

U4 Expert Answer



Special courts for corruption cases

Query

What is the experience of countries, particularly in Asia, establishing special courts dedicated to dealing only with corruption cases?

Purpose

To provide possible sources of regionally-relevant guidance and contact for the judges on Nepal's Special Court.

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1 Special corruption courts in Asia

The UNDP-supported 1999 Report on Human Development in South Asia, covering India, Pakistan, Bangladesh, Sri Lanka and Nepal, as part of its call for "a bold, concrete anti-corruption agenda" urged the creation of exclusive corruption courts. Similar recommendations have been made by different other international organisations as well as national experts.

At present (2003), not all countries have pursued that path. The section below will summarise the experience and current situation in a number of Asian countries.

Bangladesh

In Bangladesh, there are no special anti-corruption courts. At the zila level (sub-district), judges who deal with corruption cases are called special judges. But, they are part of the whole judicial system. Of late, Transparency International Bangladesh has prepared a working paper on the proposed structure of an Independent Anti-corruption Commission, where one of the suggestions was to establish a special court for trying corruption cases.

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Pakistan

National Level:

The Musharraf Government in 1999 created by Ordinance the NAB (National Accountability Bureau) and special accountability courts to try exclusively corruption cases. These Courts are part of the national judicial system and operate under the Chief Justices of the High Courts of Pakistan. For up-to-date statistics on the number and type of cases files, convicted and acquitted, please refer to the Appendix. The NAB was created in part to deal with as much as \$4 billion (PKR 208 billion) that was estimated to be owed to the country's banks (all of which were state-owned at the time; several have since been privatized) by debtors, primarily from among the wealthy elite. The Musharraf Government stated that it would not target genuine business failures or small defaulters and does not appear to have done so. The NAB was given broad powers to prosecute corruption cases, and the accountability courts were expected to try such cases within 30 days. As originally promulgated, the ordinance prohibited courts from granting bail and gave the NAB chairman sole power to decide if and when to release detainees.

The ordinance also allowed those suspected by the State Bank of Pakistan of defaulting on government loans or of corrupt practices to be detained for 15 days without charge (renewable with judicial concurrence) and, prior to being charged, did not allow access to counsel. In accountability cases, there was a presumption of guilt, and conviction under the ordinance can result in 14 years' imprisonment, fines, and confiscation of property. Originally, those convicted were set to disqualify from running for office or holding office for 10 years. In August 2000, the Government announced that persons with a court conviction would be barred from holding party office. This provision was applied during the general election to prevent certain candidates from entering the contest.

Provincial Level (Punjab province):

One of the objectives of province's special anti-corruption entity (called the Anticorruption Establishment: ACE) is "to enquire, investigate, arrest and prosecute corrupt public servants under ACE rules through Special Anti Corruption Courts".

There are nine Anti Corruption Courts established in each civil division at Lahore, Faisalabad, Sargodha, Multan, Dera Ghazi Khan, Bahawalpur, Rawalpindi and Gujranwala, besides the Senior Special Judge, Anti Corruption Punjab, at Lahore.

ACE's present strategy states, among other items: "transfer of cases involving huge amounts from courts of Special Judges Anti Corruption to Accountability Courts under the NAB Ordinance - 1999".

Philippines

A special court, the Sandiganbayan, composed of a Presiding Justice and eight Associate Justices, has exclusive jurisdiction over violations of the Anti-Graft and Corrupt Practices Act [Republic Act No. 3019], the Unexplained Wealth Act [Republic Act No. 1379] and other crimes or felonies committed by public officials and employees in relation to their office, including those employees in government-owned or controlled corporations.

2 General experience (outside Asia)

Such special anti-corruption courts have been established and been operating outside Asia as well, of course. Since the focus of the query is on Asian countries, however, we will limit this part of the discussion to one example: Kenya.

In April 2002, Kenya established courts to deal solely with cases of corruption and fraud. The courts were given jurisdiction to handle all cases under Kenya's Prevention of Corruption Act. Several critics had voiced that the establishment of the courts were a result of foreign multilateral and bilateral pressure, whereas Kenyan authorities had insisted that the inauguration of the courts was in line with the ongoing programmes of expanding judicial services to make access to justice easier and cheaper.

3 Assessments of effectiveness, risks and prerequisites for success

The special courts have received varied assessments as to their need and effectiveness over time. Critics argue that establishment of such courts will create the burden of yet another malfunctioning institution, especially in countries with systemic corruption and weak institutions while optimists insist that, in particularly when the bulk of the system is deficient, such courts are the only way to ensure due judicial process and prosecution of the corrupt, which is one of

the essential elements in the overall fight against corruption.

In a South African expert panel survey evaluating the various measures used to fight corruption, anti-corruption experts and practitioners were asked on a scale of one to four (with one considered the least effective and four the most) to rate the effectiveness of special anti-corruption courts. The courts were assessed to be rather effective receiving a credible 3.27.

One of the more frequent dilemmas faced by the practitioners is the issue of special corruption courts vs ordinary courts with special judges dedicated to corruption cases:

Some countries, in order to avoid having specialised courts, use a unified general court system, with judges who have or acquired expertise in handling special cases, in order to avoid having a multitude of specialized courts for corruption, business, science, etc and the associated problems such divisions cause in administration and lack of uniformity in administration and standards.

One of the common risks associated with the special corruption courts is that of their possible misuse for political purposes:

So, for example, according to critics, despite governmental claims that Pakistan's NAB cases would be pursued independent of an individual's political affiliation, NAB had selectively targeted certain persons in the anti-corruption campaign. Senior opposition figures had charged that NAB threats were used to pressure politicians to join the PML-Q, run as independents, or vote for Prime Minister Jamali in the vote of confidence. For example, according to HRW, Aftab Sherpao, an influential PPP leader and former chief minister from the North-West Frontier Province (NWFP) had returned from London to face corruption charges. He subsequently was acquitted after his faction of the PPP pledged its support for Musharraf in the referendum on his presidency. At year's end, Sherpao was elected to the National Assembly and became Minister for Water and Power.

The Government denied press reports that it had decided not to pursue accountability cases against active members of the military or the judiciary; however, critics argue that hardly any serving members of the military or the judiciary have been charged by the NAB. In May 2002 former Chief of the Naval Staff Mansoor

ul-Haq was charged with corruption under the NAB ordinance. Ul-Haq pled guilty, agreed to repay the money, and was released in January. The Government also withdrew the privilege of retention of the rank of admiral.

It goes without saying that in order for the special corruption courts to be successful, the basis and mode of their operation should be carefully tailored. Prerequisites for success may, among others, include:

- Existence of and compliance with a tailor-made national strategy (so that the courts are a part of a comprehensive anti-corruption strategy and do not operate in a vacuum)
- Government commitment and political will
- Adequate legal framework with inclusive offence definitions and enforcement provisions
- Impartiality and independence from political influences
- Transparency and effective accountability mechanisms
- Credibility and public trust
- Appropriate expertise and specialisation
- High level of ethics and codes of conduct
- Adequate resources and funding

4 Recent recommendations to create such special courts (not limited to Asia)

In the period between 2000-2003, recommendations to establish special courts for corruption cases have been marking the agendas of various international organisations and respective governments. Such recommendations were, among others, framed by:

1. Nigeria (2000: Nigerian government recommendations in collaboration with the UN ODCCP)
2. Romania (2002: report on a Ministry of Justice project strategy in conjunction with EU assistance in strengthening the anti-corruption structures in the Romanian judicial system)
3. Morocco (2003: report of the Moroccan Human Rights Consultative Council urging that Morocco needs a special corruption court)

4. Bangladesh (2003: TI Bangladesh working paper urging for an establishment of a special corruption court) and others.

Sources consulted:

Country Reports on Human Rights Practices – 2002
<http://www.state.gov/j/drl/rls/hrrpt/2002/18314.htm>

National Accountability Bureau Pakistan

Corruption in South Africa, Results of an Expert Panel Survey (2001)
<http://www.iss.co.za/Pubs/Monographs/No65/Chap7.html>