

[ADRN Issue Briefing]

## Expanding International Cooperation against Corruption in the Indo-Pacific

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The South Korean government will host the Second Summit for Democracy's (S4D2) Indo-Pacific regional meeting. The second global summit will be conducted online on March 29th, with four regional meetings being held concurrently offline next day. The Korean government chose anti-corruption as a central agenda that requires the cooperation of Indo-Pacific countries to effectively address.

Corruption harms every aspect of human life. Corrupted elites often hold “extractive economic institutions,” designed to siphon off national income and wealth for their self-serving interests rather than for the benefit of the broader society.<sup>1</sup> A predatory and corrupted “rogue state” is the worst form of such. A corrupted government cripples the ability to deliver rational economic management by distorting public demand, drawing the costs of bribery from public money, and taking an inverse selection of firms.<sup>2</sup> Such damaging attributes heighten mistrust between people, thereby limiting market development, as communities lack the solid ties of cooperation necessary for their collective economic growth.<sup>3</sup> Furthermore, Kleptocracy – a government whose leaders seize public funds made available by public institutions – considerably undermines democracy, as leaders are breaking democratic rules to retain their political power for the sake of self-enrichment. Accordingly, kleptocracies tend to be autocracies.<sup>4</sup> Transparency International (TI) has identified a strong association between higher levels of corruption and breaches of civil liberties.<sup>5</sup> Corruption's negative social impact is no less significant. Rampant corruption that is prevalent across all areas of society reduces people's ethical values and sense of social justice, making it considerably more difficult to

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<sup>1</sup> Daron Acemoglu and James A. Robinson. 2012. *Why Nations Fail*. 76. New York: Crown. Kindle, 76.

<sup>2</sup> Donatella della Porta. 2000. “Social Capital, Beliefs in Government, and Political Corruption.” In *Disaffected Democracies*, ed. Susan Pharr and Robert Putnam, 202-228. Princeton: Princeton University Press.

<sup>3</sup> Michael Woolcock. 1998. “Social Capital and Economic Development: Toward a Theoretical Synthesis and Policy Framework,” *Theory and Society* 27, 2: 151-208.

<sup>4</sup> Mayne says, some kleptocratic gains are reinvested in political campaigns or in media companies to help frame the kleptocrat's narrative. Dariga Nazarbayeva's ownership of Kazakhstan's largest media company Khabar is a good example. Thomas Mayne. 2002. “What Is Kleptocracy and How Does It Work.” Chatham House, July 4. <https://www.chathamhouse.org/2022/07/what-kleptocracy-and-how-does-it-work>.

<sup>5</sup> Transparency International. 2022. “Corruption Perception Index 2021.” 9. [https://images.transparencycdn.org/images/CPI2021\\_Report\\_EN-web.pdf](https://images.transparencycdn.org/images/CPI2021_Report_EN-web.pdf).

sustain and govern such communities in line with the rule of law. Given the detrimental effects that corruption has on transparency, accountability, and integrity; democratic countries should work together to combat corruption and actively support each other's anti-corruption efforts.

## The State of Corruption in the Indo-Pacific

The United Nations Convention against Corruption (UNCAC) is the only legally binding universal anti-corruption instrument, with the United Nations Office on Drugs and Crime (UNODC) as the leading entity in global anti-corruption cooperation efforts. The Convention, adopted in October 2003 and made effective in December 2005, has 140 signatories and 189 parties as of November 2021. It covers many different forms of corruption, including bribery, trading in influence, abuse of functions, and various acts of corruption in the private sector. The UNODC identifies the Convention's four highlights as preventive measures, criminalization and law enforcement measures, international cooperation, and asset recovery.<sup>6</sup>

Although it has been seventeen years since the Convention's implementation, corruption remains rampant in many countries. The most recent TI's Corruption Perception Index (CPI) reports that the global average of perceived public sector corruption remains unchanged for the tenth year in a row, marking just 43 on a scale between 0 (highly corrupt) and 100 (very clean). It is notable to see that 131 countries have made no significant progress against corruption in the last decade. Two-thirds of countries score below 50, indicating that they have serious corruption problems, while 27 countries are at their lowest score ever.<sup>7</sup>

While the Asia-Pacific region has certainly made progress in controlling petty corruption over the last decade, a failure to address grand corruption has kept the region's average score stalled at 45. New Zealand, Hong Kong, and Singapore take top scores of 88, 85, and 76, respectively. Cambodia, Afghanistan, and North Korea are ranked at the bottom with a score of 23, 16, and 16, respectively. Among the region's democracies, Australia and Japan received 73 points, while Taiwan and South Korea remained at 68 and 62 points, respectively.

The *Rule of Law Index 2022*<sup>8</sup> measures the absence of corruption as one of the elements of its rule of law index, together with constraints on government powers, open government, fundamental rights, order and security, regulatory enforcement, civil justice, and criminal justice. Among the Indo-Pacific countries, Singapore tops the 0 (corrupted) to 1 (not corrupted) scale, with 0.91, followed by New Zealand (0.88), Hong Kong (0.83), Japan (0.82), Australia (0.81), and South Korea (0.66). Other countries in the region, however, received scores below 0.5. The highly ranked ones in the absence of corruption stand out also in the overall rule of law score based on all eight elements, including New Zealand (0.83), Australia (0.79), Japan (0.79), Singapore (0.78), South Korea (0.73), and Hong Kong (0.73).

<sup>6</sup> United Nations Office on Drugs and Crime. 2003. "United Nations Convention Against Corruption." <https://www.unodc.org/unodc/en/corruption/uncac.html>.

<sup>7</sup> Transparency International, "Corruption Perception Index 2021." [https://images.transparencycdn.org/images/CPI2021\\_Report\\_EN-web.pdf](https://images.transparencycdn.org/images/CPI2021_Report_EN-web.pdf)

<sup>8</sup> World Justice Project. 2022. "Rule of Law Index 2022". <https://worldjusticeproject.org/rule-of-law-index/downloads/WJPIndex2022.pdf>. The report measures 140 countries including Hong Kong but not Taiwan.

These indexes follow the conventional definition of corruption regarding the illegal abuse of public office for private gains such as bribery, embezzlement, and vote buying. These forms of corruption are most rampant in poorer countries. However, it is also important to recognize that there exist forms of corruption related to non-illegal exchanges of power and profit among political elites. Cultivating political connections, campaign finance, and revolving-door practices are typical examples of such. Yang argues that these kinds of “undue influence of wealth” are often found in wealthy democracies as a type of “access money” form of corruption. Among the 15 countries of which corruption is measured by four types—petit theft, grand theft, speed money, and access money - 8 countries from the Indo-Pacific region were identified. Among them, Bangladesh and Indonesia were measured as the most corrupt in all four types of corruption. India, China, and Thailand are ranked next, with speed money, access money, and petit theft as the highest forms of corruption, respectively. Japan, Taiwan, and South Korea are ranked as less corrupt, though their access money is a more common type of corruption, as is the case for many wealthy democracies. Singapore again stands out in this data as the least corrupted in all types, with access money corruption being its highest<sup>9</sup>.

### **Spreading Anti-corruption Institutions and Current Weaknesses in Institutional Independence and Capacity**

Although Singapore and Hong Kong are not democracies, they are notable for having a visible absence of corruption. Both possess a strong state bureaucracy able to efficiently maintain order, security, and criminal justice. Furthermore, they introduced independent corruption investigation bodies relatively early, with Singapore’s Corrupt Practices Investigation Bureau established in 1952 and Hong Kong’s Independent Commission against Corruption formed in 1974. In the *Rule of Law Index* 2022 report, however, the two score a lower level in fundamental rights and constraints on government power. This means that, however clean these governments are now, they can fall into corruption when their power structures are autocratized. As Lord Ash’s famous statement goes, “Power tends to corrupt; Absolute power corrupts absolutely.”

Many Asian countries had developed penal codes and election laws to punish corrupt officials. However, the creation of independent bodies tasked with monitoring and investigating corruption had to wait until the 2000s. South Korea legislated the Anti-Corruption Act in 2001 and launched the Independent Commission against Corruption the next year. This was later merged with the Ombudsman of Korea and the Administrative Appeals Commission, which in 2008 came to form the current Anti-Corruption and Civil Rights Commission (ACRC). Malaysia introduced the Anti-Corruption Act in 1997 but had enacted a new law in 2009 to create the Anti-Corruption Commission as a single entity tasked to investigate any form of corruption and abuse of power. Mongolia formed the Independent Authority against Corruption in 2007, while Myanmar enacted the anti-corruption law only in 2013 and formed a body to punish bribery of public officials.<sup>10</sup> In the case of India, the

<sup>9</sup> Yuen Yuen Yang. 2020. “Unbundling Corruption: Revisiting Six Questions on Corruption.” *Global Perspectives* 1,1. <https://doi.org/10.1525/gp.2020.12036>.

<sup>10</sup> Asia Democracy Research Network. 2018. “Combating Corruption toward Clean Governance in Asia: Country Cases”. <http://www.adrnresearch.org/publications/list.php?cid=5&sp=%26sp%5B%5D%3D1%26sp%5B%5D%3D2%26sp%5B%5D%3D3&pn=1&st=&acode=Multimedia&code=&at=view&idx=49>.

country introduced the Prevention of Corruption Act also relatively early, in 1988, to consolidate all its laws relating to Corruption by civil servants. In 2013, however, the act had to be amended to include the bribe-giving offenses. The *Lokpal* and *Lokayuktas* were created to inquire about the complaints received about corruption in public functionaries in the same year.<sup>11</sup>

Despite the proliferation of anti-corruption laws and institutions across Asia, they tend to be weak. First, this is largely due to the majority of such institutions taking the form of a special government body. Accordingly, they lack the political autonomy needed to independently carry out their duties and are subject to the budgetary constraints imposed by their governments. Unless the highest audit bodies and other oversight mechanisms are independent, the creation of an anti-corruption entity is not sufficient, in itself, for tackling the corruption posed by aggrandized executive powers. Second, anti-corruption institutions can only work effectively when the government provides open and transparent information. For example, corruption crime is not detected unless decision processes are well-documented and data is easily accessible to the public. Third, anti-corruption bodies usually do not have the authority to directly enforce corruption charges, resulting in them having to work with prosecutors and courts to criminalize and punish those found of corruption. More fundamentally, judicial independence and robust legislature on anti-corruption efforts need to extend to instances of grand corruption committed by powerful leaders, who have often manipulated their political stations to shield themselves with impunity. Finally, anti-corruption reforms often used as a tool of power politics to punish opponents in weak democracies. Such anti-corruption drive tends to be ephemeral with no effect of strengthening anti-corruption institutions.

## International Cooperation against Corruption beyond the Summit

Corruption has increasingly become a cross-border crime as politicians, civil servants, private sector actors, and crime syndicates are assembling international networks. Recognizing the rise of transnational corruption, the UN General Assembly (UNGASS) held the Special Session against Corruption in 2021, with UNCAC member states and parties adopting a resolution.<sup>12</sup> The session produced a political declaration that called for strong international cooperation and assistance in the prevention, detection, investigation, and prosecution of corruption offenses, as well as in the recovery and return of confiscated assets.<sup>13</sup>

There are some takeaways to consider for the UNCAC's Indo-Pacific parties. In the area of preventive measures, the most significant area to focus on would be granting independence to anti-corruption bodies, supreme audit institutions, and other oversight bodies in accordance with the principles of domestic law. Taking the opportunity to convene under the S4D2 corruption agenda, the Convention's Indo-Pacific states could consider forming a network of anti-corruption bodies that can

<sup>11</sup> Yashraj Bais. (n.d.). "Anti-Corruption Laws in India with Recent Judicial Pronouncements: A Complete Guide." <https://www.legalserviceindia.com/legal/article-9085-anti-corruption-laws-in-india-with-recent-judicial-pronouncements-a-complete-guide.html>.

<sup>12</sup> United Nations Office on Drugs and Crime. 2021. "Resolutions and decisions adopted by the Conference of the States Parties to the United Nations Convention against Corruption." <https://www.unodc.org/unodc/en/corruption/COSP/session9-resolutions.html#Res.9-2>

<sup>13</sup> This declaration has a long title: United Nations General Assembly. 2021. "Our Common Commitment to Effectively Addressing Challenges and International Measures to Prevent and Combat Corruption and Strengthen International Cooperation." <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N21/138/82/PDF/N2113882.pdf?OpenElement>

learn from each other's experiences. While paying full respect to each other's varying domestic laws, they could work together in improving the capacity building of anti-corruption bodies. As such, technical assistance on data collection and the digitalization of government services and procurement would be a promising area for cooperation.

In the area of criminalization and law enforcement, the declaration urges state parties to comply with the relevant obligations established for criminal offenses pertaining to the bribery of national public officials, the active bribery of foreign public officials and international organizations, embezzlement, money laundering and obstruction of justice, as covered in the UNCAC. Recognizing the overlapping UN governance mission, the UNGASS anti-corruption political declaration calls for coordination and cooperation with the UN Convention of Transnational Organized Crime (UNTOC). Dell also emphasizes the combination of UNTOC and other human rights agreements with the UNCAC since corruption is increasingly becoming a multi-jurisdiction issue covering many international agreements.<sup>14</sup>

For the cross-border movement of people and money, the UNGASS declaration suggests using the International Criminal Police Organization (INTERPOL), the Stolen Asset Recovery (StAR) Initiative (under the World Bank and the UNDOC), and the new Global Operational Network on Anti-Corruption Law Enforcement Authorities (under the UNODC). The StAR provides forms of both informal assistance and formal ones that require mutual legal requests.<sup>15</sup>

With corruption becoming transnational in scope, current law enforcement responses are largely inadequate for tackling it since they are confined to domestic, state-level boundaries. TI's *Exporting Corruption 2022*,<sup>16</sup> which assesses the enforcement efforts of 47 leading export countries in the period 2018-2021, reports that enforcement continues to decline, leaving only Switzerland and the U.S. as the only current active enforcers. On the other hand, 38 countries accounting for 55 percent of all global exports have limited or no enforcement at all. If it is premature to enact a law like the United States Foreign Corrupt Practices Act, Indo-Pacific countries can consider the exchange and cooperation among similar law enforcement agencies on countering corruption. In the infamous 1MDB case, thanks to this kind of cooperation, Goldman Sachs was investigated by at least 14 regulators for its role in the scandal. Malaysia, Singapore, the United Kingdom, and the United States worked together to obtain US\$2.3 billion in penalties and US\$606 million in disgorgement<sup>17</sup>

Corruption is a common problem for all countries, regardless of their level of democratization. Accordingly, all country leaders invited to the S4D2 Indo-Pacific regional conference should have the incentive to address cooperation, whether it be through technical assistance or law enforcement cooperation. Convening government leaders at the Summit should sustain their efforts for the future by prioritizing action-oriented cooperation needed to effectively combat corruption across the region. ■

<sup>14</sup> Gillian Dell. 2021. "UN and Grand Corruption: Time to Break out of Silos." Transparency International. <https://www.transparency.org/en/blog/un-grand-corruption-organised-crime-break-out-of-silos>.

<sup>15</sup> Informal assistance includes obtaining information from property or company registries, information in police databases or the identity of witnesses. Informal assistance can be extremely useful to determine the direction of an investigation and the need and scope of formal assistance. However, for a judicial process, mutual legal assistance (MLA) requests is required. The United Nations Convention against Corruption (UNCAC) acts as a multilateral MLA treaty, including for the purpose of asset recovery. <https://star.worldbank.org/focus-area/international-cooperation>

<sup>16</sup> Transparency International 2022. "Exporting Corruption 2022." <https://files.transparencycdn.org/images/2022-Report-Slim-version-Exporting-Corruption-EN.pdf>

<sup>17</sup> Ibid.26.

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