

Bribery & Corruption: A Comparative Study between Malaysia, USA and South Korea

Ahmed Faris Farooq
Research Scholar,
Asia Pacific University of Technology & Innovation
Jalan Teknologi 5
57000 Wilayah Persekutuan Kuala Lumpur,
Malaysia.
f.a.r.i.s.h@outlook.com

Geetha A. Rubasundram
Senior Lecturer,
Asia Pacific University of Technology & Innovation
Jalan Teknologi 5
57000 Wilayah Persekutuan Kuala Lumpur,
Malaysia.
geetha@apu.edu.my

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Abstract

Annually, losses represented from corruption amount to 5% of the global GDP, equivalent to US\$2.6 trillion with bribes exceeding over US\$1 trillion according to UNPRI (2016). This adds up to 10% of the cost of doing business globally and 25% of procurement contracts in developing countries. Infamous cases such as the 1MDB, Park Geun-hye scandal and the colossal Odebrecht scandal rocked the world, reflecting bold movements of unethical activities carried between public-private partnerships. Although these cases represent the tip of the iceberg, it has become critical to undertake stringent steps in monitoring such activities. Political theorists find corruption to be a rather difficult term to define due to the far-reaching impacts of perverting the rule of law and the infinite perspectives of nations. B&C practices have been present for generations and it is highly likely to be present in the future as well if critical measures are not taken. This research posits that each country has its own culture and way of doing things. Factors such as these add to the understanding of B&C practices and impacts within countries. Malaysia, USA and South Korea are three countries that have been selected to be analysed and compared using case laws. This research concludes that a strong leader with integrity can make a nation well governed.

Keywords: Bribery & Corruption, Culture, Institutions, Good Governance.

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I. Introduction

Bribery & Corruption (B&C) has remained a crucial international negative phenomenon regardless of the efforts to banish it. B&C has been a menace since historical times. Historically, it is believed that corruption had existed in

Malaysia prior to the British Colonial with bribery, cronyism and kleptocracy being the more common forms found in Malaysia. However, Malaysia is not alone in this predicament. Prior to the OECD efforts in 1996, many countries still considered B&C as a way of doing business, with

B&C related expenses being tax deductible. Hence, it is not surprising that the results from the efforts to curb this phenomenon has been slow, and possibly discouraging at times.

Countries differ in the types of B&C schemes, the mechanisms to mitigate the risk, the culture and efforts to change the culture to focus on good governance and anti B&C approaches. As an example, countries such as Malaysia, Singapore and Russia are impacted by cronyism (The Economist, 2016) in comparison to South Korea, known for its “elite cartels” that collude corruptly to influence governments and political competitions for personal benefits (Johnston, 2008). These are examples of Grand Corruption. Transparency International (TI) defines Grand Corruption as the abuse of high-level power, benefiting the few at the expense of many and causing serious harm to individuals and society. Grand corruption undermines the development of economic growth affecting investors, reduction of productivity of public expenditures and distorts the allocation of resources.

The general misconception is that B&C impacts developing countries only. However, this has proved to be untrue with many multi-national companies (MNC’s) originating from developed countries have been found guilty of B&C. The key factor remains rooted in opportunity. Many developed countries have stronger anti B&C cultures due to the efforts of global institutions such as the OECD, World Bank, United Nations etc. Some also have strong anti B&C laws which makes it difficult to possibly carry out B&C in their home country, but are able to do so in foreign countries. Hence, this implies the relevance of the window of opportunity especially in economies with low control mechanisms and high growth potential, especially with high budget public-private partnerships.

Governments have long imposed several mechanisms to curb the opportunity. However, once again, the impact is minimal. This raises the

question of why? Could it be that we are tampering with a system that works? Past researchers have implied that there could be positive contributions from B&C towards economies as it is perceived to increase the efficiency of doing business since entrepreneurs can avoid strict and bureaucratic regulations, whilst benefiting government officials (Amundsen, 2006) . However, overall and with stronger justifications, more studies have shown that B&C negatively impacts the development of countries by increasing the cost of doing business as well as other issues. So, then, a logical and rational person would know the negative impact of B&C, and would want to steer away from B&C. However, this is not the case. Another possibility could also be that anti B&C measures should be personalized towards a countries individual characteristics or institutions.

This study refers to Douglass North’s (1990) Institutional Theory for its analysis. Institutions are self-sustaining structures imposed by humans or human interactions, including social interactions which sets the rules of the game in society (North, 1990; Aoki, 2007 and Meijerink, 2011). Institutions can be both formal (legal and constitutional) and informal institutions (cultural and social), and does not necessarily need to be of a positive influence. The cultural perspective is important and relevant, not only as an explanatory factor, but to also include a perspective in the changes of culture based on education and awareness. Culture is known to be a slow moving institution.

Political power abuse in B&C can revamp the rules of the games. A serious concern is when the perpetrators have the power to legitimize the abuse of power due to loopholes in a country’s legal system as the impact of the damages constantly increase and worse, there would be a lack of willingness or inability to implement the Rule of Law by domestic authorities. This increases the gap between morally and legally

right perspectives. An example to differentiate between the moral and legal perspective could be linked to whistleblowing protection. A whistleblower is protected as long as proper channels are followed. However, if there is no follow up from the proper channels, it may mean the end of the road for the whistleblower especially if there is no protection or anonymity. Likewise, if the whistleblower was to go out of the allowed channels, the whistleblower would lose the protection. Past cases would influence a potential whistleblowers mindset and hence that too would set the rule of the game.

Based on previous cases, a mix of factors such as the political environment, culture, anti-B&C laws and the change in government can also impact the rules of the game. The change of government in Malaysia during the last elections resulted in an increased number of investigations against public servants suspected of B&C. However, the Malaysian Anti-Corruption Commission (MACC) has found it challenging to enforce and prosecute cases especially related to the public-private partnership (originating from the public sector) creating a gap between arrests and offenders (Hashim, 2017) due to the secretive, sophisticated and complex systems and connections.

Similarly, South Korea has also reported abuse of power by the government and chaebols. Observers have stated that since the Presidency of Lee Myung-bak began in 2007, South Korea has found itself with weak Anti-B&C enforcement and good governance. In South Korea, the older generation are more open to gift-giving which can be manipulated to become bribery, with the younger generation more willing to report B&C practices. The older generation are aware of international standards and laws and hide beneath an accepted code of conduct. The “elite group” syndrome dominate the political and economy scene, with the flaunting of favoritism and nepotism unashamedly often ignoring public’s criticism regarding elections (Kalinowski & Kim, 2014).

USA has B&C practices such as embezzlement, insider trading, over voicing, price fixation etc. due to corporate greed (Obalade, 2014). Embezzlement and practices on behalf of voting bloc are found as two common forms of B&C practices for personal benefit in USA (Cooper, 2018). In the US, citizens have found that there is an increase in the abuse of power for personal gain since the current President came into power, with 44% of President’s Office and Presidential Officials, 38% of Congress Members and 33% of Government Officials are believed to be corrupt. The comparative study between 2016 and 2017 show there is a 50% increase in the number of critics (Transparency International, 2017).

Therefore based on the variety explored above, this research aims to compare and assess the B&C practices in South Korea, Malaysia and USA. This would include a detailed view of the influence of culture as well as the enforcement and prosecution of cases based on a case law basis.

II. Factors impacting B&C

B&C practices vary in terms of type, mechanism and scope. As an example, the World Bank Group (WBG) defines corruption as the abuse of public office for private gain. Transparency International (TI) defines corruption as the abuse of entrusted power for private gain. Although similar, there is a distinction between private and public office abuse of power. Similarly, some definitions contrast between the receiver and giver, value or benefit exchanged, demand and supply etc. Some research also cross use the term bribery and corruption to indicate the same. Although bribery is a form of corruption, it does not constitute the same. Other forms of corruption include conflicts of interest, illegal gratuities and economic extortion (ACFE, 2018). Transparency International defines bribery as the offering, promising, giving, accepting or soliciting of an advantage as an inducement for an illegal, unethical action that breaches trust.

The Council of Europe differentiates between active and passive bribery. The Criminal Law Convention on Corruption (ETS 173) Article 2 defines active bribery as "the promising, offering or giving by any person, directly or indirectly, of any undue advantage to any of its public officials, for himself or herself or for anyone else, for him or her to act or refrain from acting in the exercise of his or her functions" and Article 3 defines passive bribery as "when committed intentionally, the request or receipt by any public officials, directly or indirectly, of any undue advantage, for himself or herself or for anyone else, or the acceptance of an offer or a promise of such an advantage, to act or refrain from acting in the exercise of his or her functions", reflecting between the parties involved in the demand and supply. Cazzura (2007) echoes this variation using the terms pervasive and arbitrary corruption to denote if the standard rate of corruption is known or uncertain.

The mechanisms of B&C also differ. Schleifer and Vishny (1993) contrast the flow of B&C, giving examples of the possibility of obtaining a passport in USA without paying a bribe since other bribe free windows exist if an official requests for a bribe; bribery does not necessarily indicate a satisfactory outcome as evident in African continents or post-communist Russia; or a standard practice of the distribution of bribes among government bureaucrats (with no further demands on bribery) practiced in monarchy based countries, single mafia dominant or old-communist regimes such as Philippines and France as compared to India, post-communist Russia and African countries where there is no standard rate (consistent with the work of Cazzura, 2007).

The final factor to be discussed in this paper is the influence of culture on the type of B&C. As mentioned in the introduction, prior to the OECD efforts to combatting B&C, countries such as Germany and Japan did allow for B&C

expenditure to be tax-deductible. This implies that it was a way of doing business (i.e. culture is defined as the way things are done). Culture is a prevailing factor across several nations, where in some countries, inequality is even part of their custom which defines the difference between "elite" born and the rest. Bribery could be a custom or courtesy, with the added advantage for swift business transactions (ACRC, 2012). Gift giving is a norm in many cultures such as Malaysia and South Korea. Wolfenbarger's (1990) study on the gift-giving behavior of consumers show that there are three factors of motivation involved; self-interest or presentation of egoism, obeying social norms and pro-social behavior. Another perspective of culture is the acceptance of inequality. Hofstede's (1984, 1991, 2001) popular study on culture reflect that Malaysia has a perfect score of 100 in Power Distance, a measure that reflects the acceptability of inequality depending on the background or elite membership. In contrast, the USA does not support inequality. The UK reflects different perspectives depending on class. Another measure from the Hofstede study is also collectivism versus individualism, which would be relevant towards the loyalty one has to their personal groups versus a more self-centered view (Ting & Ying, 2013).

In Asia and Latin America, high patron-client relationships influence state bureaucracy (Camp, 1996; DaMatta, 1991 and Evers, 1987). In African countries, B&C and dysfunctionality arise due to practices such as "patronage" and "tribalism" which is also defined as "primordial" affection ties (Nuijten & Anders, 2007). Similarly, in Mexico, the coexistence of legal bureaucratic rationalism and personalism promote corruption (Lomnitz-Adler, 1992). This may not necessarily be tied to an individual, and could be linked within firms as well. These personal relationships, mutual support and flexibility could create unjust working patterns, which at times, could also appear legal such as lobbying, political donations

and others (Kaufmann & Vicente, 2005), often at a social cost. Consequences of such actions however lead to manipulated, weak institutions, bad governance and lack of transparency and accountability, unfair elections etc. (Amundsen, 2006).

B&C is perceived as an institutionalized phenomenon which is embedded within the matrix of society's power relations. Nuijten and Anders (2007) reflect this in "Corruption and the Secret of Law", to reflect the taboo within the law, hidden connections between morality and B&C practices. The enforcement of B&C penalties is weak. Corrupt officials often go unpunished due to collaboration and an unethical culture (Schleifer

& Vishny, 1993). Law and corruption are constitutive, and one cannot exist without the other, creating avoidance in changes of dualism between legality and illegality, transparency and secrecy (Nuijten & Anders, 2007). Law is closely related to political power (North, 2009), enforced privileges, developed capitalist democracies and extended citizen's rights (Faundez, 2016). This comes back to the Rule of Law or the lack of it. In developing countries, although this could see increased rights for foreign investors or elite, it could also signify a violation of the rights of the poor (Faundez, 2016). Therefore, it is important to assess a country's perception towards these factors when assessing the impact on B&C.

III. Research Methodology

This qualitative research is based on the extraction of information from four case laws as per Table 1 below.

Case	Source
The impeachment of Park Geun-hye (PGH)	Constitutional Court of South Korea http://english.ccourt.go.kr/cckhome/eng/index.do
Lim Guan Eng v Pendakwa Raya; (LGE)	OFFICE OF THE CHIEF REGISTRAR FEDERAL COURT OF MALAYSIA http://www.kehakiman.gov.my/
Khir Toyo v Pendakwa Raya (KT)	OFFICE OF THE CHIEF REGISTRAR FEDERAL COURT OF MALAYSIA http://www.kehakiman.gov.my/
USA v Odebrecht (OD)	- US Justice Department https://www.justice.gov/

Table 1: Source of case law

The cases would be analysed based on the type of B&C, in line with the influence of culture and good governance. Cultural measurement has been adopted from the work of Hofstede and Good Governance from the World Governance Indicators. The analysis would also compare against the level of penalty and whether it reflects the Rule of Law.

IV. Findings& Discussion

In both the Malaysian case laws, there is a similarity in the B&C mechanism involved. An

abuse of power was noted, with a both direct and indirect influence peddling present since both cases involved high ranking officials and below market value price. In the case of Khir Toyo (KT), this was requested by KT (the buyer) and in the case of Lim Guan Eng (LGE), this was offered by the seller in an arm's length transaction basis. KT, on the other hand, had insinuations that it was not at arm's length, since the seller provided conflicting statements on this. The case of KT had

many conflicting statements from both KT and the seller. There was a form of extortion since the seller was supposedly afraid of not complying to KT's demands. In LGE, the seller was a director of a firm and a close family friend. This implies a related party transaction (bordering on conflict of interest) and possible favoritism.

The South Korea case of Park Geun-hye's (PGH), influence peddling and abuse of power can be seen at a more extensive level. The charges included bribery, abuse of power, clientelism, favoritism, extortion etc. Some of the abuse of power included the leakage of confidential information, involvement and appointment of relatives and close acquaintances and suppression of media. There was also indications of lobbying and extortion of funds utilizing corporations and preferential treatment.

The Odebrecht (OD) scandal is a large grand corruption case involving politicians from twelve countries. OD was the bribe payer, in contrast to the earlier three cases. OD had created two

systems which were significantly important in the case, that were used for communication, payments and tracking between conspirators. The operations was complex, reaching up to four levels to launder funds using international accounts. OD employees met with co-conspirators to plan and move the proceeds in lieu of the illegal acts. The money which was distributed and stayed off book were generated through methods such as standing overhead charges from subsidiaries, overcharging from legitimate services provided and subcontractors that were not included in project budgets, retainers that were not declared, purchase company assets' success fees, self-insurance, self-guarantee transactions etc. Working closely with financial institutions and operators, OD employees would visit the required countries with beneficiaries to open accounts. The institutions would be rewarded with a percentage of the proceeds in exchange for their cooperation and silence. Majority of these institutions were small or with weak regulatory enforcement.

Table 2: World Governance Indicators from 2015 to 2017 – Voice and Accountability and Political Stability & Absence of Violence

Countries	Voice and Accountability				Political Stability & Absence of Violence			
Malaysia		2017	2016	2015		2017	2016	2015
	Estimate	-0.40	-0.42	-0.39	Estimate	0.16	0.14	0.26
	StdErr	0.13	0.13	0.13	StdErr	0.21	0.20	0.20
	NumSrc	13.00	13.00	13.00	NumSrc	9.00	9.00	9.00
	Rank	34.48	33.99	33.99	Rank	52.38	49.52	56.67
	Lower	30.54	29.56	28.57	Lower	39.52	38.10	43.33
	Upper	40.39	39.41	40.89	Upper	63.81	61.90	64.29

USA		2017	2016	2015			2017	2016	2015	
	Estimate	1.05	1.11	1.11		Estimate	0.30	0.40	0.68	
	StdErr	0.14	0.14	0.14		StdErr	0.21	0.20	0.20	
	NumSrc	12.00	12.00	12.00		NumSrc	9.00	9.00	9.00	
	Rank	82.27	84.24	84.24		Rank	59.05	59.52	67.14	
	Lower	73.89	74.88	73.89		Lower	44.29	48.57	58.10	
	Upper	90.15	93.60	92.61		Upper	68.10	71.90	84.76	
South Korea		2017	2016	2015			2017	2016	2015	
	Estimate	0.74	0.64	0.63		Estimate	0.29	0.16	0.16	
	StdErr	0.13	0.13	0.13		StdErr	0.21	0.20	0.20	
	NumSrc	12.00	12.00	12.00		NumSrc	9.00	9.00	9.00	
	Rank	71.43	68.47	69.46		Rank	58.57	52.38	53.81	
	Lower	65.52	61.08	60.10		Lower	42.38	38.57	40.48	
	Upper	76.35	74.38	72.91		Upper	67.62	62.38	60.95	

Table 2 reflects two dimensions of the World Governance Indicators – Voice and Accountability (VA) as well as the Political Stability and Absence of Violence/Terrorism (PSAVT). Malaysia reflects a slight improvement

for both dimensions in 2017, however a huge drop was noted for PSAVT from 2015 to 2017. For USA, there was a drop for VA and PSAVT over the three years. Only South Korea indicated an increase for both components.

Countries	Rule of Law				Control of Corruption			
Malaysia		2017	2016	2015		2017	2016	2015
	Estimate	0.41	0.50	0.50	Estimate	0.03	0.10	0.24
	StdErr	0.16	0.16	0.14	StdErr	0.12	0.13	0.12
	NumSrc	12.00	13.00	14.00	NumSrc	13.00	14.00	14.00
	Rank	64.90	69.23	68.75	Rank	58.17	60.10	63.46
	Lower	59.62	59.62	63.94	Lower	49.52	53.85	58.17
	Upper	75.48	75.96	75.00	Upper	62.50	65.38	67.31
USA		2017	2016	2015		2017	2016	2015
	Estimate	1.64	1.62	1.60	Estimate	1.38	1.37	1.40
	StdErr	0.16	0.17	0.16	StdErr	0.13	0.14	0.13
	NumSrc	11.00	11.00	12.00	NumSrc	11.00	11.00	12.00
	Rank	91.83	91.35	90.38	Rank	88.94	89.90	89.90
	Lower	88.46	87.50	86.54	Lower	83.17	83.17	87.17
	Upper	97.60	97.12	96.15	Upper	91.83	92.31	91.83
South Korea		2017	2016	2015		2017	2016	2015
	Estimate	1.16	1.16	0.93	Estimate	0.48	0.46	0.37
	StdErr	0.16	0.17	0.16	StdErr	0.12	0.14	0.13
	NumSrc	11.00	11.00	12.00	NumSrc	12.00	12.00	12.00
	Rank	85.58	86.06	80.29	Rank	67.79	67.31	66.83
	Lower	79.81	79.81	74.04	Lower	64.42	63.94	61.54
	Upper	88.46	89.42	85.10	Upper	74.52	73.56	69.71

Table 3: World Governance Indicators from 2015 to 2017 – Rule of Law and Control of Corruption

Table 3 reflects the Rule of Law and Control of Corruption from the World Governance Indicators

(WGI). Malaysia noted a drop for both components with South Korea reporting an increase for both components. USA noted a drop in the control of corruption but increased slightly in the Rule of Law.

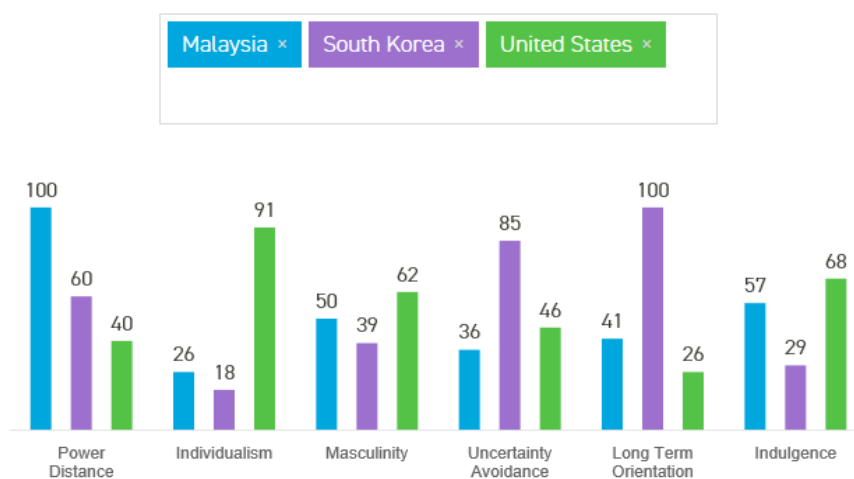


Figure 1: Hofstede Cultural Dimension

Power Distance measures the level of acceptance of inequality. Malaysia scores a perfect 100, with both South Korea and USA trailing at 60 and 40. The measure of individualism (as contrary to collectivism) reflects as a highly individualistic country as compared to both South Korea and Malaysia reflecting a more collectivist society. It is interesting to note that South Korea scores high in Uncertainty Avoidance and Long Term Orientation, implying that this is a society that plans ahead.

The Power Distance score explains that Malaysians are accepting of the hierarchal order and does not try to stand out of the crowd by voicing out. The citizens tend to lookout for each other based on the loyalty of relationships or bonds made between each other. This can also be seen from the case as well where there was previous connection between each dealing party of the schemes. But this also shows that the control of corruption may have gone lower due to such actions until the new government took over which has put more effort in seeking out B&C practices and guilty parties. The Insights also show that Malaysian culture is rather relaxed which also could be a factor that has resulted in the ineffectiveness of control and increase in B&C practices within the economy.

USA reports a negative perspective towards the hierarchal order which also can be related to the negative perspective that is held towards the new government due to the way it is practiced, and the parties involved. USA citizens tend to work for

themselves, stand out of the crowd and look after their closely related connections which can also be, in a sense, seen from the case. The scheme was carried out for their benefit while looking after the banks and politicians that were closely related to them that provided benefits in one way or another. The citizens also has strong ideas regarding “good” and “evil” which can be a result of the complex activities that are carried out in the economy. Despite the acceptance towards new ideas or innovations, the citizens are not accepting of illegal practices, although such new innovations or ideas are even used within the scheme. However, based on the scheme and the conspirators, the new ideas and innovations used within the schemes were acceptable for the parties involved.

Despite the societal acceptance toward hierarchy to some extent, South Korean citizens tend to look after one another as a collectivist society. WGI shows that within the years South Korea has increased and it can be closely related to CPI as well. In 2018 South Korea did reach the highest rank they have in comparison to 2016 and 2017 whereas according to WGI as well, consistent strive for improvement is present. However, one thing that is present in the society of South Korea is their culture of gift giving. This can be done as a thank you or respect or efficient transactions based on studies. This also can be related to how they are a collectivist society, which shows that they have respect for each other in regard for favors done. However, this can result in an increase of bribery within society.

Table 4: Penalties

Malaysi a	Khir Toyo v Pendakwa Raya (Appeal Case)	- Section 165 of Penal Code - Section 42(3) of ACA 1997 - Section 36(1) read with Section 56 and Section 2 of ACA 1997	Guilt y	12 months imprisonme nt And forfeiture of property
Malaysi	Lim Guan	-Section 24 of MACC Act	Not	Dropped -

a	Eng v Pendakwa Raya Phang Li Koon v Pendakwa Raya (Appeal Case)	-Section 165 of Penal code -Section 62 (challenged under infringement of Article 5(1) and Article 8(1) of Federal Constitution (dismissed by court)	Guilt y	Lack of evidence
USA	US v Odebrecht SA	-18U.S.C. 371 -3551 et seq. (15U.S.C. 78dd-3)	Guilt y	Fine of \$93 million
South Korea	Park Geun-hye Impeachment	http://english.court.go.kr/cckhome/eng/decisions/majordecisions/majorDetail.do#none - 5 Counts of Violation of Constitution - 4 Counts of Violation of Law	Guilt y	Removed from Office

In three of the cases, the perpetrators were found guilty. The penalties seemed appropriate in terms of the weightage of the type of crime. It is interesting to note that amongst the three countries, South Korea seems to be putting in the most amount of effort to achieve a more transparent system. This can be seen by its improvement in ranking as well as the penalty of removing the official from office. Considering that there was sufficient power for the official to stay in power, the rule of law still took precedence. A strong contributing factor for all three countries was the change in leadership. This implies a strong influential person can make or break the efforts to move forward, regardless of the culture. A good example would be the reports from USA, which implies a fallback in good governance and transparency, even from its own citizens.

V. Conclusion

There seems to be a change in the way the three countries have developed in terms of their B&C mitigation. South Korea seems to be the most promising in terms of the improved ratings and stronger penalties. USA although being a developed nation seems to show a slow-down and this is reflected in its rankings too. Malaysia has

to take stronger steps to move forward in its bid to become more transparent. However, the rule of law seems to be persistent in all three countries based on the fairness of the judiciary system. B&C is highly unacceptable in any culture unless they are already present within the culture as a norm. Culture plays a vital role in what kind of B&C practice that becomes prominent in a society. However, at the same time B&C negatively effects how the culture progresses and how the economy works in a both societal and global perspective. In order to combat corruption, the levels and mechanisms of B&C practices should be understood. Additionally, the cultural works of a society also must be understood in order to know how the ideology works, which would create an understanding of how the improvements for combating efforts to proceed. Several countries in the modern time are consistently improving on their laws and reforms regarding combatting corruption, however, a permanent solution is still far-fetched. Despite the constant evolution in efforts and laws, B&C practices will also evolve. However, culturally, B&C practices can be set aside in regard of legal issues, as especially some actions are still deemed legal though unethical.

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