

South Korea's Co-Hosting of S4D and Democracy Diplomacy

Focused on the Anti-Corruption Agenda
of the Indo-Pacific



EAI
EAST ASIA INSTITUTE

As one of the co-hosts of the Summit for Democracy 2023, the South Korean government held an Indo-Pacific regional conference on “anti-corruption.” This reflects the world’s recognition of South Korea’s democratization and achievements over the past 35 years. A key to South Korea’s success in institutionalizing a high level of democracy, including rule of law, fair elections, judicial independence, and citizen participation, is that it has effectively dealt with corruption.

Regardless of the type of regime, all governments that pursue good governance have a great interest in establishing laws and systems to manage corruption. This is because governments are well aware that resolving corruption plays an important role in achieving economic growth and public trust toward the government. For this reason, the South Korean government was able to take advantage of this diplomatic opportunity to lead international cooperation among countries in the Indo-Pacific region with the common interest in “anti-corruption.”

Corruption undermines economic development and democracy. Predatory states impede economic development by diverting government resources for private use by the privileged few rather than creating public goods for the general population. Through kleptocracy, which seeks to maintain government power by extorting public funds, politicians continuously undermine the fairness of elections, making it difficult to institutionalize democracy. Civil liberties are bound to be restricted in countries where kleptocracy is rampant; as a result, the driving force for anti-corruption movements led by the people is weak. For this reason, particularly in countries where democratization has not been sufficiently achieved, it is the active will of national leaders that determines the success or failure of anti-corruption reform. In countries with a well-developed meritocratic bureaucracy, there exists “ethical universalism” that takes for granted the administration’s fairness and compliance with rules regarding the distribution of public resources, making it possible to achieve anti-corruption reforms even when the pressure from civil society is weak. However, the continuous and actual operation of the anti-corruption system is only possible through democratization of the political system and change in social awareness. Therefore, creating a virtuous cycle in which a country with functional administrative capacity initiates an anti-corruption reform, achieves economic development as a result of the institutional reform, and consolidates social coalitions supporting anti-corruption is of paramount importance in resolving corruption.

Grounded on the critical awareness above, this report analyzes the relationship between democracy and corruption, South Korea's anti-corruption experience, South Korea’s anti-corruption legislation and international cooperation, and the relationship between South Korea’s e-government and anti-corruption. Based on the key findings obtained from the analysis and the experience of South Korean cases, we propose anti-corruption action plans for intergovernmental cooperation in the Indo-Pacific region that the South Korean government can adopt.

Relationship between Democracy and Corruption

The state of democracy within a country significantly influences its politics, economy, and society. The opportunity structures and degree of punishment for corruption are also determined by the democratic nature of the political system. At the same time, it is also important to note that the level of prevalence of corruption greatly impacts how well democracy works. Systematic corruption can hinder the social establishment of democracy; therefore, the more corruption is reduced, the more mature democracy becomes. In the mutual cyclical relationship between democracy and corruption, an anti-corruption reform policy focuses on the creation of a virtuous cycle in which the development of democracy leads to effective anti-corruption activities and continuous anti-corruption activities lead to mature democracy.

The following institutional effects enable democracy to generate an impetus for reducing corruption. First, the operation of vertical accountability lowers the incentive to participate in corrupt activities by punishing corrupt politicians or political parties through elections. Second, increased institutional transparency enables mutual monitoring through party competition and strengthens the surveillance function of civil society and the media, which consequently increases the possibility of uncovering corruption. Third, the operation of horizontal accountability enables the limit on government power, rule of law, division of powers, and checks and balances to be established as the working norms of interaction among authorities. As a result, pre- and post-surveillance of those in power becomes more effective, which reduces the frequency of corrupt acts based on collusion between the authorities. Fourth, power decentralization contributes to the reduction of corrupt activities by lowering the possibility of large-scale corruption such as massive extortion and political-business collusion resulting from power concentration and by facilitating the establishment of anti-corruption coalitions at various junctions between the state and society.

The degree of democracy and corruption shows a unimodal pattern in which the severity of corruption increases during democratic transition and decreases during democratic consolidation. In other words, in the early stage of democratization, accountability of power, institutional transparency, and decentralization develop unevenly; resultantly, the monitoring of corruption and punishment cannot be effectively carried out, leading to a rise in the level of corruption. However, in the mature stage of democratization, fair elections take root, the independence of civil society and the media increases, separation of powers and the principles of checks and balances are established, and decentralization of power progresses. This greatly alleviates the severity of corruption. Although the

introduction of democracy does not immediately solve corruption, the deepening of democracy provides the most effective institutional background for solving corruption.

It is difficult to expect the development of democracy without active efforts to resolve corruption. First, the prevalence of corruption hinders the economic growth of a country and deprives the opportunity for democratic transition through economic development. Corruption negatively impacts economic growth by lowering investment efficiency, increasing transaction costs of international trade, and privatizing national resources and plundering the private sector. This ultimately undermines the economic foundations for democratic transition. Second, corruption protects the privileged who abuse their political power to pursue private gain. This weakens the norms of equality and fairness among the general public and lowers the trust in the rule of law and justice, ultimately undermining the democratic legitimacy of the political system. Third, corruption provokes citizens' antipathy toward political elites, which leads to skepticism about institutional politics. As a result, it contributes to the crisis of democracy by facilitating the rise of populist political forces.

In short, it is important to create a virtuous cycle between the development of democracy and the resolution of corruption. The development of democracy provides an opportunity to overhaul the anti-corruption system and provides conditions for the system to function properly. Resolving corruption improves the quality of democracy and increases citizens' trust and support for democracy. In short, continuous and effective anti-corruption activities against those in power and public officials require the development and maturity of democracy.

Anti-corruption Experience of South Korea

The democratic transition in 1987 was the starting point for South Korea's institutional anti-corruption efforts. The introduction of free and competitive electoral systems guaranteed citizens the right to judge the political elite, institutionalizing regular opportunities for citizens to replace corrupt political elites. The South Korean society has internalized a systematic incentive to establish a long-term anti-corruption system and introduce a sustainable anti-corruption policy. As an institutional consequence, the South Korean government enacted a series of anti-corruption laws after democratization and launched an independent government institution for combating corruption. In 1999, the Anti-Corruption Special Committee was launched to fight against corruption. Since then, this committee has evolved into the Anti-Corruption Committee (2001), National Integrity Commission (2005), and Anti-Corruption and Civil Rights Commission (2009). As a result, at the empirical level, a clear correlation can be found between the development of democracy and the improvement in curbing corruption in South Korea after the democratic transition in 1987.

South Korea's experience clearly demonstrates that while democratization itself is not a one-size-fits-all solution for corruption, the problem can be significantly improved through the democratically-reformed government's will and effort to institutionalize anti-corruption. In particular, the case of South Korea showed that legal arrangements are essential for tackling corruption. South Korea's effort to enact various anti-corruption legislations throughout the past thirty years has been essential in establishing a system to manage corruption independently from the government and transitioning to a political culture of integrity. Some representative anti-corruption laws include the amendment to the Public Service Ethics Act, Real Name Financial Transactions Act, Anti-Corruption Act, Improper Solicitation and Graft Act, and Conflict of Interest Act.

Civil society's surveillance and pressure have played an important role in continuously curbing corruption in South Korea. Through democratization, the negative perception of corruption spread in civil society and the social consensus on resolving corruption became stronger; therefore, the anti-corruption activities of civic groups received firm support from the people. The institutionalization of anti-corruption reform from the top and the eruption of anti-corruption pressure from the bottom created a virtuous cycle and revamped South Korea's corruption-friendly environment. The Citizens' Coalition for Economic Justice played a pivotal role in the process of legislating the real-name transaction systems in finance and real estate, and the People's Solidarity for Participatory Democracy contributed to the enactment of the Anti-Corruption Act and the boycott of corrupt candidates during election campaigns. These activities are examples of the important contributions made by civic groups in enacting anti-corruption legislations.

In short, South Korea is an example of actively promoting the institutionalization and legislation of anti-corruption reform in a relatively early period after democratization. Independent anti-corruption agencies and oversight bodies were established, and both the public and private sectors continued to create legislations to combat corruption. As the government's anti-corruption efforts were combined with civil society's role of monitoring, a virtuous cycle was created between the development of democracy and the efforts to fight corruption.

South Korea's Legislation on Anti-corruption and International Cooperation

Since corruption transcends national borders, the international community has worked together to solve this problem. The international community's discussions and cooperation began with the enactment of the Foreign Corrupt Practices Act in the United States in 1977, followed by the Organization for Economic Cooperation and Development's Anti-Bribery Convention in 1999, and led

to the conclusion of the UN Convention against Corruption in 2003. The UN Convention against Corruption (the “UN Convention”), which is based on a multilateral agreement signed for the prevention and resolution of corruption, is a key instrument of international anti-corruption strategy that aims to prevent transnational organized crime.

South Korea enacted the Anti-Corruption Act in 2001 before the UN introduced anti-corruption Convention. Around the ratification of this UN Convention in 2008, lawmakers legislated the Confiscation and Return of Property Acquired through Corrupt Practices. Subsequently, the Public Interest Whistleblower Protection Act (2011), the Improper Solicitation and Graft Act (2016), and the Conflict of Interest Prevention Act (2022) have been enacted. While the UN Convention categorizes corruption into direct and indirect practices, active and passive practices, and grand and petty practices, South Korea’s legislations have been established and amended to adjust to the social need for different types of corruption prevention and punishment. As a result, South Korea’s anti-corruption legislations have been well-received domestically and have been hailed globally as an exemplary case of international cooperation against corruption.

A distinctive feature of South Korea’s anti-corruption legislation is that laws were already in place before the establishment of an international convention for anti-corruption, which facilitated South Korea’s engagement in international cooperation efforts. First, the subject of bribery of public officials, as defined by the UN Convention, includes promises and provision of undue benefits as well as demands and receipts. In the case of South Korea, bribery of public officials has already been established as a criminal offense. Second, the UN Convention extends the regulations of national public officials to foreign public officials and employees of public international organizations. Although the South Korean Criminal Law does not include foreign public officials and officials of public international organizations as subjects of bribery, promises and offering of bribes to foreign public officials are subject to punishment under a separate law (International Bribery Prevention Act). Third, the crimes of embezzlement and breach of trust by public officials covered by the UN Convention are in line with South Korea’s Code and the Anti-Corruption Act, and the relevant practices are already under domestic legal control. Fourth, the UN Convention stipulates even the undue provision of money and goods by the private sector as targets for regulation. In the South Korean legal system, breach of trust under the Criminal Code and prohibition of receiving rebates under the Health and Medical Act are in place to handle such practices. In addition, by enforcing the Public Interest Whistleblower Protection Act, the private sector is encouraged to report public interest violations and public interest whistleblowers are protected and supported.

In South Korea’s anti-corruption legislation, the problems to be improved in legal compliance with international conventions include unlawful accumulation of wealth and obstruction of justice.

First, the UN Convention defines illicit enrichment as a significant increase in the assets that cannot be reasonably explained, not as a particular conduct. However, the South Korea's legal system does not have provisions to directly punish public officials for illegal accumulation, but instead imposes administrative sanctions (warnings, corrections, fines, dismissal, etc.). Because the current law fails to punish illicit enrichment itself as a crime, it is necessary to establish the *corpus delicti* for unlawful accumulation of wealth. Second, the UN Convention stipulates acts of obstruction of corruption investigation (inducing false testimony, interfering in the giving of testimony or the production of evidence interfering with the exercise of official duties) as obstruction of justice. On the other hand, the South Korean legal system has no regulations on obstruction of justice, creating a gap that needs to be filled.

In short, South Korea's legal system is an exemplary case that meets international standards, and the public responds highly to the anti-corruption law, contributing to international cooperation against corruption.

South Korean E-government and Anti-corruption

E-government is an instrument to enhance institutional transparency and effectively control corruption. The introduction of e-government alone does not guarantee anti-corruption, but it contributes to restoring public trust in government by increasing transparency and openness.

Since democratization, the South Korean government has introduced groundbreaking e-government policies and gradually implemented supplementary measures. Following the enactment of the Framework Act on Information Promotion in 1995, the e-Government Act in 2001 was an effort to realize transparency in public administration beyond effectively computerizing administration. The 'On-Nara System' in 2003 (an electronic procurement system), 'e-People' (an electronic petition system) in 2008, the Personal Information Protection Act in 2011, and the establishment of Government 3.0 made public information available to the public and enhanced the transparency and responsiveness of the government's public services.

The implementation of e-government contributes to anti-corruption reform by increasing the transparency of the policy process, but it is not sufficient for combating corruption. It is important to note that e-government systems such as public information openness, electronic procurement, petition and digital participation of citizens cannot eradicate corruption without active citizen participation. If Information and Communications Technology (ICT) advances in a country with low citizen participation, the introduction of e-government could rather open up new opportunities for corruption. South Korea is making continuous efforts to improve public access to information and better

communicate with the public on policy issues by creating a platform for citizens to participate in e-government, with an ultimate aim to promote transparency and anti-corruption effects. South Korea's experience is a model case in which active citizen participation coupled with the introduction of e-government created a virtuous cycle that helped combat corruption.

For the past five years, South Korea has been exporting e-government systems to many countries, mainly in Asia and Africa. Upon some foreign governments' request to the Anti-Corruption and Civil Rights Commission, South Korea has even conducted a training program on institutionalizing e-government. South Korea has a rich experience in supporting anti-corruption reforms and improving transparency of the governments in the Asia-Pacific region by disseminating its e-government system as well as human and intellectual resources via Open Government Partnership (OGP) and public funds.

In essence, the South Korean government has significantly enhanced its anti-corruption capacity by strengthening the transparency of the government's policy process and administrative work through actively introducing ICT into its administrative system. It encouraged citizen participation at various levels by using e-government and ICT and created a virtuous cycle of curbing corruption through which active citizen participation increased government transparency. The development of e-government coupled with citizen participation can contribute to strengthening anti-corruption capabilities, improving transparency in government administration, and restoring trust in government.

Policy Implications

The important findings regarding anti-corruption are as follows. First, the role of the government or political leaders is crucial during the initial stage of institutionalizing anti-corruption. The will of anti-corruption reform can be promoted either by a democratic government after democratization or by an authoritarian government seeking to promote the rule of law or economic development, apart from democratization. In the early stage of anti-corruption institutionalization, a minimalist approach aimed at reducing and preventing corruption is preferable to persuading anti-corruption reform to improve the quality of democracy.

Second, continuous anti-corruption reform can be expected to be effective only when it works together with a comprehensive democratic system and norms that improve the government's vertical accountability. This is why it is necessary to establish an electoral democracy in which corrupt politicians can be expelled through elections. It is also essential to institutionalize mutual monitoring and checks among authorities, such as separation of powers, checks by the parliament, judicial

independence, the establishment of the rule of law, and decentralization, by promoting the government's horizontal accountability.

Third, in the later stage of the institutionalization of anti-corruption, a strategy to reduce the size of the corrupt coalition force and nurture the anti-corruption coalition force is needed. The expansion of anti-corruption supporters must be done through solidarity with private sector parties, such as civil society, labor unions, media, educational organizations, and corporations. Political elites who pursue anti-corruption must secure continued support for anti-corruption reform through solidarity with civil society.

Fourth, cooperation with the international community can act as a catalyst for domestic anti-corruption reform. When the governments of developing countries deem anti-corruption as a path to modernization and seek cooperation with international and private anti-corruption bodies, the international community emerges as an effective ally for the anti-corruption reform. In particular, it would be effective to have Asian and African countries with model experience in anti-corruption reform. Their leadership would not provoke anti-colonial sentiment or be misunderstood as intervention in domestic politics by developing countries.

This report proposes the following agenda to share South Korea's experience in anti-corruption institutionalization with other countries in the Indo-Pacific. First, South Korea's institutionalization of anti-corruption has a great story to tell. As the anti-corruption story was accomplished through trial and error and consistent efforts to institutionalize and enact anti-corruption, it could be presented as a gradual reform model to the countries in the Indo-Pacific.

Second, the countries in the Indo-Pacific need to promote international cooperation while sufficiently understanding each other's social and economic conditions, in addition to respective anti-corruption laws and systems. The anti-corruption agenda can be practiced mutually while sharing information and experiences by establishing a public-private 1.5 track, tentatively named "the Indo-Pacific Regional Anti-Corruption Forum." South Korea's experience in exporting a transparent government model, especially through public funds for e-government and cooperation with the OGP, is a strength. The South Korean government must serve as a convener, collaborator, and facilitator of regional anti-corruption platforms while simultaneously seeking ways to apply global standards that it has acquired from engaging in advanced anti-corruption networks. By doing this, South Korea will be able to play a leading role in international cooperation against corruption in the Indo-Pacific.

South Korea's Co-Hosting of S4D and Democracy Diplomacy

Focused on the Anti-Corruption Agenda of the Indo-Pacific

Published on May 2023

Published by the East Asia Institute

ISBN 979-11-6617-608-1 95340

All statements of fact and expressions of opinion contained in this booklet are irrelevant to the official position of the East Asia Institute.