

CORRUPTION

| Thomas Pepinsky

Maria Ela L. Atienza

Francis E. Hutchinson

Hyeok Yong Kwon

OVERVIEW: CORRUPTION AND DEMOCRACY IN ASIA

THOMAS PEPINSKY

Democratic politics is about making government work for the people by giving citizens a voice in government and the ability to remove leaders from office. Corruption is the misuse of public office for private gain. When politicians use their office to enrich themselves or their political allies, they violate the public's trust and undermine the legitimacy of their governments. Politicians in liberal democracies should be more resilient to corruption than their counterparts in authoritarian regimes are, but experiences in Asia show that the region's democratic governments are by no means immune from corruption. As these papers on Malaysia, the Philippines, and South Korea reveal, corruption remains a central policy issue for democratic governments in Asia, and the politics of controlling corruption is central to understanding electoral politics and elite political maneuvering.

Of course, even though both democratic and nondemocratic countries face the challenge of corruption, democracies offer more opportunities to address corruption. In a democracy, citizens have the ability to vote politicians out of office for violating the public's trust. Politicians also have an incentive to write laws that can help control corruption. Democracies also tolerate criticism and media freedoms, both of which are essential for helping the public identify corruption where it exists. As noted in each paper, public debate about corruption impels governments to take steps to rein in corrupt dealings. By contrast, the anti-corruption efforts of nondemocracies depend on the will of unelected politicians, many of whom claim to oppose corruption while they simultaneously line their pockets.

Yet, despite the opportunities afforded to Asia's democracies, reducing corruption is still a significant challenge. Democratically elected politicians often seem immune to popular sanction, using their access to public coffers to reward their supporters. Bureaucrats and administrators who are appointed rather than elected can benefit from political favoritism. Most distressingly, the institutions that monitor corruption can themselves fall victim to politics, rendered ineffective by legislative or executive action or staffed by political appointees with private agendas. In Malaysia, the Philippines, and South Korea, these and other corruption challenges are afflicting their new and uncertain democracies, while their democratic governments are working to reduce corruption and fulfill the promises of democracy for their citizens.

Malaysia presents a particularly interesting case, as the country's high economic performance has coexisted with corruption ever since its independence. Francis E. Hutchinson notes that although corruption has long been an issue in Malaysia, it reached new heights under the administration of former Prime Minister Najib Razak; high-profile corruption scandals implicated the prime minister himself and his closest political allies. Malaysia's opposition movement seized upon these and other scandals to push through a change in government, revealing the importance of democratic politics in sanctioning elected politicians for their misuse of office. Yet, as subsequent events showed, a change in government is often insufficient for enacting sustainable reform. The newly elected democratic government in Malaysia struggled to root out corruption once and for all. Malaysia's party system and the courts proved

to be highly resistant to change. Moreover, the electoral impetus to punish the most corrupt politicians quickly had the counterproductive effect of distracting the new government from its handling of pocketbook issues, leading to its subsequent loss of power and the return of the old guard. Hutchinson concludes that efforts to combat corruption must be attentive not only to the worst political scandals, but also to the concerns of ordinary people. Malaysia's recent history of anti-corruption efforts shows that the popular voice can produce real change, but for it to last, that change requires grassroots support from civil society to maintain consistent pressure on those holding power.

Maria Ela L. Atienza's analysis of corruption and democracy in the Philippines captures the challenges facing a country with both a longer history of electoral democracy and a more fraught history of economic performance. Since the overthrow of the Ferdinand Marcos regime in 1986, spurred by a mass protest movement that targeted the regime's corruption and violence, successive democratic governments in the Philippines have struggled to contain corruption. Atienza identifies several institutional challenges in addressing corruption, ranging from administrative inefficiency and judicial inaction to threats from the executive and legislative branches against anti-corruption activists both in government and in civil society. At the same time, she highlights some notable examples of good policies, such as Bottom-Up Budgeting, which puts key policy decisions in the hands of local communities. Atienza's recommendations for further strengthening the Philippines' anti-corruption efforts bear strong resemblance to recommendations for strengthening Philippine democracy itself, focusing on transparency and civil society, institutional and judicial independence, and a more coherent party system that gives Philippine citizens a real voice in how their country is run.

In the last paper, Hyeok Yong Kwon showcases the recent democratic successes and continued challenges of corruption in South Korea. Echoing Hutchinson's points about the importance of civil society in Malaysia and Atienza's points about institutional challenges in the Philippines, Kwon emphasizes that even

in a country such as South Korea that has made demonstrable progress in recent decades in addressing corruption, the details matter and success takes time. Corruption scandals have led to the conviction and imprisonment of two former South Korean presidents, and successive administrations have created a series of high-level institutions responsible for investigating and prosecuting corruption cases. Yet South Korean politics continues to be characterized by close relationships between the state and large business conglomerates, and new anti-corruption bodies face crucial institutional design and resourcing problems. The case of South Korea nevertheless reveals that progress in addressing corruption is possible — and that democratic political competition makes this progress more likely, even if it is slow and halting at times.

In sum, these three papers provide anti-corruption activists and democratic policymakers with important tools and insights into democracy and corruption in the Asia-Pacific region. The most important principle is that success does not come easily or quickly. Combatting corruption requires sustained effort and coordination among elected officials and bureaucrats, with the understanding that official corruption is difficult to root out because those who are responsible for it have strong incentives to fight back using the tools at their disposal.

Reducing corruption also requires sustained pressure from civil society. For ordinary citizens to root out corruption, voters have to have the ability to sanction politicians at the ballot box, and civil society actors must be vigilant and committed to anti-corruption messaging that resonates with ordinary people's concerns. Few public policy problems are as thorny as corruption, but civil society action is part and parcel of any democratic solution to corruption.

ADDRESSING CORRUPTION AND PURSUING DEMOCRATIC GOVERNANCE IN THE PHILIPPINES

MARIA ELA L. ATIENZA

Corruption lingers in the Philippines despite continued efforts to strengthen institutions and democratic processes since 1986, when people power toppled the massively corrupt dictator President Ferdinand Marcos. This paper examines how corruption affects democratic governance, assesses the policies and practices introduced by both government agencies and other sectors to address corruption, and highlights best practices and policy recommendations. While the Philippines has laws and procedures to combat corruption, effective, independent institutions are needed to strengthen accountability and the rule of law. At the same time, these institutions need to actively engage the public, civil society organizations, media, and other nonstate actors in the process, not dismiss the latter's criticisms and proposals.

CORRUPTION AND DEMOCRATIC GOVERNANCE

Why does corruption persist in the Philippines? It has been observable in both authoritarian and formal democratic or democratizing settings. Over the course of his dictatorship, Marcos stole at least \$10 billion from public funds.¹ Courts in the Philippines, Switzerland, and the United States have convicted him and his family on many corruption-related charges. To this day, the Philippine government is still running after a large portion of the stolen money, and court cases are still active.

Since 1986, continuing corruption has prevented the Philippines from consolidating its democracy and strengthening governance. Like Marcos, some Philippine presidents and other government personnel have been charged and convicted of corruption. President Joseph Estrada, ousted from office in 2001, was convicted and sentenced for life for receiving payoffs from illegal gambling and taking commissions in the sale of shares to government pension funds. However, his successor, President Gloria Macapagal Arroyo, pardoned him.² Macapagal Arroyo, in turn, spent nearly five years in hospital detention, accused of misusing millions of lottery funds intended for charities, before being acquitted by the Supreme Court.³ Her husband also faced graft charges until a Supreme Court division composed mostly of her appointees dropped the cases.

According to a study by Filipino academic Eric Batalla, the continued weakness of governance institutions "allows the culture of agency and corruption to thrive and persist, even at the highest level of government."⁴ He cites two institutional weaknesses. First, despite numerous anti-corruption laws, the "perennially weak accountability environment" and the ineffectiveness of anti-corruption agencies "encourage strategic rent-seeking by private firms and individuals through deception and bribes (or income transfer) to government officials." Second, an inefficient prosecutorial and judicial system — most of the time subservient to political power

— further encourages corruption by failing to punish powerful individuals and groups for their crimes. These factors combined constitute the collective inability of institutions and agencies to defeat the forces that “create, adapt and maintain the opportunities for corruption.”

Another study by a group of political scientists, which assesses the performance of the 1987 Constitution, specifically states that (1) the legislature has not used its oversight functions consistently to monitor the performance of the executive branch; (2) courts’ and judicial officials and personnel are subject to threats and intimidation from the executive and legislative branches and other forces, which have sometimes led to assassinations; and (3) a number of institutional reforms to increase accountability still need to be implemented.⁵ Also contributing to institutional failures are the weak structure of political parties in promoting accountability and providing alternative programs of government, the continuation of patronage by political families, the dominance of the executive branch, presidential appointments to the judiciary that at times threaten judicial independence, and even the ineffectiveness of “independent” constitutional bodies.

Socioeconomic and other structural obstacles, such as entrenched cronyism, also challenge anti-corruption efforts.⁶ Poverty and unemployment are still significant in the country. By the first half of 2021, poverty incidence among the population increased to 23.7 percent (26.14 million Filipinos live below the poverty threshold).⁷ This may be one reason why poor people have been prone to exploitation and vote buying, including as recently as the May 2022 elections. Also an obstacle is that many Filipinos do not consider corruption an urgent matter. Fighting graft and corruption in the government did not figure in the top five national concerns in regular surveys before the pandemic; the main concerns were workers’ pay, inflation, and poverty.⁸ However, in 2021, President Rodrigo Duterte’s approval ratings in fighting corruption went down by 12 percent, around the time when the Senate was conducting hearings on the government’s alleged anomalous deals with the Pharmally Pharmaceutical Corporation, which provided COVID-19 related supplies to

all public facilities.⁹ Perhaps, Filipinos finally took notice of corruption issues because, in this case, the issues directly affected their survival, particularly against illness and death. But this attention was short-lived. Duterte finished his term with high approval ratings, and the draft Senate Blue Ribbon Committee report about the Pharmally investigation failed to get the support of the majority of senators, who disagreed with implicating the president in recommended plunder investigations and cases. Furthermore, Duterte’s vice president, Leni Robredo, who ran for president in the May 2022 elections on a platform of good governance and anti-corruption — and was supported by a wide coalition of forces, including both religious and progressive actors and volunteers — overwhelmingly lost to Marcos’s son, who ran on a platform of “unity” and was supported by huge resources, traditional politicians, and massive patronage and social media machinery.

ASSESSING POLICIES AND PRACTICES

Constitutional bodies and government policies on corruption

The 1987 Constitution seeks to establish mechanisms that will help avoid another dictatorship and tyranny and ensure that sovereignty remains with the people. It is explicit about the creation of independent bodies charged not only with safeguarding democratic institutions but also ensuring that the government is accountable. Bodies established under the constitution to date, including the Civil Service Commission, the Commission on Elections, and the Commission on Audit (COA), exercise powers within their sphere and coordinate with the three traditional branches of government. However, though these commissions are considered equal to the government branches, a range of operational constraints and external pressures affect their performance.

Analyzing the performance of these and other constitutional bodies in relation to external dimensions — such as widening democratization and equitable access — entails examining

the extent to which institutions have facilitated equal access to public office and how the right to suffrage has been secured. Laws are in place to ensure that (1) elections are held regularly, (2) only those who meet the qualifications can hold public office, and (3) officials who exceed their bounds are held accountable. Constitutional bodies have adhered to the guidelines set by the Constitution and statutes with respect to elective and appointive officials; however, independent commissions cannot impose additional constraints on, or prohibit, actions and processes that are not covered under existing laws passed by Congress.¹⁰

And, unfortunately, the institutional reforms deemed to have the widest social and structural implications have yet to be undertaken. For instance, the Constitution prohibits the entrenchment of political dynasties to help promote more competitive and fair elections and reduce patronage and corruption, but it is up to Congress to pass an implementing law. Beyond legislation covering local youth councils (*Sangguniang Kabataan*), no law prohibiting political dynasties has been enacted. Although there are term limits for elective positions, outgoing politicians are not barred from competing for other positions while their family members compete for the posts they are vacating. This makes it easy for powerful political families to proliferate and establish turfs. Even in the party-list system, political families continue to thrive. Other than Republic Act 7941 and the Omnibus Election Code, no strict policy governs political parties. As a result, political parties are loose agglomerations whose existence depends on the incumbent president or the most viable presidential contender.

Existing laws that do impose constraints have limitations. Regarding the right to suffrage, for instance, laws are in place to ensure a level playing field for candidates and to afford voters unfettered opportunities to subject candidates to scrutiny. There are also laws governing print and media advertisements, as well as restrictions on the amount that can be spent on election campaigns. However, in practice, campaign activities are difficult to monitor, and laws, including those covering campaign spending, are not strictly enforced.¹¹ Around the May 2022 elections, there were numerous

allegations of vote buying and use of public funds for campaigning, but the process of filing a complaint remains tedious and the judicial process takes a long time, discouraging complainants from pursuing cases.

With respect to the civil service, there are rules against nepotism, but they do not cover confidential positions. Moreover, although as a general rule entry to the civil service is based on merit and fitness, the competitive examination requirement does not apply to noncareer service positions. All public officers and employees have a duty to annually disclose assets and relatives working in the government by completing a Statement of Assets, Liabilities and Net Worth (SALN). However, this type of self-reporting means that the disclosure may not necessarily provide a correct assessment of wealth or the potential conflicts of interest. Duterte never made his SALNs public. And during his presidential term, Congress limited public access to the legislators' SALNs which were annually publicly accessible in previous years. Media and other sectors had to make a request. Unfortunately, the Office of the Ombudsman, charged with investigating public officials and employees, went a step further and issued new guidelines that restrict public access to government officials' SALNs. Requests for SALNs will not be acted upon if the filing official does not consent to the release.¹²

In terms of direct efforts to ensure honesty and integrity in public service, a number of measures have been established to address graft and corruption. In fact, the Philippines has a relatively long history of anti-corruption laws beginning in the 1960s. The anti-graft court (the Sandiganbayan), a product of the 1973 Constitution, was explicitly allowed to continue under the 1987 Constitution. The Constitution also provided for the creation of the Office of the Ombudsman. Subsequent legislative enactments have even expanded and modified the anti-graft court, but a major backlog in court dockets remains a challenge. And despite being independent and accessible, the Office of the Ombudsman is limited to being a watchdog and wields no power to reverse the actions of government offices.¹³ Presidents also appoint the Ombudsman, which can affect the office's decisions.

Independent constitutional bodies play an important role not only in checking major institutions but also in safeguarding democratic processes. Under Duterte, despite pressures, the COA has maintained its independence and has pointed out possible discrepancies in the budgets, expenditures, and procedures of specific government agencies. In the last two years, COA reports have led to investigations in Congress looking into questionable procurements and contracts of certain government agencies in relation to COVID-19 responses.¹⁴ However, the new administration's head of COA, appointed by President Ferdinand Marcos Jr., was Duterte's loyal solicitor general and his previous office has been flagged several times by COA for questionable expenditures.¹⁵ However, he resigned as COA chair early this October after being bypassed by the Commission on Appointments of Congress, leaving the position vacant as of this writing.

It is obvious that complementary policies and other actions are needed because the problem lies not so much with the Constitution's provisions but with the integrity of individuals and the capacity of institutions to make and implement rules.¹⁶ Both Presidents Benigno Aquino III and Duterte promised a freedom of information law, but there is still no such law to date. Whistleblowers of corruption and related acts are not well-protected under Philippine laws.

Civil society

The Philippines has an active civil society — including religious groups — that advocates human rights protection, anti-corruption, and other social welfare issues. Some of their best practices in the area of anti-corruption and good governance are discussed in the next section. The country also has a very active and vocal media that may sometimes be described as sensationalist but its exposés and investigative reports have nevertheless helped to highlight corruption. Rights of civil society organizations and the media are enshrined in the Constitution, but civil society members and journalists are constantly threatened, harassed, and even killed. These have intensified under the Duterte administration and will likely continue under the new administration.¹⁷

New administration

In his inaugural speech¹⁸ and first State of the Nation Address¹⁹, Marcos Jr. made statements about modernization, digitization, bureaucratic rightsizing, and greater coordination in all government processes to improve services and revitalize and make competitive the economy. However, he and his administration have not established clear programs to combat graft and corruption, patronage, cronyism, and political dynasties. Their commitments also sound very technocratic, with no mention of partnering with citizens and groups for greater accountability and transparency.

BEST PRACTICES AND POLICY RECOMMENDATIONS

Notable anti-corruption efforts have been initiated by both national and local governments, as well as civil society organizations, donor agencies, and the media.²⁰ For instance, the Supreme Court²¹ and the Office of the Vice President under Leni Robredo²² piloted some outstanding anti-corruption and transparency practices and programs. Some local governments have received national and international awards for transparent and anti-corruption programs that have led to better public services.

Perhaps one of the best examples is the Aquino administration's Bottom-up Budgeting (BuB) program, which was initiated to help the Philippines attain the Millennium Development Goals of inclusive growth and poverty reduction and, at the same time, to promote good governance at the local level.²³ The program involved citizens in all stages of the local government budgeting process. Numerous local governments participated, but the actual results varied due to different capacities, priorities, and levels of civil society engagement. In 2014, the program received the Gold Open Government Award for BuB during the inaugural Open Government Partnership event at the United Nations Headquarters in New York City. It was also recognized as one of five Best Practices in Fiscal Transparency during the Open Government Awards in 2016. However, under the Duterte administration, the BuB was transformed into the Assistance to Disadvantaged

Municipalities Program, which while targeting specific local governments did not encourage much civil society participation.

Despite programs such as these, various anti-corruption laws, and the actions of nonstate actors, the problem of corruption persists. This is largely due to the limited capacities and independence of institutions and personnel in charge of accountability and oversight functions, in addition to socioeconomic inequalities and threats to civil society, the media, and other stakeholders. Therefore, aside from addressing corruption directly, efforts must be made to close socioeconomic gaps, strengthen institutions and inclusive processes, and implement electoral and party system reforms.

Corruption was a prominent issue during the recent May 2022 elections, but the majority of voters do not consider it to be the most important one. In the absence of strong public pressure, the following five recommendations – based on best practices and the assessments by many academics and other institutions – could help to effectively combat corruption:

- 1. Enhance transparency in government transactions, including by giving the public unrestricted access to officials' economic status and profile.** Steps could include (1) passing the Freedom of Information Act to mandate the disclosure of public documents, with well-defined exceptions and clear procedures for accessing public documents; and (2) lifting current restrictions on public access to officials' SALNs, as this access is mandated by Republic Act 6713 (Code of Conduct and Ethical Standards for Public Officials and Employees).
- 2. Ensure a strong, accessible, independent justice system** that can deal with corruption cases more effectively and without pressure. This could be done by strengthening the capacities and independence of the courts and the justice system, making procedures more accessible, and protecting personnel as well as whistleblowers and witnesses.

- 3. Develop an independent legislature and accountability institutions** that can exercise their oversight functions. Steps could include strengthening the capacity and independence of the legislature – as well as accountability and anti-corruption institutions – to ensure greater transparency and oversight of public offices, officials, and employees and to improve the quality of public services.
- 4. Develop strong party and electoral systems** that can champion anti-corruption initiatives and more democratic practices. Steps could include reforming the party and electoral systems to develop more program-based political parties that will be more competitive, inclusive, participatory, and accountable and that will combat patronage and traditional politics.
- 5. Encourage more community and civil society participation** in democratization and accountability efforts. Steps could include (1) revisiting the BuB approach to promote inclusive growth, poverty reduction, and good governance at the local levels and expanding the role of citizens and civil society in the process; (2) maximizing existing participatory monitoring processes in decision-making and budgeting at all levels; and (3) strengthening the capacities and rights of citizens, civil society, the media, and other nonstate actors to monitor government performance and hold government accountable.

The first four recommendations focus on institutional reforms, but the reforms could also help address some of the agency and actor-oriented issues that are the focus of the fifth recommendation.

REFERENCES

- 1 David Chaikin and J.C. Sharman, "The Marcos Kleptocracy," in *Corruption and Money Laundering*, eds. Chaikin and Sharman (New York: Palgrave Macmillan, 2009), 153-186, https://doi.org/10.1057/9780230622456_7.
- 2 Manny Mogato, "Former Philippine president Estrada pardoned," *Reuters*, October 25, 2007, <https://www.reuters.com/article/uk-philippines-estrada-idUKMNB0007120071025>.
- 3 "Philippines Gloria Arroyo plunder charges dismissed," BBC News, July 19, 2016, <https://www.bbc.com/news/world-asia-36832180>.
- 4 Eric V.C. Batalla, "Grand corruption scandals in the Philippines," *Public Administration and Policy: An Asia-Pacific Journal* 23, no. 1 (April 2020): 73-86, <https://doi.org/10.1108/PAP-11-2019-0036>.
- 5 Maria Ela L. Atienza, Aries A. Arugay, Francis Joseph A. Dee, Jean Encinas-Franco, Jan Robert R. Go, Rogelio Alicor L. Pano, and Alinia Jesam D. Jimenez, "Constitutional Performance Assessment of the 1987 Constitution: Summary of Findings," (Sweden and Quezon City: International IDEA and University of the Philippines Center for Integrative and Development Studies, February 2020). <https://www.idea.int/publications/catalogue/constitutional-performance-assessment-1987-philippine-constitution>.
- 6 Farzana Nawaz and Alfred Bridi, "Overview of corruption and anti-corruption in the Philippines," (Bergen: U4 Anti-Corruption Resource Centre and Transparency International, August 2009), <https://www.u4.no/publications/overview-of-corruption-and-anti-corruption-in-the-philippines>.
- 7 Dennis S. Mapa, "Proportion of Poor Filipinos Registered at 23.7 Percent in the First Semester of 2021," (Quezon City: Philippine Statistics Authority, December, 2021), <https://psa.gov.ph/content/proportion-poor-filipinos-registered-237-percent-first-semester-2021>.
- 8 Pulse Asia, "March 2018 Nationwide Survey on Urgent National Concerns and National Administration Performance Ratings on Selected Issues," (Quezon City: Pulse Asia, April 2018), <https://pulseasia.ph/march-2018-nationwide-survey-on-urgent-national-concerns-and-national-administration-performance-ratings-on-selected-issues/>.
- 9 Benise Balaoing, "Pharmally issue affecting gov't approval ratings: expert," ABS-CBN News, October 6, 2021, <https://news.abs-cbn.com/news/10/06/21/pharmally-controversy-affecting-govt-approval-ratings-expert>.
- 10 Atienza et al., "Constitutional Performance Assessment of the 1987 Constitution."
- 11 Ibid.
- 12 Gabriel Pabico Lalu, "Ombudsman limits people who can request for gov't officials' SALN," *Inquirer.net*, September 15, 2020, <https://newsinfo.inquirer.net/1335682/ombudsman-limits-people-who-can-request-for-govt-officials-saln>.
- 13 Atienza et al., "Constitutional Performance Assessment of the 1987 Constitution."
- 14 Russell Louis C. Ku and Alyssa Nicole O. Tan, "CoA finds DoH non-compliant on over P67B worth of COVID-19 funds," *BusinessWorld*, August 11, 2021, <https://www.bworldonline.com/economy/2021/08/11/388595/coa-finds-doh-non-compliant-on-over-p67b-worth-of-covid-19-funds/>.
- 15 Argyll Cyrus Geducos, "#MarcosAppointments: Jose Calida, COA Chairman," *Manila Bulletin*, July 2, 2022, <https://mb.com.ph/2022/07/02/marcosappointments-jose-calida-coa-chairman/>.
- 16 Atienza et al., "Constitutional Performance Assessment of the 1987 Constitution."
- 17 United Nations Office of the High Commissioner for Human Rights, "The Philippines: UN human rights report looks

to new administration for progress on accountability and reforms,” September 13, 2022, <https://www.ohchr.org/en/press-releases/2022/09/philippines-un-human-rights-report-looks-new-administration-progress/>.

- 18 Office of the Press Secretary, “Speech of President Ferdinand “Bongbong” Romualdez Marcos Jr. during his Inauguration,” June 30, 2022, <https://ops.gov.ph/presidential-speech/speech-of-president-ferdinand-bongbong-romualdez-marcos-jr-during-his-inauguration/>.
- 19 “FULL TEXT: President Marcos’ 1st SONA,” *Inquirer.net*, July 25, 2022, <https://newsinfo.inquirer.net/1634445/full-text-president-marcos-1st-sona>.
- 20 Farzana Nawaz and Alfred Bridi, “Overview of corruption and anti-corruption in the Philippines”; Ma. Glenda Lopez S. Wui, “Campaigning against Corruption: The Case of the Transparency and Accountability Network,” in *Localizing and Transnationalizing Contentious Politics: Global Civil Society Movements in the Philippines*, ed. Teresa Encarnacion Tadem (New York: Lexington Books, 2009), 181-238.
- 21 Maria Ela L. Atienza and Ferdinand C. Baylon, “The Judiciary”, in Noel M. Morada and Teresa S. Encarnacion Tadem, *Philippine Politics and Governance: An Introduction*, pp. 333-89, 2006, PHL CHED Connect, <https://phlconnect.ched.gov.ph/content/view/philippine-politics-and-governance-an-introduction-1?fbclid=IwAR1Md6nhAYQfeZ-8-nCz8O4dHxaV7Ln2W6NUr3f-NrC1IWBseDDRedUMKRw#>; Atienza et al., “Constitutional Performance Assessment of the 1987 Constitution.”
- 22 Mara Cepeda, “‘May resibo na’: Robredo says OVP stint proof private sector trusts honest leaders,” *Rappler*, January 19, 2022, <https://www.rappler.com/nation/elections/robredo-says-office-vice-president-stint-proof-private-sector-trusts-honest-leaders/>; CNN Philippines staff, “OVP gets highest COA rating for fourth straight year,” *CNN Philippines*, June 29, 2022, https://www.cnnphilippines.com/news/2022/6/29/Robredo-highest-COA-rating-fourth-year-.html?fbclid=IwAR0REWAbwGJAwOI8nBiWy75llksGx11rhdU52_blyOWgPaaRrLJLiDbhE4.
- 23 Rachael Moralde, Ronnel Ubungen, and Kenneth Armas, “Revisiting the Bottom-Up Budgeting Process in the Philippines: Issues, Findings and Recommendations,” SSRN (November 2018), <https://ssrn.com/abstract=3472483>.

CORRUPTION AND DEMOCRATIC GOVERNANCE IN MALAYSIA

FRANCIS E. HUTCHINSON

INTRODUCTION

Once labelled as a “Little Dragon,” Malaysia has been held up as an exemplar of consistent economic growth and far-reaching industrialization.¹ More recently, however, it has garnered headlines for high-level corruption and financial mismanagement at the hands of its former prime minister, Najib Razak. The scale and scope of his misdeeds contributed to the unprecedented 2018 electoral defeat of the Barisan Nasional (BN) coalition, which had governed Malaysia since its independence in 1957.

Six decades of uninterrupted rule had led to a serious decline in Malaysia’s institutional governance. This decline included an excessive dominant political coalition, an overlapping ruling party and state structure, the centralization of power in the executive at the expense of other branches of government, and the weakening of other accountability mechanisms such as an independent media. In regards to anti-corruption, relevant entities lacked autonomy and transparency, hampering their ability to shed light on patronage networks and restricting their activities to combating petty – as opposed to grand – corruption.

The BN’s defeat constituted a unique opportunity for the country to address its deep-seated governance issues. Yet Pakatan Harapan (PH), the succeeding coalition that came to power on a sweeping reform agenda, collapsed under its own internal contradictions less than two years later.

The momentum for reform has now dissipated, and anti-corruption is no longer a political priority. While Najib has been convicted and

jailed for corruption, he still remains an influential figure. His party and leader of the BN coalition, the United Malays National Organization (UMNO), has not undergone any internal reform. It is pushing for snap elections in a bid to reclaim what it sees as its rightful place in power and is even campaigning for Najib’s release from jail.

Studying the ultimately short-lived PH administration, its campaign platform, and the subsequent stalled momentum for reform offers insight into how governance and anti-corruption campaigns have been articulated in Malaysia, as well as highlights some of the campaigns’ shortcomings. Of particular note is that the PH agenda was too ambitious. Initial hope quickly gave way to disappointment, which cost the administration precious political capital. Popular expectations of quick reforms were at odds with the more mundane reality that improving governance inherently involves long-term and incremental changes. There were also missed opportunities regarding the messaging and framing of the tangible manifestations and costs of corruption.

Despite the current impasse, there are still options for promoting good governance. In today’s more fluid political context and smaller parliamentary majorities, there is space for measures that indirectly improve governance, such as limiting terms in office and increasing room for political participation.

If articulated effectively, there is also ample material for well-crafted campaigns that link financial probity with efficient public services and well-being. It is almost inevitable that Malaysia will have to tax its citizens directly – further

strengthening the link between the benefits of public service and their costs. Finally, religion offers an untapped avenue to combat corruption and promote good governance. If managed nimbly and creatively, support for reform can be effective and sustainable.

1MDB AND ITS FALLOUT

Although Malaysia inherited a strong state at independence and saw consistent economic growth over the ensuing six decades, the country's institutional integrity has decreased over time.² A key driver was the 1971 New Economic Policy, a sweeping affirmative action plan that entailed a dramatic increase in state involvement in the economy. Championed by the UMNO, this approach led to the fusing of politics and business, as private sector operators sought to obtain benefits or protection from state-sponsored initiatives. In the 1980s, prime minister Mahathir Mohamad took this approach even further by grooming hand-picked individuals to become entrepreneurs.³

Over the past decades, national leaders have established agencies and taskforces to combat corruption.⁴ But their influence has been partial at best. Indeed, from 1994 to 2017, Malaysia's ranking on Transparency International's Corruption Perceptions Index slid from 23rd to 62nd in the world.⁵ Relative to high-income nations, Malaysia lags in key aspects of governance such as regulatory quality, corruption control, rule of law, and voice and accountability.⁶

Despite this uninspiring track record, corruption reached an unprecedented scale during Najib's administration. A member of the country's elite and erstwhile president of the UMNO, Najib led the country from 2009 to 2018. Initially lauded for his pro-business approach, Najib's tenure ended in disgrace in 2018, when the BN was comprehensively defeated by Pakatan Harapan.

At the root of the BN's downfall was the infamous 1MDB investment fund. Established in 2009, the Najib administration touted this special purpose vehicle as a means to attract investment and boost Malaysia's per capita income. The fund issued commercial bonds

and invested in power generation, oil fields, and real estate. Najib personally promoted 1MDB and was directly involved in the organization's strategic direction.⁷

Allegations of financial impropriety quickly surfaced, however. After several questionable bond issuances, 1MDB's debt ledger rapidly spiralled to more than \$11 billion.⁸ In 2016, concerned about money laundering, the U.S. Department of Justice launched a civil suit against 1MDB, its affiliates, and the investment bank Goldman Sachs. The Department of Justice estimated that more than \$4.5 billion was misappropriated via 1MDB, with \$730 million directly transiting through Najib's accounts. In total, an estimated \$7 billion is unaccounted for.

Beyond the damage to Malaysia's international reputation, moves by the Najib administration to contain the fallout jeopardized the integrity of the country's institutions. Malaysia's deputy prime minister and four ministers were removed from the Cabinet for demanding that the 1MDB scandal be addressed.⁹ The attorney general and head of the Malaysian Anti-Corruption Commission (MACC) were replaced, and officers investigating the 1MDB case were transferred.¹⁰ Audit reports of the 1MDB were shielded from parliamentary scrutiny under the Official Secrets Act.

The subsequent attorney general declared that no financial wrongdoings had taken place and absolved Najib.¹¹ Notwithstanding this, important drivers for change had been set in motion.

THE RECKONING

Despite Najib's pro-business approach, his administration implemented policies that substantially reduced the purchasing power of ordinary Malaysians. From 2010 onward, the government eliminated or reduced subsidies on daily essentials — the effect of which was compounded by a weaker Ringgit, which, in turn, drove up the price of imports. The imposition of a Goods and Service Tax (GST) in 2015 added further fuel to the fire.¹²

Concurrently, the 1MDB scandal gave impetus to a dynamic civil society movement. Termed Bersih, or “Clean,” in 2015 and 2016, this umbrella organization staged a series of massive national protests that placed reforms in political party financing and anti-corruption legislation squarely on the agenda.¹³ This was beneficial to the opposition’s subsequent political messaging.

The 1MDB incident also spurred important elite splits. Beyond the deputy prime minister, the scandal caused senior Malay leaders, including former prime minister Mahathir Mohamad, to leave the UMNO and subsequently team up with Pakatan Harapan. These senior Malay leaders enabled the PH to expand beyond its traditional urban strongholds into the country’s rural heartland. This wider support base allowed Pakatan Harapan to secure a parliamentary majority in the 2018 election.¹⁴

Upon coming to power, the PH launched a series of reforms to improve Malaysia’s democratic governance. They included establishing an apex organization to oversee all anti-corruption efforts, drafting a detailed National Anti-Corruption Plan, increasing the oversight of public sector finances through parliamentary select committees, and requiring the MACC to report to Parliament.¹⁵

This effort coincided with a dramatic turnaround in the public perception of the government’s role in fighting corruption. In 2017, the Corruption Barometer found that 62 percent of Malaysians surveyed thought the government was doing a bad job fighting corruption, but three years later, 67 percent had a positive opinion of the government’s work in this area.¹⁶

Investigations of senior UMNO leaders were launched following the BN’s defeat. In July 2018, the MACC charged Najib with 42 counts of corruption, money laundering, and criminal breach of trust.¹⁷ In 2020, Malaysia’s High Court convicted him on seven charges pertaining to a 1MDB affiliate and sentenced him to 12 years imprisonment and a fine of \$50 million. Despite two appeal processes, in August 2022, the country’s Federal Court upheld the initial conviction. Najib was imprisoned the same day, becoming the country’s first former prime minister to be convicted of a crime or imprisoned.

BACK TO THE FUTURE?

Although the 2018 election seemed to set the country on a positive trajectory, the momentum for reform was interrupted in early 2020. In February of that year, the political compact holding the PH coalition together came undone. Two groups of members of Parliament formerly belonging to the PH crossed the floor and formed an alliance with the BN and the Islamic party, PAS.

This shift brought the UMNO and BN back into power at the national level, albeit initially in a subordinate position to another coalition, Perikatan Nasional. In August 2021, the UMNO and BN assumed a leading position in the governing coalition. At present, the sitting prime minister, Ismail Sabri Yaakob, is an UMNO official, and other UMNO members have key Cabinet positions. However, the UMNO still relies on other parties for its parliamentary majority. Consequently, senior party leaders are pushing for early elections, so that the UMNO-led Barisan Nasional might obtain a solid majority by itself.

Despite the resounding defeat back in 2018, Malaysia’s grand old party has undergone no internal reform or reflection.¹⁸ Indeed, much of the UMNO’s rhetoric conveys a desire to re-establish the 2018 status quo. Najib’s successor as UMNO party president, Zahid Hamidi, also faces 87 counts of corruption.¹⁹ Other senior party figures, collectively termed the “Court Cluster,” are facing their own legal travails.²⁰

Furthermore, Najib has enjoyed a political rehabilitation of sorts, thanks to a slick social media campaign. The UMNO leadership has sought to portray Najib as a victim of political machinations and has cast doubt on the integrity and impartiality of the judiciary. At present, a campaign to petition the king to pardon Najib is underway and supported by the party.²¹ Thus, despite facing another four sets of court cases, there is a distinct possibility that Najib’s sojourn in prison will be a short one.

WHITHER THE MOVEMENT FOR REFORM?

What accounts for this turnaround in Malaysia's political context and the fortunes of Najib and the UMNO? What has happened to the public desire for reducing corruption and improving governance? The first question can be answered by examining anti-corruption policies and organizations and how they are influenced by underlying configurations of power. The second question can, in turn, be answered by analyzing opposition and civil society campaigns to fight corruption.

Through its anti-corruption measures, the MACC has arrested a substantial number of mid-ranking civil servants. However, there has been little appetite to target politicians and high-ranked officials. This is partly due to the allocation of responsibilities and the reporting structure of anti-corruption organizations.

First, while the MACC can identify suspects and investigate them, it cannot prosecute them. Prior to the PH's reforms, the MACC also had to report directly to the prime minister's office rather than Parliament or an independent commission.²² Furthermore, the provisions of the Whistleblowers Protection Act have been criticized for not offering sufficient safeguards for witnesses.²³ Thus, the lead agency for combatting corruption has had little autonomy, few tools to prosecute offenders, and insufficient guarantees for whistleblowers.

Relatedly, the highest-ranking official in the judicial sector is the attorney general, who, in addition to advising the prime minister on legal matters, is also charged with the duties of public prosecutor. Members of the legal fraternity have long advocated separating these two functions in order to increase efficiency and avoid conflicts of interest. In addition, accounts by former members of the judiciary, including the attorney general, have shown that even senior officials are not immune to outside pressure on key cases.²⁴

Second, anti-corruption organizations are embedded within a wider political structure that is very resilient to reform. Key elements of this overarching structure include a dominant

party/coalition system, an overlapping party and state structure, a compromised electoral system, a powerful coercive apparatus, and pervasive influence over the media. This institutional setup has proven immensely resistant to change, as seen by the nearly successful attempts by Najib to close down the 1MDB investigations.²⁵ Nonetheless, Malaysia's electoral authoritarian regime does depend on periodic and genuine — albeit unfair — elections for legitimacy.²⁶ This, in turn, offers some scope for change.

Upon coming to power, the PH was lauded for its commitment to greater transparency, which, in principle, would have weakened some of these institutional underpinnings. The short-lived administration was acknowledged for committing to press freedom (including abolishing an excessively broad Anti-Fake News Act), amending the Peaceful Assembly Act to allow public events and demonstrations to be more easily organized, and easing restrictions on political activities in universities. And a number of senior political figures, beyond Najib and Zahid, were charged for corruption.²⁷

However, the PH administration made relatively little headway in several notable areas: establishing a royal commission of inquiry into corruption in the judiciary; repealing the Official Secrets Act, which allows subjects to be classified on the grounds of national security; eliminating the Printing Presses and Publications Act, which allows traditional media outlets to be closely monitored; and increasing the oversight of senior appointments to government-linked corporations.²⁸

Following the PH's collapse and the advent of the Perikatan Nasional administration, the new administration walked back many of the incipient reforms. It tightened controls over the media, including by reintroducing a version of the Anti-Fake News Act;²⁹ threatened to use repressive legislation such as the Sedition Act; and acquitted or discharged high-profile corruption cases involving UMNO-linked politicians and public figures, including Najib's stepson.³⁰

Nonetheless, bi-partisan consensus on certain issues and the current coalition's narrow parliamentary majority have allowed some promising

measures to be passed. These measures include lowering the voting age from 21 to 18, making voter registration automatic, and limiting party-hopping. Other measures under discussion include a 10-year limit on prime ministerial tenures. While not transformative, these measures indirectly strengthen governance through empowering citizens and Parliament and establishing limits on the executive.³¹

Although the old guard in the UMNO are not currently the primary players in the ruling coalition, their partial grip on power still translates into considerable influence over crucial organizations. Should the BN win a sizeable majority in the next general election, the influence of the old UMNO leadership will likely increase further, thereby jeopardizing the gains made to date.

If formal institutions traditionally attached to the state are of limited utility, do opposition forces and/or civil society organizations offer a more promising avenue? Literature on implementing anti-corruption and good governance campaigns in Eastern Europe yields several insights. Researchers Martin Tisne and Daniel Smilov argue that broad-based anti-corruption coalitions are good at increasing appetite for reform but less effective in bringing about concrete change.³² This is evident in Malaysia, where the Coalition for Free and Fair Elections has been unable to translate popular support for change into tangible outcomes. Following well-attended rallies in key urban centers — and arguably a reimagining of the country's political trajectory — the umbrella movement did not yield significant change.³³

Relatedly, early phases of anti-corruption campaigns can raise expectations to unrealistic levels, which lead to disappointment and demobilization.³⁴ The PH's 2018 campaign manifesto promised sweeping reforms, partly because the opposition leaders themselves did not think that they would win.³⁵ Once in power, the initial hopes of profound change promptly transformed to despair as the PH confronted the realities of ruling, a tacitly hostile civil service, and conflicting demands by different interest groups.

In addition, there can be a mismatch between popular demands for anti-corruption reform, which center on sweeping changes and swift

justice for perpetrators, and the gradual, piecemeal, and often unglamorous steps needed for sustainable institutional change.³⁶ The PH was criticized for its focus on institutional reform as opposed to more practical issues such as the cost of living.³⁷

Third, anti-corruption messaging is currently not showing the impact of corruption on people. The movement against the BN in 2018 was so effective because it linked the hardship experienced by people to the corruption associated with Najib and his entourage. The imposition of the GST was particularly unpopular, and its effect was visible as it was itemized on receipts.³⁸

But this kind of messaging will not be as effective now. Malaysia's political terrain has shifted in the last two years. Following the COVID-19 pandemic and the ensuing economic downturn, the outrage associated with 1MDB and the Najib administration has largely been replaced by a concern about inflation and cost-of-living issues. Results from state elections in late 2021 and early 2022 show that opposition campaigns that focus on 1MDB are no longer effective. While votes for the BN have remained constant and are a testament to their well-developed campaign machinery, support levels for the PH have fallen precipitously since the heady days of 2018.³⁹

REKINDLING SUPPORT FOR ANTI-CORRUPTION AND POLITICAL REFORM

Lamentably, Malaysia's post-pandemic situation provides ample grist for well-targeted campaigns linking responsible public spending with citizens' well-being.⁴⁰ COVID-19 has highlighted crucial shortcomings in Malaysia's public health and education systems.⁴¹ Much of the government response has been to shift the onus of responding to the crisis to the public through allowing them to access funds in their pensions. Consequently, retirement savings are at an all-time low, and old-age poverty will be a pressing issue in the future.⁴² These and other concerns offer ample ammunition for well-crafted campaigns that stress the tangible impact of corruption.

Going forward, the appetite for improved public financial management in Malaysia will likely increase. Petroleum and gas have underpinned much of Malaysia's development expenditure since the 1970s. However, the country's growing economy, available and exploitable reserves, and price shocks have led to a decrease in this source of revenue. Oil-derived rents decreased from 35% of government revenue in 2010 to approximately 20 percent in 2020.⁴³

Consequently, the hunt is on for sustainable sources of income to fund public services. In the years ahead, the threshold for income tax will likely be lowered, and other sources of income such as the GST or an alternative will have to be introduced. The need for other sources of income was the motivation for the short-lived imposition of the GST in 2015. The relatively high threshold for income tax meant that the GST was the first time an estimated 85 percent of Malaysians paid taxes directly.⁴⁴ The reaction to this imposition was immediate, and its reverberations were far-reaching.

Literature on the influence of taxation on state-society relations argues that, in contrast to rentier states that derive much of their income from natural resources or international aid, states that rely on revenue directly generated from their citizenries are subjected to higher expectations of accountability and financial responsibility.⁴⁵ Thus, as more and more Malaysians are taxed directly, it is likely that they will be more receptive to anti-corruption initiatives.

In addition to taxation, religion offers a potentially untapped avenue for anti-corruption messaging. Much of the discourse on corruption in Malaysia defines it as a civil matter, not a religious one. For example, under the prevailing understandings of crime in Islam, emphasis is placed on punishing the direct physical theft of items rather than the indirect effects of corruption.⁴⁶ Consequently, a potentially powerful way to promote anti-corruption messaging is to engage with religious authorities to pinpoint parallels between corruption and theft. In addition, there are ways to link corrupt acts with the failure of rulers and leaders to adhere to their responsibilities, which are detailed in religious texts.⁴⁷ While they are not members of political

parties, a number of groups and thought leaders have begun to attack corruption from a moral standpoint – either from within Islam or from a more multifaith perspective.⁴⁸

LESSONS LEARNED

Lessons can be learned from the Malaysian experience. The country has a bevy of anti-corruption agencies and legal frameworks in place, yet their effectiveness is limited largely due to influential underlying configurations of power. And although large-scale opposition and civil society movements have pushed aggressively for reform at various times, anti-corruption is currently low on the political agenda.

This suggests that there is a mismatch between the public's perception of how corruption should be tackled and the reality of policymaking. Calls for immediate change and swift justice are at odds with the long-term and incremental measures needed for sustainable reform. Thus, while momentum for reform can be generated, expectations are often too sweeping and all-encompassing. The end result, then, is a demotivated and disappointed public.

Rather than promoting anti-corruption and good governance writ large, sustainable reform may be more feasible through the following:

- Illustrating the tangible impact of corruption on the public through tying the costs of mismanagement to relatable line items such as health and education (for example, the number of vaccines available and teachers' salaries) or basic necessities such as bags of rice or medicine.
- Using varying language to frame corruption to avoid the public's fatigue in hearing about the issue, such as by highlighting the predation of cherished institutions (for example, the Malaysian Haj Pilgrims Fund) or the increased hardship for vulnerable groups (for example, the elderly and unemployed youth).
- Maintaining momentum for reform by avoiding generic and wide-ranging goals (for example, reducing corruption) and instead

targeting specific and achievable outcomes (for example, improving protection for whistleblowers and increasing the number of caseworkers in the MACC).

- Supporting measures that increase the power of the legislature and judiciary vis-à-vis the executive, even if only partially or indirectly.

While the fight against corruption seems to be at an impasse in Malaysia, there is room for progress. However, those organizations and groups interested in promoting greater transparency, probity, and institutional integrity will need to be nimble, creative, and flexible. Recent experience shows that support for reform is fleeting, and efforts need to be consistently and persuasively articulated and rearticulated.

REFERENCES

- 1 The term Little Dragons refers to East Asian economies that grew rapidly on the back of export-oriented industrialization. Initially referring to South Korea, Taiwan, Hong Kong, and Singapore, it was then expanded to include successful Southeast Asian countries that shared certain structural similarities. Steven Schlosstein, *Asia's new little dragons, the dynamic emergence of Indonesia, Thailand and Malaysia* (Chicago: Contemporary Books, 1991).
- 2 Milton J. Esman, *Administration and Development in Malaysia* (Ithaca: Cornell University Press, 1972).
- 3 Edmund Terence Gomez and Jomo K.S., *Malaysia's Political Economy: Politics, Patronage and Profits* (New York: Cambridge University Press Archive, Second Edition, 1999).
- 4 Noore Alam Siddiquee and Habib Zafarullah, "Absolute Power, Absolute Venality: The Politics of Corruption and Anti-corruption in Malaysia," *Public Integrity* 24, no. 1 (October 2022): 1-17, <https://www.tandfonline.com/doi/abs/10.1080/10999922.2020.1830541>.
- 5 Akhbar Satar, *Corruption and Crime in Malaysia: Perception or Reality?* (Kuala Lumpur: Akhar and Associates, 2018), 178.
- 6 "Malaysian Economic Monitor: Re-energizing the Public Service," (Washington, DC: The World Bank, June 2019), 48-49, <https://documents.worldbank.org/en/publication/documents-reports/documentdetail/430511561571109623/malaysia-economic-monitor-re-energizing-the-public-service>.
- 7 Beyond his position as prime minister, he concurrently held the finance portfolio, which directly owned 1MDB through its corporate arm, Ministry of Finance Inc. See Tom Wright and Bradley Hope, *Billion Dollar Whale: The Man Who Fooled Wall Street, Hollywood, and the World* (New York: Hachette Books, 2018); P. Gunasegaram and Kinibiz, *1MDB: The Scandal That Brought Down a Government* (Selangor: Gerakbudaya, 2018).
- 8 Tom Wright and Bradley Hope, *Billion Dollar Whale: The Man Who Fooled Wall Street, Hollywood, and the World* (New York: Hachette Books, 2018); P. Gunasegaram and Kinibiz, *1MDB: The Scandal That Brought Down a Government*, 3.
- 9 "Malaysian PM reshuffles cabinet, dumps deputy after 1MDB criticism," Reuters, July 27, 2015, <https://www.reuters.com/article/uk-malaysia-politics/malaysian-pm-reshuffles-cabinet-dumps-deputy-after-1mdb-criticism-idUKKCN0Q206V20150728>.
- 10 William Case, "Stress testing leadership in Malaysia: the 1MDB scandal and Najib Tun Razak," *The Pacific Review* 30, no. 5 (February 2017): 633-654, <https://www.tandfonline.com/doi/abs/10.1080/09512748.2017.1282538?journalCode=rpre20>.
- 11 Noore Alam Siddiquee and Habib Zafarullah, "Absolute power, absolute venality."
- 12 Francis E. Hutchinson, "Malaysia's 14th General Elections: Drivers and Agents of Change," *Asian Affairs* 49, no. 4 (September 2018): 582-605, <https://www.tandfonline.com/doi/abs/10.1080/03068374.2018.1521126>.
- 13 Khoo Boo Teik, "The Profound Impact of the BERSIH Movement since 2007," *ISEAS Perspective* no. 167 (December 2021), <https://www.iseas.edu.sg/articles-commentaries/iseas-perspective/2021-167-the-profound-impact-of-the-bersih-movement-since-2007-by-khoo-boo-teik/>.
- 14 Francis E. Hutchinson and Lee Hwok Aun, "9 May 2018: The Unexpected" in *The Defeat of Barisan Nasional: Missed Signs or Late Surge?*, eds. Francis E. Hutchinson and Lee Hwok Aun (Singapore: ISEAS-Yusof Ishak Institute, 2020).
- 15 "Malaysian Economic Monitor," The World Bank, 53. As will be detailed later on, the fragmentation of tasks and responsibilities

across a range of agencies has been a structural problem of the fight against corruption.

- 16 Transparency International, "People and Corruption: Asia Pacific – Global Corruption Barometer," (Berlin: Transparency International, March 2017), <https://www.transparency.org/en/publications/people-and-corruption-asia-pacific-global-corruption-barometer>; Transparency International, "Global Corruption Barometer Asia 2020: Citizens' Views and Experiences of Corruption," (Berlin: Transparency International, November 2020), <https://www.transparency.org/en/publications/gcb-asia-2020>.
- 17 Francis E. Hutchinson, "Najib's Political Career: The End of the Beginning or the End of the End?," Fulcrum, August 26, 2022, <https://fulcrum.sg/najib-razaks-political-career-the-end-of-the-beginning-or-the-end-of-the-end/>.
- 18 Norshahril Saat, "UMNO Revival: Reaffirmation of Ideology or Reform?" *ISEAS Perspective* no. 72 (November 2018), <https://www.iseas.edu.sg/articles-commentaries/iseas-perspective/201872-umno-revival-reaffirmation-of-ideology-or-reform/>.
- 19 Francis E. Hutchinson, "Zahid's Sources of Stress: The Clobbering of UMNO's 'Court Cluster?," Fulcrum, March 11, 2021, <https://fulcrum.sg/zahids-sources-of-stress-the-clobbering-of-umnos-court-cluster/>.
- 20 Kenneth Tee, "Malaysian Politicians in Court since 2018: where are they now?" Malay Mail, September 30, 2022, <https://www.malaymail.com/news/malaysia/2022/09/30/malaysian-politicians-in-court-since-2018-where-are-they-now/30788>.
- 21 "Umno tells members to support petition for Najib's pardon," *The Business Times*, August 28, 2022, <https://www.businesstimes.com.sg/government-economy/umno-chief-tells-members-to-support-petition-for-najibs-pardon>
- 22 Noore Alam Siddique and Habib Zafarullah, "Absolute power, absolute venality." Reshna Reem Ganesan, "What you need to know about whistleblowing in Malaysia," *FMT*, January 15, 2022, <https://www.freemalaysiatoday.com/category/nation/2022/01/15/what-you-need-to-know-about-whistleblowing-in-malaysia/>.
- 23 Tommy Thomas, *My Story: Justice in the Wilderness* (Petaling Jaya: Strategic Information and Research Development Center, 2021).
- 24 William Case, "Stress testing leadership in Malaysia," 633-654.
- 25 Meredith L. Weiss, "Duelling networks: relational clientelism in electoral-authoritarian Malaysia," *Democratization* 27, no. 1 (July 2019): 100-118, <https://www.tandfonline.com/doi/abs/10.1080/13510347.2019.1625889?journalCode=fdem20>.
- 26 CSO Platform for Reform, "Analysis Report: Pakatan Harapan's 22 Months and Perikatan Nasional's First 100 Days," (Petaling Jaya: PUSAT KOMAS, 2020), 43, <https://komas.org/download/CSO-analysis-report-Final-printing-copy.pdf>.
- 27 "BTI 2022 Country Report – Malaysia," (Gütersloh: Bertelsmann Stiftung, 2022), 13, 32, <https://www.ecoi.net/en/document/2069765.html>.
- 28 Lasse Schuldt, "The rebirth of Malaysia's fake news law – and what the NetzDG has to do with it," *VerfBlog*, April 13, 2021, <https://verfassungsblog.de/malaysia-fake-news/>.
- 29 "BTI 2022 Country Report – Malaysia," Bertelsmann Stiftung, 35; "Analysis Report," CSO Platform for Reform, 47-48.
- 30 Amir Yusof, "5 key takeaways from bipartisan cooperation MOU between Malaysian government and opposition Pakatan Harapan," *CNA*, September 14, 2021, <https://www.channelnewsasia.com/asia/malaysia-mou-bipartisan-cooperation-government-pakatan-harapan-political-stability-reforms-2176266>.

- 31** Martin Tisné and Daniel Smilov, "From the Ground Up. Assessing the Record of Anticorruption Assistance in Southeastern Europe," (Budapest: CEU University Press, 2004), <https://cps.ceu.edu/publications/policy-studies/from-the-ground-up>.
- 32** Khoo Boo Teik, "The Profound Impact of the BERSIH Movement since 2007."
- 33** Martin Tisné and Daniel Smilov, "From the Ground Up."
- 34** "Malaysian PM Mahathir admits Pakatan Harapan made promises without expecting to win election," *The Straits Times*, August 16, 2018, <https://www.straitstimes.com/asia/se-asia/malaysian-pm-mahathir-admits-pakatan-harapan-made-promises-without-expecting-to-win>.
- 35** Martin Tisné and Daniel Smilov, "From the Ground Up."
- 36** Muhammed Abdul Khalid, "Vision 2020: Are we there yet? Reflections on Mahathir's and Malaysia's unfinished business," Malaysia in Transition Seminar Series, ISEAS-Yusof Ishak Institute, Singapore, January 20, 2020.
- 37** Francis E. Hutchinson, "Malaysia's 14th General Elections."
- 38** Kevin Zhang and Francis E. Hutchinson, "Pakatan Harapan in Johor: Fading Fan Favourites," *Fulcrum*, March 16, 2022, <https://fulcrum.sg/pakatan-harapan-in-johor-fading-fan-favourites/>.
- 39** Ram Anand, "Covid-19 magnifies shortcomings in Malaysia's public healthcare system," *Straits Times*, July 31, 2021, <https://www.straitstimes.com/asia/se-asia/covid-19-magnifies-shortcomings-in-malaysias-public-healthcare-system>.
- 40** Ririn Purnamasari and Zainab Ali Ahmad, "Malaysian households during COVID-19: Fading resilience, rising vulnerability," World Bank Blogs, October 27, 2021, <https://blogs.worldbank.org/eastasiapacific/malaysian-households-during-covid-19-fading-resilience-rising-vulnerability>.
- 41** Lee Heng Guie, "Get cracking, we may be headed to a retirement savings crisis!," *Focus Malaysia*, January 30, 2022, <https://focusmalaysia.my/the-reality-of-retirement-savings-crisis/>.
- 42** Pritish Bhattacharya and Francis E. Hutchinson, "Malaysia's Oil and Gas Sector: Constant Expectations despite Diminishing Returns," *ISEAS Perspective* no. 21 (March 2022), <https://www.iseas.edu.sg/articles-commentaries/iseas-perspective/2022-21-malaysias-oil-and-gas-sector-constant-expectations-despite-diminishing-returns-by-pritish-bhattacharya-and-francis-e-hutchinson/>.
- 43** "Malaysian Economic Monitor," The World Bank.
- 44** Mick Moore, "How Does Taxation Affect the Quality of Governance?," IDS Working Paper 280, (Brighton: Institute of Development Studies, April 2007), <https://opendocs.ids.ac.uk/opendocs/handle/20.500.12413/4044>.
- 45** Abdul Hadi Awang, "Hudud for All: Implementing Islamic Criminal Law in Malaysia," Distinguished RSIS Public Lecture, Singapore, April 28, 2015. <https://www.rsis.edu.sg/event/rsis-seminar-by-dato-seri-tuan-guru-abdul-hadi-awang-president-pan-malaysian-islamic-party-pas/#.Yzz6hHZBw2w>.
- 46** Zafar Iqbal and Mervyn K. Lewis. "Governance and Corruption: Can Islamic Societies and the West Learn from Each Other?," *The American Journal of Islamic Social Sciences* 19, no. 2 (2002), 1-33, <https://www.ajis.org/index.php/ajiss/article/view/1968>.
- 47** "Mengenai Kami," <https://accinmalaysia.wordpress.com/about/>, and Rasuah Busters, <https://rasuahbusters.com/>, respectively.

THE POLITICS OF ANTI-CORRUPTION AND DEMOCRACY IN SOUTH KOREA

HYEOK YONG KWON

INTRODUCTION

The case of South Korea highlights both the opportunities and challenges for building effective anti-corruption institutions. South Korea's democracy is undoubtedly consolidated, but it falls short of the democratic ideal. This is partly because despite some progress in fighting corruption, it remains a central driver of political dynamics in the country. This paper emphasizes the importance of effective policy coordination among anti-corruption agencies and institutions in upholding the principle of democratic accountability in South Korea.

Before making any policy recommendations, however, three points need to be emphasized. First, the most vital element of any anti-corruption effort should be increasing accountability or, in other words, holding public officials and politicians accountable to their citizens. In a political context, corruption is defined as the pursuit of private gains through public office, and it implies that corrupt bureaucrats and elected officials are in significant noncompliance with the ideals and norms of democratic governance. This noncompliance is harmful to democracy partly because it undermines state capacity.¹ Curbing and monitoring illegal activities among both elected and unelected public officials are critical efforts for the health of democracies.

Second, effective anti-corruption efforts can shield the incumbent from electoral punishment by the voters. While corruption is known to be associated with voter apathy and low voter turnout,² corruption cases related to highly salient societal issues are likely to inspire the electoral

response of voters. A recent corruption scandal in South Korea known as the "LH incident" that involved real estate speculation by government officials proved to be electorally detrimental to the government of former President Moon Jae-in and the governing Democratic Party. The losses of the incumbent party in the June 2021 local election and the March 2022 presidential election trace partially back to the LH incident, which touched on the public's grievances and resentment about the increasing house prices and wealth inequality.³

Third, anti-corruption agencies must be designed in a way that ensures institutional complementarities. For instance, the South Korean political arena has been recently consumed by debate on whether, for a functional democracy, the diffusion of power between anti-corruption agencies and the public prosecutor's office is most effective or the concentration of authority in one institution is most effective. Ensuring that anti-corruption agencies and institutions are complementary, not substitutive, is essential. There should also be checks and balances between anti-corruption agencies. Once a transparent and accountable checks-and-balances system is established, effective consultations involving the relevant anti-corruption agencies, civil society organizations, and experts will ensure the proper functioning of the agencies and increase citizens' trust in them.

This paper begins with a quantitative overview of the corruption trend in South Korea and then discusses the implications of the LH incident, the roles and responsibilities of anti-corruption

agencies, and the impact of corruption on democracy. The paper concludes with policy prescriptions on how to curb political corruption.

CORRUPTION TREND IN SOUTH KOREA

This section presents the trends of corruption in South Korea. Figure 1 shows the trends of two corruption indices. The left graph shows the control of corruption score from the World Bank’s World Governance Indicators data, in which a higher score indicates better performance in curbing corruption.⁴ The right graph presents Transparency International’s Corruption Perception Index (CPI) score, which runs from 0 (most corrupt) to 100 (least corrupt).⁵ In 2021, with a score of 62, South Korea ranked 32nd out of 180 countries.

The upward trend in both scores suggests that anti-corruption efforts have increased or become more effective in recent years. From the 1960s

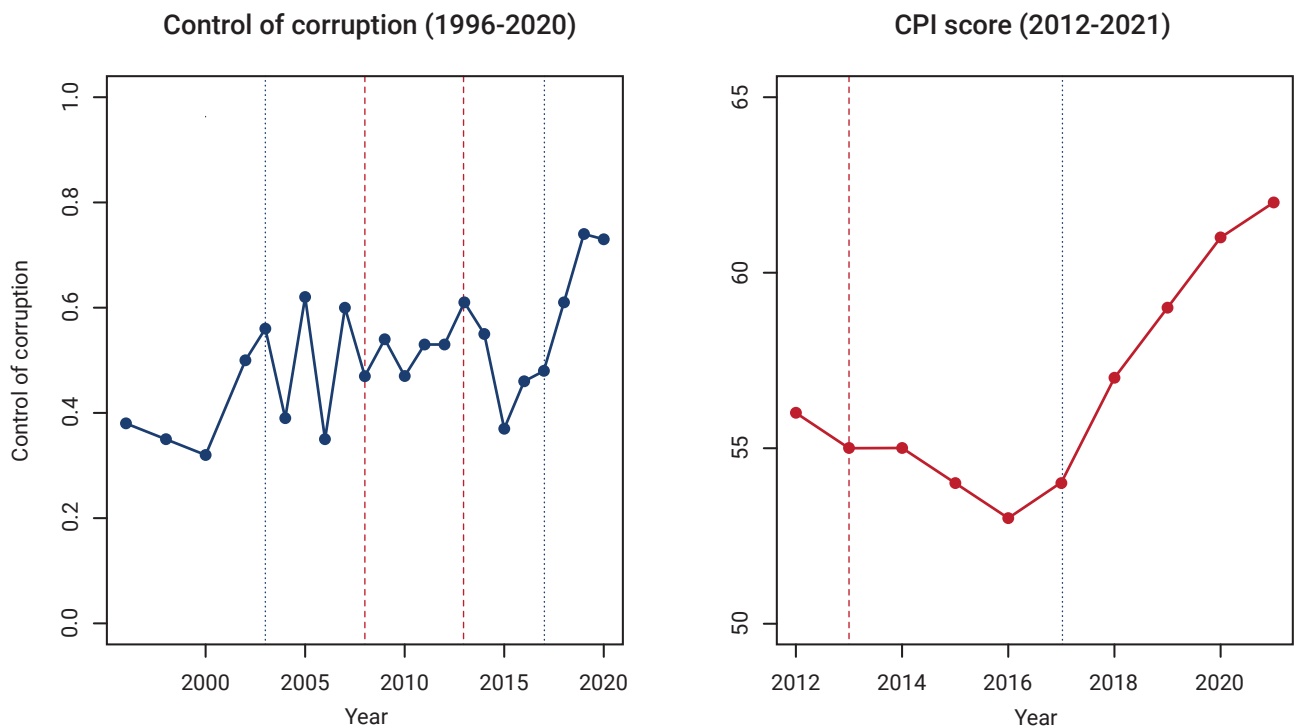
to the mid-1990s (a period of high development in South Korea), bribes and collusive practices between the state and big conglomerates, known as chaebols, were pervasive,⁶ as well as chronic, close relationships among bureaucrats, politicians, and big corporations. Years later, demonstrating corruption at the highest levels, two former presidents – Lee Myung-bak (2008-2013) and the impeached Park Geun-hye government (2013-2017) – were sentenced to prison for corruption charges. The trend of better anti-corruption scores since 2017 signals significant improvement under the Moon Jae-in government (2017-2022).

CITIZENS’ ELECTORAL RESPONSES AND GOVERNMENT ACTION

The political impact of, and response to, corruption partly depends on the issues that have salience in politics and society.⁷ Two highly

FIGURE 1

Corruption trend in South Korea



Sources: The World Bank, World Governance Indicators (left); Transparency International, Corruption Perception Index (right). The dotted blue and red vertical lines denote the starting year of the five-year term for the liberal and conservative governments, respectively.

salient issues in South Korea are rising inequality, particularly wealth inequality, and increasing house prices. Therefore, it was not surprising that the LH incident led to both local and general electoral defeats in June 2021 and March 2022.

On March 2, 2021, two civil society groups — People’s Solidarity for Participatory Democracy and Lawyers for a Democratic Society (Minbyun) — raised suspicions about speculative land purchases by government employees at the Korea Land and Housing Corporation (LH hereafter). Dozens of LH employees used insider information about real estate development projects and purchased land worth 10 billion South Korean won (about \$8.8 million at the time) in Gwangmyeong-si and Siheung-si. The land had been designated for apartment complexes in order to increase the housing supply and curb the spike in prices. A special task force investigated more than 14,000 LH and Ministry of Land and Transportation employees. In August 2021, authorities arrested 20 persons and referred 529 persons for prosecution in connection with the incident.⁸

The LH scandal catalyzed the passing of the Conflict of Interest Act, a law designed to prevent public officials and employees from obtaining private gains through their public office. Legislators first proposed the bill in 2013, but it was repeatedly dropped until the public outrage caused by the LH incident, suggesting that public resentment expressed through vote choices largely drove legislators’ responses to the corruption.

ANTI-CORRUPTION INSTITUTIONAL DESIGN AND COORDINATION

Coordination among multiple anti-corruption agencies is an important element of state capacity. It is also central to effective anti-corruption performance. There are three major anti-corruption agencies in South Korea: the Anti-corruption and Civil Rights Commission (Commission hereafter), the Supreme Prosecutors’ Office (SPO), and the Corruption Investigation Office for High-ranking Officials (CIO). A key task now is to make them complementary, not substitutive or rivaling, institutions.⁹

The state-run Commission was designed to prevent corruption, promote anti-corruption education and campaigns, and protect whistleblowers. Launched in 2008 under the Roh Moo-hyun government, it has played a major role in anti-corruption efforts, but it does not have investigative power.

Established as an independent body in January 2021, the CIO was designed to prevent and eradicate the corruption of high-ranking officials, including but not limited to the president, members of the National Assembly, judges, and prosecutors. The investigative office was also tasked with — as part of a long-term endeavor — monitoring and helping to reform the SPO, arguably the most powerful branch in the criminal justice system.¹⁰ The CIO’s biggest challenge is its severe lack of financial and human resources; it has only about 65 personnel, while the number of targeted high-ranking officials are around 7,000. Another constraint is its extremely limited power to prosecute cases. Moreover, unlike the CIO’s many references to the importance of fairness and political impartiality in relation to the President’s Office, its relation to the SPO is rarely mentioned.¹¹

Thus, the SPO, formed in 1948, remains untamed by any democratic means. Over the years, the SPO has lost much credibility because it has abused its monopoly power to both investigate and prosecute incidents. It has avoided prosecuting connected, high-level officials, politicians, and other prosecutors through legal loopholes or shoddy investigations. In short, the SPO has not complied with the normative principle of the rule of law, fairness, and equality. In May 2022, the Prosecutors’ Office Act was amended to restrict the investigative power of the office. As expected, it vehemently opposed the reform.¹² It was a highly political collective action by unelected public prosecutors, the group that essentially has vested interests in sustaining monopoly of investigative and prosecution power.

Given the unclear demarcation and overlapping jurisdiction of multiple anti-corruption agencies, the government must strive to make the Commission, CIO, and SPO complementary, not substitutive, to each other. The effort requires

both effective state capacity and democratic transparency. The Commission should focus on the preventive role: education and campaigns for anti-corruption and democratic development. The CIO should focus on both the preventive and repressive roles: the fight against elite capture and grand corruption. The SPO should focus on the repressive role and use its prosecution power to safeguard the democratic spirit of fairness and equality.

Four principles should guide the strengthening of anti-corruption institutional performance. First, anti-corruption agencies should function based on their accountability to citizens, not to the president, attorney general, or other government officials. Second, institutional independence from undue political interference should be pursued only after agencies are visibly upholding the principle of democratic accountability. Through effective legislative oversight, the public's representatives can ensure that state agencies and unelected officials adhere to democratic principles and are held accountable. Independent institutions without democratic accountability can be detrimental to democracy. In this sense, the sequence of institutional reform is of critical importance. Third, transparency is necessary – with citizens and within and across anti-corruption institutions – to maintain credibility and trust. Fourth, consultations between anti-corruption agencies, based on transparent information sharing, are essential for the effective implementation of anti-corruption efforts.

POLICY PRESCRIPTION

Anti-corruption institutional reforms in South Korea need to go hand in hand with efforts to achieve democratic progress. And anti-corruption efforts should be implemented in a democratic way to support this progress. The following policy prescriptions are worth considering:

- It is crucial to strengthen comprehensive regulations to reduce conflict of interest. Recognizing that corruption has structural or institutional foundations, and is not just the result of individual deviances, should be the first step toward curbing corruption. In states like South Korea, which have a history of collusion between the government and big conglomerates, it is particularly important to safeguard against state capture and big money politics.
- Anti-corruption institutions should first and foremost be accountable to citizens and gain their trust through being transparent and credible. Democratic accountability will help prevent petty and grand corruption both outside and within the agencies. Both a bottom-up approach (via civil society activism) and a top-down approach (via legislative oversight) should be taken to increase this accountability.
- Political parties should work to improve the independence of anti-corruption agencies. Amendments to the rules for appointments and terms for high-ranking anti-corruption officials should be in line with the goal of ensuring the impartiality and independence of the agencies. Presidents and ruling parties have used anti-corruption agencies as partisan tools to “neutralize” opposition politicians and potential rivals. Consequently, those agencies, particularly the SPO, have lost credibility among the mass public: The problem is “who will guard the guardians?” The level of impartiality and independence at an agency strongly affects the norms and behaviors of its staff.
- The government should ensure that anti-corruption agencies are consulting each other and coordinating their efforts. The coordination should be based on firmly established jurisdiction lines and responsibilities (according to set rules and laws) for each anti-corruption agency. Transparent information sharing between agencies will create trust, which will enable effective consultation processes and, in turn, lead to the successful implementation of anti-corruption drives. The goal is to make these institutions' pursuits complementary, not substitutive.
- Several reforms are needed to enhance transparency. First, the monitoring of conflicts of interest should be strengthened. Second, corruption cases should be randomly assigned to prosecutors, as already done with judges, to prevent political

interference and to increase the independence of the SPO. Third, citizens should be given easy access to information such as budgets and fiscal allocations, in order to help curb political corruption and increase democratic transparency and accountability. South Korea's human resources and information and communications technology are more than sufficient to develop adequate algorithms for the above tasks. Why not utilize them for democratic development? In implementing all these reforms, the role of political parties and elected politicians will be critical, as they can use electoral mandates to help push reforms forward. What South Korean voters want most are politicians and parties with a long-term interest in democratic development.

I am grateful to Tom Pepinsky and reviewers of the paper for their thoughtful comments and suggestions and to Jiyoung Lee for her excellent research assistance.

REFERENCES

- 1 Elissa Berwick and Fotini Christia, "State Capacity Redux: Integrating Classical and Experimental Contributions to an Enduring Debate," *Annual Review of Political Science* 21 (May 2018): 71-91, <https://www.annualreviews.org/doi/abs/10.1146/annurev-polisci-072215-012907>.
- 2 Daniel Stockemer, Bernadette LaMontagne, and Lyle Scruggs, "Bribes and ballots: The impact of corruption on voter turnout in democracies," *International Political Science Review* 34, no.1 (April 2012): 74-90, <https://doi.org/10.1177/0192512111419824>; Stefan Dahlberg and Maria Solevid, "Does corruption suppress voter turnout?," *Journal of Elections, Public Opinion and Parties* 26, no. 4 (September 2016): 489-510, <https://doi.org/10.1080/17457289.2016.1223677>; Eunjung Park, "Perceptions of Political Corruption and Voting Behavior in South Korea," *Asian International Studies Review* 20, no.2 (June 2019): 1-28, <https://doi.org/10.1163/2667078X-02002001>.
- 3 Seungwoo Han and Hyeok Yong Kwon, "House prices and beliefs in meritocracy: Evidence from South Korea and 34 countries." Unpublished manuscript.
- 4 "Worldwide Governance Indicators," The World Bank, <https://info.worldbank.org/governance/wgi/>.
- 5 "Corruption Perception Index," Transparency International, <https://www.transparency.org/en/countries/south-korea>.
- 6 David C. Kang, *Crony Capitalism: Corruption and Development in South Korea and the Philippines* (New York: Cambridge University Press, 2002).
- 7 For example, fair competition, or equal opportunity in education, has been one of the most salient issues in South Korean society. The road to former President Park Guen-hye's impeachment in March 2017 started with the allegation that she used her position to gain university admission for the daughter of her close friend. Cho Kuk, a minister of justice under former President Moon Jae-in's government, and his wife were charged with corruption related to their daughter's university and medical school admissions, which marked an important turning point in the Moon government's approval rating.
- 8 Reuters, "South Korea roiled by property scandal amid soaring house prices." March 9, 2021. <https://www.reuters.com/article/us-southkorea-property/south-korea-roiled-by-property-scandal-amid-soaring-house-prices-idUSKBN2B10QZ>; Yonhap News, "Gov't probe team arrests 20 people, refers 529 others to prosecution over property speculation." June 2, 2021. <https://en.yna.co.kr/view/AEN20210602007400315>.
- 9 For more on the idea of complementary and substitutive (formal and informal) institutions, see Gretchen Helmke and Steven Levitsky, "Informal Institutions and Comparative Politics: A Research Agenda," *Perspectives on Politics* 2, no. 4 (December 2004): 725-740, <https://www.jstor.org/stable/3688540>.
- 10 Discussions about the establishment of the Corruption Investigation Office started in 1996 when a civil society organization, the People's Solidarity for Participatory Democracy, petitioned to have it legislated after numerous revelations of corruption and unsatisfactory, biased investigation by the SPO. Since then, a proposition to institute the CIO has been made in three presidential election campaigns (Kim Dae-jung, Roh Moo-hyun, and Moon Jae-in) and in every National Assembly session. The bills failed to pass due to opposition from the conservative party, currently named the People Power Party.
- 11 Tak-Kyun Hong, Seong-jin Choi, and Kitae Park. "South Korea Set to Launch Corruption Investigation Office for High-Ranking Officials & Its..." *Chambers and Partners*, July 29, 2020. <https://chambers.com/articles/south-korea-set-to-launch-corruption-investigation-office-for-high-ranking-officials-its>.
- 12 The Korea Times, "Top prosecutor proposes alternative bill for prosecutorial reform." April 20, 2022. https://www.koreatimes.co.kr/www/nation/2022/07/356_327625.html.