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Specialised anti-corruption courts – A comparative mapping

2022 update

Authors

Matthew C. Stephenson
Sofie Arjon Schütte

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Anti-corruption courts are an increasingly common feature of national anti-corruption reform strategies. By mid-2022 we counted 27 such courts across Africa, Asia, and Eastern Europe. Reasons for their creation include the resolution of backlogs but also concerns about the ability of ordinary courts to handle corruption cases impartially. While there are no definitive best practices for specialised anti-corruption courts, existing models and experience provide some guidance to reformers considering the creation of similar institutions.

Main points

- There has been a steady increase in new specialised courts across Asia, Africa, and Eastern Europe, totalling 27 in mid-2022. On average, two new courts were set up each year over the past decade.
- About half of the jurisdictions with anti-corruption courts have relatively simple specialisation at trial level. Appeals are handled by the general court system. There is also an increase in the number of comprehensive parallel systems with specialisation at both trial and appeal levels.
- The most common reason for the establishment of special anti-corruption courts is the need for greater efficiency in resolving corruption cases promptly, signalling to domestic and international observers that the country takes anti-corruption seriously.
- In some countries concerns about the ability of the ordinary courts to handle corruption cases impartially have also led to the decision to create anti-corruption courts. Special procedures, such as new approaches to screening judicial candidates, are put in place to ensure the anti-corruption courts' integrity.
- Investments in the collection and accessibility of data are necessary to allow for a rigorous analysis of the anti-corruption courts' role in reducing corruption and of possible spill-over effects on the overall court system.

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About the authors

Matthew C. Stephenson

Matthew C. Stephenson is Eli Goldston Professor of Law at Harvard Law School. He is an expert in anti-corruption law, legislation, administrative law, and the application of political economy to public institutional design. He has served as a consultant, advisor, and lecturer on topics related to anti-corruption, judicial reform, and administrative procedure for the World Bank, the International Monetary Fund, the United Nations, and national governments and academic institutions in Europe, Asia, the Middle East, and North America. He is the founder and editor-in-chief of the Global Anticorruption Blog (www.globalanticorruptionblog.com), with more than 10,000 followers.

Sofie Arjon Schütte

Dr. Sofie Arjon Schütte leads U4's thematic work on the justice sector, including specialised institutions like anti-corruption agencies and courts. Previously, she worked for the Partnership for Governance Reform in Indonesia and the Indonesian Corruption Eradication Commission and has conducted workshops and short-term assignments on corruption in more than 15 countries. She is editor of the series of U4 publications on anti-corruption courts around the world.

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1. Introduction

In the ongoing struggle against corruption and related offences, many countries have established specialised anti-corruption institutions, distinct from the regular institutions of justice. The most familiar of these special bodies are the so-called anti-corruption agencies (ACAs), which typically wield some form of investigative and/or prosecutorial power. Scores of countries have ACAs of some kind, and there is already a great deal of research and commentary on ACA models.¹ Considerably less attention has been paid to another form of anti-corruption specialisation, namely specialised anti-corruption courts. Though these are not as ubiquitous as ACAs, many countries have created a special judicial body, division, or set of judges to focus, exclusively or substantially, on corruption-related cases. Many other countries are currently considering whether to establish such special courts. Yet while there is a body of literature that discusses judicial specialisation more generally,² there is little systematic, comparative analysis focused specifically on specialised anti-corruption courts.

In 2016, we took a first step towards filling that gap by presenting a comparative overview of the 17 specialised anti-corruption courts that existed at that time, with particular attention to the rationale for their creation and to basic design choices.^{3,4} The original U4 Issue was based on a review of secondary sources for a broad range of countries and on interviews with key stakeholders in five countries that have specialised anti-corruption courts of some kind: Indonesia, Kenya, the Philippines, Slovakia, and Uganda. Four country case studies based on this fieldwork were published in June 2016.⁵ Since the publication of the original overview, the anti-corruption court in Bulgaria has ceased to exist, while the one in Afghanistan is apparently defunct as well. The court in Mexico has not become operational, although enabling legislation has been in place for more than five years. Meanwhile, at least nine more countries have established specialised anti-corruption courts.

This updated paper expands on and modifies our 2016 work in light of these developments. We have incorporated 13 additional courts in the analysis and

1. E.g., Kuris 2014; Johnsen et al. 2011; Meagher 2004; OECD 2013; UNDP 2016.

2. E.g., Baum 2011; Gramckow and Walsh 2013; Zimmer 2009.

3. Stephenson and Schütte 2016.

4. Kuvvet (2021) used the information in our 2016 paper to do some preliminary analysis of certain aspects of specialised anti-corruption courts.

5. Schütte 2016a, 2016b; Stephenson 2016a, 2016b.

categorisation, including three Eastern European courts that were not considered in the original paper. The design of the new courts in particular allows us to make minor adjustments to the categorisation of court designs by function, though we observe emulation and convergence more than any new models. The new courts align with rather than radically challenge the observations of our original study. As in that study, the current discussion is based on a general review of secondary sources and on in-depth case studies of selected countries. Here we examine four: Madagascar;⁶ Ukraine;⁷ Zimbabwe;⁸ and Albania.⁹

This update follows the original structure. Section 2 explains our working definition of a ‘specialised anti-corruption court’ and lists the countries with such institutions that we reviewed in our research. Section 3 discusses the three principal rationales for establishing a specialised anti-corruption court – efficiency, integrity, and expertise – and offers some preliminary observations about each. Section 4 turns to questions of institutional design, highlighting the diversity of existing anti-corruption courts and identifying some of the key design questions that anyone thinking of setting up or reforming such a court should consider. A brief conclusion summarises some of the main themes of the paper and calls for investments in data transparency and research to allow for more rigorous assessments of the effectiveness and impact of specialisation.

Like the original U4 Issue, this update does not attempt to put forward best practices or to systematically assess the performance of any existing court system. Such an analysis would be well beyond the scope of this paper, given time, space, and data limitations. In particular, the lack of any systematic baseline information continues to preclude a general assessment of whether specialisation has been a good or a bad thing. This Issue’s more modest goal is to provide an overview of different types of specialised anti-corruption courts and to highlight some of the key challenges and trade-offs that must be considered when designing such institutions.

6. Schatz 2019.

7. Kuz and Stephenson 2020; Vaughn and Nikolaieva 2021.

8. Mundopa 2021.

9. Gunjic 2022.

2. Overview: Specialised anti-corruption courts and judges around the world

For purposes of this paper, we define an ‘anti-corruption court’ as a judge, court, division of a court, or tribunal that specialises substantially (though not necessarily exclusively) in the adjudication of corruption cases. Using this definition, our initial survey, conducted in 2015, identified 17 jurisdictions that had specialised anti-corruption courts at that time: Afghanistan, Bangladesh, Botswana, Bulgaria, Burundi, Cameroon, Croatia, Indonesia, Kenya, Malaysia, Nepal, Pakistan, Palestine, the Philippines, Senegal, Slovakia, and Uganda.

We have decided to omit Afghanistan’s anti-corruption court from this 2022 update as it is not clear whether has continued to exist in any form under the Taliban regime. Bulgaria’s Specialised Criminal Court was abolished by the Bulgarian Parliament in early 2022.

Meanwhile, nine more countries have established specialised anti-corruption courts since the publication of the original paper: Albania, Armenia, Madagascar, Serbia, Sierra Leone, Sri Lanka, Tanzania, Thailand, Ukraine, and Zimbabwe. Figure 1 shows the distribution of the courts around the world, with functional courts currently operating only in Africa, Asia, and Eastern Europe. The Americas do not have this level of specialisation on corruption cases. In Mexico, a 2015 constitutional amendment called for the creation of a specialised anti-corruption chamber in the Federal Administrative Court. Even though the amendment entered into force in 2017, judicial appointments were still stalled as of late 2021.¹⁰

10. Adams and Lopez 2021.

Figure 1. Anti-corruption courts in the world, 2022



Specialised anti-corruption courts: Albania, Armenia, Bangladesh, Botswana, Burundi, Cameroon, Croatia, Indonesia, Kenya, Madagascar, Malaysia, Montenegro, Nepal, North Macedonia, Pakistan, Palestine, the Philippines, Senegal, Serbia, Sierra Leone, Slovakia, Sri Lanka, Tanzania, Thailand, Uganda, Ukraine, and Zimbabwe.

In addition, there are three borderline cases that we did not include in our list but that deserve brief mention.

First, Papua New Guinea's National Court has created a 'fraud and corruption track', with streamlined procedures to expedite the processing of corruption cases. However, the judges presiding in these cases are regular National Court judges. Other than the special procedures, there is no meaningful institutional separation between this corruption track and the regular National Court. Thus, while the practice of creating special rules for corruption cases in the regular courts is itself interesting and worthy of study, Papua New Guinea's approach does not really involve the creation of a special court to hear corruption cases.

Second, Brazil has created a set of federal-level special courts to deal with cases involving money laundering and related financial crimes. While money laundering is obviously closely intertwined with corruption, in the end we did not include the Brazilian special courts in our survey, in part because 'core'

corruption offences, such as bribery and embezzlement, are not adjudicated in these courts.¹¹

Third, we have not included Tunisia’s special judicial chamber for complex economic and financial offenses, which was established in 2016 within the Court of Appeals in Tunis. The jurisdiction of this special unit is broad, including not only some bribery offenses but also tax, customs, foreign exchange, and banking crimes.¹² Because the court’s jurisdiction is defined in terms of complex economic crime rather than corruption as such, and we were unable to establish what percentage of the docket consists of corruption cases, we have not included it further in the analysis.

By contrast, we did choose to include countries where the specialised judge or court also has authority to adjudicate a set of non-corruption cases. These include Bangladesh, Croatia, and Slovakia, from the original paper, plus Albania, Montenegro, North Macedonia, and Serbia, added in this update. We took this decision because these judicial bodies have a substantial focus on corruption cases regardless of their complexity (although with some jurisdictional limitations as regards the public profile of defendants), and because corruption cases make up a substantial part of their dockets.

In none of these cases do we claim to have made the ‘correct’ decision regarding classification. As is almost always true when one tries to define the boundaries of any category, there are some tricky borderline cases and judgment calls. But our objective in this paper is not to provide a conclusive definition and definitive list of anti-corruption courts. Rather, we hope to illustrate some of the most significant institutional design choices involved in setting up judicial institutions that will focus on corruption cases.

In most countries that have specialised anti-corruption courts, these courts were created by statute, though there are exceptions.¹³ Specialised anti-corruption

11. Madeira and Geliski (2021, p. 20) have since argued for the inclusion of Brazil’s specialised courts as anti-corruption courts. While these authors point to many parallels with the specialisation and design processes discussed here, their findings do not contradict the different focus of these courts on money laundering – with corruption only one possible predicate offense among many others.

12. Art. 2, Organic Law no. 2016-77 of 6 December 2016.

13. In the Philippines, the 1973 Constitution specifically mandated the creation of a specialised anti-corruption court, a provision that was retained in the 1987 Constitution. In Botswana, senior judicial officials, purporting to act under existing legal authority, created special anti-corruption divisions within the existing court system without additional statutory authorisation. In Albania and Armenia, constitutional amendments in 2016 and 2021, respectively, mandated the creation of specialised anti-corruption courts.

courts are a relatively new phenomenon. Although the oldest such court, that of the Philippines, was established in the 1970s, none of the other specialised anti-corruption courts identified in this study began operation prior to 1999, and most of them were established within the past two decades (often concurrently with, or following, the establishment of a specialised anti-corruption agency). The dates of establishment of the 27 operational anti-corruption courts that we reviewed are listed in Table 1.

Table 1. Specialised anti-corruption courts by country and year established

Year	Country
1979	Philippines (pursuant to provisions in the 1973 Constitution)
1999	Pakistan
2002	Indonesia (substantially revised in 2009) Nepal
2003	Kenya (substantially revised in 2016)
2004	Bangladesh
2006	Burundi
2008	Croatia Montenegro North Macedonia Uganda
2009	Slovakia
2010	Serbia (Organised Crime Department with jurisdiction in large-scale corruption cases; in 2016 Corruption Departments at High Courts were added)
2011	Cameroon Malaysia Palestine
2012	Senegal (pursuant to authorisation in a 1981 statute)
2013	Botswana
2016	Madagascar Tanzania Thailand
2018	Sri Lanka Ukraine
2019	Albania Sierra Leone
2020	Zimbabwe
2021	Armenia

Although in many of the above countries the specialised anti-corruption courts have been entirely ‘home-grown’, in other cases the international donor community has played a significant role. Indeed, in a few cases the impetus to create a specialised anti-corruption court has been largely donor-driven. This was most evident in Afghanistan, where the international community

(particularly the United States and the United Kingdom) pressured the Afghan government to move rapidly to create anti-corruption courts – both because corruption was viewed as a serious obstacle to economic development and security in Afghanistan, and because international donors were frustrated by the extent to which the funds they provided to the Afghan government were misappropriated.¹⁴ Likewise, the creation of Nepal’s Special Court seems to have been at least partially a response to pressure from international donors concerned with substantial ‘leakage’ in donor-funded programs.¹⁵ In both of these cases, donors – principally the US and UK governments in the Afghanistan case, and principally the Asian Development Bank in the Nepal case – also provided extensive financial and technical support to the courts, both during and after their creation.

In Ukraine, civil society actors managed to enlist the support of the International Monetary Fund (IMF), the European Union (EU), the World Bank, and other donors for the creation of the High Anti-Corruption Court (HACC) in 2018. The IMF and EU even made the establishment of the HACC a condition for financial assistance. The HACC has since received considerable support from various donor agencies for its capacity building and facilities.¹⁶

In Albania, international stakeholders substantially influenced the establishment of the Special Courts against Corruption and Organised Crime. An expert group which devised the overall architecture of the reform included representatives of international service projects, and it modelled the new structure on existing anti-corruption institutions in Europe. In addition, the Venice Commission, a constitutional expert body of the Council of Europe, made several recommendations on the design of the court that led to adjustments. Essential to the success of the overall reform process in Albania has been its continued promotion by the EU and the United States, which have provided support through various initiatives. Crucially, Albania was granted EU candidate status in June 2014, but the start of accession negotiations was made conditional on sustained progress on justice reforms and actions to counter organised crime and corruption.¹⁷

Even in many cases where direct donor pressure had relatively little to do with the decision to establish an anti-corruption court, international donors have

14. BBC News 2009; Gutcher 2011; Mason 2011.

15. Dix 2011.

16. Vaughn and Nikolaieva 2021.

17. Gunjic 2022.

been heavily involved in providing training, financial support, and other assistance for these institutions, often as part of general support to judicial reform. Examples of such donor support include, but are certainly not limited to, technical training provided by the United States Agency for International Development (USAID) to the Uganda High Court’s Anti-Corruption Division;¹⁸ USAID support for streamlining adjudication of corruption cases and creation of an electronic register of corruption cases in Serbia;¹⁹ training and refurbishment provided by the United Kingdom’s Department for International Development (DFID) to the Anti-Corruption Division of the High Court in Sierra Leone;²⁰ training provided by the United Nations Office on Drugs and Crime (UNODC) for judges on Indonesia’s Tipikor courts and the Malaysian anti-corruption court;²¹ and both training and funding provided to Palestine’s Corruption Crimes Court by the United Nations Development Programme (UNDP), the European Union Coordinating Office for Palestinian Police Support, and several bilateral donors.²²

Clearly, although specialised anti-corruption courts are not as ubiquitous as ACAs, they are fast becoming an important part of the repertoire of anti-corruption reformers. There is a need to reflect critically on their potential justifications and drawbacks and to carefully consider how such courts should be designed. Section 3 focuses on the former issue – the ‘why’ – while section 4 turns to the latter question – the ‘how’.

3. Reasons for creating a specialised anti-corruption court

Court specialisation is a common phenomenon all over the world. Proponents typically emphasise that specialised courts can promote greater efficiency, often through streamlined procedures, as well as higher-quality and more consistent decisions in complex areas of law.²³ Consistent with this, Gramckow and Walsh find, in their review of international experiences with court specialisation, that specialisation can help the processing of complex cases that ‘require special expertise beyond the law, such as in bankruptcy, environmental, or mental

18. USAID Uganda 2010.

19. USAID Government Accountability Initiative 2021.

20. Anti-Corruption Commission of Sierra Leone 2019b.

21. UNODC 2014b; UNODC 2013.

22. Birzeit University 2013; UNDP 2012.

23. Gramckow and Walsh 2013, p. 6.

health issues, or cases that must be handled differently to better reflect the needs of a particular court user group, such as business cases or family matters'.²⁴ The arguments for specialised anti-corruption courts are similar, though these courts also have some distinctive features. While the reasons for the creation of specialised anti-corruption courts are varied, three stand out as particularly salient: efficiency, integrity, and expertise.

3.1. Efficiency

Perhaps the most common rationale for the creation of specialised anti-corruption courts is the desire to increase the efficiency with which the judicial system resolves corruption cases. Indeed, in most of the jurisdictions that have adopted a specialised anti-corruption court, the desire to speed up the processing of cases has been one of the main public justifications. This was true, for example, in Botswana,²⁵ Cameroon,²⁶ Croatia,²⁷ Malaysia,²⁸ Palestine,²⁹ the Philippines,³⁰ Sri Lanka,³¹ Thailand,³² and Uganda.³³

This is understandable. Many countries – particularly, though not exclusively, developing or transition countries – face substantial backlogs and delays throughout the judicial system. And while judicial inefficiency is undesirable in all cases, it may be especially pernicious with respect to anti-corruption cases, for two reasons. First, the urgency of making progress in the fight against corruption means that extensive judicial delays in dealing with corruption cases are particularly problematic, especially since such delays threaten to undermine public confidence in the government's commitment and capacity to combat corruption effectively. Second, substantial delays in processing cases increase the risk that defendants or their allies may exert undue influence on witnesses, tamper with evidence, or take other action to interfere with the ordinary and impartial operation of the justice system. While such concerns are not unique to corruption cases, they are especially acute with respect to such cases.

24. 2013, p. 1.

25. UNODC 2014a.

26. Iliasu 2014.

27. Balkan Insight 2008.

28. GTP 2010.

29. Miller 2010.

30. Stephenson 2016a.

31. Centre for Policy Alternatives 2018.

32. Heidler 2016.

33. Schütte 2016b.

How, exactly, is the creation of a specialised anti-corruption court supposed to increase the efficiency with which the judicial system handles corruption cases? There are three main mechanisms.

First, part of the logic is simply that a specialised court, which handles only corruption cases or similar offences, will have a more favourable ratio of judges to cases and will therefore be able to process cases more quickly. Besides improving the judge-to-case ratio, a specialised anti-corruption court may enable those overseeing the judicial system to assign more capable judges to corruption cases, further promoting their efficient resolution. While these factors sometimes help specialised anti-corruption courts process cases more quickly than the ordinary courts, this is not always the case. Many anti-corruption courts seem just as swamped as the regular court system, perhaps more so.

Furthermore, the judge-to-case ratio does not improve at all in those countries that do not limit their special anti-corruption judges to hearing only corruption cases. In Bangladesh, for example, although certain designated ‘special judges’ may preside over corruption cases, these judges also have to deal with regular cases and other (non-corruption) special cases. As a result, critics say, they remain overburdened and unable to ensure timely trials for corruption cases.³⁴ In the city of Rangpur, Bangladesh, as many as 226 corruption cases were reportedly pending in early 2021 because the position of special judge had been vacant for more than 18 months.³⁵ Similar criticism has been made with respect to the special ‘gazetted’ magistrates in Kenya, described in more detail in Box 1. One should also keep in mind that any improvement in the judge-to-case ratio for corruption cases, or the allocation of more talented judges to such cases, can come at the cost of diverting judicial resources from other areas of pressing need.

34. Chowdhury 2007.

35. Badal 2021.

Box 1. The Kenyan experience with gazetting magistrates for corruption cases

In Kenya, the 2003 Anti-Corruption and Economic Crimes Act (sec. 3) established a system for trying offences under that law, as well as other offences with which the defendant could be charged at the same trial. Under this system, the Judicial Service Commission can, through notice in the *Kenya Gazette*, appoint 'as many special Magistrates as may be necessary'. The expectation was that these 'gazetted' magistrates would deal with corruption cases in a timelier fashion by developing special expertise for complex economic crime cases that often rely on electronic evidence. Having been gazetted was like being licensed to hear corruption cases; but while that license was based on experience and seniority, no special training or other capacity building was provided to these magistrates. Despite these shortcomings, the system expanded from the capital city of Nairobi, the initial location of just two gazetted magistrates, to all the counties. By 2015, about 30 active magistrates were gazetted to hear corruption cases, but those outside Nairobi were still hearing other cases as well.

The effectiveness of this system was undermined by the Kenyan practice of rotating magistrates every two years. Many corruption cases cannot be finalised within that time frame, due to capacity constraints as well as defendants' ability to stall the process through all available legal means, such as by filing constitutional challenges that can take years to resolve. When a magistrate is rotated to a new post before the case is finished, either that magistrate has to travel back to finish the trial hearing or the case must be handed over to a new magistrate. Either alternative leads to additional delays (Director of Public Prosecutions 2014, 4).

In 2015, the system underwent changes, including the creation of an Anti-Corruption and Economic Crimes Division (ACEC) of the High Court at Milimani Law Courts in Nairobi (Munene 2015). As one of seven High Court divisions, the ACEC hears appeals from subordinate courts, but it is also a court of first instance for civil asset forfeiture. Such cases currently constitute the large majority of cases heard by the court. Another specialty of the ACEC is that it manages its own registry and can take over corruption and economic crimes filed with other High Court divisions (*Kenya Gazette*, vol. CXVIII, no. 153).

During the second half of 2019, before the Covid-19 pandemic slowed down all proceedings, the case clearance rate at the High Court was 54%. The average time to determine a case (disposition) was 266 days, with 93% of cases resolved within a year. Milimani Magistrates' Court, hearing first instance cases from Nairobi, had a clearance rate of only 44%; average time to disposition was 576 days, and only 14%

of cases were determined within a year. Unfortunately, the publication of case statistics on the Kenyan judiciary's website was discontinued after 2019 (Republic of Kenya Judiciary 2019).

Gazetted magistrates are reportedly still battling a backlog and delays caused by workload, absence of defence or witnesses, lack of court availability, and/or pending points of appeal at a superior court. The majority of corruption cases go on appeal at the High Court in Milimani, and these appeals seem to be processed with more efficiency, though they are increasingly in competition with the quickly growing number of civil forfeiture cases.

To address the delay in resolution of corruption cases, in February 2022 a specialised committee was established to examine bottlenecks and to advise the National Council on the Administration of Justice on how corruption cases can be moved expeditiously. This may include the development of practice guidelines to guide the conduct of trials handled by gazetted magistrates. Recommended practices may include pre-trial conferences where the trial schedule is set, issues are settled, and all parties including the magistrate, prosecutor, and defence attorneys participate.

The authors would like to thank the heads of the Anti-Corruption and Economic Crimes Division of the Office of the Director of Public Prosecutions, Transparency International Kenya, Milimani Law Courts in Nairobi, and GIZ Kenya for sharing their experiences and insights during semi-structured interviews in August 2015. We thank the Ethics and Anti-Corruption Commission for providing follow-up information in November 2021 and August 2022.

Second, anti-corruption courts may streamline the procedures for handling corruption cases in various ways. For instance, as discussed in greater detail below, some anti-corruption courts are courts of first instance, with appeals going directly to the country's supreme court, thus bypassing the usual intermediate appellate courts. Something like this structure is used, for example, in Burundi,³⁶ Cameroon,³⁷ Nepal,³⁸ Senegal,³⁹ Slovakia,⁴⁰ and Sri Lanka.⁴¹

36. Niyonkuru 2013.

37. Fombad 2015.

38. Poudel 2012.

39. LegiGlobe 2018.

40. Stephenson 2016b.

41. Centre for Policy Alternatives 2018.

Botswana presents an interesting variant on this theme. There, as in many other countries, the regular lower courts lack the jurisdiction to resolve constitutional questions. In an ordinary criminal trial, when a defendant raises a plausible constitutional objection, the trial must be temporarily suspended and the case transferred to the High Court, which will resolve the constitutional question and return the case to the lower court. Because defendants in corruption cases are especially likely to make constitutional arguments, this feature of the Botswanan system was a frequent source of delay in those cases. Botswana's chief justice therefore created the specialised Corruption Court as a division of the High Court, giving it jurisdiction over constitutional issues.⁴² However, in Botswana corruption cases still begin in the magistrate courts; the special anti-corruption division of the High Court remains an appellate tribunal. As a result, the creation of the specialised anti-corruption division has not sped up case processing as much as proponents hoped.⁴³

We see something similar in Uganda, where the Anti-Corruption Division of the High Court has managed to keep the average time to decision at first instance at about one year, despite deliberate attempts by accused persons to delay their trials by every possible legal means. Prior to 2010, if the defendant raised a constitutional objection, the trial would be automatically suspended and the issue referred to the Constitutional Court. However, an appendix to a Constitutional Court ruling in 2010 ended this practice. Now, before a purported constitutional objection is referred to the Constitutional Court, the Anti-Corruption Division must first decide whether the objection has sufficient merit.⁴⁴

Third, in order to speed up the processing of corruption cases, many jurisdictions impose special deadlines on their anti-corruption courts. Examples include Cameroon,⁴⁵ Nepal,⁴⁶ Palestine,⁴⁷ the Philippines,⁴⁸ and Indonesia.⁴⁹ The deadlines vary a great deal across countries, in part because of other differences in the structure, function, and organisation of the courts. There also seems to be quite a bit of variation across countries in the degree to which the deadlines are observed in practice.

42. UNODC 2014a.

43. Shapi 2015.

44. Schütte 2016b.

45. Iliasu 2014; Kamga and Fombad 2020.

46. Dix 2011; Koirala, Khadka, and Timsina 2015.

47. Law by Decree no. 37 of 2018.

48. Re: Problem of Delays in Cases Before the Sandiganbayan 2001.

49. Schütte 2016a.

The Corruption Crimes Court in Palestine is notable for its especially tight deadlines. At least as a matter of formal statutory law, this court is supposed to hear any case brought to it within ten days and to issue a decision within ten days after the hearing, with an allowable postponement of no more than seven days.⁵⁰ Of course, some may question whether these requirements are too demanding, not only because of the difficulty of meeting such short deadlines in practice – an issue discussed further below – but also because ten days may not be sufficient time to hear a case fairly and competently.

Malaysia provides another prominent (if less extreme) example. At the time Malaysia established its specialised anti-corruption courts, the average time required for a corruption case to make its way to final resolution was about 8.5 years.⁵¹ Malaysia therefore imposed a legal requirement that the anti-corruption courts process cases within one year (a requirement that does not apply to judges in the regular courts). In Malaysia, researchers found that roughly 75% of cases in 2012 were in fact completed within the one-year time limit.^{52, 53}

In contrast, anti-corruption courts in many other countries have struggled to adhere to the statutory deadlines. For instance, in the Philippines, the special anti-corruption court, known as the Sandiganbayan, is supposed to resolve each case within three months, but in practice cases could take close to a decade to resolve.⁵⁴ These extraordinary delays have prompted proposals for reform. A bill enacted in 2015 created two new divisions of the Sandiganbayan (bringing the total number of judges from 15 to 21), reduced the quorum requirements, and transferred cases involving smaller amounts of money to the regional trial courts.⁵⁵ This was followed by the introduction, in 2017, of new procedural rules that facilitate the efficient processing of criminal cases and prohibit several motions that have been abused to delay trial. In 2018 another reform gave the court the authority to serve subpoenas and notices electronically. Together these reforms led to a reduction in the average time of case disposition from eight years in 2016 to five years by 2019. During the pandemic the Sandiganbayan

50. Law by Decree no. 7 of 2010, as amended by Decree no. 37 of 2018.

51. GTP 2010.

52. GTP 2012; UNODC 2013.

53. No comparable studies with information on case completion time have been published since, but it appears that the annual disposal rate has declined from 746 cases in 2018 to 551 in 2019 and 461 in 2020, whereas the number of new cases being registered has increased (Malaysian Judiciary 2020). The Malaysian Anti-Corruption Commission reported a 91.1% conviction rate in the 292 cases it brought to court in 2021, but no information about the time of proceedings could be obtained (The Star 2022).

54. Stephenson 2016a.

55. Stephenson 2016a.

was one of the first courts in the Philippines to introduce remote hearings, and it has been able to keep the average case disposal time at around five years.⁵⁶

The Sandiganbayan is not the only specialised anti-corruption court that has struggled with lengthy delays. Indeed, failure to comply with case-processing deadlines is more likely the norm than the exception. In Nepal, the Special Court is supposed to decide each case within six months of filing, and any appeal of a Special Court decision is supposed to be resolved by the Supreme Court within three months.⁵⁷ In practice, however, cases take much longer, sometimes up to 11 years.⁵⁸ In Pakistan, the National Accountability Courts are supposed to resolve cases within 30 days but have taken closer to 500 days on average.⁵⁹

In general, although many specialised anti-corruption courts were created to improve efficiency in the processing of corruption cases, complaints about excessive delay in these courts are common in many (though not all) of the jurisdictions that have created them. In addition to the Nepal, Pakistan, and Philippines examples noted above, other countries where complaints about excessive delay have been prominent in the public discussion include Bangladesh,⁶⁰ Botswana,⁶¹ Croatia,⁶² and Kenya.⁶³ That said, some of the reasons an anti-corruption court might fail to meet its targets for timely case processing lie outside of the court's direct control. A common culprit (or perhaps scapegoat) is the prosecutor's office. In some cases, delays in case processing (and failure of the specialised courts to comply with their deadlines) have been attributed to overworked, understaffed, or inefficient prosecutor's offices. Examples include Botswana,⁶⁴ the Philippines,⁶⁵ and Nepal.⁶⁶ Some critics, however, have blamed the anti-corruption courts for being too indulgent

56. Authors' correspondence with Presiding Justice Cabotaje-Tang; A.M. no. 15-06-10-SC, Revised Guidelines of Continuous Trial of Criminal Cases; A.M. no. 13-7-05-SB, Revised Internal Rules of the Sandiganbayan.

57. Dix 2011.

58. Koirala, Khadka, and Timsina 2015.

59. Associated Press of Pakistan 2005.

60. Chowdhury 2007.

61. Piet 2014; Shapi 2015.

62. Balkan Insight 2008; Dorić 2016.

63. Ringera 2009.

64. Kuris 2014; Shapi 2015.

65. Stephenson 2016a.

66. Koirala, Khadka, and Timsina 2015.

with prosecutors who continually seek postponements – a criticism raised, for example, in Botswana⁶⁷ and the Philippines.⁶⁸

Taken together, experiences with specialised anti-corruption courts around the world suggest that although there may well be efficiency gains associated with the creation of such courts, reformers must be cautious. They should not be overly optimistic about, and should not overpromise, the extent of such gains. The degree to which efficiency gains will be realised in practice depends on many factors, including the resources devoted to the court, existing levels of judicial capacity, and several of the institutional design choices discussed further in Section 4.

3.2. Integrity

A second motivation for creating specialised anti-corruption courts is to ensure, to the extent feasible, that corruption cases are heard by an impartial and independent tribunal, free of both corruption and undue influence by politicians or other powerful actors. This rationale should be familiar, as it is one of the standard justifications for creating ACAs to investigate and/or prosecute corruption cases. While the integrity rationale has not featured as prominently as the efficiency rationale in public discussions regarding the creation of specialised anti-corruption courts, in a few instances the interest in ensuring judicial integrity was a central motivation for the creation of such courts.

Perhaps the best illustrations of this are Indonesia and Ukraine. In Indonesia, post-Suharto reformers established the so-called Tipikor courts primarily because of concerns about widespread corruption in the regular judiciary, which made it very difficult to secure corruption convictions of well-connected public officials and their cronies.⁶⁹ The designers of the Tipikor court system therefore enacted a number of specific measures to promote judicial integrity, including provisions requiring the participation of ‘ad hoc’ judges who are not part of the regular judiciary.⁷⁰ Similarly, civil society reformers in Ukraine after the Maidan Revolution distrusted the integrity of the regular courts, particularly in the context of corruption cases. They therefore pushed for the creation of a specialised anti-corruption court, with special candidate screening procedures

67. Shapi 2015.

68. Stephenson 2016a.

69. Schütte and Butt 2013; Butt and Schütte 2014.

70. Schütte 2016a.

that involve a panel of international experts, principally as a means of ensuring greater judicial integrity.⁷¹

While Indonesia and Ukraine are the best-known examples of countries where the promotion of judicial integrity was a principal rationale for the creation of specialised anti-corruption courts, this factor seems to have been significant in some other cases as well. In Slovakia, one of the arguments for giving the Special Criminal Court (SCC) jurisdiction over serious corruption cases was the concern that local networks of elites (and criminal elements) could interfere with or otherwise distort judicial decision making in the regional courts. The SCC, as a national court located in the capital, was thought to be less susceptible to this problem.⁷² In Albania, by constitutional law, candidates for judges and judicial civil servants in the specialised courts, as well as their close family members, must successfully pass a review of their assets and background. They must also consent to periodic reviews of their financial accounts and personal telecommunications.⁷³

The degree to which specialised anti-corruption courts are more willing and able than ordinary courts to convict high-level or well-connected defendants, however, appears uneven. Some courts have been praised for their independence. An example is the Indonesian Tipikor courts, although subsequent developments – including the expansion of these courts to all Indonesian provinces, following a successful constitutional challenge to the courts' original design – have raised concerns about an erosion of integrity in the Tipikor system.⁷⁴ In many other countries, however, the anti-corruption courts have been criticised for having done too little to eliminate the culture of impunity. Such criticisms have been voiced in, among other places, Burundi,⁷⁵ Cameroon,⁷⁶ and Nepal.⁷⁷ Moreover, although the usual worry raised with respect to political interference with the judiciary in corruption cases is that the courts will shield powerful wrongdoers from legal accountability, in some countries critics have alleged that the government is able to manipulate the anti-corruption courts, and anti-corruption prosecutions more generally, in order to

71. Kuz and Stephenson 2020.

72. Stephenson 2016b.

73. Gunjic 2022.

74. Schütte 2016a.

75. Tate 2013.

76. Timchia 2013; Kamga and Fombad 2020.

77. Koirala, Khadka, and Timsina 2015.

harass political opponents. Such criticism are heard in, for example, Bulgaria,⁷⁸ Burundi,⁷⁹ Cameroon,⁸⁰ and Tanzania.⁸¹

Of course, the creation of specialised anti-corruption courts is no guarantee that these courts will not themselves be corrupted. Even in Indonesia, where the role of the specialised courts as a bulwark against corruption has been most explicit, several judges on these courts have themselves been indicted for corruption.⁸² And in the Philippines, the Supreme Court dismissed a Sandiganbayan associate justice due to his alleged links to a massive corruption scheme involving the Philippine legislature.⁸³ The Bulgarian Specialised Criminal Court was criticised for having been captured by political interests of the Borisov government and colluding with the powerful Specialised Prosecutor's Office; both specialised institutions were abolished by a newly elected parliament in April 2022.⁸⁴

3.3. Expertise

A third justification for creating a specialised anti-corruption court, closely related to but distinct from the interest in increasing efficiency, is the desire to create a tribunal with greater expertise. After all, many corruption cases, especially those involving complex financial transactions or elaborate schemes, are more complicated than the run-of-the-mill cases that make up many generalist judges' criminal dockets. Indeed, the desire for a more expert adjudicative body – to promote not just efficiency but also accuracy – is a common justification for the creation of other types of specialised tribunals.⁸⁵ Perhaps surprisingly, though, the interest in fostering expertise has not been emphasised in most of the public discourse about the creation of specialised anti-corruption courts. True, this interest is sometimes invoked. For example, in Croatia, the creation of a specialised tribunal, to handle not only corruption cases but also other serious crimes, was in part an effort to build judicial capacity to handle the most complex and socially significant criminal cases, principally through the recruitment of more experienced judges to serve on these courts.⁸⁶ But in most countries specialised expertise has been less

78. Vassileva 2022.

79. Tate 2013.

80. Kamga and Fombad 2020.

81. Smith 2019.

82. Butt and Schütte 2014.

83. Stephenson 2016a.

84. Vassileva 2022.

85. Gramckow and Walsh 2013.

86. Marijan 2008.

prominent as a rationale for anti-corruption courts than for other sorts of specialised courts, such as those reviewed, for example, by Gramckow and Walsh.⁸⁷

That said, the fact that corruption cases often call for special expertise has provoked some discussion of reforms to existing anti-corruption courts. First, and most straightforwardly, there have been increasing calls for, and some investment in, better training for judges on anti-corruption courts, particularly regarding financial matters, accounting, and anti-money laundering rules. The need for anti-corruption judges to receive more training in these and other technical issues has been raised, for example, in Bangladesh,⁸⁸ Kenya (see Box 1), and Malaysia.⁸⁹ Second, some jurisdictions that do not currently provide for exclusive specialisation by their anti-corruption judges may reconsider that choice. In Malaysia, for example, the judges of the anti-corruption trial courts rotate between these courts and other courts; critics have argued that having generalist judges sit on a specialised court is in tension with the very notion of having specialised courts in the first place, and they have pressed for more specialisation.⁹⁰ And in Palestine, the 2012–2014 National Strategy on Anti-Corruption specifically called for judges of the Corruption Crimes Court to devote themselves exclusively to those cases so as to develop their expertise in the field.⁹¹ This was made mandatory by law in 2018.⁹²

Table 2 summarises the main mechanisms and institutional design considerations that are currently used in anti-corruption courts to raise efficiency, integrity, and expertise. The institutional design considerations are extremely simplified here and are discussed in more depth in Section 4.

87. 2013.

88. Chowdhury 2007.

89. UNODC 2013.

90. World Bank 2011.

91. PACC 2012.

92. Law by Decree no. 7 of 2010 as amended by Decree no. 37 of 2018.

Table 2. Summary of motivations, mechanisms, and design considerations

Motivation	Mechanisms	Institutional design considerations
Efficiency	Favourable judge-to-case ratio Efficiency gains through expertise Streamlined procedures Deadlines	Number of judges Scope of jurisdiction: <ul style="list-style-type: none"> • type of offence • magnitude of offence • identity of defendants Specialisation only at some levels (first instance or appellate) or throughout, depending on where bottlenecks are found Relationship to prosecutorial authorities
Integrity	Insulation from existing court system, e.g., location of court; special selection and recruitment mechanisms Surveillance and asset declarations	Number of judges and recruitment pool Geographic expansion (the larger and more decentralised the court network, the more difficult it is to oversee integrity, but there might also be benefits in some competition and possibility to refer cases to another geographic area)
Expertise	Selection of judges with special expertise and capacity to understand complex financial cases (regular rotation can be an obstacle unless there is a pool of such specialists) Targeted training	Scope of jurisdiction Human resources Management: establishment and maintenance of an expert pool

4. Institutional design choices

Although many countries have anti-corruption courts of some kind, there is a great deal of variation in the design of these institutions. Anyone considering the creation or reform of an anti-corruption court must pay attention to institutional design questions. There is no single ‘correct’ model or ‘best practice’ for the design of a specialised anti-corruption court; the appropriate design depends on many contextual factors and on the main objectives for the institution. In this section we discuss five of the most significant choices that institutional designers must make:

- The relationship of the special anti-corruption court to the regular judicial

system

- The size of the anti-corruption court
- The procedures for appointing and removing special judges
- The substantive scope of the anti-corruption court's jurisdiction
- The relationship to prosecutorial authorities

4.1. The relationship of the special anti-corruption court to the regular judicial system

Anti-corruption courts come in a variety of forms. Some are established as special branches or divisions of existing courts, while others are separate, stand-alone units within the judicial hierarchy. In still other cases, individual judges are given special authorisation to hear corruption cases, but there is no distinct anti-corruption structure, unit, or division. Across these categories, designated judges may work exclusively on corruption cases, or they may continue to preside over other cases as well. For example, in Bangladesh and Kenya, the trial court judges or magistrates designated as special judges/magistrates do not hear corruption cases exclusively; rather, they continue to serve as regular trial judges for ordinary criminal matters or other special cases.⁹³ And in Senegal, the Court for the Repression of Illicit Enrichment⁹⁴ is an ad hoc tribunal whose members are appointed from the pool of senior judges. These judges may continue to serve on their original courts even after appointment to the CREI.⁹⁵

Different degrees of institutional separation and specialisation come with different costs and benefits. Gramckow and Walsh⁹⁶ have set forth some basic considerations (see Figure 2). Generally speaking, a greater degree of institutional separation will typically be more appropriate when the caseload is higher, when the need for efficiency is greater, and when the need for specialised expertise is more acute.⁹⁷ Another consideration that is particularly relevant with respect to corruption cases is the fact that defendants in such cases can often afford the best lawyers, who will use all available legal means to delay the legal process and challenge a guilty verdict. In countries like Uganda,

93. On Bangladesh, see Chowdhury 2007; on Kenya, see Box 1.

94. Cour de Répression de l'Enrichissement Illicite, CREI.

95. Loi no. 81-54.

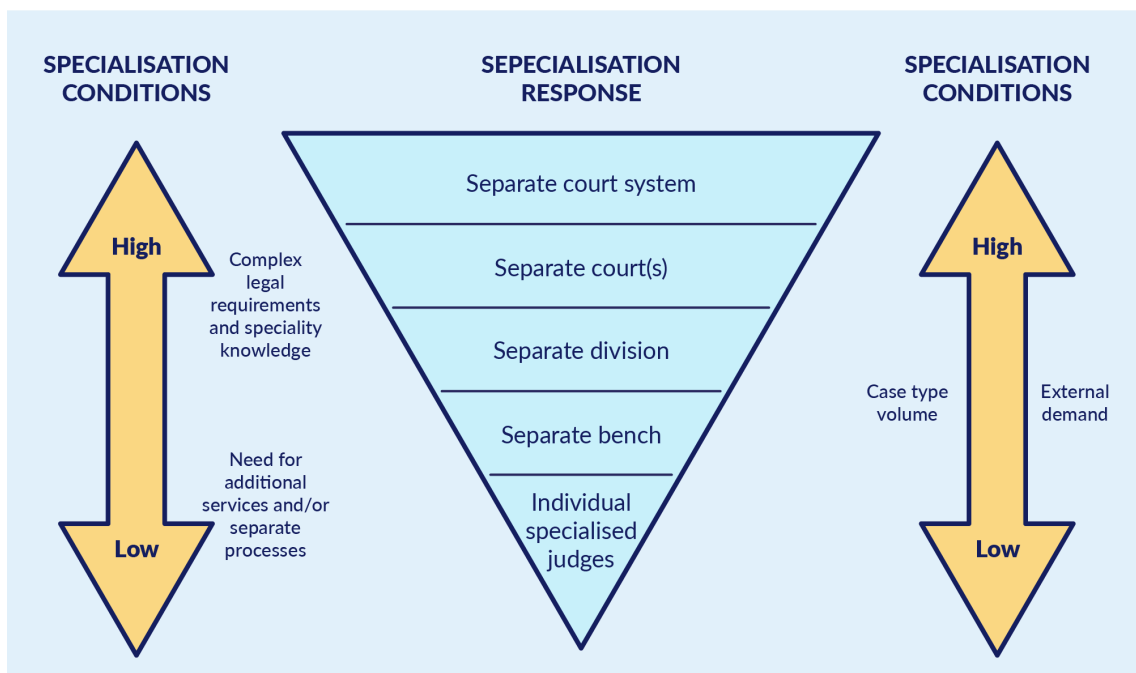
96. 2013.

97. Other factors that sometimes influence the optimal degree of specialisation – such as the need for special processes and services for litigants with special needs, such as juveniles, veterans, the homeless, or the mentally ill (Baum 2011, 106) – are less relevant in the context of anti-corruption courts.

where only the first instance courts are specialised for corruption cases, the general appellate courts can struggle with the high volume of appeals.⁹⁸

Institutional separation also comes with costs. The more elaborate and extensive the specialised system is, the more expensive it is likely to be. Other potential negative effects of specialisation may include overly close relationships between specialised judges and other actors (lawyers, experts); loss of perspective and failure to see the bigger picture; and the risk of counterproductive status differentials between specialist judges and generalist judges.⁹⁹

Figure 2. Gramckow and Walsh decision-making model for specialisation choice



Source: Adapted from Gramckow and Walsh 2013, p. 16.

While it is important to ask whether the anti-corruption court should be a separate body and whether the designated judges should specialise exclusively in anti-corruption cases, perhaps the most significant question with respect to the relationship between anti-corruption courts and the regular judicial system concerns the place of the special court in the judicial hierarchy. In particular, should the specialised anti-corruption court have original jurisdiction (that is, serve as a first instance trial court), or appellate jurisdiction, or some combination? And which court should have appellate jurisdiction over the anti-corruption court’s rulings? The countries that have created specialised anti-

98. Schütte 2016b.

99. Gramckow and Walsh 2013.

corruption tribunals have made quite different choices with regard to these questions.

Classifying the existing anti-corruption courts into categories that capture their relationship to the rest of the judicial hierarchy turns out to be difficult because of the great variety of systems. The place of the anti-corruption court in the judicial hierarchy (in terms of level or rank) does not always correspond to its function (first instance or appellate), and the systems for appeals vary considerably.

If we divide by function, four main categories can be distinguished. First, the most common approach is for a special anti-corruption court to serve as a first instance trial court. Examples in this category include Bangladesh,¹⁰⁰ Burundi,^{101, 102} Cameroon,¹⁰³ Nepal,¹⁰⁴ Montenegro,¹⁰⁵ Pakistan,¹⁰⁶ Senegal,¹⁰⁷ Sierra Leone,¹⁰⁸ Slovakia,¹⁰⁹ Sri Lanka,¹¹⁰ and Thailand.^{111, 112} Appeals from there go through one or more of the usual intermediate layers of appeals or directly to the country's supreme court.

Second, some countries have adopted a hybrid system in which the anti-corruption court can serve as a court of first instance in some cases (usually in more significant cases) and as an appellate court in other cases. The two notable examples in this category are the Philippines and Uganda. In the Philippines, the Sandiganbayan has exclusive original jurisdiction over corruption offences

100. Chowdhury 2007.

101. Niyonkuru 2013.

102. In April 2021, the Burundian National Assembly reportedly transferred the Anti-Corruption Court's authorities to the high courts and courts of appeals (US Department of State 2021; National Assembly of Burundi 2021). But in May 2022, the president appointed three judges to the Anti-Corruption Court, which points to yet another restructuring or return to the former anti-corruption court system in Burundi (Cabinet du Président 2022).

103. Fombad 2015.

104. Poudel 2012.

105. Law on Courts no. 11/2015.

106. National Accountability Ordinance.

107. LegiGlobe 2018.

108. Anti-Corruption Commission of Sierra Leone 2019a.

109. Stephenson 2016b.

110. Centre for Policy Alternatives 2018.

111. Library of Congress 2016.

112. Senegal deserves special mention here, because while appeals from the CREI go directly to the Supreme Court, on appeal the Supreme Court may only review questions of law, not questions of fact (Loi no. 81-54). This means that there is no mechanism in Senegal's legal system to appeal the CREI's judgment on factual issues, a feature that has attracted criticism for its alleged incompatibility with the rule of law and with Senegal's obligations under various human rights treaties (FIDH2014).

committed by sufficiently high-ranking public officials. When those offences are committed by lower-ranking officials, the regional trial courts have original jurisdiction and the Sandiganbayan has appellate jurisdiction.¹¹³ The Ugandan system is similar, in that the Anti-Corruption Division (ACD) of the High Court typically only serves as a court of first instance in high-value cases; in other cases, the ACD hears appeals from magistrate judges.

There are two important differences, however. First, in the Philippines, the Sandiganbayan's original jurisdiction is limited by law; while in Uganda, the ACD has original jurisdiction in all corruption cases, but as a matter of discretion it chooses only to serve as a court of first instance in more significant cases. Second, in the Philippines, Sandiganbayan decisions can be appealed directly to the Supreme Court.¹¹⁴ In Uganda, on the other hand, ACD decisions are appealed first to the Court of Appeal (which in the Ugandan judicial hierarchy is between the High Court and the Supreme Court), and only then to the Supreme Court.¹¹⁵ Tanzania emulated the Ugandan model in 2016 in that its Corruption and Economic Crimes Division at the High Court hears both appeals from lower courts as well as trials of cases of a certain magnitude. Unlike the Ugandan Anti-Corruption Division, it consists of only one judge and two lay judges who are appointed on a case by case basis but has no embedded magistrates. Its appeals go to the general Appeals Court.¹¹⁶

In Botswana all corruption cases are heard initially by regular magistrate courts, but appeals are taken to the Corruption Court (a division of Botswana's High Court), rather than to the ordinary appellate courts. Decisions of the Corruption Court can be appealed to the Court of Appeal, the highest court in Botswana's judicial hierarchy, in the same way as any other High Court decision in Botswana.¹¹⁷ As the Botswana Corruption Court only has appellate functions and never functions as a court of first instance, it should be considered a separate, third category: a special appellate division.

Fourth, and increasingly common, are specialised anti-corruption court systems that include both courts of first instance and appellate courts. These comprehensive parallel systems comprise a set of anti-corruption trial courts as well as a set of anti-corruption appellate courts to hear appeals from the anti-

113. Stephenson 2016a.

114. Stephenson 2016a.

115. Schütte 2016b.

116. The Economic and Organised Crime Control Act 2022.

117. UNODC 2014a.

corruption trial courts. Albania,¹¹⁸ Armenia,¹¹⁹ Malaysia,¹²⁰ Indonesia,¹²¹ Ukraine,¹²² and Zimbabwe¹²³ have created such systems.

Serbia constitutes a special case, with a comprehensive parallel system for large-scale corruption cases and first instance specialisation only for other corruption cases. Corruption cases involving high-level public officials and/or exceeding a certain monetary threshold are heard by the Organised Crime Court in Belgrade, with appeals going to the Organised Crime Department of the Appellate Court. Other corruption cases, however, are heard at the Corruption Departments that are part of the High Courts in Belgrade, Kragujevac, Niš, and Novi Sad.¹²⁴ Their appeals are heard by the general Appellate Court.

Table 3 classifies the anti-corruption courts we surveyed based on their relationship to the regular judicial system, distinguishing four broad categories.

118. Gunjic 2022.

119. Constitutional Law 2021.

120. NST 2011.

121. Schütte 2016a.

122. Kuz and Stephenson 2020.

123. Mundopa 2021.

124. Law 2018.

Table 3. Models of anti-corruption courts

Model	Countries
<p>Trial court</p> <p>Anti-corruption court has original jurisdiction over corruption cases. Appeals from there go through one or more of the usual intermediate layers of appeals or directly to the country's supreme court.</p>	<p>Bangladesh*</p> <p>Burundi**</p> <p>Cameroon</p> <p>Croatia</p> <p>Montenegro</p> <p>Nepal</p> <p>North Macedonia</p> <p>Pakistan</p> <p>Palestine</p> <p>Senegal</p> <p>Serbia***</p> <p>Sierra Leone</p> <p>Slovakia</p> <p>Sri Lanka</p> <p>Thailand</p>
<p>Hybrid court</p> <p>Anti-corruption court may serve as a court of first instance for some (more important) corruption cases, and serves as an intermediate appellate court for other corruption cases that are heard in the first instance by generalist trial courts.</p>	<p>Philippines</p> <p>Tanzania</p> <p>Uganda</p>
<p>Appellate court</p> <p>Anti-corruption court only hears appeals.</p>	<p>Botswana</p>
<p>Comprehensive parallel court with both trial and appeal function</p> <p>Anti-corruption court system includes both first instance trial courts and appellate courts.</p>	<p>Albania</p> <p>Armenia</p> <p>Indonesia</p> <p>Kenya*</p> <p>Madagascar</p> <p>Malaysia</p> <p>Serbia***</p> <p>Ukraine</p> <p>Zimbabwe</p>

* In Bangladesh and Kenya, lower-level courts' judges are designated as anti-corruption judges/magistrates, while still hearing other cases at the general courts as well. Kenya added a specialised appeals layer in 2015.

** The current design of the Anti-Corruption Court in Burundi could not be established with certainty at the time of this update.

*** In Serbia the functional specialisation depends on the magnitude of corruption cases. A comprehensive parallel system is in place for large-scale corruption cases and those involving senior public officials, whereas for all other cases specialisation is limited to the first instance trial level.

4.2. Size of the court: How many judges?

A deceptively simple question that must be addressed when creating a special anti-corruption court is how large such a court should be. How many judges should sit on this court, or – if there is not a single body or division designated as a special anti-corruption court – how many special anti-corruption judges should there be? The answer to this question depends on answers to the questions posed in the previous subsection, in that the number of judges required depends in part on whether the specialised court is a court of first instance, an appellate court, or both. Even taking this factor into account, countries vary quite a bit in terms of the number of judges they designate as specialised anti-corruption judges.

The main advantage to appointing a large number of judges to the special anti-corruption court is straightforward: insofar as one of the objectives of such a court is to promote the speedy, efficient resolution of corruption cases, a higher judge-to-case ratio is desirable. This is especially true in countries that have a very large number of cases that could potentially come before the court, posing the risk of substantial backlogs. In the Philippines, for example, legislation attempted to address the persistent long delays in cases before the Sandiganbayan by increasing the number of judges from 15 to 21. Some critics contended that this increase was not nearly large enough, and that the number of Sandiganbayan judges ought to have been tripled to 45.¹²⁵

There are, however, at least three potential costs to increasing the number of judges on a specialised anti-corruption court.

First, and most obviously, there is a concern about finding enough qualified judges. If the objective in creating a specialised court is not simply to improve the judge-to-case ratio for corruption cases but to ensure that highly qualified, experienced judges sit on these cases, it may be challenging to fill a significantly larger number of judicial positions, at least in countries with a limited judicial talent pool. This is especially true if the establishment of an anti-corruption court is accompanied by other judicial reforms that affect the operation of the judiciary, such as the lustration of judges.¹²⁶ Moreover, as the number of specialised anti-corruption judges increases, these positions may appear less ‘elite’ and thus less attractive to potential applicants.¹²⁷

125. Stephenson 2016a.

126. Gunjic 2022.

127. Schütte 2016a.

A second concern about expanding the size of the specialised court is that recruiting highly qualified jurists to the specialised court may draw talent away from the regular courts, with an adverse impact on the rest of the judiciary. In many countries this will not be a significant problem, as the total number of well-qualified judges will be sufficiently large relative to the size of the special anti-corruption court. But in at least some circumstances, the judicial talent pool may be small enough that institutional designers will need to take seriously the question of how to allocate the most talented judges across courts.

A third problem is related but distinct: anti-corruption courts must be staffed only by judges of high integrity. For this reason, as discussed further below, some anti-corruption courts make use of special screening and selection procedures. But the more judges that need to be recruited for the special court, the harder it will be to rigorously apply those integrity criteria.

Worrisome developments in the Indonesian Tipikor courts since 2010 illustrate the concern. Under the original design of that system, each judicial panel comprised two career judges and three ad hoc judges, selected according to a careful screening procedure. These ad hoc judges had a strong reputation for integrity and impartiality. After a Constitutional Court ruling required the expansion of the Tipikor system, there was a need to significantly increase the number of judges, including ad hoc judges. Not only were there substantial difficulties in staffing all these new positions in 34 provincial capitals, but there were many more reports of malfeasance by the new judges, suggesting that the integrity screening and oversight were not as effective as previously.¹²⁸

Since the initial recruitment round in 2010–2011, only a handful of new ad hoc judges have been appointed to the Tipikor courts. Concerns about their qualifications and integrity remain. Even though the law calls for the establishment of anti-corruption courts in all of Indonesia's 347 districts, this has not happened as of 2022. Some observers have proposed recentralising the court in Jakarta, thereby reducing the number of required judges and easing the costs of oversight. Others recommend that the judges from the provincial-level courts travel and hear cases at district level, closer to the local prosecution and witnesses.¹²⁹

In sum, when deciding how many judges to assign to a specialised anti-corruption court, institutional designers need to carefully evaluate the trade-off

128. Schütte and Butt 2013; Butt and Schütte 2014.

129. Ramadhan 2021.

involved in increasing the number of judges, weighing the favourable impact on the judge-to-case ratio against the potential adverse impact on judicial capacity and integrity. In countries that have a very large number of corruption cases but are blessed with a good supply of qualified judges, a larger anti-corruption court may make sense; by contrast, when the number of cases that require the attention of a specialised tribunal is more limited, and the number of qualified judges is more limited as well, a smaller court is probably advisable. The hardest situations – unfortunately perhaps also the most common – involve settings where the number of corruption cases is large, but there are also significant limits on the available judicial talent pool.

4.3. Selection and removal of judges

In most countries, anti-corruption judges have the status of regular judges, and so the procedures for appointing, removing, and overseeing them, as well as their terms and conditions of service, are the same as those for other judges at a comparable level of the judicial hierarchy. However, a few countries have special rules for judges on the anti-corruption court, most notably with respect to appointments. For example, there are sometimes special appointment rules or qualifications requirements for anti-corruption judges. These often take the form of requirements that the judge have sufficient rank and/or experience before becoming eligible for appointment as an anti-corruption court judge. In some countries, notably Slovakia, judges are also required to pass a security clearance, designed to ensure that they do not have anything in their backgrounds that might make them susceptible to blackmail or other forms of improper influence. This requirement in Slovakia was initially limited to judges on the Special Criminal Court, but it has since been extended to all judges.¹³⁰

The most far-reaching efforts to establish special rules for the selection of anti-corruption court judges have been in Indonesia and Ukraine. Judges who sit on the Tipikor courts in Indonesia include not only career judges but also so-called ad hoc judges (typically lawyers, law professors, retired judges, and other legal experts). Applicants for ad hoc judge positions must meet a strict set of selection criteria, with both civil society representatives and Supreme Court staff serving on the selection committee. Tipikor court judges are then appointed by the president for a term of five years, renewable one time only. Under the original 2002 legislation, the Tipikor courts decided cases in panels of five judges, three of whom had to be ad hoc judges; this system was designed to weaken the

130. Stephenson 2016b.

influence of the career judges, who were viewed as a greater corruption risk. However, pursuant to the 2009 revisions to the authorising legislation, enacted in the wake of the 2006 Constitutional Court ruling that invalidated the original Tipikor court system, the head of the Tipikor court in each judicial district (a career judge) can determine the combination of career and ad hoc judges on the panels.¹³¹

The Ukrainian High Anti-Corruption Court is the only anti-corruption court so far that involves international experts in the judicial selection process. The High Qualification Commission of Judges manages the recruitment process of candidates for the whole of Ukraine's judiciary. It is assisted by a Public Integrity Council (PIC) consisting of 20 members from civil society, academia, the media, and other professions, who participate in the screening of judicial candidates' ethics and integrity. For the selection of HACC judges, the Commission is supported by a second council, the Public Council of International Experts (PCIE). It consists of six international experts proposed by international organisations to the Ukrainian government. The PCIE screens HACC candidates for integrity and ethics based on their asset declarations, memos from the National Anti-Corruption Bureau, and interviews. To proceed in the selection process, candidates must have at least three supporting votes from the PCIE and nine supporting votes from the PIC, or 12 votes in total. So if a candidate is opposed by four of the six PCIE members, he or she cannot progress in the process.¹³²

Ukrainian civil society groups pushed hard for the inclusion of foreign experts in the HACC selection process because of their deep distrust of the ordinary judicial selection processes and their belief that foreign involvement was essential for ensuring the appointment of honest and impartial judges to the HACC. These civil society groups succeeded in gaining the support of the Venice Commission and the International Monetary Fund, which made the involvement of international experts in the HACC selection a condition for release of further loans. While the High Qualification Commission of Judges reportedly came to appreciate the rigour of the PCIE during the first-ever selection round of HACC judges, 28 judges who were rejected by the PCIE in early 2019 on integrity grounds remained sitting on the bench of other courts.¹³³

131. Schütte 2016a.

132. Kuz and Stephenson 2020.

133. Vaughn and Nikolaieva 2021.

Special selection and removal procedures for anti-corruption court judges are most sensible when concerns about judicial integrity are strongest. In Slovakia, the main perceived threat was from criminal networks that might be able to blackmail or corrupt judges. In Indonesia and Ukraine, the concern was the pervasive influence of powerful elites over the regular courts, as well as systematic corruption in the court system. Special judicial appointment procedures, however, may not be necessary to ensure integrity, and most other countries with special anti-corruption courts have not adopted special appointment and removal procedures. It is not always clear whether this is because policymakers in these countries have determined that special procedures are not necessary, or because of other political or practical considerations.

It is also important to keep in mind that special judicial appointment procedures are not sufficient to ensure integrity. They are, at most, one potentially helpful component of a larger strategy to protect judicial integrity, and they may or may not be worthwhile depending on the particular context. The case for special appointment procedures or criteria is strongest when the ordinary judiciary would be particularly susceptible to undue pressure or influence in corruption cases, which an alternative method of judicial selection might avoid.

4.4. Substantive scope of anti-corruption court jurisdiction: What cases does the court hear?

Anti-corruption courts vary in the scope of their substantive jurisdiction. Simplifying somewhat, there are three main dimensions along which a specialised anti-corruption court's jurisdiction may vary (aside from the distinction between original and appellate jurisdiction, discussed previously). These are (a) the specific offences covered, (b) the magnitude of the offence (usually measured by the amount of money involved), and (c) the seniority of the government officials allegedly involved.

Type of offence: Most anti-corruption courts deal with a broad range of corruption and corruption-related crimes. Furthermore, some of the specialised courts that we have classified as anti-corruption courts in fact have broader jurisdiction that includes not only corruption and related economic crimes, but other serious crimes as well. This is particularly common in Southeastern Europe, where the specialised courts also hear organised crime and other cases

(see Box 2). Similarly, Nepal's Special Court has jurisdiction not only over corruption and money laundering, but also over 'treason against the state'.¹³⁴ Conversely, the jurisdiction of some other anti-corruption courts is more narrowly limited to a subset of specific corruption-related offences. For example, Senegal's Court for Repression of Illicit Enrichment, as its name implies, only has jurisdiction over the crime of illicit enrichment – the use of public office or a relationship with the government to misappropriate public funds – and closely related corruption or concealment offences.¹³⁵

134. Parajuli 2010.

135. Loi no. 81-54.

Box 2. Extended jurisdiction of anti-corruption courts in Southeastern Europe

by Ivan Gunjic

There are a number of specialised courts and court divisions in Southeastern Europe that have substantial jurisdiction not only over corruption cases but over other types of offences as well. This additional group of offences includes (a) organised crime (Albania, Bulgaria, Croatia, Montenegro, North Macedonia, Serbia, Slovakia); (b) crimes against the state and the public order, most notably terrorism (Albania, Bulgaria, Montenegro, North Macedonia, Serbia); (c) crimes related to international criminal law (Montenegro, North Macedonia); and (d) other serious crimes, such as human trafficking (North Macedonia) or premeditated murder (Slovakia). The added responsibilities range from organised crime cases exclusively (Croatia) to all the above-mentioned offences (North Macedonia).

The scope of jurisdiction of the courts in question does not necessarily reflect the proportion of corruption cases in their docket. While the Special Criminal Court in Slovakia is competent to adjudicate considerably more types of offences than the USKOK Courts in Croatia, their respective dockets include a similar share of corruption cases, between one-third and one-half (Stephenson 2016b; Attorney General Croatia 2021). Remarkably, two-thirds of the caseload of the Specialised Department for Organised Crime, Corruption, Terrorism and War Crimes of the High Court in Podgorica, Montenegro, consists of corruption offences, despite the broad remit evident in the department's name (High Court Podgorica 2020).

There are several possible reasons for the extended jurisdiction of anti-corruption courts in Southeastern Europe. First, countries might aim to take advantage of benefits resulting from the pooling of different case types. Such benefits can arise from shared characteristics of the cases in question, such as similar challenges they pose for the judiciary or overlapping groups of participants. The close links between corruption and organised crime in the region (e.g., Holmes 2007) might help explain why these two types of offenses are consistently handled together. Furthermore, some anti-corruption courts in Southeastern Europe have incorporated competences of pre-existing court structures from which they emerged. The former Serious Crimes Courts in Albania, which were transformed into the SPAK Courts in 2019, had jurisdiction over certain corruption cases since 2014 (Gunjic 2022). The extended competences of anti-corruption courts in the region could also be the result of conditionality pressure from the European Union. For instance, the Audiencia Nacional of Spain, which holds jurisdiction over various types of serious crime, has been described as a possible blueprint for the Special

Court in Slovakia and the now-abolished Specialised Criminal Court in Bulgaria (Kuzmova 2014). Croatia and Romania played a similar role for Albania (Gunjic 2022).

Magnitude of the offence: While the jurisdiction of most anti-corruption courts is defined by the nature of the offence rather than its magnitude, in some countries the specialised anti-corruption court only hears cases involving sufficiently large sums. In Cameroon, for instance, the Special Criminal Court only has jurisdiction over embezzlement cases involving especially large amounts; other embezzlement cases are heard by the ordinary courts.¹³⁶ The Philippines amended the law on the Sandiganbayan to restrict that court's original jurisdiction to cases involving amounts of money that exceed a specified threshold.¹³⁷

Identity of the defendant: Some anti-corruption courts' jurisdictions are limited not only to particular offences, but to particular offenders. The Sandiganbayan, for example, only has original jurisdiction over cases brought against sufficiently senior public officials.¹³⁸ Interestingly, Burundi limits the jurisdiction of its Anti-Corruption Court in the opposite direction: although this court has broad jurisdiction over a range of corruption offences, only Burundi's Supreme Court can rule on criminal charges brought against a range of high-level government officials, including ministers, deputies, senators, generals, provincial governors, and senior judges.¹³⁹

In Serbia the identity of the defendant and/or the monetary magnitude of the offense both determine which specialised court will hear the case. Corruption cases fall under the jurisdiction of the Organised Crime Departments when the receiver of the bribe is a senior elected or appointed official and/or when the illicit gain exceeds the amount of US\$2 million or the value of the public procurement exceeds US\$8 million. The Corruption Departments have jurisdiction over a comprehensive list of corruption cases (such as abuse of office, bribery, embezzlement, and money laundering), as long as they do not fall within the jurisdiction of the Organised Crime Departments.¹⁴⁰

136. Iliasu 2014; Kamga and Fombad 2020.

137. Stephenson 2016a.

138. Stephenson 2016a.

139. Niyonkuru 2013.

140. Art. 13, Law on Organised Crime and Corruption 2016 and its amendment of 2018.

As emphasised above, there is no single right answer to the question of the appropriate substantive jurisdiction for an anti-corruption court. That said, it is possible to summarise some of the main advantages and drawbacks to imposing limits on the jurisdiction of such a court along one or more of the three dimensions noted above. The first advantage to imposing limits on an anti-corruption court's jurisdiction is straightforward: as discussed earlier, a key determinant of a court's efficiency is the judge-to-case ratio. While one way to improve that ratio is to increase the number of judges, another way is to decrease the number of cases, thereby enabling the court to focus its resources on those cases that are considered most important, or those for which adjudication by a specialised tribunal is otherwise most desirable. A second potential advantage to limiting the anti-corruption court's jurisdiction is political. One purpose of such courts is to increase public confidence that the legal system is able to tackle corruption effectively, countering the perception of impunity for high-level officials and their cronies. Also, because the specialised court may require considerable public resources, and its judges may sometimes be perceived as having more favourable terms of employment than other judges, the sustainability of the court may depend on the public's continuing belief that this body is necessary. Both of these perceptions can potentially be undermined if a large proportion of the court's docket appears to consist of cases that seem relatively unimportant.

This line of criticism is not purely hypothetical. In Nepal, for example, critics have harped on the fact that a large number of cases heard by the Special Court involve forged certificates rather than major bribery cases, though this may be more the fault of the anti-corruption agency's choices regarding which cases to prosecute.¹⁴¹ Likewise, in Slovakia, critical media coverage has highlighted the fact that many of the cases resolved by the Special Criminal Court involve petty bribes, sometimes less than 20 euros. This has led some civil society activists to propose limiting the SCC's jurisdiction to more important cases.¹⁴² And some critics complain that Zimbabwe's fledgling anti-corruption courts have been inundated with petty cases.¹⁴³

This is not to say, however, that limiting an anti-corruption court's jurisdiction is a good idea in all (or even most) cases. After all, if the specialised court is indeed a better venue than the regular courts for adjudicating corruption cases, then giving the specialised court broader jurisdiction will mean that the

141. Parajuli 2010; Gyawali 2021.

142. Stephenson 2016b.

143. Mundopa 2021.

specialised court's distinct advantages (greater efficiency, expertise, integrity, etc.) will be brought to bear on a larger number of cases. Moreover, even 'minor' corruption cases may be important – either because they cumulatively have a large impact on the society, or because instances of seemingly low-level corruption can figure significantly in the workings of larger corrupt networks.

4.5. Relationship to prosecutorial authorities

Often, specialised anti-corruption courts are directly linked to specialised anti-corruption authorities or similar prosecutorial bodies, with the jurisdiction of the anti-corruption court limited to cases brought by the ACA. And sometimes the ACA has exclusive jurisdiction to file cases in the special anti-corruption court. For some anti-corruption courts, particularly those in countries influenced by the more inquisitorial French civil law tradition, special anti-corruption prosecutors and investigators are integrated into the institution of the anti-corruption court itself, with those prosecutors having exclusive jurisdiction to bring cases before the court – though they may also take cases referred by other entities. This is so, for example, in Burundi,¹⁴⁴ Cameroon,¹⁴⁵ and Senegal.¹⁴⁶

In contrast, some anti-corruption courts hear cases brought by the regular prosecutor's office, either because the country does not have an ACA or because the ACA lacks the power to bring prosecutions directly. In Malaysia and Kenya, for instance, the public prosecutor (not the ACA) has the power to file cases in the anti-corruption courts.¹⁴⁷ And in some countries, the anti-corruption court may hear cases brought either by the ACA or by the regular prosecution service. In Uganda, for instance, the High Court's Anti-Corruption Division hears cases brought both by the Director General of Public Prosecutions and by the Inspector General of Government (Uganda's ACA), as well as by Uganda's Revenue Authority.¹⁴⁸

Indonesia is a particularly interesting example to consider here, because the authority to bring cases before the Tipikor courts was altered by a ruling of the Indonesian Constitutional Court. Under the original 2002 law, only Indonesia's ACA, known as the KPK, could bring cases before the Tipikor courts; equivalent

144. IMF 2010; Tate 2013.

145. Iliasu 2014.

146. Loi no. 81-54.

147. Yusoff, Murniati, and Greyzilius 2012; UNODC 2013; EACC n.d.

148. Schütte 2016b.

cases brought by regular prosecutors were heard by the regular courts. In 2006 Indonesia's Constitutional Court held that this two-track system violated the constitutional guarantee of equality before the law. The court's logic was that two defendants charged with identical misconduct could be tried by different judicial institutions – with different compositions, procedures, and conviction rates – depending on whether the KPK or the regular prosecution service brought the case.¹⁴⁹ The 2009 revisions to the law remedied this problem by requiring all corruption offences to go to the Tipikor courts, whether they are brought by the KPK or the regular prosecution service.

One of the issues that reformers should keep in mind is that the effectiveness of a specialised anti-corruption court depends in large measure on the effectiveness of the body or bodies that have the power to file cases in that court. When that body is ineffective, the entire process is hobbled: in other words, the chain is only as strong as its weakest link. In several countries, specialised anti-corruption courts seem to do a good job handling the cases that come before them, but the most significant cases – the ones for which a specialised court is arguably the most important – do not reach the court at all, because the ACA or prosecutor's office does not bring these cases. Indeed, corrupt elites may be content to allow a specialised anti-corruption court to operate without interference so long as they can exert enough influence over prosecutors or law enforcement to avoid any serious risk of prosecution. Several critics in Slovakia, for example, have asserted in the past that this is the main reason for the lack of any convictions of high-level politicians in Slovakia's Special Criminal Court¹⁵⁰ – something that was sadly confirmed by the unravelling of a corrupt network of police, prosecutors, and even a judge in 2020.¹⁵¹ Similarly, in Zimbabwe, the new anti-corruption courts have fallen short of expectations in part because of inadequate investigations and insufficiently prepared prosecutors.¹⁵²

There is some debate about the extent to which a specialised court itself can influence the behaviour of prosecutors. In the Philippines, many observers noted that the Office of the Ombudsman that investigates and prosecutes corruption cases was often responsible for the lengthy delays in cases heard by the Sandiganbayan, for example by not being adequately prepared on hearing dates and requesting frequent continuances. This has been addressed to some

149. Butt and Schütte 2014.

150. Stephenson 2016b.

151. Sirotnikova 2020.

152. Mundopa 2021.

degree by new procedural rules issued by the Supreme Court in 2017 and 2018.¹⁵³

The larger point here is that institutional designers need to think about the anti-corruption justice system as a whole and design the system so that the various parts work effectively in tandem. These component parts include the ACA (and/or regular prosecutors), special anti-corruption courts, law enforcement, and so on. Only when the context is well understood does it make sense to carefully consider a range of institutional design choices.

Box 3 provides a summary list of questions and basic choices to be made that may facilitate the decision-making process. One could choose to create a separate anti-corruption court or simply designate certain judges for corruption cases. A specialised anti-corruption court could hear trials, appeals, or both. It could be large or small, with broad or narrow jurisdiction. There could be special provisions for appointment and removal of judges; there could also be special, perhaps streamlined, trial and appeal procedures.

There are a number of different models for judicial specialisation in this area, and no one correct approach or set of clear best practices stands out. When deciding whether to create a specialised court, and how to design it, reformers must carefully consider the specific problems that specialisation is meant to redress. They should also take into account other aspects of the political, legal, and institutional environment in the country that might impose constraints or otherwise affect how the court will operate.

153. A.M. no. 15-06-10-SC, Revised Guidelines of Continuous Trial of Criminal Cases; A.M. no. 13-7-05-SB, Revised Internal Rules of the Sandiganbayan; see also Buan 2018.

Box 3. Anti-corruption courts: Basic choices

Why is specialisation needed or demanded? Is it because of efficiency and expertise needs, and/or integrity and independence issues in an environment where the regular courts are no longer trusted? Are there are other reasons? And is setting up a special mechanism the best way to deal with these challenges? Are there alternatives?

The reasons for setting up a court in the first place should be kept in mind when considering the following key choices regarding the model of specialisation:

- **The place of the anti-corruption court in the judicial hierarchy.** The most important questions are whether the specialised court will serve as a court of first instance or an appellate court, or both, and which higher court (if any) has the authority to review the anti-corruption court's rulings.
- **The size of the court.** How many judges will sit on the specialised anti-corruption court, or be designated as special anti-corruption judges? Specialisation can consume resources needed for broader reforms. Is there a sufficient pool of judges to draw on? If judges work inefficiently or lack expertise because of insufficient resources and training facilities, should this be addressed generally or should priority be given to special areas of law, such as corruption?
- **The substantive scope of the anti-corruption court's jurisdiction,** that is, what kinds of cases it resolves. Will the court's jurisdiction over corruption cases be expansive or strictly limited? If the latter, in what way will it be limited, e.g., by magnitude of the offence or identify of defendants?
- **The relationship between the specialised anti-corruption court and the specialised anti-corruption prosecutor.** The prosecutor might be the country's ACA, if one exists. The effectiveness of a specialised anti-corruption court depends in large measure on the effectiveness of the body or bodies that have the power to file cases in that court.
- **Whether to make any special provision for the selection, removal, or working conditions of the anti-corruption court judges.** Should they be employed on the same terms as regular judges at a comparable level of the country's judicial system, or should different terms be defined?
- **Whether to adopt substantially different procedures for the anti-corruption courts,** as compared to the procedures that would apply to similar criminal cases heard by the regular courts. If inadequate procedures in the general court system are part of the reason for specialisation, and if procedures cannot or should not be changed throughout the system, then special procedures may need to be developed.

5. Conclusion

Frustration with the capacity of the ordinary machinery of justice to deal adequately with corruption has prompted many countries to develop specialised anti-corruption courts. In many ways, the arguments for and against judicial specialisation in the anti-corruption context parallel similar considerations in other contexts, but corruption cases also present a number of distinct issues and challenges. The most commonly cited argument for the creation of special judicial bodies to address corruption is the need for greater efficiency in resolving corruption cases. This in turn signals to domestic and international audiences that the country takes the fight against corruption seriously. In some countries, concerns about the ability of the ordinary courts to handle corruption cases impartially, and without being corrupted themselves, have also played an important role in the decision to create special anti-corruption courts. The interest in fostering specialised technical expertise, which has been a significant factor in the push for other types of judicial specialisation, seems to have been at most a secondary consideration in most of the countries that have adopted specialised anti-corruption courts.

In the six years that have passed since the publication of our first mapping of anti-corruption courts, the number of courts has increased by a third, to 27 jurisdictions with distinct specialisation. Unfortunately, as we discovered when researching both the original 2016 Issue and this update, it is often difficult to find information about these courts beyond the statutes that established them. More and better data is needed, particularly data over time that would allow for rigorous performance evaluation.

The limited information available, in particular on the design of the newly established courts, shows a trend towards a relatively simple specialisation at first instance trial level, with appeals being handled by the general court system. About half of the jurisdictions we examined follow this model. We also observe an increase in the number of comprehensive parallel systems, and it is possible that some of the first category will see further specialisation over time at appellate level, depending on the number and complexity of cases. We have not observed further appointments of individual judges for corruption cases or more elaborate hybrid systems.

Reformers setting up new courts are certainly interested in the design and processes of existing anti-corruption courts. Unfortunately, no platform exists where the judges of anti-corruption courts could interact with peers in other

jurisdictions and those interested in pursuing specialisation in their own countries.

One aspect that has become more prominent in the setup of the newer anti-corruption courts, especially those in jurisdictions where public trust in the existing judiciary is low, is the screening and vetting of judicial candidates and other measures to ensure the integrity of the new bodies. The most notable example is the HACC in Ukraine, where international experts have been given a say in the screening of applicants. However, other Eastern European countries such as Slovakia, Albania, and Armenia have also set up rigorous selection procedures for the anti-corruption judges.

In 2022 it still seems fair to characterise the track record of existing anti-corruption courts as mixed. In some countries the special courts appear to have played a positive role. Others have floundered or have encountered significant challenges, and a few appear to have succumbed to corruption and/or political influence. More in-depth research is needed to arrive at a more definitive assessment of the success or failure of specialised courts to date and the suitability of particular models to address specific problems. Such an endeavour will require access to, and in some jurisdictions collection of, basic case data (number of cases, types of cases and defendants, duration of trials, sentences), as well as information on the country's courts and judges more generally. Without good data, it will be very difficult to assess whether specialisation has made any systematic difference. For policymakers this means that before investing in the creation of a new court, a clear, evidence-based analysis of the existing system and its mechanisms is needed.

References

Adams, J. E. and López, M. 2021. The anti-bribery and anti-corruption review: Mexico. *The Law Reviews*, 10 December.

Anti-Corruption Commission of Sierra Leone. 2019a. Chief justice commissions the Anti-Corruption Court. Press release, 11 December.

Anti-Corruption Commission of Sierra Leone. 2019b. Special anti-corruption division of the High Court created in the judiciary.

Associated Press of Pakistan. 2005. 286 cases pending with accountability courts: Official. *Dawn.com*, 7 May.

Attorney General Croatia. 2021. Report on the work of the State's Attorney Offices of the Republic of Croatia in 2020.

Badal, L. A. 2021. Justice on hold at Rangpur Special Judge's Court! *Dhaka Tribune*, 9 March.

Balkan Insight. 2008. Croatia sets up anti corruption courts. 28 November.

Baum, L. 2011. Specializing the courts. University of Chicago Press.

BBC News. 2009. US demands Afghan 'bribery court'. 15 November.

Birzeit University. 2013. Birzeit's Law Institute and UNDP agree on anti-corruption assistance project. 20 May. West Bank, Palestine.

Buan, L. 2018. EXPLAINER: SC ruling on inordinate delay and why it matters. *Rappler*, 1 August.

Butt, S. and Schütte, S. 2014. Assessing judicial performance in Indonesia: The Court for Corruption Crimes. *Crime, Law and Social Change* 62(5): 603–19.

Cabinet du Président, Republic of Burundi. 2022. Décret no. 100/058 du 06 mai 2022 portant nomination de certains magistrats de la cour anti-corruption.

Centre for Policy Alternatives. 2018. A brief guide to the Judicature (Amendment) Act no. 9 of 2018. Colombo.

Chowdhury, G. S. 2007. Country report: Bangladesh. In Resource Material Series no. 71, 103–12. United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI).

Director of Public Prosecutions, Kenya. 2014. Annual anti-corruption report by the director of public prosecutions. Nairobi.

Dix, S. 2011. Corruption and anti-corruption in Nepal. Norwegian Agency for Development Cooperation (NORAD).

Dorić, P. 2016. Croatia. Freedom House.

EACC (Ethics and Anti-Corruption Commission, Kenya). n.d. The Anti-Corruption and Economics Crimes Act 2003 explained: A manual for public officers and members of the public.

FIDH (International Federation for Human Rights). 2014. Sénégal: CREI a special court which does not guarantee the right to a fair trial. Press release, 25 June.

Fombad, C. M. 2015. Update: Researching Cameroonian law. Hauser Global Law School Program, New York University School of Law.

Gramckow, H. and Walsh, B. 2013. Developing specialized court services: International experiences and lessons learned. Justice and Development Working Paper 24/2013. World Bank Legal Vice Presidency.

GTP (Government Transformation Programme). 2010. Fighting corruption. In Annual Report 2010, 66–104. Government of Malaysia.

GTP (Government Transformation Programme). 2012. Annual Report 2012. Government of Malaysia.

Gunjic, I. 2022. Albania's Special Courts against Corruption and Organised Crime. U4 Brief 2022:1. U4 Anti-Corruption Resource Centre, Chr. Michelsen Institute.

Gutcher, L. 2011. Afghanistan's anti-corruption efforts thwarted at every turn. Guardian, 19 July.

Gyawali, K. 2021. Nepal's anti-corruption watchdog haunts low-level staff to leave the big fish aside. Onlinekhabar, 19 July.

Heidler, S. 2016. Thailand introduces new anti-corruption court. Al Jazeera, 2 October.

Holmes, L. 2007. The corruption–organised crime nexus in Central and Eastern Europe. In Terrorism, organised crime and corruption: Networks and linkages, ed. L. Holmes, 84–108. Edward Elgar.

Iliasu, M. 2014. The creation of the Cameroon Special Criminal Court: Better days for criminals.

IMF (International Monetary Fund). 2010. Burundi: Poverty Reduction Strategy Paper: Second implementation report. Country Report 10/312.

Johnsøn, J., Mathisen, H., Hechler, H., and de Sousa, L. 2011. How to monitor and evaluate anti-corruption agencies: Guidelines for agencies, donors, and evaluators. U4 Issue 2011:8. U4 Anti-Corruption Resource Centre, Chr. Michelsen Institute.

Kamga, S. D. and Fombad, C. M. 2020. The Cameroonian Special Criminal Court: The futility of combating corruption where the basics of constitutionalism are absent. In Corruption and constitutionalism in Africa: Revisiting control measures and strategies, ed. C. M. Fombad and N. Steytler, 417–433. Oxford University Press.

Kapama, F. 2016. Tanzania: Corruption court starts its operations. Tanzania Daily News, 8 September.

Koirala, B. P., Khadka, K., and Timsina, Y. 2015. Anti-corruption interventions in Nepal: Policy, practices and possible collective interventions. Royal Norwegian Embassy in Kathmandu.

Kuris, G. 2014. From underdogs to watchdogs: How anti-corruption agencies can hold off potent adversaries. Innovations for Successful Societies.

Kuvvet, E. 2021. Anti-corruption courts and foreign direct investments. *International Review of Economics and Finance* 72 (March): 573–582.

Kuz, I. and Stephenson, M. 2020. Ukraine's High Anti-Corruption Court: Innovation for impartial justice. *U4 Brief* 2020:3. U4 Anti-Corruption Resource Centre, Chr. Michelsen Institute.

Kuzmova, Y. 2014. The Bulgarian Specialized Criminal Court after one year: A misplaced transplant, an instrument of justice, or a tool of executive power? *Boston University International Law Journal* 32: 227–64.

LegiGlobe. 2018. Sénégal: Les juridictions spécialisées. 1 July.

Library of Congress. 2016. Thailand: Corruption court established. *Global Legal Monitor*.

Madeira, L. M. and Geliski, L. 2021. An analytical model of the institutional design of specialized anti-corruption courts in the global south: Brazil and Indonesia in comparative perspective. *Dados* 64(3).

Malaysian Judiciary. 2020. Yearbook 2020.

Marijan, R. 2008. Supreme Court judges not transferring to USKOK. *Daljje.com*, 16 November.

Mason, W. 2011. The rule of law in Afghanistan: Missing in inaction. Cambridge University Press.

Meagher, P. 2004. Anti-corruption agencies: A review of experience. IRIS Discussion Papers on Institutions & Development, no. 04/02. Center for Institutional Reform and the Informal Center (IRIS), University of Maryland, College Park.

Miller, D. E. 2010. Palestine authority inaugurates anti-corruption court. *Jerusalem Post*, 24 October.

Mundopa, M. (2021). Zimbabwe's anti-corruption courts. Progress and challenges. *U4 Brief* 2021:3. U4 Anti- Corruption Resource Centre, Chr. Michelsen Institute.

Munene, M. 2015. How corruption suspects use courts to derail and stop prosecution. Daily Nation (Kenya), 19 December.

National Assembly of Burundi. 2021. Analyse et adoption du Projet de loi organique portant réattribution des compétences de la cour anti-corruption, de son parquet général et celles de la brigade spéciale anti-corruption.

Niyonkuru, A. P. 2013. Anti-Corruption Court of Burundi: When the question of jurisdiction arises in reverse direction. Konrad Adenauer Stiftung African Law Study Library, vol. 16. Konrad Adenauer Stiftung, Rule of Law Program for Sub-Saharan Africa.

NST. 2011. 18 special courts for graft cases now open. Malaysia Today, 23 February.

OECD (Organisation for Economic Co-operation and Development). 2013. Specialised anti-corruption institutions: Review of models. 2d ed. Paris.

PACC (State of Palestine Anti-Corruption Commission). 2012. The national strategy on anti-corruption 2012–2014.

Parajuli, S. P. 2010. Criminal justice response to corruption in Nepal. In Resource Material Series no. 80, 179–188. United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI).

Piet, B. 2014. Corruption court worsens judicial delays. Mmegi Online, 16 October.

Poudel, M. S. 2012. A summary of anti-Corruption measures in Nepal. In Resource Material Series no. 86, 166–177. United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI).

Ramadhan, C. R. 2021. Reviewing the Indonesian anticorruption court: A cost-effective analysis. Law and Development Review 15(1).

Republic of Kenya Judiciary. 2019. Case management report for corruption cases: July to December 2019.

Ringera, A. 2009. Slow court system frustrating war against corruption. Daily Nation (Kenya), 5 September.

Schatz, F. 2019. Madagascar's specialised anti-corruption court: The quest to end impunity. U4 Brief 2019:2. U4 Anti-Corruption Resource Centre, Chr. Michelsen Institute.

Schütte, S. A. 2016a. Specialised anti-corruption courts: Indonesia. U4 Brief 2016:4. U4 Anti-Corruption Resource Centre, Chr. Michelsen Institute.

Schütte, S. A. 2016b. Specialised anti-corruption courts: Uganda. U4 Brief 2016:5. U4 Anti-Corruption Resource Centre, Chr. Michelsen Institute.

Schütte, S. A. and Butt, S. 2013. The Indonesian Court for Corruption Crimes: Circumventing judicial impropriety? U4 Brief 2013:5. U4 Anti-Corruption Resource Centre, Chr. Michelsen Institute.

Shapi, B. 2015. Corruption court completes two cases. Botswana Daily News, 4 February.

Sirotnikova, M. G. 2020 Slovakia works to end the corrupt era of 'our people'. Balkan Insight, 24 November.

Smith, J. 2019. Tanzania, where Magufuli is waging a war on democracy. Council on Foreign Relations blog, 15 November.

Stephenson, M. 2016a. Specialised anti-corruption courts: Philippines. U4 Brief 2016:3. U4 Anti-Corruption Resource Centre, Chr. Michelsen Institute.

Stephenson, M. 2016b. Specialised anti-corruption courts: Slovakia. U4 Brief 2016:2. U4 Anti-Corruption Resource Centre, Chr. Michelsen Institute.

Stephenson, M. and Schütte, S. A. 2016. Specialised anti-corruption courts A comparative mapping. U4 Issue 2016:7. U4 Anti-Corruption Resource Centre, Chr. Michelsen Institute.

Tate, T. 2013. A commitment to end corruption or criminalize anti-corruption activists? A case study from Burundi. Journal of Human Rights Practice 5(3): 478–488.

The Star. 2022. MACC: Special corruption courts key to high conviction rate for graft. 14 June.

Timchia, Y. 2013. Cameroon, where one can legally pay their way out of jail. Africa Review, 26 January.

UNDP (United Nations Development Programme). 2012. PACC and UNDP sign USD 270,000 agreement to enhance anti-corruption efforts. Press release, 30 August.

UNDP (United Nations Development Programme). 2016. European anti-corruption agencies: Key preventive mechanisms. Ukraine.

UNODC (United Nations Office on Drugs and Crime). 2013. Country review report of Malaysia.

UNODC (United Nations Office on Drugs and Crime). 2014a. Country review report of the Republic of Botswana.

UNODC (United Nations Office on Drugs and Crime). 2014b. Final independent project evaluation of the support to the fight against corruption: IDN/T81 Indonesia.

USAID Government Accountability Initiative. 2021. Adjudication of corruption cases.

USAID Uganda. 2010. Anti-corruption Country Threshold (ACT) Program: Evaluation report final.

US Department of State. 2021. 2021 country reports on human rights practices: Burundi.

Vassileva, R. 2022. Bulgaria's failed specialized criminal justice experiment. Verfassungsblog, 29 April.

Vaughn, D. and Nikolaieva, O. 2021. Launching an effective anti-corruption court: Lessons from Ukraine. U4 Practice Insight 2021:1. U4 Anti-Corruption Resource Centre, Chr. Michelsen Institute.

World Bank. 2011. Malaysia court backlog and delay reduction program: A progress report.

Yusoff, A. Y., Murniati, S., and Greyzilius, J. 2012. Combatting corruption: Understanding anti-corruption initiatives in Malaysia. IDEAS Malaysia.

Zimmer, M. 2009. Overview of specialized courts. *International Journal for Court Administration* 2(1): 46–60.

Statutes and Court Rulings

Armenia. Constitutional Law on Amending and Supplementing Constitutional Law on the Judicial Code of the Republic of Armenia, 2021. Unofficial translation.

Bulgaria. Act to amend and supplement the Judiciary Act. Published in State Gazette no. 32, 26 April 2022.

Croatia. Law on the Office for the Suppression of Corruption and Organised Crime, 2004. Unofficial translation.

High Court Podgorica (Montenegro). 2020. Work Report for the Period of 01.01.2019–31.12.2019. Su br. 8/2020.

Kenya. Anti-Corruption and Economic Crimes Act, 2003.

Kenya Gazette, vol. CXVIII, no. 153. Gazette Notice no. 10263, 9 December 2016.

Montenegro. Law on Courts of Montenegro (2015). 26 February 2015.

Pakistan. National Accountability Ordinance XVIII of 1999, as modified in 2010.

Palestine. Law by Decree no. 37 of 2018, Amending the Anti-Corruption Law.

Philippines. Re: Problem of delays in cases before the Sandiganbayan. A.M. no. 00805SC. Supreme Court Manila en banc, 28 November 2001.

Republic of the Philippines, Supreme Court, Baguio City. Revised guidelines for continuous trial of criminal cases. A.M. no. 15-06-10-SC. 25 April 2017.

Republic of the Philippines, Supreme Court, Manila, en banc. 2018 revised internal rules of the Sandiganbayan. A.M. no. 13-7-05-SB. 9 October 2018.

Senegal. Loi no. 81-54 du 10 juillet 1981: Créant un Cours de Répression de l'Enrichissement Illicite. Published in Journal Officiel de la République du Sénégal, 24 July 1981, 715–17.

Serbia. Law on organisation and jurisdiction of government authorities in suppression of organised crime, terrorism and corruption. 1 March 2018.

Tanzania. The Economic and Organised Crime Control Act. Revised Edition 2022. 22 June 2022.

Tunisia. Loi organique no. 2016-77 du 6 décembre 2016, relative au pôle judiciaire économique et financier. 6 December 2016.