

2011 Modularization of Korea's Development Experience:

Korea's Experience of Operating Anti-corruption Criminal Justice Policy

2012



**MINISTRY OF JUSTICE
REPUBLIC OF KOREA**

KiC

Korean Institute of Criminology

2011 Modularization of Korea's Development Experience:
**Korea's Experience of Operating
Anti-corruption Criminal Justice Policy**

2011 Modularization of Korea's Development Experience
Korea's Experience of Operating Anti-corruption
Criminal Justice Policy

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Preface

The study of Korea's economic and social transformation offers a unique opportunity to better understand the factors that drive development. Within one generation, Korea had transformed itself from a poor agrarian society to a modern industrial nation, a feat never seen before. What makes Korea's experience so unique is that its rapid economic development was relatively broad-based, meaning that the fruits of Korea's rapid growth were shared by many. The challenge of course is unlocking the secrets behind Korea's rapid and broad-based development, which can offer invaluable insights and lessons and knowledge that can be shared with the rest of the international community.

Recognizing this, the Korean Ministry of Strategy and Finance (MOSF) and the Korea Development Institute (KDI) launched the Knowledge Sharing Program (KSP) in 2004 to share Korea's development experience and to assist its developing country partners. The body of work presented in this volume is part of a greater initiative launched in 2007 to systematically research and document Korea's development experience and to deliver standardized content as case studies. The goal of this undertaking is to offer a deeper and wider understanding of Korea's development experience with the hope that Korea's past can offer lessons for developing countries in search of sustainable and broad-based development. This is a continuation of a multi-year undertaking to study and document Korea's development experience, and it builds on the 20 case studies completed in 2010. Here, we present 40 new studies that explore various development-oriented themes such as industrialization, energy, human capital development, government administration, Information and Communication Technology (ICT), agricultural development, land development and environment.

In presenting these new studies, I would like to take this opportunity to express my gratitude to all those involved in this great undertaking. It was through their hard work and commitment that made this possible. Foremost, I would like to thank the Ministry of Strategy and Finance for their encouragement and full support of this project. I especially would like to thank the KSP Executive Committee, composed of related ministries/departments, and the various Korean research institutes, for their involvement and the invaluable role they played in bringing this project together. I would also like to thank all the former public officials and senior practitioners for lending their time and keen insights and expertise in preparation of the case studies.

Indeed, the successful completion of the case studies was made possible by the dedication of the researchers from the public sector and academia involved in conducting the studies, which I believe will go a long way in advancing knowledge on not only Korea's own development but also development in general. Lastly, I would like to express my gratitude to Professor Joon-Kyung Kim for his stewardship of this enterprise, and to his team including Professor Jin Park at the KDI School of Public Policy and Management, for their hard work and dedication in successfully managing and completing this project.

As always, the views and opinions expressed by the authors in the body of work presented here do not necessary represent those of KDI School of Public Policy and Management.

May 2012

Oh-Seok Hyun

President

KDI School of Public Policy and Management



Contents | LIST OF CHAPTERS

Summary	9
---------------	---

Chapter 1

Backgrounds of Adopting Anti-corruption Criminal Justice Policies	13
1. The Current State of Korea's Corruption and Corruption Perception Index(CPI)	14
1.1 Diversification of Corruption Assessment	14
1.2 Historical and Socio-economic Backgrounds	15
2. Activity of Anti-corruption Agencies and Recent Policy Trends	17
2.1 Activity of Transparency International and Transparency International Korea	17
2.2 Policy Trends	18

Chapter 2

Contents of Anti-corruption Criminal Justice Policies	21
1. Criminal Laws Related to Corruption and the Effectiveness of Implementing Special Laws ..	22
1.1 Bribery	22
1.2 Corruption of High Ranking Public Officials	25
1.3 Corruption in Judiciary	27
1.4 Collusion between Politics and Businesses	30
2. Duty of Insinuations Relevant to Anti-corruption	33
2.1 Anti-Corruption&Civil Rights Commission	33
2.2 Role of the Transparency International Korea (TI-Korea).....	34
2.3 Role of the Central Investigation Department at the Supreme Prosecutor's Office	34
3. Government Policies on Corruption	36
3.1 Declaration of Fight against Corruption and Policies to put the Declaration into Practices	36
3.2 Anti-corruption Policies of other Related Bodies	37

Chapter 3

Ways to Carry Out Anti-corruption Policies.....	45
1. Transition of Legal Institution in Policy Implementation	46
1.1 Background of Policy Implementation	46
1.2 Enactment and Amendment of Anti-corruption Laws and Regulations	49
2. Establishment of Anti-corruption Organization and Decision-making Process.....	56
2.1 Major Agreements and Establishment and Operation of a Commission	56
2.2 Changes and Development of Organizational Structure	61
3. Major Cases of Policies Pursued	66
3.1 Sentencing Guidelines for Bribery Charges	66
3.2 Analysis of Anti-corruption Best and Failed Practices	67

Chapter 4

Assessment	75
1. Assessment of Legal System to Prevent Corruption	76
2. Assessment of Institutions to Implement Anti-corruption Policies	86
3. Assessment of Policies to Implement Anti-corruption Activities	88

Chapter 5

Implications	93
1. Necessity to Share Korea's Anti-corruption Experience.....	94
2. Factors which Prevent Corruption in Korea and the Their Implications.....	96
References.....	100



Contents | LIST OF FIGURES

Chapter 2

Figure 2-1 Bribe Status of a Government Dignitary.....	27
Figure 2-2 Types of Corruption Practiced by Public Prosecutors	29
Figure 2-3 Types of Discipline taken against Attorney.....	30
Figure 2-4 Current Condition of Misfeasance in Public Office	32

Chapter 4

Figure 4-1 Levels of Corruption of Public Officials Perceived Progress	90
Figure 4-2 Level of Corruption of the Public Sector	90
Figure 4-3 Korea's CPI for the last ten years	91

Summary

The issue of corruption has been the first priority agenda in Korea ever since its democratization in 1993. Regarding Criminal Justice Policy in particular, Korea has not only made numerous efforts to improve the legal system designed to deal with corruption of public officials and legal circles but also spent enormous amount of budget to prevent corruption. In essence, rooting out corruption has been the first-priority task for successive democratic governments in Korea. Despite Korea's slogan of "eradicating corruption" put forth by a number of presidential candidates, the vicious cycle of corruption still persists in Korea.

Corruption normally points to acts of bribery, electoral fraud, and politics-business collusion mostly committed by public officials; it may include other private actors as well. In a world of globalization, frequency and severity of such acts are attempted to be measured through official indexes such as the Corruption Perception Index (CPI) through which a level of transparency in each country is determined. According to such indexes, South Korea stands as one of the lowest-ranked countries out of the OECD member states, with its CPI rank listed as 39th out of 178 countries. Other indexes such as the Global Corruption Barometer (GCB) reveal that a continuous effort is yet needed on anti-corruption and the establishment of an effective regulatory system against corruption.

Against this backdrop, this paper aims to look in-depth into questions of what forms of corruption are taking place in Korea, how they came about, and how they are to be addressed in a legal and systematic manner.

In the first chapter, this paper deals with the historical, economical, and social background of Korea on which the issue of corruption emerges. It also looks into how they have been measured under a number of international corruption indexes such as those mentioned above. The chapter is then followed by the introduction of a number of formal institutions and civil groups that deal with the issue of corruption in and around Korea, mentioning in

particular Transparency International, along with a number of policy trends on top of the ongoing civil movements that have been emerging out of the course of Korean history.

The second chapter goes in-depth in terms of legal scrutiny, observing how Korea has enacted a number of laws and legal systems with the purpose of tackling corruption in the country. Mainly concerning two perspectives of criminal law and special legislations, this chapter analyzes how corrupt acts such as bribery, corruptions by high officials, judiciary corruption, and politics-business collusions are handled by the Korean legal system. Also, it looks into some of the government institutions, such as the Anti-corruption and Civil Rights Commission and Transparency International in Korea, and seeks to tackle ongoing corruption in the country. In particular, how the Central Investigation Office in the Supreme Prosecutor's Office acts in accordance to the exiting anti-corruption policies in Korea is examined. In doing so, the paper necessarily looks into national policies which are in relevance to anti-corruption efforts being undertaken in Korea such as the government's declaration of War on Corruption and action plans on anti-corruption.

The third chapter aims to explain the evolution of the currently existing legal policies of anti-corruption in terms of their historical development. Explanation will be given in a manner that goes along with the transition of governments under the five Republic eras which Korea has gone throughout history. Understanding the political background of each period of time-whether it was a military authoritarianism or a democracy-is important in learning how these policies came to be established after so many fluctuations and political oscillations. From how it was exploited as a means of regime stabilization under the military regime to how it became to be in 'real effect' under the first civilian democratic government established in 1993, the anti-corruption legal policies from these aspects can be said as a combination of historical experience and expertise. Then the chapter explains how these policies are in effect under the current Lee Myung Back regime, and suggests how these policies should be transformed or refurbished in order to tackle prospect corruption issues in the near future.

The third and fourth chapters elaborate on the government organizations in more detail, commissions, and independent institutions which had or have been established to tackle the issue of corruption. Explanation is given on how particular agreements such as the Social Pact on Anti-Corruption and Transparency and other international agreements are applied to the case of Korea, and how each organizations and institutions have contributed (or undermined) to the promotion of anti-corruption policies. Against such backdrop, this chapter provides a number of selected cases of success or failure in applying a number of anti-corruption policies to various parts of society whether it is a 'top-down' or a 'bottom-up' process. It finally gives a comprehensive assessment of implications that these policies take in not only Korea but also other parts of the world. In doing so, the paper makes an attempt to compare and contrast its anti-corruption policies with those of Indonesia and Nigeria, with the purpose to gain a clearer understanding of how corruption emerges and how it should be stopped.

In conclusion, this paper aims to serve as an effective case study not only for Korea but also many countries overseas who struggle with corruption. By providing insights into these issues, it is sincerely hoped that this particular debate on anti-corruption in the region and around the world will become more active. It will in turn allow more cooperation and exchanges of knowledge that will surely contribute to the cleaner and more transparent future.

2011 Modularization of Korea's Development Experience
Korea's Experience of Operating
Anti-corruption Criminal Justice Policy

Chapter 1

Backgrounds of Adopting Anti-corruption Criminal Justice Policies

1. The Current State of Korea's Corruption and Corruption Perception Index (CPI)
2. Activity of Anti-corruption Agencies and Recent Policy Trends

Backgrounds of adopting Anti-corruption Criminal Justice Policies

1. The Current State of Korea's Corruption and Corruption Perception Index(CPI)

1.1 Diversification of Corruption Assessment

As the world is becoming more globalized, Corruption Perception Index (CPI)¹ is being used as a qualitative method to compare each nation. We can judge the level of transparency of each state using this index. Corruption is compared to the disease of society like an organism. If corruption gets worsen, the society is seen as ill. Recently, these phenomena tend to occur frequently in North Africa and East Asia.

The seriousness of corruption in Korean society is clearly evident through researches conducted by many international organizations. The research of BPI, which targets entrepreneurs, or that of CPI, which targets business professionals (done by Transparency International), demonstrates that Korea falls far behind the average level of competing countries relative to national income. In 2008, BPI² ranked South Korea along side with Taiwan and the Republic of South Africa out of the major 22 countries, while CPI listed Korea as 39th out of 178 countries worldwide in 2010. These rankings show that Korea is one of the lowest-ranked countries out of the OECD states.

1 Transparency International publishes CPI annually since 1995. The CPI, assessed by each country, is a sum of score drawn from entrepreneurs and analysts, which measures perceived levels of corruption among public officials and politicians. The CPI draws on corruption related data from surveys carried out by various reputable institutions and provides a ranking of countries.

2 Ti has published the BPI 4 times since 2000. The BPI is drawn up by interviewing enterprises that have been providing a bribe or political funds. The most recently published 2008 BPI chose 22 countries for its survey including Korea, India, Brazil and Russia.

Along with the International Corruption Index, Korea's national competitiveness is at a lower level as well. For instance, the report provided by the World Economic Forum³ in 2003 ranked Korea's national competitiveness as 18th out of 102 countries; the rank dropped and Korea was ranked 22nd out of 139 countries in its 2010 report. When examined national competitiveness of each sector, Korea was ranked 23rd in Basic Requirement, 22nd in Efficiency Enhancers, 22nd in Innovation and Sophistication Factors in 2010. It should be noted that Korea's rank has dropped more seriously in areas that we reprinted out as weaknesses. For example, Korea was ranked 84th in Partiality in Decision-making by Public Servant, a sub-indicator for Basic Requirement (60th in the past year), 111th in Transparency in Policy Decisions (100th in the past year), 98th in Effectiveness of Business Board of Directors (57th in the past year), and 99th in Soundness of Banks, a sub-indicator for Efficiency Enhancers (90th in the past year).

Also, there is the Global Corruption Barometer (GCB),⁴ a corruption index which focuses on general public and was executed since 2010 by Gallop International commissioned by Transparency International. Based on the data collected from 91,781 general public out of 86 countries worldwide from May to October 2010, GCB showed that, in the case of Korea, the percentage of people who had an experience in bribing in the past year was less than 6%. On the contrary, 54% of the respondents answered that the effort made by the Korean government against anti-corruption was ineffective, rendering the governmental effort for a fair society as meaningless. It should be noted that such result was higher than the world average of 50%. Also, 32% replied that the change in corruption level has increased during the last 3 years. Such results reveal that there is need of continuous effort on anti-corruption and establishment of a system that will regulate anti-corruption in Korea.

Although the corruption level in Korea is worsening in current terms, it is hard to deny that Korea's effort in fighting past corruption and its rank in CPI has grown to join the levels of a developed state at a pace relatively faster than that of others.

1.2 Historical and Socio-economic Backgrounds

Historically, corruption had prevailed in Korea from its foundation and the fight against corruption had declared by successive Korean governments. Regarding Criminal Justice Policy, Korea has not only made numerous efforts to improve the legal system designed to deal with corruption of public officials, legal circles, etc. but also spent enormous

³ Established in 1971, the World Economic Forum is a non-profit civil society comprised of about 1,200 global enterprises and mass media mostly came from Europe and America. The World Economic Forum holds the annual Davos Forum, around at the end of January or early February, to discuss new trends of global politics and economics as well as other major global issues in depth and provides solutions for them. In addition, the Forum publishes the national competitiveness report annually.

⁴ TI has been annually publishing the Global Corruption Barometer, a survey that assesses general public attitudes toward, and experience of, corruption since 2003 with an exception of 2008.

amount of budget to prevent corruption. In essence, rooting out corruption has been the first-priority task of government in Korea. Although, Korean government has shown strong will, chanting a slogan of ‘eradicate corruption,’ especially during the early period of inauguration, a vicious circle of corruption still continues in Korea. Preventing and eradicating corruption has emerged as a task for modern times in Korea where the transition into post-material society, corruption friendly environment facilitating collusion between politics and business, and deepening ideological conflict are being laid out.

Various forms of corruption, such as bribery offense, political corruption, collusion between politics and business, have deterred Korea from building a transparent and developed society. Therefore, there has been a call to eradicate corruption for a further developed society. However, entering into the 21st century, Koreans’ determination to address past corruption allegations has become stronger than ever before. It is impossible for Korea to become a developed nation while maintaining an environment that feeds corruption within the society. To achieve a further developed Korean society, it should be sibilated that stirring up indiscriminate feud, which has been accumulated through the process of democratization and industrialization, as well as continuous pressure or adopting different counter measures to the feud.

In Korean society, making efforts to find a way to eradicate corruption and establish a system to control corruptors is not a new phenomenon. Even though the Korean government has made efforts and discussed the issue, no further development has been made. There could be many reasons for the failure, yet major grounds could be attributable to lack of precise analysis on the rapidly changing reality and various anti-corruption policies that have been implemented as remedies without reflecting the reality.

According to Korea’s Corruption Perceptions Index, Korea has joined the ranks of developed countries rapidly to fight against corruption compared to other countries. The rampant corruption was disrupted to cultural and social society through a war in the Japanese colonial period. A declaration of war against corruption, related policies and legal system were conducted whenever a regime was replaced. Despite the short period of time, the corruption-related policies prerequisite helped Korea to grow as a driving force of economic growth. Because economic development and corruption have an inseparable relation, corruption can easily diffuse under economic reasons. Thus, the foundation of anti-corruption policy and legal framework contribute to economic development in a healthy and transparent society.

Recently, developing countries export the anti-corruption policies to promote a healthy society and economic as well. An evaluation, implication, operational experience, policy enforcement, and evaluation of Criminal Justice will be discussed, which are based on the foundation of economic development. For discussion, this paper will draw conclusion on the needs and goals, using the Korea’s Corruption Perception Index and the historical, economic, and social backgrounds.

2. Activity of Anti-corruption Agencies and Recent Policy Trends

2.1 Activity of Transparency International and Transparency International Korea

Established in 1993, Transparency International (herein after TI) is an international civil group aimed at eradicating corruption that exists all over the world. TI is non-profit, non-governmental and politically non-partisan. Headquartered in Berlin, TI has more than 90 global chapters spread out across America, Europe, Asia&Pacific be in and Africa, and it operates in a form of coalition among those chapters. Its budget mostly comes from contributions made by International Organizations, governments and private sectors as well as earnings of projects run by TI.

Since its foundation in 1993, TI has been a frontline runner in improving the quality of life of many people residing all over the world. In particular, TI has raised the awareness of negative phenomenon regarding tolerance and indifference of corrupt activities by developing the Corruption Perception Index (herein after the CPI) and anti-corruption policy recommendations. The main function of TI is to serve as a private partner for International Organizations' anti-corruption efforts. TI monitors whether Member states of anti-corruption treaties, such as the OECD Convention on Combating Bribery of Foreign Public Officials and anti-bribery pacts adopted by the European Union or the Organization of American States, have been properly implemented since they were ratified. In addition, TI develops programs aimed at improving transparency and responsibility in the process of government procurement, and unfolds the awareness by raising campaigns for anti-corruption. Drawing up and publishing indexes such as the CPI, the Bribe Prayer Index(herein after the BPI) and the Global Corruption Barometer(herein after the GCB), has been a powerful measure by leading and facilitating countries to implement and adopt national anti-corruption policies. Such efforts have paved a way for TI to be an international influential NGO. Also, TI supports governments who operate anti-corruption activities by conducting research, exchanging views and dissemination of information regarding successful practices of anti-corruption.

As politically non-partisan, TI has maintained the principle that it does not undertake investigations or expose on alleged corruption of particular countries or individuals.

Likewise, global chapters of TI, which are aimed at eradicating corruption in countries where they reside, conduct TI's anti-corruption strategies at a country level. Global chapters of TI have been making efforts to improve transparency in government administration, national election, and business activity by cooperating with government, civil society, private sector as well as mass media, which are all critical players of anti-corruption activity. In addition, the global chapters of TI have urged the government located where they reside to ratify international anti-corruption treaties and to implement the anti-corruption legal framework.

Founded in August, 1999, Transparency International Korea (TI-Korea)-formerly referred as 'Anti-corruption Network' in Korea-is the Korea branch of TI. TI-Korea introduces

international anti-corruption movements to Korea and Korea's anti-corruption movements to the international community. Its mission is to build the Korean society where all people are free from corruption by raising the awareness of people and taking measures to prevent corruption, in turn, ultimately eradicating widespread corruption in the Korean society.

Headquartered in Seoul, TI-Korea has local branches in Busan, Gwangju (Province of south Geonla) and Daegu.

Main activities of TI-Korea are as follows:

- Building a national integrity system by maintaining laws and systems
- Researching anti-corruption policy
- Leading educational and cultural anti-corruption and transparency movements⁵
- Developing a fixed and transparent business culture⁶
- Creating a transparent society with national, governmental, and businesses
- Implementing and broadening Korean Pact on Anti-corruption and Transparency (K-Pact)
- Introducing international anti-corruption activities

2.2 Policy Trends

Regarding the current state of corruption, it is necessary to examine the anti-corruption policy trends. TI has five targets that are set to root out corruption in a global scale; they are:

- Corruption in politics
- Corruption in public contracting
- Corruption in the private sector
- International anti-corruption conventions
- Poverty and Development⁷

⁵ Korean Pact on Anti-Corruption and Transparency (K-PACT) is an anti-corruption system that is led by civil society organizations to make the public, politics, economy and media etc, to be transparent. The K-PACT includes;

1) Realization of transparent and effective politics;
2) Maintaining system to prevent and improve transparency for the public sector;
3) Improving business governance based on transparent and ethical management; and
4) Overcoming culture of corruption, monitoring corruption and strengthening participation of citizens for the civil society organizations.

⁶ TI-Korea surveys the current state of 300 major domestic businesses' actual implementation of ethics principles, and holds business ethics school targeting compliance officers of domestic businesses as a part of creating a culture of good business.

⁷ Transparency International, Transparency International Global Priorities, http://www.transparency.org/global_priorities(accessed by: 2011.7.28).

Furthermore, TI continues to focus its attention on the 11 thematic issues to monitor and analyze the trend of corruption in a global scale. The 11 thematic issues are:

- Reinforcing access to information
- Protection of rights and Anti-Corruption Legal Advice Centre
- Climate governance
- Corruption in the water sector
- Defense and security
- Education
- Global crisis
- Sanitation
- Humanitarian support
- Legal sector
- Protection of whistleblowers

Among those 11 thematic issues, TI believes that access to information can lead to empowerment of citizens and keep governments and public sectors accountable. Since the source of national power must belong to citizens, TI requests governments to enhance their transparency and accountability through securing the right of access to information for their citizens.⁸

TI also believes that judicial corruption erodes international coalition to fight against transnational crime and terrorism, diminishes trade, economic growth and human development, and negatively impacts citizens due to impartial legal decision. Thus, TI provides four priority targets for judicial reform.⁹ They are:

- (1) Judicial transparency
- (2) Judicial accountability and discipline
- (3) Fairness in judicial appointments
- (4) Decent judicial terms and conditions

⁸ Transparency International (2010), Using the Right to Information as an Anti-Corruption Tool, http://www.transparency.org/content/download/9633/66877/file/TI2006_europe_access_information.pdf [Accessed by: 2011.7.28].

⁹ Transparency International, Judiciary, http://www.transparency.org/global_priorities/other_thematic_issues/judiciary [Accessed by: 2011.7.28].

With regard to protecting whistleblowers, TI emphasizes the importance of disclosing and reporting corrupt behaviors because of the clandestine nature of corrupt behaviors. To protect whistleblowers, TI enumerates three policy recommendations. They are:

- Effective legal protection of whistleblowers against retaliation with full compensation in case of reprisals
- Adequate mechanisms in public, private and not-for-profit organizations to ensure that disclosures are properly handled and thoroughly investigated
- Public research, data collection, information and training to inform the public benefit of whistle-blowing¹⁰

Followings have been discussed as anti-corruption policy strategies for Korea. They are:

- Establishing an independent anti-corruption agency and securing its independency and expertise of an anti-corruption agency
- Establishing a special investigation agency that exclusively handles corruption of high ranking public officials and rebuilding the ethical infrastructure to prohibit such parachute appointment and abuse of power by granting privileges to retired officials
- Revising the Public Information Act to secure transparency in government sectors and monitor them without problems
- In reference to corporate corruption, legislation of a corporate anti-corruption Act and an amendment of the Whistleblower Protection Act to protect corporate whistleblowers, improve corporate governance and overcome corrupt practices within corporations
- Based on the Anti-corruption Action Plan adopted during the G20 summit meeting, restoring collaborative governance among the public sector, the private sector, as well as civil society¹¹

¹⁰ Transparency International (2010), Whistleblowing: an effective tool in the fight against corruption, http://www.transparency.org/content/download/56846/908432/TI_PolicyPosition_Whistleblowing_17_Nov_2010.pdf (Accessed at: 2011.7.28).

¹¹ Referred to both ACRG and TI-KOREA webpage.

2011 Modularization of Korea's Development Experience
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Anti-corruption Criminal Justice Policy

Chapter 2

Contents of Anti-corruption Criminal Justice Policies

1. Criminal Laws related to Corruption and the Effectiveness of Implementing Special Laws
2. Duty of Insinuations relevant to Anti-corruption
3. Government Policies on Corruption

Backgrounds of adopting Anti-corruption Criminal Justice Policies

1. Criminal Laws Related to Corruption and the Effectiveness of Implementing Special Laws

1.1 Bribery

A Bribery offense is most often referred to as a corruption related crime. In general, a bribery offense is defined as an act of any public official or mediator seeking financial gains for his/her duty, or an act of providing financial benefits to any public official or mediator. A bribery offense can be categorized by either acceptance of a bribe or offering a bribe. A bribery offense is regulated by criminal laws and special laws. The purpose of criminalization of a bribery offense is to prevent collapse of national functions due to existence of materially crook public officials.¹² Bribery related offenses have been pervasive in Korea. The offenses have been emerged as a social problem, which requires urgent criminological determination of cause and measures for prevention.¹³

1.1.1 Criminal Act

The basic constituent element of a bribery offense in the Criminal Act is the acceptance of a bribe (Article 129.1). If a public official or an arbitrator receives a bribe, it constitutes a crime regardless of whether there was violation of his/her duty. With regard to acceptance of a bribe, if a public official or an arbitrator takes an improper action in the course of performing his/her duties, it establishes either improper action after acceptance of a bribe (Article 131.1) or acceptance of a bribe after improper action (Article 131.2), which is an

¹² Woong Yim, *Particulars of Criminal Law*, Beopmoonsa, 2011, p849.

¹³ Woong Yim, *A Study on the Bribery Crime*, The Korean Association of Criminology, Criminal Justice Policy No10, 1998, p263-286.

aggravated constituent element of crime. A case in which a person, who is to become a public official or an arbitrator, receives a bribe in connection with the duty that he/she is to perform, it establishes advance acceptance of a bribe, which is a reduced constituent element of crime (Article 129.2).

Besides, there are other types of bribery offenses that include bribes to a third person (Article 130), subsequent bribery (Article 131.3), acceptance of bribery through good offices (Article 132), offer, etc of bribe (Article 133). However, it should be noted that the level of awareness for those penal provisions among public officials is quite low, and public officials are not aware of the content of penal provisions precisely. For example, among public officials punished according to Article 129 of the Crime Act,¹⁴ only 1.7 percent of public officials are aware of the penal code of Article 129.¹⁵ In addition, Article 130 is the provision for “a public official who causes, demands, or promises a bribe to be given to a third party.” However, only few public officials know the exact responsibility for breaching the said Article and understand that the level of responsibility for breaching would be more severe than they think. Therefore, it is difficult to expect the effectiveness of controlling corruption through the Criminal Act given the fact that only few public officials understand the exact responsibility of breaching corruption related provisions of the Criminal Act.¹⁶

1.1.2 Special Laws

One of the special laws regarding corruption is Act on the aggravated punishment, etc, of specific crime. Legislated in December, 1980, the Act on the aggravated punishment, etc, of specific crime, which was designed during the reign of the Fifth Republic in the pursuit of purifying the public sector, was a strong expression of the Fifth Republic’s will to eradicate corruption. Before its amendment, the maximum sentence for an offender was the death penalty. However, it has been amended due to criticism on its unrealistic and severe punishment and fairness of punishment imposed by other Acts.

The Article 2.1 of the said Act stipulates the aggravated punishment based on the amount of bribe received with respect to Article 129 through 132 of the Criminal Act. According to the said Act, “any person who receives money more than 100 million won shall be punished by the imprisonment for life or not less than 10 years.” In the same Act, “a person

¹⁴ Article 129.1 of the Criminal Act stipulates that a public official or an arbitrator who receives, demands, or promises to accept a bribe in connection with his duties, shall be punished by imprisonment for not more than five years or suspension of qualification for not more than 10 years. Article 129.2 of the said Act stipulates that if a person who is to become a public official or an arbitrator receives, demands, or promises to accept a bribe in response to a solicitation, in connection with the duty which he is to perform and he actually becomes a public official or arbitrator, imprisonment for not more than three years or suspension of qualifications for not more than seven years shall be imposed.

¹⁵ Soon-Young Choi&Jin-Uk Choi Institutional Control over the Corrupt Practices of Civil Servants, Korean Institute of Criminology, 2007, p81.

¹⁶ Soon-Young Choi&Jin-Uk Choi Institutional Control over the Corrupt Practices of Civil Servants, Korean Institute of Criminology, 2007, p83-84.

who receives more than 50 million won but less than 100 million shall be punished the imprisonment for more than seven years, and more than three years and less than five years of the imprisonment shall be sentenced to a person who receives a bribe more than 30 million won but less than 50 million won.”

Article 2.1 in the same Act stipulates that “a person who has committed a crime specified in Article 129 through 132 of the Criminal Act shall be concurrently fined not less than two times but no more than five times the amount of the accepted bribery,” which strengthens the punishment for bribery offenses.

The Act on the aggravated punishment etc, of specific economic crimes criminalize a bribery offense. According to Article 5.1 in the said Act, “if any officer or employee of a financial institution accepts, demands or promises any money or other benefit, in connection with his duties, he shall be punished by imprisonment for not more than five years, or a suspension of qualification for not more than ten years.” Article 5.4 in the same Act stipulates that:

- When the accepted amount is 100 million won or more, he shall be punished by life imprisonment or not less than ten years.
- When the accepted amount is 50 million won or more but less than 100 million won, he shall be punished by imprisonment for seven years or longer.
- When the accepted amount is 30 million won or more but less than 50 million won, he shall be punished by imprisonment for five years or longer.

In addition, Article 5.5 in the same Act clarifies that “in cases referred above, he shall be concurrently punished by fines, which are not less than two times but not more than five times the accepted amount.”

The Act on Special Cases concerning Forfeiture for Offenses of Public Officials was legislated in January, 1995, with an aim to thoroughly trace and forfeit illegal proceeds of a public official obtained through a misprision of the public official. This Act is aimed at ultimately rooting out causes of corruption and building a transparent environment in the public sector. A special feature of this ACT is that the target of forfeiture is limited to not only illegal proceeds generated by acceptance of a bribe but also property derivatives of the illegal proceeds (Article 2.4). If illegal properties cannot be forfeited, the value corresponding to the properties subject to forfeiture can be forfeited from the offender (Article 6).

Legislated in and entered into force since February 2008, the Act on the Prevention of Corruption and the Establishment and Management of the Anti-corruption and Civil Rights Commission provides protection and reward for an informant of alleged corruption, citizen’s right to request for audit, and etc. In general, the clandestine nature of bribery offense combined with measures adopted to cover-up possible exposure of corruption make it difficult to disclose, prove and punish bribery offense. Therefore, a tip or whistle-blowing

from the insider, who knows the existence of crime more than anyone, can be a very powerful counter measure. This is the reason why there is a need to establish the mechanism to protect and reward a whistle-blower, who is effective in controlling bribery offenses.

According to Article 3 of the Act on the Regulation and Punishment of Concealment of Gains from Crime, “if a person conceals proceeds of crime and its descendant property obtained through bribery offense in a bid to deceive the acquisition or disposal of the proceeds, or to make them appear as property obtained legally, he shall be punished imprisonment for not more than 5 years or be fined not more than 30 million won.” Furthermore, “if a person knows the origin of the proceeds of crime but accepts the proceeds, he shall be punished imprisonment not more than three years or be fined not more than 20 million won” (Article 4 of the said Act) and the proceeds of crime can be traced and forfeited (Article 8 through 10 of the said Act).

Legislated in and entered into force since August, 2005, the Act on Special Cases concerning the forfeiture of illegal political funds, etc. is aimed at ultimately blocking production of illegal political funds and improving transparency of political funds. In this light, the said Act stipulates that not only illegal political funds obtained through committing illegal transaction of political funds, acceptance of bribe, acceptance of bribe through good offices and an offense of using public secrets, but also derivative proceeds of the illegal political funds can be forfeited (Article 2 and 3) in order to thoroughly forfeit illegal proceeds.

Furthermore, in case a person other than the offender obtains properties of corruption subject to forfeiture or intermingled properties with the knowledge that properties are criminal proceeds, the properties of corruption or intermingled properties can be forfeited even if they belong to a person other than the offender (Article 4).¹⁷

1.2 Corruption of High Ranking Public Officials

1.2.1 Criminal Act

Types of crime closely related to corruption of high ranking public officials include bribery, neglect of duty, crime against divulgence of secret in the course of performing public duties, interference with the exercise of right, extortion, malfeasance and etc. Corruption of high ranking public officials, which is actually a part of corruption of public officials, shows similar patterns of criminal behavior with bribery offense. Thus, laws punishing corruption of high ranking public officials overlap with laws which explained bribery offense earlier. Both the Criminal Act and Special laws can be applied to punish corruption of high ranking public officials. However, it is difficult to expect the effectiveness of the Criminal Act since special laws are considered to be applied ahead of Criminal Act to punish corrupt high ranking public officials due to the principle of special law preference. Furthermore,

¹⁷ Woong Yim, *Particulars of Criminal Law*, Beopmoonsa, 2011, pp. 853-856.

the number of public officials punished or reprimanded due to acceptance of bribe or embezzlement of public money is great among not only high ranking public officials but also low ranking public officials. It demonstrates that corruption of public officials is a problem that is limited not only to high ranking public officials.¹⁸

1.2.2 Special Laws

Major special laws related to corruption of public officials are the State Public Officials Act and Public Service Ethics Act. The State Public Officials Act sets out obligations for public officials in reference to his/her public duties such as integrity, maintaining dignity, a ban for holding more than a concurrent position for pursuing profit. The said Act also indicates that a violator shall be retired ipso facto, dismissed him/her ex officio or etc.

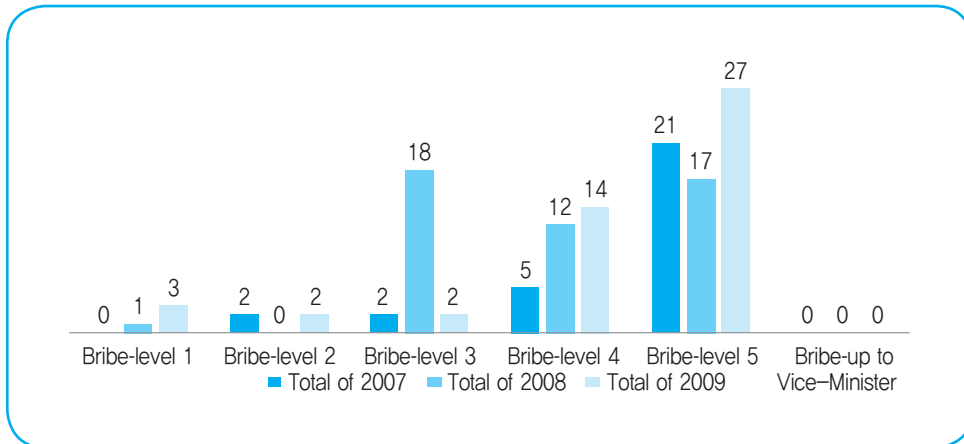
The Public Service Ethics Act, which is a legal framework possessing a characteristic designed to prevent corruption, requires a public official to register and disclose his/her property and to report on property of transferred person. Furthermore, the said Act imposes restriction on employment of retired public officials in relation to private enterprises, etc. and includes punishment to its violators.

The Act on the Prevention of Corruption and the Establishment and Management of the Anti-corruption and Civil Rights Commission also stipulates basic rules such as establishment of anti-corruption agency to make Korea transparent both in public sector and society, protection and rewarding for whistleblowers as well as improving audits and participation of citizens.

Furthermore, the Act on Special Cases concerning Forfeiture for Offenses of Public Officials was legislated in and has been entered into force since 1995 on the ground that even if a public official was prosecuted for obtaining illegal proceeds by abusing his/her public duties, it is desirable to thoroughly forfeit the illegal proceeds. The subject of forfeiture and punishment on penalty tax has been expanded to include not only illegal proceeds obtained through acceptance of bribe but also property derivatives of the proceeds.

18 Seung-Ju Lee & Dong-Yoon Lee, *Democratization and Corruption: A Case Study of Korea*, *The 21st Century Political Science Review* 2, Vol. 15, No.2, 2005, pp. 79-80.

Figure 2-1 | Bribe Status of a Government Dignitary



1.3 Corruption in Judiciary

1.3.1 Criminal Act

Among provisions of the Criminal Act, provisions for bribery offense, offense of divulging secrets, defamation, neglect of duty, abuse of authority and obstruction of election can be applied to control corruption in judiciary. While provisions for bribery offense, abuse of authority and obstruction of election can be applied to judges and public prosecutors, provisions for offense of divulging secrets and bribery offense can be applied to attorneys.

1.3.2 Special Laws

Under Article 106 of the Korean Constitution, “No judge shall be removed from office except by impeachment or a sentence of imprisonment.” However, disciplinary action taken against judges has happened very rarely, so does removing judges from his office by impeachment.¹⁹ According to Article 2.1 and Article 2.2 of the Discipline of Judges Act, “a judge who violates any of his/her official duties, or neglects any of his/her duties, or commits any act detrimental to his/her prestige or dignity as a judge shall be subject to disciplinary action.”

There are three categories of disciplinary action: suspension from office, salary reduction and reprimand (Article 3.1 of the said Act). Suspension from office means suspending a judge from performing his/her official duties for a period of between not less than one

¹⁹ According to the data released by parliamentary inspection of the administration, total five judges were brought to the disciplinary committee between 1999 to 2008. Among the five judges, three were reprimanded and other two were suspended from their position. Though there has been no case reported that a justice of the Supreme Court has been submitted to a disciplinary measure, one Supreme Court justice was brought to the Ethics Commission for the first time on a charge of exerting external pressure to candlelight vigil trials (Refer to an article reported by Segyeilbo, March 12, 2009).

month and not more than one year without remuneration (Article 3.2 of the said Act). Salary reduction means reducing a salary by not more than 1/3 for a period of between not less than one month and not more than one year (Article 3.3 of the said Act). Article 3 and the 4 of the said Act stipulates that reprimand is taken through written documents. However, it seems very difficult to hold judges liable for his/her breach without an inspection institution aimed at detecting grounds for disciplinary action.

According to Article 2, the Discipline of Public Prosecutors Act, a public prosecutor falling under any of the following shall be subject to disciplinary action:

1. Where he/she violates Article 43 of the Public Prosecutor's Act²⁰
2. Where he/she violates any of his/her official duties, or neglects any of his/her duties
3. Where he/she commits any act detrimental to his/her prestige or dignity as a public prosecutor, regardless of whether it is related to his/her official duties

According to Article 3.1 of the said Act, disciplinary actions shall be classified into dismissal, removal, suspension from office, salary reduction, and reprimand. Suspension from office means suspending a public prosecutor from performing his/her official duties for a period of between not less than one month and not more than six months without remuneration (Article 3.3 of the said Act). Salary reduction means reducing a salary by not more than 1/3 for a period of between not less than one month and not more than one year (Article 3.4 of the said Act). Reprimand means having a public prosecutor reflects on a misconduct he/she has committed while engaging in his/her official duties (Article 3.5 of the said Act). Nevertheless, removal of a public prosecutor from his/her office by a disciplinary action taken at him/her²¹ has happened rarely. The following graph shows the number of prosecutors disciplined from 2004 to 2009 and the types of offense committed.²²

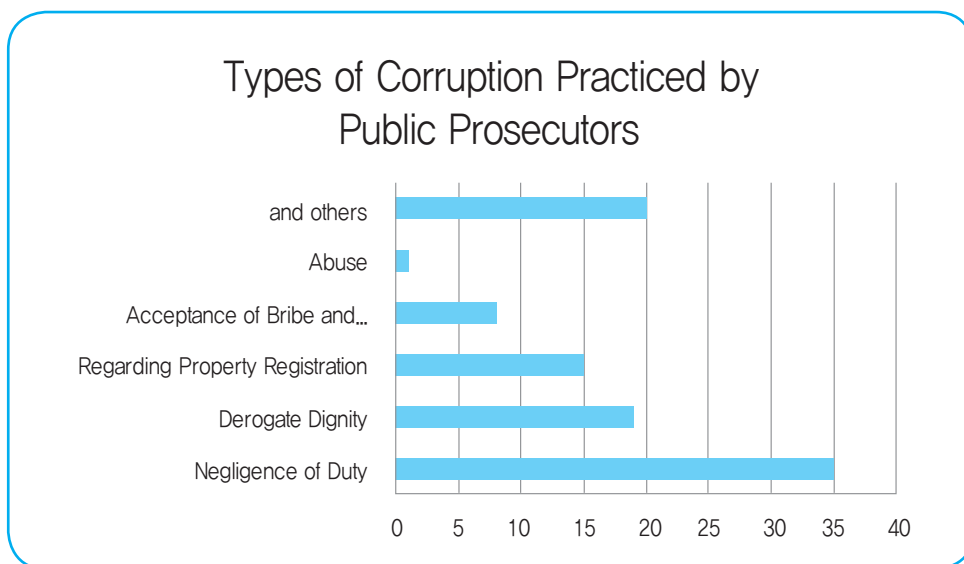
20 According to Article 43 of the Public Prosecutor's Act, a Public Prosecutor cannot conduct following acts while he/she holds office;

1. Become a member of the National or the Regional Assembly;
2. Involving in a political campaign;
3. Engaging in profit driven business; and
4. Engaging in business that pays salary without authorization of the Minister of Justice.

21 According to the annual parliamentary audit, total 98 prosecutors were indicted between 2004 to July, 2009 on charges of light and heavy irregularities such as acceptance of bribe and entertainment, negligence of duty. Among those 98 prosecutors, 73 received a warning or were dismissed with caution, which both of them are not official disciplinary measures under the Discipline of Public Prosecutors Act. Furthermore, among 18 prosecutors receiving disciplinary action against them, eight prosecutors received a relatively light disciplinary action such as reprimand or probation while only two prosecutors received a heavy disciplinary action like dismissal from office. Just one and seven prosecutor respectively received suspension and a salary reduction, and seven prosecutors leaving their office by themselves. Especially, among eight prosecutors committing comparatively serious crime such as acceptance of bribe and entertainment, only one prosecutor was dismissed from his/her position and three prosecutors received a salary reduction for one to three months (Referred an article of the Law Time reported on October 15, 2009). In addition, the Public Prosecutor Disciplinary Committee granted a suspension disciplinary measure to two senior prosecutors, who was involved in a scandal called 'sponsor prosecutor', but the Committee was criticized for its soft approach (Referred an article of the Segye-Ilbo, reported on June 25, 2010).

22 The Ministry of Justice, Refer to the annual parliamentary audit 2009.

Figure 2-2 | Types of Corruption Practiced by Public Prosecutors



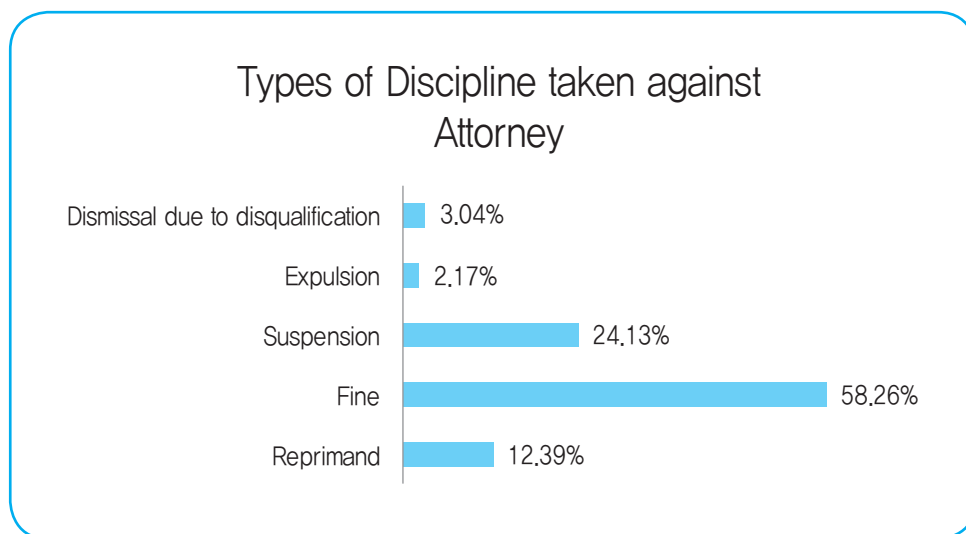
Corruption of Korean attorney can be punished through the Korean Bar Association.²³ According to Article 8.1.4 of the Attorney at-law Act, stipulated in reference to corruption of attorney, “if a person who has been subject to criminal prosecution or disciplinary action or has retired from office due to unlawful conduct related to his/her duties while working as a public official, can be denied from attorney registration.” However, there has been criticism that a person, who is denied his/her registration based on the reason mentioned above, is entitled to apply for another registration after 2 years from the denial, once accepted, he or she can serve as an attorney. In addition, the revised bill for the said Act, which includes newly set out provisions to prevent privileges of former, passed the Assembly plenary session.²⁴ As a result, both a former judge and a prosecutor are not entitled to serve as a lawyer at courts of their previous jurisdictions for one year. Also, a retired public official with experiences serving as an attorney at military courts, the Fair Trade Commission or the National Police Agency is prohibited to serve as a lawyer for his/her former agency. However, because there is no existence of specified penal provisions, the bill has been criticized as a half way

23 After the People’s Solidarity for Participatory Democracy(PSPD) analyzing 460 cases of disciplinary measures taken against attorneys from 1993, when the Korean Bar Association first had a right to discipline attorney, to July, 2010, the annual case of discipline attorney was 25.5, but there were 136 cases when the Eui jeongbu scandal happened. Before 2004, the number of disciplinary actions taken annually was 10 on average, however, the number increased around 20 to 30 after 2004. Regarding the types of discipline taken, 57 cases of reprimand(12.39%), the lightest discipline, 268 cases of fine(58.26%), 111 cases of suspension(24.13%) and 24 cases of disqualification(5.22%) were recorded(Referred the issue report of the People’s Solidarity for Participatory Democracy, A need for disclosing information of attorney and 460 cases of discipline, The PSPD Legal Justice Reform Network, 2010, pp. 12-13).

24 Passed the National Assembly plenary session on April, 29, 2011.

measure. The following graph shows the types of discipline (Article 90 of the said Act)²⁵ against an attorney and percentage of each discipline taken at attorneys.²⁶

Figure 2-3 | Types of Discipline taken against Attorney



1.4 Collusion between Politics and Businesses

Since authoritative regimes, in general, do not possess a strong support base, they are not free from a matter of political legitimacy for their reign, causing them to distribute powers and wealth to expand their support base. Funds required to expand their support base come from businesses, and the businesses naturally expect benefits in return for their payment, in turn, collusion between politics and businesses can be enlarged.²⁷ Furthermore, the relationship between politicians and businessmen is not a simple matter and can be developed to a holistic problem that includes corruption of both public official and politics. Criminal Act and Special Laws have been adopted to regulate collusion between politicians and businessmen.²⁸

25 According to Article 90 of the Attorney at-law Act, types of disciplinary action can be categorized into ① reprimand, ② fine not more than 30,000,000 won, ③ suspension not more than 3 years, ④ expulsion and ⑤ permanent expulsion.

26 Referred to the Korean Bar Association, Issue Report of the PSPD 2010.

27 Suil Jeon, The theory of corruption in bureaucracy, Seonhak Sa, 1996, p.60.

28 Indictment for members of the successive National Assembly due to raising political funds through acceptance of bribe, acceptance of bribe through good offices, embezzlement has been continuous since the process of democratization has begun in Korea. Ten Parliament members for the 13th National Assembly, seven members for both 14th and 15th were expelled from the National Assembly[Referred an article of Joongang Daily published 01/16/2001].

1.4.1 Criminal Act

Provisions pertaining to acceptance of bribe, acceptance of bribe through good offices, embezzlement, receiving or giving bribe by breach of trust, and etc can be applied to punish offenders of collusion between politics and businesses. In case of corruption of public officials, provisions for abuse of authority and embezzlement related to government funds can be applied to punish its offenders. Among the types of crime related to dirty links between business and politics, bribery related offenses occur most often.

It constitutes an offense of acceptance of bribe through good offices when a public official receives money or other benefits concerning the use of the good offices in connection with public duty. In addition, if a member of financial institution receives a bribe for his/her duties, it also constitutes the offense of acceptance of bribe through good offices.

It constitutes an offense of embezzlement if a businessman offers a bribe or provides a reception to a politician or a public official with his/her company funds, or misappropriates company funds for himself/herself or builds a corporate slush fund.

1.4.2 Special Laws

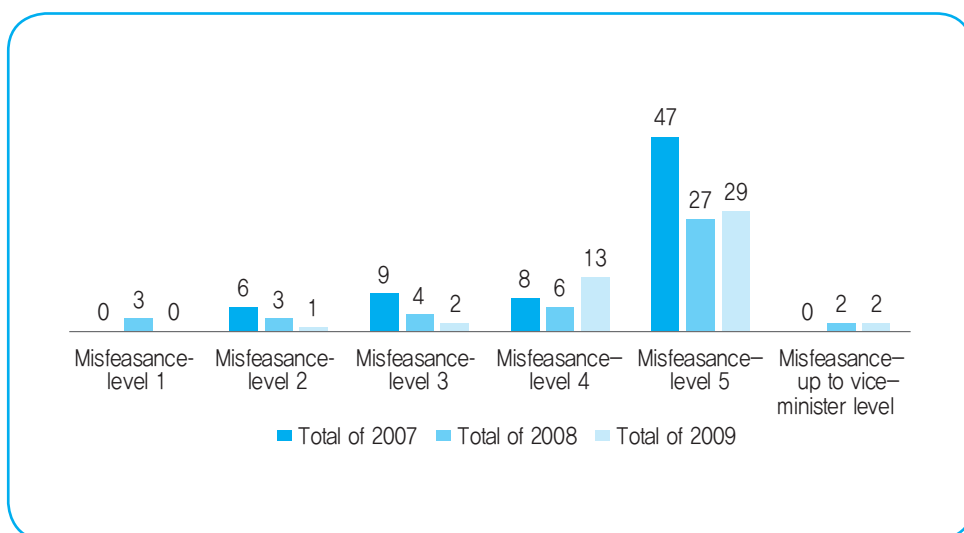
Typical special laws related to collusion between politics and businesses are politics related laws: the Public Official Election Act, the Political Parties Act and the Political Fund Act. The purpose of politics related laws is to reform the political structure that requires lots of money and to enhance transparency in collecting and spending political funds. To meet the purpose of politics related laws, the Public Official Election Act is aimed at contributing to the development of democratic politics by ensuring that elections prescribed by the Constitution of the Republic of Korea and Local Autonomy Act are held fairly in accordance with the free will of the people and democratic procedures and by preventing any malpractice related to such elections. Compared to other special laws regulating corruption, the Public Official Election Act directly targets corrupt behaviors, and the types of criminal behavior dealt in the said Act are crime of offering bribe and acceptance of bribe.

The purpose of the Political Parties Act is to contribute to the sound development of politics by securing organizations necessary for political parties to participate in the formation of the political will of the people, and by guaranteeing the democratic organizations and activities of political parties.

The Political Fund Act is aimed at contributing to the sound development of democratic politics by guaranteeing fair provision of political funds, ensuring transparency of political

funds through disclosure of the details of their revenues and expenditures and preventing irregularities involving political funds. The Public Official Election Act was amended to reflect the amendment of other laws, requiring that a person who receives money and entertainment from a politician to repay 50 times worth of money what he received, and to provide rewards for an informant.²⁹ Article 261.6 of the said Act clarifies that “a person who falls under any of the following subparagraph (excluding a person who has received money, foods or articles the value of which exceeds one million won) by violating Article 116 shall be punished by a fine for negligence of not less than ten times of the amount and not more than 50 times of the amount (two million won in case of officiators), but such fine for negligence shall not exceed 30 million won.” In addition, Article 262.3.1 of the said Act provides that “the election commission of each level may pay reward money under conditions stipulated by the National Election Commission Regulations to the person who has filed a report on election crimes before the election commission acknowledged them.” In connection to Article 262-3.1 of the Public Official Election Act, Article 143-4.1 of the Rules on the Management of Public Officials Election³⁰ stipulates that “Reward for an informant of election crime, as stipulated in the said Article 262.3, can be granted, whether autonomously or not, within the range of 500,000 won by the election commission of each level after a decision has been made through the judging commission of reward. However, the said Rule also clarifies that “an informant can be rewarded additionally provided that a dismissal of an elected person because of a sentence upheld by the Supreme Court.”

Figure 2-4 | Current Condition of Misfeasance in Public Office



²⁹ Act No.10303, 2010.5.17, Other Laws and Regulations Amended; enforcement 2010.11.18.

³⁰ Rules on the Management of Public Officials Election No.334, 2010.6.28. Partial Amendment; enforcement 2010.6.28.

2. Duty of Insinuations Relevant to Anti-corruption

2.1 Anti-Corruption&Civil Rights Commission

The Anti-Corruption&Civil Rights Commission (ACRC) has taken over all the functions that the Korea Independent Commission Against Corruption (KICAC) and the Administrative Appeals Commission (AAC) under the Prime Minister carried out in the past. The ACRC is aimed at establishing a quick and reliable one-stop service system by combining the functions of addressing public complaints, preventing corruption and settling administrative appeals.

Roles of the ACRC include designing and governing comprehensive anti-corruption measures at the national level, assisting concerned government agencies to implement a measure to assess integrity levels of high-ranking public officials and a code of conduct to prevent corruption, and protecting and rewarding those who have reported suspected corruption by legislating the Whistleblower Protection Act.

Under the Prevention of Corruption Act, upon receiving a corruption complaint, the ACRC examines the complaint, if there is corruption allegation, then transfers the complaint to investigation agencies such as the Board of Audit&Inspection or the prosecution. The ACRC also has an authority to check and balance investigation agencies by examining outcomes of investigation taken by those agencies and requesting further investigation. In addition, if there is a person who disadvantages or discriminates against an informant or a whistle blower in terms of his/her public position, the ACRC may impose a fine or a criminal prosecution to the person and enforce the person to take necessary measures to restore damage caused by his/her wrongdoing. The ACRC also takes a role to assess the actual state and to evaluate the progress of policy steps, which public organizations have taken to prevent corruption.

In the pursuit of developing civil rights protection, the ACRC runs Sinmoongo (a Big Drum)-a part of the system for handling complaints against the government-its English name is E-people-and '110 call' center to analyze complaints of people and to provide its real time analysis to government agencies as well as municipal governments, and to expand municipal government ombudsman at a municipal level so that anyone can report infringement of the public interest to the administrative agencies concerned. Protective measures for whistle blowers are implemented by ACRC to protect their status and to ensure the security and confidentiality.³¹ To establish a basis of fair culture, ACRC closely examines moral hazard cases involving public officials or high-profile citizens, information trade regarding official duties such as leaking information about public projects as well as inappropriate use of common property by public officials. It draws up ways to prevent dodging mandatory military service, promotes the effectiveness of punishment laws against corporations or companies regarding rebate, modifies corruption control system

³¹ Refer to 2011 Civil Rights Action Plan by The Anti-Corruption&Civil Rights Commission(ACRC), 2011/2, p. 8-10.

in the financial sectors, and pushes ahead with omni-directional measures with an aim to eradicate influence peddling and solicit for bribery. For the purpose of enhancing trust in the society, ACRC has put forth measures to promoting integrity. With respect to corruption, those who cooperate in reporting, investigation or legal action against corrupt-related cases are equally treated and protected as whistle blowers or reporters are. Furthermore, ACRC has considered introducing measures under which a proportion of compensation paid to a reporter shall be clawed back from the organization that benefits from restitution for unjust enrichment to report on corruption.

2.2 Role of the Transparency International Korea (TI-Korea)

The Transparency International Korea (TI-Korea) is a non-governmental organization, which was founded to promote the awareness of people, to eradicate prevailed corruption in the society and to contribute to the righteous construction of society through anti-corruption movements. In addition, it focuses on realizing a transparent society by encouraging people to participate in its activities and to actively participate in international anti-corruption movement.

TI-Korea operates local headquarters which assist in achieving goals. Its main activities are anti-corruption movements, research and development of anti-corruption policies and legislations, introduction and implementation of Citizen Ombudsman, and international networking. More specific principle activities of TI-Korea are to maintain laws and systems by construction of a national integrity system; to implement anti-corruption policy; to conduct research and collect data; to promote educational and cultural anti-corruption and transparency movement; to develop a fixed and transparent business culture through ethical management; to create a transparent society with national government; to implement and broaden K-PACT; and to take part in anti-corruption activities at an international level. A key role of TI-Korea is to build anti-corruption system by modifying related laws and institutions.³²

2.3 Role of the Central Investigation Department at the Supreme Prosecutor's Office

With respect to corruption involving public officials, the strongest sanction is criminal prosecution. For corruption cases, the prosecution conducts investigation after finding criminal facts by itself. Usually, the prosecution starts investigation into corruption cases when National Tax Service the Board of Audit and Inspection, Public Official Ethics Committee or other institutions detect suspicions of corruption and report. Successful investigation and indictment of corruption cases depend on the prosecution as it has the exclusive supervisory right of investigation activity and the right of arraignment. Therefore, the integrity and independence of the prosecution have great impact on the criminal trial

³² Refer to the official web site of TI-Korea.

system. The prosecution, especially the central investigation department of the Supreme Prosecutor's office, has the responsibility to be the first line of imposing criminal sanctions against corrupt public officials. The issue of setting up an independent investigation agency, for instance Public Officials Corruption Investigation Office, or Special Investigation Agency, has been fiercely discussed over the past 23 years. In 2011, there were controversies over disbanding an elite investigation unit of the prosecution-the central investigation department as part of a plan to overhaul the justice system in Korea. The plan was prepared by a special committee of the National Assembly.

Considering discussion over breaking the central investigation department, presence of the department depends on how to deal with corruption cases involving public officials. To properly perform its duties, the central investigation department needs to figure out the challenges that it faces. First of all, difficulties in controlling corruption stem from lack of information. The department should find ways to enhance its ability of collecting and compiling data so that it effectively and successfully controls corruption. In respect to corruption cases involving public officials, the department should utilize task force teams at government agencies who are in charge of collecting information and data, such as a crime information center to promote its information and data collection capacity. Then it shall identify specific information about chronic or organized corruption and carry out scientific and specialized investigations into areas that are vulnerable to corruption. To this end, the prosecution has made efforts to use reporting channels like hot line or its web site. However, it is generally accepted that its efforts are not sufficient to overcome challenges; more complementary measures are necessary. For example, investigation into corruption of public officials requires securing human resources with hands-on-background, expertise in various fields and investigation techniques. Therefore, it is required to help them focus on their work by guaranteeing work continuation and keeping their expertise. Moreover, illegally obtained assets of corruption offenders should be traced and retrieved.

Corrupt public officials tend to get others involved by bribing others concerned with illegally obtained proceeds. What is more worrisome regarding corruption of public officials is that it has characteristics of bureaucratic corruption which undermines an institution's capacity of supervising and monitoring corruption and has high risk of leading to 'systemic corruption.' All government agencies concerned should make efforts to designing appropriate measures to respond to complex, systemic corruption and understanding characteristics of corruption. Therefore, the prosecution needs to form a cooperative relation and build cooperation system with other government bodies, including the Anti-Corruption&Civil Rights Commission (ACRC), the Board of Audit and Inspection, the National Police Agency, National Tax Service, the Financial Supervisory Service and Fair Trade Commission (FTC). The prosecution and bodies concerned should create cooperative working environment from the practical perspective to prevent corruption and to identify corruption by public officials. By exchanging information and reporting what they learned from others, cooperative relationship could make advancements.

In this regard, the prosecution should contemplate whether it needs to promote cooperation relations with other government agencies by establishing a task force to deal with probes into corruption by public officials. The prosecution should also ensure that public officials involved in corruption case are punished according to the nature of crime by presenting sufficient documents about sentencing corruption cases and sustaining a public prosecution against offenders. Most of all, the central investigation department is required to maintain political neutrality and investigative independence because there are risks that probe into corruption cases, especially involving high-ranking officials, politicians, lawyers, judges, ministers and vice ministers, heads of local officials or military commanders. They may be influenced by the ruling or opposing political parties or the government in power.

3. Government Policies on Corruption

3.1 Declaration of Fight against Corruption and Policies to put the Declaration into Practices

A new government taking office has declared fight against corruption throughout Korean history. Only after President Kim Young-sam took office fight against corruption began in earnest. Whether a government really put its declaration of fight against corruption into practice could be determined by national policy to fulfill its election pledges. Whether a government kept its election pledges is closely examined from the following.

Election commitments of the Kim Young-sam government were represented by eliminating corruption in politics through fair election and the real-name financial system. As he promised, President KIM set up the Prevention of Corruption Committee as an advisory body of the Chairman of the Board of Audit and Inspection, amended Political Fund Act and enacted Real Name Financial Transactions Act (Repealed). During the presidential election campaign, President Kim Dae-jung pledged to enact Organic Act on Counter Corruption Act and Code of Conduct for Public Officials, to introduce anti-money laundering system, whistleblower protection system and permanent independent counsel system, and to establish a special committee on corruption. During his term, president Kim enacted Anti-corruption Act (Repealed), Anti-Money Laundering, AML and Code of Conduct for Public Officials, and set up a permanent independent counsel and a special committee on corruption. Election pledges of President Roh Moo-hyun included implementing parliamentary confirmation hearing, tightening up Public Service Ethics Act and Anti-money laundering Act, introducing transparency of political funds, and expanding the scope of disclosing administrative information. He stepped up the parliamentary confirmation hearing, amended Political Fund Act and Public Information Act, prohibited corporations from donating political funds, disclosed the list of donators giving more than certain amount of political funds and information in advance, put Currency Transaction Report in practice, and established Market Information Committee. Current president Lee Myeong-bak promised to improve preventive mechanisms, to toughen penalties for corruption, to vitalize movement on the Korean Pact on Anti-Corruption and Transparency (K-PACT), and to strengthen protection

of whistleblowers and public interest whistleblowers. Among the pledges, he kept his promise to toughen the Act on the Aggravated Punishment, etc. of Specific Crimes.

Declaration of fight against corruption repeats over and over when a new government takes office. The distinctive characteristic of the declaration has been used as a way to revive the discipline in public offices toward the end of presidency. However, the public had doubt over the government's will to fulfill its declaration of fight against corruption as corruption scandal involving president's aides and associates or relatives rise or it was used as a mean to go through apolitical crisis. For example, president Kim Young-sam showed strong will to curb corruption early in his term of office and ambition to implement the real-name financial transaction system to block black money from flowing. However, he had to release a statement of apology to the public after Kim Hyun-chul, his second son, was charged with bribe-for-loan scandal dubbed "Hanbogate." in 1994. The president was then called as 'plant president.'

In 1999, President Kim Dae-jung's government came under fierce attack when he was involved in the so-called 'Clothes Bribery Scandal,' which was a scandal involving the wives of senior government officials and a jailed business tycoon. Especially in 2000, a series of corruption scandals 'Jung Hyeon-joon, Jin Seong-hyeon, Lee Yong-ho Gate' involving head of venture business, Chongwadae officials, politicians and government officials, erupted, and the lame-duck phenomenon became worse towards the end of the presidency. In January 2002, even though the government held ministerial meetings and published a comprehensive plan to deal with corruption, '3 hong scandal,' where the president's 3 sons were involved, tarnished the government image further and resulted in the president's apology to the public.

The former president Roh Moo-hyun made efforts to control corruption by establishing an investigation bureau against corruption cases of public officials, but he and his government faced fierce resistance from the Grand National Party and the prosecution. Furthermore, he was embroiled in controversy over corruption scandals. Now, corruption of head of government officials, who are supposed to be at the front line in curbing corruption, is getting worse in the president Lee Myeong-bak's government. However, there has been no specific solution or plan.

3.2 Anti-corruption Policies of other Related Bodies

3.2.1 Government Policies and the Anti-Corruption&Civil Rights Commission (ACRC)

The Korean name of anti-corruption committee was changed to Korea Independent Commission Against Corruption,³³ an independent commission. The commission set and made its goal public: 'Building an Integrity National.' To achieve its goal, the commission established

³³ Anti-corruption committee was changed into Korea Independent Commission which was formally launched on 21 July, 2005 to achieve a grand goal of 'Enhancing Integrity of Nation' rather than a smaller one, 'Prevention of Corruption.'

two principles, 'Principle and Trust,' and 'Transparency and Fairness.' Under the principles, the commission classified its goal into 4 areas and formulated detailed policies. First of all, regarding identification of corruption and probe and impartial punishment, the commission focused on vitalizing report of corruption within an authority, stepping up monitoring corruption of high-ranking officials, and establishing an impartial punishment culture. In fact, identification of corruption and probe and impartial punishment are fundamentals in preventing corruption. If they are not properly implemented, any anti-corruption policy may bear fruitful result. Even though governments have always highlighted the importance of those two fundamentals in principle in the past, they failed to meet the public's expectation, which only raised doubt and skepticism from the public about government willingness to control corruption. Hence, an anti-corruption body is needed to strengthen monitoring of corruption among high-ranking officials and to punish them impartially.

To encourage people's participation in anti-corruption movement and raise ethical awareness, the commission presented directions of the policy; to promote citizens' participation in administrative processes, to implement a code of conduct of public officials, to provide well-organized anti-corruption education, and to conduct joint anti-corruption movement with nongovernmental organizations. In particular, the policy about raising a sense of ethics has been implemented from 2003 as not only public officials but the general public are required to have it. The importance of policy concerning implementing a code of conduct is well recognized in preventing corruption of public officials and promoting a sense of ethics. The commission presented detailed goals in order to realize its agenda of promoting a sense of ethics among public workers. The goals are to make the code of conduct establish a firm base, to improve the system of Public Service Ethics and to eliminate the authoritarian administrative culture. The code of conduct for public officials has promoted a sense of ethics among public officials and the general public and presented standards of desirable attitude of public officials and of preemptive anti-corruption measures. As a result, it has brought significant changes in the Korean society.

3.2.2 Code of Conduct

The legal ground of code of conduct is 'Act on the Prevention of Corruption and Establishment and Management of the Anti-corruption and Civil Rights Commission.' The act provides that public officials have responsibilities to prevent corruption in order to create sound social ethics in Article 3 (responsibilities of public institutions) and comply with Acts and subordinate statues, perform their duties fairly and hospitably, and refrain from committing any act of corrupting themselves or losing dignity in Article 7 (obligation of public officials to be of good standing). It also stipulates in Article 8 (code of conduct for public officials) the code of conduct that public official must observe Presidential Decree, the National Assembly Regulations, the Supreme Court Regulations, the Constitutional Court Regulations, the National Election Commission Regulations or the internal regulations of the public service-related organizations. The act provides that the code of conduct for public

officials shall prescribe matters; 1) concerning the prohibition and limitation of any public official's receiving entertainment, money, goods, etc. from any person related to his/her duties; 2) regarding the prohibition and limitation of any public official's intervening in personnel affairs or concessions or using his/her good offices or soliciting another person for his/her good offices, taking advantage of his position; 3) that public officials need to observe in order to create a sound climate of the civil service, including fair personnel administration; 4) other matters necessary to prevent corruption and maintain a good standing and dignity of public officials when they perform their duties. Per the act, if any public official violates the code of conduct for public officials, a disciplinary measure may be taken against him/her. Furthermore, the types and procedures of disciplinary measures shall be governed by Acts and subordinate statutes or internal regulations that prescribe matters concerning the disciplinary measures of administrative agencies or organizations to which relevant public officials belong to.³⁴

The code of conduct for public officials, under the name 'Code of Conduct for Maintaining the Integrity of Public Officials' was enacted by Presidential Decree in February 2003 and put into force starting from May. It specifies that the standards of conduct be observed by both state and local public officials. The code was first amended in December 2005 to complement its weaknesses found during implementation. Besides the code of conduct for public officials, 404 public service-related organizations autonomously enacted and implemented a code of conduct for their employees from September 2004, following recommendations by the Korea Independent Commission Against Corruption (KICAC). Later, Article 8 of Anti-corruption Act was amended in July 2005 and provided legal grounds to the code of conduct for public service-related organizations.

In April 2006, KIACA recommended public service-related organizations to enact and implement the code of conduct based on the amended Article 8 of the act. Then, all the organizations enacted and implemented the code of conduct for all employees as part of their internal regulations in June 2006. Since the first amendment, the code of conduct for public officials has been revised 3 times. The second amendment was made in 2008 after the new government, which was launched in February, and enacted Act on the Prevention of Corruption and Establishment and Management of the Anti-corruption and Civil Rights Commission. In November 2008, provisions that prohibit public officials from having any religious prejudices against others, were added. In December 2008, the provision about conflict of interests was amended to broaden the concept of public officials' duties and duty-related parties.

All amendments are reflected in the code of conduct of each administrative body and public service-related organizations.³⁵ Finally, 659 public service-related organizations

³⁴ Refer to Article 8 of Act on the Prevention of Corruption and the Establishment and Management of the Anti-corruption and Civil Rights Commission.

³⁵ See Best Practices Casebook of code of conduct for public officials 2011, p.8, published by Anti-Corruption&Civil Rights Commission.

implemented the code of conduct from December 2010. There are many limitations to implement the current code of conduct for public officials (Presidential Decree, No.21238) to local councilors, elected officials as it was enacted for public officials from the beginning. Given the fact that it is not appropriate to apply the code of conduct for public officials to elected officials, the ‘Code of Conduct for Local Councilors (Presidential Decree, No.22471),’ was separately enacted in November 2010 and entered into force in February 2011. The purpose of enacting the code is to reflect distinctive characteristics of local councilors and to promote integrity and impartiality of them which are prerequisite for representative of local citizens.³⁶

Aiming at establishing a foundation for fulfilling the code in everyday life, 28 best codes of conducts are selected and casebook is published every year. Also, public organizations and bodies are recommended to introduce and utilize best practices of others. The followings are examples of the best practices selected.

The first case is a policy of ‘integrity meal ticket’ of Korea Airport Corporation. The organization pays for tickets to cafeteria in the facility, and tickets are given to its employees. Employees with the ticket can have meal with his/her visitors in the cafeteria, creating open and transparent treatment culture within the organization. Both employees and visitors show high satisfaction with the integrity meal ticket.

The second example is ‘Clean Business Credit’ of Korean electric power corporation (KEPCO). Each business card has designated the plate number of vehicles for official use to ban an employee from filling his private car with a business credit card.

Third, Korean Customs Service runs ‘certification program of integrity customs office,’ which is a reward program. The customs office, which has no record of violating a code of conduct, is recognized as ‘the customs office with high integrity’ and awarded for his conduct. The selected office has the honor of raising and posting the integrity flag and signboard. Furthermore, incentives such as bigger budget support and audit exemption are given to the office.

Another case is ‘Program of Self Measurement of compliance with code of conduct’ of Korea Forest Service. The purpose of introducing the self measurement program is to enhance employees’ understanding of provisions of the code, especially the one about family events such as wedding or funeral which employees are apt to violate without consciousness. In 2010 alone, approximately 43 organizations introduced the program as it could be easily applied to their employees and implemented at a low cost.

The last one is ‘Integrity Mileage Program’ of Fair Trade Commission.’ As expected from its name, incentives are given in a form of mileage to employees based on their integrity activities. Put it simple, if an employee actively participates in integrity activities, integrity mileages are added. In contrast, if one is inactive in taking part in activities or violates

³⁶ See Best Practices Casebook of code of conduct for public officials 2011, pp. 9-10, published by Anti-Corruption&Civil Rights Commission.

the code of conduct, mileage is deducted. In 2010, about 42 organizations introduced the program.³⁷

The Supreme Prosecutors' Office conducted special inspections to identify violation of code of conduct for Prosecution Officials with respect to accepting bribes or gift of entertainment. The office published a leaflet on a code of conduct and a casebook. Moreover, it enters the code of conduct on the business log to remind prosecution official of the code. As people's expectation towards a fair society has raised higher standards of ethical conduct for public officials, they select 10 subjects from the code of conduct such as impartiality, ban on accepting bribery, establishment of sound organizational climate, and text to officials on a monthly basis. It is expected that texting the code of conduct would raise officials' understanding of the code of conduct and inspire them to implement the code in earnest.³⁸ Considering that private schools establish and implement their own code of conduct for teachers, it is anticipated that the current movement in private schools promotes a sense of integrity and responsibility among teachers.³⁹

3.2.3 Joint Anti-corruption Movement with NGOs

Transparency International Korea (TI-Korea) holds the 'Integrity Award' ceremony to honor organizations or individuals who have contributed to fighting corruption as part of joint anti-corruption movement with NGOs. The goal of the award is to develop a social consensus on necessity of promoting transparency and to help Korean society move toward a desirable direction. In addition, TI-Korea selects corrupt news and corrupt individual and publishes the Progress Report on Enforcement of the OECD Anti-Bribery Convention every year. TI-Korea signed the transparent society pact to build a sustainable transparent system, aiming at making Korea an advanced society beyond conflict over ideology, class, and agenda. Action Council, a separate body, is in charge of putting the pact into practice.

3.2.4 Anti-corruption Education

The Korea Institute for Advancement of Technology (KITA) built interactive communication channel, 'Yammar,' enterprise social network, providing a secure way for employees to communicate, collaborate, and share information. Through the channel which is available anytime and anywhere, executives and employees can have access to information about the code of conduct. KITA operates a counseling office which mainly deals with issues related to the code of conduct and provides education on the code. KITA has spared no efforts to promote its employees' awareness on the code of conduct and enhance integrity among them.

37 See Press Release in June of Anti-Corruption&Civil Rights Commission.

38 See Supreme Prosecution Service Broadcasting system, News, Focus 2010, the 30th edition (<http://www.spo.go.kr/tv/news/focus>).

39 See news articles on June 8, 2010 of Hanra Ilbo and on June 9, 2010 of Jeju daily.

Public Procurement Service opens its own anti-corruption, integrity policy and ethics of public officials courses in ‘Professional Procurement Curriculum.’ It is not an official education institution that is required to provide a course about integrity. However, it opens the integrity course considering strong will of ACRC to carry out its anti-corruption and integrity action plan 2009.

3.2.5 Stepping up Monitoring Corruption and Impartial Punishment

Yeonggwang-gun in Jeollanam-do has made utmost efforts to curb routine corruption and create corruption-free organizational culture.⁴⁰ As part of its efforts, the local government appoints its residents as clean monitor agents who collect and report information about corrupt practices and violation of code of conduct.

Gangwon-do builds and runs web site, ‘Code of conduct&Corruption Report Center’ where various materials about code of conduct for public officials are available to users and they can report corruption. Using the web site, the local government encourages report on corruption inside the organization and attempts to locate the areas that are vulnerable to corruption. In addition, the web site is expected to contribute to making the organization culture of integrity take a firm root among the officials.

Kwang-ju Metropolitan City office of Education requires heads of organization or school to receive audit right before their retirement so that they comply with the code of conduct by executing budget properly. This sound climate of service is essential for establishing ethics which encourage observation of the code of conduct and spreading anti-corruption concepts. Anti Corruption&Civil Rights Commission conducted research on ‘Actual Condition of Corruption in School’ and found that moral hazard appears just before heads of school or organization retire; it explains the reason why a majority of corruption cases occurs at the time of retirement. Given that, ACCR recommends Education Bureau of Cities and Provinces across the nation to adopt the audit system which benchmarked the audit program of Kwang-ju office.

Korean Railroad Corporation makes efforts to strengthen its internal audit capacity and to secure impartiality and objectivity of auditors through rigorous peer review; peers closely inspect audit before confirmation of audit is received. Before the final confirmation of disciplinary measure is taken on violation of the code of conduct, special committee of peer review is set up. The special committee consists of peers who have no regionalism or school ties with the person subject to the audit. Names and other personal information are deleted from documents that the special committee reviews. Korean Railroad Corporation operates an ‘integrity jury system’ to gather opinion on the case in question of the level of disciplinary. The jurors are appointed among employees⁴¹ and called as ‘Guards of Integrity.’

⁴⁰ See Best Practices Casebook of code of conduct for public officials 2011, p. 96-99, published by Anti-Corruption&Civil Rights Commission.

⁴¹ See Best Practices Casebook of code of conduct for public officials 2011, p. 46-49, published by Anti-Corruption&Civil Rights Commission.

Another case is a good practice of Korea Communications Commission. Korea Communication, launched in May 2008, had difficulties in establishing a climate that encourages its employees to observe code of conduct in a relatively short period. To promote anti-corruption awareness and establish foundations of integrity activities, it formulated guidelines of disciplinary measures on offenders who neglect the obligation of reporting corruption (December 23, 2009). Superiors and members of the staff are assigned to report corruption cases like accepting bribes or entertainment upon locating one. The guideline specifies that rigorous disciplinary action applies to any offender. The commission also draws up detailed guidelines on reporting offence directly related to official duties (December 23, 2009), which provide grounds and measures to report any corruption case such as embezzlement to investigation agencies.⁴²

Seongnam city came under fire because many public officials of the city government were involved in corruption and aroused criticism with driving under influence, physical assault and so on. The city government sentences community service order to offenders besides disciplinary measures. The order gives the offenders a chance to reflect on their conduct.⁴³

3.2.6 Judicial and Legal Corruption

After waves of the corruption scandal surrounding Kim Hong-su, who bribed a senior judge, surged, the court announced its countermeasures to eliminate corruption. Among the countermeasures, it achieves its goals in terms of making laws and regulations against corruption. However, there is still deficiency in the effectiveness of its own measures and soul searching effort. In particular, the court had made progress in taking disciplinary measures against judges, who involve in corruption, and promoting sense of ethics among judges. It establishes sentencing guideline and makes efforts to eradicate the chronic problem of granting privileges for former office. In addition, the court set restrictions on dismissal at one's own request and rules on allocating cases, set up Legal Ethics and Professional Conduct Council, and amended the Judicial Disciplinary Act.

The Supreme Public Prosecutors' Office has made efforts to curb corruption and made progress. It revised the Prosecutor Disciplinary Act, code of ethics for prosecutors and changed the inspection position into open position.

⁴² Korea Communications Commission applies rigorous disciplinary measures such as degradation, suspension, dismissal, discharge to those who violate code of conduct or obligation of maintaining dignity, or accept bribes or entertainment. If offenders accept more than certain amount of bribe or entertainment, they dismissed even before disciplinary measure is determined, and they will on the list of concentrated monitor even after they are reinstated.

⁴³ See Best Practices Casebook of code of conduct for public officials 2011, p.51, published by Anti-Corruption&Civil Rights Commission.

2011 Modularization of Korea's Development Experience
Korea's Experience of Operating
Anti-corruption Criminal Justice Policy

Chapter 3

Ways to Carry Out Anti-corruption Policies

1. Transition of Legal Institution in Policy Implementation
2. Establishment of Anti-corruption Organization and Decision-making Process
3. Major Cases of Policies Pursued

Ways to carry out Anti-corruption Policies

1. Transition of Legal Institution in Policy Implementation

1.1 Background of Policy Implementation

After Korea's liberation from Japanese colonial rule, the 1st and 2nd Republic era (1948 to 1961) experienced many political and social changes. After the end of Japanese rule, establishment of the government and periods before and after the Korean War brought about significant economic changes. Large-scale influx of American aid goods during the reconstruction period altered the dynamics of the business circle. Corruption cases include the first political slush fund affair called the "tungsten dollar scandal in 1952," and cotton scandal in 1956" where raw cotton provided by the Foreign Operations Administration to be used by military in winter was sold in the market to raise political funds.

As shown in the inaugural speech of the president, the 3rd Republic (1962~1971) considered the root cause of corruption to be in the "corrupt bureaucracy" and lack of ethics on the part of "venal officials." Also, the 3rd Republic act attributed corruption to outdated idea and custom and to the erosion of traditional ethics and values due to infiltration of foreign culture and the way of thinking. The 3rd Republic government emphasized that the best way to fight corruption is "dispensation of justice both to services and crimes." Whereas the 1955 Inspection Board Regulation and the 1961 Inspection Commission Act limited the scope of punishment to "irregularities committed by public officials in the conduct of public duty," the Board of Audit and Inspection enacted in 1963 during the 3rd Republic broadened the scope to include "public officials' work itself," making the range of inspection much wider than that of previous governments.

The 4th Republic (1975 to 1979) ascribed the cause of corruption to the blind pursuit of political ideology, or Western liberal democracy to be exact. The reformed government wanted to use anti-corruption drive to purify officialdom with the main target being elimination of

corrupt and incompetent officials and protection of hardworking and competent officials. The approach of the reformed government to corruption is more extensive than that of previous governments in that it not only targeted “doer (officials committing corruption) factor” but also institutional, organizational and environmental factors.

As shown in the inaugural address of the president, the 5th Republic (1980 to 1987) regarded corruption and irregularities as inheritance from the past, and ascribed the root cause of corruption to erosion of ethics in the public sector and poor public awareness. Attributing distortion in public service ethics and values to rapid economic development, the 5th Republic defined the scope of anti-corruption target more scientifically and exquisitely than before.⁴⁴ With the start of the Chun Doo-hwan government, society purification movement (society reform campaign)⁴⁵ intended to achieve a national agenda to realize a just nation. In the movement, priority was placed on cracking down corrupt officials.

The 6th Republic (1988 to 1992) or the Roh Tae-woo government defined corruption and irregularities as a phenomenon shown in a transition period from authoritarian to democratic social system. Although there was no fundamental difference in its opinion on the cause of corruption, the 6th Republic considered corruption as an act of public officials who lacked law-abiding spirit or commitment to their duty.

In the beginning stage, Roh Tae-woo government presented its policy to nip corruption in the bud through “democratic and autonomous corrective inspection,” and had a wide definition on the type of corruption to include giving and receiving bribes, embezzlement and misuse of tax payers’ money, and peace-at-any price principle.” As a result, the 6th Republic made more efforts to strengthen morality and accountability on the part of public officials. Presenting “establishment of law and order through governmental authority” as the direction of national policy, the 6th Republic decided to strengthen crackdown on and punishment for corruption. The government stated the direction of corrective inspection as democratic, responsible, preventive, and helpful, taking various measures to boost public officials’ morale. “Democratic inspection” highlighted that corrective inspection itself should be carried out democratically. “Responsible inspection” indicated that heads of government agencies themselves put their words into practice, taking all responsibilities. “Preventive inspection” is an effort to anticipate and take preventive measures against corruption committed by public officials, rather than after-the-fact corrective actions. Lastly, “helpful inspection” denotes an endeavor to select and prevent competent and hard-working public officials by providing better treatment (higher pay, morale support activities, etc.).

44 ... I will not tolerate corruption committed by me as well as by people around me. I will place my focus on dispelling distrust of the people by continuing eradicating corruption by all public officials. (the 11st President in his inaugural speech: September 1st, 1980).

45 Society Purification Movement was carried out in all sectors of society with an eye to renovation of political culture, renovation of public service culture, and eradication of social ills. Later in the central government, Society Purification Commission under the Prime Minister was created in October 1980 to put Society Purification Movement on the right track.

The Civilian Government (1993~1997) widely used the term “irregularities of public office.” “Irregularities of public office” was divided into two categories: irregularities in work ethics and corruption. Irregularities in work ethics include peace-at-any-price principle, unfriendliness, and acceptance of unjustified orders. Corruption mainly suggested misappropriation of public funds, money offered to superiors, and giving and receiving of gratuities and valuables. The Civilian Government regarded undesirable acts of all sorts done by public officials including raising of illegal political funds, their unkind attitude as “irregularities.” The Civilian Government clearly pointed out that cozy relations between politics and business, and defect in regulations and administrative rules were the root cause of corruption and irregularities in Korean society. Also, the government announced that it would make sweeping anti-corruption efforts as part of a comprehensive reform drive in every area of society including political and administrative sectors.⁴⁶ The Kim Young-sam government regarded corruption widely rampant in society all together as the major “Korean disease” undermining the foundation of national development. Under a conviction that creating a “New Korea”⁴⁷ by treating the Korean disease, and that no national development without eradication of corruption, the Civilian Government spearheaded anti-corruption efforts by putting fighting corruption at the top of government agenda. The People’s Government (1998 to 2002), which witnessed transfer of political power between the ruling and opposition party for the first time in Korean history and was tasked with overcoming the financial crisis, ascribed the cause of the financial woes to corruption, and made efforts to root out corruption. The People’s Government came up with comprehensive anti-corruption measures and made tackling corruption a national agenda to respond to the general public’s demand for corruption eradication. Attempts were made to build Korea an advanced country through continued economic development and to enhance national transparency, credit rating and ultimately national competitiveness as demanded by OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. As such, the People’s Government’s efforts led to construction of anti-corruption infrastructure, increased participation of citizens in anti-corruption efforts, and creation of anti-corruption atmosphere among the general public.

The Participatory Government (2003 to 2007) presented 4 policies in state affairs: principle and trust, transparency and fairness, conversation and compromise, and decentralization and autonomy. Based on these policies, the government pushed various reform measures. Of these 4 policies, principle and trust, and transparency and equality are important in anti-corruption context. First, in principle and trust, the Participatory Government highlighted

46 Corruption in our society is a formidable enemy eating away our country from within. There’s no exception in its removal. We should know where to stop and where to cut strictly. Without people’s effort to clean themselves, corruption will not disappear [excerpts from the inaugural address of the 14th President Kim Young-sam February 25th, 1993].

47 In his inaugural speech, President Kim Young-sam said “A new Korea means free democracy which is worth living in, a just society where hard working people can become rich in proportion to their efforts, a community where development of a citizen goes together with that of state, a cultural society where people can maintain their human dignity, and a unified country where all family members live together.”

that foul play and distrust increase transaction cost or social cost, acting as a major drag in national development in the end. In this regard, the Roh Moo-hyun government placed principle and trust prior to all others and emphasized that principle should be established in every affair and that principle wins over hearts and minds of the people. Second, the Participatory Government presented transparency and fairness, indicating that no matter how good laws and regulations are, they are useless and only aggravate discontent and dispute in society if they are not enforced in a just fashion. The government considered that privilege and patronage system is the main culprits, compromising fairness. The government stated that, in places where privilege and patronage system are put in place, it would not work however excellent a standard may be. The government emphasized the importance of transparency in society. The main target of the Practical Government (2008 to present) is to revive the economy with focus on “small government” and “big market.” The Lee Myung-bak government pursues working class-friendly policies, practical economic growth and resource diplomacy. Regarding anti-corruption policies, the Lee Myung-bak government has established the Special Inspection Group for 5 corruption-prone areas, promoted enlightenment of the K-Pact (Korean Pact on Anti-Corruption and Transparency), and strengthened protection of whistle-blowers and punishment of those committing corruption. However, the government proposed policies designed to abolish the Anti-Corruption Act, to stop supporting the K-Pact, and to remove the Korea Independent Commission Against Corruption (KICAC). Therefore, the government stressed the existing anti-corruption activities rather than focusing on re-building anti-corruption systems and institution.

1.2 Enactment and Amendment of Anti-corruption Laws and Regulations

1.2.1 The 1st and 2nd Republic (1948~1961)

a. State Public Officials Act

With respect to anti-corruption efforts, the 1st and 2nd Republic (1948 to 1961) or the Rhee Syng-man government enacted and promulgated the State Public Officials Act, stipulating public officials’ duties, guarantee of their status, discipline, punishment, etc. The content of the Act was nothing but a mere copy of several imperial orders on civil servant appointment and service of the Japanese Colonial period. The State Public Officials Act was finally enacted in the 3rd Republic as science of public administration was introduced by the U.S and as understanding of and interest in personnel affairs from the perspective of those who are in charge of developed.

b. Act on the Punishment of Those Involved in Fraudulent Election

To drive out corrupt officials from the previous Rhee Syng-man government, to establish democratic institutions in Korea and to help the April Revolution, the 3rd Republic amended the constitution by making some exceptions to the principle of non-retroactivity

of criminal law and people's basic rights guaranteed by the constitution.⁴⁸ As a result of the constitutional amendment, the Act on the Punishment of Those Involved in Fraudulent Election was enacted in December 1960. The contents of the amendment included the following: first, the amendment allowed a special law to be enacted to punish those who were engaged in wrongdoing in the election on March 15th 1960, or who killed or injured people protesting against wrongdoing in the election; second, the amendment allowed a special law to be enacted to restrict civil rights of those who did serious anti-democratic acts by taking advantage of their position or power before April 26th 1960; third, the amendment allowed a special law to be enacted to administratively or criminally punish those who illegally accumulated assets by taking advantage of their position or power before April 26th 1960; and fourth, the amendment allowed to found an extraordinary tribunal and a special prosecutor's department to deal with the above criminal cases. What was controversial about the constitutional amendment was punishment and restriction of political rights and property rights through retrospective enactment. On the other hand, this showed a classic example of populism not unusual in the transition of fledgling nations to democratization after the war.⁴⁹

c. Others

Regarding anti-corruption rules, the 2nd Republic established many regulations to get rid of legacies of corruption from the 1st Republic. Good examples are retrospective laws to remove legacies of corruption from the 1st Republic such as the Act on Punishment of Anti-national Activity (July 17th, 1948) and Act on the Punishment of Those Involved in Fraudulent Election (December 31st, 1960). The Special Act on Illegal Accumulation of Assets established in April 1961 was the first in Korea to include political corruption and corrupt politicians in the scope of anti-corruption targets.

1.2.2 The 3rd Republic (1962~1971)

a. Act on State Re-building Emergency Measures

The government presented the eradication of corruption and irregularities as a revolution pledge and enacted Act on State Re-building Emergency Measures in June 1961 as an important means to put the pledge into practice. The Act became the 3rd retrospective enactment since the foundation of the Republic of Korea. Article 22 of the Act stated that the State Re-building Supreme Committee may legislate a special law to punish those

⁴⁸ Students, demanding those who acted against democracy and were involved in March 15th rigged election be punished, occupied the National Assembly. The Lower House submitted a bill for constitutional amendment to have a ground for enacting special laws ("Act on punishment of those involved in fraudulent elections," "Act on restricting civil rights of those engaged in anti-democracy acts"). This was done to resolve controversy over constitutionality of retrospective legislation (the special laws mentioned earlier). On November 29th, the National Assembly passed the proposal.

⁴⁹ Refer to National Archives of Korea
<http://contents.archives.go.kr/next/content/listSubjectDescription.do?id=001434>.

who committed illegal acts against state, people and revolution, and found a revolutionary tribunal and a revolutionary prosecution department to handle such cases.

b. Act on the Disposal of Accumulation of Illegal Assets

Based on the Act on State Re-building Emergency Measures, the Act on the Disposal of Accumulation of Illegal Assets was enacted in June 1961 as Law No. 623. It is the first law in Korea to legally institutionalize full-pledged control on corrupt officials. This Act was enacted to administratively and criminally handle (confiscation, compensation, collection, and additional collection) corrupt officials, those who reaped ill-gotten gains, and who illegally accumulated wealth through school business.

c. State Public Officials Act and others

For tax accounting, advance payments for the units are taxable when received. If no payment is received yet but units are already turned over, then income is accrued as well as corresponding tax paid. The government came up with legal grounds for personnel management system through the State Public Officials Act. Open competitive employment exam for public officials marked a turning point in personnel management system. In addition, the government enacted the Act on Position Classification (November 1963) and the Act on Public Officials Training (May 1963) to introduce a sweeping change in personnel administration. These changes helped bring about enhanced morals and accountability of public office directly or indirectly.

1.2.3 The 4th Republic (1975 to 1979) and the 5th Republic (1980 to 1987)

a. Revision of Administrative Regulations for the People

‘Revision of administrative regulations for the people’ refers to amendment of existing unrealistic and unreasonable administrative regulations and practices. This is similar to administrative reforms in the past rather focuses on removal of corruption-causing factors. It is quite different from previous efforts in that extensive investigation was followed by improvement endeavor.

b. Public Service Ethics Act

The Public Service Ethics Act, which was enacted in December 1981 and took effect from January 1983, was epoch-making and was the first legislation to stipulate registration of public officials’ assets, inspection and verification of registered assets, and employment restriction of retired public officials. Unfortunately, the 5th Republic or the Chun Doo-hwan government had a large framework to control corruption, but its anti-corruption framework was not put into use effectively and was in existence in name only because registered assets were not required to be made public in addition to other incomplete legal backup.

1.2.4 The 6th Republic (1988 to 1992) and the Civilian Government (1993 to 1997)

a. Revision of Public Service Ethics Act

President Kim Young-sam made his properties public and declared that he would not receive political funds,⁵⁰ prompting politicians and public officials to disclose their properties. The Public Service Ethics Act was legislated in the wake of the President's example. Under the Act, high-ranking officials of grade 1 or higher were required to disclose their wealth, public officials with grade 4 or higher were required to register their properties,⁵¹ and they were punished if their registration was fabricated pursuant to a penal clause. The Act was amended in May 1993, submitted to the National Assembly and came into force in December of the same year. Under the amended Act, the Public Service Ethics Committee could request the head of financial institutions to submit information on financial transactions by public officials.

Changes in the revision included the following. First, the scope of those, who are subject to the mandatory property disclosure, was expanded from grade 3 or higher to grade 4 or higher. For specific category of civil servants such as tax officials, police officers and prosecutors, the grades subject to disclosure were 5 and 6. Second, properties of political public officials, those with grade 1 or higher, head of municipalities, local council members themselves, their wives, and their direct ascendants and descendents had to be put on an official gazette. In addition, candidates running for public office, and those appointees who needed confirmation by the National Assembly had to disclose their assets. Third, the head of government agencies whose employees registered their assets used to have the right to inspect registered properties, but such right to inspect was transferred to the neutral Public Service Ethics Committee. Methodologies of inspection and handling of the results were specified in detail. Fourth, punishment for those who falsely register their properties was strengthened. Offenses of acquiring financial gains by taking advantage of professional secrets, of refusing to register properties, of submitting false information, and of refusing to appear were newly created. Punishments for secret divulgence, for unauthorized perusal and duplication, and for violation of employment restriction were also tightened up. Fifth,

⁵⁰ President Kim Young-sam disclosed his properties on February 27th 1993. In a press conference held on March 4th with the Blue House correspondents, he expressed his strong will to realize a clean politics by saying "I won't receive money from anyone be they businessmen or ordinary citizens" (Yoon Young-oh, "Wring the right history" Mirae Media, 1996. page 169).

⁵¹ In the wake of tax embezzlement by Northern district office of Incheon City in September 1994, the government amended the enforcement degree of the Public Service Ethics Act and significantly expanded the scope of those subject to the mandatory property registration. The number of public officials subject to disclosure was 34,624 in all. Regardless of their position in the local or central government or the type of their serve such as regular or special service, public officials whose grade was 4 or higher were required to disclose their assets. The grade of those working for the Board of Audit and Inspection, the National Tax Service, and the Korea Customs Service were 6. In case of police officers, corporal and superintendent were subject to property disclosure. As a result, the number increased a lot to 80,000 in 1995 (JoongAng Daily, page 19, October 16th issue, 1994; Yonhap yearbook, 1995, pages 324 to 325).

annual report on activities of the Public Service Ethics Committee was subject to submittal to the National Assembly.⁵²

b. Public Officials Election and Election Fraud Prevention Act

The Kim Young-sam government came up with institutional framework designed to prevent election manipulated by the government or bribery of voters, and to realize a clean election leading to purification of politics and administration. The foundation of this institutional framework was none other than the enactment of the Public Officials Election and Election Fraud Prevention Act. The Kim Young-sam government strictly enforced this Act in 4 major local elections and the 15th general elections and blocked government manipulation of and bribery in elections. In the 4 major local elections, 3,236 people including 658 successful candidates were criminally charged and 266 were placed under arrest. In the 15th general elections, 1,192 people including 120 successful candidates were criminally charged and 170 were placed under arrest. By doing so, the government established an atmosphere of fair election.

c. Act on Special Cases Concerning Forfeiture for Offenses of Public Officials

The Act on Special Cases concerning Forfeiture for Offenses of Public Official was created to thoroughly trace and confiscate criminal proceeds that public officials gained by committing specific crimes. In January 1995, the Act was enacted as Law No. 4934. to fundamentally remove corruption-causing factors and create a clean atmosphere in public office.

The Act on Special Cases concerning Forfeiture for Offenses of Public Officials defines specific crimes committed by public officials as follows: acceptance of a bribe, taking a bribe for a favor given, embezzlement and breach of trust which is committed by public officials in charge of accounting and causes loss to state coffers, and bribery and loss to state coffers subject to aggravated punishment of specific crimes as stipulated by the Criminal Act. Therefore, under the Act, illegal properties not only include direct proceeds that public officials gained through specific crimes mentioned above but also assets derived from such direct proceeds. Such proceeds and assets are forfeited pursuant to the Act.

d. Other Legal Controls

Through the amendment (December 31st, 1996) of the Administrative Procedures Act, and the Information Disclosure Act, which were the typical reform legislation related to administrative reforms for corruption control during the Civilian Government, the Act on Disclosure of Information by Public Agencies and the Administrative Procedures Act were enacted and promulgated. In addition, the Integrated Election Act was enacted, and the Political Fund Act was implemented.

⁵² Noh Jeong-hyeon, "You need to be Clean in order to be Honorable" Mirae Media 1996. Pages 56 to 57.

1.2.5 People's Government (1998 to 2002)

a. Article 1 Anti-corruption Act

Article 1 of the Anti-Corruption Act states that the purpose of this Act is to contribute to establishment of clean public office and society by preventing occurrence of corruption and controlling corrupt behaviors efficiently. In other words, the purpose is to create a social climate where corruption is rejected by bringing anti-corruption awareness not only to the public office but to society as a whole. For financial reporting, clients' advance payments are recorded as liabilities until the units are turned over to them. Income is then recognized and the liability is reversed. The Anti-Corruption Act defines corrupt behaviors, clarifying ambiguous concept of corruption in the past. Under the Act, those who are subject to it are limited to public agencies and public officials. By stipulating responsibilities not only of public officials but also of public agencies, the Act makes it mandatory to correct and improve inconsistency in laws, systems, and administrative procedures. The Act also requires compulsory anti-corruption education and PR activities for public officials and the general public.

A new clause on globalization and internationalization was added to the Act to have public agencies make active efforts for international exchanges and cooperation. With respect to political funds and political corruption which are regarded as the hotbed of all sorts of corruption in our society, the Act sets forth the responsibilities of a political party, requiring operation of a political party and fund-raising to be done in a transparent manner to create a clean political culture for parties and their members. The Anti-Corruption Act has clauses on responsibilities of big businesses and the people, banning illegal insider trading, irregularities in sub-contract process, stock price manipulation, etc. The Act also requires corruption in medicine, education, sports, and entertainment circles to be tackled to build an honest and transparent society. On top of the Act, public officials' code of conduct is presented as a general guideline for ethical behavior for public officials to abide over corruption-related matters. The following are main contents of the code of conduct: first, prohibition and restriction of receiving entertainment and gifts from work-related persons; second, prohibition and restriction of meddling with personnel affairs, interfering with interests, accepting bribes for good offices, and asking favors by taking advantage of one's position; third, dos and don'ts for clean and wholesome public office. If public officials violate the above code of conduct, they are disciplined within their own organization.

1.2.6 Participatory Government

a. Background of Anti-Corruption Act Amendment

Before the Anti-Corruption Act passed the National Assembly that was centering on the foundation of the Korean Independent Commission Against Corruption and protection of corruption informants, the People's Solidarity for Participatory Democracy that virtually led the People's Solidarity for Anti-corruption Legislation pointed out that important contents such as regulations on public service ethics, and independent counsel investigating

corruption cases involving high-ranking officials were omitted; only whistle-blower protection is included. However, it was pointed out that protection of whistle-blowers was insufficient, urging civic movements to be carried out continuously even after enactment of the Anti-corruption Act.

The reason why such civic movements pushed for the amendment of the Anti-corruption Act was that there were whistle-blowers who were not protected due to narrow definition of corrupt acts, that reprisal of whistle-blowers occurred continuously due to weak punishment for those who revenged, that the burden of proof of disadvantage was on corruption informants themselves, that informants were hesitant to report due to conflict with the obligation to keep secret, that personnel exchange was problematic due to rigidity of procedures, and that it was not easy to determine the size and timing of rewards. Along with the issue of granting investigative right to the KICAC, there was urgent need to improve corruption informant protection and reward.⁵³

Based on these necessities, civic organizations pushed for revision of the Anti-corruption Act and centered on giving investigative rights to KICAC, strengthening of whistle-blower protection, and introducing independent counsel system that was omitted when the Act was legislated. Such efforts were actualized into the petition for revision of the Anti-corruption Act by the Citizens' Coalition for Economic Justice and the petition for revision of the Anti-corruption Act by the People's Solidarity for Participatory Democracy.

Realizing limitation of whistle-blower protection and reward, KICAC proposed policy alternatives by researching related laws of other countries on whistle-blowers. These policy alternatives had a significant effect on the draft revision of the government and the National Assembly later.

b. Revision of Anti-Corruption Act

During the 17th National Assembly, in November 2004, the government submitted proposals to amend the Anti-Corruption Act and the Act on the establishment of the bureau of investment into public officials' corruption. In June 2005, partial amendment of the Anti-corruption Act was also submitted to the National Assembly, and its Legislation and Judiciary Committee deliberated. On June, the Legislation and Judiciary Committee did not present these 2 proposals for consideration to a plenary session. The committee combined the 2 into one proposal. The combined proposal passed the National Assembly and the Anti-corruption Act was officially amended on July.

1.2.7 Practical Government (2008 to present)

Under the tightened Act on the Aggravated Punishment of Specific Crimes to strengthen punishment criteria for those committing corruption, those who are engaged in a bribery

⁵³ Kim Sang-sik, "Ways to utilize whistle-blowing" Sourcebook for 2003 winter seminar of the Korean Association for Corruption Studies. December 2003, pages 37 to 38.

case are imposed with 2 to 5 times the amount of bribes taken. Public Interest Informant Protection Act was legislated to protect whistle-blowers and public interest informants. Public Service Ethics Act was also amended to require members of the Monetary Policy Committee who are appointed by recommendation to register and disclose their properties.

2. Establishment of Anti-corruption Organization and Decision-making Process

2.1 Major Agreements and Establishment and Operation of a Commission

2.1.1 Major Agreements

a. Convention on Combating Bribery of Foreign Public Officials in International Business Transactions

A suspicion was raised in the early of 1994 that former and incumbent high-ranking military officers, politicians and bureaucrats were lobbied in connection with the purchase of components of fighter jets and naval vessels produced in foreign countries (the so called “Yulgok Scandal”).⁵⁴ Without the full account of scandal being revealed, investigation into the scandal was closed. In this case, if the full story of the scandal had come to light, those public officials who had taken bribes would have been punished pursuant to the Criminal Act of Korea. However, since there is no way to punish foreign companies or those involved in the case, there is no shortage of cases of giving bribes in large amounts to foreign public officials to win international contracts or bids. Under the circumstance, the businessmen or companies that bribed foreign officials have rarely been punished in their own countries.

In December 1997, the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions was signed at OECD headquarters in Paris⁵⁵ to prevent this kind of unfair business transactions. Government minister of 34 countries including Korea signed the convention. In line with the convention, the Act on Preventing Bribery of Foreign Public Officials in International Business Transactions was legislated in December 1998.⁵⁶

⁵⁴ Refer to Dong-A Ilbo 1994. March 10th edition.

⁵⁵ For details and contents, refer to Goh Jun-seong, “Study on amended recommendation on Anti-Bribery Convention by OECD board of directors meetings,” Trade Laws, August 1997, pages 23 to 54.

⁵⁶ The purpose of this Act is to contribute to establishing sound order in international business transactions by punishing offenses of bribing foreign public officials in conducting international business transactions and to provide matters necessary therefore to perform the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Article 1). The term “foreign public official” in this Act means: Any person holding legislative, administrative, or judicial office in a foreign government; Any person holding office in a public organization or public agency established by any Act and subordinate statutes to carry out specific public affairs; Any executive or employee of an enterprise in which a foreign government has invested in excess of 50 percent of its paid-in capital or over which a foreign government has de facto control as regards all aspects of its management; and Any person acting for a public international organization.

This Act is a special criminal law to penalize those offering bribes to foreign officials, and acceptance by Korean officials of bribes is not a direct subject to the Act. However, if foreigners who gave bribes to Korean officials are punished in their own countries, Korean officials who received the bribes are detected as well. The Lockheed bribery scandal where the former Japanese Prime minister Kakuei Tanaka took huge amount of bribes was not initially detected by Japanese investigative organizations. Over the course of the U.S Securities and Exchange Commission's investigation into wrongdoings of Lockheed Corporation, the fact that a large sum of money was bribed to a Japanese political heavy weight was known and was covered by U.S. journalists, prompting the Special Investigation Department of the Tokyo District Public Prosecutors' Office to undertake investigation.

b. Korean Pact on Anti-Corruption and Transparency (K-Pact)

In March 2005, representatives of all sectors of Korean society gathered together in the Kim Koo Museum&Library to sign the Korean Pact on Anti-Corruption and Transparency (K-Pact). The participants included President Roh Moo-hyun, Chief Justice of the Supreme Court, Prime Minister, president of the Constitutional Court, Chairperson of the National Election Commission, and leaders of the ruling and opposition parties, leaders of the Federation of Korean Industries and 5 major business lobbies, chairmen of 4 large corporations, and 10 leaders of civic organizations. The signed K-Pact at the time contained a historical promise for a transparent and corruption-free society. To enhance transparency in Korea, civic organizations took the lead in the conclusion of the K-Pact with various sectors of society participating in the process.

Major contents of the K-Pact are as follows: the public sector pushes for revision and enactment of corruption related laws, comes up with institutional framework to public service ethics, makes efforts to ratify the UN Convention Against Corruption, and supports the K-Pact; the political sector improves institution to prevent abuse of immunity from arrest, amends laws and regulations to boost transparency in political funds, and eradicates illegal solicitation and lobby; business implements ethical management, carries out systematic education and training, strengthens accounting transparency by improving independency and expertise of an audit committee, and carries out institutional improvement to stop unfair insider trading; and civil society draws up a citizen's charter as a principle of anti-corruption practices and engages in activities calling for the introduction of citizens' participation. Subsequently, the spirit of the K-Pact is spreading throughout Korea.

2.1.2 Major Commissions

The following are commissions related to anti-corruption policies established by previous governments. During the Chun Doo-hwan government, the Public Service Ethics Act was enacted (December 31st, 1981) on the back of the Society Purification Commission. The Kim Dae-jung government founded the Korean Independent Commission Against Corruption. To implement anti-corruption policies at the national level, the Roh Moo-hyun government

established an integrated consultative body the Korean Independent Commission Against Corruption and the Anti-Corruption Related Agency Meeting (2005) under the president, discussing and fine-tuning anti-corruption policies. The following is the status of various commissions established along with their operation.

a. Shimgyewon (Audit Organization)

Shimgyewon was an entity that was in charge of auditing settlement of government accounts pursuant to Article 95 of the first Constitution of Korea. Shimgyewon was founded by the Shimgyewon Act promulgated as Law No. 12, December 1948, and according to Shimgyewon organization stipulated by the Presidential Decree No. 31, January 1949 to exclusively audit government agencies. Despite chaos and corruption in the initial stage of national foundation and the Korea War, Shimgyewon faithfully carried out its duty. The audit agency made tremendous efforts to renovate accounting systems and to establish accounting order. During its existence over 14.6 years, the audit watchdog corrected numerous undue and illegal accounting practices, made those responsible for irregularities compensate for losses they caused, and improved unfair institution.

b. Inspection Board

The Inspection Board was founded under the Government Organization Act and was enacted and promulgated in July 1948. The Inspection Board was in charge of inspecting public officials' illegal acts and irregularities in non-accounting issues which were not covered by Shimgyewon. The Inspection Board was a very powerful agency that had the right to deliberate on punishment for high-ranking officials including the president, vice-president, prime minister, ministers, head of Shimgyewon, and judges. However, when the Inspection Board started inspecting corruption of such officials, there was friction between the Inspection Commission and high-ranking officials. It was abolished over the course of revision of the Government Organization Act in February 1955. The Inspection Board was reinstated in April 1961 to give a boost to inspection activities by the government.

c. Inspection Commission

Inspection Commission, successor of the Inspection Board abolished in February 1955, was launched in November 1955. The power of Inspection Commission was not as strong as that of the Inspection Board which had the right to deliberate on punishment for corruption and irregularities committed by high-ranking officials.

Accordingly, Inspection Board did not have direct right to deliberate on punishment; its role and power was reduced to submit investigation results to persons having appointive powers and a disciplinary committee. Unfortunately, in parallel with the Inspection Commission, Inspection Board suffered from political pressure and ultimately dissolved through government organization streamlining process in August 1960.

d. Board of Audit and Inspection

The foundation of the Board of Audit and Inspection (BAI) as a constitutional institution

under the president was decided by the constitutional amendment after May 16 Coup of 1961 to audit accounting and inspect work done by government agencies. The BAI is an institution established in the course of merger between Shimgyewon, founded under the constitution simultaneously with the creation of the government in 1948, and the Inspection Commission, founded under the Government Organization Act. Shimgyewon's function of auditing accounting and the Inspection Commission's function of inspecting corruption of public officials were inseparable like 2 sides of the same coin. Inspection and audit carried out by the 2 organizations meant not only inefficiency but also inconvenience for agencies that were subject to their inspection. Therefore, the BAI was founded under the president to carry out audit and inspection at the same time and thereby avoiding duplication of work.

e. Standing Commission on National Security Emergency Measures

Before the formal launch of the 5th Republic, Standing Commission on National Security Emergency Measures, mainly composed of the so called Neo-military clique led by general Chun Doo-hwan, was spearheading anti-corruption efforts. Standing Commission on National Security Emergency Measures put in place political reform measures to punish those accumulating illicit wealth by exercising their influence, and to purify public office. It battled social evil by rounding up gangsters, corrupt offenders, swindlers, and smugglers. It tried to normalize education by prohibiting private lessons. It streamlined administrative process for the people including permit and approval issuance.⁵⁷

f. Society Purification Commission

The Society Purification Commission was formally launched as a temporary entity, replacing functions of Standing Commission on National Security Emergency Measures. Major functions of the Society Purification Commission included research on and planning of society purification works, supervision and control of administrative agencies, public organizations and their affiliated organizations as to society purification works pursuant to decrees by the president and the prime minister, education and promotion to push for society purification movement, and handling of other society purification issues. Integrity of public agencies in the name of "assessment of society purification degree" was regularly commissioned to the Modern Society Research Institute.⁵⁸

g. Corruption Prevention Committee

In April 1993, the Civilian Government installed the Corruption Prevention Committee overseeing anti-corruption activities as an advisory organ for the chairman of the BAI. The purpose of its establishment was to collect a wide range of professional opinions from experts in various fields, to come up with measures to fundamentally get rid of corruption

⁵⁷ Refer to Society Purification Commission, 1988, pages 15 to 18.

⁵⁸ Modern Society Research Institute built and operated diagnosis system of public office. "Diagnosis system of public office" means a regime under which integrity measurement and analysis of public office is regularly commissioned to certain organization, and based on the result, countermeasures are devised for public office purification.

in public office, and to make recommendation to the BAI chairman. These were reflected in auditing activities or in national policy making process.

The tasks of the Corruption Prevention Committee included analysis of corruption-causing factors and preparation of prevention measures, and deliberation on ways to improve corruption-causing laws and regulations and on the direction of audit operation to eradicate corruption. To this end, the Corruption Prevention Committee conducted 3 functions of investigating actual corruption, seeking institutional improvement and promoting changes in the way of thinking.

Inspection guideline was revised (On July 24th, 1995) to enhance efficiency of self-inspection by each government agency and of the operation of Inspection-Related Ministerial Meeting. The Corruption Prevention Committee drew up the ground for establishing a conference group among inspection agencies and for supporting inspection work of local governments by changing reporting structure of inspection work planning and members of Inspection-Related Ministerial Meeting, and revising guidelines.

h. Presidential Commission on Anti-Corruption

The Presidential Commission on Anti-Corruption was promulgated by presidential decree in September 1999 and is directly under the president.

The Presidential Commission on Anti-Corruption was a deliberations and advisory organization where mostly businesses, civic organizations and the general public participated to prevent and monitor corruption and to improve institution. Pursuant to regulation to establish the Presidential Commission on anti-corruption, the commission was founded and temporarily played similar roles as those of the Korea Independent Commission Against Corruption until the Anti-Corruption Act was enacted and took effect.

The Presidential Commission on Anti-Corruption deliberated on improvement of irrational corruption-causing regulations, anti-corruption education and promotion, and support for civic organizations' anti-corruption activities. When it was necessary to give anti-corruption advice to the president, the commission evaluated anti-corruption policies of the government. In addition, the Corruption Prevention Planning Group under the Office for Government Policy Coordination was installed and operated to practically assist the functions of the Presidential Commission on Anti-Corruption.

i. Korea Independent Commission Against Corruption

As corruption emerged as an important policy issue, there was a need for more fundamental anti-corruption in the long term. Accordingly, the Anti-Corruption Act was legislated through consensus between the ruling and the opposition parties in July 2001. Based on the Act, the Korea Independent Commission Against Corruption was founded in January 2002. The KICAC built an organic link to put together anti-corruption education and PR, anti-corruption support for NGOs, anti-corruption international cooperation, reception and handling of corruption reports, and protection and rewarding of corruption

informants, making itself the corruption control entity at the national level. The foundation of the KICAC was welcomed by and induced interest from the general public, NGOs, and many other groups. However, some voiced their concern that the KICAC could be reduced to another corruption report center rather than a leading anti-corruption organization due to its lack of right to investigate as seen in the cases where the KICAC reported 3 former and incumbent ministerial level officials to the prosecutors' office.

j. Anti-Corruption Related Agency Conference

The background of the establishment of the Anti-Corruption Related Agency Conference was to efficiently implement comprehensive and systematic anti-corruption measures at the national level through integration of polices and smooth cooperation among organizations concerned. Since members of the Anti-Corruption Related Agency Conference were from organizations related to corruption control, it was an ideal entity to make comprehensive anti-corruption policies.

2.2 Changes and Development of Organizational Structure

Established in 2002, KICAC had a comprehensive anti-corruption functions ranging from anti-corruption policy making and evaluation, institutional improvement of corruption-causing laws and regulations, handling of corruption report, informant protection and reward, and the code of conduct for public officials. In addition, KICAC was an organization in charge of supervising anti-corruption initiatives at the national level. In 2005, KICAC's Korean name was changed (English name remained the same) to cover a wider range of works including setup, adjustment and evaluation of anti-corruption initiatives, recommendation of anti-corruption institutional improvement, anti-corruption education and PR, anti-corruption NGO cooperation and international cooperation. The functions and authority of KICAC, the Ombudsman of Korea and the Administrative Appeals Commission were succeeded by the Anti-Corruption and Civil Rights Commission (ACRC).

The following is on the subject of establishment, functions, organization of KICAC (before Korean name change), recommendation of institutional improvement, and opinion collection. Also, covered in the following are establishment and functions of KICAC (after Korean name change), and comparison of anti-corruption activities and limitations, as well as functions of the newly founded ACRC.

2.2.1 KICAC (before Korean Name Change)

The purpose of KICAC's establishment was stated in Article 10 of the Anti-Corruption Act. Article 10 stipulated that the purpose of KICAC under the president is improvement of laws, regulations, and institution needed for corruption prevention, and to set up and implement anti-corruption policies. The functions of KICAC are provided in Article 11 of the Act: setup and recommendation of anti-corruption initiatives and institutional

improvement of public agencies; inspection and evaluation of anti-corruption initiatives of public agencies; setup and implementation of anti-corruption education and PR plans; support for anti-corruption activities of NGOs, anti-corruption international cooperation, reception of corruption report; informant protection and reward; and matters presented by the president to KICAC for corruption prevention.

Composition of KICAC was stipulated by Article 12 of the Act: KICAC shall be composed of 9 members including one chairperson and 2 standing-commissioners (paragraph 1); chairperson and standing commissioners shall be appointed or commissioned pursuant to criteria set by the President, and shall have profound anti-corruption expertise and experiences (paragraph 2);⁵⁹ standing members are appointed by the president, and members other than standing ones shall be appointed or commissioned by the President. In this case, of the members, 3 recommended by the National Assembly and another 3 recommended by the Chief Justice of the Supreme Court shall be appointed or commissioned (paragraph 3); Chairperson and standing commissioners shall be appointed from among officials in political service (paragraph 4); the Commission shall independently perform its work within its authority (paragraph 1 of Article 15); and the term of office for the chairperson and the members shall each be 3 years and they may be reappointed or re-commissioned only once (paragraph 2).

The Commission may set up working groups by job field within the Commission in order to carry out its duties efficiently (paragraph 17). The chairperson may appoint experts in academia and social organizations and other experts in related fields as expert members of the Commission, as reasonably deemed necessary, to efficiently support the Commission's work and to conduct specialized research and studies (paragraph 1 of Article 18). Expert members shall be appointed or commissioned by the chairperson (paragraph 2).

The Commission shall set up a secretariat to deal with administrative affairs of the Commission (paragraph 1 of Article 19). The secretariat shall have one head and other necessary staff (paragraph 2). The head shall be designated by the chairperson from the standing members and shall take charge of dealing with administrative affairs of the Commission under the direction of the chairperson and supervise and direct the employees of the secretariat (paragraph 3).

The Commission may, if deemed necessary, recommend heads of public organizations to make institutional improvements for the prevention of corruption (paragraph 1 of Article 20). The head of each public organization, upon receipt of the recommendation on the institutional improvements, reflects such recommendation in its efforts for the institutional improvements and informs the Commission of the result of the measures taken according

⁵⁹ Article 6 of the enforcement decree of the Act states that members shall be a person who holds or has held an associate professorship or higher position, or positions equivalent thereto, for eight years or more at a university or authorized research institute, a person who serves, or has served, as judge, prosecutor or attorney for 10 years or more, a person who serves or has served as a public official of Grad 3 or higher for at least 5 years, a person of a social reputation with research on or experience on corruption-related problems, or a person recommended by NGOs.

to the recommendation (paragraph 2). In the event that the head of any public organization who has been recommended to make institutional improvements finds it difficult to take measures as recommended by the Commission, he/she shall ask the Commission to re-deliberate on the recommendation (paragraph 3).

Article 21 of the Act gave KICAC authority to hear opinions, and stated cases where it may not hear opinions. KICAC may request to public agencies for explanation or submission of material, documents, etc., and a survey of the actual status thereof (sub-paragraph 1 of paragraph 1). KICAC may request to any interest person, any expert witness, or any public official involved for his/her presence and his/her statement of opinion (paragraph 2).

However, KICAC was prohibited from requesting public agencies for explanation or submission of material, documents, etc., and a survey of the actual status in the following cases: first, matters concerning the confidential information of the State. Second, matters concerning the appropriateness of an investigation, trial, and execution of sentence (including any security measures, security surveillance measure, protective detention measure, probation measure, protective internment measure, custodial treatment measure and community service order), or matters on which an audit and inspection has been launched by the Board of Audit and Inspection;

Third, matters brought for an administrative adjudication or litigation, and adjudication of the Constitutional Court, a constitutional petition, an examination request filed with the Board of Audit and Inspection, and other procedures for protest and remedy in progress under other Acts;

Fourth, matters concerning procedures for mediating interests among parties concerned, including reconciliation, good offices, mediation, and arbitration, in progress under Acts and subordinate statutes;

Fifth, matters made definite by a judgment, decision, adjudication, reconciliation, mediation, arbitration, etc., or other matters on which the Audit and Inspection Commission has resolved in accordance with the Board of Audit and Inspection Act.

2.2.2 Korea Independent Commission Against Corruption

KICAC was established based on Article 10 of the Anti-Corruption Act, which was promulgated in July 2001 and took effect in January 2002. As a national and representative agency under the President, it was initially called the Corruption Prevention Commission in Korean (English name KICAC remained the same) but its Korean name was changed to KICAC.

It was composed of 9 members including 1 chairperson and 2 standing commissioners, who were appointed by the President. Of non-standing members, 3 were recommended by the National Assembly and another 3 were recommended by the Chief Justice of the Supreme Court, and all were appointed by the President. The term of members was 3 years. The

secretariat was installed to support functions of the Commission. The secretariat proposed anti-corruption polices to the Commission and handled proposed policies according to the Commission's decision.

Article 11 of the Anti-Corruption Act specifically mentioned the functions of KICAC. Article 3 of the enforcement degree of the Act and paragraph 3 of the same Article specifically stipulated setup of anti-corruption initiatives, investigation and evaluation of real status of corruption, anti-corruption education and issues related to code of conduct for public officials. The functions of the KICAC stated by the Anti-Corruption Act were as follows:

- Establish anti-corruption initiatives and institutional improvement tasks of public agencies
- Research and evaluate anti-corruption initiatives implemented by public agencies
- Set up and implement anti-corruption education and PR plan
- Support anti-corruption activities of NGOs
- Pursue anti-corruption international cooperation
- Receive corruption reports
- Protect and reward informants
- Review corruption-causing factors in laws and regulations
- Collect, manage and analyze anti-corruption data
- Enforce and implement public officials' code of conduct, and receive and handle reports of violation thereof
- Deal with issues presented by the President to prevent corruption

As such, KICAC could launch an examination by its own determination, or a petition or a report into corrupt officials and public agencies. Depending on its examination result, KICAC could refer a suspected corruption case to the prosecutors' office.

KICAC identified the following tasks it should take care of: a. enhance effectiveness and efficiency of autonomous anti-corruption initiatives; b. improve institution in corruption-prone areas; c. strengthen anti-corruption evaluation; d. carry out corruption impact assessment; e. strengthen handling of corruption reports; f. strengthen protection and reward of informants to encourage corruption report; g. enhance effectiveness of public officials' code of conduct; h. establish anti-corruption awareness and international cooperation; i. put in place measures to prevent entrenched irregularities in particular areas; and secure anti-corruption data and establish cooperation system. According to KICAC's own evaluation, it made the following achievements:⁶⁰

⁶⁰ Refer to KICAC. 2006 Guidelines on anti-corruption policies. February 2006. p. 2.

First, starting from February to February 2006, KICAC held Anti-Corruption Related Agency Meeting 6 times, integrated national anti-corruption policies and made supportive efforts by establishing the direction of anti-corruption policies, and discussing major issues.

Second, KICAC identified corruption-causing factors in laws and regulations of public agencies at each level, and urged them to improve their own institution. As of the end of 2005, KICAC attained institutional improvement in corruption-prone areas by identifying 609 improvement tasks and completing 360 improvement tasks.

Third, KICAC induced public agencies to make anti-corruption efforts on their own through integrity assessment.

Fourth, KICAC made the number of corruption reports increase by encouraging corruption report and creating an atmosphere of monitoring corruption. There was a large increase in the amount of reward money paid to informants and the number of corruption reports.

Fifth, KICAC enhanced anti-corruption awareness by inspecting those public agencies and their department whose integrity score was low and who were in charge of issuing permits and approvals. KICAC also strives to strengthen anti-corruption international cooperation.

However, KICAC was not without limitations. KICAC was a representative administrative commission that was founded to draw up technical and rational policies based on professional anti-corruption examination, and to fairly and efficiently implement such policies. In principle, KICAC should have carried out quasi-legislative and quasi-judicial functions, rather than general administrative functions. Yet, it clearly showed its limits because it was not a law enforcement agency. In addition, KICAC did not have right to investigation and was unable to prove corruption charges.

2.2.3 Anti-Corruption and Civil Rights Commission (ACRC)

As stated above, Anti-Corruption Special Committee was established in 1999 by a presidential decree as an anti-corruption advisory organ for the President. Pursuant to the Anti-Corruption Act enacted and promulgated in 2001, the Korea Independent Commission Against Corruption under the President was founded in 2002. KICAC's independence in work was recognized and status of its chairperson and commissioners was guaranteed. KICAC's Korean name was changed (English name unchanged) in 2005. With the inauguration of Lee Myung-bak government in February 2008, KICAC was integrated into the newly established Anti-Corruption and Civil Rights Commission pursuant to the Act on the Prevention of Corruption and the Establishment and Management of the Anti-Corruption and Civil Rights Commission.

Established in February 2008, the ACRC succeeded all functions and authority of KICAC and was formed by combining the Ombudsman of Korea, and the Administrative Appeals Commission. The purpose of the integration was to enhance people's access to

administrative services by unifying public agencies' windows for public petition, and to comprehensively and effectively improve irrational corruption-causing institution. In that regard, Korean anti-corruption system was unified all together through connection with and cooperation among ACRC's policy function and checks, the prosecutors' office, the Board of Audit and Inspection and various investigative agencies.

2.2.4 Others

Mid and long-term anti-corruption policies were set up during the Roh Moo-hyun government. Anti-Corruption Related Agency Meeting under the President was established and operated to coordinate anti-corruption policies. However, this organization was abolished with the start of the Lee Myung-bak government.

3. Major Cases of Policies Pursued

3.1 Sentencing Guidelines for Bribery Charges

Since ruling on bribery charges and granting privileges of one's former post are solely at the mercy of a judge's discretion, establishment of sentencing guidelines for bribery charges has been discussed for a long time to give an adequate reason to a judge's ruling. One of the reasons why people distrust the Judiciary is that sentencing criteria are different from one judge to another and one court to another, and sentencing grounds are rarely specified in a written ruling. In the case of bribery charges against public officials, distrust of the Judiciary is mainly caused by a typical practice where courts take into account of informal and extrajudicial factors such as deprivation of status, and loss of social reputation in their sentencing. Given that the scope of discourse over sentencing guidelines is extensive and the discourse was prompted by introspection or concern about a judge's discretion, a judge's discretion in sentencing should be limited. The same should be true of bribery charges. Therefore, there is a need to set sentencing guidelines subject to the type of bribery charges, to limit the scope of punishment and at the same time improve unrealistic legal punishment.

Sentencing guideline on bribery charges passed the Supreme Court's Sentencing Committee in April 2009 and has been in force since July 2009. It is expected to bring about fairness and transparency in sentencing by limiting discretion of judges in sentencing. Bribery cases are divided into 6 types according to the amount of money involved (less than 10million won, 1 million won, 30 million won, 50 million won, 100 million won, and 500 million won or more). Each amount again is divided into basic, mitigation, and aggravation to determine sentence. Sentencing factors are also divided into mitigation factor, aggravation factor, special factor, and general factor. In addition, to discourage suspension of execution, which is relatively high in bribery cases, criteria for suspension of execution were classified into important extenuating circumstance, general extenuating circumstance, negative factors, and positive factors.

3.2 Analysis of Anti-corruption Best and Failed Practices

3.2.1 Best Practices

a. Anti-corruption Policies

With respect to disclose of breakdown of clean card use, starting from July 2011, all departments including the audit and inspection office have been required to post their business promotion expenses in their homepages every month and undue use is checked. The result will be used in evaluation of senior officials with grade 4 or higher. From April, Gwangju Metropolitan Office of Education started disclosing breakdown of business promotion expenses spent every month and every case by education superintendent, vice superintendent, superintendent of district office of education support, heads of direct subordinate organizations, and principals of each school. Business promotion expenses spent by heads of public agencies are made public on a yearly basis. As stated above, a growing number of public agencies disclose in their homepage every month and the scope of those subject to such disclosure is expanding to deputy head and directors, etc.

The National Health Insurance Corporation came up with Operating Rules on Work Integrity Pact to prevent work-related corruption and to strengthen ethical management.⁶¹ As part of follow-up measures to anti-corruption policy implementation plan, the Fair Trade Commission became the first central government agency in 2009 to introduce a mileage system under which its employees voluntarily or actively put the contents of anti-corruption initiatives or various integrity enhancing measures into practice to get mileage points. Under the system, the Commission grants incentives depending on employees' anti-corruption activities and developed "management guidelines of the Fair Trade Commission Integrity Mileage."⁶²

b. Integrity Assessment

Established in January 2002, KICAC carried out Integrity Assessment on public agencies every year and released the result. Integrity Assessment was a system under which citizens themselves diagnosed corruption status of public agencies. Based on Integrity Assessment results, public agencies made efforts to prevent and eradicate corruption. Integrity Assessment was well recognized as an excellent anti-corruption system. As time went by, public agencies raced to improve their Integrity Assessment score. As a result, comprehensive integrity (the first year of Integrity Assessment) was only 6.43 in 2002 but the score jumped to 8.77 in 2006 with significant decrease in the rate of gratuities. Therefore, Integrity Assessment played a major role in making public office transparent.

⁶¹ Anti-Corruption and Civil Rights Commission, casebook on best practices of public officials' code of conduct. 2011, pp. 54-58.

⁶² Enacted on November 25th, 2009. Refer to Regulation No. 76 of the Fair Trade Commission.

c. Institutional Improvement to Make the Political Sector Transparent

As various forms of corruption related to political funds emerges major corruption scandals, KICAC decided that transparent politics would not be possible without improvement in political funding system. KICAC continuously tried to come up with comprehensive measures against corruption, take advantage of one's influence, improve political funding system, and fix political funding system in local elections. The amendment of Three major politics-related laws in March 2004 laid the foundation for a transparent and clean politics.

3 major politics-related laws refer to the Political Parties Act that stipulates i) abolition of electoral district chapter, which was criticized as "bottomless pit," setting a limit on the number of paid employees working for electoral central chapters and electoral city/provincial chapters, and permission to admit members to a political party through the Internet. ii) the Public Officials Election Act stipulated changes to media-oriented mobilization through broadcasting and internet from the existing audience mobilization method, abolition of a joint speech session and speech session of political parties or candidates, permission of a street speech where candidates themselves approach voters and ask for their support, restriction of election expenditure spending to accounting officials registered with the National Election Commission to enhance transparency in political fund operation, use of credit cards and checks or electronic transfer for spending exceeding 200,000 won at a time, imposition of fines as much as 50 times the value of gratuities or entertainment received from politicians, and introduction of reward payment if such gratuities and entertainment are reported, and iii) The Political Fund Act that stipulates prohibition of political donation from corporations and organizations to break cozy relations between politics and business, downward adjustment in the maximum donation amount from 100 million won to 20 million won a year, and mandatory disclosure of personal information of those who donated 1.2 million won or more. After revision of the 3 Acts, a survey was conducted on officials who worked in the 17th General Elections. They responded that organization management expenditure, which accounted for 68.1% of the entire expenditure, was reduced to 19.9%. According to the National Election Commission, legal election expenditure was significantly decreased and the number of election law violations was cut to a quarter of that of the 16th General Elections.

d. Reward and Award for Corruption Informants

Since corruption report compensation system was put in place after the establishment of KICAC, corruption informants can file compensation money payment with KICAC if their report directly recovered or increased revenue of public agency concerned because of their reporting. If they meet the payment criteria, they are legally entitled to such payment.

Reward payment system for corruption informants, which was established by fine-tuning the old version, has been implemented since July 2005. Under the reward payment system, reward money is paid to those informants who brought about financial benefits and prevention of losses on the part of public agencies, and promotion of public good even without public agencies' restitution. This reward payment system serves as an effective

anti-corruption tool that encourages people's voluntary participation in corruption reporting by rewarding those who are courageous enough to report corruption for the sake of public good in the face of risks.

e. Curbing Cozy Relations between Politics and Business

After democratization in 1987, the Roh Tae-woo government awarded large-scale projects to major conglomerates and gave them permission to get into new areas of business in return for billions and tens of billions of won in kickbacks. Because of such back-scratching alliance between government and businesses, former Presidents Chun Doo-hwan and Roh Tae-woo were put behind bars. The so-called Political fund scandals also known as flush funds stunned the entire nation with its enormous size. Unfortunately, it is true that the governments, inaugurated even after democratization, are not free from political slush fund scandals, collusion between political elite and businessmen, and various controversies over special favors.

A classic example is a case where 6 large construction companies in Korea were awarded with a majority of big national projects during President Roh Tae-woo government. Of 56 large-scale national projects during the 6th Republic, 46 were won by the so-called big 6. Because of this scandal, the head of state was unprecedentedly taken to court and incarcerated.

f. Upper Water Clean Campaign (Those in High Places Lead by Example)

It is no exaggeration to say that the reform of the Kim Young-sam government started its drive to eradicate corruption. The government carried out purification of corrupt officials extensively. Such purification movement originated from its anti-corruption slogan, "Upper Water Clean Campaign."⁶³

Following Upper Water Clean Campaign were a series of measures to systemize corruption prevention in the political sector and public office. Good examples would be disclosure of public officials' properties made possible by the amendment of the Public Service Ethics Act, and real-name financial transaction system.

The President's example made disclosure of high-ranking officials' properties possible. Many officials and politicians, who were found to have accumulated illicit wealth, were punished. The grade of public official subject to this corrective campaign got lowered, and the scope of anti-corruption target got more comprehensive and far-reaching compared with that of previous governments. Under its no exceptions principle, anyone working for the government were subject to this inspection drive from rank and file, to presidential aides, to former Presidents, to bureaucrats, to employees of government-affiliated organizations, to political heavy weights, and to even armed forces.

⁶³ This movement was carried out to the effect that the President led by examples; no reception of political funds, belt tightening in the Blue House spending, simplification of various events, demolishing inner house of the Blue House, no golf, voluntary property registration, and hand-made noodles for meal in the Blue House.

3.2.2 Failed Practices

a. Renovation of Public Office

The 4th Republic marked a turning point in the Korean government's anti-corruption history. To rid corruption in the public office, the government launched a policy called Renovation of Public Office. Renovation of Public Office was defined as a task for national restoration to make Korea affluent and strong via a combination of society purification movement, designed to remove all irregularities in public service, with mind reform movement, designed to uplift people's spirit. In a narrow perspective, Renovation of Public Service indicated tightening the discipline of government offices to get rid of public officials' corruption and efficiently carrying out state affairs. In a broad sense, it signified society purification movement to reform people's mindset.

The ultimate goal of Renovation of Public Office was national restoration via building up national power. The government tried to present 3 tasks of action: purification of public office, purification of society as a whole, and reform of the mindset. Specific goal of purification of public office, the first step in Renovation of Public Office, is:

First, uprooting work-related irregularities by overhauling public officials' mindset;

Second, removal of structural corruption by improving inefficient administrative system; and,

Third, development of reliable image of public officials by purification of their public and private lives.

Therefore, the target of purification in public service was divided into 4: persons (public officials), work (duty), system, and environment (public and private life).

Specific goal and target of purification of society as a whole, the second step in Renovation of Public Office, are:

First, antisocial and antinational acts undermining the reformed government such as smuggling, tax evasion, moon shining, manufacturing and selling marijuana or drugs, flying assets abroad, and false emigration.

Second, acts infringing people's lives such as organized or habitual economic violence or physical violence, taking excessive profits, harmful food manufacturing, exploitation of wages, and acts intruding national economy.

Third, acts undermining national harmonization such as wasteful and extravagant lifestyle, counterproductive acts including plotting, libeling and false accusation, gambling, and dissipation.

Specific goal of mindset reform, the last step in Renovation of Public Office, was:

First, boosting diligence, self-devotion and cooperation,

Second, rearming the right sense of security and anti-communist spirit,

Third, establishment of new values.

Renovation of Public Office was the major anti-corruption policy of the reformed government era. Renovation of Public Office was used since 1975 as a tool to justify the reformed government; it aimed at eradicating corruption and had a wide range of targets. In the initial stage, Renovation of Public Office had influence on many areas owing to the President's support. However, as the reformed government moved toward its end, the zeal of the renovation movement cooled down, and it barely remained in existence by 1979. In fact, Renovation of Public Office was used as a measure to maintain the reformed government but not as a means to purify the public office. Outcomes of the public office renovation was intended to spread to society as a whole but the desired result was not produced due to lack of legitimacy and structural limits of the reformed government.

b. Society Purification Movement

Society Purification Movement was a society reform initiative started by the Chun Doo-hwan government to fight corruption and to raise people's awareness under the slogan "realization of a just society." This movement was regarded as pan-national drive or society development movement to ultimately build a society where justice prevails by driving out corruption and changing wrong perceptions. Three ideologies of the Society Purification Movement were honesty, order and creation. Four principles were morality, common good, fairness and rationality. To secure legitimacy of the government, the Chun government carried out society purification movement extensively. This movement was a society campaign to combat corruption and irregularities rampant in all sectors of the society, to create an atmosphere where members of society trust each other, and to improve ethos of society. Specific contents of society purification movement are as follows:

First, expensive conduct of physical eradication of corruption mainly in public office and rejection of influence peddling. In fact, many high-ranking officials were dismissed in the cleanup process to warn against corruption;

Second, extensive downsizing of government agencies was carried out by dismissing those in high ranks.

Third, ethics charger for public officials was drawn up, and all public officials took an oath. The Public Service Ethics Act was enacted as a way to prevent corruption in public office.

Fourth, education was strengthened to reform people's mindset. To establish criteria for education and reforms, nine practical measures for reform of public office were drawn up and promulgated.

To purify the public office, the following strategies and measures were taken.

First, a diagnosis system was established in public office, and Integrity Assessment and Purification Assessment were carried out to analyze problems and produce improvements measures.

Second, 20 bureaus and offices in the Economy Planning Board, the Ministry of Finance and the Ministry of Construction were designated as pilot project departments to carry out a sweeping “Rejection of Influence Peddling.” Among affiliated organizations of government agencies, departments with high possibility to influence peddling were designated as examples and monitored.

Third, registration of public officials’ properties was implemented to enhance creditability of the government undermined by public officials’ accumulation of illicit wealth.

Fourth, the Public Service Ethics Act was enacted and implemented to induce faithful registration of property registration and to strengthen punishment for those who hide their ill-gotten properties.

Fifth, public officials’ ethics charter was established. All public officials took the oath office, and integrity was made a factor in public officials’ work performance.

Sixth, heads of government agencies were given discretion to autonomously handle and crack down on remaining corruption. Inspection by investigative agencies was tightened for those agencies with unsatisfactory results.

Seventh, friendly service movement and elimination of price-at-any-price attitude were implemented to overhaul public officials’ mindset. A 9-point program to reform the mindset and tasks for mindset overhaul were chosen and announced.

Eighth, public service discipline renovation is conducted to prevent lax discipline among public officials and to have better purification movement performance since September 1985.

Ninth, administrative reform measures called removal of “factors compromising growth potential” or “institutional improvement for growth and development” were pushed ahead in order to improve complaint handing process, to improve related systems, and to get rid of corruption-causing factors.⁶⁴

Although Society Purification Movement was designed to eradicate irregularities and reform people’s mindset, many adverse side-effects resulted due to exercise of government authority. The problems of Society Purification Movement that the Society Purification Committee itself announced were political burden and inconvenience in livelihood to people, lack of voluntary participation, duplication with Saemaeul Undong (new community movement) on many parts, dual structure of central government organizations and civic organizations, low morale among members, and formality in participation.

It can be assumed that Society Purification Movement cautioned government officials and curbed corruption only temporarily. It was excessively carried forward and politically charged to legitimize the process of the government coming to power. The process and

⁶⁴ Jang Ji-dong, “Comparison of and research on administrative reforms carried out by previous Korean governments” Sangji University doctorate degree thesis. 2005. Page 57.

purpose of Society Purification Movement had a lot in common with purification of public officials by Revolution Prosecutor Department and Revolution Court in the beginning stage of the 3rd Republic, national rebuilding movement, and Renovation of Public Office of the 4th Republic. The fact that main players of the reform were severely corrupt demonstrated that the future of society purification movement was doomed.

During the Roh Tae-woo government, Society Purification Movement became the target of criticism and reform, and was ultimately abolished. All measures taken by the Society Purification Movement was the target of eradication. Due to negative effects of the movement, public officials who were dismissed were reinstated and even compensated.⁶⁵

c. New Order, New Life Movement

In the 6th Republic, the Society Purification Committed was abolished and Society Purification Movement ended. However, the Rho Tae-woo government implemented New Order, New Life Movement that was similar in substance and different in name from Society Purification Movement from the 1990s. Anti-corruption in public office was emphasized as part of the New Order New Life Movement.

New Order denoted establishment of a safe and orderly society that was not threatened by unlawfulness, disorder, and crimes. New Life meant a society where wholesome morals are established and a society that is free of social ills.

New Order New Life Movement was launched 2 times. During special declaration of “new mindset movement for public officials” and “war against crime and violence” in April 1990, the President emphasized realization of a society devoid of fear of crime, an orderly society and a working society. The New Order, New Life Movement came into being according to the purpose of the special declaration. The purpose of this movement was to establish a moral image of Korean people and to accomplish mission of the time, democracy, prosperity and unification.

What separates New Order New Life Movement from other movements is that corruption prevention initiatives did not include extensive purification or relative increase in education. New Order New Life Movement was purported to be a voluntary national movement led by the private sector but was actually led by the government from the beginning. The system and drive were not so powerful as its predecessors.⁶⁶ In the end, anti-corruption polices were not institutionalized, and measures of the movement was mostly temporary and extemporaneous.

d. Weakening of KICAC Functions

The Korea Independent Commission Against Corruption (KICAC) was an organization

⁶⁵ Jang Ji-dong, “Comparison of and research on administrative reforms carried out by previous Korean governments” Sangji University doctorate degree thesis. 2005. P. 57.

⁶⁶ Encouragement of New Order, New Life Movement was barely keeping its existence in the latter half of 1992 as one of 20 initiatives was carried out (Administrative Cooperation Office under the Prime Minister, refer to evaluation of state affairs of the 6th Republic and tasks in the future, 1993, pp. 6-7).

receiving reports on corruption and irregularities committed by public officials, and setting anti-corruption policies. Therefore KICAC was an entirely different entity in nature from the Ombudsman of Korea and the Administrative Commission. Nevertheless, KICAC was integrated with the Ombudsman of Korea and the Administrative Commission to form the Anti-Corruption and Civil Rights Commission under the Prime Minister. Because its authority and functions were rather limited, it was incapable of performing its work as it did in the past. If anything, measures designed to strengthen the functions of KICAC should have been devised urgently, but the integration undermined independence of KICAC. The abolition of KICAC flies right in the face of obligations of UN Anti-Corruption Convention that stipulates the establishment of an independent anti-corruption organization and polices.

e. Controversy over the Effectiveness of Anti-corruption Measures for Judicial Officers

The Act on Law School Establishment, the Sentencing Commission, and the Legal Ethics&Professional Conduct Council were presented as a systematic solution to irregularities committed by judicial officials. However, the effectiveness of such solution is highly controversial.

Assessment

1. Assessment of Legal System to Prevent Corruption
2. Assessment of Institutions to Implement Anti-corruption Policies
3. Assessment of Policies to Implement Anti-corruption Activities

Assessment

1. Assessment of Legal System to Prevent Corruption

During the First and Second Republic, the government's anti-corruption activities were solely carried out by corruption investigation agencies, without any government-wide comprehensive plan. President Syngman Rhee and his dictatorial leadership undermined investigation agencies' independence. Approached from a systematic perspective, however, two acts were enacted and promulgated during two Republics and they were of significance as the cornerstone of the government's anti-corruption efforts. The first was "State Public Officials Act" enacted by the First Republic in 1949. It provided the impartiality of personnel administration, liability, guarantee of status, and disciplinary actions and punishments of public officials. The latter was "Special Act on the Punishment of Illegal Amasser" by the Second Republic in April 1961. It was the first act which prescribed punishment of illegal acts committed by politicians.

The Second Republic introduced several anti-corruption legislations to eliminate the legacy of corruption left by the First Republic. "Special Act on the Punishment of Anti-National Acts under the Colonial Rule of Japanese Imperialism" and "Act on the Punishment of Persons Involved in Election Rigging" were retrospectively applied to corruption cases which had occurred before the enactment; which means their application was limited only to what happened under the Colonial Rule and President Rhee's autocracy. The Second Republic did not have a strong will to fight public corruption; anti-corruption legislations were too broad and abstract as they were fragmented into discrete article within relevant legislations and did not exist as a single entity. As a consequence, those legislations lacked power to rigorously exert anti-corruption efforts. For these reasons, the Second Republic was not aggressive and even looked lukewarm about punishing corrupted officials.⁶⁷

⁶⁷ Korea's State of Corruption and Its Cause [Korea Institute of Public Administration, 1999]: 555-556.

The military junta led by Park Chung-hee and the Third Republic launched anti-corruption policies with the slogan “Elimination of Corruption,” one of the pledges made after General Park Chung-hee’s May 16 coup. During the period of Korea’s rapid economic growth, however, the relation between politics and business became lenient, and public corruption grew to be more substantial, systematic, and taken root. Typical examples of such corruption cases are “profiteering of flour, sugar, and cement,”⁶⁸ “stock rigging in 1962 by Korea Central Intelligence Agency,” “embezzling funds to build the Walkerhill Hotel,” and “pocketing a kickback in return for turning a blind eye to pachinko gambling.” The Third Republic was behind all of these corruption scandals and received illegal political funds from the businesses involved. The scale of corruption became massive compared to those in the First and Second Republic, but only rumors were rife and the truth about the cases was brought to light much later. Even worse, the suspects received minor punishment and were acquitted later. Hence, the Third Republic is said to show no progress in adopting systematic measures and schemes to fight corruption.

The Third Republic was directly involved in the previously mentioned corruption scandals and pocketed illegal political funds. Yet, it also politicized the corruption cases by punishing only some of the suspects as an example with no regard to existing laws and procedures under the slogan of “Pledge of the Revolution” and “Revolutionary Trials.” Before the start of the Third Republic, the military junta enacted the “Treatment of Illegally Amassed Property Act (June 14, 1961)” to recover illegally amassed property from politicians and high ranking officials of the First and Second Republic, to punish the people involved in corruption cases by Revolutionary Prosecutor and Revolutionary Court, to dismiss corrupted and incompetent public officials, and to establish “Special Investigation Bureau” for investigation of corrupted public officials. However, President Park and his ruling party lacked strong and consistent leadership to lead anti-corruption drive and the legislations applicable to corruption cases were fragmented and dispersed into numerous articles with no consistency. As a consequence, anti-corruption activities of the Third Republic remained nominal to politically benefit those in power and were not results of proper legal proceedings.

“Purification Movement of Officialdom” was an anti-corruption movement led by President Park during the Yushin Period (1972-1979) and was launched from 1975 as a tool to justify the authoritarian Yushin regime. The Movement focused on rooting out corruption among public officials; its coverage was quite extensive. Though it made a considerable impact on various social areas from its onset with the help of President Park’s support, it lost its momentum since then and dwindled to little more than a name in 1979.

Defining the Purification Movement, the Yushin regime said “It is our duty to restore our national spirit and to be prosperous. For that purpose, we should elevate the Purification Movement into ‘social purification’ to restore people’s trust and improve efficiency in state

⁶⁸ The Third Republic granted to certain chaebols exclusive right to import flour, sugar, and cement, and they gave political funds to the government in return for the profit (about 5 billion KRW) they unjustly gained from the importation.

administration by purging all corruption from government officials and providing effective and clear administrative service for the public and into ‘mind reform’ to foster sound national spirit based on novel values.” The trouble was that the Purification Movement started as a method to eliminate corruption among officials, but the government became obsessed with the movement itself and tried to link every reform movement with the Purification Movement.

The Yushin regime pushed ahead with the Purification Movement with introduction of new regulations such as “superiors have to be jointly liable for his/her subordinates’ wrongdoings,”⁶⁹ “records about reward and punishment of officials under the Purification Movement should be kept,”⁷⁰ “citizens as well as officials implicated in corruption are punished,” and “officials laid off because of corruption cannot return to the office.” The Purification Movement, however, was abused for political purposes by Special Presidential Aide for Anti-Corruption and the Office of Secretary to the President for Civil Affairs under the order of President Park, instead of following proper legal procedures. It caused lots of controversy from a legal perspective as the government arbitrarily applied regulations without considering proper legal grounds. The Yushin regime established “the Office of Secret Inspectors” and “the Office of Special Task Force to Address Corruption” for an effective execution of the Purification Movement. However, they were unofficial agencies and therefore caused many troubles in anti-corruption efforts.

In sum, the Purification Movement was a measure to solidify the Yushin regime, not to root out corruption from public officials. The original purpose of the Movement was to purify officialdom first and then to introduce the movement to the general public, but it failed as the regime lacked legitimacy and had structural limitations.

Despite the government’s anti-corruption drive under the Purification Movement, corruption was rife in the Yushin regime. A typical example was: a high-ranking official received “donations” from business and misused them as political funds or invested in real estate and individual assets. In addition, he/she intervened in appointing officials with the power and money in hand. Punishment on those who committed corruption was light and those who were punished were pardoned and returned to office, which incurred criticism from the general public.

The Fifth Republic inherently lacked legitimacy as it seized power in a coup and therefore set administrative goals such as “Drastic Reform,” “Economic Stability and Growth,” “Eliminating Obsolete Political Convention,” and “Rooting out Corruption” as

69 See Order of Prime Minister on March 22, 1975 (“when a subordinate official receives bribe from a person related to his/her duty, his/her superior in charge also be liable for the punishment” from “Policy Applicable When a Public Official Causes Harm to the Public”) and Order of Prime Minister on November 1, 1976 “Detailed Guidelines for Joint Liability.”

70 Such a record system’s origin can be traced back to the Joseon Dynasty period. According to Chungbaeksarok, once a public official recorded as corrupted, his sons and grandsons as well as himself cannot be appointed to high-ranking positions such as those in Saheonbu (the Office of Inspector General) and Uijeongbu (the State Council) and to the head of local governments. This can be called guilty by association.

a means to secure legitimacy.⁷¹ “The Realization of a Just Society” was the administrative goal of the Fifth Republic and was conducted under the framework named “Social Cleanup Movement,” a social reformation movement. The aim of the Movement was to eliminate injustice, illegalities, corruption, distrust, disorder, and other irregularities rife in the society. Anti-corruption measures targeted for public officials were also a part of the Movement.

From the beginning, the Chun administration, under the slogan of “Social Cleanup Movement,” rooted out officials who were considered corrupt and unethical or recovered illegally amassed wealth. It demanded that public officials should not seek any favor from citizens and promised to conduct administrative reform, and enacted Charter of Public Officials’ Ethics (December 1980) and Public Service Ethics Act (December 1981). It controlled public officials by measuring their integrity. Such measures, however, did not attract favorable response from the public. In consequence, the Cleanup Movement received negative response at the end of the administration as the government pushed ahead with the Movement without taking into account of any side effects.

On a positive regard, the Chun administration made some progress in its anti-corruption movement. First, more legal grounds were developed to reform public officials compared to previous administrations with the aim to improve their morality and responsibility. Second, several institutional grounds were introduced for anti-corruption efforts such as Charter of Public Officials’ Ethics and Public Service Ethics Act. Third, public officials were required not to seek any favor from citizens. Fourth, attempts were made to adopt the real-name financial transactions system. The most significant achievement is the enactment of Public Service Ethics Act. The act was groundbreaking in the sense that, for the first time, it demanded public officials to register their property status and then their registered property was put under investigation and examination. Nevertheless, the registered property was not open to the public, and, as a result, the act proved ineffective and later became insignificant.

The Fifth Republic went by the name of the “Republic of Corruption,” revealing that it was considered more corrupted than any other regimes in South Korea as many scandals were revealed after the fall of the regime. Chun Kyung-hwan, then President Chun Doo-hwan’s brother and the head of Saemaul Undong Center, and Lee Chang-seok, then-First Lady Lee Soon-ja’s brother, were implicated in corruption scandals. The New Generation Heart Foundation, headed by First Lady Lee, was also involved in a scandal as it received kickbacks from businesses and embezzled them to create a slush fund. Lee Chul-hee and Jang Young-ja Scandal was the biggest promissory note fraud so far in which high-ranking officials, business, and banks were involved. Youngdong Scandal was a financial fraud scandal committed by Youngdong Development and Choheung Bank. Last but not the least, officials including President himself and their relatives accumulated wealth illegally through real-estate speculations.

⁷¹ The Fifth Republic conducted extensive administrative reforms on October 15, 1981, enacted Public Service Ethics Act, and demanded that public officials should register their property status (The Annals of Ministry of Civic Service, 1982: 37-45).

The Office of Secretary to the President was behind most of the abovementioned scandals, in parallel with the Offices of former Presidents. And those in power as well as President's relatives were involved in various scandals including making illegal political funds. Accordingly, anti-corruption policies were arbitrarily used in favor of those in power and were not consistent enough to root out corruption, which caused the general public insensitive to corruption.

In 1990, the Roh Tae-woo administration launched "New Order and New Life Movement," which virtually was identical to the Fifth Republic's Cleanup Movement. One difference made was that the New Order and New Life Movement was pushed ahead with in a more democratic and voluntary way than before. Anti-corruption campaign toward public officials was one of the movement's main focuses. The Roh Tae-woo administration tried to purge corruption from public officials through a more strict management of the Central Disciplinary Committee, more detailed instructions on duty management, special supervision of duties, establishment and operation of government-wide special investigation team, and selection and propagation of "Three Tasks to Practice New Order and New Life." Most of the aforementioned policies, however, were temporary and only stopgap measures; no detailed policies for the prevention of public corruption were presented.⁷² That is to say, the New Order and New Life Movement failed to be institutionalized and ended up nominal, a likely result of most cleanup drives led by the government.

The Roh administration's anti-corruption movement required public officials to take more responsibility and be more ethical. It focused more on educating public officials when it comes to purification efforts, and it tried to clean up officialdom like the police cracks down on criminals. The launch of the "Public Concept of Land Ownership," which consisted of "Ceilings on the Ownership of Housing Sites," "Restitution of Development Benefit Act," and "Land Excess-Profits Tax," had a significant impact on politics, economy, and society as legal and institutional means to prevent public officials from being enticed into corruption. The Roh administration got credit for targeting circumstantial factors as well as undesirable aspects and institutional factors of officialdom to clean up the public sector.

Corruption cases during the Roh administration grew more systematic, substantial, and habitual than before. One thing worth of notice was the fact that President Roh's relatives were directly or indirectly involved in most of the cases. Some of the well-known cases were: Lawmakers in the Commerce and Industry Committee of the National Assembly took bribery and went overseas trips, high-ranking officials received illegal perks – priority in buying apartment houses in Suseo District – which could be abused for real-estate speculation. Politicians were suspected of getting involved in land fraud concerning former

⁷² The Three Tasks for public officials were "Public officials are off-limits to extravagant bars and clubs," "Any Public official cannot drive his/her own vehicle when the last number of his/her license plate number falls on the same date," and "Public officials cannot attend others," "Family events during work hours," all of which were not directly related to corruption (Assessment of the Roh Administration and Future Tasks, Administrative Coordination Office of the Office of the Prime Minister, 1993: 166).

site of Army Intelligence Command, and there were several slush fund scandals. Most of all, President Roh was directly involved in serious corruption scandals. The first one was Yulgok Scandal (1993) – High-ranking officials and President Roh himself received bribes and contributions worth 100 million USD from arms dealers in 1990 when the army was selecting next generation fighter jets. The second incident was called “Roh Tae-woo slush fund scandal” as President’s allies, chebols, and financial institutions got together to amass enormous amount of slush funds, led by President Roh himself.

The Civilian Government of President Kim Young-sam launched a very extensive and strong reform movement centered on anti-corruption. This was possible because it was the first civilian government in nearly 30 years. The Kim administration took great pride and felt committed to reform the society, while enjoying extensive popularity from the public. President Kim proclaimed that he would cure “the Korean Disease” and turn Korea into “New Korea.” He also set three administrative goals such as “Rooting out Corruption,” “Invigorating the Economy,” and “Tightening Discipline of the Nation.” The most powerful and evident reform movement at the early stage of the administration was anti-corruption movement under the slogan of “A servant is only as honest as his master.” Other reformation drives were also launched, targeting various areas of the society.

Anti-corruption measures launched with inauguration of the Kim administration were very strong in the beginning. President Kim was at the forefront of the measures while expressing his intention that elimination of corruption was necessary to realize a just society and to pump-prime the economy. At its early stage, President himself devised and encouraged anti-corruption policies, which accelerated the anti-corruption movement.

Notable achievements are as follows. The government revised “Public Service Ethics Act”-enacted in 1981 but remained nominal since then – and therefore public officials falling under the Act’s coverage must register their property and open them to the public.⁷³ It revised “Act on the Election of Public Officials and the Prevention of Election Malpractices and Political Fund” to deal with political corruption. It established the National Anti-Corruption Strategy Committee as an advisory committee for the Board of Audit and Inspection. The most significant achievement was President Kim’s issue of “Presidential Financial and Economic Emergency Order on Real Name Financial Transactions and Confidentiality” to start the real-name financial transactions system and to improve transparency in financial transactions. Unfortunately, such drastic efforts backfired and created hostility among public officials. The atmosphere among officials became unpleasant, and they started to watch and wait on problems without taking lead. And many policies were criticized as

⁷³ The Public Service Ethics Act revised in 1993 had more power than the previous version. It expanded the coverage of public officials required to go public with their property, had the right to select public officials eligible for the disclosure of property, granted the authority to examine disclosed property to the Public Services Ethics Committee, and imposed more harsh penalty on those who didn’t report properly and those who violated restriction on post-employment restrictions of public officials. In 1994, it was revised again to allow the Public Services Ethics Committee to demand relevant documents concerning financial transactions from heads of financial institutions as a means to strictly examine registered property.

being politically motivated and targeted against political retaliation. As a result, the Kim administration yielded to the Establishment.

To the government's frustration, the National Assembly passed a series of financial reform acts to abide by agreements with the IMF in December 1997, which, in effect, marked the repeal of the real-name financial transactions system. Under the stewardship of the IMF, the government was asked to devise an alternative legislation for the system as it was labeled as one of the culprits of economic recession. The system became meaningless after four years of its launch, and the anti-money laundering act, which had been underway before, also failed to take shape.

Unlike the previous administrations, that the Kim administration devised various anti-corruption legislations, without resorting to slogans, was one positive aspect of the administration's anti-corruption efforts. On the other hand, like its predecessors, it lacked integrated anti-corruption programs and failed to push ahead with the programs strongly enough to ward off oppositions of the Establishment. In consequence, the cure of "Korean Disease" ended in failure; even though many anti-corruption measures were existent, they became ineffective. They could not prevent the nation from being rife with lots of corruption scandals, and the public felt that there was no difference between the Civilian Government and other governments in the scale of corruption. Most scandals which happened during the period were bribery scandals involving conglomerates, giving bribes to politicians in exchange for business perks and favors. For example, lawmakers received bribery from Hanbo, Chunggu, and Kia and they could loan money from banks in a much favorable condition. The most famous scandal was the one involving Kim Hyun-chul, son of President Kim Young-sam. He received and created slush funds from businesses and made the most of his position to exercise the right to various privileges and to get bribery. The prosecution went through twists and turns as he was the son of President, but he finally was prosecuted and went into prison; it marked a remarkable achievement for prosecutors.

From a policy perspective, the Kim administration showed sincerity in anti-corruption efforts by establishing extensive and strong anti-corruption legislations. First, President Kim made campaign pledges by setting up "the Corruption Prevention Committee," purging corruption from officialdom, and rooting out corrupted officials. Second, the administration introduced various acts to achieve anti-corruption targets. It established the National Anti-Corruption Strategy Committee as an advisory committee for the Board of Audit and Inspection in 1993, revised Public Service Ethics Act four times, enacted Act on the Election of Public Officials and the Prevention of Election Malpractices and Political Fund (now Act on Elections for Public Offices) in 1994, and revised Political Fund Act (now Political Funds Act) three times in 1994, 1995, and 1997. But Anti-Corruption Act failed to take shape.

The Government of Nation of President Kim Dae-jung was burdened with the stewardship of the IMF and made efforts to eliminate corruption as corruption was considered the culprit of financial crisis. The new administration's anti-corruption policies were made possible

partly due to strong anti-corruption efforts built up during the previous administration which started to bear fruit as a result of a national consensus and due to demands from the public as well as overseas that transparency and accountability in national administration should be improved to make Korea more competitive. The government proposed the Comprehensive Plan for Anti-Corruption in August 1998. “Clean and Accountable Government,” “Transparent and Fair Social Order,” and “Enhancement of National Competitiveness to be One of the Developed Nations in the 21st Century” were selected as targets of the comprehensive plan. More comprehensive and systematic anti-corruption policies were required. In this sense, institutional grounds for anti-corruption needed to be upgraded.

The Kim Dae-jung administration established the Special Commission on Anti-Corruption, directly responsible to the President, in September 1999 after setting out rules for the commission. The commission consisted of fourteen civilian members including the chairman and one government-side member. The commission did its part until Anti-Corruption Act was enacted and the Anti-Corruption Committee took the place. Anti-Corruption Act was legislated in 2001, and the Korea Anti-Corruption Commission was launched in January 2002. The commission’s main jobs were to educate on and promote anti-corruption, to support anti-corruption efforts of non-profit organizations, to conduct international cooperation concerning anti-corruption, to compile and address reports of corruption, and to protect and compensate those who reported the case.

But sharp conflicts between the ruling and the opposition party thwarted enactment of Framework Act on Anti-Corruption, Money Laundering Prevention Act, and Whistleblower Protection Act and appointment of special prosecutor to investigate anti-corruption cases. Moreover, the conflict frustrated the government’s plan to legislate acts required to reform politics, which was considered the root of corruption.

The Government of Nation, however, was worthy of credit as it paved the legal grounds for anti-corruption efforts such as establishment of the Special Commission on Anti-Corruption, audit and inspection system led by ordinary citizens, improvement in administrative regulations, and devising and implementation of the Code of Conduct for Public Officials.⁷⁴

During the Government of Nation, corruption scandals were named with a suffix “-gate” (as in “Watergate scandal”). Whenever a scandal broke out, people could see “gate” on every news media. Starting from “Clothes-for-Lobby” Scandal (in which a wife of a chairman of chaebol lobbied to lift her husband from trouble by providing luxurious clothes to high-ranking officials’ wives), a series of power-related corruption scandals broke out such as Jung Hyun-jun Gate, Jin Seung-hyun Gate, Lee Yong-ho Gate, Yoon Tae-sik Gate, and Choi Kyu-seon Gate. All of these “gates” clearly revealed immorality of the Kim administration.

Moreover, suspicions and corruption charges involving President Kim’s two sons (Hong-up and Hong-geol) attracted lots of public attention.

⁷⁴ Kim Taek, *Anti-Corruption Measures of the Government of Nation: Assessment and Proposal* (Administrative System Research Center for Anti-Corruption in the University of Seoul, 2000): 14

Kim Hong-up was involved in Choi Kyu-seon Gate. Special prosecutors, who investigated Lee Yong-ho Gate, found out that President's relatives working for the Atae Foundation including First Lady's nephew, First Lady's bother, and President's second (Hong-up) and third (Hong-geol) sons were involved in the Gate. It was a typical example of the corruption scandal involving the President's family members. At the heart of such scandals, high-ranking officials in Cheongwadae (the Presidential Office), the prosecution, the police, the National Intelligence Service, the National Tax Service, and the Financial Supervisory Service as well as lawmakers were implicated in the scandals.⁷⁵

The Participation Government of Roh Moo-hyon showed a strong will to eliminate corruption and therefore enacted and revised numerous anti-corruption legislations. As a consequence, the administration was credited for greatly reducing the scale of illegal political funds, which were called the root of corruption, as well as illegal campaigning. Unfortunately, corruption was not eliminated despite such efforts.

The Participation Government made some progress in anti-corruption measures but revealed its limitations at the same time. First, the government closed down electoral district chapters to break the pattern of low efficiency and high expenditure in politics. Before long, however, committees of party members were established instead of electoral district chapters, a controversial development as such committees perform almost identical roles with what the district chapters do. Second, the government promised to delegate some of the authority for policy issues to civilians and to loosen regulations. But delegation and deregulation were not completed as planned and, instead, the government expanded its role and claimed the legitimacy of a "bigger government" than the previous ones. Third, the government made various efforts to increase transparency in corporate management, but most chaebols continued to be controlled by the founder's family members. Fourth, a reward was given to those who reported illegal campaigning, which greatly reduced vote buying and bribing voters. The political authority in power, however, was not properly punished; some even escaped punishment due to a relatively short statute of limitation. It was difficult for the prosecution to prove whether the suspects committed corruption in exchange for perks and bribes especially when the suspects' social positions were high. It was more likely that low-ranking officials were punished for corruption, but politicians and high-ranking officials could easily get away with corruption charges. It was only a slap on the wrist for high-ranking officials and politicians.

Enacting Anti-Corruption Act has historical significance as it laid the legal and institutional grounds for dealing with corruption in a more systematic way. It was the first time that the government started to take an institutional and sociocultural as well as ethical approach to corruption and therefore sought sociocultural solution such as creating a culture of integrity and legal and institutional solutions. From the Participation Government, anyone who gets bribed from a candidate was asked to pay a fine which amounted to 50

⁷⁵ Kim Chun-sik, "Cause of Corruption among Those in Power in the Eyes of Yi Hwang" *Journal of Association for Korean Public Administration History* vol. 11 (the Association for Korean Public Administration History, June 2002): 2.

times of what he/she received. Anyone who reported a case of bribery received a reward which amounted to 50 times of the bribe mentioned in the case. This measure was to control reckless spending on campaign and to prevent illegal campaigning and was credited with helping transparent and clean campaigning become established.⁷⁶ In addition, there were two factors that contributed to the prevention of illegal campaigning. The first factor was allowing representatives including proportional representatives to broadcast campaign ads. Originally, only candidates for president, mayor, and governor were given approval. The second factor was introduction of the “preliminary candidate” system. Under the system, many political novices could be on par with incumbent candidates and campaign against them, though there were some limitations. Moreover, during the Roh administration, campaigning on the Internet became commonplace. Having campaigning speech on the playground, which had worked as a chance to bribe voters, was banned. Television debates and talks shows emerged as an alternative to bridge the digital divide, which happened to the people who had limited access to Internet, and the weak was provided with information required to select candidates.⁷⁷ Giving money to paid canvassers disguised as volunteers was strictly prohibited, and it was a remarkable development. According to Political Funds Act, businesses are strictly prohibited from giving political funds to politicians in order to break the chain of collusive ties between politicians and businessmen. Also, the names of contributors who pay lots of money should be open to the public in order to improve transparency in the management of political funds. These measures were very effective in the prevention of illegal campaigning. According to Political Parties Act, electoral district chapters, which had been considered as the main cause of low efficiency and high expenditure in politics, were abolished and election campaign offices took the place of the chapters in recent elections. It was another positive development in Korea’s politics. In addition, the aforementioned improvements in Political Parties Act, such as laying the legal grounds for the improvement of transparency in campaign funds and political funds as well as abolishing electoral district chapters, undeniably played a critical role in anti-corruption efforts in politics.

76 Bribing and treating voters leads to high campaigning expenditure and illegal campaigning. According to the National Election Commission, at the 2008’s legislative election 53 illegal campaigning were uncovered and among them 16 were officially charged and 12 were put under investigation. Those figures were only one-fourth of those at 2004’s legislative election (212 were uncovered, 40 were officially charged, and 85 were put under investigation). It can be said that revision of election laws and regulations plays a big role in establishing clean and transparent campaigning.

77 Yoon Jong-bin, “Revision of Laws Pertaining to Politics and 2008’s Legislative Election: Assessment and Prospect” *Journal of the Korean Association of Party Studies* (the Korean Association of Party Studies, 2004): 94.

2. Assessment of Institutions to Implement Anti-corruption Policies

The launch of the Korea Anti-Corruption Commission (KACC) laid the groundwork for anti-corruption activities of the future. Before then, anti-corruption activities had been conducted separately and sporadically by the prosecution, the police, the Board of Audit and Inspection, and other investigative agencies. The KACC was the first government organization to solely deal with corruption cases and therefore was worthy of credit for building up the foundation to integrate the government's anti-corruption policies.⁷⁸ The establishment of the KACC had significance in two aspects. First, under the KACC, the government could establish a comprehensive anti-corruption policy implementation system by performing anti-corruption policy coordination and handing down anti-corruption-related guidelines to governmental organizations. Second, the government could build "anti-corruption governance" with the civil society and ordinary citizens, instead of a government-led anti-corruption system. The KACC contributed greatly to establishing a ground for further anti-corruption drive and spreading atmosphere of integrity among public officials. However, it was not able to fully exercise its authority because of several factors including failure of establishment of the Investigative Agency against High-Ranking Public Officials, the KACC's having no right to investigate corruption cases, and conflicts with other investigative agencies such as the prosecution and the Board of Audit and Inspection.

The Korea Independent Commission Against Corruption (KICAC) succeeded the KACC in 2005 and was consolidated into the Anti-Corruption and Civil Rights Commission (ACRC) in 2008. It implies that there would be no government agency exclusively responsible for anti-corruption activities. The ACRC performs three functions including administrative appeal, ombudsman, and anti-corruption; anti-corruption is downgraded into one of duties that the ACRC performs. Moreover, the head of the KICAC was on the same level with a minister before the integration, but now a director general is in charge of anti-corruption activities as the Anti-Corruption Bureau of the ACRC does what the KICAC did before. The number of officials in the bureau is smaller than that of KICAC. As a result, what the bureau does now is assessing and educating integrity of organizations. But without viable anti-corruption measures in place, campaigning and promoting anti-corruption are meaningless. What is necessary now is a channel of communication for diverse opinions of the public to flow into the government and major efforts of the government to analyze opinions and to inform relevant government agencies of the analysis at the right moment.

Of the anti-corruption efforts that the ACRC performs, the Commission conducts private-public joint anti-corruption campaigns and educates high-ranking officials and CEOs on integrity, which should be worthy of credit as they will improve integrity and transparency of high-ranking officials and encourage the officials to take the lead in anti-corruption

⁷⁸ Ten Years after the Anti-Corruption Act – Achievements and Tasks of Anti-Corruption Policies (The ACRC and the Korean Association for Corruption Studies, July 2011): 14-15.

efforts. Another credit goes to the establishment of the Code of Conduct for Local Council Members, also done by the ACRC to improve integrity among local council members.

The KACC, the KICAC, and the ACRC have greatly contributed to laying the framework for anti-corruption efforts in Korea. They've coordinated and taken the lead in government-wide anti-corruption activities, analyzed revised or enacted legislations whether there is any change or factor which can cause corruption. In July 2005, the KICAC introduced the Corruption Impact Assessment and assessed 5,808 revised or enacted laws and regulations, found 2,479 factors which could cause corruption from 1,058(12.8%) legislations, and recommended revision of them to the relevant agencies.

Korea's anti-corruption agencies such as the KACC, the KICAC, and the ACRC have contributed to establishing integrity among officials through assessment of and education on integrity. They have enabled government organizations to examine factors vulnerable to corruption and to improve related regulations and practices based on the examination. They enacted and managed code of conducts and analyzed and assessed public organizations' anti-corruption efforts, which led to spreading education on integrity and integrity-centered atmosphere and then establishing ethics management in place, to legal and institutional grounds to deal with corruption in a more systematic method, to a better understanding of corruption among the general public as well as public officials, and to improving integrity of the society.

The Supreme Prosecutors' Office had a special investigation bureau and investigation department for corruption of public officials and the leadership of the society. In March 1993, the Supreme Prosecutors' Office, with a strong will to fight corruption, renovated the bureau and department into a special investigation bureau and investigation department for officials convicted of corruption. Then the Office carried out a thorough investigation into 16 sectors which were inherently or systematically vulnerable to corruption, including tax service and health service. In consequence, 15,682 suspects were under investigation and 7,002 were imprisoned.⁷⁹ In 1995, the Sampoong Department Store collapsed due to poor construction supervision and bribery. In response, the Office conducted an extensive investigation into major buildings over the authorization, permission, inspection, and supervision of construction of the buildings. To eradicate tax corruption, the Office launched a full investigation into 259 local governments with the Board of Audit and Inspection and the cabinet. This investigation uncovered 15,853 cases of local tax embezzlement and appropriation which amounted to 13.478 billion KRW. In addition, the Office carried out a thorough investigation into national tax corruption. These investigations should be credited for being a turning point in anti-corruption of the tax service.

Though the prosecution made some achievements in several investigations into the tax service and the construction sector, it was under heavy criticism by "sponsored prosecutors" scandal. The Prosecutors General apologized to the public for the scandal and released

⁷⁹ The Bureau of Public Information, 1997

proposals to reform the prosecution. The public expected the prosecutors involved in the scandal to take severe disciplinary action such as dismissal – being stripped of their position as prosecutors and never being able to get pension and be in a public office for a certain period of time – as the scandal created quite a stir in the country. But they received dismissal from the office, meaning that they could get a full pension although they had to leave the office. In response to the public’s anger, politicians demanded the establishment of “the Investigative Agency against High-Ranking Public Officials” and handing over the cases to special prosecutors. As witnessed before, the prosecutor’s office is likely to be criticized for only protecting its own; though the prosecutors involved in the scandal left the position, they could retain their right to get a full pension after their retirement and to go into practice after a certain period of time. This “sponsored prosecutors” episode demonstrates why it is necessary to have “the Investigative Agency against High-Ranking Public Officials”; the authority of anti-corruption agencies like the ACRC is limited and therefore the corruption of judges, prosecutors, and lawyers could go unchecked. Some argues that the disciplinary action and punishment imposed upon the judges, prosecutors, and lawyers involved in corruption are not strong enough to root out corruption.

For a complete overhaul, extensive reform should be conducted for the prosecution. Investigations should be done objectively, and punishment should be imposed objectively. The judges and prosecutors implicated in corruption have received lax punishments; most of them were under the suspension of execution of imprisonment or were punished by a fine, which means imprisonment is rarely imposed. Judges, prosecutors, and lawyers have conventionally received weak punishments, which makes them insensitive to corruption. When a public official commits corruption, anti-corruption agencies should immediately inform the organizations who the suspect is working for of the corruption and the suspect should be punished severely. This is more so for high-ranking officials; they should be punished harshly as corruption committed by them tends to be massive in scale. Punishment on corrupted high-ranking officials is important for the government to restore the public’s trust. Public officials who live above themselves and their social standing or who have increased their fortune significantly without any specific source of income should be under careful examination. Also, public officials who are suspected of corruption should be made to prove their innocence.

3. Assessment of Policies to Implement Anti-corruption Activities

Of the anti-corruption polices, the ACRC and its predecessors have conducted “a thorough reform of the sectors fundamentally and systematically vulnerable to corruption.” Construction, contract, personnel management, tax service, and other vulnerable sectors are examples of the vulnerable sectors. The government selects three to five vulnerable sectors every year and examines any systematic defects which can invite corruption. If any defect is uncovered, the government agency related to the sector receives the report concerning the

defect and it conducts extensive reform on the sector. Most of the reported cases have been successfully improved or are still under improvement. The ACRC and its predecessors have conducted “improvement and reorganization of legislations which can cause corruption.” They have assessed approximately 6,000 enacted or revised legislations whether the legislations had any possibility to cause corruption. As a result, about 1,100 legislations were found to cause corruption and they were reported to the government organizations relevant to the legislations.⁸⁰ Under the improvement and reorganization program, the ACRC and its predecessors have changed unreasonable administrative rules – removing groundless rules inserted into legislations and obscure standards which lower predictability of legislation –, have examined legislations of eight local governments including Gyeonggi-do, recommended several ordinances to be revised, have examined rules of public enterprises including Korea Electric Power Corporation and Korea Expressway Corporation and recommended several rules to be revised.

The Code of Conduct for Public Officials was enacted in 2003 and since then has been improved and revised several times. When it was revised in 2008, channels to report violations of Code of Conduct increased, provisions to ban illegal aid and request were strengthened, and public officials were more strictly required to report outside lectures. 404 public service-related organizations voluntarily made and implemented their own code of conducts in 2004, and the number of organizations became 677 in 2011. At its early stage, the Code of Conduct for Public Officials was countered with skeptical reactions about its effectiveness, but it is now considered an important contributor to spreading anti-corruption by purging bribery and inappropriate presents and inducing proper use of business promotion funds. Approximately 1.3 million officials and employees in 1,227 government organizations are under the coverage of the Code of Conduct for Public Officials. So far the number of violators of Code of Conduct is 6,792; 3,238 of them took disciplinary actions including dismissal, 2,738 received warning, and 658 received admonitions or were moved to another positions. And they had to pay 47.844 million KRW as compensation.⁸¹

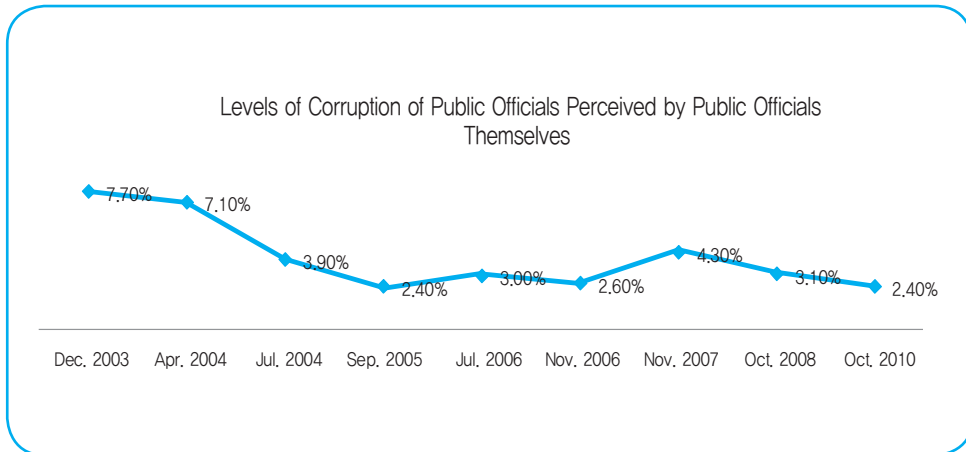
The government of Gangnam-gu (in Seoul) recently made an online test to foster awareness of the Code of Conduct for Public Officials. Those who pass the test get a certificate and extra points in the assessment of integrity. The Korea Forest Service has self integrity assessment system for a better understanding of the Code of Conduct and for creating clean and transparent atmosphere. Korea Agro-Fisheries Trade Corporation poses questions about the Code of Conduct for promotion exams, which encourages workers to study and abide by the Code of Conduct.⁸² These examples signify that the levels of corruption among public officials have gone down steadily. The following chart shows the levels of corruption of public officials perceived by public officials themselves.

80 Ten Years after the Anti-Corruption Act – Achievements and Tasks of Anti-Corruption Policies (The ACRC and the Korean Association for Corruption Studies, July 2011): 17.

81 Ten Years after the Anti-Corruption Act – Achievements and Tasks of Anti-Corruption Policies (The ACRC and the Korean Association for Corruption Studies, July 2011): 18.

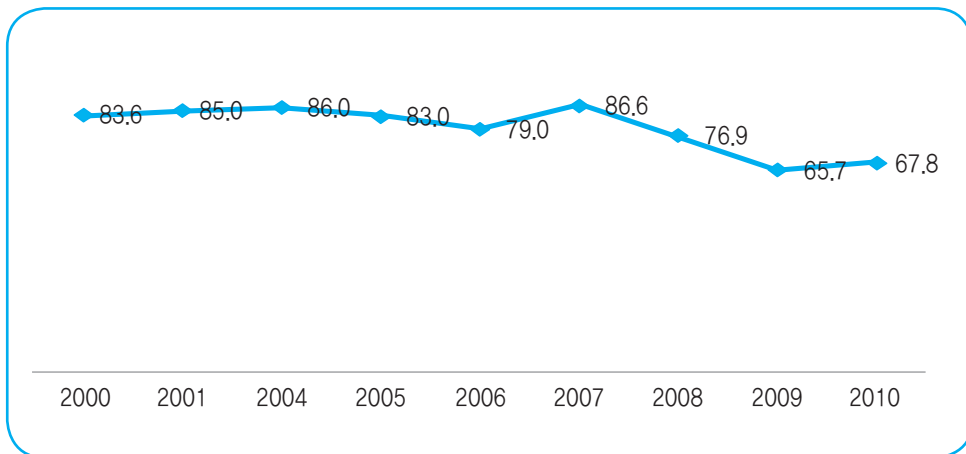
82 A Case Study of Systems which Develop Awareness for the Code of Conduct for Public Officials (The ACRC, 2011): 74.

Figure 4-1 | Levels of Corruption of Public Officials Perceived Progress



From on May 16th to 19th 2011, a survey targeting 1,000 public officials was carried out to ask whether the Code of Conduct for Public Officials had been effective in improving awareness about integrity among public officials. About 57.1% of the surveyed answered yes, indicating that many public officials believe the Code of Conduct to be helpful in fighting corruption.⁸³ The following chart illustrates the level of corruption of the public sector.

Figure 4-2 | Level of Corruption of the Public Sector



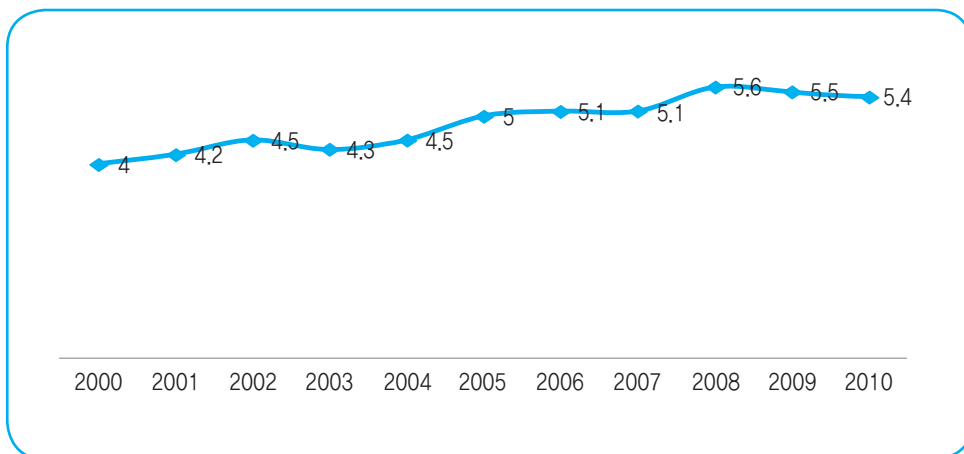
Protection and reward system for whistleblowers has been steadily improved. In 2005, Anti-Corruption Act was revised in order to shield whistleblowers from possible

⁸³ A Study of Awareness for Achievements and Tasks of Anti-Corruption Activities for the Last Ten Years (The ACRC, June 2011).

disadvantages and to provide them with rewards and therefore encourage them to come out without fear. According to the revision, the definition of corruption was broadened, protection of whistleblowers was strengthened, and requirements to get rewards were relaxed. The number of requests for guarantee of status of whistleblowers was 99, and 30 of them had their status guaranteed. The number of requests for protection of whistleblowers was 16, and 11 of them got protection. For whistleblowers, 2 billion 851 million 245 thousand KRW was paid as compensation for 134 cases, and 321.5 million KRW was paid as reward for 33 cases. “Whistleblower Protection Act” was enacted in March 2011 to reinforce protection of whistleblower. The enactment of “Prohibition Act of Reception of Request and Pursuit of Private Interest (tentatively named)” is underway to eliminate public officials’ reception of illegal requests, and its target year is 2012. As we can see, the system for protection of and reward for whistleblowers has been improved steadily. The system will contribute to strengthening protection of whistleblowers, guaranteeing whistleblowers’ status, enacting legislations to prohibit public officials’ reception of illegal requests, and raising integrity among public officials.

According to a survey by the ACRC, however, the most unsatisfactory system for the prevention of official corruption was found to be ‘protecting and rewarding whistleblowers.’⁸⁴ Public corruption occurs secretly, and therefore whistleblowers should have more reinforced protection and considerable rewards in order to uncover corruption more effectively. Therefore, the government should establish more diverse channels, such as social networking services, through which whistleblowers can report corruption more easily. The government’s anti-corruption activities for the last ten years have resulted in high ranking in the Corruption Perceptions Index (CPI); it increased from 2000’s 4.0 to 2010’s 5.4. The following chart shows Korea’s CPI for the last ten years.

Figure 4-3 | Korea’s CPI for the last ten years



84 A Study of Awareness for Achievements and Tasks of Anti-Corruption Activities for the Last Ten Years (The ACRC, June 2011): 3.

As we have seen, Korea's status of corruption has not improved dramatically since the First Republic to the Lee Myung-bak administration of today. But the statistics and figures related to this issue show that perceptions about corruption have improved when compared to those of the last government. The level of corruption has also steadily decreased owing to civic groups' efforts and better awareness of the public. As of 2010, Korea's CPI ranking is 40 out of 159 countries, a 7-notch increase from 2004's 47, and Korea's CPI is 5.4 out of 10 which means "Korea's corruption level is improving." It is worthy of credit that Korea's status of corruption has not improved considerably, yet there has been steady progress. Korea without corruption does not seem to be impossible.

2011 Modularization of Korea's Development Experience
Korea's Experience of Operating
Anti-corruption Criminal Justice Policy

Chapter 5

Implications

1. Necessity to Share Korea's Anti-corruption Experience
2. Factors which Prevent Corruption in Korea and the Their Implications

Implications

1. Necessity to Share Korea's Anti-corruption Experience

As you know, Korea has conducted extensive anti-corruption activities to purge rampant corruption out of the society and to enhance Korea's credibility. The government started "War on Corruption" in 1994, enacted "Anti-Corruption Act" in 2001, and established the "Korea Anti-Corruption Commission" in 2002 and "Korea Independent Commission Against Corruption" in 2005, which was later consolidated into the Anti-Corruption and Civil Rights Commission in 2008. The government also has taken active part in international anti-corruption efforts: it ratified the OECD Anti-Bribery Convention in 1997 and the UN Convention against Corruption in 2008. With such efforts, Korea's CPI has steadily improved from 3.8 in 1999 to 5.4 in 2010. While fighting rampant corruption, Korea has achieved phenomenal economic growth called the "Miracle on the Han River," turned itself from one of the poorest nations into an economic power, and now became the 9th largest economy in the world and 15th by the nominal gross domestic product (GDP).

Though Korea still has a long way to go before being equal to the countries ranking high in the CPI, what Korea has achieved so far could be an example for developing countries.⁸⁵ A careful look at the CPI shows the correlation between corruption and economic development; economic development helps to lower the level of corruption or economic development is

⁸⁵ The ACRC has supported Indonesia's KPK since 2006 in its anti-corruption efforts such as teaching Korea's integrity assessment system. Since then, Indonesia's CPI ranking increased gradually from 2007's 143 to 2008's 126 and 2009's 111. Indonesia's successful case becomes known to various international organizations, and the ACRC has received lots of requests for anti-corruption cooperation. In 2008, the ACRC taught its anti-corruption policies to Bhutan and Bangladesh with financial support of United Nations Development Programme. And the ACRC signed MOUs with Thailand in 2009 and Vietnam and Mongolia in 2010.

possible due to the decrease in corruption?⁸⁶ Corruption is undeniably a stumbling block to the economic growth and that has been proved by many economists recently.⁸⁷ For example, a corrupt high-ranking official receiving bribery can hinder corporate activities, distort competition, suppress entrepreneurship, and cause market failure. Under such negative consequences, businesses face increased costs and have to raise the price of their products and services; it undermines national competitiveness, damages the poor, leaves negative impacts on employment, health, and education, and depletes natural resources.

In Nigeria, for example, should achieve a faster economic growth with abundant resources, however, the corruption of leaders with plentiful resources brought the endless civil war and the society and economic have become poor and retreat in the end. After the oil boom in the 1970s, Nigeria suffered the Resource Curse: corruption became rampant, corruption of high-ranking officials went unchecked, and traffic in government positions and bureaucracy devastated corporate activities. In case of Indonesia, Haji Mohammad Soeharto, who ruled with an iron fist, was corrupted with dictatorial government. He concealed a huge amount of property through his charitable foundation and he and his family obtained an airline, a bank, a broadcaster, and a taxi company. Suharto appointed members of People's Consultative Assembly, and they were made to elect Suharto president in exchange for development rights of lucrative businesses. He further planted people close to him in major positions of the military to prevent a coup. His clan government, however, made Indonesia the most vulnerable to the Asian financial crisis in 1997. The reason why Indonesia was hit the hardest by the crisis was because foreign investors became unable to do businesses in Indonesia unless they got involved in Suharto's clan. Therefore, they ebbed away from Indonesia during the crisis. Nigeria and Indonesia are presented here to examine factors causing corruption and to see their anti-corruption efforts. These two nations rank low in the CPI, per capita income, and other economic indices. They still have not demonstrated visible achievement regarding anti-corruption efforts despite various nation-wide activities.

As a result, developing countries under the heavy burden of corruption can achieve the goal of enormous economic development only when they can control corruption rampant in their society. However, most of developing nations, which have to deal with damages from civil wars or dictatorship, have difficulty in eliminating corruption. Korea is acknowledged as the nation which successfully controls corruption and has achieved phenomenal economic growth simultaneously. Korea was once poor and suffered from a civil war and years of

86 Some theorists (Leff, 1964 and Huntington, 1968) suggest that corruption acts as a facilitator to develop the economy, which means corruption (bribes) allows investors to avoid bureaucratic red tape, decreasing waiting cost, and accelerating the development of a project and spurring economic growth. Such theory is often cited as the reason why several South Asian countries can achieve their impressive economic growth.

87 In 2000, Abed and Davoodi found a negative association between real per capita GDP growth and corruption; they stated, if a corruption index (on a scale from 0 [very clean] to 10 [highly corrupt]) decreases by a notch, real per capita GDP increases by 2.64% and outward direct investment by 21.37 USD per capita on average.

dictatorship similar to many developing countries. Given this, Korea can be a role model to curb corruption and achieve economic growth; Korea's corruption control can affect developing nations and encourage them to conduct anti-corruption activities and to curb corruption successfully. This means, as a member of the international society, Korea can make contribution to anti-corruption efforts of the world.

Of course, every success story of Korea cannot be applicable to developing countries. Every nation has its own culture, social structure, scale of corruption, and factors causing corruption. What we can do for developing nations are, therefore, to analyze factors causing corruption and scale of corruption in the developing nations and to examine whether our anti-corruption activities would be applicable and effective to them, rather than to simply brag about Korea's success story and the reasons for success.

2. Factors which Prevent Corruption in Korea and the Their Implications

Developing countries enter the stage of industrialization to develop the economy, which inevitably results in corruption. Korea was also no exception; the collusive ties between politicians and businesses were severe at the early stage of industrialization. During that period, the Korean government protected local businesses and managed and controlled distribution of resources, which resulted in abundant opportunities for corruption among politicians and public officials.⁸⁸ As Korea has almost no natural resources, the government has pursued export-oriented growth. In this process, politicians offered benefits to chaebols in exchange for money and used money for political purpose and personal gain. Politicians could exert huge influence on chaebols; for example, they could order banks and financial institutions to lend money to chaebols, help chaebols to borrow money, distribute foreign loans to chaebols, select service providers for the government, choose construction companies for government-led projects, and call for bids for government procurement.⁸⁹ Korea's export-oriented economic policy was the key to prosperity and distribution of wealth, though the cozy relationship between the government and the business has its own side-effects. On the other hand, developing countries which have abundant natural resources, such as Nigeria and Indonesia, have experienced numerous cases of collusive ties between high-ranking officials and foreign businessmen who expect enormous profits from exploiting natural resources. As a result, wealth is concentrated in the possession of the corrupt high-ranking officials, and they became vulnerable to a financial crisis. That is the difference between Korea and some developing countries.

Korea, Indonesia, and Nigeria have several similarities. First, they were ruled by the military juntas. A regime, which seizes power through a military coup or election rigging,

⁸⁸ Park Bok-young, "Comparison of Corruption between Korea and Africa and Its Implications" *Korean Economy Forum*, vol.3, no. 2 (2010): 60.

⁸⁹ Jang Sang-hwan, *Collusive Ties Between the Government and the Business and Korean Capitalism* (Institute for Social Sciences of Gyeongsang National University, 1999) :60.

has weak legitimacy. To maintain and solidify its power, it raises political funds through corruption and buys votes with such political funds. It explains why there is an inextricable connection between a military junta and corruption. Second, familism and cronyism were put ahead of national interests. A society where familism and cronyism are emphasized is unfriendly to strangers and has a weak sense of obligation to abide by a society's universal value, making the nation vulnerable to corruption. Countries which suffer from extreme poverty due to civil wars after liberation usually turn to corruption for survival. That process is what Korea and several developing countries experienced or are experiencing. What Korea differs from Africa's developing nations is that Korea is homogenous whereas African developing countries such as Nigeria are multiracial.

Korea is not immune to corruption but has somewhat succeeded in fighting corruption without getting caught in the mire of it. Here are several reasons. First, Korea has developed a policy of zero-tolerance for corruption. When a new regime seizes power in most developing nations, it usually promises to eliminate corruption but mostly in vain. Sometimes ill constructed anti-corruption policies are the cause of failure, but anti-corruption policies are stymied by the corrupt establishment most of the times. As we've seen before, Indonesia and Nigeria have the legal grounds to punish corrupted officials and dedicated organizations to investigate corruption cases. But the high-ranking officials implicated in corruption scandals could get away with corruption charges even though anti-corruption legislations are in place. It causes the public to doubt the government's will to fight corruption, and the government gets trapped in a vicious circle of losing the hearts and minds of the public about anti-corruption activities.

In case of Korea, two former Presidents (Chun Doo-hwan and Roh Tae-woo) were imprisoned for embezzlement and former President Kim Young-sam's son was also imprisoned for taking bribery in exchange for benefits. These cases clearly showed Korea's policy of zero-tolerance for corruption; the public realized that those who were corrupt would face punishment. Moreover, imposing punishment on high-ranking officials alerted low-ranking officials and the succeeding governments to the danger of corruption. Singapore also demonstrated determination to punish the people involved in corruption no matter how high their social status is. Therefore, Singapore is cited as a good example that fights corruption.⁹⁰ It explains why strict punishment of corruption is vital.

Korean people have been very enthusiastic about education, even when they were poor in the 1960s. The average level of education of the public has gone up since implication of compulsory education. With improved education level, Koreans developed a better understanding about politics and could hold the government and politicians in check. Democratic movements such as the April Revolution and the Gwangju Democratization Movement are good examples of democratic development by the people. A government-

⁹⁰ Tan Kia Khan, Lee Kuan Yew's right-hand man was punished for a scandal relating to accepting commissions from the Boeing in 1965. He was a Minister of National Development at that time. And in 1976, Wi Tun Buhn, then Secretary of State and alumni of Mr. Lee, was sent to prison for corruption.

led top-down anti-corruption activity with no supervision or check of the general public tends to fail like Nigeria's "Operation Purge the Nation" or Korea's "War on Corruption" did.⁹¹ People's improved level of education brings about the birth of the civil society, inducing another engine for the Korean society to conduct more comprehensive anti-corruption policies that encompass civilians as well as public officials who were the target of government-led anti-corruption activities. The most important factor for elimination of corruption is a strong will of the head of state. When a head of state of a developing country does not have a strong will to fight corruption, anti-corruption policies under his/her rule tend to soothe the public but to check his/her opponents and to be used as a method to loot national wealth.

Korea's anti-corruption efforts show that eliminating corruption requires experience and long-term and gradual efforts. Korea's democratization and economic development would not have been possible without ceaseless anti-corruption policies to curb deep-rooted corruption. Enforcing radical reform policies with an iron fist to find corrupted ones and punish them harshly cannot be effective without anti-corruption experience to prevent and curb corruption.

Here are several points to be considered for developing countries based on strengths of Korea's anti-corruption policies.

First, in terms of legislations, factors which can cause corruption should be found by assessing whether enacted or revised legislations can induce corruption in order to prevent corruption in a more fundamental way. If there is any factor that could cause corruption, it should be recommended for revision. In addition, legally binding anti-corruption legislations should be enacted or revised. In a developing country, an anti-corruption commission of a newly established regime normally leads to revision of legislations vulnerable to corruption and the enactment of legislations to prevent corruption. Such revision and enactment processes are critical to prevent corruption.

Second, in terms of policy enforcement agencies, a dedicated organization to fight corruption should be established. Government-wide anti-corruption policies should be consolidated and operated by the organization to deal with corruption effectively. In addition, civilian sectors as well as public sectors should be supervised for corruption to conduct nation-wide comprehensive and systematic anti-corruption efforts. In addition, judges, prosecutors, lawyers, and high-ranking officials often get away with corruption as the judiciary fails to keep a close watch on them. Therefore, the prosecution should be in check to bring about a fundamental innovation in the government's anti-corruption system. The role of the Central Investigation Division at the Prosecutor-General's Office becomes prominent in this sense. If the Central Investigation Division supervises and investigates corruption cases independently and objectively, an independent investigative agency like the Investigative Agency against High-Ranking Public Officials would not be necessary.

⁹¹ Park Bok-young, "Comparison of Corruption between Korea and Africa and Its Implications" *Korean Economy Forum*, vol.3, no. 2 (2010): 63.

Moreover, the government should strengthen the ties with civic groups which play a leading role in the enactment of Anti-Corruption Act. To carry out anti-corruption policies more effectively, the government should reconstruct anti-corruption governance more broadly by resuscitating the Council for the Pact on Anti-Corruption and Transparency and promote cooperation with international organizations.

In terms of policy implementation, the Code of Conduct for Public Officials should be constantly revised and supplemented. More detailed criteria of and interpretation guidelines of conducts in the Code should be singled out as separate articles in the Code; the Code of Conduct should be a standardized code for public officials to behave properly. Education on integrity should be done more widely, and the system to measure integrity should be managed more effectively. Education on anti-corruption and integrity is important for corruption prevention. Therefore, elementary, middle, and high-schoolers as well as public officials should receive decent education about anti-corruption for anti-corruption atmosphere to take root firmly in Korea. In case of the system to measure integrity, a reliable and effective measurement system should be in place, and measures to protect and reward whistleblowers should be considerably strengthened. As the nature of officialdom tells us, it is not easy to expose corrupt public officials. To uncover corruption cases more openly, whistleblowers should get more protection and reward. Measures to whistleblow should be easier, and the legal grounds such as Whistleblower Protection Act should be under serious consideration.

- ACRC&Korean Association for Corruption Studies, Ten Years after the Anti-Corruption Act – Achievements and Tasks of Anti-Corruption Policies, 2011.
- ACRC, A Case Study of Systems which Develop Awareness for the Code of Conduct for Public Officials, ACRC, 2011.
- ACRC, A Study of Awareness for Achievements and Tasks of Anti-Corruption Activities for the Last Ten Years, ACRC, 2011.
- ACRC, 2011 Civil Rights Action Plan, 2011.
- ACRC, 2011 Best Practices Casebook of Code of Conduct for Public Officials, 2011.
- Administrative Coordination Office of the Office of the Prime Minister, Assessment of the Roh Administration and Future Tasks, 1993.
- Administrative Cooperation Office under the Prime Minister, Evaluation of State Affairs of the 6th Republic and Tasks in the Future, 1993.
- Choi, K. H., “Interim Appraisal of the Yudhoyono Administration’s Anti-Corruption Policies and Achievement,” *The Korean Journal of International Studies* Vol. 46, No. 1, 2008.
- Choi, S. Y.&Choi, J. U., Institutional Control over the Corrupt Practices of Civil Servants, Korean Institute of Criminology, 2007.
- Goh, J. S., “Study on amended recommendation on Anti-Bribery Convention by OECD board of directors meetings”, *Trade Laws*, 1997.
- Jang, J. D., “Comparison of and research on administrative reforms carried out by previous Korean governments” Sangji University doctorate dissertation, 2005.
- Jang, S. H., Collusive Ties Between the Government and the Business and Korean Capitalism, Institute for Social Sciences of Gyeongsang National University, 1999.
- Jeon, S., *The Theory of Corruption in Bureaucracy*, Seonhak Sa, 1996.
- KICAC. 2006 Guidelines on Anti-Corruption Policies, 2006.
- Kim, C. S., “Cause of Corruption among Those in Power in the Eyes of Yi Hwang” *Journal of Association for Korean Public Administration History*, vol. 11, the Association for Korean Public Administration History, 2002.
- Kim, S. S., “Ways to utilize whistle-blowing.” Sourcebook for 2003 winter seminar of the Korean Association for Corruption Studies, 2003.
- Kim, T., *Anti-Corruption Measures of the Government of Nation: Assessment and Proposal*, Administrative System Research Center for Anti-Corruption in the University of Seoul, 2000.
- Korean Bar Association, 2010 Issue Report of the PSPD, 2010.
- Korea Institute of Public Administration, *Korea’s State of Corruption and Its Cause*, 1999.
- Lee, S. J.,&Lee, D. Y., *Democratization and Corruption: A Case Study of Korea*, *The 21st Century Political Science Review*2, Vol 15, No2, 2005.
- Ministry of Justice , *The Annual Parliamentary Audit 2009*.
- Noh, J. H., “You Need to be Clean in Order to be Honorable.” *Mirae Media*, 1996.
- Okogbule, N. S. “The Regulation of Economic Crimes in Nigeria: Old Problem, New Challenges and Responses” *University of Benin Law Journal*, Vol. 9, No. 1, 1996.

Paraqbueq, R.&Ramdani, A. R., “Busyro said the KPK lacks Strong Resources,”
Tempointeractive, 2011.
(<http://www.tempo.co.id/hg/nasional/2011/06/22/brk,20110622-342562,uk.html>)

Park, B. Y., “Comparison of Corruption between Korea and Africa and Its Implications”
Korean Economy Forum, vol.3, no. 2, 2010.

People’s Solidarity for Participatory Democracy, A Need for Disclosing Information of
Attorney and 460 Cases of Discipline, The PSPD Legal Justice Reform Network, 2010.

Transparency International, Transparency International 2004 Global Corruption Report,
Pluto Press, 2004.

Yonhap News, Yonhap Yearbook, 1995.

Yim, W., Particulars of Criminal Law, Beopmoonsa, 2011.

Yim, W., A Study on the Bribery Crime, The Korean Assosiation of Criminology, Criminal
Justice Policy No. 10, 1998.

Yoon, J. B., “Revision of Laws Pertaining to Politics and 2008’s Legislative Election:
Assessment and Prospect” Journal of the Korean Association of Party Studies, the
Korean Association of Party Studies, 2004.

Yoon, Y. O., “Wring the right history,” Mirae Media, 1996.
Article reported by Segyeilbo, March 12, 2009.
Article reported by Segye-Ilbo, June 25, 2010.
Article reported by Hanra Ilbo, June 8, 2010.
Article reported by Jeju Daily, June 9, 2010.
Article reported by JoongAng Daily, January 16, 2001.’
Article reported by JoongAng Daily, October 16, 1994.
Article reported by Dong-A Ilbo, March 10, 1994.

National Archives of Korea
<http://contents.archives.go.kr/next/content/listSubjectDescription.do?id=001434>
Press Release in June of Anti-Corruption&Civil Rights Commission.
Supreme Prosecution Service Broadcasting system, News, Focus 2010, the 30th edition
(<http://www.spo.go.kr/tv/news/focus>).

Transparency International, Transparency International Global Priorities,
http://www.transparency.org/global_priorities(accessed by: 2011.7.28)

Transparency International (2010), Using the Right to Information as an Anti-Corruption
Tool, [http://www.transparency.org/content/download/9633/66877/file/TI2006_europe_](http://www.transparency.org/content/download/9633/66877/file/TI2006_europe_access_information.pdf)
[access_information.pdf](http://www.transparency.org/content/download/9633/66877/file/TI2006_europe_access_information.pdf)(Accessed by: 2011.7.28)

Transparency International, Judiciary,
http://www.transparency.org/global_priorities/other_thematic_issues/judiciary(Accessedby:
2011.7.28)

Transparency International (2010), Whistleblowing: an effective tool in the fight
against corruption, [http://www.transparency.org/content/download/56846/908432/](http://www.transparency.org/content/download/56846/908432/TI_PolicyPosition_Whistleblowing_17_Nov_2010.pdf)
[TI_PolicyPosition_Whistleblowing_17_Nov_2010.pdf](http://www.transparency.org/content/download/56846/908432/TI_PolicyPosition_Whistleblowing_17_Nov_2010.pdf)(Accessed at: 2011.7.28)
<http://ager94.tistory.com/96>

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