

Kuwait Transparency Conference

13-17 Jan., 2007



*His Highness
Sheik Sabah Al-Ahamad Al-Jaber Al-Sabah
Amir of Kuwait*

Index

	Introduction	6
First: Opening Ceremony		7
	Speech of His Highness Sheikh Sabah Al-Ahmed Al-Jaber Al-Sabah, Amir of State of Kuwait, delivered on his behalf by His Excellency Sheikh Sabah Khaled Al-Hamad Al-Sabah, Minister of Social Affairs & Labour.	8
	Speech of Mr. Salah Mohamed Al-Ghazali, Chairman of KTC Higher Organizing Committee, and Chairman of Kuwait Transparency Society (KTS).	10
	Speech of Mr. David Nussbaum, Chief Executive of Transparency International.	13
	Speech of Prof. Johann Graf Lambsdorff, Corruption Perceptions Index (CPI) Delegate.	15
Second: Public Sessions		21
	First Session: “United Nations Convention Against Corruption” (UNCAC) on the Importance of Signing & Subsequent Obligations.	22
	Miss. Lylian Ekeanyanwu – Coalition Not Corruption, Nigeria	22
	Mr. Nasser Jasem Al-Sanei, Deputy Chairman of GOPAC	30
	Second Session: “Freedom of Information Law” Essential or Inessential?	36
	Dr. Azmi Al-Shueibi, General Coordinator of Coalition for Accountability & Integrity “Aman” – Palestine.	36
	Miss. Sofi Redmond, Article 19, Global Campaign for Freedom of Expression, UK.	39
	Third Session: “National Anti-Corruption Strategy” a Map for State Reform	44
	Mr. Mishari Al-Anjary, Member of National Assembly, Kuwait.	44
	Mr. Omar Dhafer Sheikh, Deputy of Public Accountant, Public Accountant Office for Returns of Pakistan.	46
	Miss. Efalina Yeim, Independent Delegate for Fighting Corruption, Hong Kong.	52
	Fourth Session: “Administrative Supervisory Authority” & Its Role in Fighting Administrative Corruption.	64
	Mr. Sami Abo Al-Nour Abdul Moneim, Senior Representative of Administrative Supervisory Authority, Egypt.	64
	Mr. Abdel Aziz Al-Sareawi, Member of National Assembly, Kuwait	81
	Fifth Session: “Anti-Corruption Authority” the Protective Armor Against Financial Corruption	86
	Mr. Mouk Wahoi, Chairman of Corruption Prevention Group, Independent Delegate of Fighting Corruption, Hong Kong.	86
	Mr. Shadi Al-Khori, Investigation Delegate, Lebanon.	94
	Mr. Ahmed Al-Melaifi, Member of National Assembly, Kuwait.	105
	Sixth Session: Private-Public Partnerships PPP	109
	His Excellency Mr. Bader Al-Humedi, Minister of Finance, Kuwait.	109
	Mr. Faisal Al-Ali Al-Mutawae, Chairman of Bayan Investment Co., Kuwait.	115
	Mr. Ahmed Yacob Baqer Al-Abdullah, Head of Financial Committee at National Assembly, Kuwait.	120
Third: Recommendations		127
	Organizers	130



Introduction

Kuwait Transparency Society (KTS) in cooperation with Transparency International (TI) have organized "Kuwait Transparency Conference KTC" during 13-17 January 2007, under the patronage of His Excellence Sheikh Sabah Al-Ahmed Al-Sabah, Amir of the State of Kuwait, may Allah bless him.

The following topics come on KTC Agenda:

First	: Workshops	On Saturday-Sunday 13-14 Jan. 2007 at the Arab Planning Institute.
Second	: Public Sessions	On Monday-Tuesday 15-16 Jan. 2007 at Sheraton Hotel, Kuwait.
Third	: Regional Meeting of Transparency International	On Wednesday, 17 Jan. 2007 at the Arab Fund for Economic & Social Development.

The main objective of the KTC is "To improve Kuwait's rating in the Corruption Perceptions Index (CPI) - Annual". Additional objectives of the KTC are as follows:

1. Formulate a national consensus for fighting corruption and support transparency and anti-corruption among three Kuwaiti sectors: legislative, executive, and civil community.
2. Develop transparency among corporations and individuals.
3. Transfer successful and international experiences to the State of Kuwait in order to reinforce transparency and to fight corruption.
4. Offer specialized and scientific studies in the subject of the conference, suitable to Kuwaiti environment.
5. Reinforce bilateral relations between Kuwait Transparency Society, Transparency International, and similar organizations in the Arab World and internationally.
6. Knowledge gathering for Kuwaitis and other transparency and anti-corruption activities.

To generalize benefit, we have prepared this book that is composed of:

- Opening Ceremony
- KTC Public Sessions
- Recommendations at the local level
- KTC Photo Gallery
- Organizers

On the occasion of issuing this book, I would like to express my thankfulness and gratitude to all corporations and individuals who have provided the material and moral support to KTS in general and Kuwait Transparency Conference in particular, headed by his Highness Sheikh Sabah Al-Ahmed Al-Jaber Al-Sabah, Amir of the State of Kuwait, may Allah bless him, Speakers, Sponsors, Transparency International, and members of the KTC Higher Organizing Committee and other related committees.

We do hope these useful activities will take place again and again as they provide all forms of support to the development of our societies.

Salah Mohamed Al-Ghazali
Chairman of Higher Organizing Committee



1st

Opening Ceremony



Speech Delivered By

**His Highness Sheikh Sabah Al-Ahmed Al-Jaber Al-Sabah, Amir of
the State of Kuwait, May Allah Bless Him,**

**Speech Delivered On His Behalf By
His Excellency Sheikh Sabah Khaled Al-Hamad Al-Sabah,
Minister of Social Affairs and Labour**

In the Name of Allah, the Beneficent, the Merciful

Messrs: Representatives of Transparency International,

Messrs: Representatives of National Transparency Organizations in the Sister And Friendly States,

Dear :Ladies and Gentlemen,

Peace Be Upon You,

On behalf of His Highness Sheikh Sabah Al-Ahmed Al-Jaber Al-Sabah - Amir of the State of Kuwait, may Allah bless him- and on my own behalf, I have the pleasure to welcome you at the Kuwait Transparency Conference organized by KTS in cooperation with Transparency International.

I am also pleased to welcome all guests from the Civil Society organizations who have dedicated themselves to set up the values of transparency and combat corruption in the sister and friendly states.

Government of Kuwait has taken several and fast strides in the different reformation aspects; namely, the political reform which has been dynamically launched since the last year, in addition to the economic and administrative reforms. Government of Kuwait will keep on until the tangible results of this serious trend by Government are achieved.

As far as the "United Nations Convention Against Corruption (UNCAC)" conference held in December 2006 in the Hashemite Kingdom of Jordan is concerned, I would like to note that State of Kuwait was among the earliest states that signed this agreement since it was developed by the United Nations in 2003. Moreover, this agreement was approved by the National Assembly in November 2006. As there are many obligations arising out of signing this agreement, Kuwaiti Government is determined to honor such obligations in the near future as it recognizes the significance of such obligations for the national reform.

As the Kuwaiti Government encourages the Civil Society to play its role in the national reform, KTS was established in March 2006 to mark a major step ahead. Kuwaiti Government will constantly

support the Civil Society in general and KTS in particular to help them perform their significant role in combating corruption and achieving the aspired reform.

Our support to this conference organized by an active corporation of the Civil Society in the State of Kuwait expresses our firm belief in this role by societies. We will follow up the KTC results and recommendations which will be developed by all of you. We would like also to stress the importance of cooperation with Transparency International and KTS, its local partner, to achieve the aspired reform and combat corruption.

After review of KTC agenda and participants from inside and outside the State of Kuwait , I do believe that we will listen to many international and local experiences and experiments, hoping all of this will enhance our constant endeavors to achieve reform, combat corruption, and improve Kuwait's CPI rating.

In conclusion, I would like to welcome again the representatives of Transparency International in particular, our guests in general, and all parties giving priority to the reformation issues to achieve the best for their nations.

All thanks to KTS for organizing this conference.
Best Regards,



Speech Delivered By

Mr. Salah Mohamed Al-Ghazali **Chairman of KTC Higher Organizing Committee** **Chairman of KTS**

- o **His Highness Sheikh Sabah Al-Ahmed Al-Sabah, Amir of the State of Kuwait,**
- o **His Excellence Sheikh Sabah Al-Khaled Al-Sabah, Minister of Social Affairs & Labour,**
- o **Dear Mr. David Nussbaum, Chief Executive of Transparency International,**
- o **Messrs. Transparency International Board Directors,**
- o **Valued guests of KTC from friendly and sisterly states,**
- o **Dear Ladies and Gentlemen,**

Peace Be Upon You,

KTC marks the onset of a new juncture for enhancing transparency and combating corruption in the State of Kuwait; a juncture at the level of a new era for the State; a juncture at the level of a new role by the Civil Society supported by all constituents of the society; and a juncture at the level of Transparency International which will save no effort to enhance transparency in the State of Kuwait in cooperation with KTS.

Civil Society's participation in the reform process in general and in the reinforcement of transparency and combat of corruption in particular, plays a major role in achieving renaissance and development for the different countries worldwide. We would like to extend our thankfulness and appreciation to stakeholders of Transparency International which was established in Federal Republic of Germany in 1993 and had a major and significant role in the reinforcement of transparency in different countries over the world. We would like to express our deep appreciation for Mr. Peter Aigen, Former Founder and President of Transparency International who took over his position from 1993 to 2005, and to wish his Canadian successor Mrs. Hoget Labil the best of luck so that Transparency International efforts can be echoed worldwide, noting that Transparency International partners are more than 90 states including Arab States such as Morocco, Palestine, Lebanon, Algeria, Jordan, Bahrain, Egypt, Yemen, Iraq, etc... We wish also that Transparency International will get more and more partners from the remaining Arab States; namely, GCC States.

Ladies and Gentlemen,

Our policy is to back reform, support all other factors that reinforce it, and fight corruption and all other factors that may cause it to prevail, regardless of individuals. We are committed to take the necessary legal proceedings against all forms of corruption that may exist in the legislative and executive powers and in all aspects of life in an attempt to represent the Civil Society in its endeavors aiming to achieving reform in the State of Kuwait.

We, in KTS, aspire for reinforcing transparency and fighting corruption in the coming few days through a multi-lateral cooperation between the Executive Power represented by all governmental entities, the Legislative Power represented by all National Assembly Members, and the Judiciary

Power which is the honest guard on the constitutional and legal identity of the State. We should not forget the fourth authority “Kuwaiti Media” whether public or private, which plays a major role in supporting the reform process. We have sequenced the Executive Power first, since it plays the largest role in this hard mission. It is required to meet our reform requirements, review our scientific studies and researches, and accept our participation in reinforcing transparency and fighting corruption in all aspects of life.

The first step towards achieving the national reform and combating corruption is to confess that there is corruption. Critical to note is that Kuwait is rated number 46 among the 163 states surveyed for 2006 Corruption Perceptions Index (CPI), number 5 among 6 GCC states, and number 6 among 19 Arab States. In addition, Kuwait has scored 4.8 out of 10 points, which denotes that CPI in Kuwait is not promising, so we need to exert huge, constant efforts to improve our performance and be situated among the developed countries worldwide.

Frankly and transparently speaking, fighting corruption at its current level can not be delayed any more, existence and non-existence of corruption is not an issue for argument, and compliments to each other will not be useful any more, since the issue is related to the progress and development of Kuwait. So, any factors that may hinder the State’s progress must be strongly eliminated, since corruption not only poses a threat to development, but to the State as well.

As Kuwait is pursuing its endeavors for fighting corruption, a national strategy should be developed and implemented by all constituents of the State including the Executive, Legislative, and Judiciary Powers, Civil Society, Private Sector, and free Media. This can not be achieved, unless the issue has become a point of interest at the highest levels of the State.

In fact, Kuwait’s acceptance to be a party of the UNCAC puts Kuwait on the right track towards achieving the aspired national reform. We hope that the Executive Power assisted by the Legislative Power will instantly perform all UNCAC obligations; namely, the formation of one or more anti-corruption authorities according to UNCAC. So, we have to take fast strides towards the establishment of an “Anti-Corruption Authority” for combating financial corruption and “Administrative Supervisory Authority” for combating administrative corruption in the governmental institutions.

Enforceability of Financial Status Statement Law on the State’s officials is crucial for combating financial, administrative, and even political corruption. Regulations related to the State’s domains and State’s purchases should be revised and updated in a manner that maintains public funds from plunder and illegal profit-making. This is intended to maintain integrity of Kuwait and let it to live long!

From the “preventive” perspective, we propose that the Executive Power will request governmental education institutions to teach students the concept of reform, transparency reinforcement, and combating of corruption. In addition, we hope that Ministry of Information will be requested to assist in combating all forms of corruption through the news programs and television production.

Given that the financial violations and inconsistencies are most likely related to the State’s purchases, we have formed a work group to examine possibility of “Reinforcement of Transparency in Governmental Tenders” to ensure that “Central Tenders Committee (CTC)” activities are defect free and to probe CTC response to the latest developments. We hope that State’s competent authorities will take this Civil Society’s view into consideration.



As a State, we have to ensure that the Kuwaiti Judiciary Authority will serve as a strong fortress and safe shelter against any financial or administrative violations that may be made by any party whosoever. We have to give it all powers that ensure compliance with its regulations, quick and non-routine implementation of its procedures, and easy access to it, and that protects it from those who would like to abuse its powers. Officials who were guilty of doing corrupt practices, misusing the public funds, or harming the administrative interests of the State must be put on trail before court and punished so that they become an example for others. This in fact will protect dignity of the State, support law enforcement, ensure all people will be dealt equally under law, and let people know their rights and obligations.

As a Civil Society, we are dissatisfied with the abuse of power for personal interests inside the Parliament. Instead of supervising the governmental performance, Kuwaiti Parliament is in need of a popular supervision on the performance of its members. We are addressing the sincere officials in the Legislative Power - and surely they represent the majority- to promulgate laws and legislations that prevent abuse of power for personal or group interests to achieve the best for the State.

In conclusion, I would like to express KTS's and KTC Higher Organizing Committee's thankfulness and appreciation for His Highness Sheikh Sabah Al-Ahmed Al-Jaber Al-Sabah, Amir of the State of Kuwait, for his sponsorship for this conference, for His Excellence Sheikh Sabah Al-Khaled Al-Sabah, Minister of Social Affairs and Labour for attending in person, and for Transparency International for participation in this national effort. I would like also to express my thanks and appreciation to all entities that provided the material sponsorship for this conference, and to all members of the Higher Organizing Committee and other related committees.

Best Regards,

Speech Mr. David Nussbaum,

Chief Executive of Transparency International.

Your Excellencies,
Dear Ladies and Gentlemen,

I am honoured to speak in front of this audience today. The fact you are all present, including the representative of His Highness, underlines the importance of this conference and the centrality of our cause. I thank you for sharing your views with us, and for entering into this dialogue with all partners involved, from civil society, private sector and state institutions.

For Transparency International, this conference is an opportunity to meet various players from Kuwait and other Gulf countries and address the issue of how most efficiently we can all join together to fight corruption. Let me thank Mr Al-Ghazali and our colleagues from Kuwait Transparency Society for having taken the initiative a couple of months ago, and for making this conference a reality.

The main aim of the conference is to discuss strategies how best to fight corruption in a country like Kuwait. If such strategies are implemented, it is possible for the rating of Kuwait in TI's Corruption Perception Index to improve, given that reform should lead to lower levels of corruption, and so to better perceptions. Many of you have participated in the seminar by Johann Graf Lambsdorff yesterday, so I will not go into the methodology.

TI's approach underlines the need for comprehensive strategies: We call this the National Integrity System (NIS), which outlines a framework of various "pillars" of society which need to function in themselves, and in relation to each other, to create a building bloc against corruption. These pillars include the legislative, the judiciary, the executive, media, and civil society, among other institutions. This emphasises that all actors of society need to be involved. Against this background, this conference is exemplary in bringing together players and activities from all these areas, as well as international and regional experts, and our TI colleagues from Algeria, Bahrain, Jordan, Lebanon, Morocco, Palestine.

So, I am delighted to have TI partners from the MENA region, and particularly pleased to have representatives from TI Chapters in Nigeria and South Africa here. The sharing of experience of how other civil society groups, parliamentarians, youths and others can promote transparency efforts is key.

This Conference comes at a moment where there is great momentum in the fight against corruption, both nationally, but also internationally: Kuwait ratified the UN Convention against Corruption recently, as the seventh country in the Arab region, and I congratulate you on this act of political will to fight corruption. I would be pleased if you conveyed my congratulations to His Highness. Internationally, Members States to the UNCAC gathered for the first time at the Conference of States Parties to the UNCAC last December at the Dead Sea in Jordan to design the way forward in the international fight against corruption. I will talk more about this in the next session.

I was at that UN conference just a few weeks ago. I was struck by the views of almost all participants there that civil society is crucial in the fight against corruption. Several dozen civil society organisations from all over the world, including Kuwait Transparency Society, were at the Dead Sea as "observers" – but actually mainly as partners in discussing solutions. Their experience



of the anti-corruption struggle in their country, and their passion for the cause, inspired the governments and led to better results! Future progress will rely on further joint work.

I underline “joint” as a key message for every country and, particularly, Kuwait. Of course, governments implement reforms, they draft laws, and it is not the place of civil society to do this. However, effective anti-corruption work involves raising of awareness of the problem, providing expertise and input on reform process, playing the “watchdog” so that these reforms are put into place. Civil society is basically a partner in reform, amongst others. Cooperation is needed to counter uncertainty about the reform agenda and cynicism about whether one can truly fight corruption.

We are glad to know that CSOs in Kuwait are playing this role, in particular the Kuwait Transparency Society. We hope and encourage that the dialogue between high-level government representatives and civil society will continue after this conference.

Thank you!

Speech of Prof. Dr. Johann Graf Lambsdorff Corruption Perceptions Index (CPI) Delegate

Those who are willing to carry out corrupt acts lose the capacity to commit to honesty. This is the core of the message I want to deliver today. Corrupt actors can neither commit to honestly serve the public nor credibly promise reciprocity to their corrupt counterparts. This thought is at the center of understanding the disastrous economic and social consequences of corruption. At the same time, this concept deserves to be placed at the center of reform. Bribe takers and bribe givers have a schizophrenic relationship to honesty. They betray their superiors and the public but attempt to signal honesty to each other – and often fail in doing so. A strategy for reform must exploit this failure. The Achilles' heel of corrupt transactions is that a briber often does not know what he will get in return. This is a crucial weakness of those who are willing to engage in corrupt transactions. Anticorruption can therefore take the tactic of a judo-fighter – someone who exploits his opponents' weaknesses.

The power of economic thinking started with the concept of the invisible hand. Competition substituted for benevolence by guiding self-seeking actors to serve the public. With respect to fighting corruption we do not have such a powerful mechanism. If something comes close to it, it is the corrupt actors capacity to betray each other. This betrayal is a good thing. I call this the principle of the invisible foot. The willingness to take bribes works against the corrupt actors. Anticipating this, even self-seeking individuals may have reason to commit to honesty rather than seeking opportunities for bribes.

There should be no doubt that bribe taking is often a utility maximizing strategy of a self-seeking bureaucrat. Is it thus natural to bribe? Is it the inevitable behavior that emanates where individuals are left uncontrolled? Some economists wonder why levels of corruption are not even higher in a world where we are scarce of altruism. With self-seeking being the presumed nature of human beings, opportunities for self-enrichment should always be sought and seized; distrusting public decision makers should be the natural consequence; trusting them appears to be a naïve attitude. Given that we sometimes have reason to wonder about astonishingly high levels of integrity, social scientists must confess that they are lacking a theoretical explanation. Also in recent experiments, researchers found that integrity was higher (and corruption lower) than predicted from a rational, self-centered viewpoint.

There are good reasons to assume that corruption is not part of human nature. Quite the opposite, I claim a natural strife for integrity. This strife is not in contrast to self-seeking, it is its rational consequence. The downside of ones willingness to take bribes is that one disqualifies for professions where a commitment would be vital.

Bribes impede actors from performing official duties. For example, it may well be worthwhile to construct good-quality roads. But governments may choose to cancel the project if bad quality is expected to result from unavoidable collusive behavior. Or imagine that a fair and efficient tax system should be established, but tax collectors cannot be kept from taking bribes in exchange for turning a blind eye to underreporting; the project may fall into disfavor and be terminated by the principal. A related situation arises for auditors. If they cannot guarantee to abstain from faking reports, their contributions lose value for governments and investors. The construction companies, the tax collectors and the auditors will not be hired if they fail to commit to honesty. Those who cannot ascertain that they will not give in to temptation are ultimately jobless. By recognizing this, we notice that even those who might engage in corruption sometimes want to partner in anticorruption campaigns.



A similar thought arises for heads of government. They might transfer public funds into their private pockets. But they are not trusted by investors if they disrespect law. The advantage from bribery turns against its actors. This is at the core of understanding the social costs of grand corruption, the type of corruption that takes place higher up in hierarchy. And at the same time this viewpoint provides direction to reform.

One explanation for seemingly low levels of corruption relates to the (mostly informal) institutions needed for arranging and securing a corrupt deal. Partners in a corrupt exchange face a challenging task in negotiating the terms of their agreement and in making sure that each side adheres to its promises. At the same time they are constantly tempted to betray each other. Such betrayal can be a good thing from the point of view of the society at large, because it assures that corruption is a troublesome business, and convinces potential participants to refrain from becoming involved in corrupt deals. When public officials are paid with counterfeit money, as it recently happened in India, or with fake antiques, as it took place in China, the resulting insecurity for public servants may effectively deter them from asking for bribes in the future. Similarly, when public servants, who take bribes, decline to deliver on their promises, businesspeople may become less likely to continue with their illegal strategy.

A functioning type of corruption is sometimes regarded as the lesser of two evils. Although costly to businesspeople, it allows at least for some predictability and confidence. This sometimes misleads observers to conclude that the adverse effects of corruption might be avoided by divesting it of its unpredictability. But, these arguments are misguided because a lack of confidence in those supposed to deliver corrupt services also acts as a deterrent to corruption itself. To root out corruption, it may be necessary to risk destroying some of the confidence that goes along with it: the trust that corrupt favors will be reciprocated.

For example, the downsizing of the customs services in Tanzania was a failure, because those officials who were fired at a later stage became middlemen, and created trusted corrupt relationships. After a first crackdown on corruption, the corruption networks were revitalized and strengthened, and corruption returned to its original level. Apparently, strategies in fighting corruption can fail if they do not adequately take notice of the network ties, and the mechanisms that facilitate corruption.

Anticorruption is society's perpetual endeavor to discipline its public servants and politicians. It cannot be imagined that this goal will ever be reached solely by intellectual effort. Courage and commitment among civic-minded people will remain a prerequisite for low levels of corruption. But societies' ventures require some thorough guidance. Our knowledge on anticorruption is increasing at a remarkable speed. Reform ideas are tested throughout the world and experiences are rapidly exchanged so as to determine best practice. Let me provide you with an overview.

A first approach intended to inspire anticorruption related to repression: draconic penalties and higher probabilities of detecting malfeasance. While this approach has its merits, it is doubtful whether it can be the guiding principle for the future. Data on prosecutions (per head of population) related to bribery reveal that they are common in some developed countries but rare elsewhere. Whether conviction rates in less developed countries would ever reach levels where they can represent an effective deterrence can be put in question. Furthermore, if the effects follow an economic law of decreasing marginal gains and increasing marginal costs, the likely outcome would be that criminals are less deterred by higher penalties while the pursuit of absolute integrity becomes more and more expensive, bringing about unpleasant side effects. Law enforcement is costly and requires an honest judiciary. Administrative procedures are complex due to enhanced monitoring, and may adversely affect the intrinsic motivation of

the bureaucracy. Even worse, sanctioning even minor malfeasance can backfire. If those guilty of negligible malfeasance have to fear severe prosecution, they may become entrapped in a corrupt career. Repression would become ineffective if it does not provide an emergency exit for the petty sinners. These drawbacks may increasingly materialize in the future, and other guiding principles have to be sought that inspire anticorruption efforts.

Some prosecutors are fighting a devoted battle for integrity. They consider their strong stand to serve as an effective deterrent against corruption. But their treatment of insiders and whistleblowers is sometimes unsatisfactory. It is essential to provide pardon to minor misbehavior so as to catch the big fish. But it is just a policy of zero tolerance that can be in contradiction to such a policy. Also political commitments to absolute integrity can backfire badly. Take the following case. The Aerospace Engineering Design Corporation (AEDC), registered in Panama, is alleged to have arranged the sale of aircraft equipment worth 20 billion British pounds from Rolls–Royce to the Saudi Arabian Air Force. Commissions of up to 15 percent had been agreed upon. In exchange, the Panamanian firm maintained “close relationships” with prominent Saudi Arabian nationals. Allegedly Rolls–Royce did not pay as negotiated. AEDC brought the case to the high court in Great Britain. Following a High Court writ, Rolls–Royce feared for its reputation, XE “Reputation: for honesty” as did the British government, which had always denied any bribery payments in connection with the deal. This induced Rolls–Royce to settle the case out of court, causing AEDC to withdraw the case. The British government, it seems, was unable to deliver on its promise of a perfectly honest deal. In order to avoid further investigation, they felt forced to opt for the worst option: the actual payment of the bribe.

Another approach to anticorruption focuses on prevention. This approach may likely be subject to similar limitations. These confines particularly relate to incentives and ethical training. Such training will certainly be an important issue for the years to come. It can help in communicating more clearly the conflicts of interest unique to specific sectors and countries. Furthermore, ethical training can help in developing an atmosphere of transparency and stewardship among a firm’s and bureaucracy’s employees. At the same time, it is costly and time consuming, and it may sometimes serve to camouflage an organization’s true interests. Private firms, for instance, might be in a prisoner’s dilemma, paying lip service to anticorruption, but at the same time profiting from a corrupt contract. Ethical training would be given to those supposed to stay clean, while the dirty work would be outsourced. In the end ethical training may simply provide firms with official excuses when their employees are caught, resulting for instance in exemption from corporate liability. Ethical training of bureaucrats is likely to face similar limitations.

Using incentives instead of ethical training for inducing honesty in the bureaucracy and in politics is arduous to implement. Firstly, there is no measurable economic surplus that might serve as a yardstick for remuneration. Bureaucratic departments and political initiatives cannot be transformed into profit centers. Secondly, incentive schemes imply a variation of public servants’ income, lowering the security equivalent of their pay and crowding out the risk-averse (and potentially less corrupt) from obtaining a public position. The consequence is that incentive schemes in the bureaucracy and in politics fall short of economists’ prescriptions. Incentive theory, at best, helps us detect the variety of inconsistencies and disincentives that exist in the public sector. But incentives per se will hardly ever be sufficient to outbid the briber, as is sometimes suggested by academics. Realistically, incentive schemes can provide a helpful contribution that complements other factors such as public servants’ intrinsic motivation, cultivation of professional ethics and anticorruption norms in society.

Fostering transparency still seems to be an overarching principle with latent benefits. Its potential



in reducing corruption is immense. The administrative costs of increasing transparency are limited, albeit often mentioned as an excuse for inactivity. Freedom of information in administration can effectively limit the arbitrariness required for corrupt transactions. A culture of corporate transparency inhibits the condoning of bribery. But this concept might, at least, be fine-tuned to some extent in the future. One concern is that transparency may support the monitoring of corrupt reciprocity. Bribers may prefer a transparent environment if this allows them to avoid opportunism among public servants. Likewise, non-transparent bureaucracies may at times prevent corruption, because bribers would have a hard time, first, finding the right person to compromise and, second, observing whether the bribee reciprocates honestly. In a similar spirit it is standard practice that public procurement requires some limits on transparency: Bidders are not supposed to know the incoming bids of their competitors. Some secrecy must prevail until all bids are jointly opened. The reason is that bid-rigging would be facilitated if transparency is introduced at the wrong stage. The principle of transparency, therefore, will undergo a more fine-tuned interpretation. Instead of advocating unlimited disclosure of all information, comprehensive information management systems that provide key data to stakeholders would have to be put in place. Their design will remain an important issue for the years to come.

A recent experience in Beijing well illustrates the advantages and limitations of transparency in organizing public procurement. All local public contracts related to construction are organized by a so-called "tangible construction market". Tenders are announced and bids collected via internet. The names of the firms are recorded separately, not in the incoming documents. A computer then randomly selects experts from its database, requests them to meet at the office without revealing, for which project their expertise is sought. Experts pass a security check and meet in a video-supervised room where their mobile phones are not operating. There, the experts determine the best bid, which need not necessarily be the cheapest one. From my impression, the system is capable of seriously reducing corruption, if not making it impossible. At the same time, it becomes apparent that a mixture of transparency and obfuscation is fruitfully employed to minimize corruption.

Currently, anticorruption activities mostly embrace the testing of some best practice – without knowing to what extent such approaches can claim global validity. Integrity systems are often suggested that embrace aspects of accountability, monitoring and reporting. But we know little whether criminals may seek loopholes within the newly established system and undermine the efforts. New initiatives, for example, aim at increasing revenue transparency for the extractive industries and the respective host governments where the extraction takes place. But crucial questions for the future will be whether bribery may continue in different form. Companies with a criminal intent may engage local agents, subsidiaries or design joint ventures so as to pass on advantages to local politicians. Any integrity system is quickly overburdened if these more sophisticated criminal methods are employed. Instead of avoiding corruption, the new systems may just force the criminals to reorganize their activities.

The current guiding principles for anticorruption such as repression, prevention or transparency may run out of steam when trying to cope with these future challenges. A more promising approach to fighting corruption requires a micro analysis of the criminal's activities. Instead of imagining systems of perfect integrity, diagnosis must focus on where corruption is most prevalent and how corrupt transactions are arranged. The particular institutional design that is employed for carrying out corrupt transactions must be at the core of analysis.

Given the limitations of some principles for anticorruption, our work expounds that an understanding of the criminal's calculus can provide us with a vivid starting point for future

reform approaches. The principle of the invisible foot, as we call it, utilizes some thought of the New Institutional Economics. It states that corrupt actors can neither commit to honestly serve the public nor credibly promise reciprocity to their corrupt counterparts. This implies that their willingness to take bribes leaves them in uncertainty. Strengthening this principle ascertains that even self-seeking public servants refrain from corruption.

Corrupt actors must be deterred from their criminal actions. But deterrence is more than just the threat of suffering from legal sanctions. It embraces also the risk of being cheated by one's counterpart. It includes the threat of being denounced. Deterrence imposed with utmost rigor can backfire where it forces corrupt partners into a cartel of silence. Penalizing public servants already for the taking of bribes and gifts may increase rather than decrease corruption. Such penalties place officials at the mercy of businesspeople after a minor malfeasance – and open the door to the worse types of misbehavior.

At a court in Bochum, Germany, an employee of the road construction authority confessed to accepting bribes for contracts relating to marking roads. Beginning in 1987, and lacking business experience, he passed on names of competing firms in a public tender. After this incident, he received an envelope filled with DM 2000 from the private firm who obtained the favor. "Suddenly I knew that I had begun to be at his mercy," was the explication given in court and the justification for why he afterwards became entrapped in this corrupt relationship.

Apparently, although the public servant had done little to favor the briber, he was entrapped in a corrupt relationship afterwards.

The general approach for reform would be to render those willing to take bribes untrustworthy for public positions, to encourage betrayal among corrupt parties and to destabilize corrupt agreements. A plethora of practical methods for anticorruption emanate from the principle of the invisible foot. To name but a few, reform should focus on fostering whistleblowing, providing immunity and monetary incentives to informants, disallowing courts to enforce corrupt contracts and finding clear ways of regulating conflicts of interest. The workshops will provide some inspiration in this regard. One focus that deserves recognition is the design of the legal system. Penalties may mark the starting point of a corrupt career. An asymmetric design of penalties may avoid this problem and inhibit corrupt reciprocity.

Corruption is an art, requiring a plethora of business and psychological skills. We observe that corruption has an impact on international trade. Some exporters are advantaged in entering corrupt markets. Others may refrain from corruption owing to moral concerns, or are simply untalented. One application of this finding relates to corrupt intermediaries. These offer expertise on corrupt transactions to the untalented. Their role is key to reform – and currently too little investigated. Certification should be offered to those intermediaries who are willing to commit to anticorruption. Such certification would allow separating the wheat from the chaff.

Anticorruption activists often start their campaigns by trying to form broader coalitions and seeking collaborators. But where are these found? Is it only the civil society activist, the moralists, idealists or the priests who can contribute to anticorruption? As emphasized in our work, the willingness to engage in corrupt transactions can turn against the actors themselves. As a consequence, nobody can upfront be excluded when forming coalitions against corruption. Public servants, even when tempted to take bribes, can have an interest in integrity. An engagement against corruption can provide them with avenues for committing to honesty; their service may increase in value and provide them with promising perspectives for their career. Businesspeople



may like to join an anticorruption initiative. Not only may this help them in overcoming a prisoner's dilemma. It may also be an individually profit-maximizing strategy because a visible commitment to anticorruption may drive down the solicitation of bribes and businesspeople's subordinates would no longer be induced to betray their own firm. Lobbyists may dislike corruption because it limits their capacity to find popular support for the interests of their clients and constrains them in broadening the base of supporters. Also intermediaries may like to seek binding rules that disallow their engagement in bribery, so as to ascertain honest firms that these are not liable for any criminal activities. Career-oriented rulers may have an interest to engage in anticorruption and they would be willing to curb their own corrupt opportunities so as to ascertain investors that their investments will be honored. Even Mafia bosses attempt to legalize their business in a strategy to avoid the hazards for their offspring. In sum, anticorruption crusaders can find support among many in society. The strife for integrity is a natural part of human behavior.

Combating corruption is like judo. Instead of bluntly resisting the criminal forces, one must redirect the enemy's energy to his own decay. Instead of proclaiming a policy of zero tolerance one must recognize that the imperfections of human behavior will endure. Instead of demanding a world of absolute integrity, fighting corruption foremost is the art of exploiting these imperfections for our battle.

The power of economic thinking started with the notion of the invisible hand. Competition substituted for benevolence by guiding self-seeking actors to serve the public. Individual morality lost relevance as a guiding principle for directing behavior in private markets. May this also be true of politics and administration? Can anticorruption flourish without good intentions? Will anticorruption come to a standstill if it focuses on moral sanctions, which may limit civil liberties? With respect to fighting corruption we may not have a mechanism as powerful as the invisible hand. If something comes close to it, it is the failure to make credible promises once actors are willing to take bribes. The risk of betrayal may operate like an invisible foot, making life hard for those who fail to commit to honesty. This principle can motivate even the self-seeking actors to abstain from corruption and reconcile civil liberties with good governance.



2nd Public Sessions



**First Session:
“United Nations Convention Against Corruption” (UNCAC) on the
Importance of Signing & Subsequent Obligations.**

**Miss. Lylia Ekeanyanwu
Coalition Not Corruption, Nigeria**

**STRATEGIES FOR COUNTRY AUDIT
OF COMPLIANCE WITH ANTI-
CORRUPTION CONVENTIONS**

presented by
Lilian Ekeanyanwu-TI-Nigeria at the
Kuwait Transparency Conference 15th
-17th January 2007

FORMAT OF PRESENTATION

- Background
- Uses and advantages of UNCAC
- Entry Point for CSOS
- Methodologies and content of the Audit
- Environmental and Cross- Cutting Issues
- Useful Templates
- Conclusions

Background and distinct advantages of UNCAC

- Historical context and information
- Uses of UNCAC at the domestic level
 - Creation of Anti-Corruption Agency\Agencies.
 - Code of Conduct for Public Officers
 - Conflict of Interest Rules
 - Asset Declaration Regimen for Public Officers
 - Protection for Witnesses and Reporting persons
 - Access to Information
 - Participation of Society in the war against corruption.
 - Private Sector governance
 - Credible Elections and Political Party Funding

Uses and advantages at the Global level

- Mutual legal Assistance and Technical Assistance
- International Co-operation
- Extradition of offenders
- Repatriation and Recovery of stolen assets



ENTRY POINT FOR CSOS

- Campaign for ratification and implementation
 - knowledge of Country ratification and implementation process
 - Constructing an advocacy chain
 - Gap analysis
 - Report card on implementation
 - Shadow Report

Strategy and content of the Audit

- Country status on ratification, domestication etc
- Existence or otherwise of a National Action Plan against corruption.
- Review of the convention
- Review of relevant domestic instruments and policies
- Review of relevant environmental issues
- State of institutions such as the judiciary and police
- Political structure of the country and implications for the issue
- Political Will to combat corruption

ENVIRONMENTAL AND CROSS CUTTING ISSUES

The following questions may become relevant;

- What is the character and strength of the supporting security institutions?’
- What is the character and effectiveness of the judicial structures?
- How strong is the political will of the various actors within the governance chain?
- What is the political structure and is it capable of impacting on the scope of compliance?

Other key points

- Chapter by chapter analysis
- Separating mandatory and non mandatory provisions
- Layers of Analysis
- -Identification of the legal provisions of the State Party on each target issue
 - Identification of operative institution or structure
 - Identification of policy instruments and implementation structure.
 - Does the legal instrument capture the key issues prescribed by the Convention?
 - Is the character of the operative institutions in compliance with the prescription of the Convention? Such issues as independence, adequate funding, financial autonomy, security of tenure of key staff, powers to investigate and prosecute etc will form the indicators. [eg **Article 6[2] UNCAC requires State parties to create bodies to combat corruption and accord such bodies the independence, resources and staff needed to carry out their function.**



USEFUL TEMPLATES

Issue	Existence	Signature	Ratification	Domestic ation
National Action Plan	NO	-	-	-
UNCAC		Yes	Yes	yes
Other Instruments				

Structural issues

s/no	Issue	Legal Provision	Operative Institution	Policy Initiative
1	Dedicated anti-corruption Institution	Yes	Yes	Yes
2	Asset Declaration for public officers	Yes	Yes	Yes
3	Code of conduct for Public Officers			
4	Public procurement Regimen			
5	Money laundering			

OPERATIONAL AND CAPACITY ISSUES ISSUES

S/NO	Institution	Funding	Financial Autonomy	Legal Independence	Security of Tenure of Key Staff
1.	Anti-Corruption Commission	Inadequate	None [Funded by the Executive]	Yes	Yes
2.	Public Procurement Office [BMPIU]	Inadequate	None	None- [Enabling Law is yet to be passed]	No
3.	Code of Conduct Bureau	Inadequate	Yes [Appropriation direct from parliament]	Yes	Yes
4.	Economic and Financial Crimes Commission	Inadequate [Heavily dependent on donor funding]	No	No	No
5.	Public Complaints Commission	Inadequate	Yes [Appropriation direct from parliament]	Yes	Yes

S/NO	Institutions	Investigative Powers	Prosecutorial powers	Scope of activities	Others
1.	Independent Corrupt Practices and Other Related Offences Commission	Yes	Yes	Investigation Prevention Systems Review Public Enlightenment	Dedicated anti-corruption agency
2.	Code of Conduct Bureau	Yes	Yes	Asset declaration Code of Conduct for Public officers Enforce provisions on conflict of interest and gifts	
3.	Economic and Financial Crimes Commission	Yes	Yes	Money laundering Advance Fee Fraud Designated FIU Terrorism International cooperation Mutual Legal Assistance	
4.	Public Complaints Commission	Yes	No	Ombudsman Administrative malpractice	Restricted to advisory powers.



ENVIRONMENTAL AND CROSS CUTTING ISSUES

S/NO	ISSUE				Impact
1.	Constitutional Provisions	s.12 1999 constitution	Ratification of the National Assembly required	Ratification of State Assemblies required in some cases	Substantial delay
2.	Federalism	Embodied in the Constitution		Two autonomous layers of actors	Delay in domestication Complicate implementation
3.	Opposition Parties			Ineffective opposition	Absence of positive imperative pressure
4.	Status of Ruling Party		Absence of Party discipline	Imposing majority	Will not abridge time for domestication and implementation

OVERALL COMPLIANCE RATING

S/NO	ISSUE	TOTAL COMPLIANCE	SUBSTANTIAL COMPLIANCE	PARTIAL COMPLIANCE	NON COMPLIANT
1.	Dedicated anti-corruption commission		*		
2.	Asset Declaration Regimen			*	
3.	Code of Conduct for Public Officers		*		
4.	Money Laundering prevention regimen		*		
5.	FIU		*		
6.	Political Financing			*	
7.	Ombudsman		*		
8.	Access to Information regimen				*
9.	Whistle Blowers Protection regimen				*
10.	Participation of Society			*	

Matrix of Gap Analysis-[Courtesy KPK Indonesia]

UNCAC	CONTENT	COUNTRY LAWS AND REGULATIONS	ANALYSIS	OTHER ISSUES FOR CONSIDERATION	RECOMMENDATIONS
Chapter 1-General Provisions					
Chapter 2 Preventive measures					
Chapter 3 Criminalization and Law enforcement					
Chapter 4 International cooperation					
Chapter 5 Asset Recovery					

CONCLUSION

- CSO activities and engagement under a vital convention such as UNCAC is both organic and mutative.
- There is need for continuous education and polishing of strategy and expansion of the scope for engagement as the scenario unfolds at both the global and domestic level.
- Need for global and regional co-operation among CSOS on issues such as
 - Mutual Legal Assistance
 - Asset Recovery
 - Technical Assistance



Mr. Nasser Jasem Al-Sanei
Deputy Chairman of GOPAC

**United Nations Convention Against Corruption
(UNCAC)**

**(Framework & Action to Put the Approval and
Implementation of the UNCAC into Effect from a
Parliamentary Perspective)**

**Kuwait Transparency
Conference (KTC)
Kuwait, January 2007**

Speech Delivered By:
Dr. Naser Jassem Al-Sanae
Member of National Assembly, State of Kuwait.
Deputy Chairman of "Global Organization for
Parliamentarians Against Corruption (GOPAC)".
Chairman of "Arab Organization for Parliamentarians
Against Corruption (ARPAC)".
Board Member of "Kuwaiti Parliamentarians Against
Corruption".

15/1/2007

1

**Kuwaiti National Assembly signed UNCAC in
December 2006.**

**Kuwait Participated also in the UNCAC
Signatories Conference held at the Dead
Sea in Jordan at the same month.**

**Kuwait shall comply with the UNCAC
obligations at the legislative and executive
levels.**

2

Below is a brief on the UNCAC:

UNCAC was released in 31/10/2003 by the United Nations General Assembly, with 140 signatory states during 09/12/2003 till 09/12/2005, and was put into effect in 14/12/2005.

First UNCAC Signatories Conference was held in 10-14/12/2006 at the Dead Sea, Jordan.

UNCAC Signatory States shall apply major, defined anti-corruption measures, amend their laws and regulations, and shall have influencing authority over the different institutions to: prevent and control corruption practices and introduce guilty persons into trial before court.

Negotiations for UNCAC continued for seven meetings for two years, and were attended by 100 states at the United Nations' Office for Crime and Narcotics.

Signature on UNCAC was allowed in 09/12/2003 at Merida, Mexico, and 09 December of each year is declared to be the World Day for Fighting Corruption.

3

UNCAC Terms & Conditions

- Precautionary Measures.
- Punitive Measures.
- International Cooperation.
- Recovery of Assets.
- Technical Assistance.
- Application of Mechanisms.

4



Detailed Provisions in UNCAC on the Precautionary Measures:

Ethics & Procedures at the Public Sector:

- Employment and promotion shall be based on competence, transparency, and objective criteria such as efficiency, equity, and competence (Article 6, UNCAC).
- A Code of Conduct shall be in place to ensure proper, effective, and correct performance of the public jobs (Article 8, UNCAC).
- Employment of resigned or retired officials in the Private Sector shall be subject to certain restrictions (Article 12, UNCAC)

5

Detailed Provisions in UNCAC on the Precautionary Measures:

Public Sector Procurement

Procedures based on transparency, competition, and objective criteria (Article 9, UNCAC)

Finance to the Public Sector:

Proper measures to reinforce transparency and accountability in relation to the national budget approval procedures, timely communication of revenues and expenses, accounting and auditing standards, and other effective controls and systems for the risk management and internal control, in addition to other measures (Article 9, UNCAC).

6

Detailed Provisions in UNCAC on the Precautionary Measures:

Knowledge and Access of Information to People & Protecting Whistle Blowers of Corruption Practices:

- To give people access to information on the controlling their general departments, activities, and decision-taking (Article 10, UNCAC).
- Citizens shall be given actual access to information (Article 13, UNCAC).
- Protection of Witnesses, Whistle Blowers, and Victims of Corruption (Articles 23 & 33, UNCAC).

Public Awareness:

Circulation of information through public awareness activities and programs including school and university curricula (Article 13, UNCAC).

7

Detailed Provisions in UNCAC on the Precautionary Measures:

Private Sector Standards including Accounting & Auditing Standards:

To prevent accounts and transactions not registered in the Ledger and registration of unreal expenses. Registration of financial entries defining their real purpose. To Prevent the usage of false documents and the willful destruction of accounting books before the time specified by International Law (Article 12, UNCAC).

Money Laundry

An internal system for control and supervision over banks and non-banking financial institutions shall be in place.

Money-Laundry Authorities shall be able to cooperate and exchange information at the local and international levels.

A proposal for the government to establish a financial intelligence unit.

(These are excerpts from the Articles referred to above)

8



Global Organization of Parliamentarians Against Corruption (GOPAC) has:

- **Shared its views on the UNCAC before approval through the formation of committee formed by the Board for this purpose.**
- **Adopted the UNCAC in the first conference held after its incorporation at Arosha, Tanzania in September 2006.**
- **GOPAC Arab Branch has urged Arab countries to sign the UNCAC.**
- **Organized the first Arab Parliamentary Seminar on UNCAC in June 2005 in cooperation with People's Assembly, Egypt.**
- **Entrusted the Arab Branch to chair the international parliamentary work group.**
- **GOPAC and ARPAC organized a parliamentary conference on UNCAC.**

9

In the State of Kuwait:

KUPAC was established in 2005.
A seminar was held by ARPAC in cooperation with World Bank to issue "Arab Parliamentarian Guide to Control Corruption" in December 2005.

10

- **National Front for Fighting Corruption**
- **National Strategy for Fighting Corruption in the State of Kuwait**
- **National Conference for the National Front for Fighting Corruption**

11

**Website of GOPAC:
gopacnetwork.org**

**Website of ARPAC:
arpacnetwork.org**

12

Second Session: “Freedom of Information Law” Essential or Inessential?

**Dr. Azmi Al-Shueibi, General Coordinator of Coalition for
Accountability & Integrity “Aman” – Palestine**

Is Access to Information Essential or Inessential?

Al-Mighty Allah says: “Say do those who know and those who do not know are equal”, Surat Al-Zumar.

Arab political regime is very skeptic about the free exchange of information and people’s right to get access to information. This right is very restricted and subject to control and confiscation in all Arab countries, as if the normal situation is restriction not accessibility.

“Coalition for Accountability & Integrity – Aman” took the initiative and held several workshop and seminars aims at raising Palestinians’ awareness of this right and the importance of promulgating a governing law in this regard.

The opinion reached by these initiatives was that a Free Access to Information Draft Law will be presented to the Legislative Council. “Coalition for Accountability & Integrity – Aman” in turn presented the Draft Law to the Legislative Council. Palestine was among the first Arab countries that raised this issue in parliament.

Information is that information found in any written or electronic records and documents, drawings, maps, charts, photos, films, microfilms, tape recorders, video cassettes, graphs, data that may be read by certain devices, or any other forms of data and information that the public delegate determines that they are included in the definition of information according to this law.

Article 1, Draft Law of Right of Access to Information 2005, Palestine”

People’s right to get access to information is stated by international covenants and agreements; especially, the International Covenant on Civil & Political Rights (ICCPR) (Article 19, ICCPR).

This right should be guaranteed due to the increased awareness of the culture of democracy and its influence on societies through strengthening the rule of law and good governance by publication of information and giving access of information to people.

Transparency, Accountability & Integrity Triangle controls the political practice, minimizes possibilities of corruption and fraudulence, and prevents abuse of power through giving the right to any supervisory authority to have supervision over all authorities (Executive, Judiciary, Legislative).

When people are given the right to access information, the mutual relationship between the state and people based on rights and obligations is strengthened; especially, the state’s responsibility towards people. People should have the right to access information from the official institutions, as this urges officials to perform their duties in a transparent atmosphere leaving no opportunity for defects or violations. In most cases, corruption practices and abuse of power will be eliminated as officials become aware that their practices are known to people. Right to access information is

closely linked to accountability which is the main interest of any democratic regime. Without such right, any endeavors will be impossible as long as the government activities and decision-making process are hidden from the public. This paves the way for dominance of secrecy, possible dispersal of resources, and non-performance of audits by the State's institutions such as Parliament, Courts, and Public Supervisory Authority that serve as a tool for curbing the abuse of power.

Right to access information does not necessarily mean the absence of procedures and standards that control this process. On contrary, right to access information will generate special obligations and responsibilities, and may be subject to certain restrictions provided these restrictions should be stated by law and should be critical as if related to rights and reputation of others, public order, etc. This can be achieved through laying down specific legislations that regulate access to information, define type and nature of information that can be disclosed to the public, and identify means of disclosure and confidential information (or information the disclosure of which may pose a threat to the national security) so that disclosure will not be based on the personal views or state of mind of the administrative officials or the limited number of persons in the political authority.

Right of Review or Retention

In pursuance with Law, Financial & Administrative Control Bureau (FACB) shall have the right, for exercising its competencies, to request, review, or retain any files, data, papers, documents, or information or to get photocopies thereof from the entity where such files, data, papers, or documents, or information are located including other entities that all of these are confidential. FACB shall also have the right to send a writ of summon to any body.
(Article 29, FACB Law)

Benefits of Disclosing Information

- Disclosure of information is a prerequisite for a reliable government.
- Disclosure of information reinforces transparency which helps an administrative official perform his duties in a transparent atmosphere revealing any defects or inconsistencies, due to the fact that an administrative official always bears in mind that his practices are disclosed to the public. So, corruption practices and abuse of power are limited to a minimum.
- Disclosure of information urges governments to reveal information; especially, people involved in claims of corruption are investigated. In addition, it reinforces the legislation related to the factional finance and election campaigns forming an essential part of transparency of the election process. This, in turn, gives more accreditation and credibility to the elected parliamentarians.
- Disclosure of information reinforces the level of transparency in parliament through making information available to the public, press, and media so that the government may not exercise any pressures on parliament; especially, if corruption practices are made by the government itself which, in turn, will generate popular pressure on the government so that the parliament may not be able to overlook such corruption practices.
- Disclosure of information allows people to have a scrutinized eye on the activities of public institutions such as (ministries, departments, authorities, legislative, judiciary, and executive powers, local authorities, etc..).
- Right to access information is a prerequisite for democracy and allows timely access to accurate and reliable data by people within limited restrictions.
- People will have an active role in governance, through people's interest in media, knowledge, public opinion formation, and the active membership in the civil society institutions. This will help develop people's self-trust, enthusiasm, and participation in the discussion the of public affairs so that this civil activity will make a change in policy, remove an oppression, or reveal corruption or manipulation of the public funds.



A Public Institution: “all ministries, departments, bodies, legislative, judiciary, and local authorities, or private institutions that manage a public utility, perform public works, or have information that is related to environment, health, public safety, or any other institution that the public delegate may deem it a public institution in pursuance with this law”.
(According to the Draft Law on Access Information, Palestine).

Risks of Hiding Information

- As secrecy of information prevails, resources may be dispersed with failure to perform audit operations in later stages.
- Concealment of information from people is the main factor of corruption.
- Supervisory mechanisms such as parliament, public supervisory authority, or Diwan Al-Madhalim “Grievances Bureau” will not be able to curb the abuse of power by public institutions.
- Hiding information poses a threat on the right to express opinions, and restricts people’s culture, thoughts, and directions. In most cases, Mass Media will become a mere tool to express the viewpoint of the regime to ensure its sustainability and to limit opposition’s ability to express its own ideas.

**Miss. Sofi Redmond, Article 19,
Global Campaign for Freedom of Expression, UK.**

**Access to Information – in
Combating Corruption**

Kuwait Transparency Society and
Transparency International

15 January 2007



**ARTICLE 19 and Access to
Information**

The Public's Right to Know: Principles on
the Right to Access to Information

<http://www.article19.org/pdfs/standards/foi-the-right-to-know-arabic.pdf>

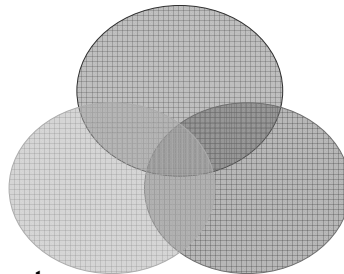
ARTICLE 19 Model Law on Access to
Information

<http://www.article19.org/pdfs/standards/foi-model-law-arabic-.pdf>



Key Elements of an Access to Information Law

1. RIGHT of Access to Information



3. Enforcement and Implementation

2. Promote open government

1. Right of Access to Information

ALL of the following should be explicitly stated in the Law:

- Legally enforceable right of access
- Broad definition of 'document'
- Presumption in favour of DISCLOSURE
- Limited number of exceptions – legitimate interests
- Time limits and time frames – 'deemed refusal'

- Written reasons for refusal; and right to appeal
- Law on Access to Information should prevail



2. Promote Open Government

ALL should be explicitly stated in the Law:

- Designated Information Officers and procedures
- Obligation to publish core information – budgets, annual reports etc
- Document maintenance systems
- Create offence of wilful destruction of documents

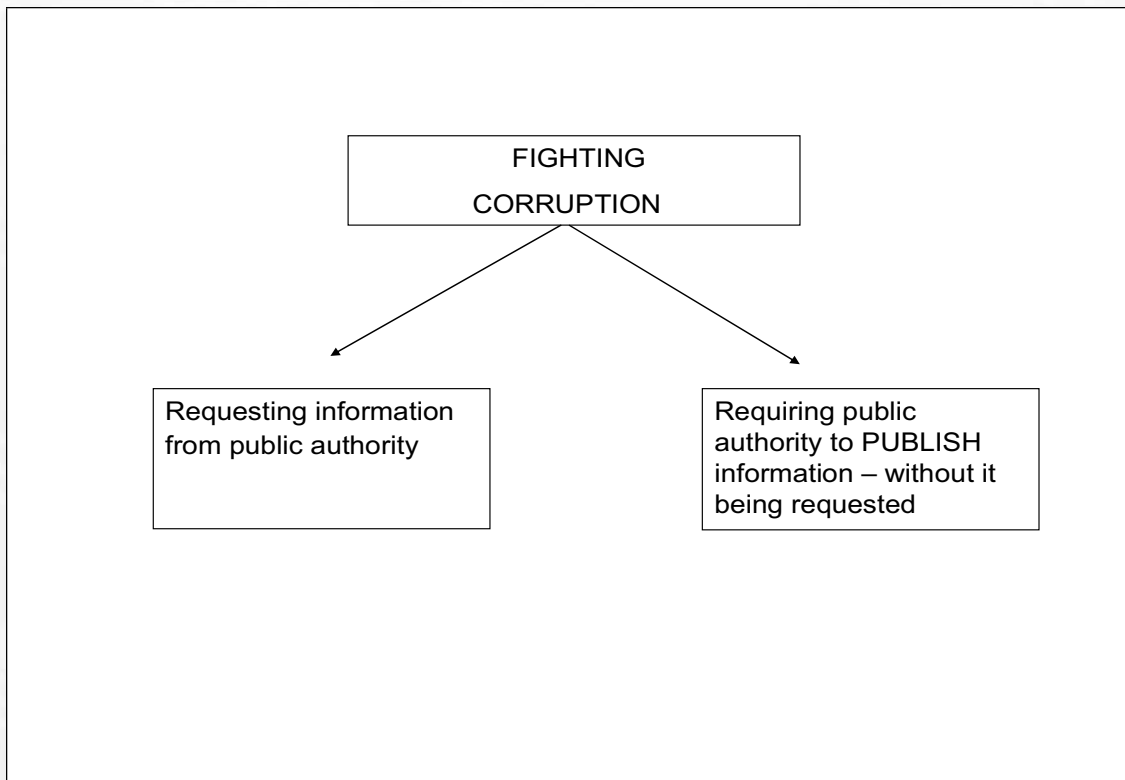
2. Promote Open Government

- Protection for Whistleblowers
- Some private bodies should also be covered by the Access to Information Law

3. Enforcement and Implementation

ALL should be explicitly included in Law:

- Training of public officials
- Information Commissioner – appeals, responsibility for implementation of Law, public awareness of Law





Third Session: “National Anti-Corruption Strategy” a Map for State Reform

**Head of 3rd Session
Mr. Mishari Al-Anjary,
Member of National Assembly, Kuwait**

I feel as if our hearts were grieved for the fact that this elite of people are here to discuss the issue of corruption not as a global phenomenon harming other people, but as a fact existing in the State of Kuwait that is threatening the whole State. It is this State that the sincere patriots have exerted their ultimate efforts to help it stand and survive, following the path drawn by their parents and ancestors who were known for their integrity, honesty in work, and sincerity in bearing responsibility and self-dependence.

Corruption has become a monster that knocks the doors, aborts every good endeavor, devours institutions, and threatens the social security which represents stability of the State. Forms of corruption and its visible marks have come to the tongues of younger and older people in their special and public meetings as if corruption is part of their normal life, and here lies the risk!

The ultimate goal of a corruptor is that corruption spreads dangerously and becomes aggravated both in reality and in feelings till confusion prevails, responsibility is lost, culprits are confused with innocents, and the high spirit of sincere people fade out, and their good endeavors are dispersed in vain!

As far as democratic regimes are concerned, involvement of corruption into the political life is the fiercest forms of corruption, either this is done through bribery, forgery of electors' votes, re-direction of desires, or influence on decisions. All these forms of corruption have become hatefully apparent in our daily life. Our earnings will vanish gradually, unless we cooperate together to destroy corruption by all the means we have.

Causes of Corruption are as follows:

- First** : The principal factor of corruption can be observed in the great government predominance on economy, services, employment, and public welfare. The increased power and influence of the government on all aspects of life can lead to the absence of conscience and hindrance of innovation and examples are frequent in our world! This situation is no longer accepted, and must be changed through privatization and minimizing government authority and control.
- Second** : The inflated government system has added much complications to the work procedures in the government institutions; the matter that paved the way for corruptors to commit corrupt practices. Cooperation of the Legislative and Executive Authorities is therefore required to revise these policies in order to encourage participation of the Private Sector and urge others to request its involvement.



- Third** : Government's permissiveness towards these forms of corruption and the government's hesitancy to fight corruption fiercely through the non-enforcement of law nor holding corruptors accountable for their corrupt practices have encouraged corruptors to act against the law carelessly. So, strict compliance with laws and regulations and holding senior and junior officials alike accountable for any detected violations are essential to move towards reform.
- Fourth** : Selection of competent executives at the top management level who have firm belief in reform process and who are able to fight all forms of corruption and administrative malpractices has not been on the right track for the last years. Favoritism and political preferences have become the key criteria for the selection of candidates in the executive and managerial level. These criteria should be ultimately changed, and jobholders of the executive and managerial level should be tested for their ability and firmness in combating corruption and enforcement of Law.

Government and National Assembly should assume the national and constitutional responsibilities for fighting corruption.



**Mr. Omar Dhafer Sheikh,
Deputy of Public Accountant,
Public Accountant Office for Returns of Pakistan**

National Anti Corruption Strategies

January 15, 2007

1

Strategies Against Corruption

- Strategies are for the future
- There is no Universal Strategy against corruption
- Strategies are not static
- Importance of change management

2



STRATEGIES DIFFER BECAUSE OF

- Nature •
- Extent •
- Impact of corruption •

3

POPULAR MISCONCEPTIONS ABOUT ANTI CORRUPTION

- ANTI CORRUPTION APPROACH •
- RESPONSIBILITY OF ANTI
CORRUPTION •
- DURATION OF ANTI CORRUPTION •
- SCOPE OF CORRUPTION •
- CONCEPT OF ACCOUNTABILITY •



4



How Pakistan proposes to undertake the task

5

National Anti Corruption Strategy (NACS)

A project undertaken in NAB to diagnose the causes of corruption and identify remedial measures

6

1. Right of Access to Information

ALL of the following should be explicitly stated in the Law:

- Legally enforceable right of access
- Broad definition of 'document'
- Presumption in favour of DISCLOSURE
- Limited number of exceptions – legitimate interests
- Time limits and time frames – 'deemed refusal'

- Written reasons for refusal; and right to appeal
- Law on Access to Information should prevail



2. Promote Open Government

ALL should be explicitly stated in the Law:

- Designated Information Officers and procedures
- Obligation to publish core information – budgets, annual reports etc
- Document maintenance systems
- Create offence of wilful destruction of documents

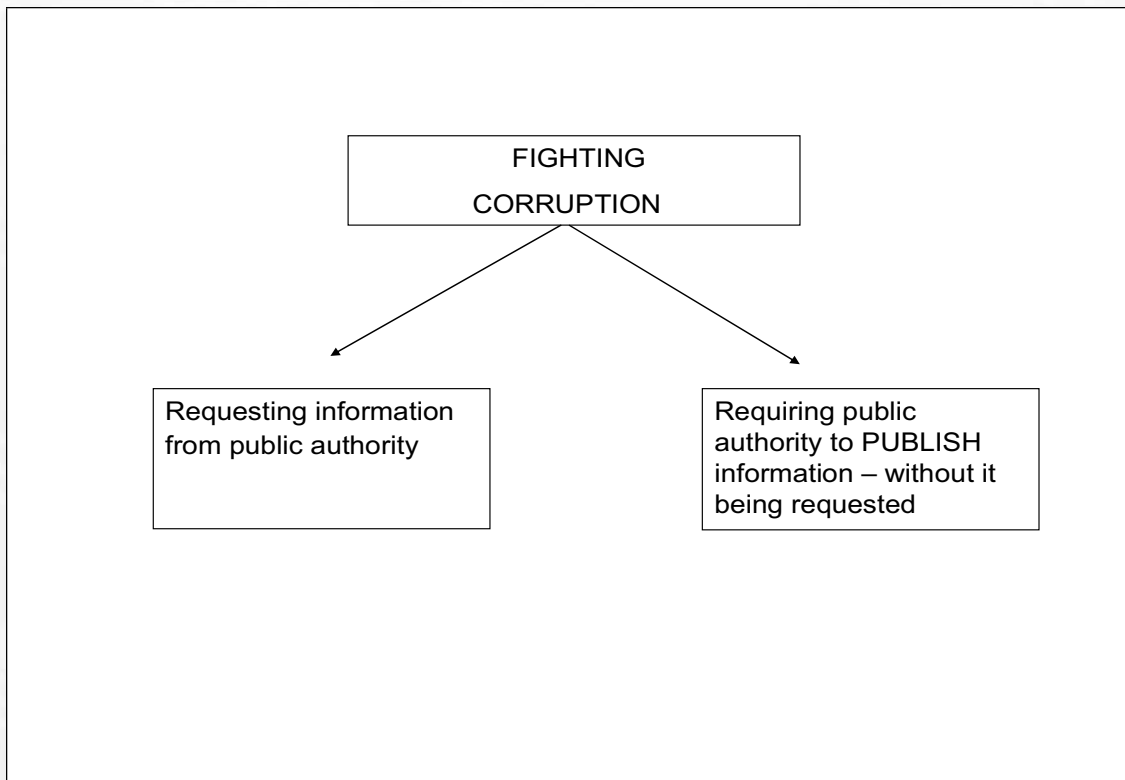
2. Promote Open Government

- Protection for Whistleblowers
- Some private bodies should also be covered by the Access to Information Law

3. Enforcement and Implementation

ALL should be explicitly included in Law:

- Training of public officials
- Information Commissioner – appeals, responsibility for implementation of Law, public awareness of Law





Third Session: “National Anti-Corruption Strategy” a Map for State Reform

**Head of 3rd Session
Mr. Mishari Al-Anjary,
Member of National Assembly, Kuwait**

I feel as if our hearts were grieved for the fact that this elite of people are here to discuss the issue of corruption not as a global phenomenon harming other people, but as a fact existing in the State of Kuwait that is threatening the whole State. It is this State that the sincere patriots have exerted their ultimate efforts to help it stand and survive, following the path drawn by their parents and ancestors who were known for their integrity, honesty in work, and sincerity in bearing responsibility and self-dependence.

Corruption has become a monster that knocks the doors, aborts every good endeavor, devours institutions, and threatens the social security which represents stability of the State. Forms of corruption and its visible marks have come to the tongues of younger and older people in their special and public meetings as if corruption is part of their normal life, and here lies the risk!

The ultimate goal of a corruptor is that corruption spreads dangerously and becomes aggravated both in reality and in feelings till confusion prevails, responsibility is lost, culprits are confused with innocents, and the high spirit of sincere people fade out, and their good endeavors are dispersed in vain!

As far as democratic regimes are concerned, involvement of corruption into the political life is the fiercest forms of corruption, either this is done through bribery, forgery of electors' votes, re-direction of desires, or influence on decisions. All these forms of corruption have become hatefully apparent in our daily life. Our earnings will vanish gradually, unless we cooperate together to destroy corruption by all the means we have.

Causes of Corruption are as follows:

- First** : The principal factor of corruption can be observed in the great government predominance on economy, services, employment, and public welfare. The increased power and influence of the government on all aspects of life can lead to the absence of conscience and hindrance of innovation and examples are frequent in our world! This situation is no longer accepted, and must be changed through privatization and minimizing government authority and control.
- Second** : The inflated government system has added much complications to the work procedures in the government institutions; the matter that paved the way for corruptors to commit corrupt practices. Cooperation of the Legislative and Executive Authorities is therefore required to revise these policies in order to encourage participation of the Private Sector and urge others to request its involvement.



- Third** : Government's permissiveness towards these forms of corruption and the government's hesitancy to fight corruption fiercely through the non-enforcement of law nor holding corruptors accountable for their corrupt practices have encouraged corruptors to act against the law carelessly. So, strict compliance with laws and regulations and holding senior and junior officials alike accountable for any detected violations are essential to move towards reform.
- Fourth** : Selection of competent executives at the top management level who have firm belief in reform process and who are able to fight all forms of corruption and administrative malpractices has not been on the right track for the last years. Favoritism and political preferences have become the key criteria for the selection of candidates in the executive and managerial level. These criteria should be ultimately changed, and jobholders of the executive and managerial level should be tested for their ability and firmness in combating corruption and enforcement of Law.

Government and National Assembly should assume the national and constitutional responsibilities for fighting corruption.



**Mr. Omar Dhafer Sheikh,
Deputy of Public Accountant,
Public Accountant Office for Returns of Pakistan**

National Anti Corruption Strategies

January 15, 2007

1

Strategies Against Corruption

- Strategies are for the future
- There is no Universal Strategy against corruption
- Strategies are not static
- Importance of change management

2



STRATEGIES DIFFER BECAUSE OF

- Nature •
- Extent •
- Impact of corruption •

3

POPULAR MISCONCEPTIONS ABOUT ANTI CORRUPTION

- ANTI CORRUPTION APPROACH •
- RESPONSIBILITY OF ANTI
CORRUPTION •
- DURATION OF ANTI CORRUPTION •
- SCOPE OF CORRUPTION •
- CONCEPT OF ACCOUNTABILITY •



4



How Pakistan proposes to undertake the task

5

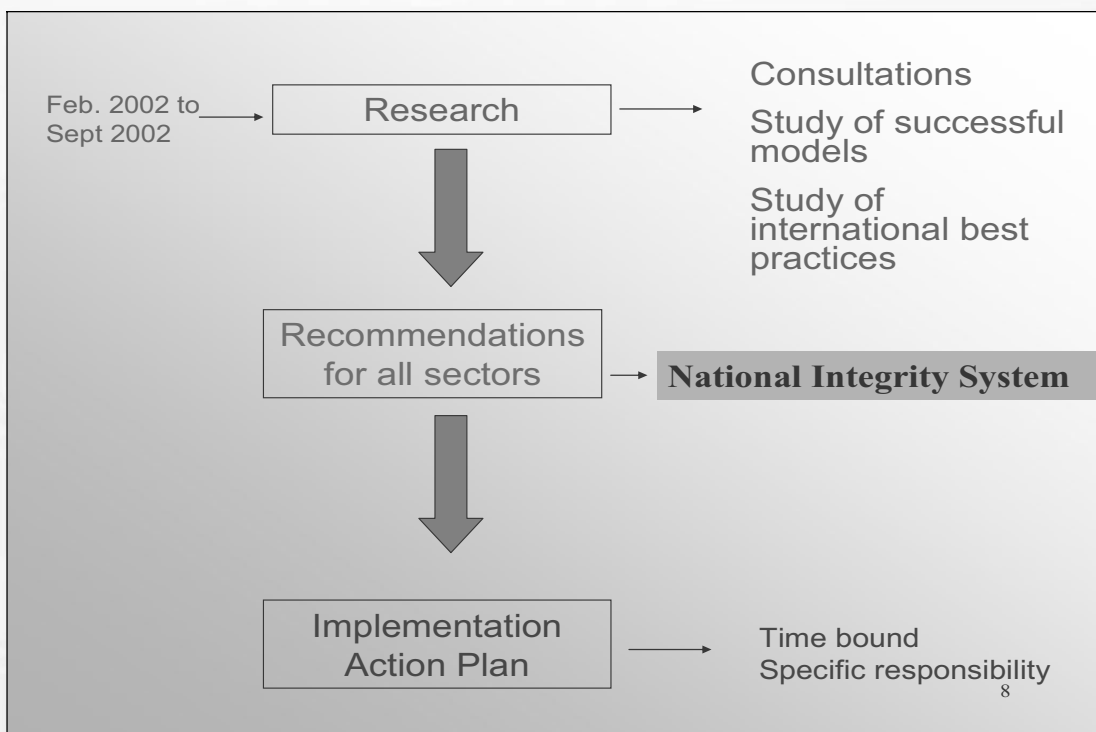
National Anti Corruption Strategy (NACS)

A project undertaken in NAB to diagnose the causes of corruption and identify remedial measures

6

The Project

7





Salient recommendations of NACS

- Political Will •
- Remuneration •
- Comprehensive Anti Corruption •
Approach
- Meritocracy •
- Transparency and Access to •
Information
- Training and capacity building •

9

Salient recommendations of NACS

- Changing the social attitude towards •
corruption
- Simplification of procedures •
- Rationalization of discretionary powers •
- Improved procurement regime •
- Internal Controls •
- Internal Accountability •

10

CHALLENGES OF IMPLEMENTATION

- Continuity of political will
- Resistance to change
- Collusive nature of corruption
- Social attitude towards corruption
- Cumbersome procedures for changing laws, rules, processes etc
- Lack of awareness and education

11

The Way Forward

- Avoid defeatist attitude and be positive
- Anti Corruption Coalition
- Formulation and implementation of NACS
- Think big, start small, scale quickly
- International cooperation
- Leadership by example
- Every stakeholder has an important role to play

12



**Miss. Efalina Yeim,
Independent Delegate for Fighting Corruption, Hong Kong.**



**Three-pronged Approach of ICAC:
The Hong Kong Experience**

Ms Evalina YIM
Deputy Regional Officer
Community Relations Department
Independent Commission Against Corruption
Hong Kong Special Administrative Region, China



Kuwait Transparency Conference

15-16 January 2007

The Bad Old Days

- **Corruption - a way of life in 1960s and early 70s**
- **People paid bribes from cradle to grave**



The Hong Kong Experience



Mission Impossible



The then Governor of Hong Kong,
Lord Murray MacLehose:

"..... there is much history behind corruption in Hong Kong and deeply ingrained attitudes are involved. The Commissioner will therefore have a civil unit whose main task will lie in educating the public as to the evils of corruption"



The Hong Kong Experience

Three-pronged Approach

COMMISSIONER



OPERATIONS
DEPARTMENT



CORRUPTION PREVENTION
DEPARTMENT



COMMUNITY RELATIONS
DEPARTMENT



The Hong Kong Experience



Three-pronged Approach



ICAC's first Commissioner,
Sir Jack Cater:

“Success in the Operations Department and success in the Corruption Prevention Department are essential as a springboard to the work of the Community Relations Department. And this is vital, for there can be no real victory in our fight against corruption unless there are changes of attitude throughout the community.”



The Hong Kong Experience

Community Education

To educate the public against the evils •
of corruption

To enlist public support in combatting •
corruption



The Hong Kong Experience



Face-to-face Contacts

About 25,000 civil servants reached each year

About 50,000 private sector staff reached each year

About 200,000 young people reached each year

300,000 people reached through 8,000 activities each year



The Hong Kong Experience

Face-to-face Contacts



The Hong Kong Experience



Mass Media

TV commercials •



The Hong Kong Experience

The First ICAC Commercial 'Hawker' (1974)

*A female hawker, hesitating whether •
to report corruption, finally went into
an ICAC office to make a report.....*



The Hong Kong Experience



Report Corruption



"I work day and night to make ends meet;

And yet you come to rob me of my meagre earnings.

I've to report it to the ICAC."



The Hong Kong Experience

Dire consequences of corruption



The Hong Kong Experience



Level Playing Field



The Hong Kong Experience

Mass Media

- TV commercials
- TV drama series



The Hong Kong Experience



Mass Media

TV commercials •



The Hong Kong Experience

Internet



The Hong Kong Experience



New Culture

Clean and efficient civil service •

Corruption reports against civil servants:

86% (1974) → 32% (2005)

Growing awareness in private sector •

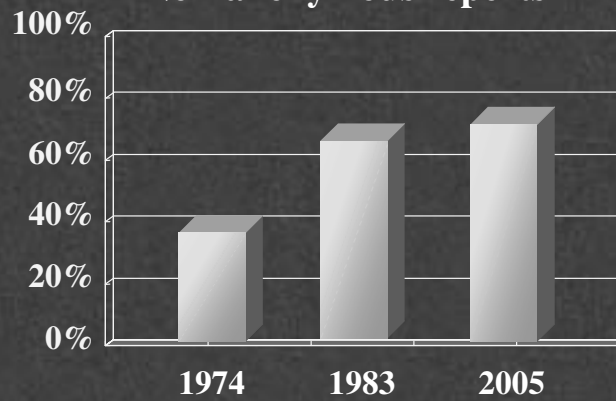
Corruption-free business environment •



The Hong Kong Experience

New Culture

Non-anonymous reports



The Hong Kong Experience

New Culture

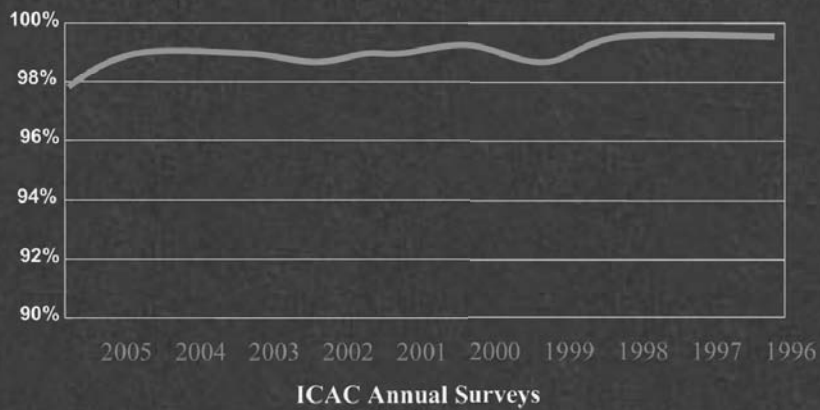
Low tolerance level of corruption



The Hong Kong Experience

New Culture

Overwhelming public support



The Hong Kong Experience



Partnership

Joint programmes with –
government
departments and
business community

Hong Kong Ethics –
Development Centre set
up with support from
chambers of commerce



The Hong Kong Experience

Partnership



The Hong Kong Experience



The Mission Continues



The Hong Kong Experience



<http://www.icac.org.hk>

Thank you



*Kuwait Transparency Conference
15-16 January 2007*



**Fourth Session:
“Administrative Supervisory Authority & its Role in Fighting
Administrative Corruption”**

**Mr. Sami Abo Al- Nour Abdul Moneim , senior Representative
of Administrative Supervisory Authority , Egypt**



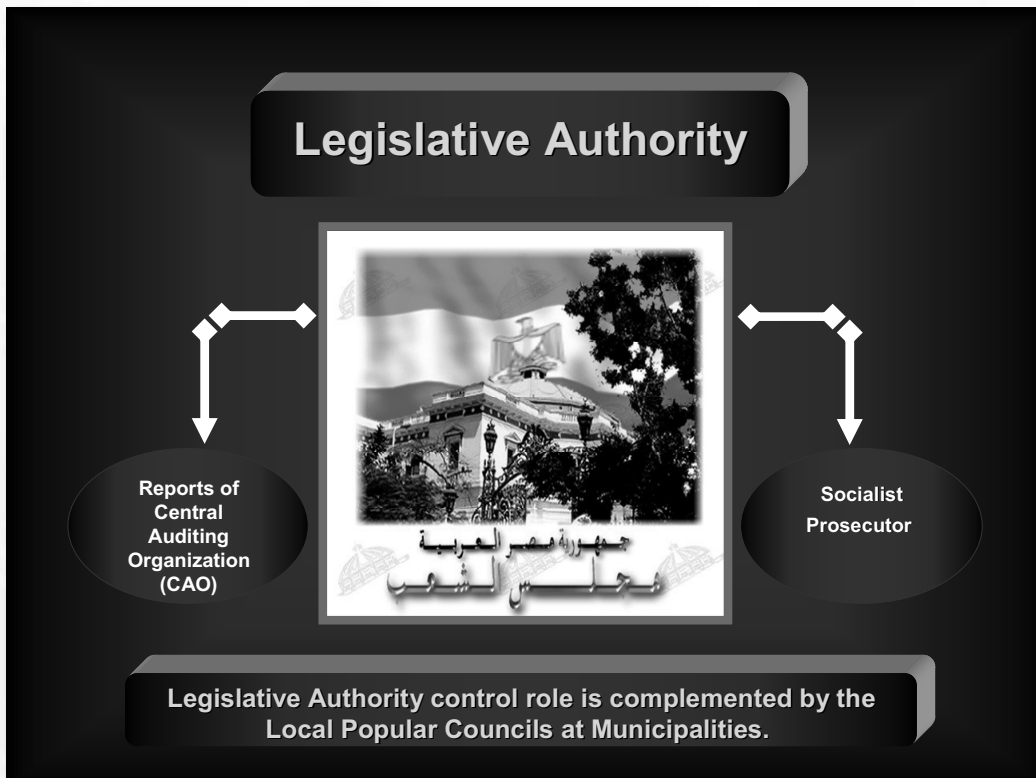
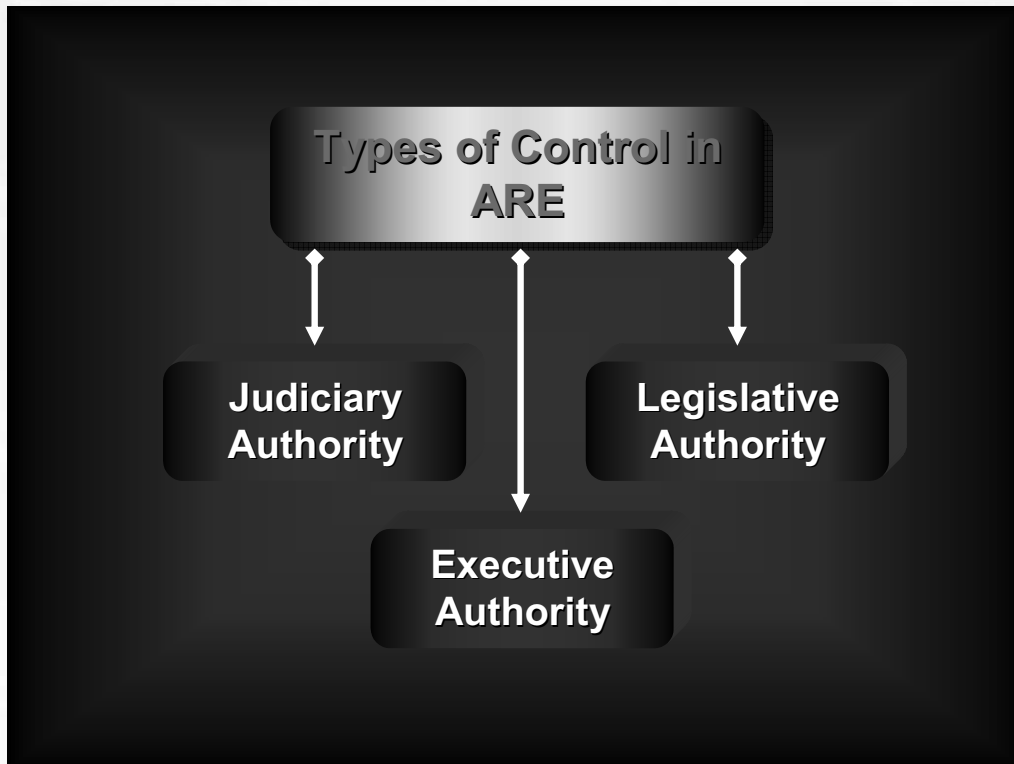
**Administrative Control
Authority
&
Its Role in Fighting Corruption**

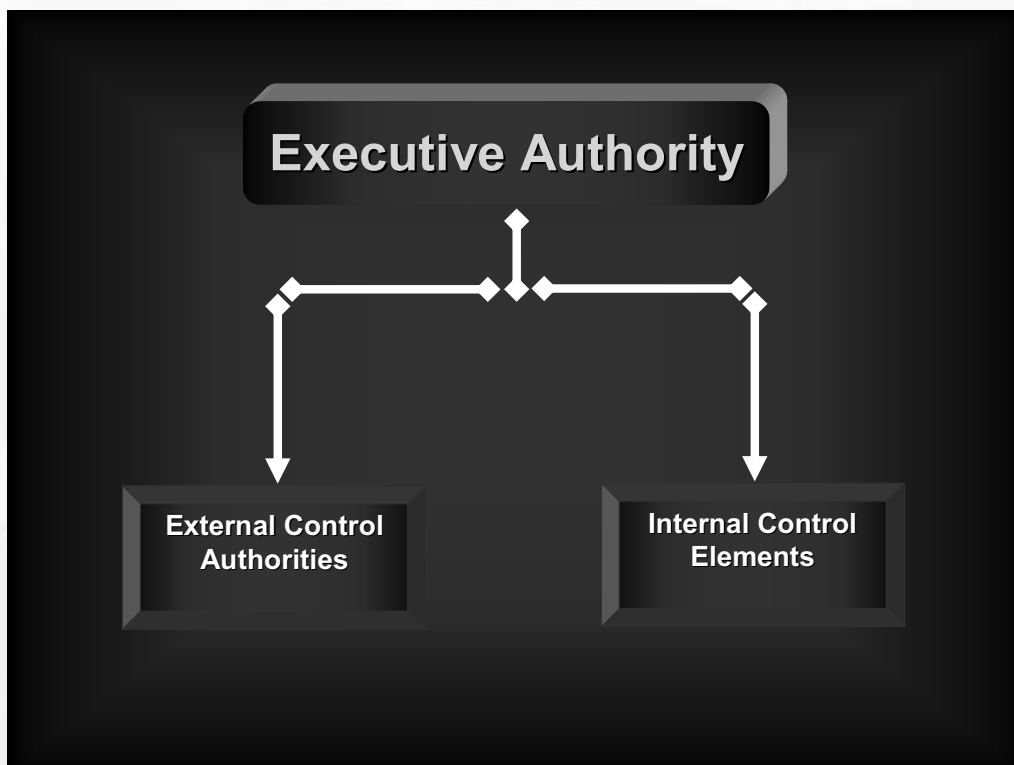
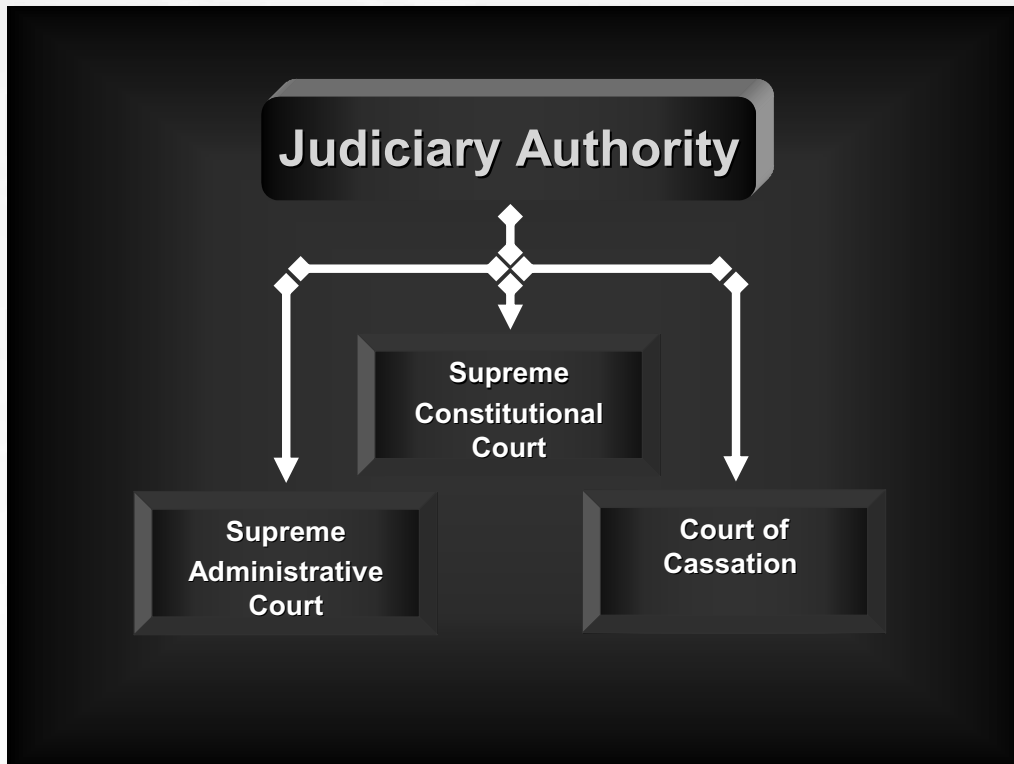


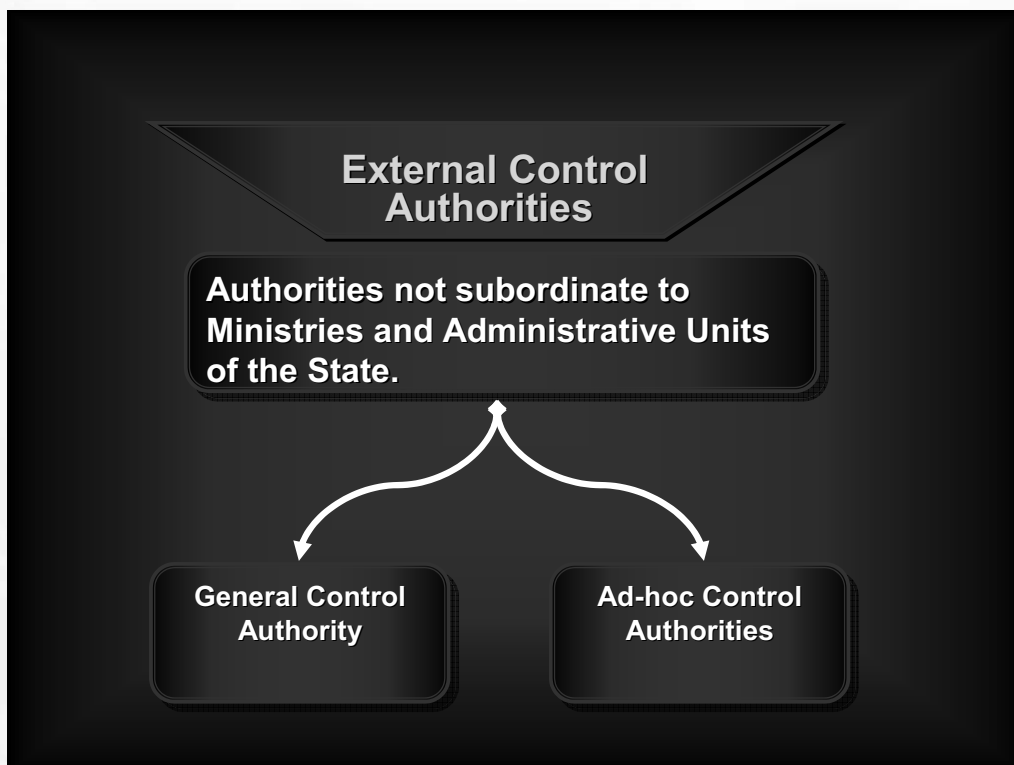
Presentation

- 1) Types of Control in the Arab Republic of Egypt.
- 2) ACA Presentation:
(Competencies, Powers & Authorities, Organization)
- 3) ACA & Its Role in Fighting Corruption

Types of Control in ARE







Ad-hoc Control Authorities

- Exercises one type of control.
- Reports to a designated minister according to their specialties.

- Industrial Control Authority
- General Organization for Export & Import Control (GOEIC)
- General Department for Control on Banks

General Control Authority

- Responsible for controlling the integrity of the administrative performance

- Reports to Prime Minister



- Exercises all forms of control:
(Administrative, Financial, Technical, Criminal)

ACA Head Office



All Types of Control aim to:

- Ensure Achievement of Objectives
- Ensure compliance with controls and disciplines
- Combat deviant behaviors and corruption
- Assist officials
- Solve work problems

ACA Chronological Events



***In 1958, ACA started as a Control Section reporting to the Administrative Prosecution.**

***In 1964, ACA became an independent authority in pursuance with Law No. 54.**

***In 1980, ACA activities were suspended by a decree.**

***In 1982, President Mubarak re-opened ACA.**

ACA Competencies



- To identify and investigate reasons for deficiency in performance and productivity, and proposes methods of recovery.
- To ensure compliance with laws and verify adequacy of such laws for the designated purposes.
- To detect defects of the administrative, financial, and technical systems, and proposes methods of recovery.
- To detect administrative and financial violations by employees during the performance of their duties.
- To detect and identify criminal violations by employees or others that may harm the integrity of work performance.

- To verify and examine issues of negligence, abuse of power, and mismanagement practices published in newspapers and mass media.
- To evaluate and verify competencies of candidate jobholders of the executive and management level to give them badges of honor and medals.
- To meet Prime Minister, ministers, and governors' requirements such as information and studies.
- To investigate cases of unlawful profit-making.
- To investigate money-laundry suspected financial transactions through coordination and exchange of data with Anti-Money Laundry Unit, Central Bank.

ACA Scope of Competencies

- **State's Administrative Agency**
- **Public Works Sector**
- **Public Authorities**
- **Private Sector exercising.**
- **public activities**

ACA Member Competencies

An ACA Member has the following competencies in pursuance with Law No. 54 of 1964:

- **To review confidential data.**
- **To get photocopies of documents and retain files.**
- **To summon employees for investigations.**
- **To request the temporary suspension/ dismissal of an employee.**
- **To request the enforcement of a disciplinary punishment on an employee.**
- **To exercise judiciary control that includes investigation of crimes, proof and evidence collection, search for criminals and ordering them to be arrested.**



Criminal Offences that shall be controlled by ACA

Offences of Abusing the Public Job

- Bribery
- Abuse of Power

Unlawful profit-making
Money-laundry

Offences related to the Public Funds

- Embezzlement
- To seize or make it easy to seize public funds
- Willful/unintentional damage to public funds
- Unlawful profit-making

Fraudulent copies of
Official Documents

ACA Anti-Corruption Policy

Key Outlines:

- **Protective or preventive control**
- **Initiation Policy**
- **Raising people's awareness of the risks of corruption**
- **Broadening areas of international cooperation for fighting corruption**

First Outline: To apply protective or preventive control as follows:

1. To examine negative phenomena and areas of defects at the competent authorities together with gaps that may be found in laws, regulations, and systems, and to develop the optimum methods of amendment and recovery.
2. To develop and activate the use of the sources of information at the competent authorities to allow for early detection of violations and infringements, and to take the proper remedial action especially in tenders and bids.
3. To meticulously review the investigations procedures related to candidates for the executive and managerial level in the State's agencies and authorities, to determine their competencies according to their qualifications and impartiality, and to exclude candidates with bad reputation.
4. To list the jobs whose jobholders are mostly vulnerable to deviant behaviors or bribery, and to conduct regular investigations on the jobholders of these jobs to ensure compliance with sound practices.
5. To follow up implementation of the public sector privatization program through the continued involvement of ACA in activities of the principal committees at the different entities concerned with the sale of lands, projects, waiver of usufructs, and the sale of public sector companies' shares and assets.
6. To follow up procedures of tenders and bids carried out by the different entities in the State for the early detection of any violations or infringements.



Second Outline: To apply the initiation policy towards corruption practices and corruptors through conducting spontaneous control measures as follows:

1. To detect and control offences related to public funds and deviant behaviors of officers.
2. To trace and control all forms power abuse and unlawful profit-making.
3. To trace and control tax and customs evasive actions to recover State's dues.
4. To observe governmental units performance and level of services provided to the public.
5. To examine people's complaints as they represent a key indicator of the deviated behaviors, and to help people get their legitimate rights.

Third Outline: Raising Anti-Corruption Awareness

Fighting corruption required active participation by people. So, people must cooperate effectively with all law-enforcement authorities, and this can not be achieved unless people have become aware of this issue via the audio, visual, and printed media.

ACA is keen to implement the Anti-Corruption Awareness Program for People & Employees. Program objectives are as follows:

- **To identify risks of corruption and its negative effects on the national economy and development plans of the State.**
- **To raise people's awareness of ACA, competencies, and ACA mission in combating corruption and protecting public funds.**
- **To increase areas of cooperation between people and employees with ACA in order to combat corruption and report any violations that may be detrimental to the public funds.**

Awareness Program follows the following steps:

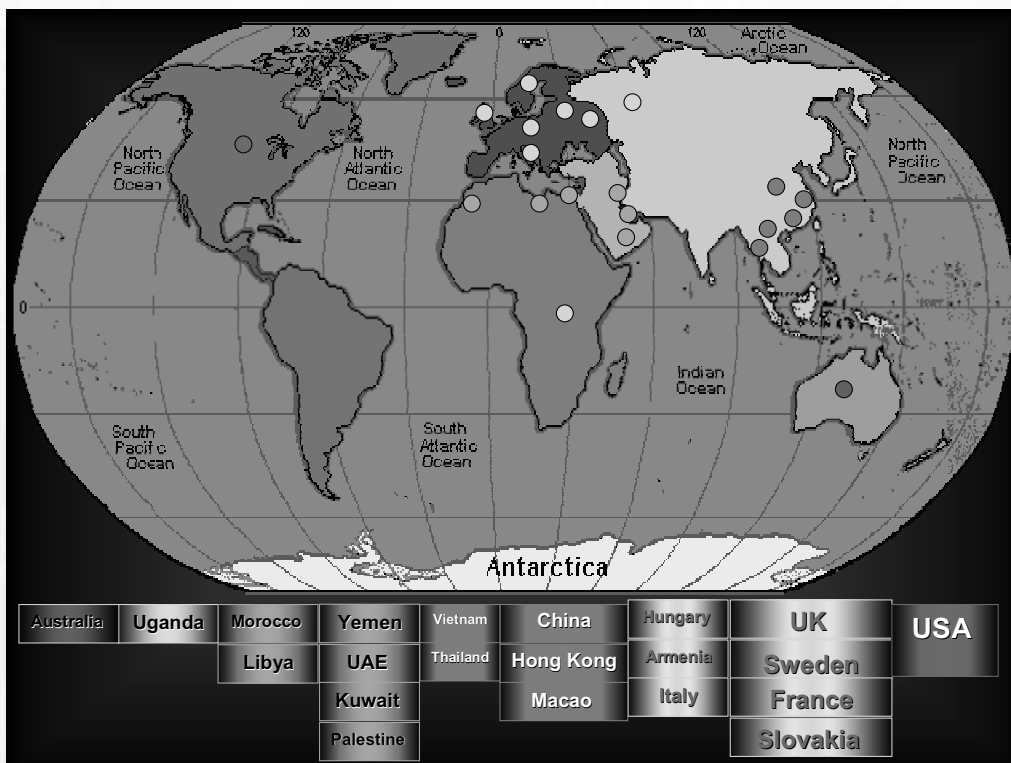
- **To cooperate with mass media in highlighting ACA role in fighting corruption and protecting the public funds.**
- **To encourage employees to attend the lectures discussing this subject matter in the training programs held at the different training institutes and centers.**
- **To organize seminars on fighting corruption at businessmen and investors' societies.**
- **To organize seminars for Egyptian university students to increase their awareness of the risks of corruption and ways of fighting corruption.**
- **To issue newsletters, including ACA contacts identifying ACA activities in combating corruption.**



Fourth Outline: To broaden areas of international cooperation for fighting corruption.

1. Economic openness policy has led to the emergence of new forms of corruption in the Egyptian society including international bribery crimes, money-laundry, organized crimes, and computer crimes. To enhance its ability to track these crimes, ACA moved ahead to open new areas of international cooperation with anti-corruption authorities at different countries. ACA has already established international relationships with 21 anti-corruption authorities in foreign, Arab, and African countries as follows:

- To conduct joint training to learn the experiences acquired by these authorities.
- To exchange data on cases of corruption and persons involved.
- To pay visits to counterpart authorities at such countries to acquire more knowledge and enhance its expertise.



In light of the above, the following shall be taken into consideration:

- 1. To make use of joining United Nations Convention Against Corruption” (UNCAC) for achieving the following:**
 - Easy tracking of culprits involved in corruption and money laundry crimes, recovery of funds outflowed to abroad, and direct cooperation with countries for the exchange of data on corruption crimes and culprits.
 - Encouraging cooperation among countries to provide training and exchange experiences on fighting corruption and money laundry.
- 2. To establish regional assemblies between corresponding countries to organize regular meetings and conferences so that their anti-corruption authorities can exchange**

Mr. Adel Abdul-Aziz Al-Sareawi
Member of National Assembly, Kuwait

Administrative Supervisory Authority (ASA)

**& ASA Role in
Combating Corruption**

Adel Abdul-Aziz Al-Sareawi

Introduction

- Consequences of the political and economic conditions have a direct impact on the development of countries' policies and on their regulatory and executive regimes. A good observer of the political and economic conditions in the State of Kuwait will realize the high rates of corruption (political, financial, and administrative) according to the international indicators and several governmental and non-governmental studies. This, in fact, is the principal factor for the establishment of Administrative Supervisory Authority ASA.



Why ASA in Kuwait ?

- Profile on the administrative and political situation in Kuwait.
- Government reports on corruption and methods of reform.
- Parliamentary efforts for combating corruption.
- International reports on corruption and transparency in Kuwait.
- ASA role given that there are other supervisory authorities.

What are the required or proposed legislations for combating corruption ?

- Political reform as the principal factor for combating corruption.
- Proposed enactment of a law on the establishment of the administrative court.
- Proposed enactment of a law on the establishment of ASA.
- Proposed enactment of a law on the right to request information.

[Main Components of ASA]

ASA Competencies

- To ensure compliance with laws and that the purpose of each law is achieved.
- To find out the administrative violations made by employees during the performance of their duties and by non-employees to violate the job duties.
- To evaluate performance of the governmental bodies.
- To follow, examine and judge on the complaints rendered by people.

[Main Components of ASA (cont.)]

First : ASA Powers

- To express its view with regard to recruiting or extending employment of holders of managerial positions.
- To examine and investigate reasons for deficiency in work, and proposed methods of recovery.
- To establish poll opinion systems within the scope of people services.



Main Components of ASA (cont.)

Second: ASA Powers & Authorities

- To review and retain any files or data even if confidential.
- To request the suspension of an employee from work.
- To apply disciplinary punishment on an employ who refuses to disclose or hides any information from the ASA.
- To conduct investigations by way of technical means with no prejudice to the personal freedom, and to communicate results to the competent investigation authorities.
- To search employees or homes of employees charged of committing work violations getting Public Prosecution's approval. Work places may be searched without the need of such approval.

Main Components of ASA (cont.)

Third: Executive Regulations

- To provide ASA staff members with the functional framework that includes job requirements, evaluation system, job grades, and the personnel affairs.
- To determine type and contents of ASA regular reports provided to Cabinet of Ministers and National Assembly.

How does ASA differ from Citizen to Government (C 2 G)?

- ASA scope of work covers all ministries, governmental departments, and entities with supplementary or independent budgets. ASA scope of work does not cover the Legislative or Judiciary Authorities, military affairs, Police, and National Guard.
- ASA shall have the power and authority to review documents, even if confidential, suspend employees from work, search employees and employees' homes after Public Prosecution's approval, and to call police officers.
- ASA shall have the right to conduct investigations and control by way of technical means without prejudice to the personal freedom, and to communicate the investigation results to the competent investigation authorities.

Conclusion

- Political stability is the principal factor for the establishment of supervisory authorities. Yet, the delayed establishment of supervisory authorities does not necessarily mean there is a problem. On the other side, the early establishment of supervisory authorities does not necessarily indicate efficiency and effectiveness of supervision. In fact, the effective implementation of supervision depends on the first place on the political regime desire to do. Such desire is not existing in Kuwait right now!



Fifth Session:
**“Anti-Corruption Authority” the Protective Armor Against
Financial Corruption**
**Mr. Mouk Wahoi, Chairman of Corruption Prevention Group,
Independent Delegate of Fighting Corruption, Hong Kong**

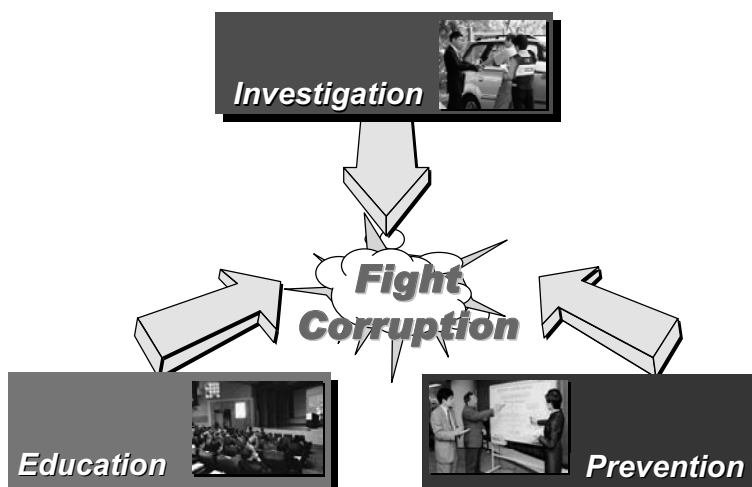


*Kuwait Transparency Conference
15 - 16 January, 2007*

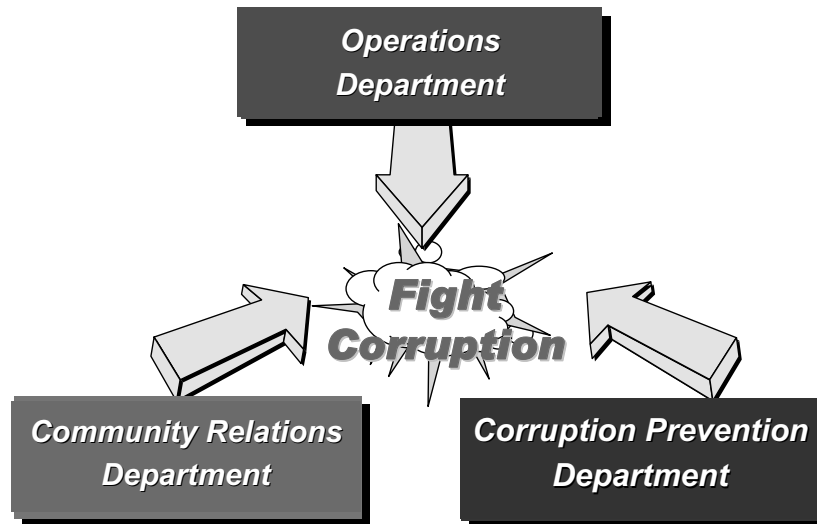
***Corruption Prevention -
The Systemic Approach***

*Mr. W. H. Mok
Corruption Prevention Department
Independent Commission Against Corruption,
Hong Kong, China*

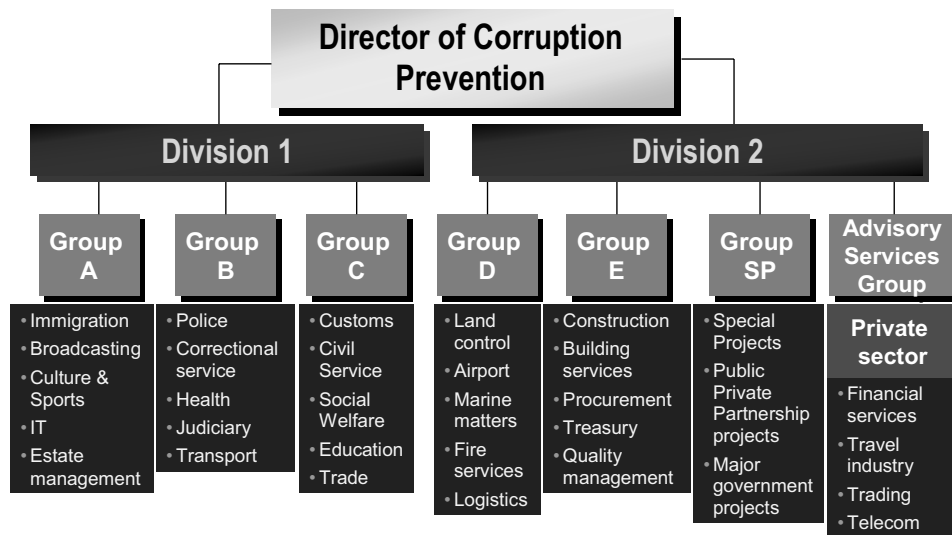
***The Strategy -
Three-Pronged Attack***



The Strategy - Three-Pronged Attack



Organization





Staffing

- **about 60 staff with professional background**
- **wide range of expertise e.g. engineers, surveyors, accountants, experienced government officers, and computer experts**

Methodology

**Detailed Reviews ●
of Systems and
Procedures**

**Consultation with ●
Government Agencies**

Sources and Prioritization of Work

- **Immediate Follow-up of Corruption Cases**
- **Clients' requests**
- **Proactive approach : Staff's alertness to changes and developments**
 - ◆ **new legislation/change of government policy**
 - ◆ **media reports**

Examples of Corruption Prevention Work in Public Sector



**Closing ●
loopholes in
police accident
investigation
procedures**

**Removing ●
opportunities for
corruption in public
construction**

**Eliminating ●
corruption
opportunities in
restaurant licensing
procedures**

**Examining ●
Hospital
Authority's
procurement
procedures**

Key Areas of Concern

- **Law Enforcement**
- **Public Procurement**
- **Administration of Social Benefits**
- **Construction Projects**
- **Licensing and Regulatory Systems**

Common Corruption Opportunities

- **unenforceable legislation**
- **lack of or inadequate policy and instructions**
- **unnecessary or cumbersome procedures**
- **inadequate supervision**
- **excessive discretion**
- **delays**
- **poor information security**
- **inadequate management of conflict of interest**
- **lack of publicity/transparency**



Regulations and Guidelines

The Civil Service Regulations

- **Acceptance of Advantages (AAN)**
- **Conflict of Interest**
- **Investments**
- **Outside Work**
- **Post-service Employment**
- **Confidentiality of Information
(Official Secrets Ordinance)**

Work for Private Sector

Advisory Services Group

- **Free advice**
- **Strictly confidential**
- **Tailor-made**
- **Hotline service**



2526 6363

Best Practice Modules

- **Booklets**

- *Contracting Out Cleaning Services*
- *Contracting Out Security Services*
- *Construction Industry Best Practices Principle*
- *Procurement Practices*
-

***Corruption Prevention
means***

***F*airness**

***A*ccountability**

***S*implicity**

***T*ransparency**



**Mr. Shadi Al-Khori,
Investigation Delegate, Lebanon**

***Anti Corruption Staff
The Protective Shield
against Financial
Corruption***

**Kuwait Transparency Conference
13-17 January 2007
General Sessions**

**Chady El Khoury
Legal Expert
Special Investigation Commission for Fighting
Money Laundering - Lebanon**

***United Nations Convention against Corruption- New York,
31 October 2003 (As per September 2006)***

	MENAFATF COUNTRIES	MERIDA CONVENTION 2003	
		Signature	Ratification
1	Jordan	9 Dec 2003	24 Feb 2005
2	UAE	10 Aug 2005	22 Feb 2006
3	Bahrain	8 Feb 2005	-
4	Tunisia	30 Mar 2004	-
5	Algeria	9 Dec2003	25 Aug 2004
6	KSA	9 Jan 2004	-
7	Syria	9 Dec 2003	-
8	Oman	-	-
9	Qatar	1 Dec 2005	-
10	Kuwait	9 Dec 2003	-
11	Lebanon	-	-
12	Egypt	9 Dec 2003	25 Feb 2005
13	Morocco	9 Dec 2003	-
14	Yemen	11 Dec 2003	7 Nov 2005
15	Iraq	-	-
16	Mauritania	-	-
17	Sudan	14 Jan 2005	-

Summary

STATUS	Merida Corruption
Ratification	5/17 30%

Anti-Corruption Body and Law Enforcement Agencies

Two Articles (6-36) of the UNCAC Convention principally deal with the Anti-corruption Body and LEA:

- ✓ Countries MUST have an Anti- Corruption Body or bodies (Art.6)
- ✓ Countries MUST designate Law Enforcement Authorities to investigate Corruption (Art.36)

Other articles also impact on the Anti-Corruption body and LEA, these will also be looked at in this presentation.



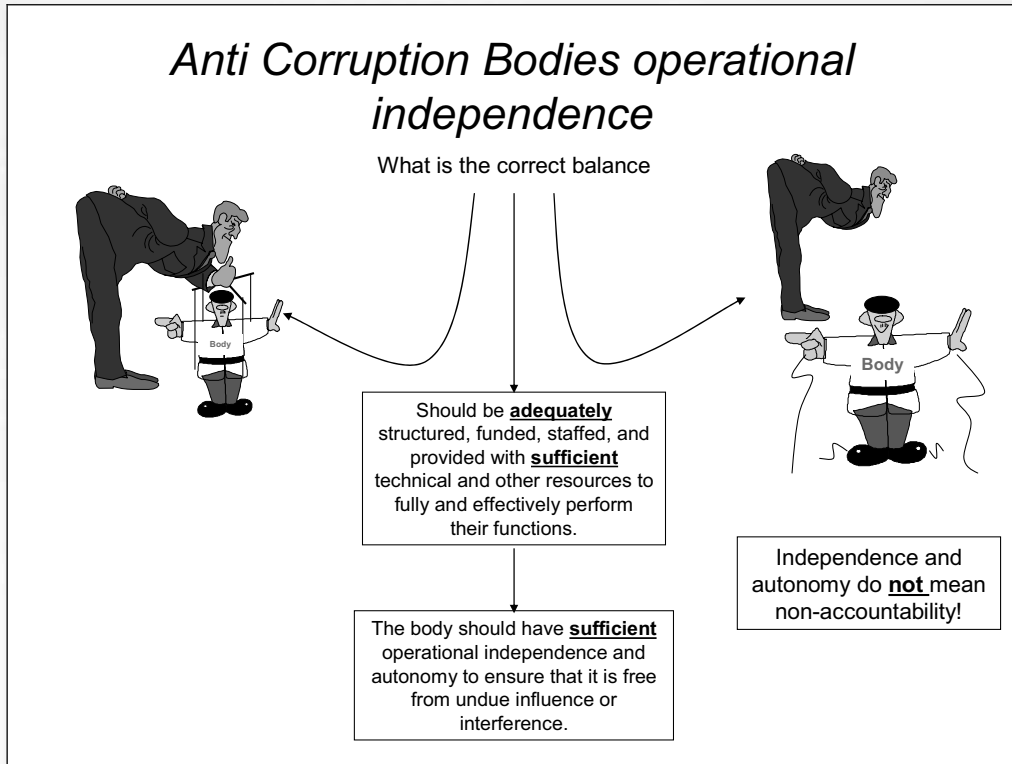
Establishment of Preventive Anti-Corruption Body or Bodies (art. 6)

Existence of a body or bodies, as appropriate, that prevent corruption by such means as:

- Implementing the policies referred to in [article 5](#) of this Convention and, where appropriate, overseeing and coordinating the implementation of those policies;
- Increasing and disseminating knowledge about the prevention of corruption.
- Grant the body or bodies the necessary independence.

Specialized authorities (art.36)

- Existence of a body or bodies or persons specialized in combating corruption through law enforcement.
- Such body or bodies or persons shall be granted the necessary independence.



The French Experience of a specialized Agency

Statute passed on 29 January 1993, created the Central Corruption Prevention Agency (SCPC).

The SCPC is attached to the Ministry of Justice, although it is not a central government agency but an independent administrative authority. It is not subject to judicial review, thus avoiding any disputes relating to jurisdiction. It is an inter-ministerial agency made up of judges on the ordinary courts (headed by a judge) and civil servants attached to various government departments:

Treasury Department: tax, customs, competition, consumer –
affairs and prevention of fraud.

Home office : national police, regional and local authorities. –

Ministry of public works. –



Functions often undertaken by the Anti-Corruption Body (art. 5)

Preventive anti-corruption policies and practices

- Develop and implement or maintain effective, coordinated anticorruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.
- Establish and promote effective practices aimed at the prevention of corruption.
- Evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption.
- Collaborate with each other and with relevant international and regional organizations in promoting and developing the measures referred to in this article. That collaboration may include participation in international programs and projects aimed at the prevention of corruption.

Financial Intelligence Unit (Art. 58)

States Parties shall cooperate with one another for the purpose of preventing and combating the transfer of proceeds of offences established in accordance with this Convention and of promoting ways and means of recovering such proceeds and, to that end, shall consider :

establishing a financial intelligence unit to be responsible for receiving, analyzing and disseminating to the competent authorities reports of suspicious financial transactions.

National Cooperation

Cooperation between national authorities (Art. 38)

Cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences.

Such cooperation may include:

- Informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the offences of the Convention has been committed; or
- Providing, upon request, to the latter authorities all necessary information.



Collection, exchange and analysis of information on corruption (Art. 61)

- Analysing, in consultation with experts, trends in corruption in its territory, as well as the circumstances in which corruption offences are committed.

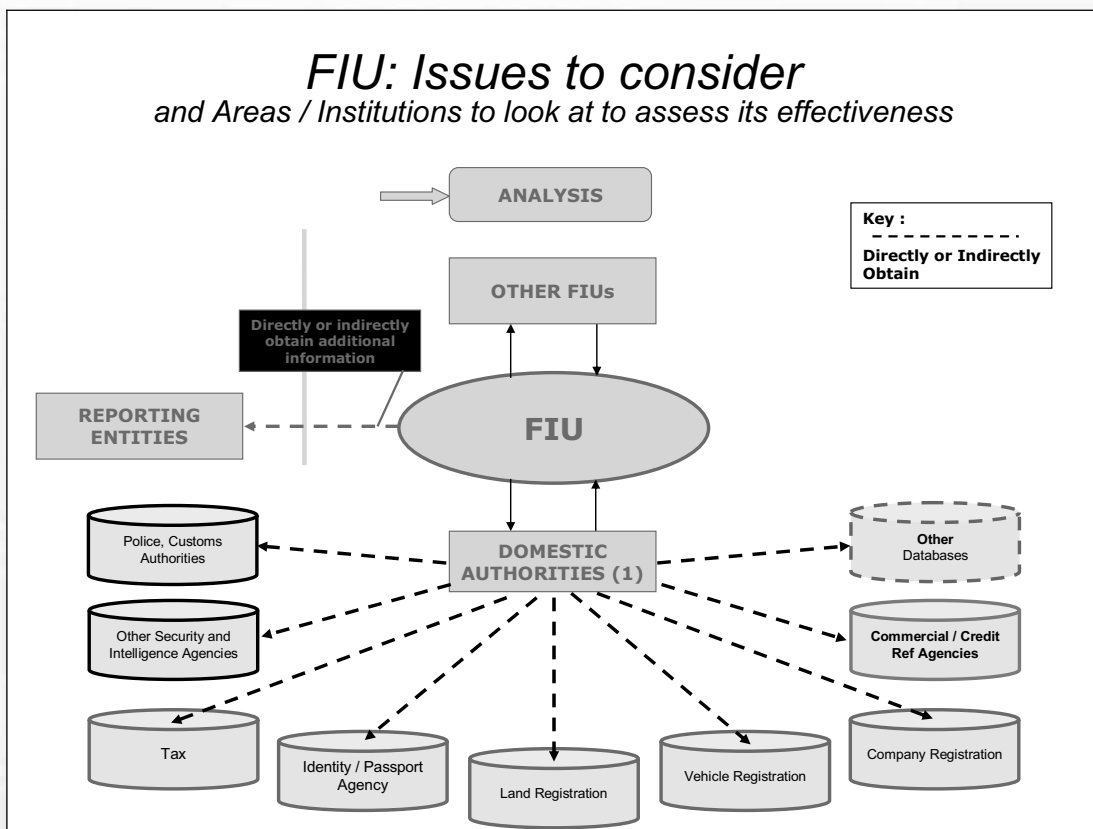
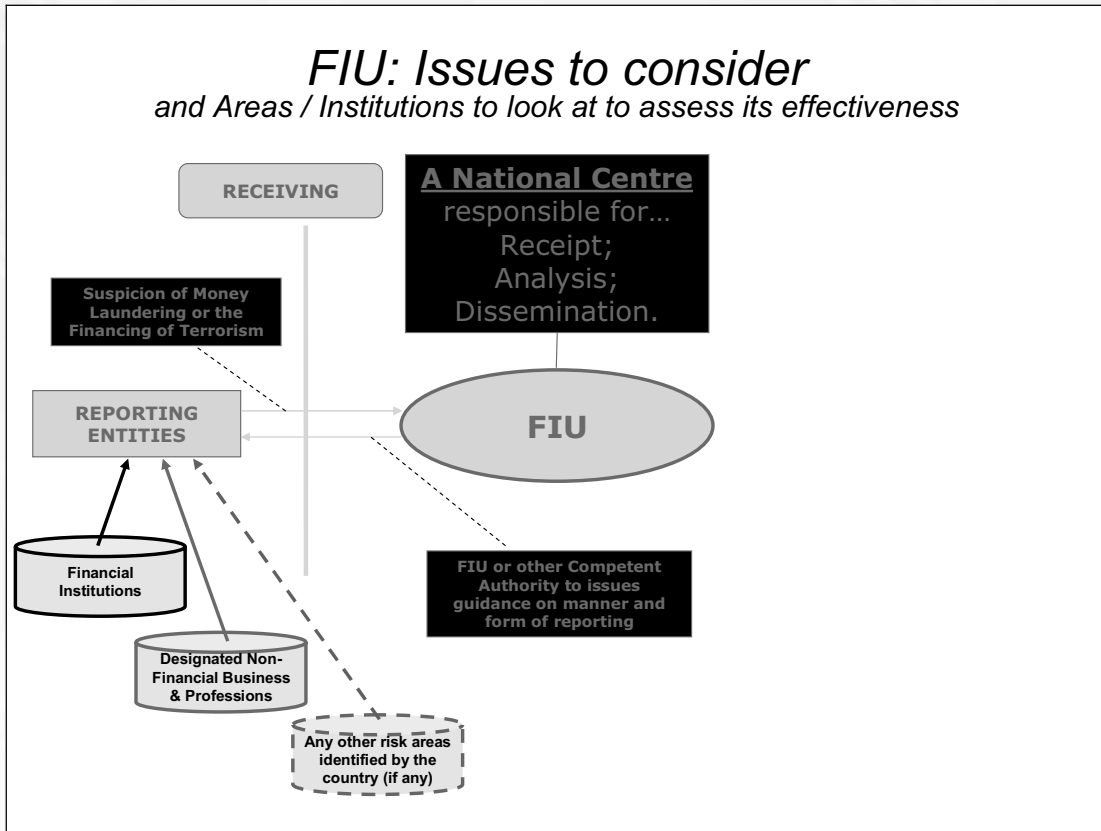
- Developing and sharing with each other and through international and regional organizations statistics, analytical expertise concerning corruption and information with a view to developing, insofar as possible, common definitions, standards and methodologies, as well as information on best practices to prevent and combat corruption.

- Monitoring its policies and actual measures to combat corruption and making assessments of their effectiveness and efficiency.

Relation between Money Laundering and Corruption

- Links between AML/CFT and corruption:
 - Proceeds of crimes of corruption are susceptible to be laundered.
 - Corruption, bad governance and corrupt institutions and officials can hamper the effectiveness of Anti Money Laundering /Counterfeit Financing of Terrorism regimes

- Main Asian Pacific Group typology working group:
 - Infiltration by corrupt politically exposed persons (in the board of a Bank) involved in laundering the funds of corrupt officials or politicians





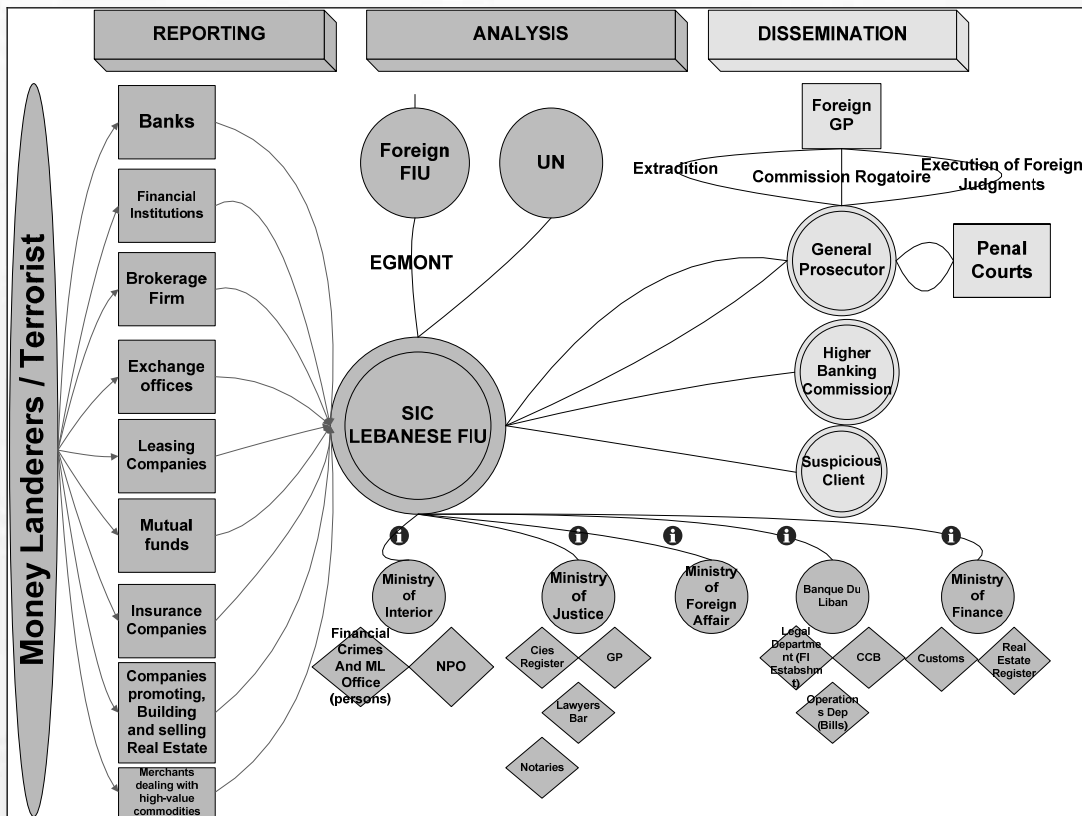
Functions often undertaken by FIU:

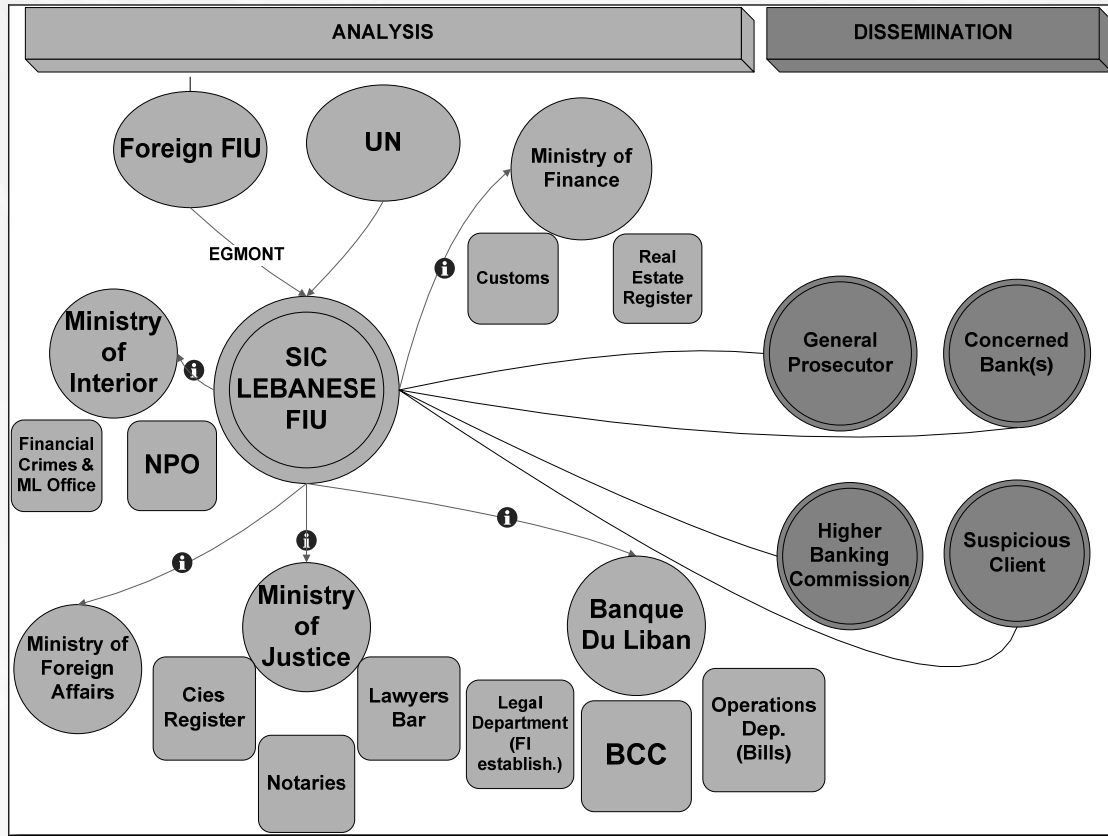
- Monitoring compliance with AML/CFT Requirements
- Blocking transactions
- Training for staff of reporting institutions in reporting and other functions

Effectiveness Issues Applicable to Competent Authorities

- Skills of staff – R30
- Resources – R26 & R30
- Training – R30
- Quality of feedback to financial sector – R25
- Quality of statistics –R32
- Domestic co-operation and coordination – R31
- International information exchange – R32 & R40

Lebanese Experience





**Mr. Ahmed Al-Melaifi,
Member of National Assembly, Kuwait.**

**Anti-Corruption Authority
Corruption Phenomenon:**

Al-Mighty Allah says: "And when your Lord said to the angels, I am going to place in the earth a khalif, they said: What! wilt Thou place in it such as shall make corrupt in it and shed blood, and we celebrate Thy praise and extol Thy holiness? He said: Surely I know what you do not know", The Cow, 30.

Phenomenon of corruption is as old as the creation of mankind, and kept developing as the social, economic, and political lives of mankind were developing. Corruption was and has been the enemy to people, prophets, thinkers, and reformers in fierce, grinding battles; they could achieve victory in many times, and beaten in many other times. In battles where they were beaten, they did not only lose properties and money, but lost their lives as will!

As corruption and corruptors have developed and invented new tools and acquired additional potentials as Allah says "Corruption has appeared in the land and the sea on account of what the hands of men have wrought, that He may make them taste a part of that which they have done, so that they may return", fighting corruption should be developed and should have additional potentials, given the fact that corruption inflicts us much social, political, and economic costs. In addition, corruption undermines development and welfare of the society as a whole.

Given that fighting corruption is a common responsibility, each individual in the society with all its classes and directions shall stand together to fight corruption. Even though corruption does not harm individuals in most cases, it targets State's institutions and corporations to absorb their fortunes and make it paralyzed. Eventually, risks of corruption will harm the individual, his future, and the future of his children.

So, all parties should cooperate together to identify the potential risks of corruption and propose the collective, organized ways of combating corruption.

I will not talk about Corruption Fighting Authority in terms of its legal form, competencies, and authorities, since the legal formation of any authority is a simple job to any legal person or a good follower. Rather, I will discuss a new problematic issue sensed by Arab citizens, an issue that we, as politicians, feel it in people's trust in fighting corruption and their experiences in this field.

Why speech is focused now on a corruption fighting authority?

People may communicate together about the reasons of establishing a corruption fighting authority. The following questions may be asked:

1. Experiences of the third world in general and the Arab World in particular in forming authorities have proven failure, since most of the authorities entitled to have control over rights and freedoms and control over governmental agencies and their activities, are linked in any way to these governmental agencies and such authorities become have become the tool that adds legitimacy on the unlawful activities exercised by such governmental agencies?



2. Even though a corruption fighting authority has kept the right track at the very beginning of its incorporation, seduction of these authorities will not be impossible if compared to the promises and threats exercised by the governmental authorities and agencies that can mobilize all their powers and potentials for that purpose?
3. Most of corruption fighting authorities that were so firm and uneducable at the very beginning, were dissolved and wound up and the board directors were imprisoned or exiled?
4. In case a corruption fighting authority has been involved in corrupt practices, which authority will be entitled to monitor and audit its activities? Will another authority be needed?

These legitimate, reasonable questions were asked by Arab citizens craving for reform and real development processes, but who became frustrated and desperate after they had seen how corruption fighters became proponents, exiled, or imprisoned. For people, political scene has become a dramatic play whose heroes are those politicians, either inside or outside the government and whether they are opponents or proponents; its stage is the life that we live and the ground that we kick with our feet; and its audience is the public who either claps, suffers, or laughs.

What is the solution?

Though this question is short and its words are few, a complete answer to this question can not be provided in a two-day conference, rather, one needs to make studies and researches and to quote certain experiences and models that are applicable and comparable.

In my viewpoint, the problem has two dimensions; Political Regime and People.

By Political Regime, I mean the state rulers themselves not their institutions, since the governing regimes of the Arab countries, whether they are royal, amiri, republic, or democratic, are similar and linked to the President, Amir, or King and whether this is done via elections where the elected president scores 99.99%, or via tribal or familial appointment. Those rulers need to realize that reform will not necessarily destroy their lives, loot their fortunes, or even restrict their decision-making authority. Reforms ensures much more welfare for nations, much more development to countries, true love between a nation and its ruling regime; a spontaneous love that penetrates into the depth of hearts away from attacks of the State Security Forces (Night Visitors), obscurity and vagueness introduced by the yellow newspapers, writers who are solely motivated by material gains, and hypocrites supported by misguided people. It is this love that should spring from the inner feelings of individuals who feed that the country's political regime is struggling to bring happiness and welfare to them and to their offspring.

Core of the problem lies in the fact that these regimes realize that they are illegitimate, and though they have all powers and means, they are in a permanent fear of losing their power. That is why they employ a very wicked policy through which the governing regime tends to immerse people in trivial issues and side conflicts so that people becomes strayed.

Governing regimes try their best to make life harder and harder so that people will have nothing to do but to work day and night and endure the hardships of life to earn their living, and thus, will not be able to run further discussions on any public issues.

Moreover, governing regimes try their best also to drive people into doing corruption practices so that people will shut up their mouths from discussing corruption made by the government, to

the extent that one is driven to steal K.D 1 and another is driven to steal millions, and eventually, all stealing is one crime!

The difficult mission falling on the shoulders political, social, and economic reformers is to convince these governing regimes of the idea of reform clarifying that there is a great difference between change resistance and reform resistance.

Military intervention to oust these regimes from power is very costly to nations and countries, since in the case of a military intervention, such regimes did not save no effort to use their whole military powers fiercely against opposition, even if such military power is not used to deter external aggressors, inflicting huge damages and losses to nations.

Reformers are therefore required to build trust and confidence between the governing regimes and their nations, be patient, take gradual steps till achievements can come true, prioritize issues, throw the seeds of reform without a rapid desire to reap the crop and to give these seeds much care till they grow up and be reaped by next generations who will defend the reform process afterwards.

Ability to convince a governing regime of the importance of reform and its national interest to the governing regime and its sovereignty will have a major role in combating corruption effectively, since Allah achieves by power what can not be achieved by the sermons of Qur'an.

The second dimension which is as important and critical as the first dimension relates to people. People are the base of reform, and they are responsible for the existence or non-existence of corruption, whether they are ordinary citizens, decision-making or taking citizens, or merchants who have business interests.

When "We are Partners to Reformists & Corruption Fighters" motto comes true by deeds not by words, corruption fighting authorities will bring about more effective results.

Even though planning the educational, cultural, and behavioral aspects of humans is not impossible, it is a hard mission and its results become clear after a long period of time. These aspects need a long-term planning, patience, sacrifice, follow-up, and sustainability. Whenever the building of a good man is completed successfully, success will be destined also to all institutions; namely, Anti-Corruption Authority.

Allah Ali-Mighty says: "But why were there not among the generations before you those possessing understanding, who should have forbidden the making of mischief in the earth, except a few of those whom We delivered from among them? And those who were unjust went after what they are made to enjoy of plenty, and they were guilty" The Holy Prophet, 116.

Conclusion

Dear Ladies & Gentlemen, surely you are trying to match the content of speech with its subject as it reads "Anti-Corruption Authority". Most of you thought that a legal practitioner and politician will discuss the legal aspects related to the ACA formation, competences, powers and authorities, and what ACA is reporting to, etc...

These legal aspects are very easy to me and may require modest efforts in most cases, since such anti-corruption authorities are already established in other countries, and in such a case, efforts



will be focused only on adapting their policies, procedures, and regulations to fit into our country and the applicable legal system.

Though I do believe that the issue is not only limited to the development of systems, laws, and regulations which are very essential for the very beginning of any idea, but defects are not in provisions as they are in souls. Humans are the key factor for the successful implementation of any developmental project based on reform, whether they have the decision-taking authority or they are ordinary people who will be responsible for putting these decisions into effect or who will have to comply with these decisions.

When mankind are well prepared, they will strictly comply with and develop these systems, laws, and regulations. However, if mankind are brought up to be in compliant or opponents to these systems, laws, and regulations, they will be the stumbling block to all change and development aspirations. It is true that "however you are, is how the next generations will be".

Sixth Session: Private-Public Partnerships (PPP)

**His Excellency Mr. Bader Al-Humedi,
Minister of Finance, Kuwait**

Enhancing Private Sector's Role in the Sustainable Development Through

Introduction:

It should be noted earlier that the title of the conference and subjects discussed at the sessions do underline the fact that economic reform efforts should be based on "Transparency," "Accountability," and "Governance," a matter that reflects the KTC organizers' awareness of the most important sustainable social and economic development requirements. So, I have to discuss in brief the key factors that have brought about radical changes to the economic development methodology at the international and local level as an introduction to my speech. I need also to discuss and analyze the important reshaping the Private-Public relationship, identify the basic requirements necessary for the optimum implementation of Private-Public Partnerships to ensure provision of high-level and quality public services and support the State's competitive potentials so that they will become an essential component of the economic and social development.

Substantial Developments to the Economic Development Methodology at the International Level

The last decade of the last century witnessed certain economic developments, the most important of which are the establishment of giant economic blocks such as European Union, North America Free Trade Zone, the development of South Asia countries economic community, and the establishment of international organizations concerned with the international trade liberation such as World Trade Organization (WTO) with a large number of countries, including the State of Kuwait, entered into international and regional agreements for trade liberation. Meanwhile, leaders of countries have realized that to achieve change, the financial and economic policies should be subject to radical changes so that such countries will be able to keep pace with the economic developments at the regional and international levels. Though the economic policies during the 1970s were imposing certain restrictions on the direct foreign investment, supporting local industries to replace imports and achieve self-sufficiency, and supporting the direct participation of the State in the economy through the State's control of the key economic activities, the economic policies based on reform during the last two decades have motivated most countries to liberate their national economies from the bureaucratic restrictions that hindered development and progress, encourage foreign investment, reshape the government's relationship with the Private Sector, implement privatization programs, and to enter into regional coalitions to reinforce their role in the world economy.

A number of reasons has led to this ultimate result; i.e., the radical changes made by several countries to their economic methodologies. An important reason of which is that leaders of countries have realized that the continued economic isolation has become ineffective and impossible under the regional and international trade agreements and globalization.

Necessity of Change to the Development Methodology at the Local Level:



The pattern of development adopted by the State of Kuwait during the last decades depended on the relative abundance of financial resources, supported by strongly-justified views and reasons that were appropriate during that time. The State at that time moved towards creating a "Welfare State" due to the broad government involvement in the economic activity in addition to the development and implementation of costly economic and social policies.

Certainly, State of Kuwait could be able, under the applicable pattern of development, to achieve steady development and progress on its way towards the achievement of an economic and social leap that has changed the status of its economy and the Kuwaiti society as a whole. Worthy admiration modern and developed economy foundations have been laid down. A high increase in the economic growth levels and income per capita is noticed, as the actual growth level has been 7.5% roughly per annum based on the average of the last two years. Increase to the average GDP per capita has become 4% roughly since 2004 reaching USD 26,0000 at the end of 2005. These figures are achieved under stable financial and pricing conditions.

Contrary to the above positive economic developments there were other developments that brought about deficits in totals and the economic structure. Among the most critical deficits are the continuing increase in the total expenditure by the government against the remarkably-decreased economic revenues, minimized participation of Private Sector in the sustainable development, the lowered added value of Private Sector's activities, minimized participation of Private Sector in the capital formation, and the disguised unemployment of national labor that is mostly centered in the governmental economic activities. These deficits have been posing a threat on the sustainable development and limiting State's abilities to keep pace with the recent requirements of globalization and the advanced progress in technologies, telecommunications, transportation, information technology, etc... given the growth and development opportunities that should be utilized and maximized, and the accompanying challenges that should be addressed properly to avoid their negative impacts on the development process and the cultural and social structures as well.

Taken the above into consideration, substantial changes to the planning methodologies of the economic and social development should be made in a manner that redresses accumulations of the past, encourages interaction with inputs of the present time, invests State's resources properly to address prospective developments and changes, diversifies sources of income, and achieves the sustainable development for the national economy. As far as this approach is concerned, State of Kuwait tends to apply several reforms based on certain basics able to achieve the required economic and financial stability to avoid the presence of uncertainty that may harm the development process on the long run.

Based on the above, Kuwait is at the advent of a new economic growth stage that best matches the nature and requirements of the local, regional, and international developments, through laying down new foundations where growth will depend on the production, efficiency, and performance of the renewable production elements including the work force and capital assets. To do this, the State's intervention and influence on the economic life, market mechanisms, and pricing systems should be kept to a minimum, so that the State will no longer be directly responsible for the provision of goods and services and control of the pricing policies, rather, it should encourage the activities required to achieve development, provide the basic requirements that motivate participation of the Private Sector in the production projects and economic infrastructure projects, prevent monopoly, take corrective actions for any deviant behaviors in markets, remove administrative obstacles, increases transparency, and ensure fair competition.

One does not need to stress that a prerequisite for the economic reform is the shifting from an economy that is based on the State and the public funding mechanisms to an economy that is mainly based on the local and foreign private business and individual initiatives under the market mechanisms. The State should maintain its principal role to monitor and direct, ensure social and moral balance for the society, and intervene to take corrective actions for any deviant behaviors in order to ensure the optimum mobilization and use of available resources. This, in fact, necessitates the reshaping the Private-Public relationship, which will be discussed in detail in the following paragraphs.

PPP to Reshape Private-Public Relationship

Government is keen to reshape the relationship between the Private and Public sectors to provide the factors of success necessary to activate the local and foreign private sector's role in achieving sustainable development. To do this, the government should reform the subsidy and incentive structure, enhance institutional capacities that enable market mechanisms to act effectively and transparently for the development of economic capabilities and productivity, lie down the regulatory framework that identifies competition factors and prevents monopoly, and maintain balance between the public and private interests in relation to the activities performed by the Private Sector.

Private Sector's participation in the provision of public services through the establishment and operation of infrastructure and public utility projects has a paramount importance, since the Private Sector's resources help alleviate the financial burdens endured by the State, in addition to the Private Sector's administrative and technical expertise that help provide high-quality and cost-effective services as it is clear in many countries. Moreover, it is clear that the Private Sector that has effectively contributed to the development of the national economy aided by its administrative and organizational resources and abilities, will be able to implement several developmental projects on PPP basis in a way that increases State's resources and push the economic development process ahead.

PPP includes services agreements, maintenance and operation contracts, management and maintenance contracts, initiatives, B.O.T, operation and own contracts, et al.

Minds may be struck by a set of logical questions on the significance of the PPP. These questions may include the following: what is the difference between projects carried out by the Public Sector and PPPs? What are the problems that may arise out of the implementation of projects by Public Sector? And what are the aspired benefits that may be triggered by the proper implementation of PPPs?

To answer the first question, we would like to indicate that PPP focuses on the deliverables and quality and creates competition among Private Sector players to propose the best methods of providing the required services. In the case of the public sector, focus is almost directed towards inputs of the project. So, PPP deliverables are of high quality and suitable for use by the end user. This means that a considerable portion of the financial, technical, and operation risks of the project will be the responsibility of the Private Sector. It is worthy mentioning that PPP contracts have been implemented in many countries and contributed effectively in raising the level of competition at the local and international levels.

To answer the second question, we would like to refer to the lessons learned from implementation of projects by the Public Sector in the sense in most cases implementation is suspended due to renegotiations with the service provider. For example, average percentage of renegotiations



made by several governments in Latin America was 29% out of 1100 contracts. Percentage of renegotiations in the main services was as follows:

- | | |
|--------------------------|-----|
| • Water services | 75% |
| • Transport services | 55% |
| • Energy services | 5% |
| • Communication services | 1% |

Renegotiation caused the suspension of water services contracts for two years and transport contracts for three years.

Reasons of renegotiations are as follows:

- Unreadiness and poor preparation by the Public Sector.
- Non-existence of a central, supervisory, organizing authority.
- Contradictions in the contract provisions, and unfair risk allocation.
- Costly service provision.
- Lack of competition in the bidding process.
- Unclear bidding documents.
- No performance bond available.

To answer the third question, we would like to indicate PPP benefits learned from experiments at the international level are as follows:

- Remarkable, quick delivery of the required services.
- Remarkable quality services and decreased costs.
- Defined obligations and responsibilities of parties, and accountability on responsibilities.
- Shifting government's role from a service provider to an organizer.
- Shifting government's role from a source of finance to a service cost manager.
- Reinforcing and developing Private Sector's role in providing sustainable development.
- Reinforcing and developing the local money market.

Optimum PPPs Implementation Requirements

To optimally implement PPPs, general rules and regulatory framework for PPPs should be in place to ensure the public interest and underline the importance of applying the principles of equity, transparency, and equal opportunities for Private Sectors' investors.

Successful international experiments stress that an administratively and financially-independent executive body should be established to manage and control PPPs. In addition to the existence of a developed administrative system, active and qualified management, qualified technical cadre, and a clear-cut work mechanism, this executive body should have full powers and authorities to address all governmental bodies. This executive body gives recommendations to a higher committee fully authorized to manage PPPs. In cooperation and coordination with the public entities, the executive body performs the following tasks:

1. To encourage investment of the national and foreign capital in PPPs and promote these PPPs.
2. To conduct surveys and initial studies to identify projects that can be implemented on PPP basis, and present the proper recommendations to the higher committee for initial approval.

3. To examine and evaluate approved PPPs, take the necessary action, and propose the proper recommendations to the higher committee for selection of the best proposal.
4. To propose and submit PPPs control and evaluation methods to the higher committee for approval.

Best practices learned from implementation of PPPs make it necessary to take the following measure before execution:

1. To lie down a regulatory framework for the management of PPPs.
2. To take the necessary action to restructure the targeted sectors to be able to handle PPPs.
3. To be prepared well for PPPs.
4. To set a well-balanced system for incentives and risks according the type and nature of each PPP.
5. To create competition among previously-qualified investors.
6. To prepare a clear list of the required guarantees.
7. To follow up implementation of the PPPs, and to take the necessary action to dispel any obstacles that may hinder project execution and operation.

Well implementation of PPPs makes it necessary to set the criteria of implementing projects on PPP basis. These criteria are as follows:

1. Proposed project should target the public interest and be consistent with the development plans and strategies of the State.
2. Proposed project should be needed to provide a public service, develop or update a current service, or develop an in-kind asset owned by the State to meet an economic or social requirement and increase State's resources or alleviate its burdens.

In addition, projects proposed for implementation on PPP basis should be subject to evaluation criteria. So, projects approved to be implemented on PPP basis should meet the following criteria.

1. Feasibility studies should show that the proposed project is technically fit.
2. Proposed project should be economically rewarding, and that the benefits that would be gained by the State or to beneficiaries of any services provided should be reasonable compared to the cost endured by the State, public body, or beneficiaries of such services.
3. Preference either to implement the proposed project on PPP basis or by contractors of the Public Sector should indicate that implementation under the PPP system is more advantageous in terms of investment risk allocation during execution or operation for the specified period in a way that ensures the provision of cost-effective and high-quality services.
4. Project should trigger accepted returns, in addition, investment risks should be reasonably accepted by the Private Sector to solicit participation of the Private Sector.
5. Finance of the project should be easily procured from the business sources according to the requirements of the project.

Equitable and transparent selection of the services providers or investors of the PPPs must be based on competition between the previously-qualified bidders. Bids should be carefully studied and analyzed to choose the best bidder according to the defined criteria referred to in the Request for Proposal (RFP).



Conclusion:

To conclude my speech, I hope I could identify the necessary measures that should be taken to keep pace with the new developments. I hope I could highlight the necessity of reshaping Private-Public relationship through implementation of PPPs, to ensure optimum use of resources to raise quality of the services so that they can come up to international competition, reinforce State's competitive abilities to be an integral source of economic and social development. By this way, we will be competently able to face the future and achieve progress and prosperity to push the sustainable economic and social development process forward.

**Mr. Faisal Ali Abdul-Wahab Al-Mutawei
Chairman & Managing Director
Bayan Investment Co.**

**Economic Corruption Phenomenon,
Private-Public Partnerships & Highlights on the Model of Kuwait**

Preface

I do believe that I need not to underline the importance of this conference, given the fact it is honored by the sublime Amiri sponsorship. I need not also to re-highlight its vital outlines, good timing, and perfect organization, since the reverend speakers who ascended this podium before me left me no opportunity to say any more. But, being one of the latest speakers in the conference, I would like to remind you that in the world of political and economic competition there is a rule that reads "He who laughs last, laughs longest". Similarly, in the field of symposiums and conferences, there is a rule that has the same concept and the opposite direction that reads "He who speaks later, speaks no more". Usually, former speakers tend to discourage speakers coming after them from presenting much of their views and going into details, especially when those former speakers do have much knowledge, experience, and specialization as it is the case now.

However, I have to breach this rule, asking Mr. Chairman to take this point into consideration, since I am the sole speaker in the conference who belongs to the private sector and who has never worked in a public position, Parliament, or the Cabinet of Ministers. On the other side, I would like to talk about corruption from a very critical perspective; namely, corruption as related to the economic performance in general and the Private-Public Partnerships in particular. So, my speech will cover three topics; First: the converse relationship between economic freedom and spread of corruption, Second: Private-Public Partnerships (PPPs), Third: Assessing Kuwaiti experiment in PPP.



First: Relationship Between Economic Freedom & Spread of Corruption

Since the 1990s, corruption has been increasingly and rapidly the main point of interest to the international, official, and national institutions as well as the international economic blocks. Governments of the third world countries and emerging economies have been completely ready to discuss the challenges of corruption. This is due to the widespread and criticality of this phenomenon from one side, and the development of economics and its analytical tools from the other side. And it becomes evident how the relationship between corruption and economic performance has become a critical issue at the national, regional, and international levels. And in a remarkable initiative from its side, World Bank has changed its stand rejecting to combat corruption to announce that "Corruption is an economic issue".

Since the last decade of the last century, studies have focused on assessing the economic costs of corruption, believing that corruption is a key factor of the poor economic performance. Conversely, this concept took another direction as a series of evidences and proofs has proven that the most dangerous forms of corruption do not reflect a deviation in ethics and beliefs, rather, they highlight the lack of economic freedom and non-strict enforcement of law and restrictions. In other words, corruption is not a key factor of poor economic performance, rather, it is the outcome of this poor performance resulting from the development of wrong policies, incapacitated institutions, and powerless management. So, the economic freedom supported by transparency and power of law is a prerequisite for the containment of corruption.

To shed more light on this fact, I will present to you the findings of the study conducted by Transparency International and World Bank in brief:

- The more Public Sector dominates economic activities, the more prevalence and widespread of corruption. This fact is not affected by the excessive widespread of corruption at the economic transformation in certain countries, since this is attributable to the absence of transparency, non-clear vision, and poor experience.
- Higher ration of public expenditure to the GDP is indicative of the excessive widespread and prevalence of corruption.
- There is a positive and clear connection between the level of corruption, restrictions on trade and prices, and freedom of criticism.
- There is a positive and clear connection between corruption and each of the following: amount of Governmental subsidies, employment inflation in the governmental sector, and dependence on production and export of raw materials.

On the other hand, the reverse relationship between the economic freedom and prevalence of corruption becomes very clear by comparing Corruption Perceptions Index (CPI) ranging from 1 to 10 which means that the lesser the number, the more ration of corruption, to the level of economic freedom at different countries. CPI was 8.5 in countries with free economy; 5.2 in countries with mostly free economy, 2.8 in countries with mostly un-free economy, and 2.1 in countries repressed by their public sectors.

I do believe, and I am really sorry to say, that Kuwait is a true example of the indices referred to above, stressing that corruption is primarily the result of the State's dominance over the economic activity, poor economic management, absence of transparency, and non-strict enforcement of law. Kuwaiti Public Sector controls more than 75% of the GDP, and the public expenditure is more than the two thirds of the public revenues and about 40% of the GDP. Oil represents 77% of the GDP and 90% of the total exports. Inflation of the government system has increased to an extent

that becomes difficult for the State to offer rewarding salaries to the government employees so that they will not accept bribery and to solicit competent cadres. Economic freedom is growing feeble more and more due to bureaucracy and red tape, absence of transparency in regulations and procedures, favoritism, lack of information, confused competencies, and loss of responsibility and accountability, in addition to the permissiveness in allowing employees to combine governmental and private work positions, as well as the incapacitated civil society institutions that can play a major role in containing corruption. As all these factors combined together, Kuwait is ranked 45 among the CPI – surveyed countries, scoring 4.7 out of a clean score of 10 in Transparency International's 2005 CPI, Oman coming number 28 and scoring 6.3, UAE 30 and 6.2, Qatar 32 and 5.9, and Bahrain 36 and 5.8. It should be noted that one point back in the CPI equals a lower growth rate by 4%.

Second: Private-Public Partnerships (PPPs) and Influence of Corruption

The said explanation of the connection between the economic freedom or efficiency of the economic performance and prevalence of corruption will help us understand the nature, role, and requirements of success of the PPPs. PPPs are developmental projects offering general services or products which were exclusively offered by the State. Private Sector is called to finance, carry out (and may be called to design or re-habilitate), and operate these PPPs for a certain period of time after which PPPs are transferred to the State. According to this definition, PPP is a form of privatization, as privatization in its broad meaning is not limited to the transfer of a public project to the Public Sector, but it includes also the transfer of Public Sector's projects and services requiring huge investments to the Private Sector.

If we are to assume that PPPs are launched for mere finance purposes and that finance will continue to be a key factor in PPPs, experiment has showed many other benefits include: proper cost-benefit analysis, non-carrying out of unfeasible projects (white elephants), improvement and reducing cost of public goods and services, optimum management of resources, local investment of savings and investments, encouraging foreign investments connected to modern technology, broadening the base of ownership, and development of the national companies' competitive abilities.

For the above reasons, PPPs are regarded as a key tool for investment in the infrastructure. World Bank estimates finance provided by Private Sector for the infrastructure investments in developing countries by 20% or USD billion 850. In 1990 to 2003, 2712 infrastructure projects in the form of PPPs were established in the developing countries. They are as follows: 44% in the energy sector (electricity and gas production, transport, and distribution), 26% in transport sector (roads, bridges, ports, airports, etc...), 22% in telecommunication sector, and 9.6% in water sector (water drawing, desalination stations, dams, sanitary sewage, etc...).

On the other side, World Bank's studies show that Private Sector and foreign investment tend to carry out PPPs in countries that have mega markets or good purchasing powers, good levels of economic freedoms, stable and predictable economic conditions, stable exchange rates, low inflation rates, and powerful judiciary system.

In relation to the connection between the PPPs and CPI, World Bank and Transparency International's studies showed that corruption has a great, direct, detrimental effect on the selection of PPPs, prioritization, types, feasibility, and benefits of PPPs, in addition to the increased costs and prolonged term of execution. Moreover, corruption has emerged and spread out in the awarding, implementation, and participation in public projects in certain developing countries



that have got independence recently, or recently converted to markets, or that have undemocratic regimes. As corruption spreads out more and more, public expenditure on projects and activities increases, even such projects and activities are of a low or negative value, thus, substituting projects and services of real benefits.

As corruption grows more and more, quality of infrastructure is lowered, maintenance and development expenses are reduced, and expenditure on health and education projects is reduced for military expenditure purposes.

As far as PPPs are concerned, there is a global consensus on two issues: First: it would be impossible to prepare uniform, model contractual agreements for all PPPs, rather, it would be better to prepare a PPP agreement for each project based on its unique specifications, inputs, conditions, and risks. Second: transparency is a prerequisite for all phases of PPPs, since the obligations and rights of the State under these PPPs become off budget and out of public control. So, transparency should be present to make clear liabilities and rights, whether direct or contingent, set forth by law or customs and traditions, and explicit or implicit. Legislator shall give due care to the clarification of tools, mechanisms, and steps that ensure the usage of transparency in all PPPs.

Third: Kuwaiti Model – Evaluation Overview

PPP in Kuwait is dated back to 1970, when the State provided plots in well-situated places at the downtown for the establishment of multi-story parks and malls, provided that such parks and shops will be used by investment companies for 25 years against a fixed rental to be paid to Kuwait Municipality. During the period 1994 – 2003, total B.O.T contracts concluded with Ministry of Finance were 92.

A scrutinized review to such BOT projects will help us write down the following notes:

1. More than 70% of BOT projects are urban development or real estate development projects (car parks, malls, marine façade, slaughterhouses, waste processing, labor villages, entertainment projects and products, craftwork and industrial areas, customs facilities, sport facilities). Except for Salebiyah Sanitary Sewage Station, we can fairly say that BOT contracts never involved the mega infrastructure and developmental projects such as (electricity, gas, transportation, telecommunication, water, etc..). This phenomenon is uniquely found in Kuwait at the regional and international levels, and can be interpreted according to the following justifications:
 - A. Monopoly of vast areas of land by the State which refuses to sell any part of them. This, in fact, makes it difficult to establish mega developmental projects without asking the State to provide for the necessary areas of land.
 - B. The continued finance by State to many goods and services prevents Private Sector from participating in most of the infrastructure projects. But it had not been for the agreement signed by the State to buy all production of water of Al-Salebiyah Sanitary Sewage Station, this project would not have been established.
 - C. Non-availability of long-term finance to support the infrastructure projects in need of huge financial resources and extended payback periods.
2. Government projects offered for participation by Private Sector depend on the desires of ministries and concerned governmental bodies. So, initiative is first made by a ministry or a government body, and then approved by the Cabinet of Ministers according to the explanation by the Minister in charge. It is then noticeable that satisfaction of the ministry or

the governmental body is the first prerequisite for offering projects on a BOT basis, a matter that will cause BOT contracts to lose their objective priorities and real parameters. So, while projects offered for implementation under B.O.T contracts would have been better to be implemented by Government, much more important projects which may be perfectly carried out by Private Sector are not provided on the B.O.T basis. This is because the strategic vision in both cases are not present or even not existing.

3. The poor or inadequate technical and economic studies as well as the vague criteria of qualification and awarding resulted in the non-awarding of many important projects or the late implementation of certain awarded projects due to the problems that arose out upon signing or executing the contract.

4. A review of the B.O.T projects-awarded companies shows that competition is confined to a limited number of local companies which means that the many goals and objectives of privatization based on the B.O.T basis have not been achieved.

5. Absence of the legal and regulatory framework that sets the general rules and procedures and determines the proper terms of reference has paved the way for each government authority tendering B.O.T projects to propose its own opinions. By this way, evaluation of proposals has been subject to the specifications and conditions provided by the government authority instead of the specifications of the B.O.T project itself to the extent that areas assigned for projects may become vast or small, procedures may become complicated or simplified, and tendered projects may increase or decrease in number without any clear considerations or reasonable criteria. As a result, the economic justifications for tendering the BOT projects are questioned from one side, and the qualification and awarding criteria are doubted on the other side.

6. National Assembly Financial & Economic Affairs Committee should have found a solution for the absence of the legal and regulatory framework through the enactment of a draft law that amends the State Domains Law and controls the PPPs. Though I insisted to keep myself apart of the hard political argument that will become more harder and harder inside the National Assembly, I regret to say that "Political Practice" may have been able to abort the economic aspirations associated with this legislation; namely, in relation to the useful exploitation of PPP as an effective tool for the finance, implementation, and operation of infrastructure projects and other developmental projects.

Here I come to the end of my speech though I have a lot to say. I would like to express my thankfulness and gratitude to the Kuwait Transparency Society that invited me to take part in this conference, and thank you all for your patience to listen to me.

**Mr. Ahmed Yacob Baqer Al-Abdullah,
Head of Financial Committee at National Assembly, Kuwait.**

Transparency Is Essential For The Effective Implementation of Private-Public Partnerships (PPPs)

Preface:

The multiple changes witnessed in the world over the last years; namely, in relation to the economic liberation and the increased trustworthiness in the private sector for playing a major role in the world economy, have urged the International Bank for Reconstruction & Development (IBRD) and other international donating institutions to develop a strategy aiming at encouraging the developing countries to rely on the private sector in financing and managing the public utilities and the developmental strategic projects requiring huge financial allocations that can not be budgeted in such countries. In addition, researches and comparative studies conducted over the world showed that such projects have been ineffectively operated and maintained by the Public Sector, and that the required resources of such projects have been effectively optimized by the Private Sector.

Even though implementation of such utilities and projects by Private-Public Partnerships (PPPs) in the State of Kuwait is dated to 1996s, expansion in using Private-Public Partnerships has been only effected since the last years. It has become evident that encouraging the Kuwaiti Private Sector to assume much more responsibility in carrying out and managing these utilities and projects, will be economically and socially essential in the future as huge investments, estimated at USD Billion 7.3 and 42.1 according to the study made by the Kuwait Institute Of Scientific Research (KISR), are required for the development and replacement of the infrastructure projects during the coming years. Therefore, policies, regulations, and incentives should be in place to ensure effectiveness and sustainability of the PPPs through satisfying interests of all stakeholders.

We do believe that the successful implementation of the PPPs will only be achieved by the full enforcement of transparency throughout all phases of the PPPs starting from thinking of and preparing for the project, proposing and awarding the project, and ending with contracting and execution.

We do believe also that enforcement of transparency in all investment projects without limitation to PPPs, has become essential in the State of Kuwait, given that a large number of the developed and developing countries have launched successful anti-corruption initiatives after they have realized the risks posed by the absence of impartiality, transparency, and spread of administrative corruption on the abilities and development goals of their societies.

Moreover, studies showed that absence of impartiality and transparency deactivates the criteria taken as a standard for allocating resources, creates levels of consumption inconsistent with certain classes of the society, and creates an inclination for investing funds out side of the country. It is also the principal factor for lowering the quality of goods and services provided to people and increasing their costs due to the inability to establish the proper criteria of the market and to create a clean environment for competition on sound economic grounds based on competency and equal opportunities. This, in turn, will undermine the development achievements, maximizes the gaps in income and wealth, harms ethics and morals, and dramatically affects the consumption

patterns forming the cultural environment necessary for activating and maintaining sustainability of the economic development.

Therefore, it has become evident that building transparency, impartiality, and combating corruption should come on top of the reformative efforts priorities for activating the economic development and ensuring its sustainability. Endeavors of nations succeeded in building impartiality and combating corruption such as Chile, Hong Kong, Malaysia, and Singapore should be examined carefully.

Based on the above, this study will discuss the following topics:

First : Forms of PPPs.

Second : Transparency required through all phases of the PPPs

Third : Draft Laws and suggestions for the enactment of laws aiming at the full enforcement of transparency during all phases of PPP.

First: Forms of PPPs:

Private-Public Partnerships aimed at providing infrastructure projects services vary in form and proportion depending on the transfer of assets and management from the Public Sector to the Private Sector and the associated financial, technical, and commercial risks ultimately transferred to the private sector. In general, participation of the Private Sector in providing infrastructure services can be sorted out progressively to the following services:

1. Services Contracts

Private Sector provides utility services for the interest of the Public Sector under these contracts. Project's assets ownership, operation, and maintenance remains the responsibility of the Public Sector. In addition, the whole responsibility on capital investments and commercial risks associated with operation of the utilities shall be borne also by the Public Sector.

2. Management Contracts (Operation & Maintenance)

Management holds Private Sector responsible for the utility operation and maintenance for a specified term under these contracts. Management shall pay to the Private Sector management fees either in the form of fixed fees or profits of the projects. The Management in fact aims at increasing the efficiency and effectiveness of the project's operation and maintenance and making use of the Private Sector's technical expertise and competency. The Utility assets ownership remains at the hands of the State, and the whole responsibility on capital investments and risks of operation of the utility shall be borne by the Public Sector.

3. Lease Contracts

Management leases the utility assets to the Private Sector for a specific term under these contracts. Lessee shall be responsible for the operation and maintenance of the utility during the contracted term.



4. Public Utility Franchise Contracts

This applies to the case when a utility is already established and existing. In such a case, Private Sector shall be responsible for operation of the utility, capital investments, risks associated to finance, and other commercial risks arising out of the operation of the utility. However, ownership of assets shall remain in the hands of the Public Sector. Organization and management of the utility shall be controlled by the Franchising Authority from the technical, managerial, and financial perspectives.

From the legal perspective, a public utility franchise contract is sorted out to be an administrative contract, given that most of its terms and conditions are made up of regulatory provisions, amendments may be made by the Management without the prior consent of the Franchisee, and the contractual provisions are limited to the franchise period and way of recovery which may only be amended by consent of both parties.

5. Build – Operate – Transfer (B.O.T) Contracts

Contracting Authority selects an investor, whether individual or corporate, to be responsible for the project finance and construction for the interest of the Government Authority, provided that such investor shall have the right to operate the project on a commercial basis and to gain the operating profits for a specific period of time. When elapsed, assets ownership and right of management shall be transferred to the Contracting Authority. In other words, assets of the project remains the property of the Government Authority during the term of the contract, so; transfer is a matter of possession transfer and repossession.

Supervision and control over the project is performed by the Government Authority in a reasonable, balanced way that allows the investor to take most of the management and operation decisions.

From the legal perspective, a “B.O.T” contract is sorted out to be a compound contract subject to the General Administrative Law and the Private Civil Law as it combine two types of provisions:

- Contractual provisions controlling the relationship between the investor and the administrative body. These provisions are related to the design, execution, and operation of the project, etc.. and are subject to provisions of the Private Law.

6. Build – Own – Operate – Transfer (B.O.O.T) Contracts

The State authorizes an investor from the Private Sector to establish and finance a project at the investor’s own expenses, own its assets, operate and maintain the project, bear the commercial risks during the authorization period, gain the project’s profits to meet the finance burdens, and get a reasonable profit margin. At the expiry of the authorization period, an investor shall transfer the project’s assets to the State. Based on the above, the Private Sector becomes responsible for the project finance, design, establishment, operation, and maintenance and is responsible also for all project’s investments and risks of operation. In turn, Private Sector remains the owner of project’s assets during the operation period, but shall transfer such assets to the State after expiry of the authorization period.

Operation and management of the project is not controlled or dominated by the public authority, and

project's assets are used as a security for the debts payable to the proposed financing institutions. From the legal perspective, this "B.O.O.T" contract is sorted out to be a contract under the Private Law, and its terms and conditions shall be subject to provisions of the Civil Law.

7. Build – Own – Operate (B.O.O)

The literary meaning of privatization refers to the transfer of assets from the Public Sector to the Private Sector, and it has two forms; First: privatization of the already-established infrastructure utilities, and in such a case, transfer of assets to the Private Sector is made by way of direct selling. Second: privatization of non-existing projects, and in such a case, the State authorizes a privately-owned company to build, own, operate (B.O.O) a new project.

Based on the above, it becomes clear that the above three forms of partnerships do not represent an investment by the Private Sector, since the Private Sector's investment is limited to the following four forms of partnerships. It is made clear also that, in spite of the fine differences, all Public Utility Franchise Contracts, B.O.T Contracts, and B.O.O.T Contracts are subject to the same contractual regulations and the finance philosophy. Since such contracts are confused by some people, researchers tended not to use any of the said terminology, and used "Private-Public Partnership" instead to represent all forms of partnerships by the Private Sectors.

United Nations Commission on International Trade Law (UNCITRAL) did not also approve any of the said terminology and used "Private Sector-Financed Infrastructure Projects" to denote to B.O.O.T, B.O.T, Public Utility Franchise Contracts, and any other forms of partnerships by the Private Sector in the provision of infrastructure services.

Second: Transparency Throughout All Phases of PPP

The successful implementation of the PPP will only be achieved by the full enforcement of transparency throughout all phases of the PPP starting from proposing the idea of the project, preparing for the project, proposing and awarding the project, and ending with contracting and execution. This can be best illustrated by the following:

A. Project's Idea & Preparation

1. Project's idea should be communicated to the society and supervisory authorities before proposing of the project in order to highlight the social benefits of the project.
2. Precise planning and analysis of all economic, social, and environmental aspects should be made to assess the present and future needs. This, in turn, can help identify type and size of the proposed investment projects so that a project is placed within a qualified package of projects. In addition, there should be a time frame and an overall plan identifying the projects to be proposed to the Private Sector, the time of proposing such projects to the Private Sector, and the true need of proposing such projects.
3. Public opinion's and society's responsive action to the terms of reference of any project should be taken into consideration. These terms of reference should be clear, defined, and well-interpreted to investors and public opinion. Answers to queries should be specific, clear, and having no hidden agenda.
4. A project should be well-prepared through making the necessary preparatory work and a



comprehensive, precise feasibility study taking the estimated costs and revenues during the execution of the project into consideration so that this study can reflect the actual status of the project and represents sound grounds for preparation of the bidding documents.

B. Publishing the Project at Newspapers & Magazines

1. Advertising the project in a way that solicits and attracts investors.
2. It will not be sufficient to advertise the project in the Official Gazette (AL-KUWAIT ALYAWM), but it should be published in all newspapers and magazines to attract all developmental projects stakeholders.
3. The project should be advertised at the Kuwaiti embassies located out side the State of Kuwait, and access is enabled to foreign investors.
4. All the necessary information on the project should be made available to investors in a clear and transparent manner; namely, the project's schedule. In addition, procedures must be simplified and impediments should be removed to ensure investors will be able to collect the necessary information.

C. Tendering

1. All administrative and regulatory restrictions hindering Private Sector's partnership in executing the project should be removed.
2. A transparent, unified tendering mechanism providing an equal-foot opportunity for all investors should be established.
3. Corporate qualification documents should be designed in a way that allows bidding companies illustrate their technical experience, financial position, and historical expertise. There should be a competent executive management system able to plan and promote projects, in addition to seeking advice of the consulting firms with proven experience in preparing the qualification documents provided that qualification conditions should be inclusive so that unqualified companies will be deemed unfit. Worth-noting is that State Audit Bureau (SAB) of Kuwait, State Domains Department, Legal Advice & Legislation Department, Central Tenders Committee, and Kuwait Municipality are preparing the qualification documents at the time being.
4. Qualified companies evaluation criteria should be in place and revised periodically. Qualification criteria should be published before starting the evaluation process. Highly experienced cadres with diversified expertise in the different fields (such as, engineering, finance, legal, economy, ...etc.) should participate in the evaluation and qualification of companies.
5. At least 3 qualified bidding companies shall be present, and reasons for excluding other unqualified companies should be made clear for public.
6. Bidding documents should be prepared based on project specifications, findings of feasibility studies, and the technical, regulatory, and financial conditions stated in a clear and transparent manner. The well-formulated international standards and the bidding evaluation criteria should be included in the bidding documents.

D. Bid Evaluation & Awarding

1. Development of financial, technical criteria for evaluation of qualified companies' bids. These criteria should be clear and transparent and included in the invitation for bidding.
2. To ensure dependence of the Bid Evaluation Committee decision. In addition, specialized consulting firms may be invited to participate in the evaluation process.
3. To communicate the evaluation results in detail to each company for all investors and concerned parties.
4. Bidders should be advised of the awarding results, in addition to clarifying the awarding and exclusion reasons, and allowing unqualified bidders to complain before a grievance board formed for this purpose.

E. Contracting

1. An integrated, contractual framework should be present to be a legal instrument binding parties to carry out and execute the project, and setting forth precisely the rights and obligations of each party. This, in fact, is due to the large scale of the implementation contracts extended for a long time between the State represented in its public entities in one side, and investors, lenders, suppliers, ...etc. in the other side.
2. Development of a well-established risk-sharing system unanimously agreed upon between all contracted parties through setting forth contractual provisions that ensure fair risk-sharing and maintain balance between the conflicted interests of the contracted parties. This is intended to address the frequent risks associated with the project throughout its different phases, such as risks associated with design and construction, operation and maintenance, and the commercial and political risks, to ensure the successful implementation of the project in general and to ensure continuity of finance. Upon the development of a risk-sharing system, risks should be taken by the most eligible party able to achieve risk control at the lowest possible cost and most probable benefits.
3. As far as the concept of partnership is concerned, the contract should allow the government body to be present upon entering into all the frequent contracts between the investor and all other parties; namely, the finance institutions, as the investor is the main party in such contracts. This is intended to ensure success of projects, since contracted parties under these contracts may have common or conflicted interests. Moreover, these intermingled, contractual relations may contradict in time and place, and therefore, must be dealt with as a single contractual package, since failure of any contractual relationship may affect other contractual relationships.
4. As far as the concept of partnership is concerned, the contract shall maintain balance between the government body's interests and the investor's. The contractual provisions shall set forth that an investor shall have the right to all guarantees and benefits under the applicable investment laws, and that the administrative bodies are providing the necessary facilities for the issuance of approvals, licenses, and the necessary fees required for implementation of the project. The contractual provisions shall also prevent any administrative body from pricing the project's products or services or limiting project's profits except to the extent stated under these contracts and without prejudice to the supervisory and regulatory administrative bodies' right to exercise their role fairly without any discrimination between the different entities producing commodities



or services in order to maintain integrity of the competition rules, interests of minor consumers, and service users.

Third: Draft Laws & Suggestions for the Enactment of Laws aiming at Ensuring Full Enforcement of Transparency throughout all The PPP Phases:

- The Government proposed a PPP draft law calling for the development of a unified mechanism for PPP bidding, awarding, and operation and execution follow up through the formation of a higher committee and an executive management system responsible for the project management.

- Given the fact that most PPPs, whether completed or in progress for the coming years, are established on the State-owned real estates, we have proposed a draft law regarding the PPP and protection of the State-owned real estates aiming to achieve the following goals:

A- Establishment of a legislative framework that provides a unified mechanism for PPP bidding and awarding, achieves transparency, and places investors on equal foot.

B- Establishment of a regulatory framework that provides a basis for negotiation and contracting for all PPPs, through the formation of a higher committee and an executive management system responsible for the PPPs management.

C- Integrity of the State-owned real estates.

D- Addressing all defects and weaknesses, referred to in detail at the State Audit Bureau (SAB) reports, identified throughout the actual implementation of PPPs in the State of Kuwait during the past years.

- The draft law and suggestions proposed by the Government referred to above are being reviewed by the Financial & Economic Affairs Committee, and its report will be presented to the National Assembly for approval.

It should be noted that the draft law presented to the Financial & Economic Affairs Committee that is reviewing now the draft laws and suggestions for the enactment of laws referred to above is limited to the regulation of contracts involving the capital investment by the Private Sector according to the B.O.T contracts, and thus, excluding all other forms of partnerships not involving the capital investment by the Private Sector.

Prepared by:

- **Mr. Ahmed Yaqoub Baqer**
Head of Financial & Economic Affairs Committee
- **Mr. Ahmed Al-Kafery**
Consultant at the National Assembly



3rd

Recommendations

Closing Statement KTC 13 –17 Jan. 2007

Under the sublime sponsorship of His Highness Sheikh Sabah Al-Ahmed Al-Jaber Al-Sabah, Amir of the State of Kuwait, may Allah bless him, Kuwait Transparency Society (KTS) in cooperation with Transparency International (TI) organized Kuwait Transparency Conference (KTC) during 13-17 Jan. 2007. Speakers agreed that corruption is prevalent in all countries of the region and that it poses an imminent danger on development in general and on stability of nations in particular. Speakers have unanimously stressed the need for fighting corruption through the Executive, Legislative, and Judiciary Authorities, Civil Society, and the Free Media.

At the local level, a committee for formulating and articulating KTC recommendations is composed of KTS Board and KTC Higher Organizing Committee. After the public sessions and workshops, the followed recommendations are made:

1. A body concerned with the issue of transparency and fighting corruption (Transparency Advisory Board) reporting to Head of State should be established and be responsible for managing this critical issue.
2. A National Reform and Transparency Strategy should be developed and implemented by all components of the State: Executive, Legislative, and Judiciary Authorities, Civil Society, Private Sector, and Free Media.
3. Anti-Corruption Authority qualified to fight financial corruption should be established.
4. Administrative Control Authority should be established to combat corruption in the governmental corporations.
5. Kuwaiti Cabinet of Ministers should hold the governmental education institutions responsible for teaching the values of reform, reinforcement of transparency, and fighting corruption for young children and juveniles.
6. Kuwaiti Cabinet of Ministers should hold the Ministry of Information responsible for fighting all forms of corruption via the news programs and television production and for raising the awareness of all classes of the society of this issue taking their ages and cultures into consideration.
7. Kuwaiti Cabinet of Ministers should hold the Ministry of Justice responsible for providing all supporting services to the Judiciary Authority to ensure expedition of litigation proceedings, prompt implementation of judgments, accessibility, and deterrence of those who abuse their powers. In addition, establishment of Administrative Prosecution should be accelerated.
8. Kuwaiti Cabinet of Ministers should hold all governmental corporations responsible for applying internal control on the potential corruption practices, whether in relation to regulations or procedures, to prevent any financial and administrative corruption practices.
9. Kuwaiti Cabinet of Ministers should promptly present its conception for implementation of



“United Nations Convention Against Corruption”: In addition, the Cabinet should play a supporting and controlling role to ensure completion of this issue at the nearest future.

10. Kuwaiti National Assembly should approve the Financial Adequacy Detection Code (FADC) to be enforceable on officials of the State given that FADC is essential for fighting financial, administrative, and political corruption practices.

11. Kuwait National Assembly should review and update the laws and regulations related to the State’s Domains (State’s Domains Law) to protect the public wealth from plunder and unlawful exploitation.

12. Kuwait National Assembly should promulgate “Freedom of Information Act” which reinforces transparency and ensures accessibility of information for the public.

13. Abuse of power by members of the Legislative Authority for personal and electoral purposes is not accepted and causes the public to think ill of the National Assembly; supposedly a legislative and control authority that represents the society and defends its interests. So, the righteous parliamentarians majority should stand up to this abuse of power by the minority of National Assembly members.

Last, KTC conferees have extended their true thankfulness and gratitude to His Highness Sabah Al-Ahmed Al-Jaber Al-Sabah, Amir of State of Kuwait, for his sublime sponsorship of this conference, to His Excellency Sheikh Sabah Al-Khaled Al-Sabah, Minister of Social Affairs & Labour, for his attendance in person, and to all entities and bodies that have presented their material sponsorship of this conference.

Best Regards,

Organizers

❖ Board:	
Chairman	Salah Al-Ghazali
Deputy Chairman	Ahmad Al-melaifi
Secretary General	Ali Al-nemash
Treasurer	Entisar Al-sowaidi
International Relation Commissioner	Salah Al-Shammari
Board Member	Abdolelah Marafie
Board Member	Husam Al-tunaib
❖ Higher Organizing Committee	
o K.T.S:	
chairman of higher organizing committee	Salah Al-Ghazali
International Relation Commissioner	Salah Al-shammari
Head of technical committee	Sahar Al-hemeli
Head of media center	Hala Al-dhuwaihi
Head of public relations committee	Abdulazeez Al-anjari
Head of media committee	Majed A-Imotairi
Member	Salah A. Al-homadhi
Member	Salma Al-essa
o T.I.	
Global Programs Director	Dr. Cobus de Swardt
Director for Africa and the Middle East	Casey Kelso
Program Coordinator	Arwa Hassan
Program Coordinator	David Koschel
Assistant Program Coordinator	Corinna Zöllner