Concept of Corruption from Cross-legal Perspectives with Special Reference to Korea, Brazil and Angola

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I. INTRODUCTION

There are differences in the perception of corruption in each country. These differences depend on the degree of social awareness and acceptance of corruption formed in the long history of each society. Corruption is perceived, recognized, accepted, monitored, investigated and punished differently depending on each community.

Corruption became a global agenda as it gives negative impact on the normal corporate activities when happens corruption like bribery on public officials. Not only had the corruption of public officials in its own country but also in foreign country become a serious problem. Corruption hinders fair competition and causes difficulty in maintaining a safe and just society. As information on corruption spreads rapidly and easily over by media such as SNS, people have been knowing the reality of the corruption involving public officials and business world causing increasingly aversion to corruption of public officials, politicians and businessmen.

Governments of Korea, Brazil and Angola have firm willingness to deal with the corruption that is widespread in the society. But they show different approach to cope with corruption as they have different priority to reach and method to apply. This is because people in the society have different perception on corruption in its scope and priority to resolve. All three countries have experience of colonization and military or civil dictatorship. After the democratization, they made a great effort to establish democratic institutions in order to prevent the power corruption. However, the method chosen by each country was different. Brazil has made the public prosecutor as constitutionally independent institution and strong judicial reforms. Korea did not achieve the independence of the public prosecutor. Angola is still experiencing civilian dictatorship.

The study is to see how corruption is perceived in Angola, Brazil and Korea and how it is prescribed in policy and laws. Different remedy to cure should be applied if the aim of anti-corruption policy is different.

II. CONCEPT OF CORRUPTION FROM CROSS-LEGAL PERSPECTIVIES

Corruption concept can differ from country to country. There are legal corruption and illegal corruption which may vary depending on social situation. Legislators come pick out types of corruption to be regulated by anti-corruption law. Traditionally, corruption is regulated by criminal law and administrative law for civil servants. It is because corruption means technically corruption of public sector. The Transparency International also follows traditional definition of corruption as “the abuse of entrusted power for private gain”. According to the Transparency International “corruption can be classified as grand, petty and political, depending on the amounts of money lost and the sector where it occurs.” (http://www.transparency.org/what-is-corruption#define)

Corruption could happen within public sector, between public sector and private sector, and within private sector. Modern anti-corruption legislation concentrates to regulate corruption by private sector in public sector. In case of Brazil the anti-corruption law (Law No.12.846/2013) focuses on company’s corruption on the public sector interpreting narrowly ‘entrusted power’ as public power exercised by the public sector. The law regulates company as the main corruptor in society. The Angolan law takes different approach. The law has the aim of eradicating the corruption of public officials targeting the proper civil servants.

Korean anti-corruption law (The Improper Solicitation and Graft Law, No. 13278, March 27, 2015) has a unique personality. The law focuses corruption in public sector. However, the law expanded intentionally the sphere of public sector for legal purpose in order to eradicate corruption in private sector, interpreting widely ‘entrusted power’. The Korea’s case can be explained in some degree by the observation by Daniel Kaufmann and Pedro C. Vicente where they consider legal corruption for political purposes (Kaufmann and Vicente 2011). For example, congressmen are excluded from the Korean law which are normally included within the public sector in other countries and included instead media and education as public sector which are normally not included in other countries.

Corruptions appearing after Brazil’s military dictatorship in 1985 are in most cases those politicians and state-owned enterprises are involved. Particularly politicians are most vulnerable to corruption. Political authorities and businessmen were closely involved in grand corruption scandals. In fact, corruption policy and legislation in Brazil are focused on this political corruption and grand corruption involving public officials and corporate rather than private sectors. The corruption in political area makes Brazilian citizens have little trust in the government regardless of sectors.

Unlike Brazil, personal networking plays important role on corruption in Korea. Usually paternalism, nepotism, kinship and regionalism are major factors for personal networking. Reflecting economic development, Korea’s biggest feature is that it was driven by the military government in cooperation with a small number of big companies called Chaebul. So the collusion of politicians, public servants and private enterprises was natural.

Even after democratization since 1987, in fact, personal networks still play a very important role in both public and private sectors showing structural problem. Because of this peculiarity, corruption in local governments tends to be more serious, especially, for example, in procurement where personal networking is very well organized and emphasized. There is a mixture of social customs and social rules that conflict each other in practice. So public opinion is more likely to equate corruption in the public sector and the private sector. Anti-corruption policy of the government, beyond the specific areas such as civil servants or politicians, tries to reach private sectors such as to journalists, professors, teachers, etc. However, it is true that anti-corruption law is much difficult to enforce in the private than in the public sector, as anti-corruption agencies have difficulty to collect information and proofs to investigate and penalize (Kalinowski 2013, 6).

Angola maintains weak governance caused by a civil war over the 30 years since independence from Portugal in 1975. Corruption of public officials in this situation is seen as inevitable phenomenon. Officials would require usually small payments for public services such as a driver's license. This petty bribery is commonly used as a supplementary means of low salaries of civil servants. Peculiar feature of the Angolan economy is its high dependence on natural resources such as oil and mining. And the political power is concentrated to the President. It is natural that business must be in collusion with politics in Angola. Grand corruption to steal public resources is a common tendency.

Also, in many cases the officials have a position both in public enterprises and private companies. Such conflicts of interest are a common phenomenon in Angola. So foreign investors are forced to choose as unavoidable choice the Angolan companies as business partner. Anti-corruption policy of the Angolan government is naturally focused on ensuring transparency on government procurement and eradicating civil servant's corruption.

III. ANTI-CORRUPTION AGENCIES AND ENFORCEMENT MECHANISMS

OECD's empirical study showed that exists roughly three different models of anti-corruption institutions based on different purposes (OECD 2008, 31). 'Multi-purpose agency with law enforcement powers' is the most common model with a single-agency based on repression and prevention. 'Law enforcement type institution' has not only corruption detection and investigation functions but also prosecution function in one body. 'Preventive, policy development and co-ordination institutions model' finds generally in institutions with corruption prevention function as one of their functions.

The rationale to choose or design the proper anti-corruption agency is to address a specific type and problems of corruption of a society. In this sense, the core issue is to identify these specific problems of a determined society to choose fitted anti-corruption institution. Regardless of which institution is designed, at least, one control tower for anti-corruption is necessary because in most cases the traditional anti-corruption measures such as detection, investigation and prosecution functions and information access to check public expenditure, etc. are scattered among different institutions. In the modern society one single agency as control tower to coordinate different institutions could be a good answer.

Three countries took a different ways: Korea takes a 'Multi-purpose agency with law enforcement powers model' and Brazil and Angola takes a 'Preventive, policy development and co-ordination institutions model'. Choosing adequate institution is a tough question to answer. A simple transplantation of a foreign experience could not be well functioning because of different social conditions. Even a same model could draw different results depending on social conditions. For example, a big country like Brazil could have different model than a small country like Korea to cope with local corruptions. In general, a multi-purpose agency model could function well in a small country like Singapore and Korea as it responds quickly to a local corruption. In the case of Angola anti-Corruption Agency still does not exist. The Law of the High Authority Against Corruption (Law No. 3/96) in 1996 mandated to create an anti-corruption agency. But it is not yet built up.

IV. CONCLUSION

There seems to have common sense that all Korea, Brazil and Angola must tackle urgently the rampant corruption in the society. But using a same terminology as corruption, there is a difference between the concept and scope of corruption that needs to be removed immediately. In relation to corruption, Korea has traditionally been giving the importance of human relationships. In order to keep the human relationship usually it has accepted a circulation of certain amount of money and goods to and from. But as society modernizes these personal relationships became uncomfortable in social life especially to young generation. The inappropriate personal relationships are formed not only in the government but also in the private sector, including businesses, hospital, schools and the media. Corruption cases that appeared in the media include both high level government officials and politicians, and both judiciary and businessmen, even in school life, in fact, everywhere in society. People think that corruption is growing everywhere counting psychological impact greater than the reality.

On the other hand, Brazil's corruption was formed mainly of politicians and civil servants and the public companies. Organized corruptions are concentrated in the public sector than the private sector. Colonial relationship of corruption between political power and local economic power has been sustained with various forms. Since the recovery of democracy corruption scandals that have been reported in the media have mostly those involving politicians and public servants. So awareness of citizens about corruption is mainly concentrated in the public sector.

Anti-corruption policies and laws also depends on the kind of corruption recognized by the society. Korea's legal system is aimed mainly at a mind and attitude change in social customs and practices. So, the anti-corruption laws are applied both public and private sectors as well. Penalties for corporates are relatively weak compared to Brazil.

On the other hand, policies and legislation in Brazil is mainly concentrated in the public sector, especially politicians and corrupt officials. Penalties for companies that practice bribes are severely applied. Brazil has focused on administrative penalties due to the slow judicial process. Brazil made the independence of public prosecution in the 1988 Constitution. However, the public prosecutor took a long time to gain public trust. *Mensalao* in 2005 was the cornerstone case that restored the confidence. On the other hand, the court took 10 years more to restore public confidence. In the Petrobras case in 2015 the positive role of the federal court took public attention. The public confidence in both the prosecution and the courts is shown by the result of concrete grand corruption scandals.

Angola does not yet install anti-corruption agency and the distrust of the judiciary is high. It is difficult to enforce anti-corruption policy in this condition. So what is urgent for Angola is to build the Anti-Corruption Agency previewed in law.

Finally, although Korean civil society recognizes promptness of prosecutors and the courts, the credibility on public institutions is very low. One of the reason is that there is no guaranty on the independence of prosecutors susceptible to political power. The dependence of prosecutors is a fundamental problem that cannot be solved easily. The restoration of confidence by civil society is necessary for the public prosecutors to play investigation role with the support of people. Based on Brazilian experience, Korea will need a considerable period of time to restore public confidence, eventually if the prosecutor is constitutionally independent. It took Brazil nearly 30 years to recover this confidence. Korea seems to take less time than this. For the same reason, Brazil is needed to institute speedy court proceedings. The institution of a special corruption court could be an alternative solution to consider in case of Brazil.

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