPO Act, most citizens in Japan thought that all social work should be done or supervised by governments or PSCs. In comparison with PSCs, most secretariats of CSOs work with no salary and most of them have no funds to send their members to attend international conferences. The Diet is planning to amend the NPO Act to strengthen CSOs' capacity-building capability.

CSOs under the NPO Act are relatively transparent, and they have an obligation to report to the public. In practice, very little corruption is reported. Nevertheless, many CSOs allegedly were established by religious organisations or enterprises to hide or disguise their real intentions. In November 2004, a leader of a CSO was arrested for deceiving people into donating 20 million yen to a 'Rescue fund for children with incurable diseases' that does not exist.³²

Cooperation between ministries and CSOs began in 1994. At first, ministry officials took an arrogant attitude, saying, 'We have a right to choose CSOs'. But step by step, government officials started to realise the importance of cooperation as they witnessed its efficacy in foreign nations. Still, the advocacy and lobbying capability of CSOs is very weak. CSOs have just begun to recognise the importance of these activities in building up their social services among citizens. The utmost efforts are needed to strengthen the structure and capability of CSOs in Japan.

Business Sector

From the devastation of World War II, Japan has succeeded in revitalising its economy by concentrating resources in core industries. As a result of this policy, the government has not only strengthened its influence on and control of general industries but also expanded certain businesses that it monopolised (tobacco, telecoms, post) or competed against in the private sector (railways, banking and insurance, natural resources).

To encourage economic development, Japan also strengthened its export-oriented policy. By the success of this policy, Japanese export industries gained their international competitiveness, but domestic industries were left inefficient and uncompetitive due to the government's protective policies.

Since the economic bubble burst in 1990, the private sector has experienced industry-wide reorganisation, revitalisation and rehabilitation. Thanks to these efforts, Japan finally sees symptoms of economic recovery. However, the government has done little to reform itself; instead it has reinforced its vested interests. As a result, the national debt (including municipal bonds and hidden debt) is said to reach close to 1,000 trillion yen.³³

In the past four years, since the populist politician Junichiro Koizumi took power by proposing a shift 'from public to private', he has promoted the war against bureaucracy by realising or being given authorisation by the Diet to privatise Japan Highway and Japan Post. He attempted to move towards consolidation of various public institutions such as government financial institutions; after Koizumi retired, everything was halted.

The private sector, especially domestic industry, has displayed anti-competitive behaviour reflecting regulation-oriented guidance by the government. As a result, bid rigging has become a matter of common practice in major industries. This is evident in the remark, 'Bid-rigging will not disappear soon', made by the chairman of the Japan Federation of Economic Organisations.³⁴

The anti-monopoly law was amended to include an increase in the penalty and a leniency system. However, due to fierce opposition by industrial groups and politicians, the law lacks strength compared with those of other developed countries.

In addition, collusive bidding at the initiative of government agencies is Japan's unique corrupt practice. In January 2003, a 'bill for the prevention of collusive bidding at the initiative of government agencies' was enacted and implemented to prevent this injurious practice. This law is applicable to

central and local government as well as agencies when more than 50 per cent of their capital is owned by the government. However, while the Fair Trade Commission can demand remedial action by the government body or agencies involved in the practice, there is no penalty clause in the law. In the case of a bridge bid-rigging scandal in which major bridge builders were indicted for alleged conspiracy in 2005, while the vice governor and other executives of the former Japan Highway were indicted under the Anti-Monopoly Law and other acts on charges of initiating bid rigging as a client, the Fair Trade Commission merely requested Japan Highway to take remedial action under the bill for the prevention of collusive bidding at the initiative of government agencies.

Collusive bidding at the initiative of government agencies is generally regarded as a prevailing practice due to the government's control over the private sector and the employment structure of officials in the form of *amakudari*. The opposition Democratic Party of Japan proposed the modification of the law to strengthen the penalty clause in 2001, but this proposal was easily rejected by the ruling Liberal Democratic Party. Parties involved in these malpractices may consider themselves to be simply unlucky, and continue bid-rigging. Without penalty, the benefit far exceeds damages for bureaucrats. This is structural corruption inherent in Japanese bureaucracy, as discussed in other sections.

In the disguised anti-quake design scandal in 2005, a business-starved architect called Aneha confessed to making false reports that structures were earthquake-proof; these had been passed unnoticed by builders, property developers and specialised companies assuring property quality. This property-quality assurance business, which was formerly monopolised by the government but later privatised, is still largely carried on by retired officials who have been golden-parachuted and cut corners due to profit pressures.³⁵

Regarding corporate governance and internal control, Japanese corporate law was drastically recast and put into force in May 2006 to reflect the global trend from regulation to self-discipline. Most private companies now have codes of conduct containing anti-bribery provisions that employees must sign. However, these are rather difficult to enforce when there is conflict of interest between the company's business and the public. Japanese corporate law stipulates board members' responsibilities, which include anti-bribery and/or anti-corruption activities. The recent trend is to extend these provisions to subcontractors all the way down the supply chain. However, little if any action has been taken by any company, or any association of enterprises, to tackle bribery and/or corruption.

The concept of CSR has been booming among Japanese companies for the past few years. In fact, a large number of companies have been publishing annual CSR reports. However, these activities look more like public relations according to Michael Porter, a business professor at Harvard University.³⁶ In the development of a market economy, there is no other way for corporate managers to realise the importance of accountability and transparency.

Local Governments

One notable feature of Japan's fiscal federalism is that local governments' share in the total general government expenditure is significantly higher compared with those in other OECD countries. Centre-local allocation of taxes is 58:42 while that of expenditure is 38:62.³⁷ Out of the 46 trillion yen of the annual tax revenue of the central government (budget for 2006), about 15 trillion yen or one third of the total is transferred to local governments in the form of local allocation tax (Japan's tax sharing system).³⁸ With this fiscal transfer as an integral part of their fiscal revenue, local governments' annual revenue (i.e. expenditure) totalled about 91 trillion yen including their own local tax revenue and local public bond revenue in 2003.³⁹

A large part of the local expenditure is channelled into the construction sector; local governments are responsible for much of Japan's gross fixed capital formation. Their contribution to this capital formation amounts to 4.9 percent of Japan's GDP, the highest figure among European advanced countries such as the UK, France and Sweden.⁴⁰ This shows that local governments play prominent roles in public works.

Japan's local self-government system can be characterised as a 'Concentrated Authority – Dispersed Function' system. This means that the central government in Tokyo holds power (authority) and money (the tax base) in its hands, whereas the local governments' role is merely to implement various functions as the centre dictates with money and instructions.

The enormous public-works burden on Japanese local governments renders these governments highly vulnerable to pressure for corruption. All local governments are suspected of being involved in *dango* related to public works. Due to *dango* and collusion among local government officials,

politicians and construction companies, many allegedly unnecessary construction projects are approved in local councils (local parliament). A typical project is a multi-purpose dam. Many of the existing multi-purpose dams might have been properly designed from the beginning as multi-functional facilities, but others started as single-function (water utilisation) dams and seem to have been altered along the way for inappropriate reasons. For example, flood control was added as a new purpose to an old project originally designed as a water utilisation dam. Water utilisation itself is a suspect purpose today, as the demand both for agricultural and industrial water is much lower than before. The new purpose of flood control often turns out to be dubious.⁴¹

Projects such as multi-purpose dams cannot be stopped because the main objective is the construction itself. Behind-the-scenes collusion among politicians, the construction industry and government officials appear to take place. The national government's subsidy policy is connected with this ineffective resource allocation; the central government guides the local governments by offering generous subsidies to expensive multi-purpose dams and by remaining reluctant to extend subsidies to plans for cheap dredging operations.⁴²

Laws

The Local Autonomy Law (LAL) and its enforcement ordinances are the most important for local-level regulation of government procurement. In addition to these, the Law to Promote the Correction of the Process of Bidding and Contracts Related to Public Works (Bidding Correction Law) is another quasi-basic law. It covers not only the central government but also local governments. Article 234 of the LAL deals with public bidding and requires competitive tenders. The LAL enforcement ordinance stipulates conditions for limited tender (or tender by specified bidders).

Article 167 of the LAL enforcement ordinance calls for official announcement of tenders. The LAL does not refer to transparency for limited competitive tender (competitive tender by specified bidders), but each local government has its own rules to guarantee transparency in the process of designation of tender participants. Specifically, a grade point system has been introduced in many local governments. This system evaluates the quality of each of the participating business firms according to objective criteria. Thus, the process of nomination/designation of tender participants for local municipalities is expected to be objective and transparent. In practice, the designation process is transparent in many cases.

Regarding modification occurring during the construction process that deviates from the content of the contract, one type is a delayed payment by the government to the company. The Law to Prevent the Delay in Payment for Governmental Contracts was instituted to prevent such delayed payment from the government to business firms. Although this law was written for the national government, Article 14 of the law stipulates that it applies to local governments, too. As to the alteration of the content of the contract including changes in price and dates of beginning and completion of construction and a change of schedule due to a natural disaster, Article 19 of the Construction Industry Law also applies to local government contracts. The LAL refers to a contract guarantee payment without giving any specific information on the amount, but Article 167 of the LAL's enforcement ordinance stipulates details of such payment.

Enforcement Mechanism

Japan has no mechanism similar to the tender board, but the LAL requires that local governments implement monitoring and inspection of contract performance. The LAL's enforcement ordinance stipulates that the officer in charge of the contract should inspect the performance of the contract by himself or with his assistants. This means that very little objectivity is guaranteed in the inspection process.

The Bidding Correction Law and the Law to Suspend and Prevent Behaviours Contributing to Bidding-Related *Dango* (*Dango* Prevention Law) cover local governments, too, thus giving local governments some responsibility for prevention of corruption. Sub-article 2 of Article 243 of the LAL deals with claims for compensation for dishonest behaviour of civil servants. Article 242 of the LAL concerns audit petitions by local residents and residential lawsuits.

Local autonomy is not functioning well to prevent corruption, as *dango* appears to be rampant in most (or all) of the approximately 2,000 local municipalities in Japan.⁴³ In the recent years, some new initiatives for transparency and efficiency have been made by several municipalities, including Nagano-ken (post-dam declaration), Yokosuka-City of Kanagawa-ken (the first municipality to introduce electronic bidding), Akashi-City of Hyogo-ken, Ichikawa-City of Chiba-ken and Shiki-City of Saitama-ken. The last two cities are known for their introduction in 2005 of the Japanese version of participatory budgeting.

Sub-article 2 of Article 202 of the LAL treats personnel commissions and requires competitive examination for employee recruitment. Although it is difficult to verify quantitatively, some positions in local governments still appear to be prone to nepotism or recruitment through personal connections.

The *Dango Prevention Report* shows that 75.4 per cent of *todofuken* governments and big cities (cabinet-ordinance-designated cities), 31.1 per cent of core cities and municipalities with over 300,000 inhabitants and 12.9 per cent of municipalities with 50,000 to 300,000 inhabitants offer a training program to their public servants for the purpose of preventing *dango* and *kansei-dango*.

As far as *dango* is concerned, almost all municipal governments have prepared a manual to consult when the government has received a report on a possible *dango* case from a whistleblower or a citizen, according to the *Dango Prevention Report*. And almost all of them have also established a special organisation to investigate *dango* cases. But such an investigation is often a mere interview with the tender participants, which rarely results in substantial unearthing of illegal behaviours. Such an investigatory team is not given any authority to confiscate evidence materials. Thus, the investigation itself turns out to be a mere formality or a ceremony undertaken for evading criticism from the general citizenry. When asked whether the ordering institution will start its own investigation when it has sensed an 'unnatural' behaviour of a tender participant before being informed of *dango* by members of the inner circle or a whistleblower, only about 20 per cent of big cities gave an affirmative answer, while only 5 per cent of the small municipalities said yes.⁴⁴ This shows that local authorities have little political willingness to uncover the reality about public bidding in Japan and to terminate corruption.

Evaluation of the NIS

The Rotten Triangle

There is a 'rotten triangle' in Japan among politics, business and bureaucracy. In politics, this can be seen in the political mindset of the people and the conservative party's long-lasting regime.

Integrity in politics in Japan is not very strong. Especially in the local autonomous bodies people have set up a structure in which politicians and bureaucrats work hard to receive subsidies from the central government, sometimes entertaining government officials, and then distribute them among stakeholders within the area of their local body for their own profit. Most parties of the local assembly have been on the side of the governor in power.

Many voters have also supported these politicians so that they can share profits from the subsidies even at the sacrifice of people outside the local body. Therefore, voters seldom criticise corruption when it occurs.

Since the end of World War II, the conservative party (Liberal Democratic Party) has been almost continuously in power. Under the conservative party's long-lasting regime, political parties and politicians, together with bureaucracy and business, participate in a rotten triangle to maintain their existing privileges.

In September 2006, Shinzo Abe was elected as the party president (also prime minister), following the former president Junichiro Koizumi who had been in power for 5 years. In the campaign for the general election of the House of Representatives in 2005, Koizumi used various tactics to win popularity among the masses in order to stay in power. To beat his competitor in the LDP who opposed his policy, he nominated as the candidate against the competitor a popular young IT entrepreneur who was such a moneygrubber that he dared to say he could even buy others' minds with money. During the campaign the media reported his actions in detail. As a result the IT entrepreneur lost the election and was arrested and prosecuted for economic crime (window dressing), but it is said that many young people in Japan still admire him for his extraordinary skill in making money and want to copy his way of life.

In terms of business, we see profit for the sake of profit. It is natural that businesses should pursue profit, but they have given high priority only to profit maximisation and have played down the ills that others, especially consumers, may suffer from their activities. The business sector has indulged in a substantial amount of unfair, dishonest and sometimes unlawful conduct. In the last 10 years or so, large-scale incidents have occurred in the environmental and human safety fields such as emission of poisonous waste, casualties from medicine or injuries due to forgery of automobile safety certificates. Mass media have mounted significant campaigns against these incidents, which had threatened people's lives. The rise of consumer awareness of the misdeeds of the business sector has driven some large enterprises to the brink of bankruptcy.

In addition to the rise in consumer awareness, a trend towards strengthening corporate governance and internal controls seems to have had great influence, and business enterprises began to take the necessary steps toward building up their integrity. At the same time, in response to requests mainly from the United States, Japan began to revise criminal, civil and other laws in order to strengthen the national integrity system. Among the three parties – politicians, business people and bureaucrats – the business sector shows the most drastic changes in the integrity system.

However, businesses are reluctant to cooperate with civil society organisations to promote integrity. Attention and criticism on the part of consumers and civil society have been extremely weak. Except for environmental and welfare activities, businesses have been decreasing their financial support to civil society, using the excuse of the long-term recession after the bubble burst.

In the bureaucracy, Japan has witnessed the changing role of the bureaucrat. The defining feature of Japanese society after World War II was the maximisation of economic growth. Bureaucrats led the national economy to expand in scale and become extremely efficient. After the Meiji Restoration they had adopted a policy of 'the affluent country with strong soldiers', but since defeat in the war, the policy was 'the affluent country without soldiers'. This policy was successful until the bubble burst in 1990–1991. As the national economy ceased its high growth rate and moved into a steady one, the role of national bureaucrats became relatively small and limited. They lost the leadership of society, pushed into the shadows, and they became spiritually decadent and money-hungry.

There is also a defence of ministries/agencies and the expansion of their power. In Japan every ministry/agency employs its own officials for life, and so their most important goal is to defend their

own ministry/agency and expand its power. For many decades a customary system has prevailed in every ministry/agency that some elder officials should retire earlier than their age limit; one of the most important tasks of officers in charge is to find new jobs for them. For this purpose they try hard to maintain their influence on private enterprises by giving them conveniences such as the granting of licenses or approvals, or leaks of information. This causes the rotten collusion between bureaucrats and business, i.e. golden parachuting (*amakudari*) and bureaucrat-led bid rigging (*kansei-dango*).

The integrity of the judiciary has been maintained. Judicial officers such as prosecutors and judges and also such offices as the Fair Trade Commission retain a consciousness of public service. These officials have come to demand integrity in politics, bureaucracy and business. Unfortunately, they want to do it on their own and have no intention of cooperating with civil society to achieve national integrity.

Thus, through the triangle among politics, business and bureaucracy, politicians receive donations from businesses in return for interference with administrative authorities favouring a specific business enterprise and/or field. The collusion between bureaucracy and business is most prominent. Bureaucrat-led bid rigging and high-ranking officers' golden parachuting into executive posts in the business sector form the main background of corruption conspiracies. The business sector is expected to show drastic change in its behaviour due to the revamping of Japanese corporate law in May 2006, but politics and bureaucracy have been left behind.

Civil Forces to Counter Corruption

In Japan the Western world's concept of 'civil' or 'citizen' did not exist for a long time. 'Democracy' was introduced to Japan after World War II by the victorious nations, especially the United States, but these concepts and values in relation to the national integrity system have not been very well established in Japan.

In ancient days, the ruling class of Japan guided the people to believe that harmonising was the most important value to be respected. This belief remains as one of the most fundamental principles among Japanese. This way of thinking makes people believe that it is virtuous to be generous to and forgive others who commit misdeeds. Some people argue that this is the reason why people do not want to criticise or fight actively against corruption.

In 1994, a coalition of 80 civil ombudsman offices from Hokkaido to Okinawa, unique in the world, was formed. This is fundamentally a taxpayers' watchdog group to monitor misuse and waste of taxes in local government, but it also fights against corruption, because most misuse of taxes has something to do with corruption. Utilising local freedom of information regulations, they have disclosed many cases of misuse of tax revenue and saved enormous amounts of money. Their target is now local government procurement and opaque expenditures of political parties in the local assemblies.

Mass media in Japan appear to have earnestly pursued corruption among politicians and business people. The problem is press clubs exclusive only for the major Japanese media in the central and local governments. Their members receive special privileges from the governments. As a reward for these privileges they play a role in giving to the public only the information that the governments want to publicise.

Civil forces against corruption are not strong enough in Japan. Their activities are limited to looking at corruption that happened in the past. As the losses caused by corruption are enormous, prevention is much more important than sanction. Thus, constant watch over government proceedings in general and civil monitoring in the process of the public procurement in particular are essential.

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⁴¹ Several books published in recent years illustrate the dam problem in great detail. One example is: Committee for Pollution Prevention and Environmental Protection, Japan Bar Association, ed., *Datsu Damu no Seiki (Post-Dam Century)* (Tokyo: Torii Shobo, 2002).

⁴² The notion of "many public works are wasteful" was first put forward by academics such as Sachiko Hobo of Shimane University (see his book *Kokyo Jigyowo Doukaeruka (How to Reform Public Works)* (Tokyo: Iwanami Shoten, 2001). The idea was so widely shared by the general public that the LDP set up a special taskforce in 2000 to review the problem, with LDP leader Shizuka Kamei presiding as chairman of the team. Kamei came up with a list of unnecessary, wasteful public works, and actually terminated 233 of them.

⁴³ While the *Dango Prevention Report* of the FTC, which is based on responses from 514 local governments and government-financed corporations to FTC's questionnaire, does not explicitly say that all municipalities are affected, the implications are clear: *dango* prevention at the municipal level is a tough challenge.

⁴⁴ *Dango Prevention Report*.