

Challenging the Power of the Prosecution? The First Phase of the Establishment of the Corruption Investigation Office for High-ranking Officials (*Kowigongjikchabŏmjoesusach'ŏ*) in the Republic of Korea

By *Gwendolyn Domning**

Abstract: The Republic of Korea has shown a strong political will to develop its anti-corruption capacities. Research argues that corruption has been - and still is - an issue for the Korean political system before and after its democratization. Even after substantial legal developments in the anti-corruption field, trust in state institutions and actors has not improved much. The Korean parliament decided in 2019 on the creation of a permanent Corruption Investigation Office for High-ranking Officials (CIO) in hopes of eradicating corruption. The CIO is an independent institution in charge of investigating and indicting cases of corruption committed by high-level officials, with a special focus on law professionals. After many controversies and some revisions, it started operating in January 2021.

In the context of studying the role and development of anti-corruption laws in the world, research on anti-corruption institutions can contribute to our understanding of corruption in context. In this article, the creation of anti-corruption agencies is seen as part of state legitimacy building process. How is the CIO, which aims to reduce corruption, contributing to state legitimacy? Looking at performance and process-based legitimacy, the article centers its analysis on the first version of the CIO and argues that the institution provides new anti-corruption ‘services’ on one side and strengthens state accountability mechanisms on the other. First, institutional analysis shows that new capacities are added to the state-led anti-corruption activity field, mainly limited investigation, and indictment rights. Second, context analysis focusing on corruption scandals involving law professionals argues that the government builds process legitimacy by being responsive to public criticism and pushing for the creation of the CIO.

* Gwendolyn Domning is a doctoral candidate at the Graduate School of East Asian Studies, Freie University Berlin, Germany. She has worked on topics such as anti-corruption institutions and transparency policies in South Korea and is currently writing her dissertation on corruption in South Korea, contact: contact.gdom@gmail.com.

A. Introduction

Since the 1990s, many have keenly discussed the origins and mechanisms, as well as solutions to corruption¹. Developments in this field of studies have advanced but also pluralized knowledge on the phenomenon². In a context of substantial developments in corruption studies on the one hand and lasting disagreement on basic questions related to definition and measurement of corruption on the other, various countries have established specialized anti-corruption institutions. Especially new democracies³ have been very active in the creation of specialized agencies⁴.

Among them, the Republic of Korea (Korea in the following), democratized in 1987, has shown a strong political will to develop its anti-corruption structures. Scholars observed that corruption has – and still is – an issue for the Korean political system before and after democratization⁵. Even after substantial legal developments in the anti-corruption field since the 1990s, corruption is still perceived as a problem by the Korean public at large⁶. Trust-levels in public institutions and officials are continuously low⁷. In hopes of eradicating corruption, President Moon Jae-in (2017-current)⁸ presented a five-year anti-corruption

- 1 *Dan Hough*, *Corruption, Anti-Corruption and Governance*, Basingstoke 2013, p. 12-30.
- 2 *Alena Ledeneva, Roxana Bratu, Philipp Köker*, *Corruption Studies for the 21st Century*, Slavonic and East European Review 95 (2017), p. 2-6.
- 3 Mainly referring to what is often called “third wave” democracies around the end of the Cold War.
- 4 OECD, *Specialised Anti-Corruption Institutions: Review of Models: Second Edition*, OECD Publishing 2013, <http://dx.doi.org/10.1787/9789264187207-en> (last accessed on 5 July 2021), p. 39.
- 5 *Michael Johnston*, *Syndromes of Corruption: Wealth, Power, and Democracy*, Cambridge 2005, p. 113-114.
- 6 *Kwangho Jung*, *Public trust and transparency in Korea*, in: Chung-in Moon / M. Jae Moon (eds.), *Routledge Handbook of Korean Politics and Public Administration*, New York and Abingdon 2020, p. 372-374.
- 7 Korea performs well in regional comparison (Asia) but levels are lower than the OECD average from 2006-2015. In the Government at a Glance 2019 survey conducted in 2018 it ranked 25 out of 37 OECD member states. OECD/KDI, *Understanding the Drivers of Trust in Government Institutions in Korea*, OECD Publishing, Paris 2018, <https://doi.org/10.1787/9789264308992-en> (last accessed on 5 July 2021), p. 44; Ministry of Interior and Safety, *Taehanmin'guk chôngbusilloedo OECD kukka chung 22wi (39%), yôktae ch'oego sôngjök- ilbon (24wi), p'ürangsü (25wi), miguk (30wi) tûng OECD chuyo sônjin'guk poda nop'un sujun [Korea's trust in government index ranks 22nd among OECD countries (39%), the highest record ever - more than major developed countries of the OECD such as Japan (24th), France (25th), and the United States (30th)]*, https://www.mois.go.kr/frt/bbs/type010/commonSelectBoardArticle.do?bbsId=BBSMSTR_000000000008&nttId=74082 (last accessed on 29 December 2020).
- 8 The McCune-Reischauer romanization system will be used for all transliterations from Korean, including names. Exceptions are public figures or authors that have already established a different, widely employed transliteration of their names. The dates in parenthesis after Presidents refer to their time in office. This article was written in June and December 2020.

plan in 2017⁹, which included the creation of a permanent Corruption Investigation Office for High-ranking Officials¹⁰ (CIO). This office is endowed with the rights to investigate and indict¹¹ and deals with cases of corruption committed by high-level officials. Its recent adoption in 2019 is the result of a 23-year long policy process.

By studying the role and development of anti-corruption laws in the world through case studies of national anti-corruption institutions, our understanding of corruption in context can be enhanced¹². Studying the establishment process of anti-corruption institutions can also increase knowledge on shifting perception of corruption. In this regard, the creation of the CIO is of interest due to its novelty as an agency on the one hand, and relatively long history as a policy option in national context on the other. Adopting the view¹³ that anti-corruption agencies are part of state-building activities with the goal to improve legitimacy of state institutions in “quasi-peace and post-conflict contexts”¹⁴, this article seeks to answer the following questions: How does the CIO build state legitimacy? What rules is it governed by and why did they initially cause such controversy?

This article analyses the first version of the law establishing the CIO and argues that it improves two forms of legitimacy: performance (output) and process (input) legitimacy¹⁵. In general, legitimacy is a measure for how justified a political order is in the eyes of citizens¹⁶. Performance legitimacy is achieved through the addition of new public

- 9 Anti-Corruption & Civil Rights Commission, Moon Jae-in Administration Announced Five Year Comprehensive Anti-Corruption Plan, <http://www.iucl.go.kr/en/board.do?command=searchDetail&method=searchDetailViewInc&menuId=020501&boardNum=69207> (last accessed on 14 June 2020).
- 10 Anti-Corruption & Civil Rights Commission, Moon Jae-in ‘5kaenyŏn panbup’ae chonghapkye-hoek’ palp’yo [Presentation of Moon Jae-in’s Five-Year Anti-Corruption Comprehensive Plan], <http://www.korea.kr/news/pressReleaseView.do?newsId=156265045> (last accessed on 14 June 2020).
- 11 General Anti-Corruption Division (Moon Jae-in Government), Segye wigwŏn ch’ŏngnyŏmgukka toyagŭl wihan 5kaenyŏn panbup’ae chonghapkye-hoek [Five-Year Anti-Corruption Comprehensive Plan to breach the top 20 of most integrous countries worldwide], <http://www.korea.kr/common/do/wload.do?fileId=185928578&tblKey=GMN> (last accessed on 14 June 2020), p. 11; p. 20.
- 12 For example: *Vinay Bhargava, Emil Bolongaita, Challenging Corruption in Asia. Case Studies and a Framework for Action*, Washington DC 2004; *Cheng Chen / Meredith L Weiss* (eds.), *The political logics of anticorruption efforts in Asia*, Albany (New York) 2019.
- 13 *Michael Pugh*, *Statebuilding and Corruption: A political Economy Perspective*, in: Mats Berdal / Dominik Zaum (eds.), *Political Economy of Statebuilding: Power after Peace*, London 2013, p. 82-85.
- 14 *Pugh*, note 13, p. 83.
- 15 The perspective adapted in this article on anti-corruption agencies and their role in state legitimacy building is inspired by Gemperle, *Sergio Marco Gemperle*, *Improving state legitimacy? The role of anti-corruption agencies in fragile and conflict-affected states*, *Global Crime* 19 (2017), p. 24-25.
- 16 OECD, *The State’s Legitimacy in Fragile Situations: Unpacking Complexity, Conflict and Fragility*, Paris: 2010, p. 7.

services (capacities) in the field of state-led anti-corruption activities¹⁷. In case of the CIO this means, that the ‘services’ investigation and indictment of corruption committed by public officials are improved. A higher probability for punishment of corrupt behavior is the consequence. Process legitimacy is built through democratic practice, in other words, through inclusion of citizen’s opinion in the decision-making process and responsiveness of the government to these inputs¹⁸. The CIO and its focus on law-professionals is partly a result of large-scale scandals and public demands to counteract. The agencies’ establishment strengthens accountability practices of certain public officials that take part in the criminal procedure¹⁹.

The article will proceed as follows: firstly, the article clarifies core concepts before offering a short historical overview on the Korean case and issues of corruption in context. Secondly, an institutionalist perspective is adopted to describe the CIO and discuss in which ways the new institution enables and limits anti-corruption activities. In other words, rules and norms, formal and informal that “enable” and “limit” human behaviour are the study focus of this article²⁰. It is concluded that the CIO *enables* Korean anti-corruption activities by adding new powers of investigation and indictment in some cases, but also limits it mainly through its special focus on higher officials. Lastly, based on this article’s observation that CIO is best equipped to deal with cases tied to corruption of the judicial process, the article touches upon recent scandals that contributed to a worsening in perception of judicial integrity and judicial reforms plans in Korea.

B. Korea’s solution to corruption? The CIO

1. *The lens of anti-corruption legalism and state building*

Corruption originally refers to the process of spoiling, disintegrating, destroying, and dissolving of “the constitution which makes a thing what it is”²¹. It is generally said to cause negatively connotated change in an object. However, different approaches and answers to the topic of corruption exist²².

17 *Gemperle*, note 15, p. 24.

18 *Gemperle*, note 15, p. 25.

19 In other words, law professionals including judges but also prosecutors and parts of the police.

20 The view on institutions adopted in this article is inspired by institutional theory, mainly on the theoretical contributions of Douglass North. *Douglass North*, *Institutions, Institutional Change, and Economic Performance*, Cambridge 1990, p. 3.

21 *Mark Philp*, *Conceptualizing Political Corruption*, in: Arnold J. Heidenheimer / Michael Johnston (eds.), *Political Corruption. Concepts & Contexts*, London 2007, p. 19.

22 *Arnold J. Heidenheimer; Michael Johnston*, Introduction to Part I, in: Arnold J. Heidenheimer / Michael Johnston (eds.), *Political Corruption. Concepts & Contexts*, London 2007, p. 7-9; p. 13.

Compared to the academic discussion, the stance of the “global anti-corruption movement”²³ is clearer: corruption is “insidious plague”²⁴, often formally defined as the “abuse of entrusted power for private gain”²⁵, and must be combatted. Solving the issue of corruption is essential to development, good governance, peace, and justice²⁶.

Parallel to this movement, the study of anti-corruption as well as its institutions exist. While some of its research focuses on developing and improving practical knowledge to build capacities²⁷, other points out the fallacies of a blind faith in anti-corruption regimes²⁸.

One thing becomes clear when looking at such studies: different ways to solve corruption exist which depend on context and underlying assumptions on corruption. Even though anti-corruption institutions across the globe share the fundamental goal of combatting corruption, they all operate differently. Why is it that, despite agreeing that corruption is not functional²⁹ or part of a historical process of political contestation³⁰, institutional designs still vary drastically between countries? Studying these design choices which reflect differences in understandings of corruption problems may inform us on country specific corruption issues and contribute to academic discussion.

In this special issue, attention is given to anti-corruption legalism³¹, the study of the development of formal anti-corruption rules. Borrowing an institutionalist perspective,

23 *Hough*, note 1, p. 12-30.

24 Stated in the foreword (p.iii) of the English version of the United Nations Convention Against Corruption. United Nations (U.N.) – Office on Drugs and Crimes (UNODC). U.N., United Nations Convention against Corruption, https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf (last accessed on 28 December 2020).

25 Transparency International, What is corruption?, <https://www.transparency.org/en/what-is-corruption> (last accessed on 28 December 2020).

26 The Sustainable Development Goals adopted by the U.N. include the fight against corruption in Goal 16 “Peace, Justice and Strong Institutions”, which aims to “Promote peaceful and inclusive societies [...]”. U.N. – Department of Economic and Social Affairs, Goal 16, <https://sdgs.un.org/goals/goal16> (last accessed on 29 December 2020).

27 The Democratic Governance Group of the U.N., the OECD or the U4 Anti-corruption Resource Centre are some examples of research groups that publish research practitioners-oriented research to improve anti-corruption capacities.

28 Anti-corruption is often seen as an industry by critics, as Hough points out. The idealistic goals of the movement are questioned, implicit normative assumptions uncovered and potential limitations as well as negative effects of overly powerful anti-corruption institutions discussed by critics. *Hough*, note 1, p.12; *Luis de Sousa / Barry Hindess / Peter Larmour* (eds.), *Governments, NGOs and Anti-Corruption*. The New Integrity Warriors, London 2008.

29 From a functionalist perspective, corruption can have a function in political systems. *Frank de Zwart*, *Corruption and Anti-corruption in Prismatic Societies*, in: *Gjalt de Graaf / Patrick von Maravic / Pieter Wagenaar* (eds.), *The Good Cause*, Opladen and Farmington Hills 2010, p. 40-41.

30 Corruption is conceptualized as a form of political influence in Scott’s work, which publication date precedes the advent of the anti-corruption movement. *James C. Scott*, *Comparative Political Corruption*, New Jersey 1972, p. 21-23.

31 *Fabia Fernandes Carvalho Veçoso*, *Anti-corruption Legalism and Moralizing Authoritarianism in Brazil*, *Third World Approaches to International Law Review* 8 (2019), p.1-8.

anti-corruption rules are defined in this article as a set of practices, rules and norms created to solve problems of corruption. The recent establishment of the CIO, an institution which this article considers belonging to state-led anti-corruption efforts due to its goal of combatting high-level public officials' corruption, shows recent developments in the field of anti-corruption in Korea and offers a new perspective on how and why these new rules come into existence.

In addition, this article frames the discussion of the development of anti-corruption rules against the backdrop of legitimacy building practices of states. Here, good governance and anti-corruption efforts are considered in regard to legitimacy building activities of states. As already mentioned before, legitimacy justifies a political order and is thus important for governance, or in other words, a state's ability to exercise authority³². Even though the exact relation between variables (state legitimacy and good governance/anti-corruption policies) is unclear³³, the analysis highlights that a likely goal of the creation of the CIO is to improve legitimacy of state institutions. The article does not argue for a positive relationship between the agency's creation and state legitimacy but showcases that such implicit assumptions played an important role in the decision to establish it. Also, trust in institutions will be considered as the core measure of state legitimacy³⁴. Consequently, the article discusses relevant national scandals that highlight how low trust in the judiciary, which assumedly impacts state legitimacy negatively, played an important role in the decision to adapt the CIO.

II. Historical background: Korea and the perception of judicial corruption

Korea, as a state that signed multiple anti-corruption treaties³⁵, has been influenced by international developments related to the process of outlawing and combatting corruption³⁶. However, this only partially accounts for the development of state-led anti-corruption

32 Daniel Kaufmann, Aart Kraay, Massimo Mastruzzi, Governance Matters VIII. Aggregate and Individual Governance Indicators 1966-2008, in: The World Bank, Development Research Group. Policy Research Working Paper 4978 (2009), p. 5, (cited in) *Hough*, note 1, p.7.

33 Even though major international organizations like the U.N. and the OECD affirm that legitimacy is improved by the implementation of good governance and anti-corruption policies, the positive relation is hard to "prove" and is still at this point more of empirical nature. *Gemperle*, note 15, p. 23.

34 This reflects the assumption made by the OECD that "Trust is the foundation upon which the legitimacy of public institutions is built and is crucial for maintaining social cohesion". OECD, Trust in Government, <http://www.oecd.org/gov/trust-in-government.htm> (last accessed on 30 December 2020).

35 South Korea has notably signed the OECD Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions, the UN Convention against corruption and the APEC's Beijing Declaration on Fighting Corruption.

36 For example, the common practice of offering bribes to accelerate dealings in foreign businesses has been outlawed in 1999 in the context of the OECD Foreign Bribery Act. Also, it created a set of anti-corruption institutions, as has been recommended by the U.N.

institutions. Corruption as well as the fight against it is context-dependent³⁷ and can only be fully understood by taking national developments into account. A short historical background on Korea provides more clarity: lack of trust in institutions, especially the judiciary, has been a rather long-standing issue.

From 1960 until 1987³⁸, Korea was under authoritarian rule³⁹. Citizens' rights were limited, particularly following the introduction of the Yushin constitution in 1972⁴⁰. Legitimacy of the government hinged on rapid and successful economic development⁴¹, not primarily on democratic practices⁴². The executive branch held power over the judicial and legislative power, not only enabling the President to pass laws, but control the law enforcement and judicial process through emergency action decrees. The existence of a separate judicial branch became effectively "obsolete"⁴³.

After Park Chung-hee's (1962-1979) assassination in 1979, protests for democratization in the southern province Gwangju emerged and were forcefully subdued by armed forces⁴⁴. After peaceful democratization in 1987, the "Gwangju massacre" was belatedly investigated and became an important symbol of corruption and impunity of those in power during authoritarian rule⁴⁵.

37 *Philp*, note 21, p. 49-50.

38 For a detailed history, please refer to: *Bruce Cumings, Korea's Place in the Sun. A modern history*, New York and London 2005, p. 343-396.

39 16 May 1961, a military coup lead by Park Chung-hee took place. In 1963, he proclaimed a new Republic (the third) and became President. He ruled until his assassination in 1979. On 17 May 1980, another military coup was carried out by Chun Doo-hwan, who followed Park's example and proclaimed a new Republic (the fifth) with him as the President. Chun stayed in power until 1987.

40 The fourth Republic's constitution was the Yushin constitution and revoked many political rights of citizens while strengthening the power of the President. The fifth Republic's Constitution was similar to the fourth and granted President Chun as much power as his predecessor.

41 *Sang-Young Rhyu, Political Leadership*, in: Chung-in Moon / M. Jae Moon (eds.), *Routledge Handbook of Korean Politics and Public Administration*, New York and Abingdon 2020, p. 104.

42 *Yoojin Lim, Jungho Roh, Political institutions in Korea*, in: Chung-in Moon / M. Jae Moon (eds.), *Routledge Handbook of Korean Politics and Public Administration*, New York and Abingdon 2020, p. 34.

43 *Hong-gu Han, Saböppu. Pöb-ül chibaehan chadür-üi yöksa [The judicial branch. History of those who rule the law]*, Paju 2017, p. 77.

44 *Rhyu*, note 41, p. 99.

45 In the literature, this has notably been discussed in the context of "transitional justice". At first, the prosecution did not indict Chun and Roh on the grounds that it had no authority to. This decision was later reversed when slush funds were discovered in 1995, leading to a sentence to life for Chun and 17 years for Roh. Both sentences were commuted by Kim Young-sam. *Dae-Kyu Yoon, Law and Democracy in South Korea. Democratic Development Since 1987*, Seoul 2010, p. 174-179; 183-187.

When the first petition for the establishment of anti-corruption laws and institutions, including the CIO, was submitted in 1996⁴⁶, it reflected widespread demands to hold the former Presidents Chun Doo-hwan and Roh Tae-woo accountable for their roles in Gwangju. The petition consequentially argued that especially the Prosecution was inefficient and inapt to handle the task of combatting corruption⁴⁷. The view that judicial structures in general suffer from a lack of integrity is still a common theme. The judiciary, and illegitimate political influence over democratic institutions are still at the centre of civil society led anti-corruption activities⁴⁸.

It is in the context of civil society actors developing and pushing ahead with ways to solve problems of corruption after democratization that plans for the CIO were introduced. However, even though a general framework for anti-corruption was quickly adopted and some judicial reforms⁴⁹ later enacted, the CIO was not. Why was its creation first excluded from state building activities?

III. Adoption of the CIO

The CIO was not the preferred solution to issues of corruption. Rather than adopting an overly powerful anti-corruption institution that challenged Korean judicial norms and tradition, a policy-formulation oriented anti-corruption body and a commission-based system of investigation were established: the Independent Prosecutor System (IPS)⁵⁰ and the Korean Independent Commission Against Corruption (KICAC)⁵¹.

First, the IPS was established in 1999 and served as a viable alternative to the CIO⁵², because the National Assembly gained the power to commission investigations of high-

46 People's Solidarity for Participatory Democracy (PSPD), Pup'aebangjiböp ippöpch'öngwön [Anti-Corruption law petition], http://www.peoplepower21.org/?module=file&act=procFileDownload&file_src=1112582&sid=de0a537f39e07d83c26ed81484bec337&module_src=464244 (last accessed on 17 June 2020).

47 Translation from Korean into English by the author. PSPD, note 46, p. 9.

48 *Jongryn Mo*, Introduction: The Elusive Goal of the Rule of Law in South Korea, in: *Jongryn Mo / David W. Brady* (eds.), *The Rule of Law in South Korea*, Stanford 2010, xvi-xvii.

49 Summarized, the judicial reforms introduced "citizen's participation in the judicial process and the adoption of a law school system". *Yoon*, note 45, p. 127-130.

50 *T'ükpyölgömsajedo* in Korean. Korea Legislation Research Institute – Korea Law Translation Center (KLRI), Act on the Appointment, etc. of Independent Prosecutor, http://elaw.klri.re.kr/kor_service/lawView.do?hseq=34924&lang=ENG (last accessed on 17 June 2020).

51 Now the Anti-corruption and Civil Rights Commission (*Kungmin'gwönigwönhoehoe* in Korean). KLRI, Act on the Prevention of Corruption and the Establishment and Management of the Anti-Corruption and Civil Rights Commission, https://elaw.klri.re.kr/kor_service/lawView.do?hseq=48545&lang=ENG (last accessed on 17 June 2020).

52 The creation of the IPS and CIO were part of the *kömch'aljungniphwaron* [Impartiality of the Prosecution discourse] among Korean scholars, according to Mun. Both projects were part of the original PSPD bill but not of the resulting Anti-corruption law. The IPS was first to be debated in parliament and also first to be adapted in 1999. *Pak Chun-hwi, Kim Yöng-jung, Han Sang-hun*,

profile cases, which often implicated high-level officials. Throughout the years, the IPS was used strategically by parliamentarians to attack the government⁵³ and failed to meet expectations⁵⁴. As a result, the legitimacy of the IPS as an alternative institution to the CIO has been waning.

Second, the establishment of a central anti-corruption agency such as the KICAC in 2001 took primacy over the creation of the CIO for civil society actors⁵⁵. Putting anti-corruption on the governments' agenda and establishing a first central state-led specialized anti-corruption body was more important at first.

However, the KICAC was reformed, creating the Anti-corruption and Civil Rights Commission (ACRC)⁵⁶. The reform has been perceived as a weakening of the government-led anti-corruption activities by civil society actors⁵⁷. The ACRC was realized despite clear opposition of civil society actors. The altered anti-corruption structures did not correspond to the demands for a strong approach to anti-corruption. Consequently, the reduced independence and new role of the ACRC, decided in a top-down manner as argued by civil society actors, led to a reconsideration of the CIO as a viable institutional alternative.

Against this historical background, the bill for the CIO⁵⁸, which was a desirable policy option for civil society actors since 1996⁵⁹, was successfully introduced to the parliament through legislative fast-track procedure⁶⁰. It was officially approved by the Korean National Assembly through vote⁶¹ on the 30th of December 2019 in the broader contemporary context of the Moon government's anti-corruption and judicial reform efforts.

Chō Han-jung, Ch'oe Yu-jin, Mun Jun-yōng, Research on the Criminal Investigation Body for High-ranking Officials, Seoul 2019, p. 218-219; p.221-222.

53 *Yoon*, note 45, p. 77.

54 *Yoon*, note 45, p. 77-78.

55 The original petition listed the establishment of the CIO as its last item. PSPD, note 46.

56 *Yoon*, note 45, p. 72.

57 PSPD, Panbup'aejōngch'ae'kut'oewa kukkach'ōngnyōmwi p'yejie pandaehanda [Against the regression of anti-corruption policy and the abolition of the KICAC], <http://www.peoplepower21.org/Government/555464> (last accessed on 17 June 2020).

58 At the date of writing (June 2020), no English translation of the statute is available. The discussion of the CIO's institutional design is based on the author's translation from Korean to English.

59 PSPD, [ippōpch'ōngwōn] Pup'aebangjibōp ippōpch'ōngwōn kijahoegyōn [[Legislative petition] Press conference for the Anti-Corruption law petition], <http://www.peoplepower21.org/Government/544443> (last accessed on 14 June 2020).

60 Bills that are introduced per fast-track into the Korean National Assembly are processed in at max. 330 days. The fast-track system was enacted through the National Assembly Advancement Act in 2015. *Ju-yōn I*, What is the fast track in Korea?, <http://www.the-leaders.co.kr/news/articleView.htm?idxno=5628> (last accessed on 14 June 2020).

61 The result of the vote in plenary session was 160:14 in favour (3 abstentions, 176 parliamentarians in attendance). *Saerom Sim, Jōngmin Yun*, Kongsuch'ō ch'ansōng 160p'yo...chikchōn 4+1 'chiyōkku hoekchōng' nontū issōta [160 vote in support of the CIO... Just before the vote, discussion about 4+1 'district demarcation'], <https://news.joins.com/article/23669414> (last accessed on 14 June 2020).

The bill passed despite strong opposition from the conservative Liberty Korea Party, which tried to boycott the vote. However, although the CIO was due to be launched in June 2020, it only started its operation in January 2021. The main reason was the strong rejection by the opposition party, which denounces it as undemocratic⁶² and resisted appointing a Director for the CIO. The next section analyses the initial institutional design of the CIO to put things into perspective. What powers did the CIO have which led to such a controversy?

C. Institutional perspective on the CIO: performance legitimacy building

The prior section suggested that low trust in judicial institutions and a perceived lack of viable anti-corruption alternatives factored into the contested decision to create the CIO. Following the idea that low trust is an indicator for issues related to legitimacy, the article analyses how the original design of the CIO intended to address these problems and recover trust. During time of writing, the legislation on which following analysis is based on was revised. Therefore, for sake of completeness, original and revised CIO are compared in the article's overall conclusion.

The CIO provides performance and process-based legitimacy in two ways. Performance legitimacy is discussed first in the following by adopting an institutionalist perspective. Institutions can be defined as formal or informal rules that enable but also limit human behavior⁶³. Based on this idea, anti-corruption institutions may be defined as a set of rules that enable or limit activities that aim to solve problems of corruption. If the CIO is such an institution, what exactly are its rules?

I. Institutional design: what are the rules?

1. General design⁶⁴

The CIO is an independently operating small-sized organization specializing in investigating and indicting crimes of high-level officials and their families committed during their time in office. Its goal is to improve trust in the public sector and enhance transparency⁶⁵.

62 A recent example is the open letter of opposition published by Chu Ho-yōng (minority floor leader at the Korean National Assembly) in reaction to the installation of the nomination committee on the 28 December 2020, stating that nominating a director for the CIO would “destroy the rule of law” and become a “stain in history”. *U Ch'ōr-hūi*, *Wiwōndūre p'yōnji ponaen Chu Ho-yōng “kongsuch'ōjang immyōng, yōksae omyōng”* [Chu Ho-yōng sent a letter to the committee members, “Appointment of the CIO's director will leave a “stain in history”], https://www.ytn.co.kr/_In/0101_202012280537475043 (last accessed on 28 December 2020).

63 *North*, note 20, p. 3.

64 The analysis is based off the initial legislation of December 2019. Since then, the legislation has been revised. A brief update is given in the concluding section of the article. Instead of pages, the corresponding articles of the law will be cited. To save space, relevant articles will be cited at the beginning of each section detailing the content of the law. National Law Information

As with the National Human Rights Commission of Korea⁶⁶, the CIO is guaranteed independent status by law. It operates outside of executive, legislative, and judicial check and balance structures. This status is granted with the intend to keep potential problems of political capture at bay.

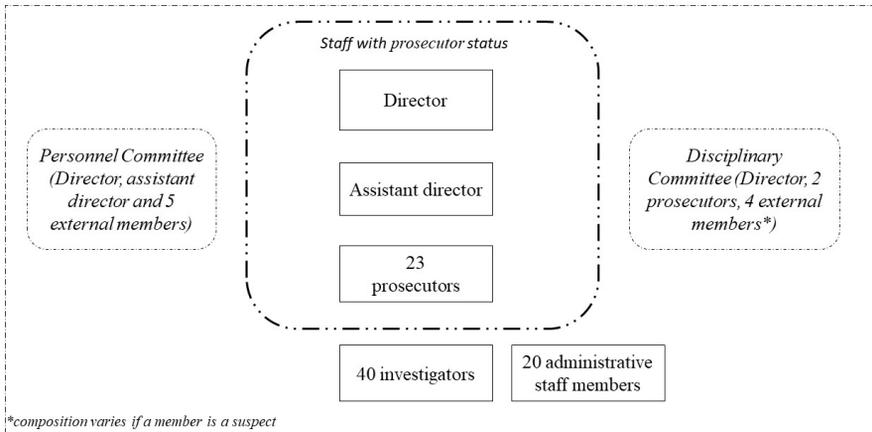


Figure 1⁶⁷

The CIO is essentially composed of a maximum of 85 fixed staff members, from which 25 are prosecutors, 40 investigators and another 20 administrative staff members.

Center (NLC), Kowigongjikchabōmjoesusach'ō sōlch'i mit uyōng-e kwanhan pōmnyul [Act on Establishment and Operation of the CIO], <http://www.law.go.kr/%EB%B2%95%EB%A0%B9/%EA%B3%A0%EC%9C%84%EA%B3%B5%EC%A7%81%EC%9E%90%EB%B2%94%EC%A3%84%EC%88%98%EC%82%AC%EC%B2%98%EC%84%A4%EC%B9%98%EB%B0%8F%EC%9A%B4%EC%98%81%EC%97%90%EA%B4%80%ED%95%9C%EB%B2%95%EB%A5%A0/> (16863;20200114) (last accessed on 14 June 2020), Chapter I, Article 3; Chapter II, Article 4, 8.2, 9, 10.2, 11; Chapter III, Article 17.1, 17.5, 18, 20.1, 20.2; Chapter V, Article 33, 34.1, 34.2.

- 65 This is stated in the “reason for proposal and main contents” section of the original bill. National Assembly Bill Information System (NABIS), [2020029] Kowigongjikchabōmjoesusach'ō sōlch'i mit uyōng-e kwanhan pōmnyuran (Paek Hye-ryōn-üiwōn tūng 12in) [[2020029] Bill on the establishment of the CIO (Legislator Paek Hye-ryōn and other 12 members)], http://likms.assembly.go.kr/bill/billDetail.do?billId=PRC_N1F9Z0X4M2O5L1F8X1M2I5D4X3N3F9 (last accessed on 14 June 2020).
- 66 Independence guaranteed in Article 3.2 of the National Human Rights Commission of Korea Act. KLRI, National Human Rights Commission of Korea Act, http://elaw.klri.re.kr/kor_service/lawView.do?hseq=37724&lang=ENG (last accessed on 14 June 2020).
- 67 The graph is created by the author but is based on the original law text. Inspiration was also taken from simplified schematic representation of the institution provided by the Korean Ministry of Justice. Korean Ministry of Justice (MOJ), Kūgōsi algosip'ōyo 'kongsuch'ō' [I want to know about 'the CIO'], <http://www.moj.go.kr/bbs/moj/189/518478/artelVview.do> (last accessed on 29 December 2020).

The director and assistant director are at the top of the command chain and in charge of managing the CIO. They also investigate as well as possibly indict suspects together with other prosecutors of the same institution. Regular prosecutors of the CIO have the duty to supervise the 40 investigators.

Beside the core structure, two integrated committees exist: the personnel committee and disciplinary committee.

While both the director and assistant director are part of the personnel committee, only the director (if free of disciplinary charges) and other CIO prosecutors take part in the disciplinary committee. Both committees include external members: 5 for the personnel committee and 4 for the disciplinary committee⁶⁸.

Depending on whether the head of the disciplinary committee is a suspect of corruption or not, the director, assistant director or an CIO prosecutor may be designated as the head of the disciplinary committee.

2. Recruitment requirements, process, and tenures⁶⁹

The director, assistant director and prosecutors are appointed for a period of 3 years each. Among them, only the prosecutors can be reappointed a total of three times. The investigators have a longer appointment period of 6 years and can be reappointed indiscriminately. Age restrictions apply to all essential staff members: the director cannot be older than 65 years old while the vice-director and prosecutors cannot surpass 63 years of age and the investigators 60 years of age.

The director and prosecutors are required to go through a committee appointment procedure. In the director's case, a special committee composed of the Minister of Justice, Minister of the National Court Administration, the President of the Korean Bar Association, two representatives of the government's party and two of the opposition is created to select two candidates for the position through a quasi-absolute majority vote (6 out of 7 members have to agree). The two candidates are then presented to the President who in turn selects one candidate out of the two. The final candidate is then screened through a National Assembly appointee hearing and if all requirements are fulfilled, finally appointed to the position of director of the CIO by the President. The director can then recommend a candidate for the position vice-director, which must be appointed by the President. To select prosecutors for the CIO, the internal personnel committee picks potential candidates and recommends them to the President, who appoints them. Investigators are directly appointed by the director of the CIO. This procedure was revised in the current version of the legislation.

68 The external members for the personnel committee are: 1 member designated by the director; 4 members dispatched by the government or opposition parties' parliamentary negotiation body (2 per party). For the disciplinary committee, external members are: 4 members from a law background designated by the head of the disciplinary committee.

69 NLC, note 64, Chapter II, Article 5.1, 5.3, 6.1, 6.4, 6.5, 7.1, 7.3, 8.3, 9.1, 10.1, 10.3.

Recruitment conditions are set especially high for the position of director. Besides age restriction, 15 years of professional experience as either a judge, prosecutor, lawyer, professor of law or public official with a lawyer's licence are required. For the vice-director 10 years of the same professional experience as applies for the director-position are demanded. In the case of prosecutors, they need to have obtained their lawyer's license at least 10 years ago or have 5 years' worth of experience in court or investigation-related work. Only half of appointed prosecutors can have priorly worked as prosecutors. This is to reduce potential influence of the regular Prosecution Office (PO) on the CIO. Applicants that either hold a lawyer's license, are above Grade 7 public officials with experience in investigative work or have gathered five years' worth of relevant investigation experience as defined by the CIO can become investigators.

3. Crimes investigated⁷⁰

The crimes the CIO is in charge of investigating are mostly tied to abuse of office power, such as 'abuse of authority'⁷¹ or 'improper action after acceptance of bribe and subsequent bribery'⁷². Also, popular forms of corruption such as bribery and embezzlement are included and specified in detail. Overall, seven different acts are referred to in the statute of the CIO to define which crimes are to be investigated by the office⁷³.

70 NLC, note 64, Chapter I, Article 2; Chapter IV, Article 23.

71 KLRI, Criminal Act, http://elaw.klri.re.kr/kor_service/lawView.do?hseq=46319&lang=ENG (last accessed on 14 June 2020), Chapter VII, Article 123.

72 KLRI, note 71, Chapter VII, Article 131.

73 These acts are: Criminal Act; Act on Aggravated Punishment etc. of Specific Economic Crimes; Attorney-At-Law Act; Political Funds Act, National Intelligence Service Act; Act on Testimony, Appraisal, etc. before the National Assembly; Act on Regulation and Punishment of Criminal Proceeds Concealment. KLRI, note 71; KLRI, Act on Aggravated Punishment, etc. of Specific Economic Crimes, http://elaw.klri.re.kr/kor_service/lawView.do?hseq=46410&lang=ENG (last accessed on 14 June 2020); KLRI, Attorney-At-Law Act, http://elaw.klri.re.kr/kor_service/lawView.do?hseq=49340&lang=ENG (last accessed on 14 June 2020); KLRI, Political Funds Act, http://elaw.klri.re.kr/kor_service/lawView.do?hseq=44107&lang=ENG (last accessed on 14 June 2020); KLRI, National Intelligence Service Act, http://elaw.klri.re.kr/kor_service/lawView.do?hseq=33396&lang=ENG (last accessed on 14 June 2020); KLRI, Act on Testimony, Appraisal, etc. before the National Assembly, http://elaw.klri.re.kr/kor_service/lawView.do?hseq=48574&lang=ENG (last accessed on 14 June 2020); KLRI, Act on Regulation and Punishment of Criminal Proceeds Concealment, http://elaw.klri.re.kr/kor_service/lawView.do?hseq=33226&lang=ENG (last accessed on 14 June 2020).

4. Target of investigation and investigation and indictment rights⁷⁴:

The central targets of investigations are higher officials, meaning officials that have reached a position tied to a considerable amount of power⁷⁵. Public officials in general⁷⁶, political⁷⁷ and special service⁷⁸ are investigated. For public officials in general service, Grade 3 and above⁷⁹ are counted as higher officials.

All investigations related to priorly stated crimes of higher-level public officials must be reported to the CIO. The Director decides, which cases will be kept, and which transferred to other investigative agencies. Furthermore, the CIO has the obligation to transfer cases that fall outside their jurisdiction to the Supreme Prosecutors' Office.

Investigations can be opened even after retirement of the concerned official. Furthermore, not only higher officials but also their family may become targets of investigation by the CIO.

The next section moves past description and analyses how the CIO enables and/or limits anti-corruption activities in the Korean context.

74 NLC, note 65, Chapter I, Article 2; Chapter IV, Article 23, 24.2, 24.3, 26, 27.

75 In detail, the CIO can investigate following higher officials: the President; the Chairman of the National Assembly and Parliamentarians; Head of the Supreme Court and Supreme Court Judges; Chief Justice and Constitutional Court judges; Prime Minister and political service public officials belonging to the Prime Minister's Secretariat: political service public officials of the National Election Commission; political service public officials from central administrative agencies; Public officials ranked 3 and above of the Presidential Secretariat, National Security Office, Presidential Security Service, National Intelligence Service; political service public officials of the Secretariat of the National Assembly, National Assembly Library, National Assembly Budget Office, and National Assembly Research Service; political service public officials of the Office of the Head of the Supreme Court, Judicial Policy Research Institute, Training Institute for Court Officials and Constitutional Court Secretariat; the Public Prosecutor General; special metropolitan City Mayors, Metropolitan City Mayors, Mayors of Special Self-Governing provinces, Governors, Governors of special self-governing provinces, and Superintendents of education; judges and prosecutors; national police officers as well as police officers ranked superintendent general and above; General/Admiral-grade officers; Director, Deputy Director, Auditor of Financial Supervisory Service; public officials of Grade 3 or higher belonging to the Board of Audit and Inspection, the National Tax Service, the Fair-Trade Commission, the National Tax Service, the Fair-Trade Commission, and the Financial Services Commission.

76 General service public officials are "public officials engaged in public administration, technology, and research". Ministry of Personnel Management (MPM), Fundamental Principles and Classification of Public Officials, <http://www.mpm.go.kr/english/system/publicOfficials/> (last accessed on 14 June 2020).

77 Political service public officials are "public officials who are elected officials or require the approval of the National Assembly to be appointed". MPM, note 76.

78 Special service public officials are "public officials serving as judges, prosecutors, teachers, police and fire-fighting officers [...]". MPM, note 76.

79 In general service, Grade 3-9 exist. Grade 3-4 are equivalent to Division Directors and ranks above equal Deputy Ministers, Directors-General, Ministers and Vice Ministers according to the graph "Public Officials in General Service" provided by the MPM. MPM, note 76.

II. Discussion: why these rules?

1. “Enablement”: New capacities for state-led anti-corruption efforts

The CIO offers new resources for the state-led anti-corruption field, mainly material and institutional. First, the CIO provides a new space for anti-corruption professionals of the criminal procedure to gather, share their expertise and use it to lead investigations and decide upon indictment. This is not a given situation for prosecutors, as most of them are not specialised on corruption cases. Gathering these professionals in one spot aids knowledge exchange. Often, these agencies are embedded in other state institutions⁸⁰, which can make cross-organizational communication and coordination between corruption experts more difficult. An independent workspace enhances efficiency of anti-corruption activities.

Second, the CIO adopts a broad perspective on corruption and moves away from the “corruption as bribery” definition⁸¹. Bribery and corruption are related, but the trend to limit anti-corruption efforts to only bribery has long since been criticized, because it diverts attention away from more pressing issues such as systemic corruption for example⁸². The CIO investigates more than bribery: ‘publication of facts of suspected crime’⁸³, ‘violence and cruel acts’⁸⁴, ‘invalidity of public documents, etc. and destruction of public goods’⁸⁵, and ‘perjury’⁸⁶ during testimonies to the National Assembly are also of interest to the agency. The CIO thus also monitors criminal behaviours that create an environment favourable to corruption⁸⁷ and consequently offers anti-corruption activities a larger space for action.

Third, the agency is also endowed with institutional independence. No other state institution can interfere in the decisions of investigation and indictment of the CIO. Its decisions and actions are guaranteed independence, a first for state-level anti-corruption activities in Korea. Generally, for effective anti-corruption activities, independence is recommended⁸⁸.

80 According to the OECD, multi-purpose agencies, law enforcement type institutions and preventive institutions (referred to here as “independent”) and prevention of corruption by other public institutions (referred to here as “embedded”) exist among specialized anti-corruption institutions. OECD, note 4, p. 13-15; p. 26.

81 UNODC, *The Global Programme Against Corruption*. UN Anti-Corruption Toolkit, Vienna 2004, p. 28-29.

82 United Nations – Office on Drugs and Crime, note 24, p. 20.

83 KLRI, note 71, Chapter VII, Article 126.

84 KLRI, note 71, Chapter VII, Article 125.

85 KLRI, note 71, Chapter VIII, Article 141.

86 KLRI, note 73 (Act on Testimony, Appraisal, etc. before the National Assembly), Article 14.

87 The ACRC for example conducts corruption risk assessments to evaluate whether a law could eventually be “corruption-causing”. ACRC, *Conducting Corruption Risk Assessment (CRA)*, <https://www.acrc.go.kr/en/board.do?command=searchDetail&method=searchList&menuId=0203160304> (last accessed on 30 December 2020).

88 OECD, note 4, p. 12.

The idea is to shield anti-corruption agencies from “political interference”⁸⁹. Furthermore, this institutional design choice seems to reflect the idea that judicial independence lowers corruption⁹⁰ and improves quality of judiciary action.

2. “Limitation”: targeting corruption of the judiciary process

The CIO has a set of clear limitations, created mainly through its personnel management rules and limited indictment power. First and foremost, it is clearly limited by time. This restriction seems contradictory when considering that it is conceived as a permanent institution, but the frequent personnel rotations limit the actual scope of investigations. Corruption is difficult to investigate⁹¹ and gathering evidence takes time. Furthermore, scholars have pointed out that corruption crimes are increasingly occurring on an international level⁹². Successful investigations will thus depend on communication and cooperation between countries in the future. Since information exchange systems for crimes of corruption are still lacking, evidence gathering may be slow due to non-cooperation of institutions located in foreign countries. If access to information is not granted or delayed, the time of an investigation may extend beyond a Director’s tenure. The outcome of the investigations would then largely depend on his successor. If transition of power between Directors does not run smoothly, this could lead to undesired inefficiencies and a waste of resources, putting the legitimacy of the CIO at risk. The Director may opt to manage the scope of investigations in function of his time in office.

Second, the strict professional requirements heavily restrict the pool of potential candidates for the appointment of a Director. The smaller the pool, the less alternatives are available when one candidate is rejected. Appointment decision are thus likely to be slow, as is already the case. Bearing in mind that a new Director must be appointed every three years, the process is guaranteed to turn into a significant obstacle for smooth operation of the CIO. Without a Director, the institution cannot operate, which puts investigations at risk. While the political appointment process guarantees a certain degree of democratic legitimacy necessary for effective action, it also is one of the main limitations for the continuity and success of anti-corruption activities.

Third, the CIO’s broad conceptual understanding of corruption is restricted to higher officials. All its anti-corruption capacities and authorities are tailored to regulate public actors. However, the nexus between public and private has long since been identified as a

89 OECD, note 4, p. 12.

90 *Johann Graf Lambsdorff*, *The institutional economics of corruption and reform. Theory, evidence, and policy*. New York 2007, p. 47-48.

91 Please refer to different accounts by prosecutors and investigative agency leadership published by the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI).

92 *Michael Johnston*, *Cross-border corruption: points of vulnerability and challenges for reform, Corruption and Integrity Improvement Initiatives in Developing Countries 13* (1998), p. 13.

general “hot-spot” for corruption. While corruption of higher officials is a symptom, the real problem with corruption is argued to be of systemic nature⁹³. Officials can be corrupt, but the primary concern of anti-corruption activities is addressing systemic factors that create opportunities for corruption⁹⁴. Bearing this in mind, the establishment of the CIO goes against what may be called a “holistic approach” to the combat corruption. It does not prevent corruption⁹⁵ ante-factum but punishes it post-factum. The CIO’s anti-corruption activities are thus delineated from larger structural reform processes undertaken by comprehensive anti-corruption agencies such as the ACRC.

Finally, the CIO is limited in its ability to indict. It can only take decisive action against some law-enforcement professionals. The “real” targets are therefore the police, judges, and prosecutors. This limitation restrains anti-corruption activities by making independent action only possible for a special category of corruption: corruption of the judiciary process. Why is this particular focus on judicial structures?

D. Challenging the prosecution? Process legitimacy building

This section focuses on process legitimacy. It argues that the state responded to continued public outrage and critique of the judiciary, driven by scandals that impacted perceptions of the integrity of the Korean judicial process negatively, by tackling judicial reforms and creating the CIO.

I. Scandals of judicial integrity

National scandals have highlighted the inefficiency and potential corruption in the judicial structures. These scandals have contributed to a shift in perception of corruption, making solutions such as the CIO⁹⁶ more attractive. Three incidents will be briefly discussed in the following of which the first two were investigated by independent prosecutors. The last case is relevant to the CIO establishment process because it involved the former head of the governmental policy project for the establishment of the agency and wider judicial reforms. All cases provide some evidence on Korean public perception of higher-level pub-

93 *Johnston*, note 5, p. 12-13.

94 Korea has done so in the past by building other anti-corruption institutions like the ACRC, which focused a lot on developing integrity education programs for example, which have a better chance to prevent corruption long-term.

95 However, seeing as its simple existence poses a threat to those that have engaged in corruption, in a way, the CIO also prevents corruption by raising the risk of being caught.

96 Scandalization processes are said to play a role in agenda-setting, which aims to create “consensus on the meanings of problems and the range of acceptable solutions.” *Thomas A. Birkland, Sarah E. DeYoung*, Focusing events and policy windows, in: Eduardo Araral / Scott Fritzen / Michael Howlett / M. Ramesh / Xun Wu (eds.), *Routledge Handbook of Public Policy*, Abingdon and New York 2013, p. 179; 180.

lic official corruption, trustworthiness of prosecutors, as well as independence of criminal investigations.

1. Sponsored prosecutors?

In the 2010 case, prosecutors were suspected of accepting bribes in form of money and “entertainment”. The existence of “sponsored prosecutors” shocked the Korean public⁹⁷ and contributed to the impression that “laws for the rich and laws for the poor”⁹⁸ exist. At first, investigations were conducted by the PO, but lead to no indictments. Later, investigations by the IPS however resulted in the indictment of four prosecutors⁹⁹. Since results of investigation differed, the integrity of the PO was questioned and calls for the establishment of an independent investigative body became more frequent¹⁰⁰. The pressure to reform the PO and judicial structures rose. Radical reforms, however, were not enacted. Instead, the PO received the opportunity to decide over the direction of reform itself and tried to enhance organizational transparency by adding different committees to its structure¹⁰¹. Yet, the efforts did not suffice to restore trust in the PO¹⁰². Furthermore, the scandal contributed to a shift in reform direction undertaken by progressive governments¹⁰³. While before, reforms aimed to purge political influence on judicial structures, judicial structures themselves came to be perceived as problematic after successive cases of corruption committed by prosecutors¹⁰⁴.

2. Supreme Court corruption?

The second scandal that marks a shift in perception is the State Affair Manipulation case of 2016¹⁰⁵. The abuse of power of President Park Geun-hye and her entourage angered

97 *Sök-ku Kang, Ui-gi Sin, Sök-sun Im, Min-gyöng Han, Jöng-yön Kim*, A Study on Exploring Research Issues Regarding Judicial Reform, Seoul 2017, p. 186-187.

98 Yujönmujoje mujönyujoe [With money you are innocent, without, you are guilty] is a popular Korean saying that has often been referred in context of lenient punishment of Korean wealthy elites. It expresses distrust towards public officials. *Kang et al.*, note 97, p. 54-55.

99 *Gyo-hyöng Ku*, Süp'onsö kömsa t'ükköm, Han Süngch'öl chön kömsajang tüng 4 myöng kiso-ro mamuri [Independent Prosecutor's investigation of sponsor prosecutors ended with the indictment of former Chief Prosecutor Süngch'öl Han and 4 others], http://news.khan.co.kr/kh_news/khan_art_view.html?art_id=201009282203055 (last accessed on 18 June 2020).

100 *Pak et al.*, note 52, p. 231; *Ku*, note 99.

101 *Kang et al.*, note 97, p. 5.

102 *Kang et al.*, note 97, p. 4; 99.

103 *Pak et al.*, note 52, p. 219; p. 231.

104 *Pak et al.*, note 52, p. 219-220.

105 *Kang et al.*, note 97, p. 4; 98.

the Korean public and led to her impeachment and incarceration¹⁰⁶. The investigation also revealed that Supreme Court Justice Yang Sung-tae offered to rule in favour of the government and conservative party in exchange for a restructuring of court administration¹⁰⁷. The court until then was viewed as the least corrupt institution because it often ruled in favour of citizens and played a central role in stabilizing democracy after 1987¹⁰⁸. However, the attempt to strike a deal with the president at the expense of justice by a high-ranking judge shook citizens' trust in courts and strengthened the argument that the Korean judicial needed to be reformed. Overall, the case of 2016 cast doubt on trustworthiness and integrity of all public institutions and officials.

3. A corrupt Minister of Justice?

It is the Ministry of Justice and its Minister that staff the PO¹⁰⁹. They must be trusted to choose integrous prosecutors. Otherwise, their legitimacy as representatives of Justice may be threatened.

Around the time the Moon government pushed for judicial reforms and anti-corruption, listing the CIO as one important policy goal, Cho Guk, a close aide to the President working as the head for the Presidential Civil Affair Bureau¹¹⁰, was entrusted with the task. His appointment as future Minister of Justice and eventually first Director of the CIO were rumoured to be under way when scandal broke, accusing him of corruption. Cho Guk and his family were said to have abused their social status to obtain unfair advantages for their daughter's professional career. Allegations of fake internships¹¹¹, undeserved scholarships¹¹² and preferential treatment were reported through media and even led

- 106 *Hannes B. Mosler*, *The Institution of Presidential Impeachment in South Korea, 1992-2017*, *Verfassung in Recht und Übersee* 50 (2017), p. 128-132.
- 107 *Troy Stangarone*, *South Korean Supreme Court Caught in Park Geun-hye Scandal*. A chief justice is accused of influencing politically sensitive trials to impress the Park administration, <https://thediplomat.com/2018/09/south-korean-supreme-court-caught-in-park-geun-hye-scandal/> (last accessed on 18 June 2020).
- 108 *Yoon*, note 45, p. 87-88.
- 109 *Jung-soo Lee*, *The Characteristics of the Korean Prosecution System and the Prosecutor's Direct Investigation*, *United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) Resource Material Series* 53 (1999), p. 85.
- 110 *Jenna Gibson*, *South Korea's Cho Kuk Saga Ends*, <https://thediplomat.com/2019/10/south-koreas-cho-kuk-saga-ends/> (last accessed on 28 December 2020).
- 111 *P'yo T'ae-jun*, *Choguk, ttal int'önhwaginsō chikchōp wijohaetta*" pōbwōndo suyonghan kongsojang [The daughter of Cho Guk faked her own internship certificate" court also accepts the notice for indictment], https://www.chosun.com/site/data/html_dir/2020/08/13/2020081302972.html (last accessed on 28 December 2020).
- 112 *Kim Ji-hye*, '2pōn nakche' choguk ttal, 1200manwōn ūjōnwōn changhakkūm pada 'nollan' [Controversy surrounding Cho Guk's daughter who, despite failing exams twice, still received 12 million won scholarship for medical school]", <https://news.joins.com/article/23555470> (last accessed on 28 December 2020).

to protests expressing displeasure with Cho Guk's 'corrupt' behaviour. Critics questioned how someone potentially corrupt could fathom to be the face of judicial reforms. Even though Cho Guk was eventually appointed to the position of Minister of Justice, he quickly retired to not "burden" President Moon¹¹³. Regardless of whether Cho Guk was guilty or not, perception regarding his integrity mattered to judicial reforms at large and the CIO in particular. The moment Cho Guk lost his perfect record, the projects he oversaw were also at risk. Even though the law for the CIO passed the National Assembly, the first Director of the CIO, Kim Jin-uk, a former legal scholar and constitutional court researcher with work experience as lawyer, judge and special investigator in the IPS¹¹⁴, was appointed only on 21 January 2021¹¹⁵. Cho Guk, who was initially a candidate for the position, needed to retire and the chance for a quick transition from paper to practice was lost.

E. Concluding remarks

Perceived inefficiency of criminal investigations and political influence on prosecutors are problems that lead to a lack of trust in the judicial system and justice itself. Due to history, especially prosecutors' independence and integrity may still be perceived rather negatively in Korea. If scandals such as the ones briefly discussed above add to the perception that the judiciary apparatus is suffering from corruption even after democratization, the creation of anti-corruption institutions may meet demands for more integrity and recover some of citizens' trust if a smooth and successful operation can be guaranteed.

This article described and discussed the newly established CIO rules and surrounding issues. It argued that its creation may enhance state legitimacy in two ways: performance and process-wise. The office is part of state-level anti-corruption structures and is envisaged to contribute to a strengthening of Korean anti-corruption governmental action. On paper, its special status of independence provides material and institutional resources for prosecutors to perform their duties related to investigations and indictment of corruption. Furthermore, this article argued that the establishment of the CIO is the result of a shift in perception of judicial corruption. The corrupt image of the prosecution, present since authoritarian rule and worsening after different corruption scandals, contributed to a reval-

- 113 DongA.com, Choguk, chŏn'gyŏk sat'oe iyu... 'chŏnggwŏn pudam-kajok kot'ong-kŏmgaehyŏk wansŏng' [The reason for Cho Guk's abrupt resignation... 'Burden to the government-family's suffering: completion of prosecutorial reforms'], <https://www.donga.com/news/Society/article/all/20191014/97866920/1> (last accessed on 29 December 2020).
- 114 Newspim, Ch'odae kongsuch'ŏjang chimyŏngdoen kimjinugŭn nugu...p'ansa ch'ul'ssin t'ŭkkŏmsusagwan kyŏngnyŏkto [Who is the nominated first director of the CIO Kim Jin-uk?... Ex-judge and also work experience as a special investigator], <https://www.newspim.com/news/vi/ew/20201230000592> (last accessed on 28 June 2021).
- 115 *Kim Su-hyŏn*, Mun taet'ongnyŏng, Kim Jin-uk ch'odae kongsuch'ŏjang immyŏng...3nyŏn imgi sijak [chonghap] [President Moon designated Kim Jin-uk as the first Director of the CIO ... his term of three years begins now [Integral]], <https://www.hankyung.com/politics/article/2021012151277> (last accessed on 28 June 2021).

uation and eventual adoption of the CIO as a solution to corruption. The CIO is thus a response to citizen's demands to improve judiciary quality and eradicate corruption among its ranks. Furthermore, the case study shows that anti-corruption capacities in general are developed over a long time and politically contested. The CIO showcases this and remains, even after its implementation, a highly contested project. During time of writing the selection committee for the Director of the CIO was delayed, its legislation revised on 10 December 2020¹¹⁶ and a constitutional complaint dismissed by the Constitutional Court on 28 January 2021¹¹⁷. Following table summarizes how the new version of the legislation differs from the original one analysed in this article.

Article. Paragraph	Original	Revision
Article 2.3 (Ba)	Refers to the National Intelligence Service Law (NISL) Article 18 and 19.	Changed to NISL Article 21 and 22.
Article 6.3; 6.5; 6.6; 6.7	Specified the composition of the selection committee for the nomination of the CIO's director and their decision-making process.	Paragraph 5 became paragraph 7 and paragraphs 6, 7 and 8 became 8, 9, 10 in the new version. Two new paragraphs (5 and 6) were added which set a timeframe for the negotiation body to recommend the necessary members for the establishment of the selection committee (10 days; paragraph 5) and define eligible substitutes if the negotiation body fails to recommend members (the director of the Korea Law Professors Association and/or the chairman of the board of the Korean Association of Law Schools, paragraph 6). Decisions are now only taken by 2/3 majority principle.
Article 8.1	Recruitment requirements for prosecutors set to more than 10 years of work experience as a lawyer and more than 5 years of working experience in court and investigation.	Requirements lowered to more than 7 years of work experience as a lawyer.
Article 21.2	Inspectors of the CIO operate on the basis of the Criminal Procedure Code (CPC) Article 196.1.	Now based off the CPC Article 197.1.
Article 30	Article details how the Director of the CIO can submit his veto against another prosecutor's non-indictment decision to corresponding authorities within a certain time-limit if he deems it necessary.	Article taken out

Table 1. Summary of changes made to the legislation establishing the CIO¹¹⁸

- 116 *Yonhap*, Nat'l Assembly passes contentious bill on new investigative organ amid opposition protests, http://www.koreaherald.com/view.php?ud=20201210000872&ACE_SEARCH=1 (last accessed on 28 June 2021).
- 117 Son Hyōn-su, Hōnjae "kongsuch'ōbōp 'haphōn'... kwōllyōkpullip wōnch'ik tūnge wibaedoeji anha" [Constitutional court "CIO 'constitutional' ... Does not violate the principle of separation of power"], <https://www.lawtimes.co.kr/Legal-News/Legal-News-View?serial=167624> (last accessed on 28 June 2021).
- 118 "Original" refers to the legislation analysed in Section C (note 64). "Revision" to the new legislation with the same name: NLC, Kowigongjikchabōmjoesusach'ō sōlch'i mit unyōng-e kwanhhan pōmnyul [Act on Establishment and Operation of the CIO*], <https://www.law.go.kr/LSW//lsLin kProc.do?lsNm=%EA%B3%A0%EC%9C%84%EA%B3%B5%EC%A7%81%EC%9E%90%E>

The majority of revisions aim to simplify the recruitment and selection process of the CIO staff (Article 6 and 8). This is to enable implementation which was delayed mainly due to the opposition party's negotiation body veto and refusal to cooperate. Other revisions are related to the definition of the crime of higher officials (Article 2) and staff's prerogatives (Article 21 and 30). Especially the absence of article 30 seems to be a precaution against eventual future power struggles over the right to indict between CIO and the regular PO. Since the office's establishment is part of structural reforms, it is likely that it will continue to be met with opposition. One of its first cases, namely, the investigation of former prosecutor general Yun Sög-yöl, already announces itself to become highly controversial¹¹⁹.

The CIO alone is not likely to cement the process of reconciliation between new good governance standards and judicial tradition. It is certainly not the one-for-all solution to corruption. However, its creation needs to be understood as the result of a long historical process of adjusting and adapting anti-corruption systems and the judicial system as a whole to new ideals of governance that fit national as well as international criteria. The cases and new records on crimes of corruption that will be generated by the CIO's investigations will certainly inform and change the public's perception of abuse of power by higher officials in Korean context and stimulate future academic discussion.

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119 *Yonhap*, Investigation into ex-top prosecutor still at early stage: CIO chief, http://www.koreaherald.com/view.php?ud=20210617000994&ACE_SEARCH=1 (last accessed on 28 June 2021).