Global Corruption Report 2009

Pakistan Report

Corruption Perceptions Index 2008: 2.5 (134th out of 180 Countries)

Conventions

ADB-OECD Anti-Corruption Action Plan for Asia-Pacific (endorsed November 2001)
UN Convention against Corruption (signed December 2003; ratified August 2007)

Legal and institutional changes

- In a meeting with a delegation of TI Pakistan on 17 July 2007, the former prime minister, Shaukat Aziz, gave assurance that the Public Procurement Rules of 2004 would be implemented in all the federal government ministries. He also claimed that transparency was 'hallmark' of government policy and that the government was promoting e-governance as a tool for more openness and in order to make processes more efficient.1[1] He claimed that the government had made it mandatory that integrity pacts are signed for all government contracts over Rs10 million'.[2] Moreover, the adoption of the rules 'minimizes discretion, gives priority to technical competence and ensures that award of contract is on the basis of lowest evaluated responsive bidder in the shortest possible time'.[3] He also agreed with TI Pakistan that the Election Commission should 'hold the elections in the most transparent manner'.[4] These commitments were undermined after the departure of the former prime minister in 2007. Under the caretaker government in 2008, complaints to the Public Procurement Regulatory Authority board were not acted upon.

- The former president, General Pervez Musharraf, issued the National Reconciliation Ordinance (NRO) on 5 October 2007, fifty-six days after ratification of the UN Convention against Corruption.[5] In many ways this was a setback for anti-corruption measures in Pakistan, as all proceedings under investigation or pending in any court that had been initiated by or involved the National Accountability Bureau (NAB) prior to 12 October 1999 were withdrawn and terminated with immediate effect. The NRO also granted further protection to parliamentarians, as no sitting member of parliament or a provincial assembly can be arrested without taking into consideration the recommendations of the Special Parliamentary Committee on Ethics or the Special Committee of the Provincial Assembly on Ethics.[6]

[1] Business Recorder (Pakistan), 19 July 2007; see www.transparency.org.pk/news/news.htm.
[2] Associated Press of Pakistan, 19 July 2007; see www.transparency.org.pk/news/news.htm.
[3] Ibid.
[4] Ibid.
[5] Business Recorder (Pakistan), 8 October 2007; see www.transparency.org.pk/news/news.htm.
[6] Ibid.

Public ills, private woes: the survival of the private sector during political Instability

Corruption is a serious problem in Pakistan, and this position is corroborated by a number of recent studies and reports. An assessment of Pakistan's infrastructure implementation capacity was carried out at the request of the government, and the resulting report was published in November 2007 jointly by the World Bank and the planning Commission of Pakistan.[7] It states that approximately 15 per cent of the cost of corruption lies in procurement, costing the Pakistani development budget (2007/8) over Rs150 billion.[8] Furthermore, the World Bank's Control of Corruption Indicator in 2007 Ranks Pakistan a mere 21.3 out of 100.[9]

In terms of the business sector, there are a number of measures that indicate that there is a serious issue of corruption. TI's Global Corruption Barometer 2006 reported that the impact of corruption on the private sector was perceived as almost equal to corruption in the public sector; and The Global Competitiveness Report 2008-2009 ranked Pakistan 101st out of 130 countries and found that respondents pointed to corruption as the second most problematic factor for doing business in the country, after government instability.[10]

The instability of the political situation in Pakistan cannot be underestimated as a factor in permitting corruption in the private sector to flourish. Despite Musharraf's claim to be committed to fighting corruption, little headway has been made, and it is still considered to be 'pervasive and deeply entrenched'.[11] Musharraf relinquished military power in November 2007, and his supporters were defeated in the February 2008 general election by a coalition of the Pakistan People's Party and Nawaz Sharif's Muslim League. Musharraf resigned in August 2008, facing impeachment for alleged crimes including gross misconduct and violation of the constitution.[12]

The inauguration of the new president, Asif Ali Zardari, on 9 September 2008 ushers in a new era, but not one without challenges. The new democratically elected government will, therefore, require the immediate enforcement of good governance and transparency standards to counter the various dire problems facing Pakistan. There is an increased threat of terrorism, hyperinflation, a reduction in the Karachi Stock Exchange 100 Index, a sizeable depreciation of the currency,[13] a substantial reduction in foreign currency reserves[14] and a huge trade deficit inherited from the previous government.

Banking fines for cartels: the new Competition Commission

In Pakistan, monopolistic practices and cartels are perceived to hold sway in such businesses as banking, cement,sugar,automobiles, fertilizers and pharmaceuticals, to name a few. Although cartels distort market

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[7] World Bank, Pakistan Infrastructure Implementation Capacity Assessment (Washington, DC: World Bank, 2007).
[8] Business Recorder (Pakistan), 24 September 2008; see www.transparency .org.pk/news/news.htm.
[9] 9 Control of corruption is one of the indicators used in compiling the Worldwide Governance Indicators (WGI) project. The indicator measures the extent to which public power is exercised for private gain, including petty and grand forms of corruption, as well as 'capture' of the state by elites and private interests. See http:// info.worldbank.org/governance/wgi/sc_chart.asp#.
[10] TI, 'Global Corruption Barometer 2006' (Berlin: TI, 2006); World Economics Forum, The Global Competitiveness Report 2008-2009 (Geneva: World Economics Forum, 2008).
[11] See www.business-anti-corruption.com/normal.asp?pageid=464.
[12] Welt online (Germany), 17 August 2008.
[13] See www.fxstreet.com/fundamental/analysis-reports/emerging-markets-weekly/2008-11-17.html;'Lost 23 Percent against the Dollar This Year as a Balance of Payments Crisis Developed'.
[14] US$ 16.4 billion foreign country reserves for October 2007; see The News (Pakistan), 13 June 2008; US$ 4.7 billion for October 2008; see Daily Telegraph (UK), 14 October 2008.

prices, they also create other anomalies. Existing players in an industry may firmly block the entry of new entrepreneurs through cartels, in order to ensure their own market dominance. This practice act as a clear disincentive for the much-needed expansion of Pakistan's industrial base.

In October 2007 a new Competition Commission was set up under the Competition Ordinance 2007, in order to 'provide for a legal frame work to create a business environment based on healthy competition towards improving economic efficiency, developing Competitiveness and protecting consumers from anti-competitive practices'.[15]

It was also meant to 'restrict the undue concentration of economic power, growth of unreasonable monopoly power and unreasonably restrictive trade practices', which are perceived to be 'injurious to the economic well-being, growth and development of Pakistan'.[16]

In one of its first initiatives, the Competition Commission challenged the Pakistan Banks Association (PBA) on its decision to 'collectively decide rates of profit and other terms and conditions regarding deposit accounts'.[17] The PBA is a membership association to which only banks in Pakistan can be affiliated, and it advertised its decision openly in a daily newspaper on 5 November 2007.The terms of the agreement included a number of its member bank impossible 'a 4 percent profit on Rs20, 000 deposits and a Rs50 charge on less than a Rs5, 000 balance' on bank accounts included in the new Enhanced Savings Account (ESA) scheme.[18] Furthermore, holders of basic accounts that met the criteria would have their accounts changed to ESAs without the prior instruction or agreement of the account-holders.

The Competition Commission considered this move by the PBA to be in violation of section 4 of the Competition Ordinance 2007, and, moreover, in acting as a cartel, the banks were alleged to have behaved anti-competitively. The implications of the changes included customers with balances of less than Rs5, 000 having to pay Rs50 each month and the transfer of accounts without the account-holders' prior permission. On 24 December a 'show cause' was issued to the PBA and the banks, and they were asked to provide justification of their behaviour to the commission by 10 January 2008.[19]

Both the PBA and the banks issued responses on 9 January, denying the charges of cartelization, and on 28 February 2008 a further statement was issued, arguing that the commission did not have jurisdiction in the area and that, furthermore, the changes had been made 'at the behest of the regulator [the State Bank of Pakistan]in the large public interest'.[20] The PBA also argued that it could not be considered to be stifling competition as the deposit amounts affected by the ESA scheme amounted to only 2.25 per cent. The commission found later, however, that in terms of the number of account-holders affected the impact was much higher, constituting 45.12 per cent.[21]

The final decision of the Competition Commission was made on 10 April 2008. The Commission argued that 'PBA has acted beyond its mandate…and has been instrumental in the formation of a cartel'.[22] As a

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[15] See www.mca.gov.pk/.
[16] See www.mca.gov.pk/law.htm.
[17] See www.mca.gov.pk/Downloads/Order_of_Banks.pdf
[18] Business Recorder (Pakistan), 13 February 2008.
[19] Competition Commission of Pakistan; see www.mca.gov.pk/Downloads/Order_of_Banks.pdf.
[20] Ibid.
[21] Ibid.
[22] Ibid.

result, it had deprived small accounts-holders of the benefits they were otherwise earning on their savings accounts. The PBA and the culpable banks were ordered to discontinue the practice, not to repeat it and to pay considerable fines. The PBA was fined Rs30 million, and the seven banks involved were fined Rs25 million each.[23]

The penalised institutions did have recourse to appeal to the appellate bench of the Competition Commission, but they failed to do so within the stipulated time. On 27 May the PBA did, however, appeal against the decision of the commission with the Sindh High Court, which ordered the commission not to take any action against the PBA before the decision had been adjudicated in court.[24]

The commission appealed against the High Court's decision, and on 15 September 2008 the Supreme Court allowed the commission to proceed against the banks.[25] The Competition Commission's move against the banking cartel, as well as the support provided by the Supreme Court, is encouraging. It has sent the message that such practices by the private sector, including the maintenance of unreasonable power by monopolies and restrictive trade practices, will not be tolerated and that the institutions in charge of monitoring such practices have the power to act.

Privatisation: Pakistan Steel Mills

Corruption in privatization in Pakistan is endemic: manipulation of the process can be found at all stages, from the evaluation of profits and assets of a company to the provision of kick-backs on completion of a settlement.

One of the most famous cases relating to privatization involves the attempted privatisation of Pakistan steel Mills. As Pakistan's largest and only integrated steel manufacturing plant, it is a private limited company, and 100 per cent of its equity is owned by the government.[26] The Plant is the biggest producer of steel in Pakistan and was installed in 1981, with the collaboration of Russia, by the Ministry of Industries, Production and Special Initiatives. In 1997 the government of Pakistan decided to privatize it, and, following the rules, secured approval from the Council of Common Interests.[27]

In 1998 the privatisation of Pakistan Steel Mills was abandoned, and to make it profitable the labour force was reduced from 20,000 to 15,000. As the steel mill had been designed, constructed and fitted out entirely by the Soviet Union, in February 2003 General Musharraf visited Moscow and signed an agreement to expand the production of the plant's steel from 1.1 million to 1.5 million tonnes. By December 2004, less than two years later, the privatisation of the plant was being discussed again, and by 10 February 2005 the decision to private the mill was taken by the government. The corporation, assessed at Rs72billion, was sold to a consortium for Rs21.58 billion on 24 April 2006.[28]

On 23 June 2006 the Supreme Court ruled against the privatization, and the Chief Justice Chaudhry

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[23] Ibid.
[24] Dawn.com (Pakistan), 16 September 2008.
[25] Ibid.
[26] Judgment of the Supreme Court in Pakistan Steel Mills Privatisation Case, 9 August 2006; see www.dawn.com/2006/08/09/tab.pdf/.
[27] This is a constitutional body, with a mandate for resolving inter-provincial inequalities and potential disagreements. The members are made up of the chief ministers provinces and a number of members nominated by the federal government. The council did not function between 1998 and 2006, when it resumed its work to decide on the privatisation of Pakistan steel Mills.
[28] Business Recorder (Pakistan), 18 August 2006.

prevented the sale of the state monopoly to the private investors.[29] The Supreme Court concluded that approving the award of the contract reflected disregard for the mandatory rules, as well as the information necessary for arriving at a fair sale price.[30]The unexplained haste of the proceedings also cast reasonable doubt on the ethics of the whole exercise. While Chief Justice Chaudhry acknowledged that it was not the function of the court to interfere with the policy-making of the executive, the privatization of the mills was 'vitiated by acts of omission' and violated the mandatory provisions of laws and rules.[31] The evaluation of the project and the final terms offered to the consortium were not in accord with the initial public offering given through the advertisement.[32]

This case had implications that still resonate today, as it is considered one of the causes of the dismissal of Chief Justice Chaudhry in March 2007, who was not reinstated until July 2008.It is, therefore, partially responsible for a great civil society movement in Pakistan, which called for the restoration of an independent judiciary. There are also unanswered questions that still need resolution. In October 2006 a case was filed against the then prime minister, Shaukat Aziz, and ten other ministers, as well as the governor of the State Bank of Pakistan, alleging misuse of Power-corruption as defined in section 9 of the National Accountability Bureau Ordinance 1999, which covers corruption and corrupt practices.[33] If found guilty, they would be subject to punishment, up to fourteen years' imprisonment, under section 10 of the ordinance for their involvement in the attempted privatization of Pakistan Steel Mills.[34] At the time of writing this report it was yet to be seen how the NAB, under the jurisdiction of the current government, will proceed with this case.[35]

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Additional reading

Human Rights First, Pakistan Courts and Constitution under Attack: Reversing the Damage (New York: Human Rights First, 2008)
M. Iqbal ,Global Integrity Scorecard: Pakistan (Washington, DC: Global Integrity, 2008).
S.Nishtar, Pakistan's Health Sector: Does Corruption Lurk ? (Islamabad: Heartfile and TI, 2007).
M.Sohail and S.Cavill, 'Does Corruption Affect Construction?', Paper presented at the developing Countries International Symposium 'Construction in Developing Countries: Procurement, Ethics and Technology' , Port of Spain, Trinidad and Tobago, 16 January 2008.
TI Pakistan: www.transparency.org.pk

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[29] Ibid.
[30] Judgment of the Supreme Court in Pakistan Steel Mills Privatisation Case, 9 August 2006; see www.dawn.com/2006/08/09/tab.pdf/.
[31] Ibid.
[32] Ibid.
[33] See www.sbp.org.pk/I_frame/NAB_Ord_1999.pdf.
[34] Ibid.
[35] See www.ppp.org.pk/refs/ref0613.html.According to The News (Pakistan), 19 January 2009, NAB will be replaced by a new independent accountability commission, which will pursue all cases filed with the NAB, including those relating to Pakistan Steel Mills. See also The News (Pakistan), 12 January 2009.