

**A comparative study of responses to corruption in
the Gulf: National efforts of Kuwait, Saudi Arabia and
UAE**

**A Thesis Submitted for the
Degree of Doctor of Philosophy**

By

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DEDICATION

To the memory of my late father, whose aspirations continue to inspire me, and whose dream I am honoured to have fulfilled.

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LIST OF ABBREVIATIONS

UAE – United Arab Emirates

KACA – Kuwaiti Anti-Corruption Authority

OACA - Oversight and Anti-Corruption Authority

UN – United Nations

CPI – Corruption Perception Index

CCI – Corruption Control Index

EU – European Union

OECD – Organisation for Economic Cooperation and Development

FIU – Financial Intelligence Unit

SAI – State Audit Institution

CBUAE – Central Bank of the UAE

DESC – Dubai Economic Security Centre

DFAA – Dubai Financial Audit Authority

UNCAC – United Nations Convention Against Corruption

CHAPTER 1. INTRODUCTION

1.1 BACKGROUND TO THE APPROACHES FOR IMPLEMENTING ANTI-CORRUPTION REGULATION

Corruption proves to be a complex issue, as it negatively affects all branches of social and political life. Corruption practices compromise trust in the political system, as well as hindering economic development (including investment flows) and preventing the recognition and the enjoyment of civil and political rights.¹ The consideration underlying the statutory condemnation of corruption is that corruption undermines the effective functioning of the state and public trust in it because it indicates that public officials abuse their positions for personal gain.² However, corruption may be detrimental, not only to the public sphere but also to the business sector, because high levels of corruption normally discourage legal subjects from entering a particular market.³ In that vein, corruption has not merely legal, but also political, economic and social implications that need to be addressed in the evaluation of the level of regulation of cases of corruption.⁴ At the same time, due to globalisation, the inter-connections between markets and the advance of large-scale international transactions, the effects of corruption have exceeded the borders of national jurisdiction and may spread worldwide, even when an act of corruption takes place in one particular state.⁵ From that perspective, some jurisdictions, among them the US, have introduced global anti-corruption legal regimes, designed to apply worldwide.⁶

The spread of corruption around the world and the need to fight it on an international level led to the creation of international instruments that try to make national anti-corruption systems easier and more unified, such as the United Nations Convention against Corruption (UNCAC)⁷. The obligations that arise from the ratification of UNCAC are discussed in detail in the following chapters. At this stage, it has to be recognised that the Convention establishes a broad range of legislative and administrative measures that have to be implemented into the domestic legislation of ratifying states in order to produce their effect.⁸ Along with the global efforts to control corruption, some organisations have undertaken a regional approach that is justified by the particularities of the specific region. The Arab Convention for Combating Corruption⁹ and the Convention on Combating Bribery of Foreign Public Officials in International Business Transaction (OECD Convention)¹⁰ stand out as examples of regional and organisational cooperation for combatting corruption.

¹ The World Bank, 'Combatting Corruption' (World Bank Brief, 2020) <<https://www.worldbank.org/en/topic/governance/brief/anti-corruption>> accessed 24 August 2025.

² Ibid.

³ Ibid.

⁴ Shrabani Saha, Mohamed Sami Ben Ali, 'Corruption and Economic Development: New Evidence from the Middle Eastern and North African Countries' (2017) 54 *Economic Analysis and Policy* 83–95.

⁵ World Bank (n 1).

⁶ Global Legal Insights, 'Bribery and Corruption Laws and Regulations – USA' <<https://www.globallegalinsights.com/practice-areas/bribery-and-corruption-laws-and-regulations/usa>> accessed 24 August 2025.

⁷ United Nations Convention against Corruption (adopted 31 October 2003, entered into force 14 December 2005) 2349 UNTS 41.

⁸ UNCAC, Foreword.

⁹ League of Arab States, Arab Convention for Combating Corruption (adopted 21 December 2010) <<https://star.worldbank.org/sites/star/files/Arab-Convention-Against-Corruption.pdf>> accessed 24 August 2025.

¹⁰ OECD, Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (adopted 21 November 1997, entered into force 15 February 1999) 37 ILM 1.

The Conventions provide that the states bear the obligation to bring their national legislations in line with the Convention standards and also to implement preventive and punitive tools with the aim of avoiding and penalising corruption.¹¹ For instance, under the Arab Convention for Combating Corruption, ratifying states are obliged to prohibit the bribery of both public officials and foreign public officials, take measures to prevent the misappropriation of public property and bribery in the public sector, and further the collaboration and cooperation among states in prosecuting those involved in such criminal activities.¹²

Although the international instruments establish monitoring bodies that supervise the operation of the respective convention, none of these bodies has any enforcement competence. Therefore, enforcing authorities have to be introduced by each ratifying state.¹³ At the same time, monitoring by an independent supra-national institution is mandatory because it fairly highlights the non-compliance of a state and it motivates the parties to amend their policies against corruption in the face of negative publicity and pressure from other state parties.¹⁴ In that vein, the provisions of the global and regional international treaties are not self-executing as they have to be implemented into the legal order of signatory states to produce their legal effects.¹⁵ Thus, the global aim to maintain control over corruption requires close interaction between domestic legislations and the international commitments of a particular state; the failure to achieve compliance with UNCAC generally implies failure to prevent corruption.¹⁶ An additional indication of the interconnections between the international – global and regional – and domestic anti-corruption legislative frameworks is that none of the international treaties defines “corruption” or “bribery”, although they all condemn acts of bribery.¹⁷ Because there is no treaty definition, the signatory states retain the power to interpret these concepts in accordance with their local anti-corruption laws.¹⁸

The United States (US) was the first nation in the world to acknowledge the extraterritorial implications of corruption with the passage of the Foreign Corrupt Practices Act in 1977 (FCPA)¹⁹, which bans American companies or persons from bribing non-US officials in order to gain an advantage for their businesses. Recently, condemnation of corrupt practices has been illustrated by the adoption of the Global Magnitsky Act²⁰, which pursues and penalises serious acts of bribery and breaches of human rights all over the world.

Corruption can undermine the integrity of public institutions, erode public trust, and impede economic and social development both in developed and in developing countries. In Arab Gulf countries, where the public sector is a significant employer and provider of services, corruption can have far-reaching implications. It can affect public procurement, regulatory decision making, and policy development, among other areas.²¹ Combatting corruption in the Arab states is difficult, not only because of the substantial power the local

¹¹ OECD Convention, Preamble.

¹² Convention for Combating Corruption, n (9).

¹³ Ben W Heineman Jr and Fritz Heimann, ‘The Long War Against Corruption’ (2006) Foreign Affairs 3.

¹⁴ Ibid.

¹⁵ UNCAC, Preamble

¹⁶ Ibid.

¹⁷ Chr Michelsen Institute, U4 Anti-Corruption Resource Centre, ‘UNCAC in a Nutshell: A Quick Guide to the United Nations Convention against Corruption for Embassy and Donor Agency Staff’ (U4 Brief September 2010:6) <<https://www.u4.no/publications/uncac-in-a-nutshell.pdf>> accessed 24 August 2025.

¹⁸ Ibid.

¹⁹ Foreign Corrupt Practices Act 1977, Pub L No 95-213, 91 Stat 1494 (US).

²⁰ Global Magnitsky Human Rights Accountability Act 2016, Pub L No 114-328, 130 Stat 2533 (US).

²¹ Kaunain Rahman, ‘An Overview of Corruption and Anti-Corruption in Saudi Arabia’ (Transparency International, 2020) <https://knowledgehub.transparency.org/assets/uploads/kproducts/2020_TI_CountryProfile_SaudiArabia.pdf> accessed 24 August 2025.

state has, but also because public sector accountability is low, while civil society institutions are too weak and ineffective to hold the local administration to account. While Arab states, including Kuwait and Saudi Arabia, have made substantial attempts in the past decade to improve access to information, the general public remains largely unaware of the relevant procedures for information disclosure, weakening the anti-corruption framework.²² Some commentators even believe that the fight against corruption in the Middle East is a challenging endeavour because of the very high levels of gender inequality registered in the region; women are much less willing than men to condone bribery offences.²³ While this argument highlights that the tolerance of corruption practices depends on the specific political culture and societal practices, the empirical research by Amy Alexander found no evidence that female participation is what influences the level of corruption in the Gulf states.²⁴ And yet, to investigate the impact of corruption, one must go beyond examining the legal text and legal developments, as reading the law by itself does not explain why some countries in the Gulf struggle with providing a strong anti-corruption response while others have been able to develop the legal culture necessary for the anti-corruption platform to succeed. The researcher recognises the need to provide a contextual appraisal of the current state of anti-corruption legislation in both Kuwait and Saudi Arabia to better understand the particular challenges both countries are facing. Therefore, the following sections 1.2 and 1.3. consider the available literature on the anti-corruption efforts that are taken at national levels in Kuwait and Saudi Arabia.

1.2 KUWAITI ANTI-CORRUPTION FRAMEWORK

The state of Kuwait is among the countries that experience some challenges in addressing corruption, although they are parties to the UNCAC and the Arabic Convention for Combatting Corruption and have a system of domestic legislation that punishes bribery of domestic public officials and an operational independent institution that conducts investigations into allegations of corruption.²⁵ Kuwait has adopted a number of domestic regulations aiming to counter and punish corruption, but it still needs to pursue more consistent enforcement of these laws. Despite this, Kuwait has been struggling to vanquish corruption domestically according to international benchmarks such as Transparency International. Thus, in global corruption perception ranking, Kuwait is listed in 65th place out of 180 countries (with the 1st place being occupied by the least corrupt country), and its ranking has been stagnating for the past decade.

At this point it has to be noted that taken alone, the ratification of the international treaties against corruption is not sufficient to achieve progress in the field of combatting corruption because, as discussed above, these treaties are not self-executing. This is evident in the case of Kuwait's experience with addressing corruption as well. Furthermore, some commentators express the concern that ratifying several of the anti-corruption conventions may even appear troublesome for the particular state because it creates ambiguity about the process of implementing all of these conventions into the national legal order of the state.²⁶ In

²² Dina Wafa, 'Corruption in the Arab World' in Melchior Powell, Dina Wafa and Tim A Mau (eds), *Corruption in a Global Context: Restoring Public Trust, Integrity, and Accountability* (Routledge 2019) 12.

²³ Anand Swamy and others, 'Gender and Corruption' (2001) 64 *Journal of Development Economics* 25, 25–55.

²⁴ Amy Alexander, 'Is Poor Performance in Gender Equality Linked to Higher Corruption in the Middle East?' in Tina Olsson and Azzam Mahjoub (eds), *Corruption and Informal Practices in the Middle East and North Africa* (Routledge 2021) 25.

²⁵ Noura Taha Aloumi, 'Corporate Criminal Liability for Bribery in Kuwait: Issues in Disclosing Commissions' (2022) 29 *Journal of Financial Crime* 1102

²⁶ Heineman and Heimann, n (13), 33.

the author's view, the implementation of some anti-corruption treaties should not be troublesome for a state because these treaties are consistent and comprehensible. Still, it has to be admitted that the problem with implementing a set of multiple conventions may eventually arise in countries that have only recently started to develop their anti-corruption policies and do not have long-standing traditions in the field, which includes Kuwait.²⁷ From that perspective, the obligation of the state to bring its domestic laws in line with a number of international treaties and the ambiguities that arise from it may impede instead of advance the progress of Kuwait.²⁸

Overall, the state of Kuwait is an interesting example among the other countries in the Gulf region, which is usually treated as a region with high levels of corruption.²⁹ Most of the oil-abundant countries in the region share a relatively common political, social and economic profile with certain differences in the foundations of their legal order, which is largely founded upon Islamic Sharia law.³⁰ The control over corruption in the Arab Gulf states is usually problematic for a number of reasons and most of these considerations are relevant for the state of Kuwait as well.³¹ First of all, many states in the region are still in the long and difficult process of building their institutions and getting people to trust them. From this point of view, initiatives to fight corruption are not yet fully developed because they are part of this slow process.³² Second, in the same way, the lack of well-developed institutions and ways for the public to take part in government limits the public's access to information and leads to a lack of clarity concerning governmental activities, which may fuel corruption.³³ Thirdly, the absence of clarity in the public sphere is generally associated with the risk of corruption because it implies that there is no publicly available information about affairs in the public sector, and additionally that there are few legal opportunities to oppose acts of bribery.³⁴ Fourthly, regardless of the traditional understanding, the economic development of the Arab Gulf states, and Kuwait in particular, does not in itself imply a low risk of corruption because the link between the level of economic growth and corruption is not straightforward.³⁵ Fifthly, some commentators suggest that states which are abundant in natural resources may be more susceptible to corruption because they rely extensively on the proceeds that these resources bring. In that vein, these governments are less motivated to secure fair administration.³⁶ As Kuwait is among the states in the region that enjoy the largest quantities of oil and gas resources, this contention will be critically evaluated in the course of the research.

The counter-corruption legislative framework of Kuwait is usually evaluated as scattered and overlapping because it comprises of several laws that partially coincide.³⁷ The leading Kuwaiti anti-corruption law is Law No. 2 of 2016, which established the Anti-Corruption Authority, while Law No. 16 of 1960 (Kuwait Criminal

²⁷ Ibid.

²⁸ Ibid.

²⁹ Saha, Sami and Ali (n 4) 31

³⁰ Anja Schoeller-Schletter (ed), *Constitutional Review in the Middle East and North Africa* (Nomos 2021) 401

³¹ Saha, Sami and Ali (n 4) 11

³² U4 Anti-Corruption Resource Centre, 'Overview of Corruption in GULF Countries' (U4 Brief) (Chr Michelsen Institute, Bergen)

³³ Ibid.

³⁴ Ibid.

³⁵ Al-Marhubi, 'The Determinants of Governance: A Cross-Country Analysis' (2004) 22 *Contemporary Economic Policy* 394–406.

³⁶ Ibid.

³⁷ Adam Vause, 'Kuwait – Global Bribery Offences Guide' DLA Piper (2019) <<https://www.dlapiper.com/en/europe/insights/publications/2019/09/bribery-offences-guide/kuwait/>> accessed 9 January 2022.

Code), modified by Law No. 31 of 1970³⁸, punishes acts of bribery as criminal offences.³⁹ The existence of several laws in this particular field is not necessarily a weak regulatory approach because, as explained above, the international treaties that aim to control corruption prescribe multiple measures, both preventive and punitive, and they can be implemented by different legislative tools.⁴⁰ Additionally, pursuant to art. 58 of Law No. 2 of 2016, in cases of conflicting provisions, this statute has primacy over other statutes. Therefore, possible clashes between anti-corruption laws will not hinder their effective application. From that perspective, the Kuwaiti legislative approach is justifiable, although it certainly needs some further improvements.

Nowadays there are some indications in academic literature and professional reports that Kuwait performs better than other Gulf countries in its attempts to keep corruption under control. Unlike other Gulf countries, Kuwait has a more progressive political system and a comprehensive system of domestic legislation where practical concerns of securing good economic development dominate over close adherence to the principles of Islamic law and its conservative pillars, which are typical of the legislation of other Gulf countries.⁴¹ In the first place, the state of Kuwait has ratified the UNCAC, which indicates its readiness to apply a more global approach against corruption. Over the decades, Kuwait has made significant progress in its anti-corruption policy and it started the implementation of UNCAC by introducing Law No. 2 of 2016 (the Anti-Corruption Law) which established the autonomous anti-corruption authority – the Public Authority for Anti-Corruption (NAZAHA, hereinafter referred to as Kuwaiti Anti-Corruption Agency or KACA to avoid confusion with identical agency of Saudi Arabia). While Kuwait has developed an anti-corruption strategy, it still needs to catch up with other Gulf countries in terms of the control of corruption, such as the United Arab Emirates (UAE). However, the UAE does not follow a precise strategy for fighting corruption and there is no officially appointed anti-corruption authority.⁴² The adoption of the Kuwait Integrity and Anti-Corruption Strategy (Kuwait Strategy)⁴³ is a major accomplishment in maintaining control over corruption because it presents an integrated perspective on corruption-related issues and their possible solutions and outlines the necessary steps for achieving more transparent public and private environments.⁴⁴ Besides, Kuwait has undertaken the obligation to develop an anti-corruption strategy pursuant to Art. 5 (1) of Law No. 2 of 2016⁴⁵, and in that regard the issuance of the strategy demonstrates the consistency of the Kuwaiti government in its attempts to eliminate corruption.⁴⁶ Additionally, the measures provided in the strategy follow the recommendations of the authorities monitoring the implementation of international anti-corruption instruments, which is a strong indication that the country seeks to observe its obligations under the treaties.⁴⁷

³⁸ Law No 31 of 1970 amending Law No 16 of 1960 (Kuwait Criminal Code).

³⁹ Heineman and Heimann, n (13) 12.

⁴⁰ Ibid.

⁴¹ Schoeller-Schletter (n 30).

⁴² Jordan Integrity and Anti-Corruption Commission, 'Regional and International Partnerships to Fight Corruption' http://www.jiacc.gov.jo/En/Pages/Regional_and_international_partnerships_to_fight_corruption accessed 24 August 2025.

⁴³ Kuwait Anti-Corruption Authority, Kuwait Integrity and Anti-Corruption Strategy 2019–2024 <<https://www.nazaha.gov.kw/EN/DocLib/Kuwait%20Integrity%20and%20Anti-Corruption%20Strategy.pdf>> accessed 23 February 2022.

⁴⁴ Ibid., foreword

⁴⁵ Law No 2 of 2016 on Establishing Kuwait Anti-Corruption Authority and the Provisions on Disclosure of Assets and Liabilities (Kuwait).

⁴⁶ Kuwait Integrity and Anti-Corruption Strategy (n 43) Foreword.

⁴⁷ Ibid.

Furthermore, Kuwait has demonstrated its increased vulnerability to corruption through cases that were made public and it has made efforts to prevent similar cases in the future.⁴⁸ The case that prompted the promulgation of modern Kuwaiti anti-corruption legislation and the creation of the Anti-Corruption Commission were the 2011 revelations against fifteen Kuwaiti MPs who were accused of having received illicit money transfers.⁴⁹ Quite recently, the state has renewed its attempts to prosecute these former MPs as the initial pursuit failed due to the lack of clear regulations against illicit payments.⁵⁰ This development serves as an indication of the state's increased commitment to combatting corruption.⁵¹ However, the renewed attention paid to this high profile case may also be evidence of the reluctance of the Kuwaiti regime to prosecute those holding political offices for corruption, as ten years of inaction has really narrowed the opportunities for effective prosecution due to the statute of limitations associated with this crime.

Regardless of the above developments, Kuwaiti domestic law seems to struggle to meet the high standards for compliance set under UNCAC.⁵² One of the reasons for this is that Kuwait has not fully fulfilled the obligations it has adopted pursuant to UNCAC.⁵³ At present, Kuwait does not pursue bribery in the non-governmental sector, or the corruption of non-Kuwaiti officials, or the involvement of legal subjects in acts of corruption.⁵⁴ The international bodies monitoring the implementation of UNCAC have already confirmed that Kuwait needs to make additional progress in the process of aligning its legislation with the requirements of the Convention.⁵⁵ The above allegations indicate that Kuwait can make significant progress in fighting corruption if it aligns its national laws with the provisions of UNCAC.

The Kuwaiti domestic legal framework that regulates corruption comprises of several laws that partially coincide, thereby causing doubt about the applicable legal regime under different factual scenarios.⁵⁶ The Kuwaiti anti-corruption laws do not address cases of bribery in the private sector or the responsibility of legal entities for active bribery, which is a significant gap in regulations, particularly when considering the economic strength of the abundance of resources in the UAE and Kuwait, and the intensity of business activities on their territories.⁵⁷ Furthermore, Kuwaiti laws do not pursue bribery in the business sector. The significance of the Kuwaiti public sphere is generally used to explain this lack of regulation, as it is the main supplier of services and goods such as education, healthcare and nourishment, and is therefore more vital for social reasons.⁵⁸ From that perspective, corruption in Kuwait might be a consequence of the underdeveloped legal framework and also the existing social and cultural paradigm. For instance, in Arab culture, providing the other party with a gift is considered to be a traditional form of generosity and good

⁴⁸ Katie Benson, Colin King and Clive Walker, *Assets, Crimes and the State: Innovation in 21st Century Legal Responses* (Routledge 2021) 45

⁴⁹ *Ibid.*

⁵⁰ Kuwait Times, 'MPs Demand Probe into Alleged Corruption Cases' <<https://news.kuwaittimes.net/website/mps-demand-probe-into-alleged-corruption-cases/>> accessed 24 August 2025.

⁵¹ *Ibid.*

⁵² Benson, King and Walker (n 48) 2

⁵³ Aloumi, n (25) 1113

⁵⁴ *Ibid.*

⁵⁵ United Nations Office on Drugs and Crime, Implementation Review Group (Vienna 2013 and 2016); Transparency International, Corruption Perceptions Index (2019, 2020); Transparency International and Kuwait Transparency Society, Report (2019).

⁵⁶ Aloumi, n (25) 1102

⁵⁷ Abdelaziz Hakimi and Helmi Hamdi, 'How Corruption Affects Growth in Gulf Region? Fresh Evidence from a Panel Cointegration' Munich Personal RePEc Archive Paper No 99345 (2020) <<https://mpra.ub.uni-muenchen.de/99345/>> accessed 24 August 2025.

⁵⁸ Explanatory Note on Criminal Code No 16 of 1960, Amendment No 31 of 1970 (Kuwait Official Gazette, Vol 787 No 61, 1970) 13–14.

intentions, and the difference between a sign of gratitude and a bribe may be very subtle.⁵⁹ Thus, a detailed examination of the social context and the anti-corruption laws operating in Kuwait may reveal the legal and social reasons for Kuwait's difficulties with fully implementing the Convention and the on-going process of building sound state institutions.⁶⁰

Overall, the literature provides a solid account of the Kuwaiti legal anti-corruption framework, its strengths and its limitations. It becomes clear that despite having made progress in terms of adopting anti-corruption laws, corruption still persists in the country. Yet, the literature only briefly considers non-legislative aspects of combatting corruption in Kuwait such as policies, anti-corruption agencies or measures against corruption in specific fields of activity such as private business or procurement. The compliance of the country's laws with UNCAC is underlined as a baseline, with little regard being given to the local, historical or cultural context of the country, which all affect how corruption is combatted in Kuwait. Hence, there is a need to consider combatting corruption in Kuwait in more detail, with consideration of the local and regional context so that lessons can be drawn from the country's experience.

1.3 SAUDI ARABIAN ANTI-CORRUPTION FRAMEWORK

Providing a relevant and comprehensive response to corruption is also a pressing concern for the Kingdom of Saudi Arabia. According to the Saudi Crown Prince Mohammed bin Salman Al Saud himself, corruption has been responsible for syphoning off nearly 10% of all government spending for the past 40 years.⁶¹ Addressing this issue has been a priority since the early 2000s, following the establishment of the National Anti-Corruption Committee, which also oversaw a substantial increase in the number of corruption cases that were brought to the criminal justice system. However, those changes were not enough to strengthen the fight against corruption in the country. According to the data from the Saudi Ministry of Interior, the number of cases of corruption has progressively increased, and in 2006, it rose by 15% with nearly 7000 cases being registered by the Ministry in that year.⁶² The Ministry data, however, might be the tip of the iceberg, as Saudi Arabia has been backsliding – the country reached its peak in the Corruption Perception Index between 2006 and 2008 and it has not improved since then.⁶³ While the Corruption Perception Index is not an objective indicator of the extent or prevalence of corruption in Saudi society, the stagnant ranking highlights that the general public expect the Saudi authorities to do more to address corruption.

The first attempts of the Saudi government to address corruption can be traced back to 1958 when Royal Decree No. 43 was introduced.⁶⁴ The act focused on the various acts of corruption and bribery that public servants could engage in and it criminalised not only the different forms of embezzlement, abuse of power and authority, but also the very engagement of public servants in private business activities without prior

⁵⁹ Aloumi, n (25) 1104

⁶⁰ Heineman and Heimann, n (22)

⁶¹ Ahmed Altawyan, 'The Importance of Reinforcing the Rules against Corruption: Whistleblowing to Improve the Saudi Economic Environment for Saudi Vision 2030' (2020) 34 Arab Law Quarterly 65–85.

⁶² Mohamed A Ramady, Political, Economic and Financial Country Risk Analysis of the Gulf (Springer International Publishing 2014) 21

⁶³ World Data, 'Corruption in Saudi Arabia' (2023) <<https://www.worlddata.info/asia/saudi-arabia/corruption.php>> accessed 13 April 2023.

⁶⁴ Royal Decree No 43, 29/11/1377H (Saudi Arabia)

authorisation.⁶⁵ However, a notable limitation of the act is that it fails to redefine explicitly what is meant by corruption, even though it provided a clear list of offenses that are penalised under the act.

The main driver of the subsequent reform of the anti-corruption framework in Saudi Arabia has been the country's accession to the UN Convention against Corruption. Combating Bribery Law (CBL), Royal Decree No. M/36, of 29/12/1412AH⁶⁶ further strengthened the Saudi legal framework and introduced a zero-tolerance approach towards corruption. The penalties for those involved in corruption were increased nearly 50-fold from 20,000 riyals to almost 1 million riyals⁶⁷ and the punishment for those who breached the law was also increased, with severe violators spending up to 10 years behind bars.⁶⁸ What is also important is that the court is not taking into account the *mens rea* element when evaluating whether an offense has been committed, as the intention of the perpetrators does not matter. The prosecution needs to demonstrate only the actus reus element of the offense to secure conviction.⁶⁹ To a certain extent, Royal Decree No. M/36 is a progressive piece of legislation that has been amended a number of times to ensure that it is relevant to and able to address the contemporary forms of corruption. Its drafters have recognised the need to expand the scope of the law to cover not only those employed in the public sector, but also investors and directors of joint stock companies, the members of the judiciary, and the employees and the directors of private companies that have substantial dealings with the public sector. The employees of international organisations who have international business dealings in Saudi Arabia and the employees of banks and companies that receive grants from the government can also be brought to justice if they violate the Saudi Anti-Corruption Law.⁷⁰ The broad scope of this law should be positively evaluated as it has enabled the prosecution of those involved in the bribery of the foreign public officials, which, as mentioned above, is a recent but much desired addition to the international and domestic anti-corruption efforts.

To further strengthen the fight against corruption, in 2007, Saudi Arabia also developed a National Strategy for Protecting Integrity and Combating Corruption and it provided specific benchmarks that the public and private bodies must adhere to. The strategy also introduced a periodic review mechanism through which progress in the anti-corruption initiatives has to be evaluated.⁷¹ Subsequently, in 2007, the Saudi Anti-Corruption Authority was established. It was given the tasks of monitoring the progress of the implementation of anti-corruption frameworks, facilitating the recovery of funds obtained through corruption and other illicit activities, conducting periodic reviews of the relevant anti-corruption frameworks, and assisting the prosecution of such offenses.⁷² In an attempt to further strengthen the administrative capacities for fighting corruption, the Supreme Committee was established in 2017. Its establishment highlighted the strategic importance of the anti-corruption actions and ongoing reform plans. The

⁶⁵ Ibid.

⁶⁶ Combating Bribery Law (CBL), Royal Decree No M/36 of 29/12/1412AH (30 June 1992) (Saudi Arabia)

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ Lex Nexis, 'Middle East Legislative Insight: Saudi Arabia Anti-Bribery Law' <<https://nasreenalissalaw.com/wp-content/uploads/2019/09/Middle-East-Legislative-Insight-Saudi-Arabia-Anti-Bribery-Law.pdf>> accessed 13 April 2023

⁷⁰ Adam Vause, Saudi Arabia - Global bribery offenses guide, <https://s3.amazonaws.com/documents.lexology.com/10902818-421f-462c-989e-5122371cc192.pdf?AWSAccessKeyId=AKIAVYILUYJ754JTDY6T&Expires=1681383782&Signature=ChyxHcOCr5O01PPgE2PH2p9IF18%3D> > accessed 13 April

⁷¹ Saudi Arabia, The National Strategy for Protecting Integrity and Combating Corruption <https://www.my.gov.sa/wps/portal/snp/content/reportcorruption!/ut/p/z0/04_Sj9CPYkssy0xPLMnMz0vMAfiljo8zjQx93d0NDYz8LXx9LA0CjT1MAoPMzRxDAk30g1Pz9AuyHRUB5GLKcw!!/> accessed 13 April

⁷² Ibid.

Committee is led by Saudi Crown Prince Mohammed bin Salman Al Saud himself and consists of senior officials from the different sectors of the public administration. The Committee facilitates the prioritisation of high-profile corruption cases by bringing them to the government's attention.⁷³ The Supreme Committee possesses substantial capabilities for conducting investigations and prosecutions, as well as the power to authorise arrests and implement temporary measures such as travel bans and asset freezes. Its introduction represents a significant improvement over the current National Anti-Corruption Commission, or KACA, which was established in 2012 and had limited resources, despite its role as the primary recipient of reports of corruption. It is important to note that the new committee will not replace KACA, which continues to focus on safeguarding national integrity, probing instances of corruption in government contracts, and forwarding any cases to the relevant authorities and public prosecutors when required.⁷⁴

However, those legal developments were not able to placate the fears of domestic international investors about Saudi Arabia's capability to adequately address corruption. A survey conducted in 2013 among Saudi business owners revealed that 81% of the respondents were not confident about the strength of the local anti-corruption law and believed that one of the key reasons for the rampant prevalence of corruption was that the law had become obsolete.⁷⁵ Alshalan Abdulmajeed also noted that even though the penalties for corruption have increased substantially over the past two decades, the prosecution of high-profile cases is limited and so are the convictions of those involved in high-level corruption.⁷⁶ In fact, Saudi Arabia's National Anti-Corruption Commission, established in 2012, only focused on mid-level bureaucratic abuses and was not able to bring any senior public servant to account.⁷⁷ Rahman also believes that corruption at the higher political levels creates a trickle-down effect and encourages corruption at the lower levels of government, with more and more public servants being inclined to take bribes as a means of offsetting the rising cost of living and the lack of corresponding wage increases.⁷⁸ However, as it will be demonstrated in the text below, that criticism has been mostly addressed as the number of high-profile investigations into corruption in Saudi Arabia has increased in the past five years.

A common concern of those considering doing business in Saudi Arabia is the prevalence of *wasta* in Saudi society. This term is notoriously difficult to define but according to Weir and others, *wasta* is the informal networking system of Arab society.⁷⁹ Fedhali defines it as the use of tribal connections to obtain jobs or services, access to which would have been difficult or cumbersome to obtain through the normal way of doing business.⁸⁰ Most commentators consider that the *wasta* system favours nepotism and corruption, as influence and informal connections help some individuals gain an unfair advantage in political and economic life.⁸¹ While *wasta* networking is common throughout the Arab Peninsula, it has affected Saudi Arabia

⁷³ Lex Nexis, n (69)

⁷⁴ Ibid.

⁷⁵ Riyadh Economic Forum, Administrative and Financial Corruption: Reality, Consequences, and Combating (Riyad Economic Forum 2013)

⁷⁶ Alshalan, Abdulmajeed. "Corrupt Practices in Saudi Arabia: An Analysis of the Legal Provisions and the Influence of Social Factors." (PhD Thesis Indiana University 2017) 55

⁷⁷ Bertelsmann Stiftung *BTI 2018 Country report – Saudi Arabia* <https://bti-project.org/fileadmin/api/content/en/downloads/reports/country_report_2018_SAU.pdf> accessed 13 April 2023

⁷⁸ Kaunain Rahman, *An overview of corruption and anti-corruption in Saudi Arabia* (Transparency International 2020)

⁷⁹ David Weir, Nabil Sultan, and Sylvia Van De Bunt *Doing Business in the Arab World: Unlocking the Potential of Wasta in Globalization and Development* (Springer 2019) 76

⁸⁰ Rana Fedhali, *Wasta: Connections or Corruption in the Arab World* (Insights 2014) <https://www.nardelloandco.com/wp-content/uploads/2014/04/Dec2017_Wasta.pdf> accessed 23 April 2023

⁸¹ Ibid.

because the political and legal culture in the country favours the development of personal connections and loyalty, and middlemen are often involved in both legal and illegal transactions.⁸² *Wasta*'s cultural embeddedness into Saudi Arabia is difficult to eradicate, as unlike other quid-pro-quo exchanges, *wasta* obligations can also be inherited and passed on from one generation to another⁸³ For those doing business in Saudi Arabia, the prevalence of *wasta* is a common concern as it is widely believed that access to public resources is only open to those with sufficient connections.⁸⁴ A study conducted among public servants in Saudi Arabia also revealed that the prevalence of *wasta* in Saudi society represented a concern for more than 63% of public servants, as *wasta* opens the door to involvement in corruption.⁸⁵

A number of reforms have been introduced in Saudi Arabia in the past 6–7 years to dissuade *wasta* and penalise those who are involved in high-profile cases of corruption. First, Saudi Crown Prince Mohammed bin Salman personally organised a crackdown on high-ranking corruption in 2019. That campaign resulted in the recovery of nearly 108 billion USD following the settlement reached with former high-ranking officials.⁸⁶ The campaign has shown that the culture of tolerance and impunity for bribery and corruption offenses is not going to be tolerated in the country. It has been positively evaluated by the Saudi Arabian people, who have long called for a more meaningful anti-corruption response to be taken.⁸⁷

A number of progressive steps have been taken in the Kingdom of Saudi Arabia in the past 6 years to modernise the legal framework and prevent the prevalence of *wasta* in public administration. For example, the anti-corruption laws were reformed in 2018 and 2019 to modernise the legal framework and ensure that the law is capable of addressing the different forms of corruption that permeate Saudi society.⁸⁸ Second, while there was a record number of corruption reports and investigations in Saudi Arabia from 2018 to 2020, the vast majority of them (4 out of 5 cases) were initiated following the submission of whistle-blowers' reports. To a certain extent, the rise of whistle-blower reports can be attributed to the launch of the Nazaha app, through which victims and observers can directly and anonymously report corruption cases.⁸⁹ Furthermore, an increase in the reporting of these cases shows that Saudi Arabia has established a strong framework for whistle-blower protection, as whistle-blowers are fully exonerated if they report the offence prior to its detection⁹⁰. Bystanders are also incentivised to report such offenses, as Royal Decree No. M36/1412 offers monetary compensation to anyone (apart from the offender and the accomplice) who provides information on cases of bribery, and that award can be substantial: from 5000 rials to nearly 50% of the confiscated amount.⁹¹ Additional compensation can be given to third parties if they report serious and repeated offenses.⁹²

⁸² Rahman, n (78)

⁸³ Mohamed Ramadi, *The Saudi Arabian Economy Policies, Achievements, and Challenges* (Springer 2010) 33

⁸⁴ Fedhali, n (80)

⁸⁵ Robert Anderson, *Wasta seen as main source of corruption in Saudi Arabia* (Gulfnews 2016) <<https://gulfbusiness.com/wasta-seen-main-cause-corruption-saudi/>> accessed 13 April 2023

⁸⁶ Al-Jazeera, Saudi Arabia: Corruption crackdown 'ends with \$106bn recovered' (*Al-Jazeera*, 2019) <<https://www.aljazeera.com/news/2019/1/31/saudi-arabia-corruption-crackdown-ends-with-106bn-recovered>> accessed 13 April 2023

⁸⁷ Rosie Bsheer, How Mohammed bin Salman Has Transformed Saudi Arabia (*The Nation* 2019) <<http://www.hlrn.org/img/violation/Salman%20Rein.pdf>> accessed 13 April 2023

⁸⁸ Deloitte, Saudi Arabia's Anti-Bribery and Corruption Law: The Outline and Enforcement (Deloitte 2023)

⁸⁸ Homer E Moyer Jr, *Anti-Corruption Regulation in 46 Jurisdictions Worldwide* (Law Business Research 2010)

⁸⁹ *Ibid.*

⁹⁰ Moyer, n (88)

⁹¹ Royal Decree No. M36/1412 (Saudi Arabia)

⁹² Lex Nexis, n (69)

Third, Saudi Arabia has established the Priority Projects Office, also known colloquially as super *wasta*, to assist big businesses in navigating the administrative hurdles of doing business in Saudi Arabia.⁹³ Commentators have positively evaluated the work of the Priority Projects Office for both providing administrative support to businesses and offering a strong response against the growing use of *wasta* in public administration.⁹⁴ Fourth, Saudi Arabia has invested substantial resources into e-government and e-services and a vast majority of the administrative services can now be obtained through an online application.⁹⁵ Digitalisation and e-government are important steps for curtailing the prevalence of *wasta* and corruption in public administration, reducing cases by up to 90%.⁹⁶ Fifth, the Saudi lawmakers have taken proactive measures to preclude the different forms of bribery. The anti-bribery laws prohibit public officials from receiving gifts of different forms such as compensation for travel expenses, free meals, and gifts or artefacts with an entertainment value, as such their acceptance can trigger the anti-corruption law. Yet, the law does not criminalise modest gifts associated with the normal course of business operations, especially if there was no intention for the gift to constitute a bribe.⁹⁷

In order to address the problem of corruption, Saudi Arabia has enacted a number of regulations targeted at preventing and identifying instances of corruption in the public sector. One of these measures is the Anti-Corruption Law (Royal Decree No. M/36, of 29/12/1412AH), which makes it unlawful for individuals to offer, receive or solicit bribes, in order to influence trade. The law outlines the penalties, including jail and fines, that may be imposed on lawbreakers.⁹⁸ Furthermore, the Whistle-blower Protection Law, Royal Decree No. M/22 dated 4/5/1425H, protects those who disclose corruption or a conflict of interest from retaliation and encourages the public to come forward and expose instances of corruption.⁹⁹ In addition to advising public officials on how to prevent corruption, these laws promote openness and accountability in the decision-making process. In addition, the government has mandated that all federal employees adhere to an ethical code that sets acceptable behaviour standards and prohibits any corrupt activities.¹⁰⁰ Despite these measures, corruption remains a significant concern in Saudi Arabia. Researchers have noted that the implementation of anti-corruption laws and regulations is weak and that decision-making procedures lack transparency.¹⁰¹ Considering the material presented in the paragraphs above, one has to conclude that Saudi Arabia has taken substantial measures to prevent corruption, but the impact of those measures is not always as positive as policymakers had hoped. There is a need for more extensive scholarly investigation into how Saudi Arabia's anti-corruption framework has been developed and to what extent it is fit to address the subsequent challenges, which will be explored in the following chapters of this work.

The material presented above reveals an interesting paradox. While the government of Kuwait has made multiple public statements decrying its commitment to fighting corruption through all means possible, the initial review presented above indicates that its achievements in that respect are much smaller than expected, especially if compared to the substantial crackdown on corruption that was conducted in Saudi

⁹³ Reem Dafa, Saudi Arabia's 'super *wasta*' paves a path for big businesses (*Arab News* 2022) <<https://www.arabnews.com/node/1569471>> accessed 13 April 2023

⁹⁴ *Ibid.*

⁹⁵ Maher O Al-Fakhri, and others, 'E-government in Saudi Arabia: Between promise and reality.' (2008) 2 *International Journal of Electronic Government Research*, pp. 59-85.

⁹⁶ Ramady, n (62)

⁹⁷ Moyer, n (88)

⁹⁸ Combating Bribery Law (CBL), n (70)

⁹⁹ Royal Decree No. M/22 dated 4/5/1425H (Saudi Arabia)

¹⁰⁰ Rahman, n (78)

¹⁰¹ Abdulmajeed, n (76)

Arabia. Indeed, while Saudi Arabia has taken measures to prohibit corruption in both the public and private sectors and has expanded the investigatory powers of the anti-corruption agencies, Kuwait seems to have focused its anti-corruption efforts entirely on the prosecution and investigation of corruption in the public domain. The lack of high-profile cases that have reached a judicial verdict in Kuwait also points towards the conclusion that its anti-corruption efforts are not producing the expected results.

To summarise, one can hypothesise that Saudi Arabia appears to have undertaken more active measures to combat corruption than Kuwait because the prevalence of corruptive practices is greater in Saudi Arabia than in Kuwait. However, it is difficult to validate such an assumption as Saudi Arabia is ranked as the 53rd country on the Corruption Perception Index, while Kuwait ranks 65th, which means that citizens in Kuwait consider that their government is making less strenuous efforts to address corruption than Saudi Arabia.¹⁰² The reason why Kuwait appears to have taken a less proactive approach compared to Saudi Arabia in addressing corruption will be comprehensively investigated in the chapter to follow. However, the researcher would like to recognise at this preliminary stage that Saudi Arabian active anti-corruption efforts may conceal nefarious motives as well. Researchers have suggested that Saudi Arabia is using anti-corruption investigations as a means of quelling political dissent and punishing political opponents, especially those who disagree with the progressive agenda of the ruling elite.¹⁰³ Indeed, one cannot but notice that the number of high-profile cases of corruption, including charges against princes and high ranking businessmen, rapidly increased following the consolidation of power in Saudi Arabia in the past few years. Of course, the validity of such an assertion will be examined in greater detail, as it is very easy to disregard the efforts of addressing high-ranking corruption, which, if conducted properly, is the most successful accomplishment of anti-corruption reform and more than merely an attempt to silence political activists.

The examined academic, professional and legal research on Saudi Arabia highlighted both the strengths and weaknesses of the anti-corruption regime in Saudi Arabia. However, similar to the research on Kuwait, there is still a considerable gap in understanding about why Saudi Arabia, having essentially similar policies, anti-corruption agencies and legislation in place, outranks Kuwait on the Corruption Perception Index. The literature also does not provide an understanding of whether the index can be considered an adequate instrument for assessing the anti-corruption framework and anti-corruption efforts in general. Hence, it can be assumed that there is a need for a more in-depth examination of different socio-legal and cultural aspects of the Saudi anti-corruption framework and efforts against corruption in different spheres.

1.4 UAE ANTI-CORRUPTION FRAMEWORK

The United Arab Emirates (UAE) presents a compelling case in the comparative study of anti-corruption regimes in the Gulf due to its distinctive federal structure, rapid institutional development, and active international engagement. As a party to the UNCAC since 2006, the UAE has been committed to aligning

¹⁰² Transparency International, Corruption Perception Index, <https://www.transparency.org/en/cpi/2021?gclid=CjwKCAjwx_eiBhBGEiwA15gLN9nBKw3kxtsoxGRWqap_RnmT-c5w9KwlzymFzx6qGDnm7PLV6Ugo2hoCAAssQAvD_BwE> Accessed 12 May 2023

¹⁰³ Associated Press, Saudi Arabia: 201 people held in \$100bn corruption inquiry. (*The Guardian*, 2017) <<https://www.theguardian.com/world/2017/nov/09/saudi-arabia-201-people-held-in-100bn-corruption-inquiry>> accessed 5th May 2023

its domestic legal framework with global anti-corruption standards.¹⁰⁴ National strategies such as Vision 2021 and Vision 2030 have emphasised transparency, efficiency, and integrity in governance as pillars of sustainable development.¹⁰⁵ In line with these commitments, federal institutions such as the UAE Accountability Authority (formerly the State Audit Institution) and the Financial Intelligence Unit have been tasked with overseeing financial conduct and pursuing corruption-related offences.

In spite of these developments, many questions are still raised about how well and transparently federal anti-corruption efforts work. The existing literature points out that the concentration of power in the federal executive, lack of independent oversight, and minimal role of civil society and media in monitoring institutions are major concerns in the UAE.^{106,107} It also notes that there is no federal whistleblower protection law and the country's legal system does not include comprehensive access-to-information legislation, which reduces the transparency of anti-corruption institutions and thus hinders the efficiency of the UAE's anti-corruption framework.¹⁰⁸ In addition, the UAE's federal system allows each emirate to have substantial independence, which makes it more difficult to apply federal anti-corruption laws consistently, especially in Dubai and Ras al Khaimah, which have their own judicial and administrative systems.¹⁰⁹ There is no federal access-to-information law in the UAE and it has not set up a specialised anti-corruption commission with all the authority described in UNCAC. While the UAE regularly reports to UNCAC review mechanisms, it remains difficult for external observers and scholars to evaluate the domestic implementation of regulations due to limited data availability and the lack of public oversight mechanisms.¹¹⁰ The factors described above point towards a gap between formal ratification and the meaningful implementation of global anticorruption norms, and the literature cited above demonstrates the persistence of systemic and structural issues in the UAE's anti-corruption framework.

With regard to the anti-corruption legislation of the UAE, observers note a positive change and a trend towards reasonable sophistication, although certain gaps remain. Over the past decade, UAE laws against corruption have changed substantially, allowing the nation to follow international best practice while still keeping its own civil law and executive-led traditions. At its core, the legal framework criminalises bribery, embezzlement, abuse of office, money laundering, and illicit enrichment under Federal Decree Law No. 31 of 2021 (Penal Code) and Federal Decree Law No. 20 of 2018 on Anti-Money Laundering.¹¹¹ These laws

¹⁰⁴ United Nations Office on Drugs and Crime, *United Nations Convention Against Corruption Signature and Ratification Status* (UNODC 2024) <<https://www.unodc.org/unodc/en/corruption/ratification-status.html>> accessed 2 June 2025.

¹⁰⁵ UAE Government, *Vision 2021 National Agenda* (UAE Cabinet, 2014) <<https://u.ae/en/about-the-uae/strategies-initiatives-and-awards/strategies-plans-and-visions/uae-vision-2021>> accessed 2 June 2025.

¹⁰⁶ Mukdad Ibrahim, 'State Audit Institution in United Arab Emirates' (2010) 52 *International Journal of Law and Management* 464;

¹⁰⁷ Mhamed Biygautane, 'Anti-Corruption Strategies in the Gulf Cooperation Council's States: Lessons Learned and the Path Forward' in Yahong Zhang and Cecilia Lavena (eds), *Government Anti-Corruption Strategies* (Routledge 2015) 134.

¹⁰⁸ Dina Elsayed, 'Corruption in the Gulf Region: A Black Box' in Dina Elsayed (ed), *Corruption in the MENA Region: Beyond Uprisings* (Springer International Publishing 2021) <https://doi.org/10.1007/978-3-030-55314-2_6> accessed 25 October 2024.

¹⁰⁹ 'All You Need to Know About the UAE Judicial System' (*Tasheel Legal Consultancy LLC*, 2024) <<https://www.tasheellegal.com/all-you-need-to-know-about-the-uae-judicial-system/>> accessed 3 June 2025.

¹¹⁰ Elsayed, n (109) 137.

¹¹¹ Federal Decree Law No. 31 of 2021 (UAE Penal Code); Federal Decree Law No. 20 of 2018 on Anti-Money Laundering and Countering the Financing of Terrorism.

provide a clear basis for prosecuting both domestic and cross-border corruption and reflect the UAE's intention to meet its obligations under UNCAC.

A key achievement of the above-mentioned legislation is that corruption-related offences of UAE officials and involved parties abroad are prosecutable and the laws include powers to hold legal persons accountable and confiscate the proceeds of corruption, which aligns with international standards. Still, the legal system has its gaps. UAE Accountability Authority (formerly SAI) further strengthened institutional mandates by expanding oversight functions and reinforcing financial and administrative audit powers at the federal level.¹¹² Although key crimes are set out in the penal code, other parts of anti-corruption law, like managing procurement, government employees and financial records, are covered by different laws. Also, there is no single law that covers all aspects of fighting corruption and the rules do not include standards for ethical conduct in the private sector or strong protections for those who report wrongdoing. Generally, the UAE's federal anti-corruption laws are fully equipped and meet the requirements of international instruments. Still, since the UAE does not have full legal unification and certain regulatory fields are lacking, thus there is space for more unity and organised changes. Overall, the legal advances, developments, and gaps have not been studied comprehensively in the literature as a part of the anti-corruption framework, revealing a fragmented look at the puzzle of the UAE as the least corrupted country in the Gulf region. This presents an opportunity to conduct a thorough study of the UAE's legislation and other aspects of the framework to assess the extent to which it follows best anti-corruption practices.

In another aspect of its framework, which is whistleblower protection, the UAE has also made significant steps forward, as is reflected in the professional literature. In the UAE, transparency at the federal level has improved slowly, mainly in financial reporting and laws linked to tax and anti-money laundering.¹¹³ In 2020, the UAE enacted a federal law focusing on witness and whistleblower protection.³ It ensures that anyone reporting a crime, including corruption, is protected from disclosure, harm, and retaliation.¹¹⁴ It mainly affects criminal proceedings and is enforced by the Ministry of Interior.⁴ With these developments in mind, the law does not offer full protection for all reports such as those about public tenders or administrative misconducts and there is little guidance on how whistleblowers will be protected and/or rewarded. It also remains unclear whether protection is granted on the fact of reporting prior to official confirmation/rejection of whistleblower complicity. To some extent, the Federal Tax Authority offers protection to misconduct reporters in the financial sector, yet, the laws are not comprehensive and lack clear guarantees of confidentiality, legal immunity, or protection from punishment.¹¹⁵ International organisations have continuously mentioned these shortcomings.¹¹⁶ The UAE has been encouraged by the Organisation for Economic Cooperation and Development (OECD) and UNODC to have a stand-alone whistleblower law and to share more details about their enforcement actions to ensure that the UAE follows UNCAC Articles 13 and 33.

¹¹² Ibrahim, note 107, 465.

¹¹³ John Cusack, *UAE National ML/TF Risk Assessment 2024 2023* <<https://thefinancialcrimenews.com/uae-national-ml-tf-risk-assessment-2024/>> accessed 2 June 2025.

¹¹⁴ Federal Law No. (14) of 2020 on the Protection of Witnesses and Whistleblowers.

¹¹⁵ John K Devitt, 'Whistleblowing in the Mena Region' (Transparency International 2015) <<https://www.jstor.org/stable/resrep20533.6>> accessed 4 June 2025.

¹¹⁶ Tatyana Gibbs, 'Evolution of the Whistleblowing Regime: The UAE Model' (2024) 28 *Journal of Money Laundering Control* 108.

In global corruption rankings, the UAE is recognised as being among the better performers in the region. In Transparency International's 2024 Corruption Perceptions Index (CPI), the UAE ranked 28th globally and first among Arab states, with a score of 67 out of 100.¹¹⁷ This ranking positions the UAE far ahead of both Kuwait and Saudi Arabia and has been interpreted by some commentators as evidence of stronger governance and institutional integrity.¹¹⁸ Even so, using CPI as the main measure can introduce some risk. Since it relies on perception, the ranking mainly reflects how business and political leaders view the UAE and this may be affected by its welcoming policies, strong security, and role as a regional financial centre. The issue of a mismatch between the UAE's low corruption score and gaps in its anti-corruption framework, or rather explanations for this state of affairs, is not widely studied in the literature besides the work by Biygautane, which was published more than 10 years ago.

The UAE has made it clear several times that it is committed to tackling corruption domestically. Anti-corruption discourse is included in national plans such as Vision 2021 and Vision 2030, which describe integrity and trust as key to the country's development and competitiveness.¹¹⁹ Still, integrity and trust campaigns were started and run by top executives, which raises concerns about who is targeted and the independence of the enforcement bodies. Even though the UAE's government places corruption high on its agenda, similar to Kuwait and Saudi Arabia, the full picture of its anti-corruption framework has not been comprehensively examined.

The literature contends that much like in other countries of the Gulf and elsewhere in the world, the way that corruption is understood and managed in the UAE is strongly affected by cultural and legal traditions.¹²⁰ In a political system characterised by hierarchical authority, tribal loyalty, and high levels of social deference to leadership, informal practices such as *wasta* remain embedded in governance and everyday transactions, although some scholars contend that this is less so than in other countries.¹²¹ While often socially accepted and even expected in certain contexts, such practices blur the line between legitimate assistance and improper advantage, complicating formal anti-corruption efforts.¹²² Because there are conflicting ideas about some types of gifts and hospitality, it is harder to enforce the anti-corruption laws and policies. Hence, much like in the Kuwaiti and Saudi Arabian context, the line between traditional generosity and bribery can be hard to draw in the high-level business sector and administration of the UAE. As a result, anti-corruption efforts need to focus on changing the values and practices that affect how fairness and accountability are viewed in Emirati society. Yet, few scholars have explored anti-corruption measures and frameworks in general in the cultural and policy context.

While the country publicly supports international anti-corruption rules and has made progress in its laws and institutions, there is limited detailed academic research on its anti-corruption regime. Most research on

¹¹⁷ Transparency International, 'United Arab Emirates' (*Transparency.org*, 23 April 2024) <<https://www.transparency.org/en/countries/united-arab-emirates>> accessed 22 September 2024.

¹¹⁸ Biygautane, n (107) 207.

¹¹⁹ UAE Government, 'We the UAE 2031' <<https://wetheuae.ae/en/pillar/forward-economy>> accessed 4 June 2025.

¹²⁰ Nathan J Brown, *The Rule of Law in the Arab World: Courts in Egypt and the Gulf* (Cambridge University Press 1997) 56; Adam Graycar and David and Jancsics, 'Gift Giving and Corruption' (2017) 40 *International Journal of Public Administration* 1013.

¹²¹ David Weir, Nabil Sultan and Sylvia van de Bunt, 'Doing Business in the Arab World: Unlocking the Potential of *Wasta*' in Nezameddin Faghih (ed), *Globalization and Development: Entrepreneurship, Innovation, Business and Policy Insights from Asia and Africa* (Springer International Publishing 2019), 324.

¹²² *Ibid.* 324.

governance or law in the Gulf tends to ignore how anti-corruption policies have changed with the evolving federal system, national goals, and cultural background. Most existing works (specifically professional sources) provide descriptive accounts rather than a deep, comprehensive analysis of the anti-corruption regime.¹²³ Furthermore, there is little critical study of how the law and its enforcement can be affected by the executive's dominance or by the different legal systems in each emirate. The areas of whistleblowing, procurement, and the way that different areas of the government work together have not been looked at in depth.¹²⁴ Similarly, the fact that the UAE has very high CPI scores despite clear challenges in its judicial independence and control of enforcement has not been thoroughly studied in the academic literature. Furthermore, policy experts are noting that cultural practices such as *wasta* influence perceptions of corruption, but not many studies examine how these norms are handled in formal institutions.¹²⁵ So, it is clear that there is need for qualitative and socio-legal studies that join cultural analysis with the study of institutions, laws, and policies. An approach that connects different disciplines and examines everything together would better fill the scholarly gap and help to suggest a policy that covers all parts of the anti-corruption framework in the Gulf.

1.5 RESEARCH GAP AND RESEARCH CONTRIBUTION

A review of the existing legal literature shows that the Kuwaiti, Saudi Arabian and UAE anti-corruption regimes have not been thoroughly investigated. Although some researchers such as Saha et al.¹²⁶ and Hakimi et al.¹²⁷ deal to some degree with the issues of corruption in Gulf countries and the reasons for their low CPI rankings, they do not examine thoroughly the case of Kuwait or Saudi Arabia in particular. A more recent study by Aloumi¹²⁸ focuses primarily on Kuwait's failure to introduce criminal responsibility for legal entities, without addressing Kuwaiti corruption. Al-Rashidi provides comprehensive examinations of Kuwait's anti-corruption framework, but the work is mostly focused on examining the letter of the law and it does not investigate the evolving role of the different bodies involved in the fight against corruption in Kuwait.¹²⁹ Furthermore, the book does not provide an analysis of the role of the KACA or the successes and challenges that this body has faced in the fight against corruption. KACA's scope and powers were extended in 2019 and the body had a leading function in implementing the 2019–2024 Anti-Corruption Strategy. Additional research must be conducted to examine the recent development of anti-corruption strategies in Kuwait and the manner in which those strategies have to be implemented, and to assess the overall direction of the Kuwaiti anti-corruption framework in late 2010 and early 2020.¹³⁰ This research is need to examine how Kuwait collaborates and cooperates with international organisations and with other jurisdictions in the fight against corruption, which is a subject not examined in Al-Rashidi's work. Similarly, Altawyan¹³¹ and Abdulmajeed¹³² have provided a solid but somewhat fragmented analysis of Saudi anti-

¹²³ Kristian Ulrichsen, *The United Arab Emirates: Power, Politics and Policy-Making* (Routledge 2016), 321

¹²⁴ Biygautane, note 107, 334.

¹²⁵ Weir, Sultan and van de Bunt, note 122, 322.

¹²⁶ Saha, Sami and Ali n (4) 84

¹²⁷ Hakimi and Hamdi n (57)

¹²⁸ Aloumi, n (25) 1112

¹²⁹ Khaled S Al-Rashidi, *Combating Corruption in the Middle East: A Socio-Legal Study of Kuwait* (Routledge, 2021) 22

¹²⁹ Hakimi, Hamdi n (57)

¹³⁰ Ibid.

¹³¹ Altawyan, n (61) 66

¹³² Abdulmajeed, n (76) 44

corruption frameworks, missing critical emphasis on the socio-legal aspects and the role of anti-corruption agencies in the national fight against corruption.

Given the similarities of the Kuwaiti and Saudi approaches to tackling corruption and their somewhat comparable standings in the global CPI rankings, another crucial gap is not only the lack of comparative perspectives on these regimes, but also the lack of research into regional best practices for tackling corruption or 'what works' approaches. Instead, as seen from the literature discussed in sections 1.2. and 1.3, UNCAC and global best practices are taken as measures of success in tackling corruption, which reflects a Western-centred view on combatting corruption. The present project will address those limitations by taking a holistic and comparative perspective when examining the Saudi Arabian and Kuwaiti anti-corruption frameworks. This is a valuable contribution as no studies to date have taken a comparative angle when examining the anti-corruption frameworks in the Gulf region.

This research will examine the anti-corruption legal frameworks of the emirate of Kuwait and Saudi Arabia. Furthermore, a third country will be taken into consideration as a comparator: the UAE. Compared to Saudi Arabi and Kuwait, the UAE has a much better corruption rating. It is ranked 26th out of 180 countries, whereas Kuwait and Saudi Arabia are ranked 65th and 53rd, respectively. To date, few studies have tried to establish the reasons for this drastic difference or to compare regional variations in anti-corruption approaches, frameworks failures, and the successes achieved by governments in the Gulf. Thus, this study will draw a critical comparison between the three legislative models that aim to prevent and control corruption in their respective jurisdictions. The comparative examination will identify the difficulties that Kuwait, Saudi Arabia and the UAE experience in their efforts to secure a fair and objective administration, and it will additionally examine the gaps between the domestic anti-corruption regime of Kuwait and the measures provided under UNCA. Understanding the institutional and legal frameworks, policies and administrative efforts against corruption in Kuwait, Saudi Arabia, and the UAE is crucial for identifying best practices, assessing gaps and challenges, and providing guidance for policymakers and practitioners. Thus, the study will contribute to the existing literature on anti-corruption and provide insights into how the effectiveness of the anti-corruption authority can be enhanced in Kuwait and Saudi Arabia. On the basis of these findings, the dissertation will offer suggestions for establishing a more effective legal control over corruption in both jurisdictions.

Further to this, the research will discuss the discrepancy between the expectations induced by some empirical evaluations and the existing state of matters.¹³³ It is commonly assumed that states with a developed economy and a high Gross Domestic Product (GDP) have lower rates of corruption and vice versa.¹³⁴ However, in the case of Kuwait, the state enjoys one of the highest GDPs in the region, as well as high incomes and low levels of unemployment, but it is still ranked in the bottom half of the chart measuring countries' success in combatting corruption.¹³⁵ Therefore, taken alone, the level of GDP is not a sufficient indicator to evaluate the level of corruption in the country and a more thorough investigation should take place. Similarly, measuring corruption by a perception index, as is done by Transparency International, also requires testing in the regional context of the Gulf countries, since no such practical evaluations have been performed. In addition, the research will facilitate a better understanding of the

¹³³ Hakimi and Hamdi n (57)

¹³⁴ Ibid.

¹³⁵ Ibid.

reasons for high rates of corruption in the Gulf region because, as discussed above, Gulf states – especially those rich in natural resources – share many common features and some of them face difficulties with addressing corruption.¹³⁶ From the above, it can be argued that regardless of what is traditionally assumed, low levels of corruption are among the reasons for advanced economic development, and not vice versa.¹³⁷

As evidenced from the above, corruption is not entirely alien to Saudi Arabia, as the country has struggled for years to address corruption. While there is some research examining Saudi Arabian anti-corruption practices, most of that research is in the form of think-tank reports that cover only a snapshot of the Saudi Arabian legal framework. The policy reports mention that Saudi Arabia has introduced a number of laws that aim to improve the transparency and accountability of public administration in Saudi Arabia, but the impact of that legislation on corruption has not been subject to scholarly investigation. There are some scholarly attempts to address the question, for example, Alshalan Abdulmajeed's thesis provides an informed discussion on how Saudi Arabian anti-corruption law has evolved over time, but that thesis was written before the Saudi Crown Prince Mohammed bin Salman Al Saud came into power and it does not take into account the sweeping reforms that the King has pursued or explore the zero-tolerance policy to corruption that the country is currently ascribing to.¹³⁸ A comparison between Saudi Arabia and Kuwait will help to identify not only the similarities and differences in the legal responses but also the common factors facilitating corruption in two countries from the same legal family.

The research on Kuwaiti approaches to corruption faces a number of challenges, the most significant of which is a lack of credible information about the true dimensions of corruption in the Gulf region, and particularly in Kuwait.¹³⁹ Under those circumstances, the researcher will provide an original interpretation of the existing legal regulations and will draw conclusions on the applicability of anti-corruption laws in Kuwait, paying due regard to the relevant provisions of the Constitution of Kuwait. The present work will also contribute to existing scholarly studies and advance research conducted by other legal scholars and practitioners, not only in Kuwait but also in other Gulf countries. Although Saudi Arabia can serve as an example of successful anti-corruption initiatives to many other jurisdictions, its experience may not be directly applicable to Kuwait's environment, due to some political and social divergences and the importance of the governmental sector.¹⁴⁰ For instance, as evident from Kuwaiti anti-corruption strategy, the prevention of corruption when awarding public procurements is viewed as a measure to protect the public sphere, while in the most developed economies, public tenders are considered a field where government and businesses interact closely.¹⁴¹ In that vein, the present work will offer practical suggestions for reforming the existing legal regulations with the distinctive features of the Kuwaiti, Saudi Arabian and UAE social paradigms.

The research on the UAE will provide a meaningful comparison case for Kuwait and Saudi Arabia, since it is evaluated significantly better than the latter two countries in terms of corruption. The similarities between

¹³⁶ Saha, Sami, Ali, n (4) 87

¹³⁷ Michael Johnston, "Anti-corruption and its discontents: reforming reform" in Adam Graycar (ed) *Handbook on Corruption, Ethics and Integrity in Public Administration* (Edward Elgar Publishing 2020) 96

¹³⁸ Abdulmajeed, n (76) 61

¹³⁹ Freedom House, n (44)

¹⁴⁰ Kuwait strategy, n (43)

¹⁴¹ Paul Heywood, "Scale and focus in the study of corruption" in Paul Heywood (ed) *Routledge Handbook of Political Corruption* (Routledge, 2015) 39

the UAE government's efforts in the field of fighting corruption and those of Kuwait and Saudi Arabia are also poorly covered in the literature. At the same time, legal firms¹⁴², international organisations¹⁴³ and foreign analytical agencies¹⁴⁴ indicate that the UAE has been quite effective in combatting corruption. The UAE stands out as an Arab country that shares the Islamic faith and many traditions with Kuwait and Saudi Arabia, yet it is dissimilar in the evaluations of its level of corruption. Therefore, analysing these three countries with similar resource-based economies and Islamic societies in terms of how they manage corruption will provide a substantial insight into regional approaches to corruption and contribute to the anti-corruption policy and practice in the said countries.

Overall, the motivation to undertake a comparative study of Kuwait, Saudi Arabia, and the UAE has both academic and personal angles. As a Kuwaiti national, I am committed to helping my country thrive and develop in all respects, hence a comprehensive analysis and comparison of Kuwait's anti-corruption efforts together with those of other nations will likely have a practical and academic impact and aid Kuwait in developing further. Specifically, a comparative framework can provide an understanding of institutional strengths and weaknesses compared with neighbouring countries that share similar structural, legal, and cultural challenges in the sphere of anti-corruption. The UAE and Saudi Arabia are highlighted for their strong actions against corruption, new reforms and centralised power structures, while Kuwait takes a more participatory approach that sometimes moves slowly through its legislative process.¹⁴⁵ Meanwhile, other neighbouring states like Qatar and Bahrain are not included in the comparison because their governance structures are not always transparent. Furthermore, compared to other Gulf states, Kuwait, the UAE, and Saudi Arabia are studied more often in international governance and legal academic and professional literature, giving a solid evidence basis for comparison and evaluation. The selection of countries, thus, presents a balancing effort that reflects, in equal parts, a personal value, academic substance, and policy relevance.

1.6 RESEARCH QUESTIONS

The proper functioning of the public sector administration depends on having the administrative resources to prevent and investigate cases in which public officials break public trust and pursue their private interests through the power they are given by their office. To limit such occurrences, states often rely on hard laws by criminalising corruption, facilitation payments, and bribery, and soft laws by mandating a full disclosure of such cases. To fully investigate the consequences stemming from the implementation of hard and soft measures within the public sector, this research provides a comparative analysis of how Saudi Arabia, Kuwait, and the UAE respond to corruption and how adequate the legislative and administrative frameworks of those jurisdictions are in limiting abuses of power.

¹⁴² CMS Law, 'Anti-Bribery and Corruption Laws in United Arab Emirates' (CMS Law, 2022) <<https://cms.law/en/int/expert-guides/cms-expert-guide-to-anti-bribery-and-corruption-laws/united-arab-emirates>> accessed 2 October 2024.

¹⁴³ Transparency International, 'United Arab Emirates' (*Transparency.org*, 23 April 2024) <<https://www.transparency.org/en/countries/united-arab-emirates>> accessed 22 September 2024.

¹⁴⁴ GAN Integrity, 'United Arab Emirates Country Risk Report' (*GAN Integrity*, 2020) <<https://www.ganintegrity.com/country-profiles/united-arab-emirates/>> accessed 19 October 2024.

¹⁴⁵ Biygautane, note 107, 334

The main aim of the research is to analyse the key policy, administrative (structural), and legal mechanisms and means implemented in Saudi Arabia, Kuwait and the UAE to combat corruption. This broad aim will be accomplished by answering the following research questions:

- To what extent do Saudi Arabia, Kuwait, and the UAE adhere to best practices of fighting corruption?
- What are the social, economic, and institutional enablers and challenges to corruption in Saudi Arabia, Kuwait, and the UAE?
- What are the laws and the approaches for preventing, prosecuting, and reporting corruptive behaviour in Saudi Arabia, Kuwait, and the UAE?
- How have institutions in Saudi Arabia, Kuwait, and the UAE addressed the challenge of developing an adequate framework for responding to corruption?
- What lessons can be drawn from the analysis of Kuwaiti, Saudi Arabian and UAE anti-corruption frameworks?

1.7 METHODOLOGY

The wide scope of the chosen topic requires the researcher to use a number of complementary research tools to achieve the posited objectives. Thus, the researcher adopted a combination of comparative and socio-legal research strategies and a qualitative multi-method methodology, using primary and secondary legal sources.

A comparative methodology is also appropriate for the needs of the study. Comparative legal studies provide a blueprint on how reforms of legal frameworks are to be implemented as they allow legal practitioners and legislators to look beyond their borders and determine how the same legal problems are addressed internationally.¹⁴⁶ Reitz argues that any analysis of a foreign legal regime is inherently comparative as the laws of a foreign legal system are interpreted by practitioners who operate under different legal rules.¹⁴⁷ Another advantage of a comparative methodology is that it enables the researcher to understand not solely the distinctive features of the solutions to the same legal problem offered in different legal systems, but also the commonalities in how the same legal problem is dealt with in different jurisdictions.¹⁴⁸ A comparative legal methodology is not comparing apples to oranges, but rather it explores the functional equivalences through which different legal systems have dealt with the same legal issues. In that respect it provides more comprehensive abstractions of the studied legal phenomenon than a doctrinal methodology could provide.¹⁴⁹ However, despite the multiple advantages of comparative legal methods, there is limited research on comparative criminal procedures and by exploring the different approaches to regulating corruption this research will help to fill this gap.¹⁵⁰

¹⁴⁶ Ishwara Bhat, *Idea and Methods of Legal Research* (Oxford University Press 2019) 74

¹⁴⁷ John H Reitz, 'How to Do Comparative Law' (1998) 46 *American Journal of Comparative Law* 617, 636.

¹⁴⁸ *Ibid.*

¹⁴⁹ Mark Van Hoecke, 'Methodology of Comparative Legal Research' (2015) *Law and Method* 34, 34.

¹⁵⁰ Sergey Vasiliev, 'The Usage and Limitations of Comparative Law and the Methodology of International Criminal Procedure' (2017) 5 *Revista Eletrônica de Direito Penal* 1, 23.

There are different, often competing approaches to conducting comparative legal research. The functional method in comparative law encourages researchers to take a look at the function that the law performs, and examine the similarities in the function across the different jurisdictions studied.¹⁵¹ Such an approach is inherently narrow as it does not attempt to identify the differences in the legal dogmas, but rather to discover the functional equivalents that exist between them. The key material for functionalist comparison is judicial decisions, as analysts examine how the law and the courts have responded to the same legal situations.¹⁵² Another aspect of functionalist comparative legal analysis involves integrating a non-doctrinal approach with the belief that legal subjects and objects must be analysed in terms of their functional connection to society. The purpose of functionalism is to provide a neutral analysis of the law itself and its functions, offering paths for reform and unification of the law itself.¹⁵³ However, the functionalist approach to the law has been criticised for offering a very narrow methodology for comparative analysis and failing to achieve a neutral analysis. Researchers of comparative law inevitably compare jurisdictions through the perspective of their own jurisdictions, not in a neutral manner as the functionalist approach requires. Some strands of functionalism also aim to find pathways to unification of the law, which is criticised for leading to reductionism as it artificially reduces the number of legal systems that could serve for comparison.¹⁵⁴

The method of difference emerged as a response to the reductionalist focus of functionalism and those who employed it called for an expansion of the focus of analysis beyond the similarities and functional equivalents that existed in the legal system by acknowledging the differences among them. The method of difference recognises that the legal framework of a country is inevitably influenced by the local culture and traditions and it asks researchers to consider those local differences in their explanations. In doing so, scholars embracing the method of difference are looking to explain not only the commonalities in the law that exist between the studied jurisdictions but also how and why these differences emerge. Thus, the method of difference accepts that the focus of comparative research should not be restricted to the examination of jurisdiction of the same legal family, but rather it recognises that a comparison can be done between states from civil and common law legal traditions.¹⁵⁵

There have been attempts in past decades to recognise the functionalist method and its critics, with some arguing that a comprehensive comparative examination should be conducted by acknowledging both the similarities and the differences.¹⁵⁶ This approach is embraced in this study as the researcher believes that studying the functional responses to corruption of the studied jurisdictions will provide a comprehensive account of why the law evolved in this way. Looking at both the similarities and differences in the responses to corruption in Kuwait and Saudi Arabia will provide a more nuanced examination of the processes that have influenced legal developments in both countries.

The jurisdictions chosen for the comparative analysis are Kuwait, Saudi Arabia, and the UAE. The research focuses on micro analysis or more particularly on how each of these jurisdictions has attempted to combat corruption domestically. Saudi Arabia was chosen for this study because it belongs to the same legal family

¹⁵¹ Mathias Reimann and Reinhard Zimmermann (eds), *The Oxford Handbook of Comparative Law* (2nd edn, Oxford University Press 2019) 23.

¹⁵² Ralf Michaels, 'The Functional Method of Comparative Law' (2006) SSRN Electronic Journal https://papers.ssrn.com/sol3/papers.cfm?abstract_id=691642 accessed 24 August 2025.

¹⁵³ Jaakko Husa, 'Functional Method in Comparative Law – Much Ado About Nothing?' (2013) 2 *European Property Law Journal* 4, 19.

¹⁵⁴ Anthea Roberts and others, *Comparative International Law* (Oxford University Press 2018) 43

¹⁵⁵ Reimann and Zimmermann, n (133), 23

¹⁵⁶ *Ibid.*

as Kuwait and shares similar legal traditions. Thus, a direct correspondence is to be expected between the approaches undertaken by the three countries to fight corruption, which facilitates the analysis. Saudi Arabia is a suitable case for comparison because it is the de facto leader of the Gulf Cooperation Council countries and it is the state that quite often provides a model for legislative reforms that the rest of the Gulf emulates. Furthermore, the country recently organised an unprecedented crackdown on high-level corruption and it is important to analyse whether its legal framework is robust enough to secure the conviction of those implicated in these offences.

The second country chosen for comparison is Kuwait, a jurisdiction where the problem of corruption has been constantly increasing in the past few decades, but little research has been conducted to examine the wider social implications and the corresponding legal responses. Kuwait has one of the most progressive legal regimes among the Gulf States and has shown immense capacity for reforming its legal systems. A comparative analysis between the Saudi Arabian and Kuwaiti responses to corruption will therefore highlight new approaches for Kuwait to follow. As the Kuwaiti government is increasing its vigilance, not only towards high-profile corruption in the political elite, the question emerges of how Kuwait could introduce a legal framework capable of addressing those problems. Exploring the Saudi approach to punishing corruption among high-ranking officials might provide pathways for Kuwait to follow, or alternatively, in light of the potential limitations of the Saudi approach, pathways for Kuwait to build further upon the Saudi experience to develop better and more comprehensive reform.

In turn, the UAE is also a valid comparison case because it too shares geographical, political and socio-cultural and legal closeness to Kuwait and Saudi Arabia. Yet, it excels at fighting corruption, according to international assessments, and therefore its successes as well as areas for improvement can become a vital lesson for Kuwait and Saudi Arabia. Critically, the UAE is also a member of the Gulf Cooperation Council, so potentially these countries are much more compatible and open to cooperation in the sphere of anti-corruption, which opens another avenue for comparative analysis and the drawing of conclusions.

The materials for socio-legal and comparative investigations were retrieved through Brunel University London's library, which provides doctoral researchers with access to various legal research search engines including, but not limited to, Hein Online, Lexis Library, Lexis Library International, Westlaw UK, and Westlaw International Materials. In addition, some of the materials are accessible through the Audiovisual Library of International Law of the United Nations. The governments of Kuwait and Saudi Arabia have also published a number of reports and analyses on corruption and anti-corruption action that can be accessed online.

In terms of methods, the research fully embraces a qualitative methodology as the dominant methodological paradigm within the legal research field. Even though there have been examples of quantitative empirical assessments of the impact of the anti-corruption legal framework, such investigations remain biased, subjective, and prone to errors in human judgement and cannot offer a comprehensive analysis of the impact of anti-corruption frameworks on law and society. Thus, to avoid the inherent weaknesses of quantitative research, this project will utilise qualitative research methods, making extended and full use of primary (e.g. court cases, statutes) and secondary legal sources, journal articles, books, and legal commentaries to examine, assess, and evaluate the extant literature and legal material on the development of Kuwait and Saudi Arabia's approaches against corruption.

1.8 THE STRUCTURE OF THE STUDY

To provide a comprehensive answer to the research questions and attain the research objectives, the study consists of nine chapters. The first chapter was presented above and it provided a background to the studied problem (namely corruption in Saudi Arabia and Kuwait), the gap that the present scholarship has failed to address, and the specific contribution that this study makes to the literature. In addition, the introduction presented the methodology adopted for the research.

Chapter 2 is mostly focused on definitional issues as the scope and boundaries of corruption are clearly outlined. By referring to the academic literature and practitioner handbooks, the chapter provides a brief overview of the different approaches to fighting corruption.

Chapter 3 is devoted to developing a theoretical framework for the study and establishing its conceptual apparatus. This chapter focuses on analysing the theoretical underpinnings of corruption, and the relationship between a resource-based economy, development status, and corruption. Ultimately, the chapter debunks some of the misconceptions on corruption and increases understanding of the nature of this phenomenon.

Chapter 4 of the study is focused on a critical analysis of the available strategies used by the states for addressing corruption. It offers a theoretical framework on how anti-corruption efforts are to be conducted. In addition, it provides an overview of the anti-corruption efforts conducted at the UN, OECD, and EU level to identify the best practices for the states to adhere to when they devise their anti-corruption practices. The chapter also recognises the efforts of the Arab states and how their anti-corruption efforts are constructed in reference to Islamic law. Attention is also paid to the responses of the private sector to corruption and the best practices introduced in this regard.

Chapter 5 focuses on addressing the specific steps that Kuwait has taken to address corruption by acknowledging the development of the Kuwaiti anti-corruption law, and appraising the reforms that the state has undertaken to make the anti-corruption legislation a progressive one and compliant with the best international recommendations. The discussion focuses on anti-corruption efforts in public contracts and procurement and traces the birth and development of the agencies tasked with advancing the anti-corruption agenda. A case study analysis sheds light on the achievements and struggles of the anti-corruption authorities.

Chapter 6 and 7 follow roughly the same structure to examine the anti-corruption efforts of Saudi Arabia and the UAE, again with a focus on the compliance of the state with international recommendations and best practices. The efforts of anti-corruption bodies are also comprehensively investigated through case study analysis, focusing on high-profile cases disseminated in the media and in the literature.

Following the analysis presented in the past four chapters, Chapter 8 is dedicated to a comparative analysis pointing out the similarities and the differences that exist in the strategies and approaches that Kuwait, Saudi Arabia, and the UAE have undertaken to fight corruption. The purpose of the chapter is to identify which strategies worked well in these jurisdictions and which did not, and how both Kuwait and Saudi Arabia can learn from the experience of the UAE on how to improve their anti-corruption legislation.

The last chapter of the study is the conclusion. Chapter 9 presents a summary of the key research findings, highlighting how the research has answered the given questions. In addition, the chapter presents

recommendations for reforms that Saudi Arabia, Kuwait, and the UAE can follow to ensure that their legal framework is up to date and effective for offering adequate safeguards against corruption. The chapter appraises the limitations of the study and offers recommendations for further research on the topic.

CHAPTER 2. DEFINITION AND STRATEGIES FOR DEALING WITH CORRUPTION

2.1 INTRODUCTION

In recent decades, the challenges caused by corruption have been extensively researched and discussed in literature and the practice of law.¹⁵⁷ The negative effects of corruption on all spheres of political, social, and economic development are indisputable, as it increases costs for both businesses and governments, distorts economic development, and undermines public trust and social integrity; this latter consequence seems to be the main consideration of anti-corruption policies.¹⁵⁸ Numerous initiatives that aim to counter corruption and eliminate these negative effects, on both national and international levels, have been implemented in jurisdictions worldwide.¹⁵⁹ It is generally accepted that regardless of the continuous efforts, very few jurisdictions have been successful in curbing corruption, although New Zealand, Finland, Denmark and the UK are commonly recognised as anti-corruption champions. The establishment of reliable anti-corruption measures has been hindered by a number of obstacles, among them the complexity of the phenomenon, which is the prominent concern. The understanding of what constitutes “corruption” and its implications for the public and private spheres vary from one jurisdiction to another, thereby creating conditions for different anti-corruption practices worldwide and impeding the universal treatment of the issue.¹⁶⁰ The continuous failures to deal with the problems posed by corruption evokes the need for a critical examination of the definition of corruption and the initiatives aiming to curb it.

Firstly, this chapter 2 will review the definitions of corruption within the literature of law as well as debates about the dimensions of the phenomenon and its scope. Secondly, it critically examines the most commonly employed initiatives to maintain control over corruption and discusses whether the response to corruption should be universal or specific. The chapter then discusses definitions of corruption and their implications for establishing effective anti-corruption initiatives as well as practical considerations and approaches to construing a definition of corruption. The scope and main elements of the definition of “corruption” are provided in this chapter.

2.2 DEFINING CORRUPTION

Although corruption is largely perceived as a critical threat to social integrity because of its destructive impact on every aspect of public and private life, there is no universally approved definition of corruption.¹⁶¹ There are a number of hindrances to formulating a common definition of corruption and the most outstanding impediment is that corruption is a complex phenomenon that takes various forms.¹⁶² Although

¹⁵⁷ United Nations Office on Drugs and Crime, UN Guide for Anti-corruption policies <https://www.unodc.org/pdf/crime/corruption/UN_Guide.pdf> accessed 20 January 2022

¹⁵⁸ Adam Graycar, “Corruption and public administration” in Adam Graycar (ed) *Handbook on Corruption, Ethics and Integrity in Public Administration* (Edward Elgar Publishing 2020)

¹⁵⁹ UNODC, note 1

¹⁶⁰ Cecilie Wathne, “Understanding corruption and how to curb it A synthesis of latest thinking” (2021) (3) U4 Anti-corruption Resource Center

¹⁶¹ Richard Mulgan, “Aristotle on legality and corruption” in B. Hindess, M. Barcham and P. Larmour (eds) *Corruption: expanding the focus* (Canberra: ANU E-press, 2012) 25–36

¹⁶² Paul Heywood, “Scale and focus in the study of corruption” in Paul Heywood (ed) *Routledge Handbook of Political Corruption* (Routledge, 2015)

bribery is the most easily perceived form of corruption, corruption has various manifestations in practice.¹⁶³ From that perspective, “corruption” is a collective term used to denote a wide range of illegal activities among which are different acts of passive and active bribery, offering illegal gifts, embezzlement, diversion of funds, organisation executives appointing close relatives, the exploitation of one’s office, etc.¹⁶⁴ In that regard, finding an adequate and all-embracing definition of corruption has become a subject of extensive debate in legal literature, where the most challenging issues are the scope of the corrupt behaviour, the parties involved in it, and its political and legal implications.¹⁶⁵

Legal literature contains many definitions of corruption in general and political corruption in particular.¹⁶⁶ Overall, the definitions vary because of some differences in what they focus on – while certain definitions emphasise the breach of public obligations by public officials¹⁶⁷, others focus on not conforming with legal regulations,¹⁶⁸ and a third set of definitions dwells on the conflict between illicit personal gain and the interest of the wider public.¹⁶⁹

The classical definition of corruption takes as its starting point the violation of public duty and it posits that corrupt behaviour is the breach of public duty by a government officer who aims to benefit from his position.¹⁷⁰ However, not all corrupt actions involve illicit behaviour or an irregularity, as many jurisdictions punish so-called facilitation payments as forms of corrupt behaviour.¹⁷¹ Such payments are usually provided to accelerate a certain action that is legal but that would otherwise require more time or some formalities. Thus, corruption may imply an illicit action by an officer but is not limited to this, and it may involve instances when an officer performs his lawful duties.¹⁷² In the same vein, these considerations apply to all definitions that revolve around irregularities that occur in the course of conducting one’s public office.¹⁷³

Furthermore, it is notable that the UNCAC¹⁷⁴ does not contain a definition of corruption, which is often attributed not just to the difficulties of drafting a definition, but also to the variety of domestic legal regulations of the states that are parties to the Convention.¹⁷⁵ As evident from Articles 15–25 of UNCAC, the Convention merely lists the forms of corrupt conduct without outlining the commonalities between them. This approach is generally justified because the Convention, as an international instrument, seeks a balance among various jurisdictions and drafting a definition may restrict the participation of those jurisdictions that apply a different understanding of corruption. At the same time, the drafters of the UN

¹⁶³ Ibid.

¹⁶⁴ UNODC, n (136)

¹⁶⁵ Ibid.

¹⁶⁶ Graycar, n (137)

¹⁶⁷ Mulgan, n (136)

¹⁶⁸ Oskar Kurer, “Definitions of Corruption” in Paul Heywood (ed) *Routledge Handbook of Political Corruption* (Routledge, 2015)

¹⁶⁹ Transparency International, “What is corruption” <<https://www.transparency.org/en/what-is-corruption>>[accessed 20 January 2022]

¹⁷⁰ Kurer, n (149)

¹⁷¹ Eoin O’Shea, *The Bribery Act 2010: A Practical Guide* (Jordan Publishing, 2011)

¹⁷² Graycar, n (137)

¹⁷³ O’Shea, n (152)

¹⁷⁴ United Nations Office on Drugs and Crime, United Nations Convention against Corruption, 31 October 2003, 2349 UNTS 41

¹⁷⁵ United Nations Office on Drugs and Crime, “Corruption: a baseline definition” <<https://www.unodc.org/e4j/en/anti-corruption/module-1/key-issues/corruption---baseline-definition.html>> [accessed 22 February 2022]

Guide are of the opinion that summarising the common elements of the actions listed by the Convention provides a more general and therefore more common understanding of corruption.¹⁷⁶

Considering the above difficulties in creating a universal understanding of corruption, a set of commentators have questioned the practicality of drafting a common definition and instead they seek alternative methods for dealing with the challenges posed by corruption. For instance, Johnston¹⁷⁷ and Kirby¹⁷⁸ argue that jurisdictions worldwide should instead focus on promoting what is considered the opposite of corruption, i.e., integrity and fair and open government. On the other hand, Graycar questions the practicality of setting a common definition, as he claims that precise legal definitions are only necessary when carrying out prosecutions and from a broader perspective, such a definition will not facilitate the proper functioning of the administration.¹⁷⁹

As discussed above, the traditional understanding of corruption is deeply seated upon the conception that corruption involves a breach of public duty by a public officer. In that vein, the most popular definition of corruption cited as a starting point in scholarly discussions is misuse of the authority bestowed upon the individual in order to benefit personally from a situation.¹⁸⁰ This definition has gained universality primarily because it emphasises the public official's breach of the impartiality obligation, which is the main duty attached to his position, and from a broader perspective any corrupt conduct reveals a certain bias.¹⁸¹ Although the above definition is widely recognised, it has been subject to extensive criticism among legal experts such as Heywood.¹⁸² Among the main flaws of this traditional definition is that it tends to associate corruption only with the behaviour of public officers and ignores the possible involvement of private subjects in corruption schemes.¹⁸³ Although the definition does not specifically mention the breach of a public duty by a public officer, the emphasis is on the act of conferring powers to a person and the pursuit of a private interest, which is directly opposed to the proper execution of public functions.¹⁸⁴ Focusing primarily on the public sphere is seen as problematic by some commentators, such as Brooks¹⁸⁵, Heywood¹⁸⁶, and Graycar¹⁸⁷, as it has the risk of leaving unaddressed all corrupt practices in businesses and from a wider perspective, it restricts the overall understanding of what corruption is.¹⁸⁸

In contrast, private-sector corruption refers to the abuse of entrusted power for private benefit throughout private organisations, e.g. commercial bribery, kickbacks, bid-rigging, undisclosed conflicts of interest, tampering with corporate accounts, and embezzlement by officers.¹⁸⁹ Its fundamental harm lies in distorting corporate governance and competition rather than in a breach of public duty. It follows that the locus of

¹⁷⁶ UNODC, n (137)

¹⁷⁷ Michael Johnston, "Anti-corruption and its discontents: reforming reform" in Adam Graycar (ed) *Handbook on Corruption, Ethics and Integrity in Public Administration* (Edward Elgar Publishing 2020)

¹⁷⁸ Nikolas Kirby, "From anti-corruption to building integrity" in Adam Graycar (ed) *Handbook on Corruption, Ethics and Integrity in Public Administration* (Edward Elgar Publishing 2020)

¹⁷⁹ UNODC, n 137

¹⁸⁰ Transparency International, note 150

¹⁸¹ Kurer, n (149)

¹⁸² Heywood, n (143)

¹⁸³ Ibid.

¹⁸⁴ Ibid.

¹⁸⁵ R. C. Brooks, "The Nature of Political Corruption" (1909) 24 (1) *Political Science Quarterly*, 1

¹⁸⁶ Heywood, n (143)

¹⁸⁷ Graycar, n (137)

¹⁸⁸ Heywood, n (143)

¹⁸⁹ Antonio Argandoña, 'Private-to-Private Corruption' (2003) 47 *Journal of Business Ethics* 253

analysis is different than public sector corruption: whereas in public sector corruption it is on impartial exercise of state power, private sector corruption focuses on breaches of fiduciary and contractual obligations in firms and supply chains. Such breaches are mostly addressed through company law, competition law, and specific offences of private bribery available in certain common law jurisdictions.¹⁹⁰ Naturally, there will be some overlap, particularly in public procurement and state-owned enterprises, but the regulatory logic and burdens of evidence will differ.¹⁹¹

This thesis does not foreground private sector corruption because the questions of this research focus on the design and performance of public institutions (i.e. anti-corruption agencies, prosecution services, auditing authorities) and their compliance with international standards. The comparability of case information across countries and the availability of data are much stronger on the public side; therefore, it is much easier to conduct benchmarking studies on the international side to strengthen the assessment of enforcement and transparency. Finally, it is recognised that the legal treatment of private bribery is inconsistent in relation to the Gulf cases examined, which would further dilute the analytical focus. Consequently, private sector corruption is only assessed when it relates to public functions, especially procurement, concessions, and state-owned enterprises. Acknowledging the definition and conceptual debates that rise the issue of adequate coverage of private sector corruption, the work, nonetheless argues for an approach that foregrounds public sector corruption.

In the author's opinion, creating a definition of corruption could be beneficial not only for scholarly purposes but also more generally, as it would provide a more comprehensive and systemic notion of different corrupt practices and enable their comparative evaluation. Firstly, this understanding is consistent with the practical need to set clear legal definitions of different forms of corrupt behaviour for public prosecution cases, but it recognises that a wider definition might be useful as well.¹⁹² Secondly, a broader understanding of public sector corruption would better serve as a basis for developing effective preventive mechanisms, which is the main focus of most anti-corruption legislation. Thirdly, creating a common definition of corruption is consistent with the perception of corruption as a global threat and it advances its common assessment in different jurisdictions.¹⁹³ Fourthly, this broader approach will facilitate comparative research of corruption among various countries because it suggests that the evaluation of all jurisdictions will apply a similar understanding of corruption.

Given that corruption still lacks a universal definition and the fact that most definitions focus on distinct aspects of the phenomenon, this research proposes its own a definition of corruption which is based on the examined literature and available conceptualisations discussed above. This definition will become the basis for the following discussion and analysis of the phenomenon in the context of a comparative study of corruption in Kuwait and Saudi Arabia. This definition is in no way presented as final and comprehensive to apply in every sphere and legal environment, but as a working definition that enables this research to meet its objectives. Thus, based on various academic and official descriptions, the term corruption will be defined as a *criminal act committed by a public officer or an individual including their closest relatives*

¹⁹⁰ Adam Graycar, 'Corruption: Classification and Analysis' (2015) 34 Policy and Society 87.

¹⁹¹ Ibid., 89.

¹⁹² Ibid.

¹⁹³ Kurer, n (149)

performing public functions that involved an increase in the said officer or individual or their closest relatives' wealth or diminution of their liabilities that is unjustified and disproportional with regard to their resources.

This definition addresses several issues outlined in the literature, identifying the conditions for considering an act as corruption. This definition notably expands the notion of corruption to include any act committed by a public servant or individual performing public functions, even acts that are not connected to their direct line of responsibility or fact of holding office. The Kuwaiti government gives high priority to eliminating any incentive for public servants to pursue private gain while performing their duties for the state, as stated in the Kuwait Integrity and Anti-Corruption Strategy.¹⁹⁴ Secondly, this definition follows Law No. 2 of 2016, which in turn is modelled to follow UNCAC in outlawing illicit gains and defining those as unjustified, disproportional increases in wealth and diminution of liabilities. In the author's view, this definition of illicit gains provides an excellent condition for defining corruption as its ultimate goal is almost always an individual (or family) gain. The present work will generally utilise the term "corruption" in its broadest notion in order to consider the wider negative effects of corruption – the distortion of economy, the lack of public trust, and the undermining of social integrity. Focusing primarily on individual cases of corrupt behaviours as forms of corruption shortens the perspective and reduces the possible interventions, since these violations can only be prosecuted as a criminal case. For that reason, the present work will generally utilise the term "corruption" as a collective term that encompasses all possible forms of corrupt behaviour. On the other hand, whenever the researcher refers to a particular form of corrupt behaviour, the respective term will be given for it.

2.3 LEGAL AND POLITICAL IMPLICATIONS OF CORRUPTION AND THEIR RELEVANCE FOR ADOPTING ANTI-CORRUPTION INITIATIVES

Out of the public–private sphere implications of corruption arise another closely related discussion, namely whether "corruption" is a legal or political concept, and therefore whether political or legal initiatives should be employed to keep it under control. The drafters of the UNODC Guide for Anti-corruption Practices argue that legal definitions of corruption are inevitably narrow because they aim to criminalise certain corruptive practices, therefore they seek brevity and clarity.¹⁹⁵ Furthermore, although these definitions criminalise certain actions, they do not consider the interrelation between corrupt practices, which are generally addressed in political and social research on corruption. An illustration of this point of reasoning is the differentiated treatment of some forms of criminal activities related with corruption. For instance, the crime of money laundering is necessarily associated with criminal activities, including corrupt conduct, as it usually aims to cover the proceeds of a crime, therefore this crime necessarily occurs in connection with another crime.¹⁹⁶

Money laundering is treated differently in the varying jurisdictions worldwide – although some systems treat it as a corruption crime, others address it as a crime against the financial system, without necessarily

¹⁹⁴ Nazaha, 'Kuwait Integrity and Anti-Corruption Strategy' (2019) <<https://andp.unescwa.org/sites/default/files/2021-07/Kuwait%20Integrity%20and%20Anti-Corruption%20Strategy.pdf>> accessed 1 December 2023.

¹⁹⁵ UNODC, n (136)

¹⁹⁶ Foreword to UNCAC

involving corrupt behaviour.¹⁹⁷ In that vein, money laundering appears as part of a broader criminal context as it advances the concealment of other crimes and this relationship exists regardless of whether the transformation of money is seen as a form of corruption. This example can be further utilised to evidence that the purely legal definitions employed by criminal codes may indeed shorten the understanding of corruption, while the examination of the social and economic relationship between the crimes may provide a more comprehensive understanding of the phenomenon and the initiatives that aim to combat it.¹⁹⁸ On these grounds, it can be upheld that the narrow legal definitions do not provide a full understanding of all the implications of corruption and the possible methods to counter it. Thus, social and political implications may additionally advance the perception of corruption and the possible methods for its minimisation.¹⁹⁹

Another set of authors, such as Mungiu-Pippidi²⁰⁰ and others, assert that corruption is a predominantly political concept, especially in states with underdeveloped institutions, and on those grounds political means are necessary to keep corruption under control. To achieve that objective, Pippidy proposes a set of political approaches including building an alliance of subjects who are most severely affected by corruption, for instance those who have been forced to become involved in active bribery or those who have been victims of extortion. Representatives of civil society and political subjects should participate in this alliance.²⁰¹ The UN Guide seems to support the above understanding, as it states that anti-corruption efforts should necessarily involve all the victims of corruption, rather than only those subjects who are expected to keep it under control.²⁰²

However, in the author's view, the political approaches to combatting corruption may be effective under certain circumstances but they can only be supplementary to the legal initiatives undertaken to minimise corruption. At the same time, it has to be admitted that the legal measures against corruption employed in the respective legislation may be insufficient if the government lacks the political will to carry out these initiatives.²⁰³ In that regard, it can be argued that the political and legal responses to corruption should be applied with consideration of the particular political and economic context.²⁰⁴

2.4 REGULATORY APPROACHES TO COMBATTING CORRUPTION

2.4.1 CLASSIFICATIONS OF ANTI-CORRUPTION POLICIES

Legal literature and commentaries are full of anti-corruption strategies and initiatives and various international agencies have developed their own guidelines or toolkits that contain initiatives aiming to keep corruption under control.²⁰⁵ Despite the wide variety of suggestions and catalogues of "best practices", finding a universal solution to end corruption seems problematic. A number of commentators, such as Wathne, Johnston, and Klitgaard, find these standardised strategies only theoretical because most of them have never been used in practice and they are not linked to the particular context where they need to fit.

¹⁹⁷ Ibid.

¹⁹⁸ UNODC, n (136)

¹⁹⁹ Ibid.

²⁰⁰ Alina Mungiu-Pippidi, "Corruption: Diagnosis And Treatment" (2006) 17(3) *Journal of Democracy*

²⁰¹ Ibid.

²⁰² UNODC, n (136)

²⁰³ Ibid.

²⁰⁴ Wathne, n (139)

²⁰⁵ Wathne, n (139)

The complex nature of corruption poses a challenge to anti-corruption initiatives as it implies that in order to combat it, a state should undertake an integrated rather than fragmented set of measures that are in conformity with the wider background, including the political, economic, and social situation.²⁰⁶ Most of the legal regulations and anti-corruption strategies adopted worldwide adhere to this understanding and apply a broader approach to the complex concerns arising from corruption, taking into consideration the relationship between different corrupt practices and their repercussions, and anti-corruption initiatives as well. Still, the importance of single measures aiming to reduce or eradicate corruption in a particular sector or to eliminate specific forms of corruption should not be ignored as they have the potential to achieve progress in the combat against corruption, although on a smaller scale.

In addition to the complexity of the situation, over recent decades corruption has proved to be a global rather than a merely domestic challenge and respective transnational approaches have been established in different international instruments, such as the UNCAC and the OECD. UNCAC is usually seen as a comprehensive legal instrument that summarises the possible legal measures that can be implemented by signatory states in order to combat corruption. These measures can be divided into several categories: statutory condemnation of certain acts of bribery or misappropriation of funds²⁰⁷; the introduction of appropriate measures to prevent corruption²⁰⁸; and improving the co-operation between ratifying states in terms of taking joint action against corruption on a global level²⁰⁹, including the return of any benefits received as a result of corruption²¹⁰. The above set of measures list the possible legal approaches to combating corruption; some aim to prevent corruption while others attempt to deal with its consequences.²¹¹ In that vein, combatting corruption on the domestic and international levels inevitably requires legislative initiatives, depending on the international commitments of the state and the level of their implementation. In addition, anti-corruption legislation should be customised to counter those forms of corruption that are most common in the particular jurisdiction.²¹²

Traditionally, the approaches to combatting corruption are classified into two main categories: the so-called “positive” measures that more generally address public concerns with the problems associated with corruption, and “punitive” ones that directly confront corrupt conduct and sanction the particular misconduct.²¹³ Overall, the “positive” measures, such as educating employees about integrity and raising the awareness of the general public, require more time than the initiatives that directly address a certain corrupt behaviour, such as criminal indictment, administrative sanctions, or legislative reforms that criminalise corrupt behaviour. These “positive” initiatives form the democratic foundation of a state and they are an essential part of the process of establishing sound institutions and good governance. Still, the “positive” measures cannot effectively control corruption if a particular state has not developed its institutions and has not gained citizens’ trust in the proper operation of public authorities.²¹⁴ For instance,

²⁰⁶ Ibid.

²⁰⁷ UNCAC, Chapter Three

²⁰⁸ UNCAC, Chapter Two

²⁰⁹ UNCAC, Chapter Four

²¹⁰ UNCAC, Chapter Five

²¹¹ Alan Doig, 'Political Corruption In The United Kingdom' in Martin J. Bull, James L. Newell (ed.) *Corruption in Contemporary Politics*(Palgrave Macmillan 2003)

²¹² United Nations Office for Drug Control and Crime Prevention, n (207)

²¹³ Ibid.

²¹⁴ Bertram Levine and Michael Johnston, “The Compliance Equation: Creating a More Ethical and Equitable Campaign Financing System by Blinding Contributions to Federal Candidates” In Aaron S. Kesselheim and Christopher T.

the main pillar of all anti-corruption strategies – the principle of transparency – is insufficient to achieve effective control if citizens distrust the information given by politicians or if they fear that such an inquiry may be harmful for them.²¹⁵ On the other hand, jurisdictions cannot rely solely on direct measures against corruption because these sanctions inevitably follow the corrupt conduct. Therefore, they can only serve the purpose of general prevention; in theory, they are supposed to act as a deterrent against other similar cases, but they cannot effectively prevent a particular corrupt action.²¹⁶ Therefore, successful anti-corruption policies should integrate “positive” and “negative” measures against corruption, in order to deter subjects from getting involved in corrupt behaviour or to sanction them in the event that the preventive measures fail.²¹⁷

With that background in mind, the existence of universal solutions to the problems posed by corruption that have the potential to eradicate or minimise corruption under all circumstances is debatable in legal literature. A number of experts, such as Wathne, negate the effectiveness of all-embracing anti-corruption initiatives because a measure that has proved effective under certain circumstances may not be adequate in another environment.²¹⁸ For instance, establishing a specialised independent authority to pursue corruption is seen as a common measure that facilitates the establishment of an institutional mechanism to prevent and pursue corruption.²¹⁹ Still, it has to be recognised that such an institutional reform may produce more tensions than benefits if that particular jurisdiction has already founded specialised and effective anti-corruption departments within other state bodies.²²⁰ Additionally, a general concern that inevitably arises when setting an institutional framework for combatting corruption is how to safeguard the independence and the impartiality of those officers employed in the service and this issue may create a further impediment to the implementation of anti-corruption initiatives.²²¹

In addition, other commentators argue that an effective anti-corruption framework can only be established following an in-depth analysis of the reasons for corruption.²²² Wathne classifies the various incentives for involvement in corruption, most of which relate to a wide and diverse context comprising of political, social, and economic circumstances. Among these incentives the author recognises in first place agency problems, for instance, a lack of adequate supervision of a corrupt officer. Second, is collective involvement in corruption, which motivates the individual to act dishonestly. Third is the existence of a pressing need to satisfy another demand, which may occur in cases of low wages or rising personal demands. Fourth, involvement in corruption may lead to an advantage or accelerate certain processes.²²³ Wathne argues that every anti-corruption initiative should be based on the proper identification of the context where corruption appears, including the motives for corruption, as classified above.²²⁴ In the author’s opinion, this approach may curb the particular corrupt practice or to prevent similar cases in the future. However, taken alone, it

Robertson (eds), *Blinding as a Solution to Bias: Strengthening Biomedical Science, Forensic Science, And Law* (Amsterdam: Elsevier/Academic Press, 2016), 278–296

²¹⁵ Ibid.

²¹⁶ United Nations Office for Drug Control and Crime Prevention, n (207)

²¹⁷ Ibid.

²¹⁸ Wathne, n (139)

²¹⁹ United Nations The Global Program Against Corruption, Anti-Corruption Toolkit, <https://www.unodc.org/documents/treaties/corruption/toolkit/toolkitv5_foreword.pdf>accessed 20 January 2022

²²⁰ Ibid.

²²¹ Mungiu-Pippidi, n (218)

²²² Wathne, n (139)

²²³ Ibid.

²²⁴ Ibid.

is fragmentary and insufficient to deal with corruption from a broader perspective for a number of reasons. The main consideration against this approach are the difficulties in identifying the reasons for the corrupt behaviour, more particularly, that reasons for corruption are often mistaken for its causes.²²⁵ For instance, it is commonly accepted that countries with low economic development experience high levels of corruption and vice versa.²²⁶

Still, this traditional understanding can be challenged because as already explained, corruption distorts economies and hampers economic development.²²⁷ Similarly, Sandgren argues that although poverty used to be considered a reason for corruption, now it is more commonly accepted that corruption causes the decline in an economy.²²⁸ In that vein, Johnston argues that one of the main reasons for failing to handle corruption is that its underlying motivations are usually mistaken for its consequences.²²⁹ Besides, it has to be recognised that the dynamics of the present business and the social context may give rise to new incentives for corruption, which will remain unaddressed if the above approach is implemented strictly.

With due consideration of the above deficiencies of the contextual approach and irrespective of the particularities of the jurisdictions in question, according to the UN Anti-corruption Toolkit, there are a number of common efforts that states should make in the process of combatting corruption because they have proved to be generally effective and necessary.²³⁰ In that vein, the main pillars that serve as the basis of every anti-corruption strategy are the establishment of an autonomous judicial system, enhancing the transparency of the public sector, training unbiased and loyal public administrators, freedom of the press and the mass media, and periodic monitoring of the success of anticorruption initiatives.²³¹ In addition to the above mandatory pillars, the UN Toolkit suggests numerous particular anti-corruption initiatives and the possible combinations between them to be applied in accordance with the particularities of the jurisdiction in question. According to the stance taken by the drafters of the Toolkit, the specific anti-corruption measures should necessarily be combined with common initiatives aiming to establish good state governance and public integrity as a starting point in the process of implementing successful anti-corruption tools.²³²

As explained above, some of the United Nations' bodies and other organisations involved in monitoring compliance with international instruments have issued various guidelines and compilations of good anti-corruption practices, aiming to aid state parties to progress in their anti-corruption efforts.²³³ On the basis of these "toolkits", many jurisdictions have adopted anti-corruption legislation and strategies that comply and largely adhere to the mechanisms suggested by the international bodies with regard to their national particularities.²³⁴

²²⁵ Johnston, n (160)

²²⁶ U 4 Anti-Corruption resource center, „Overview of Corruption in GULF Countries“ <<https://www.u4.no/publications/overview-of-corruption-in-gulf-countries>> [accessed 22 February 2022]

²²⁷ Johnston, n (160)

²²⁸ Claes Sandgren, "Combating Corruption: The Misunderstood Role of Law" (2005) 39 *International law*, 717

²²⁹ Johnston, n (160)

²³⁰ United Nations The Global Program Against Corruption, n (246)

²³¹ *Ibid.*

²³² *Ibid.*

²³³ Wathne, n (139)

²³⁴ *Ibid.*

The effectiveness of the above approach has been challenged by scholars such as Johnston, who reviews the results from applying the toolkits and argues that the set of measures provided in these collections has not proved to be effective. This can be easily perceived when tracing the progress of most jurisdictions.²³⁵ Johnston is of the opinion that these measures are adequate by themselves, but that they fail due to their lack of consideration of the particular social, political, and cultural background. Another drawback of these policies is that they are directly aimed at eradicating corruption and ignore the social, economic demands of the population, for instance, a lack of sufficient healthcare, poor infrastructure, inadequate system of education, etc. In that vein, the author states that a successful anti-corruption strategy should start with the most pressing demands of society, and when these problems are solved, as a side effect, corruption will reduce in the respective sector. Following this approach, jurisdictions will additionally deal with the problem of a lack of sufficient public trust, which exists in most developing countries with weak state institutions and which further hinders the effective enforcement of anti-corruption measures. With consideration of the above, Johnston finds that eradicating corruption should not be an aim by itself, but that rather jurisdictions should seek to solve the issues identified as the most troublesome by the majority of the population, because this will facilitate consensus on the necessary anti-corruption measures.²³⁶ Additionally, this approach will promote integrity among society because it still allows for measures directly aimed at combatting corruption, but they will be implemented after the most problematic issues have been solved and when society has gained at least a certain amount of trust in the government. Therefore, Johnston sees the process of establishing control over corruption as a pathway to a fair and adequate state governance, especially in under-developed countries.

This approach is largely upheld by Kirby, who argues that direct anti-corruption measures should instead be replaced by “positive” efforts to achieve greater integrity in society.²³⁷ The author challenges the common understanding that integrity is just the opposite of corruption and vice versa, as he states that being non-corrupt constitutes a very low standard for public behaviour; on the other hand, acting with integrity is much more demanding and implies a performance that is consistent with higher moral values.

The author upholds the above understanding and additionally believes that it can be further developed in order to create a more general understanding of the strategies that can be successful in the control of corruption under different circumstances. Democratic states that have established strong institutions and enjoy a high level of social consideration for tackling the problems associated with corruption can rely more extensively on the purely “positive” mechanisms for achieving greater integrity in their public and private spheres in their combat against corruption. Additionally, these countries can rely more extensively on the collections of good practices and other strategic instruments that directly aim to reduce corruption. On the other hand, countries of lower political and economic development initially need to approach corruption indirectly, namely, to solve the problems that hinder the stable development of the state. In the course of settling those issues, they will achieve progress in the fight against corruption.

As for specific initiatives, Howlett recognises four different categories of anti-corruption interventions, which are differentiated on the basis of the type of corrupt behaviour and the specific response to it.²³⁸ Following

²³⁵ Johnston, n (160)

²³⁶ Ibid.

²³⁷ Kirby, n (161)

²³⁸ M. Howlett, *Designing Public Policies: Principles and Instruments* (London: Routledge, 2010)

these distinguishing criteria, the four categories of policies are: institutional mechanisms, authoritative tools (regulatory and sanctioning), financial incentives, and data-based tools.²³⁹ Additionally, each of these broad categories can be further divided into substantive and procedural instruments. This classification has a number of merits, mainly because it allows for specific measures to be targeted at particular forms of corrupt behaviour.²⁴⁰ On the other hand, commentators, such as Villeneuve, argue that this classification is comprehensive and well-organised, therefore eligible not only for scholarly purposes but for practical application as well.²⁴¹

2.5 CONCLUSION

This chapter clarified the definitions of corruption and why universal definitions remain elusive. It differentiated public from private sector corruption, recognising that they can sometimes overlap (e.g. in procurement, concessions, SOEs), and justified the public sector focus of the thesis because there are clearer obligations under UNCAC; greater cross-national comparability, and the integrity outcomes that centre upon state institutions. Regardless of the existing debates about the scope and the implications of corruption, at present it is clear that corruption is a global problem and that bribery in both the public and private spheres is against international anti-corruption treaties. The review of the existing scholarly literature evidences that the aggregate approach towards corruption is preferred over fragmentary tools that aim to address only specific, usually sector-based problems arising from corruption and standardised solutions “codified” in the collections of best practices should be accommodated to fit the specific circumstances. The definition of corruption proposed by the author addresses the scholarly issues and serves as a basis for the present study.

²³⁹ Ibid.

²⁴⁰ Jean-Patrick Villeneuve, Giulia Mugellini and Marlen Heide, “Typologies of anti-corruption frameworks” in Adam Graycar (ed) *Handbook on Corruption, Ethics and Integrity in Public Administration* (Edward Elgar Publishing 2020)

²⁴¹ Ibid.

CHAPTER 3: A THEORETICAL FRAMEWORK OF CORRUPTION

3.1 INTRODUCTION

Having analysed the scholarly debates surrounding the term 'corruption,' the author has revealed numerous inconsistencies in the way that the phenomenon in question is understood and applied in legal practice across the globe. These distinct conceptualisations have paved the way for unique regulatory approaches combatting corruption. As established in the previous chapter, scholars have identified punitive and positive measures against corruption. Within those broad categories, there have formed several approaches involving different measures such as the contextual approach, the pursuit of integrity, and institutional and financial approaches. Based on this understanding, this chapter will examine the existing academic works and international organisations' sources in order to delve deeper into the theoretical side of fighting corruption, focusing on the underlying reasons why corruption occurs and the theoretical underpinnings of the strategies for fighting it. In an attempt to provide a detailed analysis of the strategies dealing with corruption, two sets of theories are explored in this chapter. The first set is based on the microeconomic schools of thought that focus on methodological individualism, thereby examining corruption bottom-up.²⁴² The actors in these microeconomic models are the individuals themselves, as opposed to institutions or collective actions by society, as the second set of theories argues.²⁴³ The second set of theories explored considers corruption as a social phenomenon that is contagious and easily spreads to non-corrupt individuals through their corrupt counterparts following a variety of different incentives.²⁴⁴

The main objective of the present chapter is to examine the theories explaining corruption. This will be done by providing a theoretical account of the causes and underlying factors of corruption and discussing their practical implications.

Moreover, it shall be acknowledged that academic consensus recognises that corruption is one of the most serious impediments to economic progress worldwide.²⁴⁵ Given that economic development is a priority for the international community and developing countries especially, motivation to minimise corruption as quickly as possible should not be lacking. However, this undoubtedly necessitates the examination of the practices constituting corruption.

The author's thesis statement is that corruption has been a long-standing issue that recognises no physical borders and has already spread out globally. Irrespective of whether one adopts a bottom-up or a top-down theoretical approach towards corruption, the results are always the same, i.e. undermining democratic governance, the rule of law, loss of integrity, and minimising public trust. Therefore, the author's objective is not so much focused on discussing the results of corruption *per se* but rather on examining the theories that seek to address the causes of corruption and the international and regional efforts put into place to

²⁴² James P. Gander, 'Microeconomics of Corruption Among Developing Economies' (2011) *Working Paper No: 2011-01*, 4.

²⁴³ *Ibid.*

²⁴⁴ Heather Marquette and Caryn Peiffer, 'Corruption and Collective Action' (2015)

<https://www.shareweb.ch/site/DDLG/NDocuments/U4%202015%20Corruption%20and%20CollectiveAction.pdf> accessed on 10 Jun. 23.

²⁴⁵ Ivan Krastev, *Shifting Obsessions: Three Essays on the Politics of Anticorruption* (Central European University Press, Budapest, 2004) 43-74.

minimise the detrimental effects of corruption practices. To that extent, the author proceeds to review the theoretical framework on the matter.

3.2 THEORETICAL UNDERPINNINGS OF CORRUPTION

The theoretical explanations of corruption examined in this section could be further divided into two broad categories, namely theories that view corruption in a bottom-up manner, i.e. theories placing the individual and his actions at the centre of corruption, and theories that seek to explain corruption by referring to collective actions of the society, organisations, or governmental departments altogether. Therefore, the first set of theories is based on the assumption that certain individuals contain inherently flawed moral values that eventually materialise in corrupt practices, while the second set of theories suggests that there are faulty societal norms that directly impact the norms of separate individuals and lead to the engagement with corruption.

One of the most frequently cited triggers for corruption in the public sector is the desire of individuals to achieve personal gain. Therefore, even though corruption is largely described as a social phenomenon, some individuals are more prone to corruption than others. As such, academics like Klitgaard, Shleifer, and Vishny have attempted to create a theoretical correlation between corruption and principal–agent and agency principles.²⁴⁶ For example, in accordance with the principal–agent theory, the agents protect the principal's interests. However, although this presumption is strong in theory, it appears to be rather controversial in practice, as an agent's interests may significantly differ from those of the principal.²⁴⁷ The former may thus use their position of trust to acquire personal benefit rather than to safeguard the principal's interests, as their fiduciary duty supposedly dictates. As such, the agency issue arises in cases where the agent acts in a corrupt manner to further their self-interest, very often to the principal's detriment.²⁴⁸ That is why ensuring that the interests of the agent and the principal are aligned has been put forward by Posner as a solution to corrupt practices.²⁴⁹ Arguably, such harmonisation of the objectives of both parties would decrease any possibility of opportunistic behaviour on behalf of the agent.²⁵⁰ In addition, to limit corruption in the principal–agent scenario from a theoretical perspective, principals may opt to develop adequate monitoring and oversight and remove any potential motivation by the agents to engage in corrupt practices.

In contrast to Klitgaard's theory, which is based on the presumption of the existence of a corrupted agent who acts for his benefit as opposed to the benefit of a principal, Andvig and Moene have made a different reading on the topic. They instead focus on the demand and supply side, treating both as corrupted.²⁵¹ Moreover, it has been argued that one of the main limitations of the principal–agent theory is that it requires

²⁴⁶ Robert Klitgaard, *Controlling Corruption* (University of California Press, 1988) 52-97; Andrei Shleifer and Robert W. Vishny, 'Corruption' (1993) vol. 108:3 *The Quarterly Journal of Economics*, 599-617.

²⁴⁷ *Ibid.*

²⁴⁸ UNDOC, 'Knowledge tools for academics and professionals UNODC Module Series on Anti-Corruption' https://grace.unodc.org/grace/uploads/documents/academics/Anti-Corruption_Module_4_Public_Sector_Corruption.pdf accessed on 12 Jun. 23

²⁴⁹ Eric A. Posner, 'Cost-benefit analysis as a solution to a principal-agent problem' (2001) vol. 53 *Administrative Law Review*, 289-297.

²⁵⁰ *Ibid.*

²⁵¹ Jens Andvig, and Karl Ove Moene, 'How Corruption May Corrupt' (1990) 13 *Journal of Economic Behavior*, 63–76.

as a prerequisite an active principal who is constantly monitoring and overseeing the actions of their agent.²⁵² However, this would be difficult to achieve in practice considering how widespread corruption practices are. Another limitation of the theory is that it fails to explore the idea that the principal may also benefit from the corrupt practices and thereby tolerate or even encourage it.²⁵³

The principal–agent theory may be further linked to the public choice theory as both interpret corruption through a "rational choice" prism. Therefore, in accordance with the public choice theory, corruption comes about as a result of the rational decisions of individuals who are aware that these decisions would lead to a predetermined outcome. Rose-Ackerman asserts corrupt individuals usually choose to become corrupt upon realising that the advantages of engaging in corrupt practices would greatly outweigh the disadvantages.²⁵⁴ Thus, the public choice theory postulates that corruption is a conscious choice that incorporates a calculating exercise of determining whether the benefits of engaging in corrupt practices outweigh the benefits of abstaining from these practices. Nelen and Nieuwendijk have described this approach to corruption as simplification. One of its main limitations is that claiming that all individuals who engage in corruption seek monetary advantages would be incorrect.²⁵⁵ Some, as Nelen and Nieuwendijk seem to suggest, may seek higher social standing, a higher office, etc.²⁵⁶

The principal–agent and public choice theories may be distinguished from those examined in this work because the former is based on an individual's rational and conscious decision, not on factors beyond an individual's control. The main advantage of these theories is that they have a strict focus and are not so much affected by variables beyond a person's control. Therefore, researchers adopting one of these two theories need not consider any additional factors beyond those under an individual's direct control and may solely concentrate on specific actions taken in specific situations.²⁵⁷ Arguably, this would make it easier to implement more efficacious deterrents against corruption. For example, as already established, the public choice theory focuses on the actions of a particular individual and one's determination of whether the benefits of corruption would outweigh the risks involved.²⁵⁸ The respective risks may easily be substantially increased by adequate surveillance, information gathering, and, most importantly, the strict enforcement of both administrative and criminal penalties to punish corrupt practices. If one follows the assertion of the public choice theory, if the risk of being caught is higher than the benefits that an individual would potentially acquire from corruption, it is reasonable to assume that the level of corruption would decrease incrementally.

²⁵² Petr Wawrosz, 'How Corruption Is and Should Be Investigated by Economic Theory' (2022) vol. 10:12 *Economies*, 326.

²⁵³ *Ibid.*

²⁵⁴ Rose-Ackerman, Susan, 'Corruption and Conflicts of Interest' (2014) in Jean-Bernard Auby, Emmanuel Breen and Thomas Perroud, *Corruption and Conflicts of Interest: A Comparative Law Approach*, Cheltenham, UK: Edward Elgar.

²⁵⁵ H. Nelen, & A. Nieuwendijk, 'Geen ABC: Analyse van Rijksrechercheonderzoeken naar Ambtelijke en Bestuurlijke Corruptie' (2003) *Den Haag: Boom Juridische Uitgevers*.

²⁵⁶ *Ibid.*

²⁵⁷ Gjalte de Graaf, 'Causes of Corruption: Towards a Contextual Theory of Corruption'

<https://core.ac.uk/download/pdf/15474836.pdf> accessed on 12 Jun. 23.

²⁵⁸ *Ibid.*

Another way to explain why corruption comes about is through a psychological analysis of the human mind. For example, the bad apple theory is based on the idea that not all individuals are guided by the same moral compass or share the same values.²⁵⁹ Therefore, some individuals may be inherently predisposed and more inclined to engage in corrupt acts than others. This means that from the perspective of the bad apple theory, corruption arises due to the existence of individuals, i.e. "bad apples", whose moral values suffer from defects and, as a result, tolerate rather than condemn criminal activities.²⁶⁰ These defects are usually greed and extreme wealth accumulation through unlawful schemes and actions. Critics such as de Graaf have argued that the bad apple theory does not have universal coverage as not all individuals choose to act in a certain way on the basis of moral values.

On the contrary, at times, circumstances may arise whereby an individual would have no control over what is to follow, i.e., in certain situations, an individual may act in a particular way because they are compelled to do so by forces beyond their control, without any conscious determination of whether these actions would be moral or not. Effectively, this showcases one of the main limitations of the bad apple theory, as the theory has poor empirical standing and appears to be predominantly based on a theoretical foundation. Moreover, even if one chooses to examine corruption based on this theory, one would inevitably be led to questions such as how do individuals acquire faulty moral values, and what is the impact of one's family history on the values developed with the passage of time? This would most certainly lead to numerous psychological predicaments leading down a rabbit hole.²⁶¹ Therefore, the bad apple theory may be said to engage with psychological and criminological theories strongly but often fails to provide any empirical evidence to support the ideas its proponents put forward. Nonetheless, the psychological analysis of corruption has been helpful as it proves that individuals who engage in corruption subconsciously rationalise their behaviour and genuinely perceive the corrupt behaviour as lawful.

As shown above, the different theories focus on different elements or causes of corruption. It is important to consider the bottom-up theoretical account of corruption and also the top-down one. As such, the author turns to the collective action theory to examine why corruption is traditionally regarded as a persistent phenomenon and continues to be regarded in that manner in modern days as well. In contrast to the principal-agent theory, the collective action theory focuses on the general levels of trust within a society and examines how individuals view and interpret the behaviour of those around them. Academics such as Persson, Rothstein, and Teorell have argued that corruption is a collective issue that crosses borders and affects the majority of the world because people as social beings look at the behaviour of others when seeking justification to act in a similar fashion.²⁶² Therefore, in a society where corruption is the norm, i.e., how to get things done, most people will probably adopt corrupt practices instead of being honest in a corrupt system.

²⁵⁹ Gjalt de Graaf, 'Causes of Corruption: Towards a Contextual Theory of Corruption' <https://core.ac.uk/download/pdf/15474836.pdf> accessed on 12 Jun. 23.

²⁶⁰ Gjalt de Graaf, 'Causes of Corruption: Towards a Contextual Theory of Corruption' <https://core.ac.uk/download/pdf/15474836.pdf> accessed on 12 Jun. 23.

²⁶¹ *Ibid.*

²⁶² Anna Persson, Bo Rothstein, and Jason Teorell, 'Why Anticorruption Reforms fail: Systemic corruption as a collective action problem' (2013) vol.26:3 *Governance*, 449-471.

Moreover, the collective action theories assume that corruption is a contagious phenomenon, and as such, once corrupt practices of certain individuals become perceived as normal, this behaviour will eventually corrupt all other individuals working in the particular organisation. As Jackall suggests, the irony is that corruption is caused by corruption itself.²⁶³ Therefore, one may easily spot how countries with weak governance and a generally high level of distrust by the public often suffer from persistent patterns of corrupt practices that are systematic and difficult to minimise.²⁶⁴ That is why Persson, Rothstein, and Teorell have suggested that whenever corruption is "the expected behaviour, everyone should be expected to act corruptly".²⁶⁵

This is particularly problematic as it can lead to the normalisation of corruption on a large scale in a given state and imbue people with the sense that there is no punishment for corrupt practices simply because everyone else engages in such practices.²⁶⁶ In these circumstances, adopting different monitoring and oversight schemes suggested by the principal–agent theory would be inefficient and unsound. States would rather need to devise and adopt collective and coordinated strategies, such as establishing different proactive alliances or organisations to combat corruption.²⁶⁷

Corruption may also be examined through the prism of the contextual corruption theory, often linked to the collective action theory, as they share a similar theoretical foundation.²⁶⁸ This theory, developed by De Graaf, posits that each country's corruption level would be directly affected by certain pre-existing characteristics, such as respect for the rule of law, the level of enforcement of anti-corruption norms, and the level of discretion and authority given to anti-corruption organisations to combat corruption.²⁶⁹ Therefore, the contextual corruption theory considers the social context in which corruption exists, and through the social behaviour of individuals, it seeks to understand how corrupted practices become embedded within institutions and society as a whole. Simultaneously, this theory's proponents argue that the link between corruption, society, and political institutions is a highly complex one.²⁷⁰ For example, in the US, political campaigns often receive financial support from different groups and organisations, which would not be regarded as illegal *per se* but does raise serious concerns about susceptibility to political corruption.²⁷¹ This is due to the fact that the option of receiving unlimited financial support without bearing any responsibility for disclosing details about or being accountable for such support may lead to institutional corruption. The matter is even more problematic when it concerns elections, as this would potentially make

²⁶³ R. Jackall, *Moral Mazes: The World of Corporate Managers* (New York: Oxford University Press, 1998).

²⁶⁴ Heather Marquette & Caryn Peiffer, 'Collective Action and Systemic Corruption' (2015) *Paper presented at the ECPR Joint Sessions of Workshops*, 7.

²⁶⁵ A. Persson, B. Rothstein, & J. Teorell, 'Why anticorruption reforms fail—systemic corruption as a collective action problem' (2013) vol. 26:3 *Governance*, 467.

²⁶⁶ Heather Marquette & Caryn Peiffer, 'Collective Action and Systemic Corruption' (2015) *Paper presented at the ECPR Joint Sessions of Workshops*, 7.

²⁶⁷ Gjalte De Graaf, 'Causes of Corruption: Towards a Contextual Theory of Corruption' (2007) 31 *Public Administration Quarterly* 39.

²⁶⁸ *Ibid.* 41.

²⁶⁹ *Ibid.* 41.

²⁷⁰ Dennis F. Thompson, 'Theories of Institutional Corruption' (2018) vol. 21:1 *Annual Review of Political Science*, 4-6.

²⁷¹ UNDOC, 'Knowledge tools for academics and professionals UNODC Module Series on Anti-Corruption' https://grace.unodc.org/grace/uploads/documents/academics/Anti-Corruption_Module_4_Public_Sector_Corruption.pdf accessed on 12 Jun. 23

the said elections too dependent on the "arbitrary influence of financial powers".²⁷² This is truly problematic, considering that the US is one of the countries with the strongest respect for the rule of law and democratic governance. Ceva and Ferretti explain this peculiarity by arguing that institutional corruption occurs when institutions are set up in a manner that makes deviation from their founding mandate possible.²⁷³ This explains why institutional corruption is possible in countries with strong anti-corruption measures and high regard for the rule of law and democratic governance, such as the US, as the receipt of private funding by individuals running for office, although not expressly prohibited, creates an environment that could easily be contaminated with political corruption.²⁷⁴

According to the contextual corruption theory, actions against corruption ought to be taken at an institutional and societal level instead of focusing on the behaviour, or rather the misbehaviour, of particular individuals, as in the collective action theory, for example. This theory is among those that best recognise the complex nature of corruption and its evasive nature, which is why it became the backbone of the theoretical framework of this study. In line with this theory, the contextual social, institutional, and administrative factors will be considered as issues that help explain the particular manifestations of corruption in any given state and thus serve as factors for analysis. Along with adopting the contextual corruption theory by De Graaf as the primary theoretical and analytical vehicle, it is vital to also consider other important facets of corruption to better understand the phenomenon at hand and possible explanations for its persistence, emergence, and manifestations.

3.3 THE RELATIONSHIP BETWEEN THE "RESOURCE CURSE" AND CORRUPTION

History, especially colonial history, pointedly evidences a direct link between the natural resources and economic progress of states.²⁷⁵ Support for this argument may be drawn from the exploitation efforts made by France and Britain in relation to the natural resources of their colonies in the nineteenth century, which ultimately boosted their economies and led to an industrial revolution.²⁷⁶ However, history also teaches us that the existence of natural resources does not always guarantee economic prosperity. This curious correlation has become known as the "resource curse" or the paradox of plenty, whereby countries that are naturally rich in natural resources tend to develop much slower due to poor internal government, lax regulations, and high corruption levels.²⁷⁷ As Sachs and Warner suggest, the relationship between the abundance and wealth of natural resources and economic progress is rather negative.²⁷⁸ For example,

²⁷² UNDOC, 'Knowledge tools for academics and professionals UNODC Module Series on Anti-Corruption' https://grace.unodc.org/grace/uploads/documents/academics/Anti-Corruption_Module_4_Public_Sector_Corruption.pdf accessed on 12 Jun. 23

²⁷³ Emanuela Ceva and Maria Paola Ferretti, 'Political Corruption' (2017) vol.12:12 *Philosophy Compass*, 3.

²⁷⁴ *Ibid.*

²⁷⁵ Natural Resource Governance Institute, 'The Resource Curse The Political and Economic Challenges of Natural Resource Wealth (2015) https://resourcegovernance.org/sites/default/files/nrgi_Resource-Curse.pdf accessed on 12 Jun. 23.

²⁷⁶ Shannon M. Pendergast, Judith A. Clarke, and G. Cornelis Van Kooten, 'Corruption, Development and the Curse of Natural Resources' (2011) vol. 44:2 *Canadian Journal of Political Science*, 411-412.

²⁷⁷ Natural Resource Governance Institute, 'The Resource Curse The Political and Economic Challenges of Natural Resource Wealth (2015) https://resourcegovernance.org/sites/default/files/nrgi_Resource-Curse.pdf accessed on 12 Jun. 23.

²⁷⁸ J.D. Sachs and A.M. Warner, 'Natural Resource Abundance and Economic Growth' (1995) *NBER Working Paper series 5398*, 19.

countries with abundant natural resources, such as South Africa and Venezuela, do not enjoy a particularly high standard of living, often contributing to high corruption levels and income disparity. However, developed economies like Iceland and Norway, with strong anti-corruption legislation, appear to have additionally benefited from the exploitation of their natural resources and substantial oil reserves.²⁷⁹ Therefore, it may be argued that the "resource curse" does not equally affect all countries possessing an abundance of natural resources. As such, countries that lack anti-corruption legislation and have lax rules on the regulation of the exploitation, distribution, and sale of the natural resources on their territory appear to suffer from a lack of economic growth. On the other hand, countries with strong legislative responses to corruption and strict regulation of the exploitation, distribution, and sale of natural resources appear to only gain from the possession of such resources.²⁸⁰ The Natural Resource Governance Institute has further concluded that countries with high oil, gas, and mineral reserves often fail to fulfil their natural resources' full potential and are generally more prone to violent clashes and negligible economic progress.²⁸¹ However, many sources support the idea that countries affected by the resource curse usually have weak institutions and poor governance.

An additional example is that of countries in the Arab region. Some gain substantial wealth from their natural resources, but at the same time, their economies remain at a relatively steady level with next to no diversification or growth.²⁸² The diversification of the economy is believed to bring long-term growth in countries with abundant natural resources. In addition, the readiness and openness of a country to engage in trade with third parties is also regarded as one of the most impactful factors on economic growth overall.

Examining the distribution of natural resources and the level of corruption worldwide shows an interesting correlation between having substantial natural-resource assets and prevalent corruption. It has been argued that the "resource curse" is strongly influenced by corruption, as the very process of extracting the natural resources is prone to corrupt practices by high-level officials²⁸³. Therefore, the arrangement of natural resource extraction would often lead to bribery and corruption and may even hinder regional development by granting foreign firms licenses to extract natural resources, as opposed to domestic firms. In addition to the severe economic impacts that the "resource curse" may have on a given state, it may also substantially alter the political landscape of a country as corrupt practices could ensure that the government of the day is the government that serves the business interests of the more influential players.²⁸⁴

Moreover, the literature on the topic largely supports the opinion that most countries that possess an abundance of natural resources are harmed by this wealth as opposed to receiving benefits from it. A study by the International Monetary Fund concluded that the living conditions in countries with large oil reserves

²⁷⁹ Steinar Holden, 'Avoiding the resource curse the case of Norway' (2013) *Energy Policy*, 2.

²⁸⁰ Margie Sharpe, 'Corruption: The True Cause of the Resource Curse?' (2006) *Clemson University*, 1.

²⁸¹ Natural Resource Governance Institute, 'The Resource Curse The Political and Economic Challenges of Natural Resource Wealth (2015) https://resourcegovernance.org/sites/default/files/nrgi_Resource-Curse.pdf accessed on 12 Jun. 23.

²⁸² Ibrahim Elbadawi and Hoda Selim, *Understanding and Avoiding the Oil Curse in Resource-rich Arab Economies* (ERF and Cambridge University Press, 2016) 1.

²⁸³ Michael M. Ross, 'What Have We Learned about the Resource Curse?' (2014) vol. 18 *Annual Review of Political Science*, 239-259.

²⁸⁴ *Ibid.*

"are below the average for sub-Saharan African countries".²⁸⁵ It has further been argued that the discovery of such oil reserves does indeed lead to a burst of economic growth, but unfortunately, that is only a temporary development, and the subsequent economic decrease is so severe that it places the country in a less prosperous position than it was before the discovery of the oil reserve.²⁸⁶ Moreover, dependence on natural resources for a country to develop its economy is believed to often lead to higher corruption rates and issues concerning adhering to the rule of law and respect for democracy. Shaxson even argues that the poorer and less regulated a state is before the discovery of abundant natural resources, the higher the chances of being harmed by these resources as opposed to benefiting from them.²⁸⁷ This is because if a country has poor governance and weak institutions before discovering its natural resources, it is highly likely that upon discovery, many will act opportunistically and seek to maximise their personal benefits, inevitably leading to a deeply embedded culture of corruption.²⁸⁸ However, in states like the US and Norway, where the institutions were well-developed and a system of checks and balances was put into place before the discovery of the natural resources, the resource curse and corruption seem to not be substantial issues.²⁸⁹

It is important to also examine the resource curse practically, especially in the Gulf. It is a widely known fact that the GCC states possess a formidable quantity of oil and gas reserves, which places them among the richest countries in the world. However, this also makes the economies of these countries very dependent on the quantity of their natural resources, which are, after all, finite. Therefore, it may be argued that to preserve the levels of economic progress achieved thus far, the Arab countries in the Gulf region would need to diversify their economies and work on developing other sectors of their economies as well.

Research shows that the Kingdom of Bahrain has chosen to invest in and develop its finance and tourism sectors as part of its diversification efforts. As a result, Bahrain has become recognised as the innovation-driven financial centre in the GCC region. Bahrain has over 370 financial institutions, which ultimately contributed 17.3 per cent of the GDP in 2020, a 16 per cent increase from 2019.²⁹⁰ Moreover, recent figures show that the revenue received from tourism in 2022 doubled the target initially set for the year and reached \$3.98 billion.²⁹¹ The average duration of stay also increased from 3.3 days to 3.5, and the number of visitors reached 9.9 million, which exceeded the target number of 8.3 million tourists by 19 per cent.²⁹² These findings are particularly important for the long-term sustainability of the economy, irrespective of whether the natural resource reserves will begin depleting in the future.

²⁸⁵ Jan-Peter Olters, 'Old curses, new approaches? Fiscal benchmarks for oil-producing countries in sub-Saharan Africa' (2007) IMF Working Paper 07/107.

²⁸⁶ Nicholas Shaxson, 'Oil, corruption and the resource curse' (2007) vol. 83:6 *Oxford University Press*, 1123.

²⁸⁷ Nicholas Shaxson, 'Oil, corruption and the resource curse' (2007) vol. 83:6 *Oxford University Press*, 1123.

²⁸⁸ *Ibid.*

²⁸⁹ Michael M. Ross, 'What Have We Learned about the Resource Curse?' (2014) vol. 18 *Annual Review of Political Science*, 239-259.

²⁹⁰ Foreign Policy, 'Bahrain: The Innovation-Driven Financial Hub' <https://sponsored.foreignpolicy.com/country-reports/bahrain-the-innovation-driven-financial-hub/> accessed on 12 Jun. 23.

²⁹¹ Zawya, 'Bahrain tourism sector tops targets; revenue hits \$4bln' (2023) <https://www.zawya.com/en/business/travel-and-tourism/bahrain-tourism-sector-tops-targets-revenue-hits-4bln-sljaddj6> accessed on 12 Jun. 23.

²⁹² *Ibid.*

Similarly, the State of Kuwait has also been focusing on its finance sector by adopting certain rules and regulations enabling non-Kuwaiti citizens to trade shares on the Kuwait Stock Exchange. Kuwait has also concentrated on securing foreign direct investments and these increased to \$372.4 million in 2022 compared with \$7.5 million for the previous year.²⁹³ Despite these efforts, over 90 per cent of the exported products are still oil, making the country's economy largely dependent on extracting and selling its natural resources.²⁹⁴ Even though diversification appears to be a *leitmotif* in the country's economic policies and long-term sustainability plans, it is still at a rudimentary stage compared to the diversification reached by the Kingdom of Bahrain.

The Sultanate of Oman also strongly relies on its natural resource reserves, with 80 per cent of its total exports being oil. However, the country's government has consistently strived to achieve diversification and industrialisation, and these efforts have resulted in the development of the Oman 2040 Vision Plan, which aims to explore and further invest in and develop sectors such as tourism, fisheries, logistics, mining, and manufacturing.²⁹⁵ Moreover, the new Foreign Capital Investment Law, which came into force in 2020, seeks to remove any restrictions related to foreign ownership and is believed to have the potential to successfully stimulate foreign direct investment flows. Therefore, even though the overall state of the economy is still highly dependent on oil reserves, the government has taken steps to ensure swifter diversification, which is already reaping positive results for the Sultanate.

The State of Qatar also receives a large percentage of its annual revenue from oil and gas exploration. In addition, Qatar has sought diversification in the tourism sector and, respectively, the transport and communication sectors, which have expanded quite significantly. As tourism increases in a linear manner, this led to the need to renew the infrastructure in the country. It is also important to note that Qatar has been seen as the "magnet" for attracting FDI inflows in the GCC Region. For instance, in 2022, the country attracted \$29.78 bn worth of investments creating over 14,000 jobs.²⁹⁶ Interestingly, only 9 per cent of these were in the oil and gas sectors, and most jobs were created in sectors such as information, communication and technology, healthcare, and financial services.²⁹⁷ Thus, it is reasonable to argue that the diversification efforts of the State of Qatar are rather strong, and the country has turned the "resource curse" into a "resource blessing".

On the other hand, the Kingdom of Saudi Arabia has concentrated its diversification efforts on the manufacturing sector. It has also invested in building a Financial District to increase its share of financing services, but it has not yet reached the desired goals. Nonetheless, its efforts have resulted in the increased participation of foreign investors in the stock market for open-ended mutual funds. The government's reform to decrease income tax for corporations has also led to positive outcomes, as the FDI inflows have continued to increase in the last couple of years. Most importantly, however, Saudi Arabia has managed to

²⁹³ CEIC, 'Kuwait Foreign Direct Investment' (2022) [https://www.ceicdata.com/en/indicator/kuwait/foreign-direct-investment#:~:text=Kuwait%20Foreign%20Direct%20Investment%20\(FDI,Mar%202012%20to%20Sep%202022](https://www.ceicdata.com/en/indicator/kuwait/foreign-direct-investment#:~:text=Kuwait%20Foreign%20Direct%20Investment%20(FDI,Mar%202012%20to%20Sep%202022). accessed on 12 Jun. 23.

²⁹⁴ *Ibid.*

²⁹⁵ Trade Club, 'The economic context of Oman' <https://www.tradeclub.standardbank.com/portal/en/market-potential/oman/economical-context> accessed on 12 Jun. 23.

²⁹⁶ Santhosh V. Perumal, 'Qatar has a stronger pipeline of FDI inflows: IPA Qatar CEO' (2023) <https://www.gulf-times.com/article/661594/business/qatar-has-a-stronger-pipeline-of-fdi-inflows-ipa-qatar-ceo> accessed on 28 Jun. 23.

²⁹⁷ *Ibid.*

use oil revenues in such a wise and sustainable manner that fluctuations in the oil prices will not hurt spending or damage the state's fiscal sustainability. The diversification that Saudi Arabia has achieved so far and the controlled dependency on its natural resources appear to also place it on the side of the countries that have challenged the accuracy of the "resource curse" doctrine.

Lastly, the UAE may be used as the best practice example of diversification, as growth may be observed within all of its sectors. The country has achieved remarkable success in tourism and transportation, making it increasingly less dependent on its natural resources. For instance, unlike its counterparts in the GCC region, the UAE's oil exports amount to only 48 per cent of the total exports, as the country is also increasing its involvement in the export of gold, diamonds, and commodities.²⁹⁸ There is also a steady increase in FDI inflows, which reached \$20.7 bn in 2021 and continued to rise despite the global economic consequences following the COVID-19 pandemic.²⁹⁹ Therefore, it may be concluded that the UAE has not only found a way to minimise the negative effects of the so-called "resource curse" but has also managed to turn the curse into a blessing.

A study conducted by Lonneke Titulaer tested the above assertions empirically for "multicollinearity, robustness, heteroskedasticity, serial correlation, and normality".³⁰⁰ To avoid deviation from the objectives of this study, the results may briefly be summarised as evidencing the fact that irrespective of the strong diversification of the countries in the GCC region, their annual average growth rate is still significantly influenced by growth in the oil and gas sectors. While manufacturing, tourism, and financial services also positively affect the annual average growth, the correlation between the healthy state of the economy and oil and gas is still too strong.

Even though the "resource curse" has largely been qualified as a negative phenomenon, one also needs to examine the benefits it brings to examine its relationship with corruption critically. To that end, one must note that scholars have observed a trend whereby countries with stringent anti-corruption rules and regulations experience certain difficulties in securing investments compared to countries with more relaxed anti-corruption regulatory frameworks. The latter are seen as the more convenient option by investors, as there are substantially lower compliance costs.³⁰¹ However, if one conducts a more in-depth analysis of the topic, one would ultimately come to observe that the legal regimes in developing countries with lax anti-corruption regulations actually benefit from the investments of companies subject to foreign corruption regulations, such as the US Foreign Corrupt Practices Act (hereinafter: the FCPA) as this provides the often lacking political will to address corrupt practices of multinational corporations.³⁰²

²⁹⁸ Zawya, 'The UAE maintains its position among top global commodity trading hubs in DMCC 'Future of Trade' research' (2022) <https://www.zawya.com/en/press-release/research-and-studies/the-uae-maintains-its-position-among-top-global-commodity-trading-hubs-in-dmcc-future-of-trade-research-igm4zgvr> accessed on 28 Jun. 23.

²⁹⁹ Cleofe Maceda, 'UAE attracted \$20.7bn FDI in 2021' (2022) <https://www.zawya.com/en/wealth/alternative-investments/uae-attracted-207bn-fdi-in-2021-c6bxncnk> accessed on 28 Jun. 23.

³⁰⁰ Lonneke Titulaer, 'Six oil abundant Gulf countries, cursed or blessed?' (2009) *Erasmus University Rotterdam*, 38-48.

³⁰¹ Hans B. Christensen, Mark Maffett, and Thomas Rauter, 'Reversing the Resource Curse: Foreign Corruption Regulation and the Local Economic Benefits of Resource Extraction' (2022) *Working Paper no. 2020-155*, 3.

³⁰² *Ibid.*

However, despite the high-level diversification, the UAE exhibits signs of decline in its Corruption Perception Index, from 69 points in 2022 to 67 points, according to the last review.³⁰³ Similarly, Qatar scored 63 points in 2022, now decreasing to 58.³⁰⁴ The Kingdom of Saudi Arabia has also dropped 53 to 51 points, while Oman has had 52 to 44 points.³⁰⁵ The State of Kuwait appears to have made only a minimal drop from 43 to 42 points,³⁰⁶ and the Kingdom of Bahrain has increased its tolerance to corruption by gaining 2 points, and its index is now at 44 points.³⁰⁷ Therefore, it appears that the States in the Gulf region, while exposed to a resource curse, have also been exposed to high levels of corruption. This may be explained by the fact that when the discoveries of the country's natural resources were made, there were no sophisticated institutions established to conduct checks and balances and implement anti-corruption prevention measures.

3.4 THE RELATIONSHIP BETWEEN DEVELOPMENT AND CORRUPTION

In a recent discussion on corruption, the Council of the European Union agreed that corruption undermines democratic governance and the rule of law and erodes public trust in institutions.³⁰⁸ Moreover, the Council took the position that corruption hinders the adequate fulfilment and realisation of human rights and exacerbates existing inequalities within societies worldwide.³⁰⁹ As such, the Council has urged states to review and revise their anti-corruption measures in all sectors, focusing on the public finance management sector where corruption is most prominently observed.³¹⁰ Even though corruption is difficult to examine empirically given its varying effects on countries around the world, the traditional international position is that corruption is detrimental to the economy and good governance of a state, and it tends to lead to the shrinking of the economies of corrupt countries.

One of the most popular assertions regarding the relationship between development and corruption is that the latter substantially diminishes investments and shrinks economic growth.³¹¹ For example, this occurs when an investor is asked for a bribe before setting up their enterprise in a particular state. The investor is then uncertain about whether the official/s requesting the bribe will not also request a percentage of the proceeds going forward. This is particularly problematic as it may act as a strong deterrent for investors as the uncertainty and the need to pay out bribes to commence operations reduce their incentive to invest in the first place.³¹² In addition, the literature on the topic suggests that corruption and bribery often lead to

³⁰³ Trading Economics, 'United Arab Emirates Corruption Index' <https://tradingeconomics.com/ united-arab-emirates/corruption-index> accessed on 30 Jun. 23.

³⁰⁴ Trading Economics, 'Qatar Corruption Index' <https://tradingeconomics.com/qatar/corruption-index> accessed on 30 Jun. 23.

³⁰⁵ Trading Economics, 'Oman Corruption Index' <https://tradingeconomics.com/oman/corruption-index> accessed on 30 Jun. 23.

³⁰⁶ Trading Economics, 'Kuwait Corruption Index' <https://tradingeconomics.com/kuwait/corruption-index> accessed on 30 Jun. 23.

³⁰⁷ Trading Economics, 'Bahrain Corruption Index' <https://tradingeconomics.com/bahrain/corruption-index> accessed on 30 Jun. 23.

³⁰⁸ Council of the European Union, 'Corruption as an obstacle to development' (2023) <https://data.consilium.europa.eu/doc/document/ST-9015-2023-INIT/en/pdf> accessed on 28 Jun. 23.

³⁰⁹ *Ibid.*

³¹⁰ *Ibid.*

³¹¹ Council of the European Union, 'Corruption as an obstacle to development' (2023) <https://data.consilium.europa.eu/doc/document/ST-9015-2023-INIT/en/pdf> accessed on 28 Jun. 23.

³¹² Paolo Mauro, 'Why Worry About Corruption?' (1997) vol. 6 *International Monetary Fund*, 1.

loss of tax revenue, which may have negative budgetary consequences.³¹³ These arguments are supported by the empirical findings of Paolo Mauro suggesting that if a country improves its corruption index score from 6 to 8 (0 being the most corrupt and 10 being least corrupt), the economic growth will, in turn, increase by over 4 percentage points and the annual growth rate by half a percentage point.

However, on the other side of the spectrum, some countries, like the People's Republic of China, continue to thrive economically, although they have a strong history of corruption. Moreover, China's economy continues to receive considerable investments, especially in the infrastructure sector, which raises the question of why China's economic growth appears to be completely unaffected by such high levels of corruption.³¹⁴ The peculiar case of China is a serious deviation from the current theoretical understanding and is likely to jolt academics if a positive relationship is established between corruption and development. An interesting proposition on the topic was made in the book *China's Rise: Challenges and Opportunities*, in which the authors draw a link between corruption and economic growth, arguing that the latter is a byproduct of the former.³¹⁵ Moreover, the authors appear to consider that there is nothing special about corruption in China *per se*.³¹⁶ Instead, they explain China's booming economy in the presence of unprecedented levels of corruption with the fact that bribing government officials actually provides incentives for them to perform their tasks more effectively and to find ways of "partnering up" with entrepreneurial individuals and enterprises seeking to invest in fast-growing sectors such as real estate.³¹⁷

Others have set out three factors that helped China to grow its economy despite the ever-deepening corruption. These are: i) corruption did not represent a serious barrier to securing economic growth in the first place as there has always been a culture of "profit-sharing" between bribe-givers and bribe-takers; ii) the period with the highest levels of corruption coincided with a period when the state shifted large-scale transfers of value to the market economy, which was in its primary stages of development; and iii) the government's efforts and sets of reforms were sufficient to keep corruption levels under control and maintain "healthy" levels of corruption by the early 2000s. As such, one may use the "efficiency-enhancing" argument to appreciate how, despite the high level of corruption, China continues to secure ever-increasing economic growth. Therefore, it may be argued that in certain circumstances, corruption may help to grease the governmental machinery if, for example, the government has adopted extremely strict and rigid anti-corruption regulations that deter foreign investments and ultimately hurt the country's economy. Bribing a senior official in these circumstances may ensure that the investors receive the necessary permissions and licenses to commence operation, thereby allowing them to invest large amounts in the country's economy. Another element that has been regarded as important for the relationship between economic growth and corruption in China is the strong level of public trust.³¹⁸ Allegedly this makes both parties to an act of bribery more trusting, which facilitates the bribe-giving and taking, and thus brings about the desired result of

³¹³ *Ibid.*

³¹⁴ Xingxing Li, 'Guest post: bribery and the limits of game theory – the lessons from China' (2012) <https://www.ft.com/content/5861a908-dc8e-3b8e-bc06-7f761227ff6d> accessed on 12 Jun. 23.

³¹⁵ C. Fred Bergsten, *China's Rise: Challenges and Opportunities* (Peterson Institute for International Economics, 2009).

³¹⁶ *Ibid.*, 38

³¹⁷ *Ibid.*, 39

³¹⁸ Shaomin Li and Judy Jun Wu, 'Why China Thrives Despite Corruption' (2007) https://ww1.odu.edu/news/news-archive/2007/04/WhyChinaT_8969 accessed on 30 Jun. 23.

increased economic growth as both parties receive the intended benefits – the public official receives the bribe, and the bribe-giver receives the incentive or business advantage it sought to secure with the bribe. Albeit ironic, this relationship suggests that higher levels of public trust also boost the peculiar, as one may call it, healthy corruption that increases economic growth.³¹⁹ Respectively, countries with lower rates of public trust make both bribe-givers and bribe-takers more suspicious and this lowers the rate of successfully executed bribes of senior public officials and thus does not present the opportunity for economic growth.

Nonetheless, it has been argued that in order to achieve sustainable economic growth going forward, China would need to put reasonable effort into amending its existing anti-corruption measures and improving their respective enforcement.³²⁰ This view has also been supported by the government of the day, which has vowed to combat corruption, particularly bribe-taking by senior governmental officials. However, the case of China raises the question of whether the states in the Gulf region could thrive irrespective of the existence of corruption. This is a valid question indeed, considering the amount of FDI that these countries have secured despite the rising levels of corruption. This question will be developed in more detail in the subsequent chapter of this work.

3.5 THE RELATIONSHIP BETWEEN DEMOCRACY AND CORRUPTION

Democratic systems are traditionally assumed to be less corrupt than non-democratic ones, but empirical evidence and research indicate that institutional factors, such as judicial independence, effective separation of powers, and transparency, are more important for discouraging corruption than regime type alone.³²¹ This section will consider both theoretical and empirical considerations of the link between democracy and corruption to analyse whether it is important to consider regime type as a vital point of analysis in the study of corruption.

Traditionally, the relationship between democracy and corruption has been considered negative and it is assumed that democratic regimes are less corrupt, because of the accountability mechanisms of electoral competition, media freedom, and civil liberties. According to Treisman³²², democracies are better able to fight corruption because political accountability lowers incentives for public officials to commit corrupt acts. Langseth³²³ also points out democracy's usefulness in preventing corruption, because open governance and transparency greatly reduce the scope for corruption through increased public oversight of government activities. Also, Chowdhury³²⁴ empirically shows that press freedom, a characteristic feature of democratic regimes, has a strong negative effect on corruption through investigative journalism and the exposure of malpractices as a deterrent to corruption.

³¹⁹ *Ibid.*

³²⁰ Nicholas D'Amico, 'Corruption and Economic Growth in China: An Empirical Analysis' (2015) *John Carroll University, Senior Honors Projects*, 1-2.

³²¹ Elsa Nightingale, 'A Critical Analysis of the Relationship between Democracy and Corruption' [2015] E-International Relations <<https://www.e-ir.info/2015/12/20/a-critical-analysis-of-the-relationship-between-democracy-and-corruption/>> accessed 7 May 2025.

³²² Daniel Treisman, 'The Causes of Corruption: A Cross-National Study' (2000) 76 *Journal of Public Economics* 399.

³²³ Petter Langseth, 'Prevention: An Effective Tool to Reduce Corruption', *Global Programme Against Corruption* (United Nations 1999) <<https://www.unodc.org/pdf/crime/gpacpublications/cicp2.pdf>> accessed 5 July 2025.

³²⁴ Shyamal Chowdhury, 'The Effect of Democracy and Press Freedom on Corruption: An Empirical Test' (2004) 85 *Economics Letters* 93.

However, there is a growing body of research that questions this simplistic narrative of democracy as a natural anti-corruption tool. Thus, certain scholars^{325,326} argue that the relationship between democracy and corruption is nuanced, and inconsistent across contexts. McMann and colleagues³²⁷ show an inverted U-shaped relationship — that is, countries undergoing democratic transition may have higher corruption levels because of weaker or less stable institutions in the transitional period. Building on the same idea, Case³²⁸ argues that democratic transitions do not always lead to lower corruption because transitional democracies often fail to create stable governance structures with which to effectively control corruption. This viewpoint is echoed by Mcleod,³²⁹ who notes that Indonesia's post-authoritarian democratic experience is one marked by weak governance and high vulnerability to corruption because of weak institutional capacity and an ineffective rule of law. In addition, Fisman and Gatti³³⁰ use cross-national evidence to show that democratic decentralisation, a tool often used to curb corruption, may actually lead to increased corruption by creating new layers of authority that can be captured by local elites. Collectively, these studies emphasise a shortcoming of conventional perspectives, which often ignore the complications that institutional fragility and decentralisation dynamics bring, and thus challenge earlier arguments by Treisman³³¹, Langseth³³², and Chowdhury³³³ that democracy itself inherently limits corrupt practices. From this perspective, it is possible to critically note a fundamental weakness of traditional perspectives like Treisman's and Chowdhury's, which assume stable and mature democratic institutions as a precondition.

In addition, traditional literature (Langseth's study included) tends to underestimate the complexity of institutional interplay. Promoting democratic elections or press freedom per se does not guarantee less corruption if institutional robustness, especially judicial independence and effective separation of powers, does not exist or is flawed in some way. According to Stephenson³³⁴, corruption levels in regimes with weak institutional checks are as high as in authoritarian states. For example, democratically elected officials might exploit their positions because of weak legal and institutional constraints, which is something overlooked in previous democratic corruption narratives.³³⁵

For this reason, while elections and free press are favourable conditions for accountability and transparency, they do not ensure low corruption. The traditional assumptions simplify institutional realities, ignoring scenarios where democratic structures are nominally in place but do not in fact constrain corruption. As a result, recent analyses favour a focus not on democracy as a regime type but on institutional quality as the more critical determinant of corruption levels.

³²⁵ Kelly M McMann and others, 'Why Low Levels of Democracy Promote Corruption and High Levels Diminish It' (2020) 73 *Political Research Quarterly* 893.

³²⁶ Ross H Mcleod, 'The Struggle to Regain Effective Government under Democracy in Indonesia*' (2005) 41 *Bulletin of Indonesian Economic Studies* 367.

³²⁷ McMann and others, 'Why Low Levels of Democracy Promote Corruption and High Levels Diminish It' p. 898

³²⁸ William Case, *Politics in Southeast Asia: Democracy or Less* (Routledge 2013).

³²⁹ Mcleod, 'The Struggle to Regain Effective Government under Democracy in Indonesia*', 370.

³³⁰ Raymond Fisman and Roberta Gatti, 'Decentralization and Corruption: Evidence across Countries' (2002) 83 *Journal of Public Economics* 325.

³³¹ Treisman, 'The Causes of Corruption: A Cross-National Study' 399

³³² Langseth, 'Prevention: An Effective Tool to Reduce Corruption' 2

³³³ Chowdhury, 'The Effect of Democracy and Press Freedom on Corruption' 94

³³⁴ Matthew C. Stephenson, 'Corruption and Democratic Institutions: A Review and Synthesis', in Greed, Corruption, and the Modern State *Essays in Political Economy* (Susan Rose-Ackerman & Paul Lagunes eds., Edward Elgar Publ'g 2015) 83.

³³⁵ Treisman, 'The Causes of Corruption: A Cross-National Study' 400

Besides the above-demonstrated weakness of the empirical link between regime type and corruption level, there is also consideration of corruption as being a flaw that is detrimental to any regime, democratic or not. Even monarchies with absolute or constitutionally limited powers have considerable incentives to fight corruption, as misappropriation of public resources undermines effective governance, which remains a vital condition for regime stability and legitimacy. According to Hertog³³⁶, corruption undermines the efficiency of public investment and service delivery and thus harms regime performance, regardless of political structure. As a result, transparency and accountability mechanisms are rationally pursued across regime types. Indeed, autocratic regimes may grant informal immunity from prosecution to a few individuals on the basis of nepotism, patronage networks, or elite bargaining³³⁷, but democracies are also rife with dishonesty and evasion of accountability, especially where institutional oversight is weak. For example, Italy and Greece, democratically governed states, have been involved in serious corruption scandals including tax evasion by political elites, sustained clientelism, and ineffective judicial enforcement.³³⁸ Like the UK's parliamentary expenses affair, scandals in established democracies show that democratic electoral mechanisms are not a complete guarantee of prevention of corrupt practices.³³⁹ As a result, democratic regimes do not have an inherent immunity to corruption, much like autocratic ones have an inherent propensity for it. In either case, however, effective anti-corruption strategies are overwhelmingly reliant on strong institutional frameworks that effectively make (and establish the opportunities for) accountability, whether these institutions operate within a democratic or an authoritarian political context.³⁴⁰

A few examples can demonstrate that regime type alone does not reliably predict levels of corruption. One of the most striking examples of this divergence is Singapore. Even though it is the third least corrupt country in Transparency International's 2024 Corruption Perceptions Index (CPI)³⁴¹, Singapore is politically restrictive with low levels of electoral competitiveness, limited political freedoms, and state-controlled media.³⁴² Strong governance institutions, strict enforcement of anti-corruption policies, a rigorous rule of law, and efficient bureaucracy with meritocratic appointments have resulted in the country's success in combating corruption. Hence, the 'Singapore model' shows that corruption can be deterred effectively not by democratic processes per se, but by effective institutional frameworks.

On the contrary, Bulgaria shows that democratic governance on its own is not enough to stop corruption. Although it is a member of the European Union and a democracy, Bulgaria has a long history of high corruption, which is demonstrated by it being ranked 76th in the 2024 CPI.³⁴³ Weak judicial independence, ineffective implementation of anti-corruption legislation, and inadequate institutional oversight undermine

³³⁶ Steffen Hertog, 'Challenges to the Saudi Distributional State in the Age of Austerity' (2016) <<https://mei.nus.edu.sg>> accessed 7 May 2025.

³³⁷ Martin Hvidt, 'The Dubai Model: An Outline of Key Development-Process Elements in Dubai' (2009) 41 *International Journal of Middle East Studies* 397.

³³⁸ Alina Mungiu-Pippidi, *The Quest for Good Governance* (Cambridge University Press 2015) 201.

³³⁹ Paul M Heywood, 'Measuring Corruption: Perspectives, Critiques and Limits', *Routledge Handbook of Political Corruption* (Routledge 2014) 55.

³⁴⁰ Matthew C Stephenson, 'Corruption and Democratic Institutions: A Review and Synthesis' in Susan Rose-Ackerman and Paul Lagunes (eds), *Greed, Corruption, and the Modern State* (Edward Elgar Publishing 2015) 76.

³⁴¹ Low corruption rating means that the country is less corrupt

³⁴² Transparency International, 'Corruption Perceptions Index 2024: Singapore' (Transparency International, 2024) <<https://www.transparency.org/en/countries/singapore> accessed 7 May 2025.; Jon ST Quah, 'Combating Corruption in Singapore: What Can Be Learned?' (2001) 9 *Journal of Contingencies and Crisis Management* 29.

³⁴³ Lower rating is worse. 1st place in the rating – is the least corrupt country, last place – most corrupt. Transparency International, 'Corruption Perceptions Index 2024: Bulgaria' (Transparency International, 2024) <<https://www.transparency.org/en/countries/bulgaria>> accessed 7 May 2025.

Bulgaria's anti-corruption efforts.³⁴⁴ Institutional deficiencies like these indicate that without strong, autonomous enforcement mechanisms and effective judiciary, democratic governance structures can be susceptible to entrenched corruption.

In another example, Saudi Arabia, an absolute monarchy often condemned for its authoritarian rule and human rights record, scores comparatively well, being rated 38th in the world, according to the CPI.³⁴⁵ This ranking shows that even monarchic regimes can achieve relatively low corruption with a centralised anti-corruption strategy, strict internal accountability, and decisive institutional enforcement.³⁴⁶ Although less democratic, a centralised authority can effectively fight corruption through the strict control of institutional processes as recent high-profile anti-corruption campaigns in Saudi Arabia demonstrate.³⁴⁷

Lastly, the UAE is ranked the 23rd least corrupt country in the world and least corrupt country in the Middle East and North Africa (MENA) region, showing the limited explanatory power of regime type alone. The UAE functions as a monarchy with little political competition, but its low levels of corruption are explained by institutional strengths, such as strong bureaucratic structures, strict rules and regulations, and strict enforcement mechanisms that greatly limit opportunities for corruption.³⁴⁸ Thus, the Emirati governance model shows how institutional quality can reduce corruption even when there is little democratic governance. Together these empirical cases clearly show that institutional robustness, and not democratic regime type, is the critical factor determining levels of corruption. Hence, in this study it is reasoned that it makes little sense to consider government type as a factor of corruption analysis. Focus will be placed instead on the anti-corruption institutions, administrative capacities, judicial independence, transparency, and other critical elements of the anti-corruption framework.

3.6 UNDERSTANDING AND STUDYING ANTI-CORRUPTION MEASURES ON A STATE LEVEL

It is, however, insufficient to study anti-corruption measures and frameworks as a summary of their elements. Anti-corruption frameworks take shape and work within the complex context of laws, politics, and organisations. This is especially clear in the Gulf region, as anti-corruption policies are often made from above and have to deal with issues of authority, legal changes, and political commitment. In this section, the discussion revolves around the ideas that form the theoretical basis for analysing national anti-corruption frameworks, especially in Kuwait, Saudi Arabia, and the UAE. This section introduces four key dimensions essential for comparative analysis: (1) the role of institutional design in shaping anti-corruption bodies; (2) how such institutions are embedded within broader political and legal systems; (3) the relevance

³⁴⁴ European Commission, '2024 Rule of Law Report Country Chapter on the Rule of Law Situation in Bulgaria' (European Commission, 2024) 3–5.

³⁴⁵ Transparency International, 'Corruption Perceptions Index 2024: Saudi Arabia' (Transparency International, 2024) <<https://www.transparency.org/en/countries/saudi-arabia> accessed 7 May 2025

³⁴⁶ Steffen Hertog, 'Challenges to the Saudi Distributional State in the Age of Austerity' (2016) <<https://mei.nus.edu.sg>> accessed 7 May 2025.

³⁴⁷ Salma Ben Souissi, 'Saudi Arabia Anti-Corruption Authority Announces Arrest of Public Servant on Corruption Charges' (*Jurist News*, 30 January 2024) <<https://www.jurist.org/news/2024/01/saudi-arabia-anti-corruption-authority-announces-arrest-of-public-servant-on-corruption-charges/>> accessed 21 February 2024.

³⁴⁸ Transparency International, 'Corruption Perceptions Index 2024: UAE' (Transparency International, 2024) <<https://www.transparency.org/en/countries/ united-arab-emirates>> accessed 7 May 2025.

of international benchmarks such as the UNCAC; and (4) the use and limitations of tools such as the CPI in evaluating anti-corruption framework performance.

3.6.1 INSTITUTIONAL DESIGN

Institutional design is one of the key concepts that scholars such as Oliveira³⁴⁹ or Sommersguter-Reichmann³⁵⁰ identify as crucial for understanding and combatting corruption. Institutional design is defined as the particular design and implementation of formal and informal structures, processes, and laws that help to achieve certain national goals such as transparency, accountability, and less corruption.³⁵¹ These rules, structures, and processes are important in determining the powers, capacity, and independence that organisations and agents have to combat corruption. Yet, there is still debate among scholars about how much focusing on institutional design really helps our understanding of corruption.

Scholars who hold institutional design as crucial in the anti-corruption field believe that strong and well-organised anti-corruption institutions are necessary for effective reform.³⁵² Among the elements of a good institutional design, they emphasise strong accountability, transparency, fairness, and the efficiency of processes, oversight and monitoring.³⁵³ This perspective is supported by the principal–agent theory, which views corruption as a problem arising when agents (public officials) pursue personal interests that diverge from those of the principals (citizens). A well-designed institution, according to this view, utilises accountability, monitoring, penalties and transparency to discourage people (at both institutional and citizen levels) from taking advantage of the system.

Others, like Persson, argue that institutional design by itself is not enough to explain how prevalent and influential corruption is in a given state.³⁵⁴ According to collective action theorists, when corruption becomes prevalent, it becomes a typical behaviour and even proper institutional design may not be sufficient to convince people to change their habits.³⁵⁵ The idea that design quality influences outcomes will not be true in these contexts without changes in what people expect and accept informally. This invites the consideration of other factors beyond institutional design in order to grasp the full picture of corruption in a given state. De Graaf's theory adds that the way a society is organised can also strongly influence the spread of corruption. According to this view, the effectiveness of institutional design depends heavily on three interrelated factors: (1) the degree of respect for the rule of law within a given jurisdiction; (2) the extent to which anti-corruption norms are meaningfully enforced; and (3) the level of discretion and authority conferred upon anti-corruption bodies.³⁵⁶ De Graaf believes that bringing in models from other countries

³⁴⁹ Gustavo Oliveira, 'Institutional Corruption as a Problem of Institutional Design: A General Framework' (Social Science Research Network, 10 April 2014) <<https://papers.ssrn.com/abstract=2423554>> accessed 31 May 2025.

³⁵⁰ Margit Sommersguter-Reichmann and Gerhard and Reichmann, 'Institutional Corruption in Higher Education: Diving into Indicator-Based Funding and Employment Conditions in Austrian Universities' 0 Policy Reviews in Higher Education 1.

³⁵¹ *Ibid.*, 1.

³⁵² Oliveira, note 357, Sommersguter-Reichmann and Reichmann, note 358, 3.

³⁵³ Susan Rose-Ackerman and Bonnie J Palifka, *Corruption and Government: Causes, Consequences, and Reform* (Cambridge University Press 2016), 455.

³⁵⁴ Anna Persson, Bo Rothstein and Jan Teorell, 'Why Anticorruption Reforms Fail—Systemic Corruption as a Collective Action Problem' (2013) 26 *Governance* 449.

³⁵⁵ *Ibid.*, 451.

³⁵⁶ De Graaf, note 276, 41.

can fail if the context in the new setting is not taken into account, so reforms should be supported by supportive legal, cultural, and political conditions.

Such issues are especially paramount in relation to the Gulf states. As will be discussed in more detail in Chapters 5, 6, and 7, there are substantial differences between how anti-corruption institutions are designed and how well they perform in Kuwait, Saudi Arabia and the UAE. Even if there are national anti-corruption commissions or specialised prosecutors, their power and independence are often restricted through the dominance of political elites. Furthermore, in political systems where accountability is primarily upward (to rulers) rather than downward (to the public), institutional design may serve more symbolic than functional purposes.³⁵⁷ So, even though institutional design is an essential concept to consider and will indeed be given substantial consideration in the analytical part of this work, it will also be situated within the context of political incentives, legal backgrounds, and cultural norms as per De Graaf's theory. One will find in this study that examining anti-corruption institutions in Gulf states means looking at their institutional design as well as their overall cultural, legal, and political context.

3.6.2 INTERNATIONAL BENCHMARKS AND NORMATIVE FRAMEWORKS

Another vital part of the theoretical framework of this study and an integral part of studying corruption is consideration of international benchmarks and normative frameworks for corruption as these define standards for institutional integrity, transparency, accountability, and independence. Among the most prominent of these frameworks is the UNCAC, adopted in 2003 and now ratified by over 180 countries. The UNCAC lists detailed principles and systems to help countries limit corruption by preventing it through law and policy as well as by collaborating internationally and regaining lost assets. Especially important are Articles 6 and 36, which require state parties to have specialised anti-corruption bodies that are independent, well-resourced, and able to carry out their tasks effectively.³⁵⁸ Similarly, Article 11 underlines the importance of safeguarding the judiciary so that judges and prosecutors are not under undue influence and undergo fair appointment procedures.³⁵⁹ Overall, the UNCAC creates a standard for evaluating the structure and function not only of anti-corruption institutions but also of national anti-corruption frameworks. Therefore, the UNCAC principles and guidelines are used in Chapters 5, 6, and 7 for assessing the extent to which Saudi Arabia, Kuwait, and the UAE adhere to the best practices for fighting corruption.

Complementing the UNCAC are the United Nations Basic Principles on the Independence of the Judiciary (1985), which articulate the foundational requirements for a judicial system capable of upholding the rule of law. They consist of: 1) constitutionally granted independence; 2) judiciary impartiality; 3) jurisdiction and exclusive authority over judicial matters; 4) absence of interference and third-party revision of judgments; 5) the right of every individual to have a court trial; 6) fair and rights-based judicial procedures; and 7) possession of adequate resources to conduct judicial activities.³⁶⁰ All of these are crucial aspects of institutional quality, particularly the quality of judicial institutions. The underlying assumption is that an independent judiciary serves as a vital check on executive power and political corruption as it enables impartial prosecution and uniform application of the law regardless of individual status and affiliation. When

³⁵⁷ Alina Mungiu-Pippidi, *The Quest for Good Governance* (Cambridge University Press 2015), 238.

³⁵⁸ UNCAC, art. 6, 36.

³⁵⁹ *Ibid.*, art. 11

³⁶⁰ United Nations Basic Principles on the Independence of the Judiciary.

the judiciary is free of the influence of politicians, it can help to identify and prosecute corruption among high-ranking officials, which discourages abuse of office and thus raises the public's trust in the system.

Still, the strength of this deterrence effect has been questioned. For example, Stephenson maintains that for anti-corruption laws to be effectively applied and for them to deter others from corruption offenses, judges need to be independent, especially when the executives can be easily influenced.³⁶¹ However, in the same study he finds that in environments where corruption is socially and culturally entrenched, the judiciary, even if nominally independent, may still become part of the corruption equilibrium – a state level of corruption reinforced or perpetuated through time despite reform efforts.³⁶² In line with this, Kleinfeld adds that corruption often stems from cultural norms and social practices and becomes a widely accepted norm.³⁶³ Thus, if the state system is deemed by society to be highly corrupt, judges can be influenced towards complicity, and independence on paper might be meaningless without other accountability and integrity mechanisms such as judicial oversight bodies and public scrutiny. In line with this, according to empirical research, judicial independence affects corruption differently depending on other factors such as how well enforcement agencies work, how professional the civil service is, and the political setting. Because of this, a number of analysts urge the use of a broader approach, considering how different institutions work together.³⁶⁴ Also, because enforcement may be lacking, commitments may be more about appearances than actual change. Rose-Ackerman and Palifka argue that the UNCAC may have helped to create a worldwide guideline for anti-corruption, but it does not deal with political capture, informal power, or the refusal of those in charge to give full authority to independent oversight.³⁶⁵

Thus, even though international frameworks like UNCAC and UN Basic Principles on the Independence of the Judiciary provide useful benchmarks, their main advantage in this context is allowing and informing country comparisons. Organisations such as the OECD, World Bank, and UNODC use them during country reviews to observe how far countries have advanced and to identify issues in independence, enforcement, and coordination. These frameworks are sometimes criticised for being vague and non-mandatory.³⁶⁶ Nevertheless, they are used in this study to inform the analysis and assessment of countries' anti-corruption frameworks.

3.6.3 MEASURING CORRUPTION: CPI AND ALTERNATIVE TOOLS

Gauging the level of corruption in countries is a complex task since many corrupt acts are concealed, informal, and unrecorded. Thus, most current tools depend on perceptions, personal experiences, and proxy measurement. Among these, the CPI, developed by Transparency International, is the most widely cited global measurement of public sector corruption. It is used widely as a reference for both experts and officials analysing national efforts to fight corruption.

³⁶¹ Matthew C Stephenson, 'Corruption as a Self-Reinforcing Trap: Implications for Reform Strategy' (2020) 35 *The World Bank Research Observer* 192.

³⁶² *Ibid.*, 222.

³⁶³ Rachel Kleinfeld, *Advancing the Rule of Law Abroad: Next Generation Reform* (Brookings Institution Press 2012) 100.

³⁶⁴ Daniel Kaufmann, Aart Kraay and Massimo Mastruzzi, 'Governance Matters VIII: Aggregate and Individual Governance Indicators, 1996-2008' (Social Science Research Network, 29 June 2009) <<https://papers.ssrn.com/abstract=1424591>> accessed 31 May 2025.; Kleinfeld, note 372, 111.

³⁶⁵ Rose-Ackerman and Palifka, note 362, 443.

³⁶⁶ Mungiu-Pippidi, note 366, 35

The CPI aggregates data from a range of expert assessments and secondary-source surveys to produce a composite score that reflects perceived levels of public sector corruption in a given country.³⁶⁷ Scores range from 0 (highly corrupt) to 100 (very clean), with countries ranked accordingly. If the score is high, it means that experts and people believe that corruption is less pronounced, but if the score is low, they believe there to be a lot of corruption.³⁶⁸ Transparency International annually ranks all countries from 1 to 180, where first place is awarded to the country with the highest score and the last place is awarded to the country with the lowest score. For example, in the latest 2024 ranking, 1st place was awarded to Denmark, which scored 90 points, meaning that it was the least corrupted country according to Transparency International's rating system. The CPI is highly influential because it is always consistent, covers many parts of the world, and is used by governments, international organisations, and investors.

However, despite being widely cited and acclaimed, the CPI has some weaknesses. It measures perceptions, so the numbers are influenced by global experts and executives, not by actual observations or everyday people's lives. According to Andersson and Heywood, the use of perception data might make matters seem simpler and more stereotypical than they really are, without enough solid evidence. Furthermore, according to Rose-Ackerman and Palifka, not all the sources used by Transparency International are updated annually, which means that in some countries, the CPI may fail to account for a change in corruption levels.³⁶⁹ Furthermore, as Ackerman and Palifka note, perceptions are slow to change over time and might not accurately reflect year-to-year changes and reforms that happen in a state. There is also a cultural bias embedded into the CPI: due to the absence of a universally accepted and recognised definition of corruption, in some cultures transactions between individuals can be deemed acceptable and legalised, while in others they may be outlawed. This bias is all the more important because Transparency International uses predominantly Western sources for assessing corruption.³⁷⁰ Finally, the CPI does not allow one to assess precisely what a country's score and rank mean in relation to its corruption. Specifically, using CPI it is impossible to assess whether bribery, influence trading, or contract and procurement corruption is most prevalent in the country; the CPI indicates the general perceived persistence of corruption without noting much of the specific problems that a country is facing.

Alternative tools include the World Bank's Control of Corruption Indicator (CCI) which is a part of the Worldwide Governance Indicators. Similar to CPI, this metric combines data from multiple sources to offer a broader governance perspective. Yet, it shares the same cultural bias and vagueness of conclusions that one can draw on corruption. Like the CPI, it uses the subjective perceptions of households, firms, and experts that are sourced globally rather than locally.³⁷¹ Many scholars now suggest using several indicators to reduce bias and strengthen analysis, but the CPI still dominates as the main measure for comparing countries, given that the CCI and CPI are largely correlated. Thus, while these indexes will be used as a

³⁶⁷ Rose-Ackerman and Palifka, note 362, 54.

³⁶⁸ Transparency International, 'Corruption Perceptions Index 2023: Full Source Description' (2023) <https://images.transparencycdn.org/images/CPI2023_SourceDescription_EN.pdf> accessed 12 July 2024.

³⁶⁹ Rose-Ackerman and Palifka, note 362, 54

³⁷⁰ Transparency International, note 377.

³⁷¹ Daniel Kaufmann, Aart Kraay and Massimo Mastruzzi, 'Governance Matters VIII: Aggregate and Individual Governance Indicators, 1996-2008' (Social Science Research Network, 29 June 2009) <<https://papers.ssrn.com/abstract=1424591>> accessed 31 May 2025.

good way of gauging the public's opinion of corruption, they will not be considered the only measures of how well anti-corruption measures are applied.

3.7 CONCLUSION

The chapter shows that there are two main schools of thought that seek to examine the issue of corruption through their theoretical prism. The author's research shows that there is not a one-size-fits-all approach to the theoretical explanation of corruption, and that scholarly opinion on the matter is highly polarised. The first set of theories proposes that corruption actors are rational, autonomous agents whose choice to act in a particular way is motivated by the idea of acquiring personal gain. On the other hand, the second school of thought advocates the idea that causes beyond one's individual control often lead to corruption, leaving actors vulnerable to the different variables beyond their control.

The author acknowledges the criticisms expressed by scholars like Caiden and Heywood, who argue that it would be impossible to create a systematic theoretical framework on corruption as it is a phenomenon affected by a number of variables and, therefore, too complex to be fitted into a framework. Nonetheless, the author argues that it is precisely the complexity of the issue and the scarcity of scholarly attempts to contextualise the topic from a theoretical perspective that merits this research. The various links between corruption and resources, corruption and development, and corruption and democracy indicate that there is an inherent fallacy in trying to link corruption to just one factor, which creates an impetus for studying corruption through the prism of multifactorial analysis. Such an analysis is implied in the work of De Graaf, whose contextual corruption theory will serve as a theoretical basis for this study. In line with De Graaf, corruption is to be examined and analysed by looking at domestic contextual factors such as the historical respect for the law, social perceptions of and practices relating to corruption, institutional and administrative capacity, legal regime, and more. In line with these considerations and the idea that there is no inherent propensity in any regime to be immune or prone to corruption, this study will undertake an analysis of corruption in Gulf monarchies from an open mind and critical angle, which implies multi-factorial analysis of the factors, legal features, and institutional frameworks that lead to the development of a particular corruption level in selected states.

Furthermore, this chapter provided an outlook on how corruption is studied and measured. It confirms that institutional design, adherence to international benchmarks, and scores in international corruption measurements are vital elements of corruption assessment on a national scale. These elements will become part of the theoretical framework and basis for assessment and comparison of anti-corruption regimes in Kuwait, Saudi Arabia, and the UAE. These elements also fit De Graaf's contextual theory of corruption, which recognises the cultural, legal, social, and institutional factors that form a particular state of corruption in a given country and also contribute to forming a specific anti-corruption regime.

Chapter 3 has clearly played an important role in shaping the trajectory of this thesis by offering a comprehensive understanding of corruption through various theoretical lenses. The theoretical foundations discussed above not only enrich the current state of knowledge regarding the complex dynamics behind corruption, but also provide a solid framework for evaluating the anti-corruption strategies employed by Kuwait. This in turn has allowed for a critical assessment of the strengths and weaknesses of the anti-corruption measures in the case study countries. Importantly, theoretical underpinning has also illuminated

the broader economic, societal, and institutional factors that influence the effectiveness of anti-corruption efforts. In this manner, the integration of the theories into the research has not only augmented the depth of the analysis but also allowed for a more refined understanding of how Kuwait can hone its strategies and align them with international best practices. Essentially, this chapter has acted as the theoretical compass guiding this study through the complex terrain of corruption research. The next chapter explores the practice of fighting corruption by reviewing anti-corruption strategies.

CHAPTER 4. STRATEGIES FOR FIGHTING CORRUPTION

4.1 INTRODUCTION

In this chapter, the author explores the measures adopted by the UN, the OECD, and the EU in the fight against corruption and flags the best practices and recommendations that ought to be followed by other countries. In addition, the author also examines the efforts and measures adopted by the Arab States and their compatibility or lack thereof with Islamic law. The main goal of this chapter is to transition from a mostly theoretical account of corruption to the practical manifestations of the phenomenon and efforts aimed at combatting it. This critical overview enables further and more in-depth comparative analysis of corruption in Kuwait, UA and Saudi Arabia by offering a global perspective on anti-corruption practices. Such discussion is important for understanding how anti-corruption measures in Kuwait and Saudi Arabia fare against global ones.

4.2 ANALYSIS OF THE UN MEASURES FOR FIGHTING CORRUPTION

One of the principal UN instruments developed to minimise corruption is the UNCAC,³⁷² adopted by the UN General Assembly in 2003.³⁷³ The objectives of the UNCAC are threefold, namely to *"promote and strengthen measures for the combating of corruption; to promote, facilitate, and support international cooperation and technical assistance in the fight against corruption and asset recovery; and to promote integrity, accountability, and proper management of public affairs and property"*.³⁷⁴

A substantial part of the UNCAC's preventive measures is based on exchanging information and adopting coordinated policies between the signatory states.³⁷⁵ Such policies should cover anti-corruption measures within both the public and private spheres. Furthermore, unimpeded access to public information, an independent judiciary, and effective measures against money-laundering would also constitute a vital part of developing a good system of preventive measures against corruption.³⁷⁶ Moreover, the UNCAC may be commended for its appreciation of the global nature of corruption and its support for adopting cross-border measures, technical support, and know-how exchange between state signatories.³⁷⁷

The importance and significance of the UNCAC stem from the fact that it has an appreciably high percentage of approval within the international community, with over 180 signatory countries.³⁷⁸ In addition, the UNCAC not only sets out punitive measures against corruption but also encourages states to rely strongly on preventive mechanisms to address corruption at its inception.³⁷⁹ However, it has been argued

³⁷³ Cecily Rose, Michael Kubiciel, Oliver Landwehr, *Corruption: A Commentary* (OUP Oxford, 2019) 1-2.

³⁷⁴ Article 1 of the UN General Assembly, United Nations Convention Against Corruption, 31 October 2003, A/58/422.

³⁷⁵ *Ibid.*

³⁷⁶ *Ibid.*

³⁷⁷ Nihal Sri Ameresekere, *UN Convention Against Corruption to Combat Fraud & Corruption A Cancerous Gulfce with Mere Rhetoric Subverts Un Convention* (Author House, 2011) 27.

³⁷⁸ UNODC, 'Signature and Ratification Status' <https://www.unodc.org/unodc/en/corruption/ratification-status.html> accessed on 1 June 2023.

³⁷⁹ UNODC, 'Challenges faced and best practices applied by States in integrating human rights into their national strategies and policies to fight against corruption, including those addressing non-State actors, such as the private

that irrespective of its bindings status and widespread ratification, the UNCAC has a very limited capacity to restrict corruption on the domestic level as it contains a significant number of non-mandatory criminalisation provisions, i.e. certain actions whose criminalisation is not compulsory.³⁸⁰ This means that although widely approved and binding *per se*, the UNCAC has a hidden trojan horse in the form of non-mandatory provisions that contain common types of corrupt practices, i.e., trading in influence, illicit enrichment, concealment, embezzlement of property in the private sector, and bribery in the private sector. States are under no obligation to criminalise these types of acts. Nonetheless, the majority of the rules set out in the UNCAC are mandatory with exception of the few optional measures listed above, and it is also important to point out that the entirety of the anti-corruption mechanism ought to be applied and interpreted in a way that is compliant with a state's domestic legal framework.³⁸¹

The Achilles heel of the UNCAC lays in its failure to provide an express definition of corruption, which creates a gap between the different interpretations of corruption the numerous state signatories may have. In addition, the non-mandatory provisions appear to be problematic for the overall effectiveness of the legal instrument as a whole. It also fails to address political corruption, which has traditionally been perceived as one of the major areas in need of urgent reform globally, as it only states that countries may "consider" addressing political funding.³⁸² Moreover, it has been argued that the preventive measures prescribed by the UNCAC, particularly in relation to setting up impartial national agencies to oversee corruption, appear to be non-binding—even though the binding term "shall" is used, the section then goes on to state "*in accordance with the fundamental principles of its legal system*".³⁸³ Concerns have been raised in this regard as signatories may easily find an escape route from this provision, ultimately leading to asymmetrical implementation. Thus, the frequently used discretionary terms in the text of the UNCAC make it toothless in many important areas, such as political funding and preventive measures like setting up national monitoring agencies. These limitations are even more problematic when one considers that the UNCAC does not contain any economic sanctions for states that violate it, which ultimately reduces its ability to foster compliance significantly.

4.3 ANALYSIS OF THE OECD MEASURES FOR FIGHTING CORRUPTION

The OECD is an intergovernmental organisation that provides countries worldwide with a special forum where governments can convene and discuss how to address best contemporary economic, social, and environmental issues that halt progress globally.³⁸⁴ Due to the fact that corruption is one of the major

sector' <https://www.ohchr.org/sites/default/files/Documents/Issues/Corruption/Challenges/UNODC.pdf> accessed on 1 June 2023.

³⁸⁰ Cecily Rose, 'The Limitations of the United Nations Convention against Corruption' in *International Anti-Corruption Norms: Their Creation and Influence on Domestic Legal Systems* (Oxford, online edn, Oxford Academic, 2015) 97-132.

³⁸¹ Pierre Hauck, Sven Peterke, *International Law and Transnational Organized Crime* (Oxford University Press, 2016) 222-223.

³⁸² Cecily Rose, 'The Limitations of the United Nations Convention against Corruption' *International Anti-Corruption Norms: Their Creation and Influence on Domestic Legal Systems* (Oxford, 2015; online edn, Oxford Academic, 22 Oct. 2015) 97.

³⁸³ Article 6 of the UN General Assembly, United Nations Convention Against Corruption, 31 October 2003, A/58/422.

³⁸⁴ High Authority for Transparency in Public Life, 'The High Authority at the OECD Global Forum on Integrity and Anti-corruption' (2023) https://www.hatvp.fr/english_news/the-high-authority-at-the-oecd-global-forum-on-integrity-and-anti-corruption/ accessed on 3 Jun. 23.

impediments to progress within the political, social, and economic sectors, the OECD created an international Anti-Bribery Convention, which came into force in 1999.³⁸⁵ The significance of the Anti-Bribery Convention is that it is the only international legal instrument that addresses corruption in a bottom-up manner.³⁸⁶ This means that unlike the UNCAC, which focuses on anti-corruption measures for states, the OECD's Anti-Bribery Convention places the "supply side" at the focal point. In practice, this means that the Convention's efforts are centred on individuals and companies who offer bribes to public officials with the intention of receiving a competitive business advantage.³⁸⁷ To combat corruption in a bottom-up manner, the Convention sets out legally binding rules that qualify the bribery of a foreign public official in a business transaction as a criminal act. Each signatory state has the discretion to transpose the Convention into its own national legal system as it sees fit. Nonetheless, signatories need to comply with the minimum standards set out within the Convention.³⁸⁸ This means that states must adopt the following measures: criminalise the action of bribing a foreign official in a business transaction; apply proportionate and effective sanctions; set out bribery as a component offence to money laundering; and develop systems facilitating legal assistance between the Member States, as well as cooperation and extradition with the other Member States.

To complement the efforts of the Convention, the OECD has also adopted recommendations that set out further rules on deterring, preventing, and combating corruption and bribery in particular.³⁸⁹ In addition, the OECD has set up a Working Group on Bribery in International Business Transactions tasked with monitoring, overseeing, and reviewing the mechanisms adopted by the Member States in fulfilling the Convention's objectives. It has been argued that the Convention and the standards set out therein have improved transparency and increased the visibility of corrupted practices.³⁹⁰ This is because since the adoption of the Convention, over 150 bribery investigations have been carried out, and over 40 individuals and companies have been penalised.³⁹¹ A strong campaign for monitoring the enforcement of the Anti-Bribery Convention commenced in 2007. This led to a number of serious investigations into the work of major companies such as Siemens and the French oil company Total.³⁹² The investigation efforts included searches of the company offices and the homes of the most senior executives. It is, therefore, important to note that proceedings against an individual or a company under suspicion of breach of the Convention rules may be conducted in multiple jurisdictions.

³⁸⁵ Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

³⁸⁶ Nicola Ehlermann-Cache, 'The impact of the OECD Anti-Bribery Convention' <https://www.oecd.org/Gulf/competitiveness/39997682.pdf> accessed on 3 Jun. 23.

³⁸⁷ *Ibid.*

³⁸⁸ Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

³⁸⁹ 2021 OECD Anti-Bribery Recommendation <https://www.oecd.org/corruption/2021-oecd-anti-bribery-recommendation.htm> accessed on 3 Jun. 23.

³⁹⁰ OECD, 'The OECD Anti-Bribery Convention and the Working Group on Bribery' https://www.oecd.org/daf/anti-bribery/anti-briberyconvention/Anti-Bribery_Convention_and_Working_Group_Brief_ENG.pdf accessed on 3 Jun. 23.

³⁹¹ Nicola Ehlermann-Cache, 'The impact of the OECD Anti-Bribery Convention' <https://www.oecd.org/Gulf/competitiveness/39997682.pdf> accessed on 3 Jun. 23.

³⁹² *Ibid.*

In a review carried out by the OECD in 2014, over 81 per cent of the bribery cases concerning foreign public officials were linked to state-owned enterprises (hereinafter: SOEs).³⁹³ The study further showed that these SOEs are usually run by senior public officials who often receive financial benefits from their engagement in corrupt practices. Therefore, the Anti-Bribery Convention and the UNCAC are complementary as they strengthen the differing tools and instruments in the fight against corruption.

4.4 ANALYSIS OF THE EU-WIDE MEASURES FOR FIGHTING CORRUPTION

The EU framework for combating corruption began developing as early as when the Treaty on the Functioning of the European Union (hereinafter: TFEU) came into force, in 1958. Its legal basis may be found within Articles 83, 67, and 325 of that treaty.³⁹⁴ In general, within these provisions, the TFEU recognises that corruption is a particularly heinous crime and vows to ensure a high level of security to combat crime, fraud, and other activities that affect the financial interests of the Union.³⁹⁵ The TFEU's efforts were subsequently strengthened by the 1997 Convention on fighting corruption involving officials of the EU or officials of EU countries; the 2003 Council Framework Decision on combating corruption in the private sector, which criminalises both active and passive bribery; and the 2008 Council Decision 2008/852/JHA on a contact-point network against corruption.³⁹⁶ It is important, however, to note that since the inception of EU criminal law on corruption, there has been a rising level of public concern among Member States and the public, as the area of criminal law has traditionally been perceived as falling under the realm of national competence.³⁹⁷ Some have even argued that allowing the EU to exercise extensive public discretion in the area of criminal law would be problematic for the liberties of individuals that the elected government guarantees.³⁹⁸

As part of its legislative reform on anti-corruption, the European Commission recently prepared and issued a "Handbook of good practices in the fight against corruption".³⁹⁹ The said *Handbook* provides twenty-seven different good practices with the objective of reducing the severity of corruption and securing its overall prevention.⁴⁰⁰ It is important to mention that the *Handbook* proposes these different good practices by taking into account the economic, social, and political peculiarities of each of the Member States.⁴⁰¹ Therefore, as previously discussed in the case of China, in some states with high levels of public trust, corrupt practices may actually prove useful for overall economy growth, and this link has been taken into account by the European Commission when drawing up the *Handbook*. Moreover, the plethora of good

³⁹³ OECD, 'OECD Foreign Bribery Report An Analysis of the Crime of Bribery of Foreign Public Officials' (2014) <https://www.oecd.org/corruption/oecd-foreign-bribery-report-9789264226616-en.htm> accessed on 28 Jun. 23.

³⁹⁴ Demelsa Benito Sánchez, 'The European Union Criminal Policy against Corruption: Two Decades of Efforts' (2019) vol. 14:2 *Política criminal*, 1.

³⁹⁵ *Ibid.*

³⁹⁶ European Commission, 'EU legislation on anti-corruption' (2023) https://home-affairs.ec.europa.eu/policies/internal-security/corruption/eu-legislation-anti-corruption_en accessed on 28 Jun. 23.

³⁹⁷ Jacob Öberg, 'Normative justifications of EU criminal law: European public goods and transnational interests' (2023) vol. 27 *European Law Journal*, 409.

³⁹⁸ *Ibid.*

³⁹⁹ European Commission, 'Handbook of good practices in the fight against corruption' (2023) <https://op.europa.eu/en/publication-detail/-/publication/df1a5278-ac18-11ed-b508-01aa75ed71a1> accessed on 28 Jun. 23.

⁴⁰⁰ *Ibid.*

⁴⁰¹ *Ibid.*

practices set out in the European Commission's *Handbook* may be summarised and categorised as follows: increase in transparency; datafication of anti-corruption; collaborative approaches; integrity; setting up special anti-corruption agencies.

Under the first category of practices aiming to promote the increase of transparency, the European Commission seeks to promote the adoption of mechanisms that would ensure the adequate enforcement of freedom of information agreements and the revision of public information in such a manner that it is fully comprehensible to ordinary members of the public who do not possess specialised knowledge in the field of corruption and its prevention.⁴⁰² The second category of datafication relates to the development and adoption of sophisticated technological solutions that would make considerable amounts of data and information readily available and, in that sense, useful to law enforcement agencies and members of the general public. Moreover, the collaborative approaches seek to improve interaction between the different government agencies and departments and improve corruption investigation efforts by guaranteeing the adequate and speedy exchange of data between the different arms of the government. In addition, whilst integrity has often been regarded as a mere complementary measure to assist the efforts of other anti-corruption instruments, the *Handbook* recognises integrity as an important instrument in the fight against corruption.⁴⁰³ As such, it is recommended that Member States raise awareness of the matter and promote integrity as a social norm that should be obeyed by communities worldwide. The last practice cited above, i.e., the setting up of a special anti-corruption agency to monitor anti-corruption efforts within Member States, is of great importance for the efficiency of anti-corruption efforts.⁴⁰⁴ As previously discussed in this work, one of the main limitations of the UNCAC instrument was its failure to include the setting up of special anti-corruption agencies under its mandatory provisions. Therefore, it truly is good to see that the European Commission's *Handbook* has re-opened the topic of monitoring agencies. It has also renewed the efforts to convince Member States to set up local anti-corruption agencies that would facilitate multi-stakeholder engagement in the fight against corruption and develop local solutions to local issues to provide tailored anti-corruption strategies to the respective governments that created them in the first place.

In this regard, the European Commission's actions have been described as "a milestone in the fight against corruption at the national and the EU level".⁴⁰⁵ In addition to providing Member States with useful recommendations and best practices in tackling corruption, the Commission is also monitoring the developments made by each state on the national level. It identifies weaknesses and areas in need of further development through its Rule of Law Report, which is prepared annually under the auspices of the European Rule of Law Mechanism.⁴⁰⁶ The most recent measures put forward by the European Commission include the criminalisation of corruption offences and the harmonisation of the different penalties currently

⁴⁰² European Commission, 'Anti-corruption: Stronger rules to fight corruption in the EU and worldwide' (2023) https://ec.europa.eu/commission/presscorner/detail/en/ip_23_2516 accessed on 2 June 2023.

⁴⁰³ *Ibid.*

⁴⁰⁴ *Ibid.*

⁴⁰⁵ *Ibid.*

⁴⁰⁶ European Commission, 'Rule of law mechanism' https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism_en#:~:text=rule%20of%20law-,%20the%20rule%20of%20law%20mechanism%3F,on%20the%20rule%20of%20law. accessed on 6 Jun. 23.

being applied within the EU Member States.⁴⁰⁷ To complement these measures, the European Commission is also considering the creation of a Common Foreign and Security Policy sanctions regime that would apply to grievous corruption offences around the globe.⁴⁰⁸

Thus, even though the *Handbook* contains twenty-seven best practices, several categories of practice have led to comparatively better results. The first category promotes increasing transparency and open data, which has the effect of making valuable information not only available but also highly comprehensible to citizens; the second category promotes the implementation of sophisticated technological solutions in the fight against corruption, also referred to as "datafication of anti-corruption". The third category encourages the improvement of collaboration between different departments intra-governmentally in order to enhance the flow of information and the enforcement capacity of the respective departments. The fourth category promotes a focus on multi-stakeholder engagement, including collaboration with special anti-corruption agencies. In addition to the *Handbook*, the EU intends to adopt a revised legislative framework that would seek to address corruption within the societies of the Member States, extend the definitions of the currently existing offences, and implement measures allowing the prosecution of corruption in courts. The legislative framework would comprise the Communication on the Fight against Corruption, the Proposal for a Directive of the European Parliament, the Council on Combatting Corruption by Criminal Law, and a new EU sanction regime for corruption, which will allow for the harmonisation of the legislative instruments and minimise the defragmentation of legal effort as we have witnessed thus far.

4.5 THE ARAB RESPONSES TO CORRUPTION

The first formal anti-corruption instrument developed by the League of the Arab States entered into force in December 2010 and was signed by the majority of the Arab States, excluding Somalia.⁴⁰⁹ The Arab Anti-corruption Convention (hereinafter: the Arab Convention) recognises the need to address corruption in official institutions and encourages society to step up and assist their respective state in the fight against corruption. In addition, similar to the international and European anti-corruption efforts, the Arab Convention emphasises the importance of international cooperation for the purposes of coordination, mutual legal assistance, extradition, and of course, asset recovery.⁴¹⁰ Unsurprisingly, the Arab Convention is founded on the principles of the holy law of Islam, as well as the Charter of the Arab League and the UN Charter, and it is modelled on the UNCAC.⁴¹¹

As such, similar to the UNCAC, the Arab Convention does not contain an express definition of corruption but has rather opted for a list-based set of actions that would fall under the umbrella term of corruption. They include bribery of officials, corruption in the public and private sectors, illicit enrichment, embezzlement, trading in influence, money laundering, and obstruction of justice.⁴¹² The author discussed

⁴⁰⁷ European Commission, 'Anti-corruption: Stronger rules to fight corruption in the EU and worldwide' (2023) https://ec.europa.eu/commission/presscorner/detail/en/ip_23_2516 accessed on 2 June 2023.

⁴⁰⁸ *Ibid.*

⁴⁰⁹ Abdelaziz Nouaydi and Saad Filali Meknassi, 'A Glance at the Arab Convention to Fight Corruption' (2012) <https://uncaccoalition.org/a-glance-at-the-arab-convention-to-fight-corruption/> accessed on 6 Jun. 23.

⁴¹⁰ *Ibid.*

⁴¹¹ *Ibid.*

⁴¹² Article 4, of the Arab Anti-corruption Convention.

the strengths and weaknesses of the lack of definition in the discussion pertaining to the UNCAC, but these can be summarised as follows: the lack of a definition gives the Convention wider applicability and flexibility, but it also allows for differing interpretations of certain actions by the different signatory states. Moreover, according to the Convention's text, states have to undertake to provide anti-corruption training and guarantee the independence of the judiciary.⁴¹³ In addition to the Arab Convention, the states have also set up the Arab Anti-Corruption and Integrity Network consisting of government representatives, academics, and NGOs.⁴¹⁴ It has an advisory role but has not been given the mandate to review anti-corruption performances or conduct country-by-country analysis, which is worth considering in the future to identify specific issues in the signatory states and allow for the adoption of issue-specific measures.⁴¹⁵

Moreover, irrespective of the Arab Convention and the crimes it seeks to prevent, most Arab states have substantially high levels of corruption according to the Corruption Perceptions Index.⁴¹⁶ Unsurprisingly, the countries with the highest corruption level are also those involved in war conflicts, like Syria, Yemen, and Libya.⁴¹⁷ This would suggest that the Arab efforts in the field of anti-corruption ought to be reviewed due to their lack of efficiency and Arab states should follow the EU's example of revising their legislative framework overall.

4.6 CONCLUSION AND IMPLICATIONS

The author has found that there is a strong international and regional effort in the fight against corruption in the form of UNCAC, the OECD Convention, and EU law. As effective as these efforts are, concerns still need to be addressed. The UNCAC, for example, has often been criticised for failing to provide an express definition of corruption, while the OECD's Convention incorporates a set of offences in its non-mandatory provisions, meaning that states are under no obligation to criminalise these actions. The EU law efforts, on the other hand, appear to always be politicised, with academics arguing that the EU should not further deepen its integration or entering the remit of criminal law, which should be left for the Member States to define. In addition, the author has found that Arab states have also drafted an anti-corruption legal instrument that is modelled on the UNCAC and respectively shares the same limitations. Moreover, the increasing corruption levels in the states in the Gulf region suggest that the Convention merits further work.

In Chapter 5, the study embarks on a detailed exploration of Kuwait's journey in combating corruption. The chapter begins by tracing the development of anti-corruption laws in the country, highlighting key milestones and legal reforms. It then extends to the achievements and challenges encountered in implementing these reforms.

⁴¹³ Articles 12 and 16 of the Arab Anti-corruption Convention.

⁴¹⁴ Susan Rose-Ackerman, Bonnie J. Palifka, *Corruption and Government Causes, Consequences, and Reform* (Cambridge University Press, 2016) 468.

⁴¹⁵ *Ibid.*

⁴¹⁶ Transparency International, 'CPI 2022 For Middle East & North Africa: Corruption Fuels Ongoing Conflict' (2023) <https://www.transparency.org/en/news/cpi-2022-middle-east-north-africa-corruption-fuels-ongoing-conflict> accessed on 15 Jun. 23.

⁴¹⁷ *Ibid.*

CHAPTER 5. FIGHTING CORRUPTION IN KUWAIT: CHALLENGES AND OPPORTUNITIES

5.1 INTRODUCTION

Corruption in Kuwait represents a significant problem for society, and combating it is a prime focus of the Kuwaiti government and the Kuwait Anti-Corruption Authority, KACA. In assessing the scale of corruption in Kuwait, Khaled Ahmed Al-Tarrah, Professor of Sociology at Kuwait University, described corruption as an 'internal invasion,' comparing its damage figuratively to the destructive effect that the Iraq invasion had on Kuwait.⁴¹⁸ Kuwait has indeed fallen victim to several major corruption scandals in the 21st century, underscoring the gravity of the issue. The most recent scandal involved a high-ranking public official who embezzled large sums of money from employees to increase their own salary. Another vivid illustration was the 2011 bribery case, where Sheikh Nāṣir had allegedly paid over 180 million pounds to 15 members of parliament to secure their votes.⁴¹⁹ However, at the time, no legislation was in force related to financial disclosure and there were no laws criminalising sources of illicit gains such as bank transfers. Therefore, the prosecution could not identify evidence of bribery or the illicit nature of the funds transferred or received. Concurrently, the severity of punishments, such as a 15-year prison term, substantial fines, and deposition ordered for the perpetrators, indicates that the state of Kuwait is treating corruption cases with the utmost seriousness. Overall, in 2020, KACA identified over 300 cases of corruption, 40 of which were being prosecuted, demonstrating the scale of corruption and the government's resolve to identify and punish corrupt individuals.⁴²⁰ However, certain challenges remain to be addressed to boost anti-corruption efforts in Kuwait.

In 2023, according to the CPI developed by Transparency International, Kuwait has a corruption score of 46 out of 100, where a score of 100 signifies a 'corruption-free' status.⁴²¹ Compared to the UAE, which scored 67, Saudi Arabia with 51, and Bahrain and Oman both with 44, Kuwait remains similar to other GCC countries, with the exception of UAE, in terms of how far the country has progressed in combating corruption. Historical scores indicate that Kuwait's success in fighting corruption has been modest, as it was rated in the same range of 44–39 in the period from 2014 to 2022, indicating the presence of substantial barriers towards the efforts of Kuwaiti officials to eliminate corruption.⁴²² At the same time, Kuwait outpaces its Gulf neighbours in terms of aligning with the best global practices in tackling corruption. Among the efforts to establish this alignment are the ratification of UNCAC and the Arabic Convention for Combatting Corruption, establishing the KACA authority, and adopting a national strategy to fight corruption, along with

⁴¹⁸ Bader Al-Saif, 'Another Invasion of Kuwait' (Carnegie Middle East Center, 11 August 2020) <<https://carnegie-mec.org/diwan/82453>> accessed 9 November 2023.

⁴¹⁹ Rivka Azoulay and Claire Beaugrand, 'Limits of Political Clientelism: Elites' Struggles in Kuwait Fragmenting Politics' (2015) 4 *International Journal of Archaeology and Social Sciences in the Arabian Peninsula* 23,

⁴²⁰ Nazaha, 'Annual report 2020/2021' (2021) <<https://www.nazaha.gov.kw/nazaha/reports/%d8%a7%d9%84%d8%aa%d9%82%d8%b1%d9%8a%d8%b1-%d8%a7%d9%84%d8%b3%d9%86%d9%88%d9%8a-2020-2021/>> accessed 10 November 2023.

⁴²¹ Transparency International, 'Kuwait' (*Transparency.org*, 29 March 2024) <<https://www.transparency.org/en/countries/kuwait>> accessed 10 November 2023.

⁴²² Al-Rashidi, n (129) 59.

dedicated anti-corruption legislation in the form of Law No. 2 of 2016.⁴²³ On top of that, compared to other monarchies in the Gulf, Kuwait has a more progressive political system featuring a functioning parliament that has some influence on the legislative process.⁴²⁴ The statistics, cases, and international scores observed above indicate that Kuwaiti anti-corruption efforts have both enablers and challenges; these are discussed further in this chapter.

The chapter considers the institutional design of Kuwait pertaining to its anti-corruption efforts. It begins by tracing the development of Kuwaiti anti-corruption laws to understand the historic underpinnings of the present instruments and efforts. In the following section, Kuwaiti reforms in the sphere of anti-corruption laws are discussed from the standpoint of their achievements and challenges, to ascertain the key political vectors of anti-corruption effort advancement. Next, the chapter reviews the spheres of contract and procurement to identify and discuss critical vulnerabilities and strengths. Furthermore, KACA's activities are reviewed in detail to ascertain their role in fighting corruption in Kuwait. The chapter also considers international assessments of anti-corruption efforts in Kuwait, as well as ways to improve it.

5.2 CRIMINAL JUSTICE SYSTEM IN KUWAIT

This section examines the anti-corruption legislation of Kuwait as a core component of its institutional design. An essential aspect of evaluating institutional design in Kuwait is understanding how the structure and functioning of the criminal justice system affect the investigation and prosecution of corruption cases. Article 11 and Article 36 of the UNCAC require states to safeguard the independence and integrity of their judiciary and prosecution services to allow for the impartial enforcement of the law relating to anti-corruption, free of undue influence.⁴²⁵ However, there are a number of structural and practical constraints associated with the legal and institutional arrangements in Kuwait that call into question the country's compliance with these international obligations.

Kuwait's criminal justice system is built upon an inquisitorial approach where the Public Prosecution Department (PPD) serves as the investigative authority with prosecutor powers. This structure was created in 1959 by an Amiri decree, preceding even the attempts to codify the 1961 Constitution, and it purposefully aggregated numerous judicial functions and enhanced procedural efficiency in the process.⁴²⁶ However, in real terms, this arrangement has revealed profound institutional weaknesses. In contrast with most systems that distinguish and separate the roles of the investigative agent and prosecutor, the procedural structure under Kuwaiti law designates the investigative and prosecutor authority to the PPD, and gives the PPD exclusive power of prosecution, which may be delegated to a subordinate prosecutor.⁴²⁷ A Public Prosecutor can withdraw the delegation at any time, and any directive that occurs contrary to the instruction of the Public Prosecutor is rendered ineffective. The intended focus and centralisation of the PPD discretion

⁴²³ Noura Taha Aloumi, 'Corporate Criminal Liability for Bribery in Kuwait: Issues in Disclosing Commissions' (2021) 29 *Journal of Financial Crime* 1102.

⁴²⁴ Anja Schoeller-Schletter *Constitutional Review in the Middle East and North Africa* (Konrad Adenauer Stiftung, 2021) 76.

⁴²⁵ UNCAC, art. 11, 36.

⁴²⁶ Alfahad Hamad, 'Public Financial Crimes: A Critical Analysis of the Role of Kuwaiti Criminal and Regulatory Agencies in the Investigation Process' (Doctoral Thesis, Queen's University 2021).

⁴²⁷ Mahmoud Hussni, *Sharh Qanon Alejraat Aljnaeya [Annotation of Criminal Procedures: According to the Latest Legislative Amendments]* (3rd edn, Dar Alnahtha Alarbeya 2013) 75.

is crucial for procedural governance and procedural uniformity, case management and timeliness, but concentrating prosecutorial discretion presents a profound risk to independence and impartiality. When cases involve public corruption that includes political elites, or otherwise politically sensitive interests of the state, the danger of political interference is heightened. Although prosecutors formally constitute a part of the judiciary, they are administratively subordinate to the Minister of Justice, who has disciplinary powers over them. This raises further concerns about impartiality.⁴²⁸ Such concentration of power amounts to a situation where decisions to investigate or prosecute could be influenced by extra-legal motivations not only by the Public Prosecutor, but also by the political elites involved, which undermines the credibility of any anticorruption effort. Moreover, the structure would not comply with international best practice, and in fact would directly violate Article 36 of the UNCAC, which prohibits political interference for specialised anticorruption authorities.

With no institutional checks, no oversight and no separation of responsibilities of an investigative authority and prosecutor, the transparency and integrity of the process are compromised. While Kuwait's legislators presumably rationalised this decision by citing the limited capacity of judicial cadres, this design flaw represents a significant and harmful defect that has a detrimental impact on corruption prosecutions, the rule of law, and the credibility of anticorruption programming among the public.

In addition, the seminal work of John Morrison and Brian Grimshaw evaluating Kuwait's criminal justice system is deemed relevant. Specifically, they indicate that the structure of the centralised authority is not very clearly defined.⁴²⁹ Moreover, such division creates possibilities for corrupt exploitation and/or the compromising of investigations. Thus, considering alignment with international conventions, specifically Articles 11 and 30 of the UNCAC, which emphasise judicial integrity and effective prosecution mechanisms, the Kuwaiti judicial system is yet to overcome these challenges for full compliance.⁴³⁰ There are also procedural deficiencies whereby suspects are not legally required to be cautioned by the prosecution before questioning and no recording of the questioning is mandated. This too creates opportunities for the manipulation and suppression of the evidence crucial to corruption cases.

Among other things highlighted by Morrison and Grimshaw are many allegations of misleading reports and biased quoting of suspects that may undermine the justice and reliability of the cases.⁴³¹ In addition, they mentioned imprecise and inconsistent terminology, which point towards a lack of formalisation and procedural transparency. This makes the judicial system vulnerable to influence and compromises its ability to identify and prosecute corruption effectively, thereby not achieving the goals of UNCAC for an unbiased and uninfluenced judiciary.

According to the International Association of Democratic Lawyers (IADL), the impartiality and fairness of the judiciary system are also somewhat lacking in Kuwait. IADL's review, conducted in 2019, compared Kuwaiti judiciary laws and procedures with UN standards. Among the flaws they outlined were the lack of independence, undermined by the ability of the Ministry of Justice to appoint, promote, and fire judges and

⁴²⁸ Law No 23 of 1990 on the Organisation of the Judiciary System (Kuwait), art 66.

⁴²⁹ John Morison and Brian Grimshaw, *Investigation, Process and Legal Standards within the Criminal Justice System in Kuwait* (Kuwait International Legal Research Centre and Queen's University Belfast 2016) 7

⁴³⁰ UNCAC, art. 11, 30.

⁴³¹ Morison and Grimshaw, note 464, p 7.

members of the PPD up to the Secretary General, leader of the PPD.⁴³² In theory, the Constitution of Kuwait guarantees the independence of the judiciary in Article 163, establishing that “No Authority may wield any dominion over a Judge in his rendering of justice and in no circumstance shall interference be permissible in its performance.”⁴³³ Thus, the ability of the Ministry of Justice to remove and appoint judges creates ambiguity in fulfilling judicial independence, which in turn makes it impossible to argue that an impartial judicial process for corruption cases is achievable. The same report also mentions that there are ‘reports’ of executive pressure on the judiciary, but it does not list any evidence to substantiate these claims. In the news, however, there was indeed a case of 7 judges sentenced to imprisonment for being corruptly appointed to dismiss and stall cases of influential business people, which somewhat validates the claims of the IADL report.⁴³⁴

Overall, the institutional features described above represent significant flaws in the design of Kuwait’s justice system, because there are no systematic or procedural guarantees for accountability and oversight. The absence of separation between prosecution and investigation, coupled with the possibility of executive control of the judiciary, effectively denies the judiciary’s ability to address high-level corruption prosecutions. The absence of internal or external accountability for prosecutorial inaction or discrimination weakens institutional credibility, and the power to effectively withstand corruption within the system and effectively prosecute corruption crimes. In the next section, an overview of legal instruments is provided, along with their historical development.

5.3 LEGAL INSTRUMENTS AGAINST CORRUPTION

The development process of Kuwaiti legal instruments for corruption can be characterised as being dictated by the need to combat corruption as a matter of national interest. However, simultaneously, the development process has been somewhat proportional to the government’s growing ties to international society. The need to attract foreign investment and to participate in international trade pushed Kuwait to adopt laws that guarantee the compatibility of legal regimes and standards with those of its partners, primarily in the Western world. Thus, as argued in the research by Sherman, the development of anti-corruption and anti-money laundering (AML) law in many developing nations, including Kuwait, has been influenced by often coercive and manipulative policies of Western states, such as blacklisting or stalling business agreements on account of lacking sophistication in legal codes.⁴³⁵ Indeed, the investment climate, likelihood of business, and international public–private partnerships depend on many national variables, including access to information, civil rights and freedoms, laws protecting property, and, not least, policies that cement the rule of law in the sphere of financial operations, procurement, and contracts.⁴³⁶ The

⁴³² Micol Savia, ‘Independence of the Judiciary in Kuwait’ (*International Association of Democratic Lawyers*, 26 July 2019) <<https://iadllaw.org/2019/07/independence-of-the-judiciary-in-kuwait/>> accessed 30 August 2024.

⁴³³ Mohamad Al-Moqatei, ‘A Study of the Kuwaiti Constitutional Experience’ (PhD thesis, University of Warwick 1987) 13

⁴³⁴ Hasan Esat Yüzbaşıoğulları, ‘Kuwait Court of Cassation Closes Judges’ Bribery Case File’ (*IHA News*, 7 November 2023) <<https://iha.news/kuwaits-top-court-closes-judges-bribery-case-signals-strong-anti-corruption-stand/>> accessed 30 August 2024.

⁴³⁵ JC Sharman, ‘Power and Discourse in Policy Diffusion: Anti-Money Laundering in Developing States’ (2008) 52 *International Studies Quarterly* 635.

⁴³⁶ Salman Bahoo, Ilan Alon and Andrea Paltrinieri, ‘Corruption in International Business: A Review and Research Agenda’ (2020) 29 *International Business Review* 101660.
Michael Nest, Saul Mullard and Cecillie Wathne, ‘Corruption and Climate Finance’ (*Anti Corruption Resource Centre*, 2020) <<https://www.u4.no/publications/corruption-and-climate-finance.pdf>> accessed 10 November 2023.

existence of this link is explained by the growing business risks of operating in countries where limited legal protection is offered to foreign businesses.⁴³⁷ However, one can find only partial support for this thesis in relation to Kuwait's development and maturation of anti-corruption law, as every following legal reform can be seen as an attempt to tackle the gaps left by its predecessor. For example, since the 1960s when corruption crimes such as bribery were first acknowledged in the legislation, namely in Law No. 16 of 1960 which is discussed in detail below, the clarity of definitions and scope of laws became progressively greater. Yet, this development process of expanding and clarifying anti-corruption legislation is still ongoing as the legal framework remains flawed in several aspects, including the applicability and inclusiveness of multiple forms of corruption.

5.3.1. LAW NO. 16 OF THE KUWAIT CRIMINAL CODE OF 1960

ACHIEVEMENTS AND CHALLENGES

The first law that can be labelled as anti-corruption is Law No. 16 of the Kuwait Criminal Code of 1960, specifically Articles 112–116.⁴³⁸ The critical feature of the law is that it establishes the definition of bribery as promises, gifts, and 'interests' which an employee might be offered or receive. In this case, 'interests' are defined as the monetary outcome of selling or buying property at a significantly different valuation than its original price.⁴³⁹ The provisions of the 1960 Criminal Code thus represent the first crucial milestone in the development of anti-corruption legislation as they promote a broad definition of bribery that extends beyond typical forms, such as material or tangible gifts. They further stipulate the potential machinations that arise from asset valuation, adding further nuance and depth to the law. Critically, however, the articles did not present an exhaustive list of possible acts that could be classified as bribery (i.e., a service), thus only paving the road for further sophistication of the definition.

LEGAL DEVELOPMENT

Evaluating the possibility of manipulative or any other influence on the development of Kuwaiti anti-corruption law prior to 1960 appears to be possible only to a certain extent, as academic research fails to consider any environmental, political, or legal circumstances related to anti-corruption efforts, particularly the formulation of Articles 112–116 of the Kuwaiti Criminal Code 1960.⁴⁴⁰ However, scholarship devoted to the development of the Kuwaiti legal system in general indicates that the oil boom that started in the late 1950s ushered in many foreign nationals, including Arabs from the Gulf. Given that Kuwait was under British protectorate at the time, both Kuwaiti national courts and British courts coexisted and often had to cooperate on cases.⁴⁴¹ During the British protectorate, the judicial powers of the Emir, the highest authority, were

⁴³⁷ Sanjib Guha and others, 'Does Corruption Act as a Deterrent to Foreign Direct Investment in Developing Countries?' (2020) 11 *Organizations and Markets in Emerging Economies* 18.

⁴³⁸ 'Measures against Corruptibility, Gifts and Gratification: "Bribery" in the Middle East' (2000) 15 *Arab Law Quarterly* 363.

⁴³⁹ Law No. 16 of 1960 (Kuwait Criminal Code)

⁴⁴⁰ Abdulrahman Alhajri, 'Separation of Powers in the Kuwaiti Criminal Justice System: A Case Study' (2018) 4 *European Journal of Interdisciplinary Studies* 59.

⁴⁴¹ Ahmad Hijazi, 'Kuwait: Development from a Semitribal, Semicolonial Society to Democracy and Sovereignty' (1964) 13 *The American Journal of Comparative Law* 428.

limited to Kuwaiti subjects, while in relation to British subjects living in Kuwait, judicial powers were exercised by the British High Commissioner. Consequently, the two authorities had to coexist.⁴⁴²

In reality, the application of either British or Kuwaiti national law lacked a systematic approach, and claimants often sought recourse in a court they found familiar, even if the Kuwaiti national court was the appropriate jurisdiction to apply to.⁴⁴³ Practically, the National Kuwaiti court at the time lacked the required sophistication of the legal code to consider the full extent of cases, as it was largely based on Islamic law and its customary interpretations.⁴⁴⁴ Specifically, prior to the establishment of a civil judicial system, the judicial system of Kuwait was based on three courts: the Executive Supreme Court, a court above courts; the Major Sharia court, which examined cases related to heritage, civil and criminal cases; and the Shia and Sunni personal statute courts, dealing with minor cases not falling under the jurisdiction of the Major Sharia court.⁴⁴⁵

The achievement of independence in 1961, the development of trade and corporate relationships, and sophistication of society and education led to the need to sophisticate the legal regime and develop the legal system, as well as the criminal code, especially regarding contractual relationships and related crimes; this included the criminalisation of bribery and its legal sophistication. Furthermore, the oil boom also led to an increase in national wealth and the 'co-penetration' of Kuwait with other nations across the world, triggering the development of education, means of communication, and transportation. This was paralleled by the increased sophistication of political and legal systems, including the inclusion of bribery definitions in the aforementioned Articles 112-116.

Therefore, contrary to the premise of Sharman, who argued for the power-based (coercion and manipulation from foreign states) nature of the development of legal systems in developing nations, the anti-corruption provisions of the 1960s Kuwaiti Criminal Code appear to be a result of national interest protection as well as domestic political unrest.⁴⁴⁶ In support of this, Hijazi mentions the emergence of young Sheikhs, well-educated and well-travelled Kuwaiti nationals who saw the co-existence of British and national courts and the underdeveloped state of the latter as a cause for reform.⁴⁴⁷ Furthermore, the Kuwaiti merchant class and high officials were dissatisfied with British courts and the great extent to which they occupied the position of authority in the state of Kuwait.⁴⁴⁸ Finally, the rivalry within the Kuwaiti merchant elite often led to disputes requiring court settlement,⁴⁴⁹ and this rivalry had the tendency to involve the elite in government. Therefore, the sophistication of the national criminal codes and anti-corruption law can be tied to the domestic socio-political development, the need for emancipation, and the heightened importance of the Kuwaiti national court, which required a developed base of laws and regulations.

Indeed, Sharman's thesis of the influence of foreign powers can be applied to some degree to the development of anti-corruption, particularly to Law No. 16, as no blacklists existed at the time. The influence

⁴⁴² Abdul Rasoul Abdul Reda, 'A Summary of the Legal and Judicial System in the State of Kuwait' (1991) 6 *Arab Law Quarterly* 267.

⁴⁴³ Ibid. 429

⁴⁴⁴ Ibid. 431

⁴⁴⁵ Reda, 'A Summary of the Legal and Judicial System in the State of Kuwait' 271.

⁴⁴⁶ Sharman, 'Power and Discourse in Policy Diffusion' 636

⁴⁴⁷ Hijazi, 'Kuwait: Development from a Semitribal, Semicolonial Society to Democracy and Sovereignty' 432

⁴⁴⁸ Rivka Azoulay and Claire Beaugrand, 'Limits of Political Clientelism: Elites' Struggles in Kuwait Fragmenting Politics' (2015) 4 *International Journal of Archaeology and Social Sciences in the Arabian Peninsula* 7.

⁴⁴⁹ Azoulay and Beaugrand 'Limits of Political Clientelism' 27.

of British courts in the 1950s and 1960s can be nominally considered foreign influence, yet the motivation for legal sophistication in the sphere of anti-corruption law at the time seems to have been influenced not only by this factor but also by domestic considerations as discussed above. Furthermore, the relationship between the emergence of Law No.16 is the opposite of the suggestion by Sharman, in the sense that legal sophistication came rather as a response contrary to British legal dominance in this sphere. Therefore, it can be seen as an attempt to regain independence from foreign influence in the sphere of prosecuting and punishing corruption by the national authority. Such considerations also appear to be contrary to the claims of Al-Rashidi, who suggested that the development of anti-corruption law was independent of socio-cultural development.⁴⁵⁰

5.3.2. LAW NO. 31 OF KUWAITI CRIMINAL CODE 1970

ACHIEVEMENTS AND CHALLENGES

The next milestone in Kuwaiti anti-corruption law was Law No. 31 of 1970. It amended the previous Law No. 16 of 1960 by offering several crucial definitions in connection to bribery and clarifying the nature and circumstances of prosecutable actions. Firstly, the definition of a 'gift' was broadened to include both material and immaterial benefits, allowing the consideration of services, promises, and other forms of gratification as punishable.⁴⁵¹ Article 43 of the law specifies that the 'offerings of gifts to the public servant with the intention of duty performed' are punishable, irrespective of whether the service is related to the public servant's responsibilities or not. Such a definition in theory also includes grease payments, or small bribes made to expedite services rendered, as it does not specify the minimal estimate of a sum to be considered as a gift or benefit. However, the specific notion of a grease payment was not mentioned in the law.

Contrary to the definition of corruption by Al-Rashidi, which classifies corruption as "deviation from the formal duties of a public role because of private-regarding pecuniary or status gains", Law No. 31 indicates that no such deviation is required to classify the action as an act of bribery.⁴⁵² Instead, it stipulates that bribery is 'any instance of a public officer taking interest', and it may or may not involve a service performed for the briber in return:

"Any benefit obtained by the briber or the person who accepts the bribe, regardless of its name or type, whether it is material or immaterial, falls under the concept of promise or gift."⁴⁵³

So, in fact, the law indicates that any form of accepting interest, regardless of its nature, is classified as a criminal offence. This development thus outlaws any monetary transactions between public servants and third parties if private gain for the former is involved.

This definition marks significant success in tightening the anti-corruption legislation of Kuwait compared to the first law of 1960, which was less straightforward. Furthermore, compared to British anti-corruption law relevant to the same time period, Kuwaiti Law No. 31 was a significant step forward towards better

⁴⁵⁰ Al-Rashidi, n (129) 38

⁴⁵¹ Law No. 31 of 1970 amending Law No. 16 of 1960 (Kuwait Criminal Code)

⁴⁵² Al-Rashidi, *Combating Corruption in the Middle East* 34

⁴⁵³ Article 7, Law No. 31 of 1970 amending Law No. 16 of 1960 (Kuwait Criminal Code)

conceptualisation of bribery, as the British law in practice at the time lacked clarity. Specifically, the British common law defines bribery as 'the receiving or offering of any undue reward, by or to any person whatsoever, in a public office in order to influence his behaviour in office, and incline him to act contrary to the known rules of honesty and integrity'.⁴⁵⁴ The problem with the British law is the unclear concept of 'undue reward,' which the Kuwaiti law of 1970 does a better job of defining.⁴⁵⁵ Hence, Law No. 31 of 1970 in Kuwait, in itself, is a development that outclassed even more advanced legal systems.

Although the 1970 legal definition of bribery seems to further expand the actions classified as bribery by setting no limit on the possible actions or services to provide in exchange for material or immaterial benefit, it was not without its flaws. With the view of the need to establish corrupt intention, the practical application of the law appears to have suffered.⁴⁵⁶ The difficulty of proving ill intent is well presented by the dilemma of acceptable lobbying versus illegal compensation for service. Thus, Giupponi and Yu cite the cases of *Aguas del Tunari S.A. v Bolivia* and *Inceysa Vallisoletana S.L. v. Republic of El Salvador*, where courts ruled differently based on their interpretation of the intentions of the parties accused of making improper investments.⁴⁵⁷ This means that the sophistication of anti-corruption in the face of Law No. 31 of 1970 entailed not only clarification but also the possibility for ambiguous reading and challenges in application, thus creating new challenges for legal practice.

In addition to amendments made to Law No. 16 of 1960, Law No. 31 of 1970 introduced the confiscation of offered benefits. This was a significant addition as it enabled the evaluation and classification of corruption cases based on their severity. However, the law did not specify graduated punishment for bribery corresponding to the value of the benefit involved. Instead, it stipulated that bribery was punishable by "imprisonment for up to five years and a maximum fine of 5,000 dinars".⁴⁵⁸ The only scenario where punishment may escalate is if the perpetrator received compensation for committing a crime that was punishable by a longer sentence. To this end, the anti-corruption effort of Kuwait, embodied in this law, appears to have been thwarted somewhat by a certain impracticality that is imbued with a limited ability to scale punishment.

A notable positive characteristic of Law No. 31 of 1970 is that it places a greater emphasis on imposing the primary burden of punishment on the public officer. While it preserves the original character of Law No. 16 by focusing on gift-taking, it also features certain protection for the individual who give the gift. Specifically, the amendment in Law No. 31 allowed the briber to escape punishment completely, even after the bribe was given, provided that they informed the police of the deed.⁴⁵⁹ In that regard, the early Kuwaiti anti-

⁴⁵⁴ Sir W Oldwell Russell, *Russell on Crime*, ed. Turner (12th ed., Stevens, 1964) 381; See the discussion in: Colin Nicholls and others, *Corruption and Misuse of Public Office* (OUP Oxford 2011) 21

⁴⁵⁵ Cameron McKenna, 'A Guide to Existing Bribery and Corruption Offences in England and Wales' (*CMS Law*, April 2010)

<https://cms.law/sh/content/download/77485/2984829/version/1/file/A%20guide%20to%20existing%20bribery%20and%20corruption%20offences%20in%20England%20and%20Wales_v2.pdf> accessed 12 June 2023.

⁴⁵⁶ 'Measures against Corruptibility, Gifts and Gratification: "Bribery" in the Middle East' (2000) 15 *Arab Law Quarterly* 363.

⁴⁵⁷ Belen Olmos Giupponi and Hong-Lin Yu, 'Analysing Obstacles and Challenges in Fighting Corruption in Cases of Illegal Investments' (2022) 11 *Laws* 59.

⁴⁵⁸ Law No. 31 of 1970 amending Law No. 16 of 1960 (Kuwait Criminal Code)

⁴⁵⁹ Law No. 31 of 1970 amending Law No. 16 of 1960 (Kuwait Criminal Code)

corruption law established the foundation for subsequent whistleblower regulations, manifesting in the Whistleblowing Law No. 24 of 2012.

A notable challenge of Law No. 31 of 1970 is its limited ability to secure convictions. As stipulated by the constitution, crimes and penalties are established exclusively by the law.⁴⁶⁰ Consequently, if the law fails to denominate a particular action as a crime, then conviction is deemed unconstitutional by the court. Such a case arose in 2011 when the prime minister (PM) gave gifts to 15 members of parliament.⁴⁶¹ At the time, despite the resignation of the PM under pressure, the legal charges of corruption could not be brought under the existing laws as the 1970 law stipulated the need for being under official duty, material benefit to be had in exchange for the gift, and criminal intent. Under such conditions, neither the PM nor the MPs could be charged with bribery.

Another case demonstrating this difficulty was the alleged bribery of the Deputy Head of the Central Agency for Public Tenders by a manager of A.R. Albisher & Z. Alkazemi CO. The accused, a manager at Al-Bushar Al-Kazemi Company, was found to have offered a bribe to the first accused, a public servant holding the position of Deputy Head of the Central Agency for Public Tenders.⁴⁶² The bribe, consisting of three Mercedes vehicles valued at one hundred and forty-eight thousand Kuwaiti dinars, was intended to influence the first accused's official duties, particularly to secure a direct contract between the Ministry of Health and the company managed by the second accused. Despite an initial rejection, the contract was approved at a board meeting of the Central Agency for Public Tenders. Subsequently, it was discovered that the first accused's wife, also a public servant in the Tender Committee, owned the vehicles licensed under her name, corroborating the bribery allegations. Legal proceedings ensued, resulting in a 10-year sentence for both accused in the primary and appellate courts. However, they were acquitted in the cassation ruling, with the court citing insufficient and inadequate evidence presented by the KACA and the Public Prosecution. The court emphasised the principle of presumption of innocence and the requirement for criminal judgements to be based on certainty, leading to doubts about the truth of the charges and necessitating the acquittal of the accused. This ruling emphasises the difficulty of establishing the connection between evidence collected such as possession of vehicles not officially purchased and the fact of a decision change in favour of the accused company or individual. Essentially, this means that the criminal codes' standards for evidence might be too high to meet in reality in order to achieve convictions for bribery cases. Thus, more extensive corruption legislation is in order.

LEGAL DEVELOPMENT

Considering the development of Law No. 31, it can be surmised that it continued the trend in anti-corruption law development set by its predecessor, Law No. 16. This trend manifests in the fact that anti-corruption law has been kept under the auspices of regular crimes, hence its placement in the Kuwait Criminal Code. Furthermore, Law No. 31 continues to exercise the punitive approach to fighting corruption in Kuwait by elucidating the acts that are classified as corruption and updating this list through expansion and further clarification of the possible interactions between the briber and the bribee. The law of 1970 closed some of

⁴⁶⁰ Kuwait Constitution 1962 (reinst.)

⁴⁶¹ 'Kuwait's Prime Minister Resigns after Protests' *BBC News* (28 November 2011) <<https://www.bbc.com/news/world-middle-east-15931526>> accessed 16 November 2023.

⁴⁶² Case 616/2019 of the Criminal Investigations Department registered under number 2019/40

the gaps left by the law of 1960, specifically the definition loophole where the offer of non-monetary benefits as a bribe might have escaped punishment as it was not stipulated in the law directly.⁴⁶³ Finally, Law No. 31 paved the road towards a more sophisticated and legally established role of the whistle-blower in the process of identifying and combating corruption.

When it comes to the socio-legal impetus for Law No. 31, considered as a reform of the previous Law No. 16 of 1960, one cannot pinpoint a single source of inspiration or influence. Instead, several factors appear to have led to the development and adoption of this law. In 1961, Kuwait gained independence from Britain, so the contention between British and National law, which had much influence on the development of the previous law, was no longer a factor.⁴⁶⁴ On the other hand, the void that remained after the closure of British law courts had to be filled by the national courts. Even during the late 1950s, British courts were handling more than 200 cases per year, so the national courts had to process this workload.⁴⁶⁵ Given the early developmental state of the Kuwaiti legal system borrowed from Egypt, which was in turn French, legal reforms in Kuwait were a natural necessity.

The influence of Islamic law on criminal law is important and to an extent, one could suggest that the Kuwaiti criminal code is harmonious with Sharia, but there is no direct Sharia influence on the development or wording of the laws themselves. Prior to the establishment of civil courts, Sharia courts would use Maliki school methodology (Sunni) for considering criminal cases. This methodology relied on Qur'an and Hadiths (words, actions and approvals of Prophet Muhammad) as sources of law. Although codification of the laws has undermined the influence of Sharia law, which currently only applies to family law for Muslims, some Islamic law principles such as judiciary discretion remain strong in the Kuwaiti judicial system. Specifically, when statutory laws do not provide a definitive answer, judges are allowed to rely on Sharia principles to guide their decisions.⁴⁶⁶ Although this is rarely practised, administrative court judges indeed have a substantial degree of authority, which is seen in their ability to invalidate other administrative courts' decisions. While Article 2 of the Kuwait Constitution explicitly names Sharia as the main source of law in Kuwait,⁴⁶⁷ in practice, the codification and development of civil law currently overshadows the influence of Sharia, at least in relation to corruption-related law.

Another factor of legal development was the continued influence of the new generation of Kuwaiti youth committed to the reform and betterment of the nation.⁴⁶⁸ Kuwait entered the League of Nations in 1963, which accelerated the democratic processes in the country and contributed to the introduction of the Kuwaiti Constitution, which set up the State Audit Bureau of Kuwait.⁴⁶⁹ This is in charge of performing audits of public funds to prevent their misuse and ensure their adequate allocation in line with the goals and objectives of the state. Auditing the use and, consequently, misuse of funds apparently required a more sophisticated legal basis than that provided by the 1960s law, as its definitions were somewhat loose, as

⁴⁶³ 'Measures against Corruptibility, Gifts and Gratification: "Bribery" in the Middle East' (2000) 15 *Arab Law Quarterly* 363.

⁴⁶⁴ Hijazi, 'Kuwait: Development from a Semitribal, Semicolonial Society to Democracy and Sovereignty' 431

⁴⁶⁵ *Ibid.*

⁴⁶⁶ Georges Saad, 'Discretionary Power of the Kuwaiti Administrative Judiciary: A Comment on a Ruling Issued by the Administrative Circuit (No. 546/1017 Administrative/5): A Comparative Study (In Arabic)' (2018) 11 *Kilaw Journal* 43.

⁴⁶⁷ Constitution of Kuwait 1992, article 2.

⁴⁶⁸ Rivka Azoulay and Claire Beaugrand, 'Limits of Political Clientelism: Elites' Struggles in Kuwait Fragmenting Politics' (2015) 4 *International Journal of Archaeology and Social Sciences in the Arabian Peninsula* 1.

⁴⁶⁹ Kuwait 1962 Constitution (reinst. 1992), Article 151

discussed above. However, the extent of the influence of these developments on the adoption of Law No. 31 remains speculative, as no academic or official accounts providing other justifications for its adoption have been identified.

5.3.3. PROTECTION OF PUBLIC FUNDS LAW NO. 1 OF 1993

ACHIEVEMENTS AND CHALLENGES

Another step in the development of anti-corruption legislation in Kuwait was the introduction of the Protection of Public Funds Law No. 1. This law added mechanisms missing in the previous anti-corruption legislation, such as limited power for the prosecutor to prevent perpetrators from leaving the country's jurisdiction, as well as pursuing the movement of illicit funds through the accounts of perpetrators' family members.⁴⁷⁰ Furthermore, in addition to the seizure of stolen/embezzled/bribed assets, under Law No. 1, the perpetrator was also fined twice the amount of the seized assets. In that way, Law No. 1 improved both the scope and severity of corruption crimes linked to machinations with public funds and the abuse of a public role.

The additions made by Law No. 1 of 1993 enabled the anti-corruption legislation to consider the scale of the crime and it provided a means to trace illicit transactions internationally. Article 14 introduced the notion of 'grave damage' caused as a result of negligence, failure to perform duties, or abuse of power as a public servant:

Any public servant, employee or worker who has caused grave damage to the money or interests of the entity for which he or she works, for money or interests of other parties and if such is damage is the result of negligence in the performance of duties, breach of duties or abuse of power by public servant, employee or workers' inside or outside of the country, he or she shall be sentenced to a maximum of three years of imprisonment and a fine of not less than 3,000 dinars and no more than 20,000 dinars”

In this sense, Law No. 1 also amended the previously lacking scalability of the punishment stipulated under Law No. 31 of 1970.⁴⁷¹

Another achievement of Law No. 1 was the establishment of a transaction monitoring system. Article 6 of the law stipulates that any public body needs to notify the State Audit Bureau of Kuwait of any investments made inside or outside the country:

“Parties referred to in article 2⁴⁷², must notify the State Audit Bureau of Kuwait in writing of its operations or actions related to the investment of its funds inside or outside of the country and the decisions it makes in this regard and the amendments that occur to them.”⁴⁷³

⁴⁷⁰ Protection of Public Funds Law no. 1 of 1993 (art. 24 and 25)

⁴⁷¹ Fahad Al-Kandry, 'The criminal protection of the public funds: A critical legal analysis study of the law no. 1 of 1993' (1994) 18(2) *Kuwait Journal of Law* 271–317.

⁴⁷² The parties are: Public bodies, public institutions, companies and entities in which the the state owns 25% of the capital.

⁴⁷³ Protection of Public Funds Law no. 1 of 1993, article 14.

This addition makes it possible to trace illicit funds, which means that the law introduces a preventive aspect to anti-corruption legislation. This also means that Law No. 1 took a step to the side from a purely punitive approach to corruption crimes to introducing preventive measures. An illustration of this achievement is the successful apprehension of embezzled public pensions by Fahad al-Rajaan, who headed Kuwait's Public Institution for Social Security (PIFSS).⁴⁷⁴ In 2014, under Law No. 1, al-Rajaan faced charges of embezzlement and money laundering, and was sentenced to 10 years in prison (*in absentia*) along with the freezing of 100 million dollars in his Swiss bank accounts.⁴⁷⁵

Lastly, Law No. 1 of 1993 makes a significant jump towards the effectiveness of anti-corruption legislation but the law poses certain concerns over misuse. Specifically, Article 21 makes the judgements passed under this law unabatable, which means that the legal consequences will not be cancelled for the crimes outlined in that law.⁴⁷⁶ From one point of view, the law makes it more difficult for corruption criminals to evade punishment. From the other, it can be used as a repressive measure as convictions become the sole responsibility of the prosecution, meaning that those accused of corruption will not be able to use a statute of limitations or argue for the lapse of prosecution. Thus, the law being unabatable places substantial authority in the hands of government institutions to use it very authoritatively and with few balance mechanisms for the defendant to use.

On the other hand, Law No. 1 of 1993 is ridden with the same flaws as Law No. 31 of 1970, namely, the difficulty of convicting. Similar to Law No. 31, in order to be applicable, the law has several key conditions: the crime must involve public funds and a public official; be classified as embezzlement, stealing, or gaining benefit; invoke grave damage to public funds; and, lastly, have malicious intent.⁴⁷⁷ Although, According to Al-Oumi, there is a benefit in defining all these conditions, it makes the application of the law quite narrow, allowing more subtle crimes such as insider trading or biased tender evaluations to avoid punishment under this law.⁴⁷⁸

The problem with the law also remains in the proportionality of punishment. In certain cases, punishment may be too small and disproportional to the amount of funds stolen or misappropriated. This is evidenced by the case of corruption investigated by KACA in the Ministry of Health. The case centres on allegations of misappropriation of public funds reported to the General Authority for Anti-Corruption, prompting investigations by the Public Prosecution. The first defendant, a public employee at the Ministry of Health, was accused of facilitating the misappropriation of 1.6 million Kuwaiti Dinars by the second defendant for personal use. The Public Prosecution pursued punishment under Article 48/3 of the Penal Code and Articles 2/A, 3, 1/9, 10, 16 of Law No. 1 of 1993.⁴⁷⁹ Initially acquitted by the Criminal Court, both defendants were subsequently fined 3,000 dinars each by the Court of Appeals following the Public Prosecution's appeal.

⁴⁷⁴ Paul Peachey, 'Kuwaiti Banker Faces Arrest in Switzerland over \$850m Investigation' (*The National*, 22 July 2020) <<https://www.thenationalnews.com/world/europe/kuwaiti-banker-faces-arrest-in-switzerland-over-850m-investigation-1.1052477>> accessed 16 November 2023.

⁴⁷⁵ Subdivision Criminal Court 28 April 2016, No. 159/2015 in the Public Funds Prosecution Department

⁴⁷⁶ Protection of Public Funds Law no. 1 of 1993

⁴⁷⁷ Protection of Public Funds Law no. 1 of 1993

⁴⁷⁸ Noura TA Al-Oumi, 'The Development of Laws in Kuwait to Combat Corruption: A Work in Progress' in Katie Benson, Colin King and Clive Walker (eds), *Assets, Crimes and the State* (Routledge 2020) 201

⁴⁷⁹ Court of Cassation Judgment No. 696 of 2020 (partial/2)

The first defendant then appealed to the Court of Cassation, which accepted the appeal and confiscated bail.

While technically the defendants were fined under the law, the small fine of 3,000 dinars in comparison with the 1.6 million misappropriated appears to be insufficient punishment. While full details of the case are not known, it can be assumed that the wide gap between the minimum (a fine of 3,000 dinars) and the maximum punishment (10 years in prison) leaves the decision to the court in consideration of all the available evidence and mitigating circumstances of the case. Thus, the judicial discretion and large leeway allowed in Law No. 1 in terms of punishment allowed the accused to receive only a small punishment. This undermines the law's ability to deter further acts of corruption if the legal practice continues to demonstrate a lack of real punishment.

LEGAL DEVELOPMENT

In a sense, Law No. 1 of 1993 cannot be considered an evolutionary addition to Kuwait's legal framework on anti-corruption. Instead, it is regarded in the literature as a reactionary law introduced due to two notable corruption scandals.⁴⁸⁰ Firstly, the law was necessitated by the Iraqi invasion of Kuwait and the stealing of public funds resulting from this invasion. Specifically, 6 billion dollars of public money was stolen from the Kuwaiti Investment Authority (KIA). Since those accused of stealing public funds had already left the country, the court had to process the case *in absentia*.⁴⁸¹ Furthermore, the money also had to be seized overseas in 19 different jurisdictions, which necessitated the introduction of a law allowing the tracing and apprehension of stolen funds.⁴⁸²

The second case that led to the development of anti-corruption law, manifesting in the adoption of Law No. 1, was the discovery of fraud and the embezzlement of public funds belonging to the Kuwait Oil Tanker Company (KOTC). In the case *Kuwait Oil Tanker Company SAK & Anor v Al Bader & Ors*, four public officials were ruled guilty for illicitly profiting from fake contracts and undue commissions resulting in US\$ 137 million-worth of damages to public funds.⁴⁸³ Both cases indicate the weaknesses of the existing legislation at the time. For one, the accused were committing crimes outside of the Kuwaiti legal jurisdiction, which was not covered by Law No. 31 of 1970. Furthermore, Law No. 31 did not prevent the defendants from leaving the country despite legal proceedings beginning in 1992, so only the KOTC chairman was sentenced to a prison term while other defendants escaped their sentences.⁴⁸⁴ Despite the fact that the said law was flawed, the need for reform did not surface until the starting of the legal development processes, which gives ground to Al-Oumi's argument.

5.3.4. LAW NO. 2 OF 2016 ON ESTABLISHING THE ANTI-CORRUPTION AUTHORITY AND THE PROVISIONS ON DISCLOSURE OF ASSETS AND LIABILITIES

ACHIEVEMENTS AND CHALLENGES

⁴⁸⁰ Al-Oumi, 'The Development of Laws in Kuwait to Combat Corruption' 201

⁴⁸¹ Case No. 176/2005 Supreme Criminal Court, May 9, 2006.

⁴⁸² Al-Oumi, 'The Development of Laws in Kuwait to Combat Corruption' 202

⁴⁸³ Kuwait Oil Tanker Company SAK & Anor v Al Bader & Ors, [2000] EWCA Civ 160.

⁴⁸⁴ Al-Oumi, 'The Development of Laws in Kuwait to Combat Corruption' 202

The most notable piece of anti-corruption legislation is Law No. 2 of 2016, which is the first stand-alone law devoted to combating corruption in Kuwait. Modelled after the UN Convention Against Corruption, the law classifies all activities aimed at personal gain through the abuse of public or private office as corruption offenses. It defines crucial concepts in anti-corruption, namely, 'illicit gain,' 'public official,' 'assets and liabilities,' and 'whistleblower,' thereby establishing the objects and subjects of anti-corruption law within one legislative act.⁴⁸⁵ Most importantly, illicit gain is defined as:

“Any increase in the wealth or diminution of liabilities occurs - because of assuming an office or a capacity - to the official subject to this law, his minor children or those under his guardianship, custodianship or curatorship whenever it is disproportionate to their resources and it is unjustified.”

This definition appears to be the most crucial since it operationalises a specific body of evidence or indicators that can be used by the prosecution to argue that illicit gain has taken place. It also introduces the aspect of intent whereby to become illicit, the increase in wealth or diminution of liabilities must be justified as not normal. The use of the word 'illicit' (muḥarram) vs 'illegal' (ghayr qānūnī) is also a fine addition as it recognises the possible legality of certain transactions from the word of law but makes them socially unacceptable. For example, it renders illicit situations like a person paying a public official to secure a service that might technically be legal (a transfer of money from one bank account to another is legal), if that service is in violation of the public interest.

Notably, the law establishes an anti-corruption authority imbued with the power to independently and impartially investigate cases of corruption. The scale and number of changes brought in by Law No. 2 of 2016 are indeed voluminous, so within the limits of this chapter, only the most notable achievements and challenges are discussed.

The first notable achievement is the establishment of the KACA. It is tasked with reviewing the accounts of public servants eligible under Law No. 2 of 2016 to regularly submit their income statements and currently held assets. It is further responsible for initial investigatory procedures related to corruption offenses (including embezzlement, stealing, and any other crime classified as illicit enrichment). Under the law, KACA is entrusted with 14 other functions, of which the most notable are working with the media to raise awareness of corruption, and researching amendments and enhancements to the existing anti-corruption efforts.⁴⁸⁶ In practice, these functions mean that Kuwaiti law enables wider cooperation between anti-corruption authorities and members of the public and focuses work on the betterment of anti-corruption law. Overall, the establishment of a specific anti-corruption authority reflects an acknowledgment of the detrimental impact that corruption can have on economic development, public trust, and governance. This recognition is a critical step towards fostering a culture of transparency and accountability.

Another notable achievement is the introduction of the concept of 'illicit gain,' which can be seen as alignment with the global standards of fighting corruption established, for example, by UNCAC. This concept, produced by Law No. 2 of 2016, appears to be a further expansion of the objects defined in the previous laws as 'benefits', 'gifts', 'promises', and 'services'. The new law indicates that disproportionate or

⁴⁸⁵ Article 1, Law No. 2 of 2016 on Establishing Anti-Corruption Authority and the Provisions on Disclosure of Assets and Liabilities

⁴⁸⁶ Part II, Article 3, Law No. 2016

unjustified positive changes in wealth occurring due to an official position are now considered illicit gains and therefore have become an object of anti-corruption law.⁴⁸⁷ Effectively, the introduction and particular definition of illicit gains mean that the law can now apply to cases where gifts provoke a significant and unjustified change in wealth. This was the case in the previously discussed MP bribery scandal of 2011, where the PM escaped justice because Law No. 31 of 1970 did not criminalise the fact of a sufficient increase in wealth. Furthermore, the term 'illicit gains' does not specify a threshold or establish criteria for being defined as an 'unjustified increase in wealth,' leaving the definition broad and subject to interpretation by KACA, which is responsible for reviewing public servants' accounts. It is argued in the literature that this definition is indicative of a zero-tolerance policy on corruption crimes.⁴⁸⁸

Indeed, whereas UNCAC outlaws at least 'significant' gains in wealth, the Kuwaiti law does not specify any limits.⁴⁸⁹ The court and KACA hold exclusive power to define the extent of what can or cannot be considered illicit gains, limited, however, to being exercised based on submitted accounts. From this point of view, the leeway left by the law allows the court and KACA room for corrupt, biased interpretation of the law, i.e., deciding what is an illicit gain and what is not. Such phrasing expands the applicability of the law, which was lacking in the previous legislation with the limitation of the law being only applicable to the accounts surveyed by KACA. Practically, however, defining corruption with a certain threshold of significance may focus the activities of KACA and other agencies who investigate corruption, such as the State Audit Bureau of Kuwait, on cases where national interests or welfare are compromised as a result of corrupt actions. It would have also been beneficial to delineate between grease payments, e.g., a small benefit for a service rendered at increased speed, and a large-scale public funds embezzlement. The issue of categorisation of corruption crimes by severity and punishment has not been effectively solved by either this law or any previous law. Therefore, the law may be flawed in a way that it leaves too much room for biased interpretation and persecution and does not differentiate between various corruption crimes in terms of severity.

Another notable challenge of the 2016 law is the definition of public servants in Article 2. It specifically includes all members of parliament and the PM, public servants occupying managerial positions (i.e., executives and decision-makers), court members, judges, prosecutors, and the attorney general.⁴⁹⁰ Notably, any other public officials are exempt from the law, which can be considered as a limitation since any public servant may be engaged in corruption. Secondly, as noted by Al-Oumi, this definition is more narrow than suggested by UNCAC and it does not include close family members of public servants who, therefore, do not have to submit their accounts to be surveyed by KACA.⁴⁹¹ It can be indeed argued that this omission leaves room for corruption using accounts of relatives or those of lower-rank employees in the public service and makes it difficult to track funds to find proof of the criminal act.

Law No. 2 of 2016 and its Executive Regulation Decree No. 300 of 2016 also largely govern Kuwait's financial disclosure regime. These legal instruments provide a valuable legal tool towards improved

⁴⁸⁷ Article 1, Law No. 2 of 2016 on Establishing Anti-Corruption Authority and the Provisions on Disclosure of Assets and Liabilities

⁴⁸⁸ Al-Oumi, 'The Development of Laws in Kuwait to Combat Corruption' 208

⁴⁸⁹ UNCAC, Article 20

⁴⁹⁰ Article 2 of the Anti-Corruption Law No. 2 of 2016

⁴⁹¹ Al-Oumi, 'The Development of Laws in Kuwait to Combat Corruption' 208

transparency and preventing the unlawful enrichment of public officials. Part IV of the law captures a large spectrum of public officials, from the Prime Minister and ministers down to low-ranking civil servants, and it requires these officials to provide initial, periodic (every three years), and final declarations of conditions of their assets and liabilities before leaving office.⁴⁹² This tiered structure reflects international best practices regarding frequency of disclosures, as well as public disclosures by officials generally and particularly with Articles 8(5) and 52 of the UNCAC, which gives credence to declarations of assets systems that promote the accountability of officials and their identification of conflicts of interest.⁴⁹³

However, despite the apparent and legally arduous level of compliance enshrined in the regulations, certain systemic flaws persist. Firstly, the maximum penalties for non-disclosure (sometimes non-compliance) of three years imprisonment, and any financial penalties of between 3,000 and 30,000 Kuwaiti dinars, seem robust and compliant with UNCAC Article 8(5). Yet, without enforcement the law is only symbolic. There do not appear to have been any prosecutions relative to non-disclosure in the public domain, while consistency and transparency over compliance monitoring are critical to assessing whether enforcement is characterised by more than symbolism.⁴⁹⁴ Given that KACA lacks the power to conduct financial audits of officials who do not make financial disclosures and is also reliant on whistle-blower reporting, one must question how much preventative action this legal regime can exert.

By comparison, some alternatives in jurisdictions such as Georgia or Indonesia either do this covertly in random compliance checks or facilitate public access to disclosure information, which has created additional layers of oversight if not enforcement.⁴⁹⁵ In Kuwait, however, KACA does not have these powers. The limitation is compounded by the omitted disclosures of close relatives and especially related politically exposed persons (PEPs), which are often part of the majority of corruption schemes and applications but are not captured by disclosing public officials themselves.⁴⁹⁶

LEGAL DEVELOPMENT

When considered in the context of the existing Kuwaiti legal framework on corruption, one could observe that Law No. 2 of 2016 emerges as an effort to address the gaps of the previous laws. Specifically, the law offered more practical means of establishing the fact of corruption to complement the previous effort taken under Law No. 1 of 1993. Thus, where Law No. 1 established a transaction monitoring system and created a legal basis for international cooperation ensuring overseas conviction and seizure, Law No. 2 of 2016 goes several steps further to establish an authority to track public servants' own transactions as well. It further amended the flaw of Law No. 31 of 1970, manifested in a rigid list of criminalised offenses, which in certain cases were inapplicable, therefore allowing perpetrators to escape justice. By defining the concept of illicit gains more broadly and empowering KACA to establish the facts of such gains, Law No. 2 widened the application of anti-corruption law, albeit for a more limited number of eligible public servants. Thus, by

⁴⁹² Part IV of the Anti-Corruption Law No. 2 of 2016

⁴⁹³ UNCAC, art, 8(5), 52.

⁴⁹⁴ Fasil Al-Kandery, 'Kuwait and Arab Legislators' Philosophy in Fighting Corruption' (2013) 1(4) *Journal of Kuwait International Law School* 399

⁴⁹⁵ *Ibid.*, 401

⁴⁹⁶ Gustavo A Vargas and David Schlutz, 'Opening Public Officials' Coffers: A Quantitative Analysis of the Impact of Financial Disclosure Regulation on National Corruption Levels' (2016) 22 *European Journal on Criminal Policy and Research* 439.

introducing Law No. 2 of 2016, Kuwaiti legislators established continuity with earlier efforts on anti-corruption.

Furthermore, Law No. 2 adds a new perspective to the issue of corruption compared to previously existing laws. Whereas Law No. 16 of 1960 and Law No. 31 of 1970 were pursuing a purely punitive perspective on corruption, attempting to criminalise many activities falling under this category, Law No. 2 of 2016 introduces several new methods of tackling corruption, which can be regarded as 'positive'.⁴⁹⁷ Specifically, following the path of Law No. 1 of 1993, it enhances transparency initiatives, forcing public servants to disclose their earnings, allowing better scrutiny of their gains. Secondly, it initiates a broader institutional reform, introducing a new oversight body. Finally, it initialises civil society engagement by giving KACA the power to collaborate with the media to generate public awareness of corruption. Thus, Law No. 2 is a critical step towards improving the scope and types of measures against corruption by focusing on non-criminal efforts as well, which underlines its impact on the development of the legal framework.

Law No. 2 can also be seen as an effort to adhere to international best practices in tackling corruption. For example, the concept of illicit gains, the criminalisation of a public servant's increase in wealth, and the disclosure mandate draw influence from UNCAC and British law. It is, in fact, stated in the text of the law that KACA's establishment is in line with Kuwait's recognition of international conventions on fighting corruption, including UNCAC.⁴⁹⁸ The process of globalisation and alignment between legal regimes in this sphere appears to be a natural development persisting due to the growing ties of Kuwait to the international community, as noted by Sherman.⁴⁹⁹ However, the development of Law No. 2 could hardly be seen as imposed but rather dictated by the need to make public spending, contract relationships, and the allocation of compensations fair and transparent for the benefit of the nation. This is evident in the above-noted development of Law No. 2 of 2016, as well as in its grounding in the problems of the national public sphere. These problems stem from the government's historical discretion in the allocation and spending of oil revenues, accrued directly to the Treasury – a practice that formed under the premise of oil revenues being independent from a large part of the public.⁵⁰⁰ Hence, the need for transparency and scrutiny has not always been present. However, as the Kuwaiti economy diversifies and becomes more entangled with international bodies, such a need emerges, dictating the general 'positive' vector of the development of anti-corruption law, which is illustrated by Law No. 2, which aimed to expand anti-corruption efforts.

5.4 THE ROLE OF ANTI-CORRUPTION AGENCIES IN INVESTIGATING AND PROSECUTING CORRUPTION IN KUWAIT

5.4.1. KUWAITI ANTI-CORRUPTION AGENCY (KACA)

KACA stands out as the most crucial anti-corruption agency in Kuwait that investigates and prosecutes corruption. To evaluate its role in these processes, this research considers factors such as legislative mandate and organisational independence, capacity, preventive measures, awareness, and transparency. In terms of its legislative mandate, KACA's role is clearly established and its main duties are well-formulated

⁴⁹⁷ United Nations Office for Drug Control and Crime Prevention, n (207)

⁴⁹⁸ Part II, Article 4 of the Anti-Corruption Law No. 2 of 2016

⁴⁹⁹ Sharman, 'Power and Discourse in Policy Diffusion' 64

⁵⁰⁰ Al-Rashidi, n (129) 218.

with several minor issues persisting. The legal basis of KACA is the Law No. 2 of 2016 (Part II), which enabled the foundation of the organisation. The law delineates an exhaustive list of activities that KACA is charged with, such as its organisation's aims, functions and competencies, organisational leadership, governance and structure, and the mechanisms of its interaction with the community.⁵⁰¹ Specifically, its role in prosecution is limited to following up on the decisions of competent bodies, such as courts of law, in order to apprehend stolen funds and take action on local corruption reports. Importantly, KACA assists prosecution by identifying illicit enrichment offences (IEOs), albeit based on reports that are provided by whistleblowers.⁵⁰²

LEGISLATIVE MANDATE, FUNCTIONS AND ORGANISATIONAL POWERS (CAPACITY)

The organisational structure and formation of KACA's leadership is determined by Law No. 2 (Part II, see Chapters 1, 2, 3). According to the Law, KACA is managed by the board of Trustees presided over by the Chairman. The Board Members, vice Chairman and Chairmen are appointed by the Minister of Justice.⁵⁰³ Members of the Board have to satisfy the following criteria: (1) be a Kuwaiti national, (2) be older than 40 years, (3) have a higher education diploma, and (4) have a good reputation and not be sentenced under corruption articles or articles involving breach of honour or integrity. Each member serves a term of 4 years which is renewable up to a maximum of 8 years.⁵⁰⁴ The executive branch of the KACA is governed by a Secretary-General and Assistant Secretaries appointed by the Chairman to supervise technical, financial, and administrative tasks. Executives are also selected by the Board based on expertise, experience and criminal track record. Importantly, executive personnel shall not be selected out of direct kin (up to second degree relations).⁵⁰⁵ The organisation is supervised by the Minister of Justice.

From the analysis of the law, it appears that KACA is entrusted with a broad range of tasks, enabling it to play a central role not only in investigations and prosecution but also in developing anti-corruption efforts. Furthermore, KACA's functionality reflects the need for a centralised body to explore corruption, similar to other anti-corruption agencies such as the Serious Fraud Office in the UK and the Central Anticorruption Bureau in Poland.⁵⁰⁶ At the same time, the Kuwaiti agency has a comparatively broader scope than the aforementioned organisations, as it also features a research and development function. In a sense, too much functionality could spread KACA's resources too thin, arguably undermining its effectiveness in investigating corruption. Effectiveness of investigation is an especially valid concern considering the fact that the investigatory powers of KACA remain preliminary and mostly based on whistleblowing reports that are submitted to the agency and accounts submitted under financial disclosure rules.⁵⁰⁷ Indeed, as discussed earlier, sufficient evidence for convictions in IEOs is rarely obtained, partly because comprehensive audits and full-scale investigations are not included in KACA's role.⁵⁰⁸ Further academic

⁵⁰¹ Part II, Article 4 of the Anti-Corruption Law No. 2 of 2016

⁵⁰² Ibid.

⁵⁰³ Part II, Article 3 of the Anti-Corruption Law No. 2 of 2016

⁵⁰⁴ Part II, Article 5 of the Anti-Corruption Law No. 2 of 2016

⁵⁰⁵ Part II, Article 12 of the Anti-Corruption Law No. 2 of 2016

⁵⁰⁶ Al-Rashidi 'Proceeds of Corruption Crime' 219

⁵⁰⁷ Part II, Article 4 of the Anti-Corruption Law No. 2 of 2016.

⁵⁰⁸ Alqattan, 'The Shortcomings of Anti-Corruption Measures: Kuwait's Financial Disclosure System' 669

scrutiny of KACA's role clarity is yet to emerge, as the literature appears to be more focused on evaluating the outcomes of anti-corruption measures in Kuwait.

In terms of its capacity to combat corruption, KACA functions as a preliminary investigative and research agency rather than a judiciary or enforcement entity, defining its role as supportive to other branches of the government. Specifically, the investigative powers of KACA are triggered by Article 5, section 2 of the Law no. 2 of 2016 which reads:

“Receiving and studying the reports, complaints and information submitted to it concerning the corruption offences, and when ascertained that they constitute a suspicion of a crime, such reports shall be referred to the competent investigative body”⁵⁰⁹

The competent investigative body here refers to the Public Prosecution Office (PPO), an agency mandated by the constitution to: conduct penal charges on behalf of society; supervise the judicial police; and enforce penal laws, the pursuit of offenders, and the execution of judgements.⁵¹⁰ The PPO itself is answerable to the Ministry of Justice, as stipulated in Emiri Decree no. 2 of 16th of February 1978.⁵¹¹

Section 3 further states that KACA must receive “the statements of Assets & Liabilities” and only then to form “committees to examine such statements.”⁵¹² This means that the agency has to rely on external complaints and file submissions to initiate its investigations and it does not have the discretionary powers to initiate a review or audit of another agency or individual. There are no limitations on the ability of KACA to scrutinise the reports, meaning that once submitted to the agency, it can technically launch investigations into any public body in any economic sector. However, Article 27, which relies on Law no. 88 of 1995 Concerning the Trial of Ministers, makes investigations of ministers inaccessible to KACA, as it has to transfer these cases to the PPO (under the Minister of Justice’s jurisdiction). Law no. 88 itself is argued by Dr. Muhammad Al-Fili to protect ministers from accusations of corruption, as there is no organisation independent enough to prosecute ministerial corruption.⁵¹³ Thus, while technically there are no limitations in terms of areas of prosecution except for ministerial corruption, KACA is powerless to expose corruption at the highest levels.

By facilitating the submission and review of public officials' and organisations' accounts, KACA enables law enforcement and prosecution functions by providing critical evidence for use in courts. According to the latest KACA annual report, it has received reports on over 300 cases of corruption, with 40 currently under further review by the prosecution.⁵¹⁴ Hence, although KACA lacks the authority to enforce anti-corruption laws and regulations within Kuwait, it possesses the capability to access, review, and communicate concerns to other competent agencies regarding potential instances of corruption. Thus, it can be argued

⁵⁰⁹ Section 2, Article 5 of the Anti-Corruption Law No.2 of 2016.

⁵¹⁰ Article 167, Constitution of Kuwait 1992

⁵¹¹ Article 2 of the Amiri Decree no. 2, 8th of Rabi' al-Awwal 1398 AH corresponding to the 16th of February 1978.

⁵¹² Section 3, Article 5 of the Anti-Corruption Law No.2 of 2016.

⁵¹³ Arab Times, 'Laws on prosecuting ministers rather protect them from accountability, assert legal experts' (*Arab Times*, 17 December 2019) <<https://www.arabtimesonline.com/news/laws-on-prosecuting-ministers-rather-protect-them-from-accountability-assert-legal-experts>> accessed 30 August 2024.

⁵¹⁴ Nazaha, 'Annual report 2020/2021' (2021)

that KACA's ability to investigate corruption depends heavily on the transparency in different spheres of government activity. This issue is discussed in more detail below in section 5.7.

In terms of resources, the capacity of KACA can be deemed sufficient, as it currently employs around 1,000 personnel and can accept 99.5% of public records eligible for disclosure and conduct a basic verification. This attests to its crucial function as a key national anti-corruption agent well-equipped to fulfil its obligations.⁵¹⁵ Still, despite these achievements and its scope of coverage, the capacity of KACA is yet to be developed further, as disclosure remains a key issue in the fight against corruption. Currently, KACA is unable to comprehensively review all submitted accounts, with only 27% being verified for internal, cross-year, and cross-source consistency.⁵¹⁶ In essence, the constrained ability of KACA to detect corruption hinders its effectiveness in facilitating thorough fiscal audits. Furthermore, according to research by Alheimer, who explored attitudes towards KACA among the public members of Kuwait, 46.9% and 32.3% of respondents indicated that KACA could not provide a timely response or was unable to apprehend perpetrators, respectively.⁵¹⁷ These issues pose challenges to the capacity of the KACA agency to combat corruption and consequently they undermine its role as the central anti-corruption agency of Kuwait, as designated by the government.

Most recently, Law No. 2 of 2016 establishing and regulating KACA's authority has been modified by Decree Law No. 69 of 2025, which aims to increase KACA's independence, authority, and responsibilities. The reforms planned for 2025 deal with a number of issues persisting with the law. In particular, the Decree Law introduces a board of directors to KACA. The board will consist of five members appointed by Amiri decree on the recommendation of the Minister of Justice. This marks a change to the organisation's structure, promoting its independence. Another key development is that the reform gives KACA the authority to challenge prosecutors' decision to drop corruption cases, which on paper improves the accountability in the justice system. Furthermore, KACA is now mandated to protect whistleblowers' identity—except with written consent for disclosure to authorised investigation bodies (e.g., the PPO). Furthermore, changes such as electronic asset listing and including cooperative societies in the law advance KACA's work and reach new areas, but their impact will be determined by how consistently they are put into practice and by the government's respect for the agency's independence.

ORGANISATIONAL INDEPENDENCE AND ACCOUNTABILITY

The appointment process inherently ties KACA's leadership to Kuwait's executive branch, potentially compromising its autonomy. Although the selection criteria for board members aim to ensure qualified and reputable leadership, the fact that these appointments are made by a political figure could influence the organisation's impartiality. The limitation placed on the terms served provides some degree of continuity in organisational policy but also presents a risk of entrenchment and reduced dynamism in leadership, especially in light of how the members and chair are appointed.

⁵¹⁵ Nazaha, 'Annual report 2022/2023' (2023)

⁵¹⁶ Alqattan, 'The Shortcomings of Anti-Corruption Measures: Kuwait's Financial Disclosure System' 671

⁵¹⁷ Rashed Alheimer, 'Exploring the Attitudes of Kuwait's Residents Toward the Role of Corruption and Anti-Corruption Entities (Nazaha) in Kuwait' [2023] *Public Integrity* 1.

KACA is funded through the general state budget, making it susceptible to political fluctuations and potential interference from both the legislative (Parliament) and executive branches.⁵¹⁸ Although KACA is supposed to be an independent organisation, because it depends entirely on the state for funding, there are concerns about its actual financial independence and it might not always be able to function freely and effectively.

The appointment system is also somewhat flawed. While the prohibition on appointing executives with direct kinship to the Chairman is a positive step towards preventing nepotism, the overall influence of the Chairman, who is also appointed by the Minister of Justice, could still lead to biased executive appointments.⁵¹⁹ To a degree, the selection criteria for candidates alleviate this bias but the criteria themselves remain somewhat problematic. The 5th criterion focuses on individuals not being "sentenced" under certain articles, which implies only a formal conviction, excluding other relevant factors such as ongoing investigations, past accusations, or out-of-court settlements. These issues do not result in a formal sentence yet still could demonstrate questionable integrity. A sole reliance on formal convictions would thus allow individuals with problematic backgrounds to hold positions of authority. Finally, the law on the anti-corruption authority has no instruments of public control and supervision, which may also undermine its integrity and accountability, thereby limiting KACA's potential for being an effective anti-corruption body.⁵²⁰ While it is true that KACA shares annual reports and some basic statistics via its website, detailed information about investigations or its decision-making process is not transparent.

One more important development introduced by Decree Law no. 69 of 2025 concerns KACA's accountability. It establishes that the Public Prosecution now has exclusive jurisdiction to investigate KACA employees, with prior notification of all procedures to the Authority's Board. This ensures that staff are protected while carrying out their official duties. Effectively, this means that KACA's accountability is now enhanced to a degree, yet it also does not address the challenge of the public's ability to monitor the investigation process. If the Public Prosecution is not truly independent or is believed to favour the executive, this might make people doubt the fairness of such investigations, since any investigation of KACA's activities remains behind closed doors. The decree also does not specify the legal threshold for initiating investigations, which ushers in the risk of procedural inconsistency or abuse of discretion by KACA's board or the Prosecution, as the judiciary is not explicitly involved.

PREVENTIVE MEASURES AND PUBLIC AWARENESS

In terms of preventive measures, KACA's role appears paramount as it establishes the foundation for public accountability and transparency. By conducting fiscal audits of the submitted data and ensuring the timely submission of accounts eligible for disclosure, KACA contributes to corruption prevention, as regular scrutiny of accounts and movements of public funds is considered an effective measure to reduce financial corruption and Illicit Enrichment Offences (IEOs).⁵²¹ However, transparency standards in certain areas of Kuwaiti public finance remain limited, as much of public procurement, assets, and liabilities in industries of

⁵¹⁸ Article 18, Anti-Corruption Law No. 2 of 2016.

⁵¹⁹ Alan Doig, 'Good Government and Sustainable Anti-Corruption Strategies: A Role for Independent Anti-Corruption Agencies?' (1995) 15 *Public Administration and Development* 151.

⁵²⁰ Alan Doig and David Norris, 'Improving Anti-corruption Agencies as Organisations' (2012) 19 *Journal of Financial Crime* 255.

⁵²¹ Al-Rashidi, n (129) 322

strategic importance (e.g., oil and gas) remain confidential. Furthermore, KACA is obligated under Law No. 2 of 2016 to keep all records it has access to confidential, preventing citizens and non-governmental organisations (NGOs) from scrutinising public accounts.⁵²² This implies that, compared to more advanced accountability systems such as those in the UK where public procurement, contracts, and financial statements are open, KACA's role is somewhat constrained by the obligation to withhold corruption investigation information from further scrutiny. In that sense, the preventive function of KACA remains impeded because enablers, such as systemic and wide access to data, as well as continuous and comprehensive reviews of assets, liabilities, and transactions, are not fully present. The limited transparency and gatekeeping of data are particularly significant as KACA's capacity to conduct a full comprehensive audit is further restricted by the law.

KACA's role in investigating and prosecuting corruption appears pivotal, as it has become one of the first organisations to systematically increase public awareness of and participation in fighting corruption in Kuwait. Charged with the publication of corruption statistics, networking with public media and communities, facilitating whistleblowing, and offering protection to whistleblowers are key functions that allow KACA to meaningfully contribute to combating corruption. Whistleblowing facilitation and protection are especially paramount, as KACA is the agency responsible for implementing the provisions of Law No. 2 of 2016 (Part V). KACA's engagement with the public and media further underscores its critical role in investigations. For example, it has promoted standards of ethical conduct among public servants, offered advice to departments to encourage whistleblowing, and shared corruption statistics with the media.⁵²³

Since whistleblowing is evidenced to assist in the process of investigating and prosecuting corruption, KACA indirectly contributes to the fight against corruption.⁵²⁴ In this respect, KACA is a public body where preliminary investigations take place so that the materials of that investigation can then be transferred to the criminal prosecution agency represented by the PPD. Thus, the relationship between the two organisations is hierarchical, and KACA, although independent, serves as a first-instance body for corruption investigations. The difference between the agencies is that KACA cannot initiate an investigation, relying only on submitted financial accounts and whistleblowers' reports, while the PPD can initiate investigations and take a corruption case to court.

TRANSPARENCY

KACA publishes annual reports of its activities in a statistics format, and these are available to every citizen and non-citizen from an organisation's website. Due to this corporate-like transparency, one can analyse some of its activities. It is indicated that in the period of 2016 to 2020, KACA received and reviewed 300 reports of corruption and filed 40 cases for prosecution; 33 of those cases are currently being prosecuted, and 7 have already resulted in convictions.⁵²⁵ The 300 reports is a number that reflects only the substantive

⁵²² Part II, Article 4 of the Anti-Corruption Law No. 2 of 2016

⁵²³ Khalid Al Hamrani, 'Float Like a Butterfly, Sting Like a Bee: Kuwait's National Anti-Corruption Strategy to Take the Fight to Graft' (*Al Tamimi & Company*, March 2019) <<https://www.tamimi.com/law-update-articles/float-like-a-butterfly-sting-like-a-bee-kuwaits-national-anti-corruption-strategy-to-take-the-fight-to-graft/>> accessed 6 December 2023.

⁵²⁴ Hossein Gholami and Habeeb Abdulrauf Salihu, 'Combating Corruption in Nigeria: The Emergence of Whistleblowing Policy' (2019) 26 *Journal of Financial Crime* 131.

⁵²⁵ Nawara Fattahova, 'Nazaha Received 300+ Corruption Reports, Referred 40 to Prosecution' (*kuwaittimes*, 19 September 2020) <<https://kuwaittimes.com/nazaha-received-300-corruption-reports-referred-40-to-prosecution/>> accessed 6 December 2023.

reports that KACA's investigation deemed worthy of examining based on the criteria of sufficient evidence or reasonable suspicion of corrupt practices being reported. The rest of the reports submitted to KACA are stored on a temporary administrative complaints register.⁵²⁶ Therefore, for the same 4-year period, KACA processed 454 corruption-related complaints, which is a high number signifying KACA's success in working with the public and emphasising the need for whistleblowing and exposing corruption—more than half of the submitted reports were indeed classified as corruption. It is further notable that the prosecution was able to undertake 33 out of the 40 cases submitted in the same period, showing that KACA conducts high-quality preliminary investigations that allow it to take matters to the court. These numbers are comparable to the US corruption prosecution statistics when taking into account the sizes of the two countries.⁵²⁷

On the other hand, the number of convictions remains low. This low number may be attributed to the inability of the prosecution to find evidence of corruption in the reports submitted by KACA or their own investigations. In turn, the ability of the prosecution to find evidence is undermined by the flawed legislation that concerns disclosing financial liability and criminalising all forms of illicit gains. For instance, the 2011 case of corruption in the Kuwait Parliament involving 15 MPs demonstrates that deposits into accounts per se could not be considered illegal under the existing laws, or at least the prosecutions' interpretation of the laws did not apply to the case, hence the inability to convict individuals responsible for bribery.⁵²⁸ On the other hand, conviction rates are a dubious indicator of the effectiveness of anti-corruption laws or prosecution as one must consider lapses in prosecutory judgement and the fact that not every defendant is in fact rightly accused of corruption.⁵²⁹

Thus, it can be observed that KACA plays a critical role in the investigation and prosecution of corruption, which manifests through several facets of its activities. Firstly, its role has been clearly defined by Law No. 2 of 2016, although the breadth of functionality remains the subject of debate as it arguably impedes the effectiveness of KACA in relation to the investigation and prosecution of corruption. Secondly, although KACA is not able to provide a comprehensive review of public funds and accounts, it has been the first agency in Kuwait to facilitate such a review. Furthermore, KACA's critical role manifests in the prevention of corruption, as evidenced by its financial review of 99.5% of all disclosed accounts.⁵³⁰ KACA's contributions to the anti-corruption effort, however, seem to be impeded by the inability of the organisation to conduct a comprehensive review of these accounts or to initiate self-led investigations, as its powers are triggered by external reports. The transparency and accountability role is again undermined by the lack of public and NGO scrutiny, appointment-based leadership, and the flaws of account disclosure regulations. Taken together, these indicate that the design of the Kuwaiti KACA' reflects limited autonomy and capacity, which negatively affects its overall robustness as a key institution to reduce corruption domestically.

5.4.2 KUWAIT FINANCIAL INTELLIGENCE UNIT (FIU)

⁵²⁶ Nazaha, 'Annual report 2022/2023' (2023)

⁵²⁷ US Department of Justice, 'Fraud Section Year In Review | 2022' (2022) <<https://www.justice.gov/criminal-fraud/file/1568606/download>> accessed 25 January 2024.

⁵²⁸ Azoulay and Beaugrand, 'Limits of Political Clientelism: Elites' Struggles in Kuwait Fragmenting Politics' 23

⁵²⁹ Ronald F Wright, Kay L Levine and Russell M Gold, *The Oxford Handbook of Prosecutors and Prosecution* (Oxford University Press 2021).

⁵³⁰ Nazaha, 'Annual report 2022/2023' (2023)

LEGISLATIVE MANDATE, FUNCTIONS, AND CAPACITY

Kuwait's Financial Intelligence Unit (KFIU), draws its powers primarily from Law No. 106 of 2013 and Article 7 of the Ministerial Decree No. 1532/2013. Under Article 16 of Law No. 106/2013, the FIU is an independent unit that is tasked with receiving, analysing, and disseminating information on suspected money laundering and terrorism financing.⁵³¹ The FIU also coordinates with national entities, such as the Central Bank of Kuwait, the Public Prosecution Department, KACA, and international bodies, such as the FATF.

The FIU may take action under its legal authority and may obtain and also analyse suspicious transaction reports (STRs) submitted by financial and certain other non-financial institutions (real estate brokers, dealers in precious metals, etc.).⁵³² According to its latest 2024 annual report, the KFIU has received 2,570 STRs of which 77% were from banks and majority of the rest were from currency exchange companies.⁵³³ Of those, the KFIU referred 101 cases to the PPD, which highlights its role and function as an intelligence collection agency rather than a prosecutorial agency, similar to KACA.⁵³⁴ The KFIU is also able to request information from any reporting body or government authority when necessary and access financial data without court authority (or through exceptions relating to AML/CTF), which reinforces this investigatory role.⁵³⁵

These functions make the KFIU an appropriate fit in the global best practice context, specifically with regard to FATF Recommendations 20 and 29, which highlight the role of FIUs in the reception, analysis, and dissemination of financial intelligence.⁵³⁶ The KFIU's ability to acquire financial information without a court application, while being a valuable feature for expediency, is likely to give rise to due process concerns in the absence of significant judicial oversight, as noted in global critiques of intelligence powers lacking restraint. Relatedly, while the KFIU's referral of over 100 cases reflects proactive engagement, it is unclear how many of those resulted in prosecutions or convictions based on the referrals, since data on corruption cases and judicial reasoning are not routinely published in Kuwait. Therefore, while the KFIU's statutory powers are seen as broadly appropriate and relevant, their effectiveness depends on diligent follow-up action from prosecuting authorities and the will of the broader institutional system to actively enforce them.

In terms of capacity, the FIU has recently strengthened its technical resources after the FATF assessment and recommendations in 2019.⁵³⁷ In the report, Kuwait was urged to strengthen strategic analysis and inter-agency coordination. Specifically, in following the FATF recommendations, the FIU has adopted an online STR reporting platform and improved its ability to cross check financial reporting with partner institutions (e.g., banks).⁵³⁸ Nevertheless, the FIU still lacks the ability to enforce compliance on Designated Non-Financial Businesses and Professions (DNFBPs) where awareness and regulatory compliance remain

⁵³¹ Law No. 106/2013, art. 16

⁵³² Law No. 106/2013, art. 19

⁵³³ KFIU, 'KFIU Annual Report 2023/2024' (2024) <<https://www.kwfiu.gov.kw/Webpage/PUBLICATIONS/Filedownload/1092?DocumentType=Publication>> accessed 26 June 2025.

⁵³⁴ Ibid.

⁵³⁵ Law No. 106/2013, Anti-Money Laundering and Combating The Financing of Terrorism Law, art. 19

⁵³⁶ FATF, 'The FATF Recommendations to Combat Money Laundering and Terrorist Financing' (2012) <<https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Fatf-recommendations.html>> accessed 26 June 2025.

⁵³⁷ FATF, 'Kuwait's Measures to Combat Money Laundering and Terrorist Financing' (2019) <<https://www.fatf-gafi.org/en/publications/Mutualevaluations/MER-Kuwait-2024.html>> accessed 26 June 2025.

⁵³⁸ Ibid.

low.⁵³⁹ Crucially, while the FIU has legislative authority to use intelligence and extensive coordination tools, its actual ability to persistently challenge financial corruption is critically contingent upon the impact of prosecutorial follow-up action, political will, and institutional independence.

Despite the ongoing modernisation, currently the KFIU continues to rely on manual procedures for its analysis and data management. The FATF's examination and Kuwaiti Ministry of Finance evaluations noted that the development of automated systems has been slow and is standing in the way of sharing data in real time, or conducting in-depth analytical assessments on some of the most complicated corruption networks that have cross-border elements.⁵⁴⁰ This circumstance may not allow the KFIU to easily pick up on or detect advanced layering and integration schemes associated with money laundering related to corruption, owing to the limited data analytical systems at their disposal.

ORGANISATIONAL INDEPENDENCE AND ACCOUNTABILITY

Under Article 16 of Law No. 106/2013, the KFIU is established as an independent unit.⁵⁴¹ This article states that the KFIU operates independently in terms of its analysis and operations and that it reports to the Minister of Finance. Overall, it is consistent with the report of FATF, which states that the KFIU is operationally independent. With that said, this independence is mainly functional, rather than institutional. The KFIU is administratively connected to the Ministry of Finance, as its leaders are appointed through executive decision making in the absence of parliamentary oversight or formal protection for the KFIU's autonomy.⁵⁴² On paper, the KFIU's institutional design exposes the unit to indirect political influence, especially on matters that involve politically exposed persons linked to corruption, and it is not aligned with best practices articulated by the IMF, such as independent budgetary responsibility, merit-based appointments, and having a pluralistic governance structure, to protect the neutrality of the FIU.

There are also limits on the accountability framework for the KFIU. The annual report that KFIU publishes lacks disaggregated data and outcomes on case referrals, convictions secured, or coordination with institutions (other than references to institutions participating in the agencies acting on STRs). In its report dated 2024, it reported receiving 2,570 STRs, with 101 referred to the PPD, but there is no indication of whether the PPD took further action.⁵⁴³ The lack of a publicly available review framework not only reduces confidence in the KFIU, but also inhibits the ability of the public and institutional actors to evaluate the KFIU's efficacy. FATF reports strongly call for public transparency and accountability standards in reporting and tracking outcomes, and are fundamental for maintaining the unit's legitimacy in the eyes of the public and other stakeholders.

Accountability from a KFIU perspective means accounting to the Minister of Finance, yet it does not include independent scrutiny by civil society or parliamentarians, which limits pluralistic oversight, and contradicts OECD guidance on the financial oversight of institutions.⁵⁴⁴ This guidance advocates including substantive

⁵³⁹ Ibid.

⁵⁴⁰ Ibid.

⁵⁴¹ Law No. 106/2013, Anti-Money Laundering and Combating The Financing of Terrorism Law, art. 16.

⁵⁴² Ibid.

⁵⁴³ KFIU n (533).

⁵⁴⁴ OECD, 'Recommendation of the Council on a Policy Framework for Effective and Efficient Financial Regulation' (*OECD Legal Instruments*, 2009) <<https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0377>> accessed 26 June 2025.

independent legal accountability (such as the involvement of a judiciary) and reporting to a parliament.⁵⁴⁵ Compared to some international peers, many FIUs (e.g. UK and France), have independent systems of oversight, and make regular reports of public interest detailing financial intelligence data and follow-ups.⁵⁴⁶ The lack of such systems and proper detailed reporting makes the KFIU susceptible to perceived and probably actual executive interference, impacting the FIU in terms of the anti-corruption mandate to act independently.

On the other hand, practice indicates that the KFIU's ties to the executive through the Minister of Finance prove useful as they help the organisation to retain and increase its relevance in the fight against corruption. Ministerial oversight does not automatically mean that the minister will intervene in individual KFIU cases or analyses, but it indicates that the organisation as a whole is accountable to the leadership of the financial sector of the government. Alongside the associated risks of high-profile corruption case interference, such ties help to ensure that the KFIU is in line with national priorities and gives the Minister/Cabinet a chance to support it (e.g. addressing any needs, or promoting legal changes). For example, in July 2020, when there was an upsurge in money-laundering cases, the Finance Minister (Barrak Al-Shitan) publicly announced that the time was right to “enhance and activate the role of the FIU”.⁵⁴⁷ He subsequently created a committee charged with reviewing the AML law and powers of the FIU, to “raise the efficiency of the FIU and enhance its independence and strengthen its powers and tools”.⁵⁴⁸ Ultimately the committee’s aim is to amend legislation to increase the FIU’s independence and capacity, and this underscores the idea that ministerial accountability for the KFIU not only means hand-held control, but also a mechanism for lobbying and empowering the KFIU as an anti-corruption institution able to respond to any legislative voids. It therefore can be seen as an adaptive response: oversight highlights areas for improvement and creates a requirement to follow through, which in the end will ultimately strengthen the FIU’s capacity. Despite this, there is no evidence that the same level of patronage could not be achieved in the more independent form of institutional design where the KFIU is held accountable by the Kuwaiti National Assembly.

PREVENTIVE MEASURES AND PUBLIC AWARENESS

While the FIU does not have regulating functions, it plays a noteworthy role in prevention due to the FIU's statutory powers and through the National Committee. Under Article 17 of Law 106 of 2013, the FIU has a responsibility to identify high-risk countries (countries without appropriate controls or which carry high ML/TF risk) and implement counter-measures for high-risk countries.⁵⁴⁹ Regulators must ensure that banks and businesses adopt measures required by the FIU in relation to high-risk jurisdictions, including enhanced due diligence or prohibiting particular transactions with high-risk countries.⁵⁵⁰ In this respect, the FIU's statutory powers are a significant consideration when creating a national policy on prevention that responds to global risks. The FIU can also provide instructions or circulars to assist institutions with compliance, for

⁵⁴⁵ Ibid.

⁵⁴⁶ Waleed Alhosani, *Anti-Money Laundering: A Comparative and Critical Analysis of the UK and UAE's Financial Intelligence Units* (Springer 2016).

⁵⁴⁷ KUNA, 'The Minister of Social Affairs Discusses with the Head of the Financial Intelligence Unit the Joint Cooperation to Strengthen the Regulations Governing Non-Profit Organisations' (30 May 2025) <<https://www.kuna.net.kw/ArticleDetails.aspx?id=3233924&Language=ar>> accessed 6 July 2025.

⁵⁴⁸ Ibid.

⁵⁴⁹ Law 106 of 2013, Anti-Money Laundering and Combating The Financing of Terrorism Law, art. 17

⁵⁵⁰ Ibid.

example instructions on how to report STRs. The FIU coordinates with regulators to ensure that institutions have strong internal controls, including in relation to customer due diligence, record keeping, and screening systems.⁵⁵¹

The FIUs partnerships involve preventive monitoring in specific sectors. The charitable sector is a significant example: there is a significant charitable and philanthropic sector in Kuwait which is at risk of potential financing abuse. The FIU collaborates with the Ministry of Social Affairs (which has jurisdiction over charities and NGOs) to ensure that underlying controls are in place. Meetings with the Minister of Social Affairs have resulted in an agreement to "continue cooperation and integration with the FIU to provide protections for charitable work from being suspicious or violations," and recognition that partnerships are essential to prevent the unwarranted utilisation of charitable funds.⁵⁵² The ability to achieve agreed-upon actions such as enhanced scrutiny and overview of donations, or sharing intelligence or due diligence was facilitated through the Minister of Social Affairs.⁵⁵³ In addition to partnering with charities, the FIU has partnerships with KACA. FIU and KACA exchange intelligence on the financial activities of public officials, which arguably has the potential to dissuade public officials from engaging in unexplained wealth accumulation, as any sign of unusual or unjustifiable activities are likely to be investigated by the FIU, which is enabled through its ability to pull financial data on request.⁵⁵⁴ However, without information from the bank, the FIU is unlikely to look for irregularities on its own unless there is targeted financial surveillance of some personas in the public sector, because the FIU's role as mandated by the law is again reliant on information from competent authorities.⁵⁵⁵

As for other partnerships in the sphere of prevention, the FIU is in touch with law enforcement in the Ministry of Interior. In instances where new techniques for money laundering become apparent (using online platforms and technologies) the FIU can provide information to the MOI and ask them to apply preventative scrutiny, even before a crime is potentially detected. Recently, the FIU worked with the MOI on virtual assets, and the Kuwaiti authorities issued procedures for responding to virtual assets in a preventative manner, whereas the FIU engaged in awareness building by circulating the requirements on its website to encourage reporting entities to be cautious about any related crypto asset risks.⁵⁵⁶

TRANSPARENCY

As outlined, the FIU publishes an Annual Report that is distributed to the Minister of Finance and the Cabinet of Ministers. Although not every item from the FIU is made available publicly, some of the information from those reports is released or reported in the media. In fact, Kuwaiti newspapers obtained and published highlights from the Ninth Annual Report (April 2023–March 2024) of the FIU.⁵⁵⁷ The highlights indicated the number of STRs, sectoral division of the STRs, number of referrals to prosecutors,

⁵⁵¹ Ibid. art. 19.

⁵⁵² Nasser Lafi Al-Otaibi, 'Cooperation between the Financial Investigations Department and CyNet to combat money laundering' (الكويتية الجديدة جريدة), 3 July 2025) <<https://www.aljarida.com/article/102370>> accessed 7 July 2025.

⁵⁵³ Ibid.

⁵⁵⁴ Ibid.

⁵⁵⁵ Magdalena Brewczyńska, 'Financial Intelligence Units: Reflections on the Applicable Data Protection Legal Framework' (2021) 43 Computer Law & Security Review 105612.

⁵⁵⁶ KUNA n (547).

⁵⁵⁷ Al Anbaa, 'Financial Investigations: 2,570 notifications of suspected money laundering in one year' (الكويتية الأنباء جريدة), 2025) <<https://www.alanba.com.kw/1294509>> accessed 7 July 2025.

and domestic and international cooperation requests received. By providing these statistics, the FIU gives the public an insight into its activities, its output, and performance. During the 2023/2024 time period, it became known that 61 case reports had been sent to Public Prosecution and 22 case reports sent to other agencies, thereby giving an indication of what level of actionable intelligence was being produced by the FIU.⁵⁵⁸ The FIU also disclosed that it made several hundred requests to other agencies for information related to STRs and responded to dozens of requests from foreign agencies, indicating a high level of activity and cooperation.⁵⁵⁹ This level of disclosure is fairly extensive and enables interested observers (including international evaluators as well as the general public) to interpret its effectiveness and workload. It also demonstrates Kuwait's willingness to address any financial crime, which can be helpful for international confidence (e.g., FATF assessments or foreign investors).

While the KFIU reports aggregate annual figures, it does not provide detailed information on the prosecution process, asset recovery, or the final outcomes of each cases referred to prosecution. Without follow-up information, stakeholders and the public are unable to determine whether the intelligence obtained and processed by the FIU leads to criminal action.⁵⁶⁰ Arabic reporting from the New Arab newspaper highlighted that in two high-profile money laundering cases against social media influencers, the public remained unaware of the ultimate legal outcomes, which undermined public trust in the FIU's efficiency.⁵⁶¹ This limited transparency is inconsistent with OECD guidance and best practice of FIUs in more advanced jurisdictions that report detailed information as part of annual and enforcement reports.

To summarise, the KFIU, through its legal responsibility to receive, request, analyse, and disseminate financial intelligence, is positioned as an essential component of the state's anti-corruption efforts. Its strengths include its ability to access a wide range of financial information without the need for a court order; established inter-agency cooperation with the Public Prosecution, KACA, and banks; and robust preventive measures. However, the KFIU's strengths are limited by considerable structural and organisational weaknesses. Its affiliation with the Ministry of Finance, combined with appointments made by the direct authority, undermines its independence, particularly in relation to serious, high-level corruption. Public transparency is somewhat limited by lack of detail on the outcomes of corruption cases and follow-up enforcement actions. Furthermore, the KFIU currently relies on manual processes for data analysis, which greatly limits the opportunities for more advanced analytical approaches. Finally, the KFIU's legal mandate demonstrates a reactive rather than proactive approach to corruption crimes due to dependence on STRs rather than continuous search for irregularities. Therefore, the KFIU's contribution to the anti-corruption effort in Kuwait remains substantial but undermined by systemic flaws and inefficiency in conduct and approach, which fail to meet international best practice as laid out by FATF and OECD.

5.5 ANTI-CORRUPTION EFFORTS IN PUBLIC CONTRACTS AND PROCUREMENT

⁵⁵⁸ Ibid.

⁵⁵⁹ Ibid.

⁵⁶⁰ Gloria Perez Torres, 'The Effectiveness of the International Anti-Corruption Legal Framework in the Context and Practice of Colombia' (2020) 27 *Journal of Financial Crime* 437.

⁵⁶¹ The New Arab Staff, 'Kuwaiti Social Media Influencers under Investigation for 'money Laundering'' (<https://www.newarab.com/>, 1 August 2020) <<https://www.newarab.com/news/kuwaiti-social-media-influencers-under-investigation-money-laundering>> accessed 7 July 2025.

Institutional design is also reflected in how procurement laws and decentralisation strategies are structured to promote accountability. The anti-corruption framework concerning public contracts and procurement encompasses several laws and policies guiding efforts in this sphere. Firstly, Law No. 25 of 1996 on the Disclosure of Commissions establishes the foundation for reviewing the details of contracts made by the government. Secondly, offenses related to public contracts and procurement are regulated by Law No. 31 of 1970, amending certain provisions of the Penal Code No. 16 of 1960, which defines and stipulates punishments for various corruption-related offenses committed by public officials. In turn, Law No. 1 of 1993 regulates criminal acts associated with the manipulation of public funds and establishes monitoring and disclosure mechanisms for government spending. Finally, the most recent addition, Law No. 2 of 2016, introduces further measures to ensure the adequate identification, prosecution, punishment, and prevention of corruption in various spheres, including public contracts. These measures constitute the core of punitive measures against corruption, indirectly regulating the sphere of public procurement through their broader application.

An assessment of the punitive facets within the legal framework reveals a nuanced picture marked by both strong attributes and inherent limitations. Among the key strengths one could note that the body of law on corruption contains a rather exhaustive list of criminal activities that can be witnessed in public contracts and procurement. This comprehensive legislative coverage is evident in the detailed and broad definitions of key legal concepts such as bribery, embezzlement, and illicit gain. It is noted by Alschuler that broad definitions of crimes such as bribery, including 'intent to influence' or similar formulas, undermine the anti-corruption efforts in the case of political actors.⁵⁶² However, when it comes to government contracts, any form of bribery can be considered undue influence on a public official. This means that broader and detailed definitions better serve to protect public contracts from corruption as they limit the possibility of perpetrators escaping justice.

Another crucial achievement of government efforts pertaining to the sphere of public contracts is rapid digitalisation and decentralisation. Since the establishment of Law No. 1 of 1993, reforms have been initiated to render public contracts more transparent, organised, and therefore resistant to corruption. Culminating in Law No. 49 of 2016, this effort is commended for several aspects. One of them is the transition to electronic procurement, which renders transactions involving public funds more transparent and establishes a foundation for easier fund tracing and supervision.⁵⁶³ Another aspect is the establishment of the Central Tenders Agency responsible for certain types of government contracts, such as direct purchases, which signifies a trend towards decentralisation. In turn, decentralisation is found to be linked to reducing corruption, as the connection between these two factors has been firmly established and explained by factors such as enhanced accountability, competition, and competence.⁵⁶⁴

⁵⁶² Albert W Alschuler, 'Criminal Corruption: Why Broad Definitions of Bribery Make Things Worse' (2015) 84 *Fordham Law Review* 463.

⁵⁶³ Hind Bassaj, 'Public Procurement & Government Contracts 2023 - Kuwait' (*Chambers and Partners*, 11 April 2023) <<https://practiceguides.chambers.com/practice-guides/public-procurement-government-contracts-2023/kuwait/trends-and-developments>> accessed 4 December 2023.

⁵⁶⁴ Olga Chiappinelli, 'Decentralization and Public Procurement Performance: New Evidence from Italy' (2020) 58 *Economic Inquiry* 856.

Another strength of the Kuwaiti framework stems from the legal provisions embedded in Law No. 31 of 1970, Law No. 1 of 1993, and Law No. 2 of 2016, which aimed to provide instruments for confiscation and forfeiture both domestically and abroad. The efficacy of these measures was demonstrated in the Kuwait Supreme Court case number 4/2023.⁵⁶⁵ In this case, four public officials were charged with accepting bribes from a foreign partner to secure a public contract with the State of Kuwait. Thanks to the aforementioned laws, the prosecution was able to seize the accounts of the accused and sentence them for up to seven years. Prior to 1993, convictions in the sphere of public contract were a rarity, as there were no mechanisms to seize and scrutinize the funds of the defendants, leading to a lack of sufficient evidence for conviction.⁵⁶⁶ Still, in some cases, evidence was not still sufficient for convictions, which resulted in poor conviction rates and an overall limited success for the anti-corruption efforts.

Although it has strengths, there are certain limitations to the present framework. Firstly, despite clearly defined terms and formulas, the legal framework remains insufficient to secure convictions effectively in certain cases. Specifically, the prosecution seems to lack the means to investigate cases of embezzlement, bribery, and other instances of corruption, even in the wake of the establishment of KACA. An illustrative example is the case of the former electricity minister of Kuwait, suspected of embezzling US\$790 million of army contract funds. He and seven other ministers were acquitted due to a lack of evidence.⁵⁶⁷ This outcome suggests that the prosecution was unable to present a compelling case before the court and lacked knowledge of the whereabouts of the funds and the actual perpetrator.

Alqattan suggests that, in addition to the still-developing mechanisms for investigating financial crimes in government contracts, the financial disclosure regulation is also culpable for persistent corruption in Kuwait.⁵⁶⁸ Specifically, Law No. 2 of 2016, outlining the procedure for the disclosure of assets and liabilities, fails to perform effectively. Timely submission and diligent verification of disclosed statements were identified among the key issues of the financial disclosure system in Kuwait, undermining the prosecution's ability to collect and analyse evidence and, consequently, secure convictions. It is added that under Law No. 49 on Public Procurement of 2016, the government retains the discretion to disclose or withhold the details of contracts and procurement, rendering the system lacking in transparency.⁵⁶⁹ As a result, only 8 out of 24 defendants tried were actually convicted in cases concerning illicit gains related to public funds and contracts.⁵⁷⁰

In addition, despite the measures aimed at decentralisation and transparency, Law No. 49 still exhibits limitations in achieving both objectives. Al-Otabi suggests that the establishment of the Central Tenders Agency does not significantly contribute to decentralisation, as the government retains the authority to determine the entire process of contract award and conclusion, particularly in cases that are somewhat loosely defined as exclusive. Moreover, he notes that public tender procedures often remain closed,

⁵⁶⁵ Kuwait Supreme Court case 4/2023

⁵⁶⁶ Al-Oumi, 'The Development of Laws in Kuwait to Combat Corruption' 203

⁵⁶⁷ B Izzak, 'Ex-Electricity Minister Reappointed' (Kuwait Times, 29 February 2016) <<https://kuwaittimes.com/ex-electricity-minister-reappointed>> accessed 4 December 2023.

⁵⁶⁸ Eiman Khaled Alqattan, 'The Shortcomings of Anti-Corruption Measures: Kuwait's Financial Disclosure System' (2022) 30 *Journal of Financial Crime* 665.

⁵⁶⁹ Dr Bader Saad Al-Otaibi, 'The Governance Procedures of Public Tenders in Kuwait' (*IR Global*, 24 May 2022) <<https://irglobal.com/article/the-governance-procedures-of-public-tenders-in-kuwait/>> accessed 4 December 2023.

⁵⁷⁰ Alqattan, 'The Shortcomings of Anti-Corruption Measures: Kuwait's Financial Disclosure System'

especially in contracts within the oil and gas industry, which are exclusively managed by the highest authorities. In these cases, the calls, bids, and awarding procedures lack transparency as well.⁵⁷¹ To some extent, this lack of transparency is justified by the strategic importance of the oil and gas sector for Kuwait, necessitating heightened protection measures and limited disclosure. Nevertheless, this situation creates a fertile ground for corruption to occur.⁵⁷²

Overall, Kuwait has made significant progress in its endeavours to mitigate corruption in the realm of public contracts and procurement. This progress is evident in achievements such as enhanced transparency, the decentralisation of the contract-awarding process, additional elucidation of anti-corruption legislation, and the broadening of tools to ensure adequate transparency, investigation, and prosecution of public fund corruption. However, further efforts are required to tackle the challenges, including a limited conviction rate, persistent centralisation, and deficiencies in financial disclosure legislation. These challenges undermine the effectiveness of KACA and criminal prosecution in locating and apprehending misappropriated funds and holding perpetrators accountable.

5.6 FIGHT AGAINST CORRUPTION IN KUWAIT ACCORDING TO THE INTERNATIONAL ORGANISATIONS AND FOREIGN ANALYTICAL AGENCIES

This section assesses how international organisations evaluate Kuwait's institutional design, specifically in terms of legal gaps, agency coordination, and judicial independence. Western analysts, such as Transparency International, the Carnegie Center, and international legal and advisory firms, tend to highlight persistent risks within Kuwait's anti-corruption framework while also acknowledging the pivotal role of recent legislation. Among the key risks, they identify financial transparency. In the defence industry, budget allocation is a closed procedure, and the publication of the defence budget by the Kuwait Ministry of Defence is characterised as aggregate and insufficiently detailed.⁵⁷³ In the same vein, there is limited legislation to compel ministers to publish comprehensive defence procurement plans, further undermining transparency. The recently published anti-corruption strategy is viewed as a positive improvement that is yet to reach its full potential, as many initiatives are still expected to take practical effect. IR Global, an accounting and financial advisory firm, additionally notes the poor flexibility of the public procurement process, manifested in the absence of a centralised procurement system and legal basis, creating jurisdictional gaps where corruption may emerge.⁵⁷⁴ Due to these shortcomings, investments in the Kuwaiti economy or business contracts may be perceived as risky by international businesses and national

⁵⁷¹ Al-Otaibi, 'The Governance Procedures of Public Tenders in Kuwait'

⁵⁷² Aly Abdou and others, 'Assessing Vulnerabilities to Corruption in Public Procurement and Their Price Impact' (2022) 2022 IMF Working Papers <<https://www.elibrary.imf.org/view/journals/001/2022/094/article-A001-en.xml>> accessed 4 December 2023.

⁵⁷³ Amélie Mouton and Kenneth Katzman, 'Government Defence Integrity Index' (*Transparency International UK*, 2020) <https://ti-defence.org/gdi/wp-content/uploads/sites/3/2021/11/Kuwait_GDI-2020-Brief.pdf> accessed 30 November 2023.

⁵⁷⁴ Bader Saad Al-Otaibi, 'The Governance Procedures of Public Tenders in Kuwait'

governments. Overall, according to Transparency International, Kuwait is ranked as a high-risk country in terms of defence integrity, indicating a high risk of corruption in this sphere.⁵⁷⁵

In addition, experts from abroad emphasise the significance of the cultural practice of *wasta*. Among Arab nations, this tradition is a crucial foundation for networking and connectivity and is inherent in collectivist and tribal societies, including Kuwait. It essentially refers to the process of intermediation. *Wasta* is often practised as a way to alleviate grievances between families, arrange help without causing disturbance or uneasiness, and share knowledge.⁵⁷⁶ In the organisational context, as perceived by Western think tanks, *wasta* is often defined as the practice of using personal connections to gain favours and services, which is often inseparable from corruption.⁵⁷⁷ It is thus argued that this cultural practice has permeated the organisational culture, allowing casual corruption to spread into the public sphere.

Numerous governments and agencies provide evaluations of Kuwait's anti-corruption efforts with a focus on the investment climate. For instance, the US International Trade Administration concluded that despite the introduction of Law No. 1 of 1993 and Law No. 2 of 2016, aiming to institutionalise financial review and reporting, the process remains bureaucratised and is still prone to corruption.⁵⁷⁸ On a different note, the Congressional Research Service noted that the post-2022 government-initiated effort to recover stolen or embezzled public funds, improve accountability, and conduct parliamentary investigations has had a positive influence on economic cooperation between the US and Kuwait.⁵⁷⁹

Recent anti-corruption efforts in Kuwait regarding staff training are positively characterised in the Western professional community. Thus, GAN Integrity notes that public officers have recently undergone corruption awareness training to detect and prevent corruption, contributing to increased public awareness of corruption.⁵⁸⁰ Illicit gains and other concepts related to corruption are regarded as well-defined, and the overall scope of the criminalisation of corruption is considered sufficiently broad. Additionally, Kuwait is recognised for ratifying the United Nations Convention against Corruption (UNCAC) and modelling its latest anti-corruption legislation, reflected in Law No. 2 of 2016, in line with UNCAC, with several omissions. One of these is the definition of public officials, which falls short of UNCAC standards due to limited inclusivity.⁵⁸¹

Another crucial advancement recognised by international think tanks is the Kuwait Integrity and Anti-Corruption Strategy. The UAE legal firm Al Tamimi & Co has indicated that despite being only a plan, it is an important incremental step towards forming a culture of accountability and transparency across the public sector, private firms, specialised industries, and in the community.⁵⁸² The IMF adds that substantial

⁵⁷⁵ Ibid., p. 3

⁵⁷⁶ Abrar Al-Enzi, Andrew Rothwell and Louise Cooke, 'The Influence of *Wasta* on Knowledge Sharing in Kuwait' (ACPI 2017).

⁵⁷⁷ Bader Al-Saif, 'Another Invasion of Kuwait' (*Carnegie Middle East Center*, 11 August 2020) <<https://carnegie-mec.org/diwan/82453>> accessed 9 November 2023.

⁵⁷⁸ International Trade Administration, '2022 Investment Climate Statements: Kuwait' (*United States Department of State*, 2022) <<https://www.state.gov/reports/2022-investment-climate-statements/kuwait/>> accessed 6 December 2023.

⁵⁷⁹ Christopher Blanchard, 'Kuwait: Issues for the 118th Congress' (*Congressional Research Service*, July 2023) <<https://crsreports.congress.gov/product/pdf/R/R47390>> accessed 6 December 2023.

⁵⁸⁰ GAN Integrity, 'Kuwait Country Risk Report' (5 November 2020) <<https://www.ganintegrity.com/country-profiles/kuwait/>> accessed 6 December 2023.

⁵⁸¹ Al-Oumi, 'The Development of Laws in Kuwait to Combat Corruption' 208

⁵⁸² Khalid Al Hamrani, 'Float Like a Butterfly, Sting Like a Bee: Kuwait's National Anti-Corruption Strategy to Take the Fight to Graft'

progress has been made in all four key areas, including better whistleblowing protection, elaborating legislation on corruption in the private sphere, and the introduction of an electronic asset declaration system.⁵⁸³ Furthermore, the role of KACA in reviewing progress in the strategy bi-annually is strongly commended. Finally, the IMF commends the government's resolve to tackle the long-standing issue of public procurement efficiency and transparency as per the strategy.

While many issues highlighted by international think tanks remain relevant to present-day Kuwait, they sometimes fail to account for important factors characterising the anti-corruption effort in Kuwait. The perception of corruption in Kuwait as an Arab country often escapes Western analysts. The cultural context and practice of *wasta* can indeed be very difficult to delineate from corruption, posing one of the major challenges persisting in legislative efforts in Kuwait. In fact, gaining political advantage through investment, funding and lobbying can be argued to be legalised forms of corruption. For example, some of the Kuwaiti members of parliament from the opposition bloc are referred to as 'service MPs' who represent the interests of a particular tribe or interest group within Kuwait, brokering government services to their supporters.⁵⁸⁴ These unofficial and unlegislated forms of gaining advantage are also prevalent and known in the western countries such as UK and US, where private companies can donate to political campaigns and in turn see their interests protected by elected officials. According to Goldberg, this is a grey area of corruption research and disentangling corruption from lobbying can be very difficult as they can often substitute each other or occur simultaneously.⁵⁸⁵ Establishing laws to investigate or prevent this type of corruption is challenging because of the fine line between legitimate political advocacy and unethical influence. Moreover, powerful interest groups often resist regulatory changes that might limit their ability to exert influence, further complicating the legislative process.

In Kuwait, the parliament is often unstable and characterised by incumbency-opposition clashes leading to delays in developing policies and laws. Although this is a normal democratic process, it impedes the adoption of legislation, including new laws on corruption, financial accountability, and transparency.⁵⁸⁶ Thus, legislative updates are somewhat blocked by systemic institutional factors, but the government's resolve to tackle persisting issues is unshaken and recognised by western experts.⁵⁸⁷ There is also a strategic factor at play with regard to corruption in procurement. Disclosing public financial plans, accounts, and security contracts is a matter of national security strategy that presupposes utmost discretion, with the view of past failures such as the Iraq invasion of Kuwait. The compromised impartiality and independence of judiciary also remains a serious problem for fair trials in corruption cases. Finally, like many countries in the Gulf, Kuwait has a large percentage of non-nationals who do not have clearance to access important government documents and cannot fully participate in the anti-corruption effort, despite the best attempts

⁵⁸³ International Monetary Fund Middle East and Central Asia, 'Kuwait: 2023 Article IV Consultation-Press Release; and Staff Report' (2023) 2023 IMF Staff Country Reports <<https://www.elibrary.imf.org/view/journals/002/2023/331/article-A001-en.xml>> accessed 6 December 2023.

⁵⁸⁴ Courtney Freer and Andrew Leber, 'The "Tribal Advantage" in Kuwaiti Politics and the Future of the Opposition' (*Brookings Institute*, 2021) <<https://www.brookings.edu/articles/the-tribal-advantage-in-kuwaiti-politics-and-the-future-of-the-opposition/>> accessed 6 August 2024.

⁵⁸⁵ Felix Goldberg, 'Corruption and Lobbying: Conceptual Differentiation and Gray Areas' (2018) 70 *Crime, Law and Social Change* 197.

⁵⁸⁶ Anas Al Qaed, 'Kuwait Parliamentary Elections: Rethinking the Meaning of "Opposition"' (*Gulf International Forum*, 5 June 2023) <<https://gulifif.org/kuwait-parliamentary-elections-rethinking-the-meaning-of-opposition/>> accessed 6 December 2023.

⁵⁸⁷ International Monetary Fund Middle East and Central Asia, 'Kuwait: 2023 Article IV Consultation-Press Release; and Staff Report'

of the government for social integration. These peculiarities somewhat explain the particular development and state of Kuwaiti anti-corruption efforts and its institutions, which are often omitted in international think-tank assessments.

5.7 LATEST POLICY DEVELOPMENTS IN KUWAIT

Since the adoption of Law No. 2 of 2016, the Kuwaiti government and the newly established KACA have focused on devising a strategy to combat corruption. The Kuwait Integrity and Anti-Corruption Strategy 2019–2024 was published to address the need for such a strategy. This need was partly based on the Kuwait national development plan, New Kuwait Vision 2035, one of the main pillars of which was the strategic public administration programme aimed at raising transparency, accountability, and governmental efficiency.⁵⁸⁸ Additionally, Kuwait aspires to become a regional leader with developed and stable governmental institutions to attract foreign investment and diversify its economy.⁵⁸⁹ Finally, the strategy was one of the requirements under the UNCAC, which Kuwait officially ratified in 2006.⁵⁹⁰ Corruption, therefore, became an issue that received special focus.

The Anti-Corruption Strategy 2019–2024 focuses on four pillars or areas of improvement: public, private, society, and special organisations. In the public sphere, the first priority of the Kuwaiti government is addressing corruption in the management of public affairs and finance. In the private sphere, among the top priorities is raising integrity and accountability, and cultivating a culture for corruption reporting. Aims for social sphere improvement share the same determination to enable corruption awareness and reporting.⁵⁹¹

The strategy remains a crucial element of the anti-corruption effort, and it is perceived to yield positive outcomes. Among the first achievements of the government in realising the plan was KACA's public awareness campaign. In its Citizen Report 2022, KACA indicated that it had trained 180 volunteers in partnership with the Kuwait Transparency Association to monitor national assembly elections and notice signs of corruption, fraud, bribery, and other breaches of integrity.⁵⁹² Similar training initiatives have been conducted in the private sphere among employees.⁵⁹³ Such initiatives demonstrate the government's commitment to better accountability and serve as a token of adherence to UNCAC. However, the impact of such activities on corruption is difficult to measure at this point in time, as democratic changes of this nature need time to settle in the wider society.

Furthermore, as part of the strategy, the government adopted Law No. 12 of 2020 on the right to access information, which promotes transparency of public finance and allows every citizen, non-national, or organisation to request information from the government.⁵⁹⁴ Notably, the law grants access to information

⁵⁸⁸ Kuwait Government, 'New Kuwait' (2017) <https://www.newkuwait.gov.kw/image/NewKuwait_CampaignLaunchEvent.pdf> accessed 7 December 2023.

⁵⁸⁹ Ibid.

⁵⁹⁰ Kuwait Government, 'Kuwait Marks International Anti-Corruption Day Dec 9, Continues Bolstering Transparency' (*State of Kuwait*, 12 September 2022) <<https://e.gov.kw/sites/kgoenglish/Pages/ApplicationPages/NewsDetail.aspx?nid=1710854>> accessed 7 December 2023.

⁵⁹¹ Kuwait Anti-Corruption Strategy 2019-2024

⁵⁹² Nazaha, 'Citizen Report' (2020) p. 25

⁵⁹³ Nazaha, 'Citizen Report' (2020) p. 22

⁵⁹⁴ Law no. 12 of 2020 "The right to access information"

about public procurement and contracts, current projects, and performance indicators. However, it is impossible under the law to access sensitive or confidential information related to areas of national security, public security, or defence. While such a law enables anti-corruption efforts by introducing more transparency in some areas of public finance, the persistence of strict non-disclosure policies and the small volume of accessible information somewhat undermine the anti-corruption effort. In particular, defence contracts and procurement remain hidden from the public and regulators, which means that corruption may persist in that sphere, as KACA is not able to audit any defence contracts or transactions.

This lack of transparency that is demonstrated to be persisting in some spheres such as national defence also extends to other spheres, which contributes to the problems of investigating and persecuting corruption in Kuwait. Namely, another sphere where transparency is lacking is the oil and gas sector. According to the report by UN's Economic and Social Commission for Western Asia on transparency in the oil and gas sector, Kuwait falls behind on disclosing and clarifying licencing and the bidding process for oil and gas extraction.⁵⁹⁵ Therefore, no clear or transparent system is in place to regulate the allocation of funds and privileges for a key source of national wealth. Currently, in cooperation with a cross-national standardisation agency the Extractive Industry Transparency Initiative (EITI), Kuwait has begun to raise transparency by publishing financial data on government transfers, joint ventures, and subsidiaries, yet no information is shared on commodity sales or non-operational activities.⁵⁹⁶ Investigation of corruption in the oil and gas sector is also plagued by the persistence of overriding and discretionary powers by authorities in the sector. For example, the Supreme Petroleum Council of Kuwait, a body that makes policy decisions in the oil and gas sector is headed directly by the PM, and ministers appointed directly by the Emir can forbid the provision of information on the operations, decisions, and personal data based on Article 12 of Law no. 12.⁵⁹⁷ This article stipulates the right of the ministers and the council to withhold information as they see fit, which undermines corruption investigations in almost any sector if the requested information is deemed to contradict national interests, security, or even the personal will of the informant.

In addition, information eligible for disclosure under Law No. 12 is granted through a request that is subject to a fee of 5,000 dinars per 10 documents, arguably limiting the availability of information to the wider public. The broad definition of non-disclosable information, as pertaining to 'national security, public security, or defence,' as well as multiple other clauses, also limits transparency and accountability. In terms of usability, a National Assembly report indicated that 37% of public bodies still do not comply with the new law and abuse the broad definition to deny access to their information.⁵⁹⁸ Hence, the new law can be perceived as only a small step that paves the road for more extensive anti-corruption measures and further amendments to the law. The aforementioned limitations inhibit the overall transparency of public authority figures and

⁵⁹⁵ Carole Nakhle, 'Towards Good Governance of the Oil and Gas Sector in the GULF' (*UN Economic and Social Commission for Western Asia*, 2017) <https://archive.unescwa.org/sites/www.unescwa.org/files/page_attachments/oilgasgovernance-arab-final-submitted.pdf> accessed 25 January 2024.

⁵⁹⁶ Ibid. 24

⁵⁹⁷ Law no 12 of 2020, art. 12.

⁵⁹⁸ National Assembly, 'Report Regarding the Implementation by Government Entities and State-Owned Companies of the Provisions of Law No. 12 of the Year 2020 Concerning the Right to Access Information' (2021) <<https://www.draalsaqobi.com/media/report.pdf>> accessed 7 December 2023.

agencies, which undermines the investigation activities of KACA. In turn, this means that corruption in crucial areas of national interest still remain hidden from the main anti-corruption authority.

In further alignment with the strategy, several laws are under discussion, facilitated by the Legal Affairs Department and the National Assembly, aimed at providing greater clarity over bribery in the public sector. Furthermore, legislative approval was sought from the National Assembly for Decree No. 64 of 2021, which aims to expand the scope of liability for legal entities in the field of corruption offenses.⁵⁹⁹ As of 2023, these laws have not yet been adopted and signed into effect, but the initiatives demonstrate a commitment to expanding anti-corruption efforts, particularly in spheres where corruption persists. The focus on the private sector appears to be a direct result of the strategy, as prior to 2016, anti-corruption efforts were primarily concentrated on the public sphere.

Overall, since 2016, numerous efforts have been undertaken to expand the current legislation and non-legislative measures against corruption in Kuwait. The introduction of the strategy has played a crucial role in clarifying the scope and focus of subsequent anti-corruption efforts. The combined efforts of KACA, the National Assembly, and the Kuwait Transparency Association have advanced the fight against corruption, contributing to improved transparency and accountability in both public- and private-sphere organisations. However, progress over the last decade has been hindered by significant factors, with an inherently secret regime in government funding, especially in sectors crucial to national security and defence, which are among the most important. Prominent corruption offenses, such as the unresolved loss of US\$ 790 million from defence contracts machinations, highlight the ongoing prevalence of corruption in this area, necessitating further measures.⁶⁰⁰ Additionally, the compliance of organisations with new practices needs improvement, as there are currently limited legal incentives to cooperate with anti-corruption authorities. The ongoing expansion of KACA's powers under the developing law aims to address this issue.⁶⁰¹ However, despite these innovations, Kuwait's corruption score remains low. Since 2016, Kuwait has maintained a consistent corruption score, fluctuating between the lowest at 39 in 2019 to 42 in 2022 with a slight increase to 46 in 2024.⁶⁰² On a positive note, the increased legislative and non-legislative efforts post-2016 in the sphere of anti-corruption, many of which are yet to take effect on organisations and society, may require time for the changes to settle and be properly reflected in international ratings and evaluations.

5.8 PATH FOR FURTHER REFORMS OF ANTI-CORRUPTION LEGISLATION IN KUWAITI CONTEXT

The path chosen by the government for further anti-corruption reforms appears to address scholarly criticism and align with the nation's needs. The government acknowledges that procurement and public finance remain the primary sources of most corruption problems, along with under-regulated private sector corruption, social awareness, and willingness to report corruption. Recent measures aimed at addressing

⁵⁹⁹ Nazaha, 'Citizen Report' (2020) p. 26

⁶⁰⁰ Ismaeel Naar, 'Kuwait Defence Ministry to Co-Operate with Parliamentary Probe into Military Deals' (*The National*, 15 December 2022) <<https://www.thenationalnews.com/gulf-news/2022/12/15/kuwait-defence-ministry-to-co-operate-with-parliamentary-probe-into-military-deals/>> accessed 7 December 2023.

⁶⁰¹ Nazaha, 'Citizen Report' (2020) p. 25

⁶⁰² Transparency International, 'Kuwait Corruption Index' (*Trading Economics*, 2025) <<https://tradingeconomics.com/kuwait/corruption-index>> accessed 19 September 2025.

these issues, as discussed above, indicate that attention is being given to the gaps in the anti-corruption framework. Nevertheless, there are several crucial areas where additional effort is also required.

One of those areas pertains to the amendment of loopholes and shortcomings in the criminal code covering bribery and illicit enrichment. Currently, under Law No. 2 of 2016, KACA is not permitted to independently prosecute corruption but must rely on collaboration with competent agencies. Its investigatory activity is confined to the review of accounts, statements, and liabilities submitted to it.⁶⁰³ As the central anti-corruption agency in Kuwait, it possesses a very limited set of responsibilities that can directly contribute to the efforts to combat corruption. Within the envisioned expansion of KACA's capabilities and the broadening of its role by the government, there is a pressing need to focus on enhancing its investigatory capacity. Specifically, KACA could be empowered to scrutinise the financials of a broader range of stakeholders, such as public officials' family members, who presently are not required to submit their assets or liability statements. The common practice of involving family members in corrupt schemes and transferring assets to the names of relatives is widely investigated in many countries such as the US and the UK.⁶⁰⁴ KACA could be granted access to public contracts and procurement operations, including those in the defence industry. Given that the agency already operates under a strict non-disclosure policy, expanding its capabilities in this manner would unlikely compromise national interests or state security. By enabling the central anti-corruption agency to investigate a broader range of stakeholders, its capacity to effectively combat corruption can be significantly enhanced. That should, of course, be complemented with audits and accountability of KACA's function (i.e., through annual parliamentary or royal family review) to prevent the possible abuse of power that comes with the extension of powers.

Moreover, KACA's potential to combat corruption could be further enhanced through the expansion of the list of public officials eligible to submit statements of assets and liabilities under Law No. 2 of 2016. As highlighted in previous literature, the term "public official" in Law No. 2 of 2016 is defined narrowly, in contrast to the UNCAC or legislations in other jurisdictions.⁶⁰⁵ For example, the current list does not include senior officials, their deputies, and department heads at government-led organisations, such as the National Bank, National Petroleum Company, and a variety of other industries crucial for national prosperity and development. The review of accounts belonging to these officials could extend the culture of accountability more broadly across the public sphere of Kuwait, albeit at the expense of a corresponding expansion of KACA's workforce.

Another area requiring improvement in anti-corruption legislation efforts is the effectiveness of prosecution. A significant gap undermining anti-corruption endeavours is the absence of a comprehensive review of submitted documents at the preliminary investigation stage. As highlighted by Alqattan, only 27% of the submitted statements undergo scrutiny for internal, cross-year, and cross-source consistency, thereby diminishing the quality of the review and, consequently, the likelihood of identifying corruption.⁶⁰⁶ Conversely, the inability to gather credible evidence hampers the presentation of a robust case in court, contributing to low conviction rates. Therefore, a reform that allocates more resources and accounting

⁶⁰³ Law no. 2 of 2016, part II, article 5

⁶⁰⁴ Anastasia Litina and Dimitrios Varvarigos, 'Family Ties and Corruption' (2023) 23 *The B.E. Journal of Theoretical Economics* 195.

⁶⁰⁵ Al-Oumi, 'The Development of Laws in Kuwait to Combat Corruption: A Work in Progress' 206

⁶⁰⁶ Alqattan, 'The Shortcomings of Anti-Corruption Measures: Kuwait's Financial Disclosure System' 671

talents to KACA could be a crucial step towards enhancing corruption identification and, subsequently, prosecution effectiveness. It is worth noting, however, that such a reform would necessitate KACA having increased access to the financial data of individuals and organisations, leading to a concentration of more authority within the agency, which should be offset by regular public and/or royal reviews and audits of KACA's activities.

Another aspect contributing to the difficulties with corruption identification and prosecution in Kuwait is rooted in the prevailing tradition of criminal conduct in the country. Both the existing criminal laws and Law No. 2 of 2016, which regulates the sphere of corruption, assume that it is the responsibility of the prosecutor to establish whether enrichment is illicit or if bribery has occurred. This places a significant burden on the prosecutor, creating challenges in the criminal procedure and allowing individuals and organisations accused of corruption to flee the country while investigations are still ongoing. Al-Oumi points to this issue, indicating that many corruption cases in the 21st century are processed in absentia, with perpetrators having already left Kuwait's legal jurisdiction. Consequently, despite the ability to freeze stolen funds abroad under Law No. 1 of 1993, offenders can evade justice in most cases.⁶⁰⁷ Therefore, to address this gap, it is proposed that the procedure for submitting financial statements by public officials should incorporate some form of self-verification and the provision of proof that the currently possessed and reported assets are acquired legitimately. Additionally, amendments to criminal laws should be considered to prevent defendants from leaving the country during corruption trials.

Finally, seminal scholars including Al-Oumi and Al-Rashidi suggest that, in addition to the criminal prosecution of corruption, civil courts might need to be empowered to consider such cases. Civil prosecution imposes a lesser burden of proof and offers various options for conducting litigation based on different aspects of proprietary and individual claims. It is important to emphasise, however, that civil prosecution does not facilitate the forfeiture of illegally acquired funds. Therefore, the choice of procedural type must be made with consideration to whether public funds are involved.⁶⁰⁸ Granting claimants' access to both criminal and civil avenues enhances flexibility in the fight against corruption, thereby contributing to prosecution effectiveness and increasing the likelihood of achieving justice.

5.9 CONCLUSION AND IMPLICATIONS

Corruption in Kuwait has persistently posed a challenge, eroding the nation's wealth and hindering its progress towards achieving a stable diversified economy, effective governance, and various national aspirations. The origins of corruption in Kuwait can be traced back to the nation's tribal past, the intertwining of governmental institutions with private family businesses, and cultural characteristics such as collectivism, the practice of gift-giving, and networking. The endeavour to eradicate corruption in Kuwait commenced with Law No. 16 of 1960, which established the foundation for criminalising various instances of corruption, including embezzlement, bribery, and theft. Over time, additional laws have been enacted to further the anti-corruption efforts across multiple spheres, as the government recognised the detrimental impact of this pervasive practice. Consequently, legislative, policy, and strategic measures have been implemented to combat corruption. The early legislative initiatives against corruption in Kuwait can be predominantly

⁶⁰⁷ Al-Oumi, 'The Development of Laws in Kuwait to Combat Corruption: A Work in Progress' 212

⁶⁰⁸ Al-Rashidi, n (129) 231

characterised as punitive, with preventive measures such as raising institutional transparency and accountability being gradually introduced closer to the beginning of the 21st century. This period marks the development of the legal framework in Kuwait in response to the persistent challenge of corruption.

Kuwait's criminal justice system, however, has emerged as a structure that is problematic for anti-corruption purposes. Following an inquisitorial model, the PPD has both investigatory and prosecutorial functions, leading to a concentration of power that erodes impartiality. While consolidation was likely intended to promote procedural efficiency, consolidation also introduces the risk of political interference (for example, in investigations involving former ministers and public officials). Moreover, the administrative subordination of prosecutors to the Minister of Justice undermines their autonomy and independence and in effect runs counter to Article 36 of UNCAC, which stipulates that anti-corruption agencies must function independently. Morrison and Grimshaw reported that the lack of demarcated authority and procedure safeguards such as cautioning suspects during an interview or recording the interview, allows for manipulation of the prosecution and reduces its effectiveness. Furthermore, reports of biased reporting and inconsistent terminology diminish the integrity of the judiciary even further. Finally, Kuwait's judiciary lacks institutional checks, oversight, and separation, and does not create accountability or transparency for widespread corruption cases, and therefore fails to meet UNCAC requirements. This undermines public confidence in the rule of law.

In terms of policymaking, however, the recently established anti-corruption authority, KACA, actively implements anti-corruption policies through the enforcement of audits on submitted assets, liabilities, and corruption reports to identify instances of corruption. Additionally, KACA is engaged in legislative improvement, collaboration with other branches of the government, and the dissemination of public awareness regarding corruption. Kuwait, in its commitment to combating corruption, has ratified various international and regional anti-corruption agreements, including the UNCAC and the Arab Anti-Corruption Convention. This commitment involves partnerships with numerous countries to leverage international best practices and regulations for the enhancement of its own anti-corruption framework. Operating within the framework of UNCAC, Kuwait has formulated a national Anti-Corruption Strategy for the period 2019–2024, delineating the scope and avenues for both current and future endeavours in the fight against corruption. In alignment with this strategy, Kuwait has made significant strides in addressing loopholes in anti-corruption legislation, expanding the reach of anti-corruption efforts, and demonstrating continued determination to further refine the anti-corruption framework.

Yet, this framework is not without its flaws. Due to a strong emphasis on protecting national interests and security in public procurement, Kuwait still has issues with transparency and accountability in many public sectors, contributing to the proliferation of corruption. In line with this doctrine, defence procurement is one of the key sources of corruption that requires reform. Since KACA is not vested with the power to initiate its own investigations, its power to expose corruption is severely limited. Furthermore, KACA's dependence on the Ministry of Justice does not allow the anti-corruption agency to investigate corruption at the highest ministerial level. This is further exacerbated by the fact that the judiciary is also not independent from the executive, with the Minister of Justice being able to appoint PPO heads and judges, thereby undermining the efforts to combat corruption. Finally, self-regulation in the private sphere, the limited powers of KACA, the definition of crucial concepts in corruption, as well as loopholes and insufficient coverage of the existing

legislation, constitute major problems that do not allow the agency to secure convictions on corruption cases. Kuwait is yet to resolve those issues to improve its corruption score and limit the impact of corruption on the wealth of the nation.

The main areas in need of reform include the separation of powers in the criminal justice system, establishing an independent judiciary, multiple clarifications, and broadening of policy and legislation with regard to disclosure and the audit of state finances, including those in security-sensitive areas. Furthermore, reform is imperative to expand KACA's powers and its capacity to comprehensively review submitted accounts in order to more vigorously identify cases of corruption. In addition, Kuwait could benefit from shifting the burden of proving corruption to public officials themselves and limiting defendants' ability to leave the country's jurisdiction before conclusion of their corruption trial. Kuwaiti criminal law could further benefit from adjusting evidence standards in order to match the covert reality of bribery crimes. Finally, introducing both civil and criminal procedures could add flexibility to corruption investigation and prosecution.

CHAPTER 6. FIGHTING CORRUPTION IN SAUDI ARABIA – CHALLENGES AND OPPORTUNITIES

6.1. INTRODUCTION

For the Saudi Arabian government, corruption has been one of the critical spheres of focus and significant progress has been achieved in combating it. The national strategy to combat corruption embodies the will of the government to commit to this problem. It also recognises the strategic importance and complex nature of corruption, which is seen from the establishment of an anti-corruption authority, and a focus on whistleblowing and transparency.⁶⁰⁹ While vital to the anti-corruption effort, the strategy is only one facet of the anti-corruption effort in Saudi Arabia, a part of the legal framework that has been in development since 1958 when the first law on corruption crimes was adopted. The history of almost a century of fighting corruption is therefore vital to analyse in detail; this is the main goal of this chapter.

The importance of fighting corruption for Saudi Arabia is justified by several factors, one of which is the pragmatic realisation of corruption effects. As noted by Altawyan, corruption undermines the wealth of the nation by harming the budget and investment climate in the country. Specifically, 10% of budget losses are reported to be due to various corrupt machinations such as embezzlement, bribery, and theft.⁶¹⁰ In the 2022 Oversight and Anti-Corruption Authority (OACA) report, bribery emerged as the most prevalent corruption offense in Saudi Arabia, with a total of 2,646 reported cases. Bribery significantly surpasses the second-ranking offense, influence abuse, which had 528 reported cases.⁶¹¹ In addition, as indicated in the global corruption metrics such as the CPI, Saudi Arabia has a score of 59, which is higher than global average of 43.⁶¹² In the region, Saudi Arabia also represents an above-average rating, compared to 55 in Oman and Bahrain, and 46 in Kuwait. However, it is lower than that of the UAE, which can boast the highest regional score of 68.

Corruption scandals and harsh responses of the government to corruption such as the detaining of more than hundred Saudi officials under allegations of corruption in Riyadh prompted foreign companies to withhold investment and stall contracts with Saudi companies, due to the associated risks. The overall investment climate is estimated as lower than the average among countries with similar GDPs, which researchers also attribute to corruption.⁶¹³ Because of these direct and indirect economic losses, corruption is regarded as being among the top national priorities under Saudi Arabia's ambitious integrity strategy. This priority is maintained under Saudi Vision 2030, a critical policy document that details the goals and

⁶⁰⁹ Government of Saudi Arabia, 'The National Strategy for Protecting Integrity and Combating Corruption' (*United National Platform*, n.d.) <https://www.my.gov.sa/wps/portal/snp/content/reportcorruption!/ut/p/z0/04_Sj9CPykssy0xPLMnMz0vMAfljo8zjQx93d0NDYz8LXx9LA0CjT1MAoPMzRxDAk30g1Pz9AuyHRUB5GLKcw!!/> accessed 20 December 2023.

⁶¹⁰ Altawyan, 'The Importance of Reinforcing the Rules against Corruption: Whistleblowing to Improve the Saudi Economic Environment for Saudi Vision 2030.' (2020) 34 *Arab Law Quarterly* 85.

⁶¹¹ Nazaha, 'Statistics of Reports Submitted to the Oversight and Anti-Corruption Authority in 2022' (Oversight and Anti-Corruption Authority 2022) <https://www.nazaha.gov.sa/Media/Posts/Statistics_2022.pptx> accessed 30 December 2023.

⁶¹² Transparency International, 'Saudi Arabia' (*Transparency.org*, 19 September 2025) <<https://www.transparency.org/en/countries/saudi-arabia>> accessed 19 September 2025.

⁶¹³ Stephan Roll, A Sovereign Wealth Fund for the Prince (German Institute for International and Security Affairs 2019)

direction for national development. In the Vision, Saudi Arabia is viewed as a country with a strong commitment to transparency and openness for business and investment, making corruption a critical obstacle.⁶¹⁴

A unique feature of combatting corruption in Saudi Arabia is that it is grounded substantially in the Islamic philosophy. The anti-corruption strategy, as formulated by the government, is based on Sharia rules as indoctrinated by the Holy Qur'an. The Qur'an explicitly prohibits bribery and corruption. One of the key verses is: "And do not consume one another's wealth unjustly or send it [in bribery] to the rulers so that [they might aid] you [to] consume a portion of the wealth of the people in sin, while you know [it is unlawful]." (Al-Baqarah, 2:188) This verse clearly forbids offering bribes to gain an unfair advantage or to manipulate justice, which aligns with the principles of fairness and justice in Islam. Thus, public officials and anyone imbued with power in the community are held responsible for maintaining integrity and righteousness, and for abstaining from bribery or deceit.⁶¹⁵ Thus, a public servant's role is not only under the supervision of the authorities but they also have responsibilities before the community and Allah to behave in accordance with Sharia norms. This facet of anti-corruption effort implies a strong element of moral and ethical duty which, to an extent, explains why combatting corruption is critical to Saudi Arabian society. As an embodiment of this duty to create a society driven by ethics, morale and sound judgement, Saudi Vision 2030 presupposes living by Islamic values.⁶¹⁶

Recognising the importance and long history of fighting corruption in Saudi Arabia, this chapter presents a comprehensive overview of the national efforts against corruption. Firstly, the chapter overviews the criminal justice system of Saudi Arabia as well as the development of its anti-corruption law, noting the achievements and challenges arising from the legal framework's development. Next, the chapter presents an analysis of anti-corruption efforts in several spheres such as public contract procurement, and the conduct of foreign officials. The chapter also details the role of the anti-corruption agencies and considers the analytical value of international assessments of Saudi anti-corruption effort. The chapter examines both historical and recent efforts initiated under the leadership of Mohammed Bin Salman.

6.2. CRIMINAL JUSTICE SYSTEM IN SAUDI ARABIA

This section analyses the institutional foundations of the criminal justice system and the most notable milestones marking the development of the legal instruments within the Saudi Arabian Anti-Corruption framework.

As part of the institutional design evaluation in Saudi Arabia, one must first understand the structure, functions, and limitations of its criminal legal system. The efficacy of anti-corruption systems is influenced by more than the existence or ability of specialised institutions and anti-corruption laws; they exist in a broader legal and judicial context.⁶¹⁷ In this respect, judicial independence, separation of powers, and the rule of law underlie corresponding international anti-corruption obligations expressed in Articles 11 and 36 of the UNCAC. This section reviews the court system in Saudi Arabia and elaborates on its institutional and

⁶¹⁴ Saudi Vision 2030, 36.

⁶¹⁵ Al-A'raf; 56; Al-Baqarah; 205.

⁶¹⁶ Saudi Vision 2030, 16.

⁶¹⁷ Abdulaziz K Al-Hamoudi, 'Criminal Defense in Saudi Arabia: An Empirical Study of the Practice of Criminal Defense in Saudi Arabia' (PhD Thesis, University of Washington 2014) 32

procedural features, which enable and inhibit the fair, independent, and competent prosecution of offences of corruption, mediation in legal disputes, and other relevant activities in the context of its unique legal and religious culture.

Firstly, Saudi Arabia does not have a codified constitution in the Western sense. Instead, the supreme authorities of the Qur'an and the Sunnah (traditions of the Prophet) serve as foundations of the country's laws and political order. The Basic Law of Governance, issued by Royal Decree in 1992, identifies the institutional structure of government, the rights and responsibilities of citizens, and others, but it is not a constitution and can be amended or abrogated by Royal Decree.⁶¹⁸ The Basic Law indicates in Article 7 that authority is derived from the Qur'an and the Prophet's teachings, underlining the country's theocratic legal culture. Laws and judicial decisions must conform to Shariah, and decisions are made by the Hanbali school of jurisprudence. The Basic Law refers to the principles of justice, but it does not create binding or enforceable guarantees regarding judicial independence or due process. Thus, with no binding constitution that entrenches rights, the Saudi Arabian legal system has limited institutional capacity to be accountable, and has weakened legal certainty and predictability to ensure the rule of law and impartial enforcement of anti-corruption efforts.

In Saudi Arabia, the judiciary is comprised of two types of courts: Shariah courts and administrative tribunals. The Shariah courts are the primary court system through which crimes are adjudicated. Shariah courts are organised into three levels: first instance courts, appeals courts, and the Supreme Court. Judges (*qadis*), are appointed by the king on a request from the Supreme Judicial Council. Generally, first instance judges are graduates from Islamic law schools, and with almost exclusively *Hanbali* (one of four Sunni sects) training. Additionally, 80% of judges receive education and judiciary training in the Qasim region of Saudi Arabia.⁶¹⁹ This points to the lack of diversity in human resources, as most judges come from the same geographic area (*Qasim*) and therefore have limited exposure to comparative or modern legal education.

There are also Boards of Grievances (*Diwan al-Mazalim*) that adjudicate administrative disputes and corruption-related allegations involving public authorities. The Board of Grievances, like Shariah courts, is an executive appointed body.⁶²⁰ It has a separate functional role, but it also does not have structural independence from the king and therefore lacks institutional independence. In Saudi Arabia, judges do not apply binding precedents, and decisions by judges are based on their unique *ijtihad* (interpretation), which creates a high degree of variance.⁶²¹ This degree of variation may reflect the flexibility of Islamic jurisprudence, but it is also problematic for legal certainty, especially in complicated corruption allegations. The breadth of non-standard practices and lack of modern legal reasoning and structure create challenges for institutional coherence and predictability, which are the two aspects of institutions that are vital for effective judicial oversight of anti-corruption enforcement.

⁶¹⁸ Royal Decree No. A/90 dated 27/08/1412H (March 1, 1992)

⁶¹⁹ Cooper C Millhouse, 'Injustice Anywhere: A Comparative Law Analysis of Saudi Arabia's Criminal Justice System' (2024) 47 UC L. SF Int'l L. Rev. 40.

⁶²⁰ *Ibid.*, 33.

⁶²¹ Al-Hamoudi, note 624, 33.

While the Basic Law of Governance technically separates executive, judicial, and regulatory control of the state, in practice these are centralised in law under the king.⁶²² It is also important to note that the judiciary is not institutionally set apart from the executive, as they derive their distinction from the executive in law. Judges are appointed, promoted, and dismissed by royal decree, and there is no measure to secure tenure, or an independent judicial council to mitigate executive influence. Instead, the Supreme Judicial Council is presided over by the king, who oversees judicial affairs and appointments. This fusion of institutional boundaries severely erodes the separation of powers principle and acts as a significant barrier to judicial independence and therefore stands in contrast to the UN basic Principles on the Independence of the Judiciary.⁶²³

In addition, the judiciary is also firmly rooted in the religious institutional structure in Saudi Arabia, with most judges being members of the wider *ulema* (religious clerical body) which adds to an already reduced institutional disaggregation.⁶²⁴ Though the judiciary nominally safeguards the law, it is largely subject to the royal will and judicial discretion, which has precedence over all legislative and adjudicative sovereignty. Thus, the overall structural design does not satisfy the key international standards like the UNCAC, where Article 11 indicates that state parties must also take measures to promote the integrity and independence of the judiciary, as a measure to act against corruption. This means that in cases of high-profile corruption involving individuals of high political weight, the potential negative influence of lacking judiciary independence can be substantial. Consequently, impartiality is severely impeded and this undermines the ability of the criminal justice system to aid the fight against corruption.

The rule of law in Saudi Arabia exists under the religious-based Shariah principles and a monarchical system of authority, rather than a secular constitutionalism.⁶²⁵ While the basic law outlines justice and equality before the law under Article 8, the absence of binding precedents and codified judicial decisions inhibit certainty and uniformity in the application of the law.⁶²⁶ Due to this, judges rely on their own interpretations of *Hanbali* jurisprudence, and the fact that courts are not bound by previous decisions creates significant inconsistency in similar cases.⁶²⁷ This inconsistency does not serve the principles of transparency, predictability, and accountability, which are vital to the rule of law.⁶²⁸

Appellate structures exist by way of a court of appeal or the Supreme Court, but their oversight is mostly concerned with Shariah compliance in legal decisions, not with statutory standards. Case law is not widely available, so access to the reasoning behind the case law is limited and does not facilitate research or public scrutiny.⁶²⁹ In high-profile cases, including capital offences or crimes of corruption, decisions can be reviewed and reversed by the king. Thus, the centralisation of final authority in the executive branch substantially diminishes judicial independence and prejudices any effective institutional design to uphold the rule of law.

⁶²² Royal Decree No. A/90 dated 27/08/1412H (March 1, 1992), art 5.

⁶²³ Basic Principles on the Independence of the Judiciary, endorsed by United Nations General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985

⁶²⁴ Millhouse, note 626, 38.

⁶²⁵ Al-Hamoudi, note 624, 12.

⁶²⁶ Royal Decree No. A/90 dated 27/08/1412H (March 1, 1992), art 8,

⁶²⁷ Millhouse, note 626, 38.

⁶²⁸ Basic Principles on the Independence of the Judiciary, note 630.

⁶²⁹ Al-Hamoudi, note 624, 147.

The limitations prevent the state from conducting impartial investigations and prosecutions of corruption cases, especially in politically sensitive cases. Within these limits, the institutional design of Saudi Arabia's judiciary remains misaligned with core international anti-corruption norms and standards, especially those found in Articles 11 and 36 of the UNCAC and UN Basic Principles on the Independence of the Judiciary. Without further structural changes, the fight against corruption might face serious challenges, evident in the legal and institutional structure itself.

6.3 LEGAL INSTRUMENTS AGAINST CORRUPTION

The development of the Saudi Arabia Anti-Corruption Law can be characterised as driven by both external and internal forces. On the one hand, the legislation has been influenced heavily by the international standards on corruption such as the UNCAC and modern law. On the other hand, Saudi legislation bears strong commitment to the legislative aspects native to Saudi Arabia's system of law, which draws much from Islamic religion and the tribal organisation of Saudi society. One can note the gradual sophistication of the law from banning the specific manifestations of corruption to the expansion of the effort to achieve overall transparency, integrity and accountability in the public sphere. Unfortunately, the Saudi framework still lacks comprehensiveness, which explains the country's moderate corruption rating. Despite this, as demonstrated in this section, the Saudi anti-corruption legislative framework has progressed considerably over the years.

6.3.1 ROYAL DECREE NO. 43 (1958)

ACHIEVEMENTS AND CHALLENGES

The first legislation that featured corruption crimes is Royal Decree No. 43 (1958). This legislation piece established punishments for a variety of criminal conducts, including embezzlement and engagement in private business while performing a public duty. It also made direct mention of a corrupt practice labelled loosely as 'abuse of power for private interest'. The punishment for such acts was formulated as follows:

Any individual, whether classified as a public official or not, found to commit or assist in the commission of the specified offenses shall face punishment, entailing imprisonment for a duration not surpassing ten years or a monetary fine not exceeding twenty thousand Riyals.⁶³⁰

The obvious strength of the law is the breadth of its application, which extends from public officials to private-sphere officials, but there are still certain impracticalities observed therein. A definition of power abuse is not specified in the Decree, which contributes to the lack of clarity over the specific acts and behaviours that constitute an abuse. The lack of a clear definition also complicates the distinction between corrupt practices and routine duties, thereby hindering the ability of courts to convict individuals within the larger population of public and non-public officials and assign them specific penalties such as fines or imprisonment.⁶³¹ In addition, the law's contribution to the national anti-corruption effort is undermined due to the difficulty of uncovering proof of an abuse being committed or aided. The law did not introduce any mechanisms or authority to trace material or immaterial benefits. Thus, as an earliest addition to the anti-corruption law in Saudi Arabia, this law established a foundation for fighting corruption that is not without

⁶³⁰ Royal Decree No. 43, 29/11/1377H corresponding to June. 17, 1958, art. 2.

⁶³¹ Alshalan, note 80, 25

its flaws. Decree No. 43 can be classified as an example of a prohibitive approach to corruption manifested in the statutory condemnation of certain acts as crimes.

LEGAL DEVELOPMENT

In terms of legal development, Decree No. 43 of 1958 was the first step towards fighting corruption through the means of civil law. Before 1958, the foundation of the anti-corruption effort in Saudi Arabia lay mostly in the religious body of Sharia Law. The Qur'an remained and remains still the most significant primary source of Sharia Law, as 30 of the 500 provisions relating to law (as commands and prohibitions) can be considered to be criminal law injunctions and there are 53 mentions of corruption in the Qur'an.⁶³² Sunnah (utterances, acts, or approvals of Mohammed) and *Ijma* (jurist or scholar consensus) also act as major sources of Islamic Law and have been serving as a basis for the process of investigation and prosecution of any criminal offense in the historically-tribal society of the Saudi nation.⁶³³ For example, in the words of Prophet Mohammed, "Allah curses the one who offers the bribe and the one who accepts it".⁶³⁴ Therefore, for generations, the definitions and provisions on corruption existed in the form of Islamic Law and were administered in the community by Islamic courts rather than civil ones.

By the second half of the 20th century, Saudi Arabia became much more modernised, in part due to the influence of its involvement in foreign trade and relations with other, non-Muslim nations. The modernisation of society was also followed by modernisation in the legal sphere where Sharia law, mostly uncodified, became under pressure of codification. Although this was a source of conflict among the judges rejecting the authorities' push for laws to be structured, reforms modernising the legal system were adopted. Royal Decree No. 43 was the first attempt to codify offenses relating to misuse of the law and official position, and it was a product of the modernisation of the traditional Sharia-based approach to fighting corruption, which marked a start in the effort to introduce structure to Saudi anti-corruption law.

6.3.2 ANTI-BRIBERY LAW

ACHIEVEMENTS AND CHALLENGES

The Anti-Bribery Law can be characterised as the first law in Saudi Arabia dedicated exclusively to corruption offenses. The law mostly focused on bribery as the most common manifestation of corruption, although it was later extended to include other corruption offenses. In itself, the Anti-Bribery Law appears to be a developmental project that sustained several amendments that further amplified its scope and clarity. In its first iteration promulgated by the original Anti-Corruption Law introduced in 1962, it offered clear indications of the subjects of the anti-bribery law and clarified the nature of criminalised acts.⁶³⁵ The analysis of the text of the law identifies several of its achievements in tackling corruption crimes.

Firstly, building on the foundation of Royal Decree No. 42, which enumerated only a few corruption practices, the Anti-Bribery Law added other items to the list of punishable acts and their accurate

⁶³² Cherif Bassiouni & Gamal Badr, 'The Shari'ah: Sources, Interpretation, and Rule Making,' 1 *ULCA J. Islamic & Near EL.* 135 (2001) 148;

⁶³³ Ali Alharbi Khalaf, 'An Overview Of The Saudi Arabian Criminal Justice Procedures Against Corruption In The Public Sector' (UNAFEI 2008) <https://www.unafei.or.jp/publications/pdf/RS_No77/No77_14PA_Khalaf.pdf> accessed 29 December 2023.

⁶³⁴ Musnad Aḥmad 9031

⁶³⁵ Brill, 'Saudi Arabia: Anti-Bribery Law' (1994) 9 *Arab Law Quarterly* 283.

description. Specifically, it criminalised exploitation of official position, taking or giving bribes, nepotism, and favouritism.⁶³⁶ Bribery was defined as any form of request for a service such as a recommendation, mediation, gift, promise of a service, or material or immaterial benefit of any kind.⁶³⁷ Nepotism is described as an act committed by a public employee resulting in the appointment of another person in exchange for a material or immaterial benefit or promise of such benefit. Favouritism is described as violation of one's duties in exchange for a material or immaterial benefit that results in an action, decision, or commitment using one's official influence.⁶³⁸ Through these acts, exploitation of official position is defined and consequently, any of the said acts is punishable in accordance with the provisions of the law. Thus, the Anti-Bribery Law significantly extends on Royal Decree No. 42 and codifies new corruption practices. This benefits the legal system's effectiveness by addressing evolving forms of corruption, and clarifying the government's position on these forms of public officials' activity.

Another achievement of this law and its subsequent amendments was clarification of the subject of the law. Article 8 summarises all the individuals and groups of individuals who are subject to the Anti-Bribery Law. Among these are the briber, bribee, and any intermediary (described as a party aiding and abetting the issuance of benefit, facilitating a transaction, or soliciting any help in the process). As per the 1992 amendment, the law applies not only to public servants working in state institutions but essentially any individual who is temporarily or permanently performing duties for a governmental agency, or any employee of a company that performs services or duties for government (i.e., government-affiliated entities).⁶³⁹ In addition, knowledgeable persons who do not report the crime are also punishable under the law. Such clarifications further benefit the effectiveness of the law as it focuses not so much on the title and authority held by the potential perpetrator but on the services and duties they perform for the state. It is thus the defining feature of the Saudi law on bribery that the crime of corruption was extended beyond public service to the private sphere as early as in 1992.

The Anti-Bribery Law was further enhanced by two notable amendments in 2018 and 2021, which contributed to the breadth of the law's application. In 2018, the Anti-Bribery Law was modified by Royal Decree No. M/4, which expanded the scope of the law further into regulating corruption in the private sector. Specifically, the amendment prohibited taking material (e.g., money, property) and immaterial bribes (e.g., service, promise of a bribe in any form) from: "any person working at private or cooperative associations, private organisations, or companies, private establishments or professional bodies, in any capacity".⁶⁴⁰ Moreover, the law expanded the application of bribery to international organisations such as for-profit multinationals (e.g. Unilever) or non-profit multinational organisations (e.g. The Red Cross, UN structures). This update was an improvement, especially in the wake of emerging cross-border corruption cases such as the bribery of Malaysian Prime Minister Najib Razak by high-level Saudi officials in 2016.⁶⁴¹

⁶³⁶ Royal Decree No. M/36 of 1412H corresponding to 1992, art. 4.

⁶³⁷ *Ibid.*, art. 5.

⁶³⁸ *Ibid.*

⁶³⁹ Royal Decree No. M/36 of 1412H corresponding to 1992, art 8.

⁶⁴⁰ Royal Decree No. M/4 of 1440 corresponding to 2018.

⁶⁴¹ Omar Al-Shehabi, 'Show Us the Money: Oil Revenues, Undisclosed Allocations and Accountability in Budgets of the GCC States' (LSE Middle East Centre 2017) <https://eprints.lse.ac.uk/84521/1/show-us-the-money_V1.pdf> accessed 4 February 2024.

The next set of amendments to the Anti-Bribery Law, introduced in 2021 by Royal Decree No. M/38 of 2021, positively expanded its scope and improved its practical application. Firstly, the scope of the Anti-Bribery Law was further expanded by the amendment of the wording of influence-peddling crime from “any public official” to “any person”.⁶⁴² The significance of this amendment follows from the fact that it evidences a further shift away from banning and prosecuting corruption only in public organisations to also include private persons and any other persons linked to the Saudi government such as foreign officials (e.g. Saudi foreign ambassadors). This expansion is recognised by Holman as a reflection of the Saudi Government’s commitment to purging corruption globally (the so-called Riyadh initiative) announced during the G20 global summit.⁶⁴³ Next, the amendment changed Article 15, allowing the prosecution to seize not only funds or other material wealth acquired illicitly but also “the value” and “any proceeds gained from the funds, benefit or privilege”.⁶⁴⁴ In theory, this improves the effectiveness of corruption case prosecution since it limits the damage done to the public wealth by an act of corruption. However, it is not yet clear how or by whom ‘the value’ of benefits or privileges will be assessed and consequently seized as there is currently no case law demonstrating the application of this article.

Despite the expansions, a significant challenge that still undermines the effectiveness of the Anti-Bribery Law is collecting proof. The provisions of the law feature intent of private gain (whether material or immaterial) as stipulated by Articles 1: “The occurrence of the crime is affected by the employee’s intention” and 2: “...public employee who *requests* or accepts... a gift...”⁶⁴⁵ However, the existence of intent is usually difficult to prove in court using evidence, as corrupt agreements are often verbal and private to the parties committing the crimes, with no witnesses present.⁶⁴⁶ Furthermore, the burden of finding proof is laid on the prosecution.⁶⁴⁷ Hence, the law is difficult to put into practice and use to secure convictions for the corruption acts stipulated therein, which means that the law effectively only works as a preventive and prohibitive measure against corruption.

This challenge is inextricably linked to the *wasta* practice which can be described as the use, abuse and recognition of social connections and family in the process of social networking and occasionally gaining benefit. Thus, the law fails to encompass cases where a public employee willingly adjusts their behaviour or official conduct in order to provide an extra favour or service that is directly within their formal duties to a person whom they consider of significant social standing (i.e. members of the royal family, relatives, fellow tribesmen, neighbours and so on). In such cases, no explicit promise or gift may be given, as such services may be rendered out of a feeling of duty, indebtedness, or fulfilling honour.⁶⁴⁸

LEGAL DEVELOPMENT

⁶⁴² Royal Decree No. M/38 of 1422H corresponding to 2021, art. 5.

⁶⁴³ Daniel Holman, ‘Saudi Arabia Amends Its Anticorruption Law: A New Kid in Town?’ (*Paul Hastings LLP*, 2022) <<https://www.paulhastings.com/insights/international-regulatory-enforcement/saudi-arabia-amends-its-anticorruption-law-a-new-kid-in-town>> accessed 4 February 2024.

⁶⁴⁴ Royal Decree No. M/38 of 1422H corresponding to 2021, art. 15.

⁶⁴⁵ *Ibid.*, art. 1,2.

⁶⁴⁶ Belen Olmos Giupponi and Hong-Lin Yu, ‘Analysing Obstacles and Challenges in Fighting Corruption in Cases of Illegal Investments’ (2022) 11 *Laws* 59.

⁶⁴⁷ Shaw Shiuan Ong, ‘Dismantling the Safe Harbour: Solving the Evidentiary Problems in Corruption Allegations in Investor-State Arbitration’ (2 January 2019) <<https://papers.ssrn.com/abstract=3708186>> accessed 29 December 2023.

⁶⁴⁸ Annika Kropf and Tanya Newbury-Smith, ‘Wasta as a Form of Social Capital? An Institutional Perspective’ in Mohammed Ramady, *The Political Economy of Wasta: Use and Abuse of Social Capital Networking* (2016) 4.

From the perspective of legal development, the law was an expansion of the previous Royal Decree No. 42, which had limited application. Clearly, the inclusion of private actors carrying out services for the public institutions of Saudi Arabia in the subject of anti-corruption law demonstrates the sophistication of the government apparatus and the perceived impact of bribery and other corruption offenses on the effectiveness and efficiency of the said public institutions. The increasing involvement of private entities in government, marked by an increased reliance on private contractors and service providers, demands an extension of the legal scope to encompass potential avenues for corruption in these collaborations. By doing so, the government aimed to address the vulnerabilities associated with the intersection of public and private interests, safeguarding the integrity of public institutions in the wake of their investment relations with western states and US oil companies in particular.⁶⁴⁹

Evidently, the gradual expansion of the law's applicability to various areas such as private companies and international organisations was dictated by the increased openness of Saudi Arabia to foreign trade. Furthermore, the changes in 2018 and 2022 serve as evidence of the need to underscore Saudi Arabia's proactive stance against cross-border corrupt practices so that the nation's trustworthiness could be reflected in the various western investment ratings.⁶⁵⁰

At the same time, the Anti-Bribery Law appears a 'horizontal' improvement as it mainly extended the breadth of the anti-corruption effort rather than its depth. This horizontal expansion aligns with the recognition of the multifaceted nature of corruption, especially within the context of private actors involved in public service delivery. By extending the legal framework horizontally, the law acknowledges the need for a comprehensive approach that covers a wide spectrum of potential corrupt activities. At the same time, the significance of the Anti-Bribery Law for the effectiveness of anti-corruption legislation and effort appears to have been thwarted by its lack of emphasis on providing the means for the prosecution to collect and analyse evidence of corruption. In practice, the law continued the historical legislative tradition born out of Islamic Law that manifested in purely punitive measures rather than positive measures.

6.3.3 OTHER ANTI-CORRUPTION LEGISLATION

ACHIEVEMENTS AND CHALLENGES

To date, the only dedicated anti-corruption legislation in Saudi Arabia is the Anti-Bribery Law, which criminalises corrupt acts of public and government-affiliated private officials. Instead, Saudi Arabian law features certain provisions for corruption offenses within the laws regulating specific spheres such as public funds (Public Funds Management Law), employee discipline (Civil Service Law), ministerial activities (Impeachment of Ministers Law), and financial machinations (Anti-Money Laundering Law, Anti-Forgery Law). These laws collectively contribute to the broader anti-corruption framework in Saudi Arabia by addressing specific aspects of corrupt practices within different sectors. The inclusion of anti-corruption provisions in sector-specific laws underscores the recognition of the multifaceted nature of corrupt activities and the need for targeted regulations in various domains. Certain provisions stand out as critical for the Saudi anti-corruption effort, and these are discussed below.

⁶⁴⁹ David E Long, *Culture and Customs of Saudi Arabia* (Bloomsbury Publishing USA 2005).

⁶⁵⁰ Haider Mahmood, 'Oil Prices, Control of Corruption, Governance, And Economic Growth Nexus in Saudi Arabia' (2021) 11 *International Journal of Energy Economics and Policy* 91.

One of the most crucial achievements is Article 10 of the Public Fund Handling Act, which prohibits embezzlement. Although there is no formal definition of embezzlement, the Act itself identifies any deficit in the public funds that is investigated as misuse, waste or unlawful disposal as embezzlement. Article 15, in turn, defines the procedure for registering, reporting, and investigating the incident when a deficit in funds is identified.⁶⁵¹ The subjects of the law are any public officials who have access to or are part of the process of handling public funds. Although no exhaustive list is provided, it empowers the investigators to consider an unlimited number of employees, which in turn makes it more effective albeit more time-consuming.

Another notable achievement is the criminalisation of a broad range of ministerial corruption acts such as influence trading, fraud, and bribery under the Impeachment of Ministers Law. Influence trading (peddling) refers to the illegal exchange of money, favours, or privileged access to secure political or regulatory benefits, often involving bribery or undisclosed conflicts of interest (e.g., officials awarding contracts in exchange for kickbacks).⁶⁵² Influence trading should not be confused with lobbying, which is act or process performed in accordance with the law and involves the use of research, public speaking, and official meetings with lawmakers to influence policies.⁶⁵³ While influence trading is universally condemned as corruption, the acceptance of lobbying varies by culture. It is seen as legitimate in the U.S. (where it is a US\$3.5 billion industry) but viewed sceptically in France, where elite networks often wield informal influence. American law requires the disclosure of lobbying activities, but Saudi Arabia accepts foreign lobbying without openness about its influence within the country. Thus, in other words, the main difference is that lobbying follows the law, while influence trading is usually done in secret. Nevertheless, if regulations are not strong enough, it can be difficult to tell where lobbying ends and corruption starts, as proved by numerous cases of undisclosed gifts or favouritism to the elite. In regions like Saudi Arabia, cultural norms around *wasta* complicate enforcement, whereas Western democracies treat lobbying as a democratic tool—provided it remains transparent.

Unlike similar acts criminalised under the Anti-Bribery Law that are prosecuted by the Bureau of Investigation and Prosecution, the investigation of these crimes is handled by the Ministerial Audit Commission established within the same law.⁶⁵⁴ Notably, the Commission is eligible for reviewing the financial statements of both ministers and their family members, which amplifies the effectiveness of the prevention and prosecution of crime with regard to high-profile officials. At the same time, the ministerial audit commission is in itself a less well-established agency, the activity of which is not clearly described in the law.

At the lowest level, the crime of corruption is recognised in the Civil Service Law. Promulgated by the Royal Decree No. M/49 of 1397H, the law introduces administrative rather than criminal punishment for the offense while marking a possibility for escalation and treatment of the offense in accordance with the crime. Thus, the Civil Service Law specifically prohibits the abuse of functions, bribery (including aiding or non-

⁶⁵¹ Royal Decree No. M/18 dated 02/23/1436 AH corresponding to 2014, art. 14

⁶⁵² Association of Accredited Public Policy Advocates to the European Union, 'DISTINGUISHING BETWEEN LOBBYING, INFLUENCE PEDDLING, PLEADING, PETITIONING AND EXPRESSION OF OPINION' (2015) <<https://www.aalep.eu/distinguishing-between-lobbying-influence-peddling-pleading-petitioning-and-expression-opinion>> accessed 1 June 2025.

⁶⁵³ Ibid.

⁶⁵⁴ Impeachment of Ministers Law, Royal Decree No. 88 of 1380H corresponding to 1960

disclosure of bribery), accepting gifts, or personal profit as a result of commercial activity.⁶⁵⁵ The fact of recognising corruption at the level of public employees, not only decision-makers and those holding positions of authority, is a significant achievement for the legislative effort in Saudi Arabia and the Civil Service Law in particular.

The latest legislative achievement in the sphere of anti-corruption effort in Saudi Arabia was the adoption of the Combating Financial Fraud and Deceit Law in 2021, which significantly amplified the severity of punishments for fraud committed by public officials. Regarding “any act involving deceit to obtain a direct or indirect financial benefit by the perpetrator or by others with his help, causing a loss to the deceived party”, the law stipulates a fine of up to SAR 5 million or imprisonment for up to 7 years.⁶⁵⁶ Notably, for repeated offenses, the punishment escalates to a maximum of 14 years imprisonment and SAR 10 million.⁶⁵⁷ This law establishes the principle of gradual punishment escalation with adequate severity. However, it remains unclear why the possibility of recidivism is considered in the law, in light of the severity of fraud, theft and any corrupt act classified as *hudud* or the most severe crimes under Sharia Law.⁶⁵⁸

Among the key challenges of the above legislation is the absence of proper codification or a definition base. Despite the early effort in this regard manifested in the Anti-Bribery Law, corruption crimes are not considered comprehensively within a single law. Instead, they remain loosely defined and punished under laws governing a specific area of public or private activity. The fragmented nature of the existing legal basis for tackling corruption may lead to inconsistencies in the interpretation and application of anti-corruption provisions across different sectors of public activity. Furthermore, the absence of a unified legal framework on corruption may contribute to certain forms of corruption being inadequately addressed due to the lack of streamlined enforcement procedures. Finally, the prohibitive and punitive character of the majority of the laws remains an issue for adequate prevention, which requires increased transparency and integrity.⁶⁵⁹

Another challenge is the lack of emphasis on whistleblowing. Only in the Anti-Bribery Law are whistleblowers exempt from punishment, but no reward is stipulated for reporting crimes in any of the existing laws, which undermines the effort of identifying corruption crimes. As argued by Alshalan, the encouragement of whistleblowing is further undermined by the ‘effective regret’ type of whistleblower protection.⁶⁶⁰ Effectively, such protection is offered in cases when a case of corruption is reported immediately after it has been witnessed. The circumstance of immediacy or short-term nature differentiates this type of protection from whistleblower immunity, whereby any act of reporting, regardless of the timing, makes whistleblowers immune to punishment and/or eligible for reward.⁶⁶¹ As only ‘effective regret’ is recognised under the Saudi laws, the incentive for reporting crime remains limited as individuals cannot be

⁶⁵⁵ Royal Decree No. M/49 of 1397H corresponding to 1977, art. 12

⁶⁵⁶ Cabinet Decision No. 534/1442 corresponding to 2021.

⁶⁵⁷ *Ibid.*, art. 5.

⁶⁵⁸ Syed Zubair Ahmed, ‘An Evaluation of the Anti-Fraud Regime in Saudi Arabia from the Islamic Shariah Perspective’ (2021) *Universal Journal of Business and Management* 94.

⁶⁵⁹ Hindawy, ‘Combating Administrative Corruption and Its Role in Achieving Sustainable Development in Light of the Kingdoms Vision 2030’ (2023) 12 *Information Sciences Letters* 1911.

⁶⁶⁰ Alshalan, note 80, 225.

⁶⁶¹ OECD, *Corruption: A Glossary of International Standards in Criminal Law* (Organisation for Economic Co-operation and Development 2008) <https://www.oecd-ilibrary.org/governance/corruption_9789264027411-en> accessed 30 December 2023.

certain that their eligibility for protection against prosecution and/or retaliation from the perpetrator is guaranteed.

LEGAL DEVELOPMENT

From the legal development perspective, the sector-based laws featuring corruption articles are demonstrative of further sophistication of the law and recognition of corruption penetrating all spheres of public service. The Impeachment of Ministers Law is evidence of recognising corruption at the highest level while the Civil Service Law does the same at the lowest level. Thus, corruption practices are being gradually recognised across all spheres of public service, which underscores the rising significance of the matter for the government. One can characterise this development as being essential for the transformation of the nation under the accumulation of material wealth. According to Al-Rasheed, such rapid growth of anti-corruption legislation exacerbated the social tensions, inequality, and accusations of corruption at the highest levels of the royal family.⁶⁶² In turn, these accusations threatened regime stability and the legitimacy of the Saudi dynasty's rule. The juxtaposition between material abundance and the Islamic tradition of moderation further fuelled the social tensions, which resulted in a series of public revolts in 1979. Thus, at least to some extent, efforts to contain ministerial corruption in the 1960 law, followed by the Civil Service Law of 1977, can be deemed as motivated by tending to the said public grievances and discontent.

Following the signing and ratification of the UNCAC in 2006, Saudi Arabia continued along the course of banning corruption, yet the efforts remained mostly punitive, as can be seen from the Combating Financial Fraud and Deceit Law. Therefore, throughout its history, the development of the Saudi anti-corruption law mostly remained breadth-oriented, with the focus being given mostly to recognising and banning corruption at all possible levels and in all public and private institutions. At the same time, the efforts at codification resisted earlier due to the Sharia Law tradition undermined the attempts to introduce more comprehensive and focused laws. This is evidenced by some stalled legal projects such as the Law of Abuse of Public Trust, which was delayed for more than a decade.⁶⁶³ Overall, however, the continuous amendment and legal review of the current legal framework, witnessed in multiple iterations and expansions to the Anti-Bribery Law, Anti-Money Laundering Law, and Anti-Forgery Law, as well as continuous adoption of new legislation such as the Combating Financial Fraud and Deceit Law, suggest that the framework keeps developing under the auspices of international collaboration.⁶⁶⁴

6.4 THE ROLE OF ANTI-CORRUPTION AGENCIES IN INVESTIGATING AND PROSECUTING CORRUPTION IN SAUDI ARABIA

6.4.1 OVERSIGHT AND ANTI-CORRUPTION AGENCY (OACA)

LEGISLATIVE MANDATE, FUNCTIONS AND ORGANISATIONAL POWERS (CAPACITY)

⁶⁶² Madawi Al-Rasheed, *A History of Saudi Arabia* (Cambridge University Press 2002).

⁶⁶³ Alshalan, note 80, 178.

⁶⁶⁴ Ibid.

The most important anti-corruption agency in Saudi Arabia is the Oversight and Anti-Corruption Authority (OACA).⁶⁶⁵ The OACA agency was originally established in 2011 to lead the national anti-corruption effort in accordance with the National Anti-Corruption Strategy expressed in Ministerial Resolution no. 43 of 19th February, 2007.⁶⁶⁶ In line with the decree and the subsequent Resolution no. 165 published in 2011 (referred to here as the Resolution), OACA was created to preserve integrity, advance transparency, and confront all forms of financial and administrative corruption.⁶⁶⁷ OACA was established as an independent body free from the oversight of other government structures and was answerable directly to the King, although OACA's role incorporated cooperation with other agencies who play a role in fighting corruption in Saudi Arabia, as discussed later in the section.⁶⁶⁸ Moreover, OACA possessed the power to inquire into Saudi governmental officials, governmental entities (no exclusions provided within the Resolution), and private companies in which the Saudi government held no less than a 25 percent stake.⁶⁶⁹ The creation of OACA can be thus considered as a significant step in the institutionalisation of transparency and integrity in the governance of Saudi Arabia, especially as there was no dedicated agency to fulfil that role. The broad jurisdiction of the Saudi OACA that extended to any public body, including the Defence and Oil Ministries (although not explicitly) nominally granted OACA the ability to shape anti-corruption policy across the whole public sector and in large-scale public or private organisations.

Article 3 of the Resolution established a very particular list consisting of 21 main functions or duties that OACA had the authority and obligation to execute. They can be classified into 5 types: prevention; detection and monitoring; enforcement and prosecution; capacity building and collaboration; and international cooperation. The prevention function of OACA is mainly realised through policy analysis and ideation, as well as promoting good citizenship values such as integrity and accountability through public education efforts such as presentations. The detection and monitoring function of OACA allows it to monitor compliance with laws against financial and administrative corruption, collect and investigate corruption reports, and conduct follow-up inquiries.⁶⁷⁰ Its enforcement and prosecution function is realised by referring corruption violations to prosecution authorities (i.e., the public prosecutor's department) as well as stolen asset recovery. Capacity building in OACA is realised through the coordination and evaluation of anti-corruption efforts in bodies under its jurisdiction. The main function of OACA in the sphere of international cooperation is to represent the Kingdom in international anti-corruption forums and participate in the development of cross-border anti-corruption norms.

In theory, the described functionality of OACA fits its role well, as it combines various approaches to fighting corruption including preventive, punitive, and collaborative instruments. In this sense, the Saudi OACA represents a multi-purpose anti-corruption agency that matches the scale and complex nature of corruption in Saudi Arabia, which stems from various causes and manifests across many national institutions. At the same time, such breadth of function requires a matching capacity to fulfil it, which was not always present.

⁶⁶⁵ Different Translations exist to name the Agency, including 'Control and Anti-Corruption Commission,' so, to avoid confusion, it will be referred to as Nazaha in this chapter.

⁶⁶⁶ Council of Ministers Resolution No. (43), 01/02/1428H corresponding to 2007, The National Strategy for Maintaining Integrity and Combating Corruption.

⁶⁶⁷ Cabinet Resolution No. 165, dated 28/05/1432H corresponding to 2011, on the establishment of National Anti-Corruption Commission, art. 3.

⁶⁶⁸ Ibid., art. 2

⁶⁶⁹ Ibid.

⁶⁷⁰ Ibid.

Thus, according to an interview with OACA's president, Muhammad Al-Sharif, dating back to 2013, the agency was a short-staffed body that mostly dealt with receiving reports of corruption and making follow-up queries to various public bodies.⁶⁷¹ Accordingly, OACA's annual reports reflect only the detection and monitoring function because they contain data on submitted corruption reports, while the results on the rest of the activities are not publicly reported.⁶⁷² Although this does not necessarily mean that OACA did not perform all of the functions bestowed upon it by the Resolution, the issue persists with the transparency of OACA due to its allegiance only to the monarch, rather than to the public, which is stipulated in Article 2 of the Resolution.⁶⁷³ Thus, the data on OACA's activities have been collected through indirect sources such as interviews and press releases, to analyse its role and its influence on anti-corruption efforts. The two key functions of OACA, namely enforcement and prosecution and capacity building are discussed in detail in sections 4.1. and 4.2, respectively.

It is evident from the available data that the role of OACA is significant, evidenced in its contributions to the anti-corruption efforts in Saudi Arabia. In 2013, the agency was receiving and analysing between 80 and 100 reports of corruption across the nation daily. For the first 25 months after its inception, OACA conducted 38,000 inspection visits and interviewed some 8,000 people, which resulted in more than 2,600 arrests, according to a press release.⁶⁷⁴ In 2021 alone, OACA conducted 28,000 inspections, conducted close to 9,000 investigations and authorised 2,100 arrests based on those activities. By 2022, OACA's social media accounts had attracted 1.7 million followers (2 million in 2024), which signifies a large public outreach.⁶⁷⁵ Finally, as evident from historical data on the CPI, after the establishment of OACA the country's CPI score gradually rose from 43 points to 59 (higher is less corrupt), thus surpassing the global average of 43.⁶⁷⁶ These results demonstrate that OACA contributes immensely to ousting corruption across the nation. There are several major reasons for this productivity.

Compared to KACA, whose remit is limited to the collection of reports and preliminary investigations, the OACA is vested with the authority to conduct thorough investigations into such claims. This function lies with the criminal investigation and prosecution unit established within OACA. Following the completion of an inquiry, it is further empowered to refer corruption cases to the appropriate criminal court, thus combining the functions of investigator and prosecutor. However, these powers have not been granted to OACA from its inception. Rather, the agency's powers were gradually expanded over time. In 2019, OACA's powers were expanded to make it the sole agency responsible for the majority of anti-corruption efforts in Saudi Arabia. This expansion was a result of merging OACA with the Control and Investigation Board and the Administrative Investigations Department.⁶⁷⁷ Thanks to the merger, OACA received additional personnel

⁶⁷¹ Fahd Al-Theyabi, 'Nazaha Has Reined in Corruption' (*Arab News*, 2013) <<https://www.arabnews.com/node/477126/amp>> accessed 12 February 2024.

⁶⁷² Nazaha, 'Statistics of Complaints Submitted to the Oversight and Anti-Corruption Authority for the Year 2022' (Oversight and Anti-Corruption Authority 2022) <<https://nazaha.gov.sa/Media/Posts/2022%D9%85.pdf>> accessed 13 February 2024.

⁶⁷³ Cabinet Resolution No. 165, dated 28/05/1432H corresponding to 2011, on the establishment of National Anti-Corruption Commission, art. 2.

⁶⁷⁴ Abdel Aziz Aluwaisheg, 'Saudi Arabia's Anti-Corruption Campaign Takes Root' (*Arab News*, 2022) <<https://www.arabnews.com/node/2020831/amp>> accessed 13 February 2024.

⁶⁷⁵ Ibid.

⁶⁷⁶ 'Saudi Arabia Corruption Perceptions - Transparency International' (*TheGlobalEconomy.com*, 2022) <https://www.theglobaleconomy.com/Saudi-Arabia/transparency_corruption/> accessed 13 February 2024.

⁶⁷⁷ Arqam Investment Company, 'القضائية الأحكام من عدداً وتصدر الجنائية القضايا من عدداً تباشر "الفساد ومكافحة الرقابة هيئة"', (أرقام, 14 October 2021) <<https://www.arqaam.com/ar/article/articleDetail/id/1503419>> accessed 13 February 2024.

and resources, which amended the understaffing issue mentioned in 2013 by Muhammad Al-Sharif. The merger allowed OACA to expedite the investigation process due to the reduced need for cross-agency communication, which explains the high rates of inspections and arrests. Recent legislative reforms, specifically the OACA Law of 2024, introduced mechanisms for inquiries into illicit enrichment practices and it also required public officials to justify large wealth imbalances.⁶⁷⁸ However, this ex-post approach is not as effective as the regularly scheduled ex ante disclosure regimes recommended by UNCAC.

ORGANISATIONAL INDEPENDENCE AND ACCOUNTABILITY

As per the Cabinet Resolution No. 165, dated 28/05/1432H corresponding to 2011, which established Saudi OACA, the agency is established by the king and is answerable directly to him:

“The Authority is directly linked to the King, and enjoys a legal personality and complete financial and administrative independence, which guarantees that it can carry out its work with complete neutrality and without influence from any party, and no one may interfere in its field of work.”⁶⁷⁹

“The President shall prepare reports to be submitted to the King, as follows: An annual report within (ninety) days at most from the date of the end of the fiscal year...”⁶⁸⁰

As follows from Article 14, the King is a direct supervisor of the organisation and is also the sole source of the agency’s power, which shields the OACA from other ministries’ influence. The president of the organisation is equal to the rank of a minister, which grants the privileges and responsibilities of this rank such as legal immunity and accountability before the king. However, it is not stated directly that the government’s treasury is also a source of the organisation’s budget but Article 12 of the Resolution indicates that the organisation shall possess an independent budget in the form of a special account at the Saudi Arabian Monetary Agency.⁶⁸¹ Even though this centralised system ensures that resources are divided equally, it also reflects the fact that the authority depends more on the king’s decisions than on guidelines set by institutions.

Overall, the OACA is indeed insulated from undue influence from 99% of the state and non-state actors in the country, which sets it apart as independent and autonomous. Contributing to this autonomy is its budget, which is not linked to its performance, role or relations with other ministries. On the other hand, the role of the Saudi Arabian Monetary Agency is not clearly defined in the Resolution, which raises concerns over whether the King is fully responsible for approving the budget or whether the Monetary Agency has any leverage over it. This circumstance somewhat undermines OACA’s financial transparency but otherwise OACA can be deemed sufficiently autonomous and free from influence.

PREVENTIVE MEASURES AND PUBLIC AWARENESS

⁶⁷⁸ Benjamin D Jones and Florence Jerome-Ball, ‘The New Nazaha Law: More Prosecution Prospects in Saudi Arabia’s Fight Against Corruption’ (2024) <<https://www.gtlaw.com/en/insights/2024/8/the-new-nazaha-law-more-prosecution-prospects-in-saudi-arabias-fight-against-corruption>> accessed 11 June 2025.

⁶⁷⁹ Cabinet Resolution No. 165, dated 28/05/1432H corresponding to 2011, on the establishment of National Anti-Corruption Commission, art. 3

⁶⁸⁰ Ibid., art. 14

⁶⁸¹ Ibid., art. 12

A main reason for the high numbers of investigations and convictions achieved by the Saudi OACA is the high corruption-reporting rate (whistleblowing). According to the 2018 statistics, up to 80% of corruption cases investigated by OACA originated from individual reports or referrals. According to Deloitte, there is reason to believe that such rates are there due to the high rewards instituted for whistleblowing.⁶⁸² Indeed Article 17 reads:

“Any person who provides incriminating information on any of the offences set forth in this Law that substantiates the offence and he is not a briber, accomplice, or mediator shall receive a reward not less than 5,000 riyals and not more than half of the money confiscated. Such reward shall be determined by the authority deciding upon the offence.”

In addition, the article states that the reward can be increased situationally by the Presidency of State Security, the Mabahith department. Beyond their connection to rewarding whistleblowing, the role of this agency is also to publish the judgements issued on bribery offenses, as indicated in Article 21. This incentive with the prospect of a substantial monetary benefit has indeed proved effective for increasing reports of corruption, thereby providing material for OACA and other agencies to investigate them further.

However, despite the large numbers of initiated cases, high public outreach and number of investigations, there is a caveat of low conviction rates. According to the article published by Argaam Investment Company, the cases prosecuted by OACA in 2020 resulted in around 100 convictions, ranging from prison terms to fines, while the total number of arrests for corruption in the same year was close to 1,900.⁶⁸³ Based on these data, the conviction rates appear to be low (5.3%) compared to countries like the US, where the conviction rate for corruption crimes is 76%, and Singapore where it is close to 99%.⁶⁸⁴ There may be several reasons for this outcome. One is the fact that the Saudi Arabian judicial system does not officially incorporate the concept of a plea bargain, at least in corruption cases.⁶⁸⁵ Because plea bargains are popular in the US, conviction rates in their system could be higher, as a plea bargain allows the prosecution and the defendant to agree on a lesser sentence in exchange for the defendant's guilty plea, thus avoiding the time, expense, and uncertainty of a trial. Another reason is the lack of evidence of a crime; gathering such evidence can be exceptionally challenging due to the covert nature of corruption crimes, the sophistication of the schemes involved, and the possibility of evidence tampering. Even though the law states that even promises of services can be considered corruption, in reality, the fact that such a promise was made is hard to establish.

OACA also has a capacity-building function, which involves working with the public to increase their awareness of corruption and helping to establish anti-corruption oversight. Thus, OACA works with Saudi

⁶⁸² Paul Huck, ‘Saudi Arabia’s Anti-Bribery and Corruption Law’ (*Deloitte Middle East* 2023) <<https://www2.deloitte.com/sa/en/pages/finance/articles/saudi-arabias-anti-bribery-and-corruption-law.html>> accessed 18 February 2024.

⁶⁸³ Argaam Investment Company, ‘القضائية الأحكام من عدداً وتصدر الجنائية القضايا من عدداً تبأشر “الفساد ومكافحة الرقابة هيئة”’ (October 2021) <<https://www.argaam.com/ar/article/articledetail/id/1503419>> accessed 13 February 2024.

⁶⁸⁴ National Institute of Justice, ‘A Handful of Unlawful Behaviors, Led by Fraud and Bribery, Account for Nearly All Public Corruption Convictions Since 1985’ (*Office of Justice*, 2020) <<https://nij.ojp.gov/topics/articles/handful-unlawful-behaviors-led-fraud-and-bribery-account-nearly-all-public>> accessed 19 February 2024; Corrupt Practices Investigation Bureau, ‘Public Vigilance Critical In Fighting Corruption’ (2022) <<http://www.cpiib.gov.sg/press-room/press-releases/280423-public-vigilance-critical-in-fighting-corruption/>> accessed 19 February 2024.

⁶⁸⁵ Abullah Alaoudh, ‘Saudi Arabia’s Convenient Attorney General’ (*Carnegie Endowment for International Peace*, 2018) <<https://carnegieendowment.org/sada/75658>> accessed 19 February 2024.

citizens and professionals to encourage them to directly report instances of corruption. As discussed above, reporting rates appear very high due to the substantial monetary encouragement provided by Article 17 of the Anti-Bribery Law. The OACA authority facilitates this process through an online portal dedicated to receiving reports from whistleblowers. They have also created a mobile app that whistleblowers can use to safely and easily report corruption.⁶⁸⁶ To protect whistleblowers, in 2018, a Royal Decree emanating from the Saudi Royal Court directed the entities falling under OACA's jurisdiction to abstain from pursuing disciplinary actions against individuals who, as employees, engaged in whistleblowing activities.⁶⁸⁷ Thus, the wide agency over corruption reporting granted by the law allowed OACA to contribute considerably to the anti-corruption effort.

To boost the effort of uncovering instances of corruption and establishing oversight, OACA offers training for internal audits in public and private organisations as more than 80% of the internal auditors in Saudi organisations do not have valid certification or relevant training.⁶⁸⁸ Judging by the fact that by 2020, 80% of auditors were still uncertified, OACA's efforts in this regard are progressing slowly, although earlier data on certification was not available to understand the certification and qualification dynamics. It should be noted also that despite the difficulty of finding a direct connection between whistleblowing, quality of internal audit, and corruption, these variables have been found to have a positive effect on corruption as fraud detection improves.⁶⁸⁹ Consequently, by building organisational capacity, OACA plays a great role in making the effort of fighting corruption the business of every organisation. Thus, instead of having to wait for OACA inspections, organisations and public bodies could identify corruption themselves and possibly uncover evidence of corruption. These oversight activities vastly expand the anti-corruption effort efficiency and possibly enhance conviction rates, which fall behind. However, there is no longitudinal data to show the dynamics of audit quality and certification rates in Saudi Arabia, so it is thus difficult to analyse OACA's effort and determine how effective the training is.

Overall, from its inception, OACA became a major actor that put the existing legislation to use against fraud, embezzlement, bribery, and other corruption offenses. However, other organisations that aid OACA in fighting corruption should also be acknowledged. For example, the PPD is an organisation that fulfils the investigatory and prosecutor function. PPD handles all criminal offenses, so it is involved if a defendant is facing other criminal charges besides corruption. There is a certain overlap, as the PPD can also investigate and prosecute corruption cases, as bribery is a criminal offense under the Anti-Bribery Law. Furthermore, there are no explicit laws that delineate the functions of the PPD and OACA with regard to the anti-corruption effort, hence the lack of clarity persists. However, the confiscation of funds obtained through illicit

⁶⁸⁶ Application Department, 'Report corruption to Nazaha' (*Ministry of Justice*, n.d.) <<https://www.moj.gov.sa:443/English/Ministry/Pages/Nazaha.aspx>> accessed 3 May 2024.

⁶⁸⁷ Ahmed Amonette, 'The Anti-Corruption Landscape in Saudi Arabia under Vision 2030' (*Al Tamimi & Company*, n.d.) <<https://www.tamimi.com/law-update-articles/the-anti-corruption-landscape-in-saudi-arabia-under-vision-2030/>> accessed 3 February 2024.

⁶⁸⁸ Zahraa Moied Al-Rbai, 'The Effectiveness of Internal Audit in Government Units in the Kingdom of Saudi Arabia and Their Obstacles in the Light of the Saudi Vision 2030 and Current Changes' (2020) *Multi-Knowledge Electronic Comprehensive Journal For Education & Science Publications* 1.

⁶⁸⁹ See: Monica Pamela Citranagari, 'The Effect of Professional Skepticism, Experience of Investigative Auditors and Whistleblowing System on Auditor's Ability in Detecting Fraud' (2022) 2 *Journal Research of Social Science, Economics, and Management* 72; See also: Bambang Leo Handoko and Roifah Amelia, 'Implementation of Good Corporate Governance, Internal Audit, Whistle-Blowing System for Fraud Prevention in State-Owned Enterprise', *Proceedings of the 2021 12th International Conference on E-business, Management and Economics* (Association for Computing Machinery 2021) <<https://doi.org/10.1145/3481127.3481144>> accessed 13 February 2024.

means requires the involvement of the PPD as it holds exclusive powers to issue confiscation requests, unlike OACA.⁶⁹⁰ Thus, the PPD plays an important role in facilitating corruption convictions and returning stolen funds from perpetrators' accounts, although the nature and the extent of their collaboration are not explicitly promulgated in the law.

TRANSPARENCY

Although there have been a few improvements, the transparency of the OACA has been limited over the last few years. OACA has become more open about its operations, publishing numbers on investigations and the results (in 2024, it reported over 1,700 arrests linked to corruption).⁶⁹¹ The OACA law that went into effect in 2024 claimed to increase transparency, accountability and whistleblower protections to encourage people to take part.⁶⁹² The agency produces periodic reports and attracts the public's attention through official media and public events. Meanwhile, very few independent parties are scrutinising OACA's actions. Because free speech is heavily controlled in Saudi Arabia, media and society are unable to challenge OACA's activities. Furthermore, OACA is directly answerable to the head of state, without any separate organisation watching over it. Most cases handled by OACA are sent to the courts, but important anti-corruption cases against top figures have avoided the courts, which raises questions about whether justice is always applied in the same way at the top. So, despite providing some clear information through public reports and statements, OACA keeps its transparency limited and there are still large gaps in its accountability to the public.

6.4.2 SAUDI ARABIA FINANCIAL INTELLIGENCE UNIT (SAFIU)

LEGISLATIVE MANDATE, FUNCTIONS AND CAPACITY

The institutional side of the Saudi Arabian framework against corruption also includes a Financial Intelligence Unit. Saudi Arabia's FIU (SAFIU) was created as part of the Kingdom's anti-money laundering legislation. Formally operational as of 2005 and established by Royal Order (No. 6041 of 1426 AH), the SAFIU acceded to its Royal Order approval and start date.⁶⁹³ The SAFIU's legal existence is established under the AML Law (Royal Decree M/20 dated 5/2/1439H (corresponding to 2017), amending the earlier 2003 law to reflect international standards and to strengthen the SAFIU's role in Saudi Arabia's AML/CFT regime.⁶⁹⁴

The core functions of the SAFIU are defined within the 2017 AML law. According to Article 17 of the law, the SAFIU's primary role is to receive and analyse STRs and, as appropriate, compile intelligence reports on transactions it believes to be suspicious.⁶⁹⁵ After it has analysed an STR, the SAFIU may then choose

⁶⁹⁰ Kaunain Rahman, 'An Overview of Corruption and Anti-Corruption in Saudi Arabia' (Transparency International 2020) <https://knowledgehub.transparency.org/assets/uploads/helpdesk/Country-profile-Saudi-Arabia-2020_PR.pdf> accessed 13 February 2024.

⁶⁹¹ Nazaha Annual Report 2022

⁶⁹² 'Integrity and Accountability: Anti-Corruption Enforcement in Saudi Arabia' (*Secretariat*, 30 January 2025) <<https://secretariat-intl.com/insights/integrity-and-accountability-anti-corruption-enforcement-in-saudi-arabia/>> accessed 1 June 2025.

⁶⁹³ SAFIU, 'Saudi Arabian Financial Intelligence Unit' (N.d.) <<https://safiu.gov.sa/wps/wcm/connect/safiu/en/about>>.

⁶⁹⁴ Royal Decree No. (M/20) dated 5/2/1439 AH (corresponding to 2017), superseding the Anti-Money Laundering Law issued by Royal Decree No. (M / 31) dated 11/05/1433 AH (corresponding to 2011)

⁶⁹⁵ Royal Decree No. (M/20) dated 5/2/1439 AH (corresponding to 2017), art. 17

to share it with the appropriate competent authority (law enforcement or prosecutors) for action if there is ground to assume wrongful conduct. In this sense, the FIU constitutes a very important filtering institution and a repository of financial intelligence. The SAFIU maintains a database of suspicious transaction records, and it can request additional information from reporting entities to assist in its analyses (as provided for under the AML regulations).⁶⁹⁶ The SAFIU also facilitates both information-sharing between domestic relevant authorities and international cooperation with foreign FIUs on a variety of AML matters. For example, the SAFIU has signed multiple Memoranda of Understanding (MoUs) with its counterpart FIUs in other countries, which enables cooperation on cross-border financial intelligence information-sharing. These agreements show the potential and actual benefits of viewing the SAFIU as the Kingdom's entryway to the global AML/CFT intelligence network.

In terms of institutional capacity, the SAFIU's progress in meeting international obligations has been marred with procedural inefficiency. By 2007, the FIU was able to demonstrate enough capacity to be endorsed for membership of the Egmont Group by international evaluators (the U.S. Financial Crimes Enforcement Network was one of those evaluators). SAFIU was formally accepted as a member of the Egmont Group in 2009, showing that it had achieved Egmont's minimum membership requirements (operational autonomy and ability to share information securely). Indeed, a mutual evaluation report published in 2010 depicts the SAFIU as a 'well-equipped and well-resourced' entity. At that point in time, the SAFIU had modern analytical software and the staff complement to analyse STRs. However, a very small number of STRs was submitted and there was a backlog and still approximately 30% of STRs from the two previous years pending analysis. Despite the fact that the technical infrastructure was reasonable, the capacity to handle STRs was still lacking as of its last report in 2020.

In recent years, the FIU has adopted electronic STR filing systems and more advanced analytics. Despite this, international assessors have noted possible areas for improvement: in the 2018 evaluation, FATF acknowledged that SAFIU was operational and largely compliant with its standards, but indicated that the analytical processes tended to be somewhat basic.⁶⁹⁷ Specifically, they described SAFIU's analysis as 'simple and single-layered' that generally connected data together from apparent indicators, typically without any significant measures or techniques for complicated money laundering scenarios. This means, essentially, that the capacity of FIU to recognise and act upon a sophisticated financial corruption case remains limited.

In terms of capacity, the FIU received over 1,700 STRs in 2018 but it experienced a significant drop in processing power due to a number of factors.⁶⁹⁸ Also, there have been significant changes in the overall enforcement-related results within the Kingdom: by 2018, convictions related to terrorism financing which was in part a result of increased financial intelligence reporting streams. This suggests that FIU analyses are contributing towards multiple important investigations related to money laundering networks and thus

⁶⁹⁶ SAFIU, 'Saudi Arabian Financial Intelligence Unit' (SAFIU, N.d.) <<https://safiu.gov.sa/wps/wcm/connect/safiu/en/about>>.

⁶⁹⁷ FATF, 'Saudi Arabia Mutual Evaluation 2018' (*SlideShare*, 2018) <<https://www.slideshare.net/slideshow/saudi-arabia-mutual-evaluation-2018/116265082>> accessed 7 July 2025.

⁶⁹⁸ SAFIU, 'SAFIU Annual Report 2020' (2020) <https://safiu.gov.sa/wps/wcm/connect/safiu/ar/reports?WCM_PI=1&WCM_Page.3e5d4161-735e-43fa-892f-a95cdc4ed4a6=1&WCM_PageSize.3e5d4161-735e-43fa-892f-a95cdc4ed4a6=10> accessed 7 July 2025.

helping to expose corruption schemes. However, case examples remain confidential. Furthermore, the FIU's STR processing ratio, according to its latest report, dwindled significantly: in 2020, it received 320 intelligence requests, produced 164 analytical reports, and sent 171 outgoing requests for information from local and international partners.⁶⁹⁹ Also, final law enforcement outcomes (investigations initiated, charges filed, or convictions secured) are not listed. The decreased activity compared to 2018 is explained by a number of factors, including COVID-19 pandemic disruptions, the introduction of an electronic reporting system, a strategic priority for quality over quantity, and a temporary pause in accepting reports due to the need to clear the backlog issue noted by FATF.

ORGANISATIONAL INDEPENDENCE AND ACCOUNTABILITY

The Financial Intelligence Unit of Saudi Arabia (SAFIU) is part of the Presidency of State Security, a specialised security organisation established in 2017 that reports directly to the king.⁷⁰⁰ This makes SAFIU part of a law enforcement and intelligence framework rather than under the authority of either a civilian government ministry or central bank. Embedding SAFIU within a state security structure enhances SAFIU's law enforcement mission, gives it access to intelligence assets, and increases the level of protection afforded to sensitive financial information. The downside of this structure concerns operational independence, given that SAFIU is embedded in an organisational structure as part of a more complex security organisation.

Despite this concern, SAFIU is designed to function with a great deal of operational independence in line with FATF Recommendation 29 and Egmont Group principles. The FIU has no political obstructions to carrying out its mandate to collect, use, analyse, and disseminate information. Saudi officials, namely the Head of the FIU, are adamant that SAFIU can execute its functions free from outside intrusion. The Head of the FIU, the director-general, can access domestic and foreign intelligence reports from various intelligence and law enforcement sources without needing to seek higher approval on a case-by-case basis.⁷⁰¹ This operational independence of SAFIU was a significant reason for Saudi Arabia's accession as a member of the Egmont Group in 2009, which mandates that member FIUs have the capacity to share information effectively without the need for political/executive approval.⁷⁰² Yet, the king and State of Security Presidency still have substantial veto power over their operations since they oversee and approve budgeting and appointment, hence limiting the achievement of 100% independence.

SAFIU also publishes statistics on an annual basis and provides applied operational updates to the National Anti-Money Laundering Committee and the Council of Ministers through State Security as part of internal accountability.⁷⁰³ However, public oversight of SAFIU is limited as citizens of Saudi Arabia do not have access to financial intelligence reports, which are confidential. To compensate, internal supervision is embedded into the leadership and organisational structure of SAFIU. The budget, appointment of personnel, and policy direction ultimately rest with the Head of State Security, who holds a minister rank.⁷⁰⁴ Analysts employed by SAFIU may be afforded more confidentiality and institutional protection by being

⁶⁹⁹ Ibid.

⁷⁰⁰ Royal Decree No. (M/20) dated 5/2/1439 AH (corresponding to 2017), art. 13

⁷⁰¹ FATF n (666).

⁷⁰² Ibid.

⁷⁰³ SAFIU n (667).

⁷⁰⁴ Royal Decree No. (M/20) dated 5/2/1439 AH (corresponding to 2017), art. 18

employed as part of State Security, and this enables them to pursue any potentially sensitive financial corruption investigations, and to try and mitigate pressures if politically connected persons are involved. This structure attempts to provide operational effectiveness by having them embedded in a distinct security governance framework, but still ensures operational independence.

PREVENTIVE MEASURES AND PUBLIC AWARENESS

The SAFIU is also part of the wider strategy to prevent money laundering and corruption. The FIU is primarily an intelligence unit, but also has a role in policy development and generally raising awareness of issues pertinent to regulated sectors and the general public. A crucial preventative action is that the AML Law obliges designated non-financial businesses (e.g., banks, insurance companies, real estate agents, lawyers) to supervise their customers and immediately report suspicious transactions to SAFIU.⁷⁰⁵ SAFIU has provided guidance to reporting entities by publishing information about how to recognise suspicious transactions, and the processes for filing suspicious transactions, to inform them about how to raise awareness of suspicious transactions under the preventative regime. By being the point of receipt for STR filings, the SAFIU indirectly monitors non-financial businesses for compliance. Thus, a certain level of under-reporting may trigger investigation or follow up from regulators, potentially alerted by the SAFIU itself.

Public awareness represents another dimension of the corruption prevention strategy. Through SAFIU, the Saudi government strives to inform the public about the dangers of money laundering and the importance of compliance. Specifically, the SAFIU and its partners have conducted public awareness campaigns in a variety of ways, and published awareness messages in the media.⁷⁰⁶ For example, the FIU's website and the AML Permanent Committee portal both host or have hosted awareness messages and guidelines for businesses and citizens. The topics covered in these messages and guidelines have included, but are not limited to, how money laundering works, the harm money laundering causes to societies, and reminders that it is a formal obligation to report suspicious conduct.

TRANSPARENCY

Collaboration among agencies is another aspect of transparency. Within the government, SAFIU shares its operational transparency with the government agencies relevant to its functions. For example, the SAFIU regularly informs the Public Prosecution Office regarding its provision of financial intelligence through cases sent to the prosecution and follow-up meetings.⁷⁰⁷ OACA, as part of the anti-money laundering and counter-terrorist financing (AML/CFT) architecture, can access financial intelligence with respect to cases it is working on. The substantial number of agencies that form the AML Permanent Committee (Tax and Customs Authority, the Ministry of Commerce, etc.) have awareness of the FIU's operations, which together forms inter-agency transparency.⁷⁰⁸ This helps reduce the "black box" impression of the FIU that domestic partners may have. The external transparency (openness to public) of SAFIU is, however, limited to annual reports that are available from SAFIU's website. As noted before, information on SAFIU's activities remains

⁷⁰⁵ Royal Decree No. (M/20) dated 5/2/1439 AH (corresponding to 2017), art. 13

⁷⁰⁶ SAFIU, 'Saudi Arabian Financial Intelligence Unit' (N.d.) <<https://safiu.gov.sa/wps/wcm/connect/safiu/en/home>>.

⁷⁰⁷ Ali Ibrahim, '29 reports to the Public Prosecution and 2,241 notifications of suspected money laundering in one year' (Alanba, 2023) <<https://www.alanba.com.kw/1205393>> accessed 1 September 2025.

⁷⁰⁸ Ibid.

quite limited since it is lacking prosecution results and other ways of tracking the efficiency of the organisation's intelligence work such as detection rates, internal decision quality, or specific performance metrics.

On an international transparency level, Saudi Arabia is engaged with organisations such as FATF and Egmont in order to open its FIU to outside evaluation.⁷⁰⁹ The mutual evaluation process by FATF is made public, enabling anyone to read an independent evaluation of the FIU strengths and weaknesses. For instance, the 2018 FATF Mutual Evaluation Report about Saudi Arabia provided honest assessments of the performance of the FIU; that is, updates regarding areas that require improvement, and these assessments are made public.⁷¹⁰ Furthermore, being an active member of Egmont also means being part of a peer review process and sharing best practices, which in its own way forces some transparency about SAFIU's operational protocols (although it is in the confidential Egmont environment).

In conclusion, SAFIU has been a fundamental part of Saudi Arabia's anti-corruption framework. Among its strengths are the broad legal mandate, its associated international cooperation, and operational integration with local agencies including OACA and the Public Prosecution. Its Egmont membership, and compliance with FATF standards, indicate a robust institutional design. Yet, SAFIU also has critical weaknesses. Although SAFIU has a degree of independence with respect to the other investigative authorities, the fact that it is an agency under State Security reduces its complete operational independence and may ultimately impact the extent to which it could be influenced by the executive branch.⁷¹¹ SAFIU also has capacity limitations, demonstrated by its large backlog of analytical work, and its simplistic approach to some very complex financial crime investigations. Also, SAFIU's operations again represent a reactive approach dependent on the submission of STRs. The transparency aspect is also not exemplary. While inter-agency reporting is relatively strong, the outcomes of its investigations are not available for the public scrutiny. SAFIU's preventive function also requires broader engagement with civil society. Overall, SAFIU is an institution that is a work in progress and it needs to be given greater independence, greater capacity development, and greater public transparency.

6.5 ANTI-CORRUPTION EFFORTS IN PUBLIC CONTRACTS AND PROCUREMENT

The key law regulating public contracts and procurement in Saudi Arabia is the Tenders and Procurement Law issued by Royal Decree No. M/58 in 2006. The law regulates government tenders and procurements to ensure that no individual influence and/or private interest affects the decisions of procurement authorities and that public funds are well-protected. Furthermore, the law regulates the pricing of contracts and procurement deals to ensure they are completed in accordance with the principles of competitiveness and fairness. Lastly, the law promotes transparency, accountability at all stages of the contract, and procurement and fair treatment of private entities participating in contracts and procurement deals.⁷¹² In terms of the anti-corruption effort, the law alludes to termination of contracts in the event of any corrupt activity, which only effectively promotes corruption deterrence.

⁷⁰⁹ FATF n (666).

⁷¹⁰ Ibid.

⁷¹¹ Ibid.

⁷¹² Tenders and Procurement Law promulgated by Royal Decree No. (M/58) dated 4/9/1427H corresponding to 2006.

Specifically, Article 51 of the law stipulates that public tenders could be cancelled if there are:

“Clear indications of fraud, corruption or collusion between bidders or any parties related the tender in a manner that precludes awarding the tender in accordance with the provisions of the Law and Regulations.”⁷¹³

Article 76 essentially sets out the same cause for termination for public contracts, albeit for an extended range of corruption offenses including bribery, fraud, deceit, forgery, and manipulation.⁷¹⁴ Article 5 of the Executive Regulations of Conflict of Interest in the Public Contract and Procurement Law also stipulates that no relatives up to the fourth degree may be participants in government contracts and that no public officer should award or mediate awarding a contract to relatives.⁷¹⁵

The inclusion of explicit language addressing fraud, corruption, and collusion of interests indeed serves as a deterrence mechanism, sending a clear signal that such practices will not be tolerated in public procurement processes. By allowing for the cancellation of tenders in the presence of fraudulent activities or collusion, the legislation aims to preserve fair competition. This ensures that contracts are awarded based on merit and adherence to the stipulated regulations.⁷¹⁶ Finally, the merit of the tenders and procurement law in terms of reducing corruption is that it provides a legal basis for the cancellation of tenders. This legal framework can be used to justify actions taken in response to instances of corruption, thus enhancing the overall integrity of the procurement process.

On the other hand, it can be noted that the articles are hardly sufficient for deterrence purposes as they invite certain subjectivity, potential for misuse, and procedural ambiguity. Firstly, the use of terms such as "clear indications" may introduce a level of subjectivity in the interpretation of the provision. Different stakeholders may have varying perspectives on what constitutes clear indications of fraud, corruption, or collusion, potentially leading to disputes or legal challenges.⁷¹⁷ Secondly, there may be concerns about the provision being misused for personal motives, such as the cancellation of tenders based on unsubstantiated claims of corruption. This could raise questions about the fairness and accountability of the decision-making process. Thirdly, the law does not stipulate the procedures to be followed for investigating and establishing the presence of fraud, corruption, or collusion. This ambiguity could result in inconsistencies in the application of the law. Fourthly, there is no mention of bodies to oversee the process of awarding public contracts and tenders. This undermines the transparency of the process and thus disables the deterrence function of the law, since there is effectively no control over public officials' decisions and actions.⁷¹⁸

⁷¹³ Ibid., art. 51.

⁷¹⁴ Tenders and Procurement Law promulgated by Royal Decree N. (128/M) dated 28/9/1444 corresponding to 2020. Art. 76

⁷¹⁵ Ministry of Finance, 'Executive Regulations of Conflict of Interest in the Public Contract and Procurement Law' (n.d.) <<https://www.mof.gov.sa/en/Knowledgecenter/newGovTendandProcLow/Documents/Regulations%20on%20Conflict%20of%20Interests%20in%20Implementation%20of%20the%20Government%20Tenders%20and%20Procurement%20Law%20and%20its%20Implementing%20Regulations%20.pdf>> accessed 2 February 2024.

⁷¹⁶ Awad Ali Alanzi, 'Saudi Procurement System and Regulations: Overview of Local and International Administrative Contracts' (2021) 10 *Laws* 37.

⁷¹⁷ Hunt La Cascia, Michael Kramer and Joseph Huntington La Cascia, 'Vulnerabilities of ICT Procurement to Fraud and Corruption' (World Bank 2023) <<https://openknowledge.worldbank.org/handle/10986/40274>> accessed 2 February 2024.

⁷¹⁸ Ibid.

Although a few crucial amendments to the tenders and procurement law were adopted in April 2020, the above-mentioned drawbacks have not been addressed. However, one crucial amendment arguably closed the loophole in the legislation that allowed price-fixing. In essence, the amendment stipulated that modification to the contract price may not exceed a 10% increase or a 20% decrease.⁷¹⁹ This demonstrates that the Saudi government is striving to amend the legislation in order to increase transparency and accountability. This design-level amendment arguably signifies a more effective approach to fighting corruption that is robust, and clear procedures that leave no room for corrupt practices. Nonetheless, crucial clarifications are still required for the law to become more robust and to work well as a deterrent.

An illustration of the existing flaws is a corruption scandal that was revealed in January 2024, involving the Amir bin Saleh Abdulrahman AlMadani who served as a Chief Executive of the Royal Commission for the Al Ula holy site. OACA charged him with illicitly securing public contracts worth US\$346,685 for the company he co-owned by using family member connections.⁷²⁰ While the contracts he secured will most likely be voided as per Article 76 of the tenders and procurement law, the law was not able to prevent such cases due to the above-mentioned design limitations.

Specifically, one of the limitations that led to this case is the lack of transparency provisions in the law. In practice, all procurement scrutiny is internal to the Local Content & Government Procurement Authority, which essentially concentrates all decision-making power in the hands of a few public servants. In 2019, the government established a Center of Spending Efficiency, an internal governmental body that is, by Article 6 of the law, tasked with the “periodical follow-up of the data of the procurements and contracts concluded by the Government [Procurement] Authority”.⁷²¹ Such narrow functionality is evidence of the lack of investigatory and oversight functions of the new agency, the effect of which is demonstrated in the corruption case above.

In addition, the law does not specify any anti-corruption measures in the due diligence requirements for bidders’ compliance with contract terms. Only formal and technical requirements to qualify for tender or contract competition are set forward to establish the competence of the contract bidders to perform the task, such as certification, licensing, solvency, and so forth.⁷²² This lack of verification of bidders’ honesty and transparency is another flaw in the legislation that stands to be addressed.

Considering the issue of financial disclosure, Saudi Arabia's financial disclosure rules differ substantially between the public and private sectors. In the public sector, although Saudi Arabia has ratified the UNCAC, there is no general financial disclosure requirement for ministers, civil servants, or other public office holders. Only the staff of the OACA are formally required to disclose their assets.⁷²³ Therefore, without

⁷¹⁹ Tenders and Procurement Law promulgated by Royal Decree N. (128/M) dated 28/9/1444 corresponding to 2020. Art. 76

⁷²⁰ ‘Saudi Arabia Detains Public Servant on Corruption Charges’ *Reuters* (29 January 2024) <<https://www.reuters.com/world/middle-east/saudi-arabia-detains-public-servant-corruption-charges-2024-01-29/>> accessed 2 February 2024.

⁷²¹ Executive Regulations Of The Government Tenders And Procurement Law Issued by Royal Decree No. M/128 dated 13/11/1440 A.H. corresponding to 2019, art. 6.

⁷²² Executive Regulations Of The Government Tenders And Procurement Law Issued by Royal Decree No. M/128 dated 13/11/1440 A.H corresponding to 2019, art. 11.

⁷²³ Cabinet Resolution No. 165, dated 28/05/1432H corresponding to 2011, on the establishment of National Anti-Corruption Commission, art. 2.

regular asset declaration across the public services, the effectiveness of any norms for transparency and accountability is constrained. While the OACA Law of 2024 introduced mechanisms for inquiries into illicit enrichment practices and also requested that public officials justify large wealth imbalances,⁷²⁴ this still represents an ex-post approach, which is inferior to the regularly scheduled ex-ante disclosure regime recommended by UNCAC. As no evidence exists to demonstrate systemic scrutiny or obligation in the public sector at the level of design, this points to another major flaw in the anti-corruption framework.

There is also evidence of insufficient whistleblower protection, which undermines the identification of corruption in public contracts and procurement. In fact, Article 11 of the Regulations on Conflict of Interests in Implementation of the Government Tenders and Procurement Law stipulates disciplinary punishment and liability as the consequences for any employee who fails to disclose a conflict of interest.⁷²⁵ In the absence of robust protection measures for whistleblowers, individuals may hesitate to come forward with information about corrupt practices due to fears of retaliation. The said inadequacies lead to the law being insufficiently effective for preventing and exposing corruption in public purchasing and procurement, despite the best legislative efforts of the Saudi government.

6.6 FIGHT AGAINST CORRUPTION IN SAUDI ARABIA ACCORDING TO INTERNATIONAL THINK TANKS

Assessments of international think tanks such as Transparency International or Deloitte in general commend the recent improvements in anti-corruption efforts and the expanded role of OACA but they also underscore the persistent transparency issues in key economy sectors such as defence and oil. For example, Rahman identifies the main strength of Saudi Arabia's anti-corruption efforts as the high-level commitment to combating corruption, exemplified by the Crown Prince's leadership in launching high-profile anti-corruption campaigns. He also highlighted significant downsides, including the lack of transparency and due process in these campaigns, the potential for them to be used as political tools against dissent, and the absence of a robust legal framework that ensures accountability and fairness in the fight against corruption.⁷²⁶ Also, Rahman indicates that the defence sector procurement planning is very opaque, with the Saudi Arabian Monetary Agency only publishing a defence budget with a limited level of detail. The Deloitte report echoes these arguments, indicating that defence and the interior sector (police, judiciary, traffic control) remain among the most corrupt spheres in Saudi Arabia. At the same time, Deloitte commends the efforts of OACA, indicating that their activity levels increased substantially over the period of 3 years between 2020 and 2023, but also noting that in 2022 the number of arrests and open investigations fell compared to 2021 despite the rise in the number of oversight inspections. This is attributed to the possible deterrence effect of the arrests, investigations, and oversight visits, which made

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⁷²⁵ Ministry of Finance, 'Regulations on Conflict of Interests in Implementation of the Government Tenders and Procurement Law' (n.d.) <<https://www.mof.gov.sa/en/Knowledgecenter/newGovTendandProcLow/Documents/Regulations%20on%20Conflict%20of%20Interests%20in%20Implementation%20of%20the%20Government%20Tenders%20and%20Procurement%20Law%20and%20its%20Implementing%20Regulations%20.pdf>> accessed 2 February 2024.

⁷²⁶ Kaunain Rahman, 'An Overview of Corruption and Anti-Corruption in Saudi Arabia' (Transparency International 2020) <https://knowledgehub.transparency.org/assets/uploads/helpdesk/Country-profile-Saudi-Arabia-2020_PR.pdf> accessed 13 February 2024.

individuals more vigilant to corruption and encouraged those who had been engaging in corruption to stop.⁷²⁷

While there is merit in the reports' assessments, there are also certain flaws and biases. The reports assume that transparency in government operations, especially in sensitive sectors like defence and oil, is a primary indicator of effective anti-corruption efforts. While transparency is crucial, this assumption may not fully account for security and strategic considerations that necessitate confidentiality in certain areas. The lack of transparency does not inherently equate to corruption, as indicated in empirical research.⁷²⁸ Secondly, Deloitte's observation about the relationship between the number of arrests, investigations, and the assumed deterrence effect may not account for all the variables affecting these outcomes. The assumption that a decrease in arrests and investigations directly correlates with a successful deterrence effect could overlook other factors such as shifts in corrupt practices to more covert methods. By highlighting the defence and interior sectors as particularly corrupt, there is an assumption that corruption is uniform across these sectors, potentially neglecting the diversity of operations, personnel, and levels of oversight within and across these areas. It is true, however, that the transparency issue does not allow for a proper comparison of corruption efforts in those sectors, since official OACA reports intended for the wider public do not reflect the processes and procedures employed in the organisation. Instead, OACA's full investigation results and efforts are mainly visible to the King.

In addition to major think tanks such as Deloitte and Transparency International, a global law firm, Paul Hastings, offered their assessment of recent anti-corruption actions in Saudi Arabia. Specifically, they positively characterised the efforts of OACA in maintaining a proactive stance towards corruption globally and conducting numerous inspections and investigations within the country. Furthermore, they commended the amendment of the Anti-Bribery Law that extended the application of the law to any person instead of only public officials. However, they remained sceptical about the application of the amended law to foreign officials and business people.⁷²⁹ Such scepticism can be alleviated by a recent report in which two individuals from the public affairs sector and six individuals from the private sector were identified by OACA as being involved in corruption between 2020 and 2022.⁷³⁰ Unfortunately, no data on the cases were available to assess the application of the amended Anti-Bribery Law.

Another international think tank, GAN Integrity, identified several key problems with Saudi Arabia's anti-corruption effort. As an organisation specialising in international business ethics and risk management, GAN Integrity highlighted significant risks for foreign businesses operating within the Saudi Arabian natural resources sector, public procurement, and service industries. The main concern of GAN is that despite the comprehensive legal base, the application of it remains selective. For example, it is mentioned that

⁷²⁷ Paul Huck, 'Saudi Arabia's Anti-Bribery and Corruption Law' (Deloitte Middle East 2023) <<https://www2.deloitte.com/sa/en/pages/finance/articles/saudi-arabias-anti-bribery-and-corruption-law.html>> accessed 18 February 2024.

⁷²⁸ See for example: Mariana Batista, Virginia Rocha and José Luiz Alves dos Santos, 'Transparency, Corruption, and Mismanagement: An Analysis of Brazilian Municipalities' (2020) 54 *Revista de Administração Pública* 1382.; Alina Mungiu-Pippidi, 'Transparency and Corruption: Measuring Real Transparency by a New Index' (2023) 17 *Regulation & Governance* 1094.

⁷²⁹ Daniel Holman, 'Saudi Arabia Amends Its Anticorruption Law: A New Kid in Town?' (Paul Hastings LLP, 2022) <<https://www.paulhastings.com/insights/international-regulatory-enforcement/saudi-arabia-amends-its-anticorruption-law-a-new-kid-in-town>> accessed 4 February 2024.

⁷³⁰ Paul Huck, 'Saudi Arabia's Anti-Bribery and Corruption Law'

members of the royal family are rarely ousted from their positions and the 2017 crackdown on corruption⁷³¹ was rather an exception to the rule.⁷³² Next, GAN Integrity suggests that violations of corruption legislation may go unpunished in practice if a person is well-connected and has ties to the royal family. However, there is no hard evidence to substantiate or disprove that claim as the GAN references BTI's (Bertelsmann Stiftung) country report, which used their own empirical data.⁷³³

There are also certain dubious assumptions in GAN Integrity's assessment of Saudi anti-corruption efforts. Firstly, they identify corruption in tax administration as low based on the fact that it is uncommon for companies to take irregular payments or bribes in relation to annual tax payments.⁷³⁴ By focusing on the specific aspect of irregular payments or bribes for annual tax payments, they have overgeneralised the state of corruption in the broader tax administration. Thus, they ignore other corrupt practices within the tax system, such as favouritism, embezzlement, or misuse of authority. The flaw in this assumption is confirmed by a OACA report featuring just eight identified cases of corruption in the tax and customs sphere for the 2-year period from 2020 to 2022.⁷³⁵

Secondly, GAN Integrity's assessment is based on secondary sources such as reports by other international observers such as the World Bank, Transparency International, Freedom House, the World Economic Forum, and so forth. Despite that fact, GAN Integrity reports feature factually incorrect statements such as that corruption in the defence sector in Saudi Arabia is not checked. According to Deloitte, OACA identified 21 cases of corruption in the defence sector in the 2020–2022 period, which means that the agency has conducted investigations and received reports in that area.⁷³⁶ Therefore, while GAN Integrity highlighted a few crucial shortcomings in Saudi Arabia's efforts, its assessment has been marred by flaws of its own.

Overall, international think tanks and agencies characterise Saudi Arabian efforts in fighting corruption positively, noting a few crucial advancements: updating the already comprehensive legal basis, proactive global cooperation in the sphere of anti-corruption, a tough leadership stance on corruption, and the successes of OACA in investigating corruption in all areas. There is also agreement on a few crucial shortcomings such as a lack of transparency and accountability in the areas of defence and natural resources, which is not directly related to corruption but rather contributes to its emergence and proliferation. Furthermore, international assessments point out the limited application of anti-corruption law, leaving some public officials such as members of the royal family and those closely connected to them outside of the scope of the anti-corruption effort. These international assessments are mostly in line with the ones made in this chapter and, despite the bias identified in some of the agencies' assumptions, are

⁷³¹ In 2017, crown prince Mohammed bin Salman detained and investigated more than 300 high officials including royal family members based on the allegations of their corruption. This case is discussed in detail in section 6.

⁷³² GAN Integrity, 'Saudi Arabia Country Risk Report' (*GAN Integrity*, 4 November 2020) <<https://www.ganintegrity.com/country-profiles/saudi-arabia/>> accessed 21 February 2024.

⁷³³ Bertelsmann Stiftung, 'BTI 2022 Country Report: Saudi Arabia' (Bertelsmann Stiftung 2022) <https://bti-project.org/fileadmin/api/content/en/downloads/reports/country_report_2022_SAU.pdf> accessed 21 February 2024.

⁷³⁴ Ibid.

⁷³⁵ 'Data on the Oversight Visits out by the Oversight and Anti-Corruption Authority, and the Numbers of Those Investigated and Arrested - Oversight Visits 'Investigating 'and Arresting' (*Saudi Open Data*, 2023) <<https://od.data.gov.sa/Data/en/dataset/oversight-visits-investigating-and-arresting/resource/22067570-e469-4f5d-b084-153be6622003>> accessed 21 February 2024.

⁷³⁶ Huck, 'Saudi Arabia's Anti-Bribery and Corruption Law'

largely on-point. It is of note, however, that some of the reports such as those by Transparency International and GAN Integrity date back to 2020 and use sources dating back to 2018 at the latest. Therefore, they are missing some of the crucial developments in the legal, governance, and political anti-corruption effort in Saudi Arabia that occurred after that point. The next subsection of this chapter is therefore devoted to overviewing the latest improvements and challenges in fighting corruption in Saudi Arabia.

6.7 LATEST POLICY DEVELOPMENTS IN SAUDI ARABIA

In the period spanning from 2018 to 2024,⁷³⁷ the fight against corruption in Saudi Arabia can be characterised by further toughening of anti-corruption policy and a hardline, zero-tolerance approach to corruption. The origins of this approach can be traced to the rise of Crown Prince, Mohammed bin Salman, and his father King Salman bin Abdulaziz Al Saud, who assumed power in 2015. Two years later, in 2017, King Salman bin Abdulaziz Al Saud established a Supreme Committee on Corruption with even wider powers in order to empower the efforts of OACA. In accordance with the Royal Decree No. A/38 of 2017, the Supreme Committee is vested with the power to investigate cases, make arrests, and seize assets acquired by a suspect as a result of corrupt activity.⁷³⁸ Headed by the Crown Prince Mohammed bin Salman, the committee consists of the Attorney General, Sheikh Saud Al-Mujib; the head of the OACA organisation, Mazin Ibrahim Alkhamous; the Chief of the General Audit Bureau, Dr. Hussam Alangari; and the Head of State Security, Abdulaziz bin Mohammed Al-Howairini. Essentially, the Committee was formed from the highest-order officials vested with unlimited power within the existing law to fight corruption. This was demonstrated on the fourth of November, 2017 when 387 Saudi public officials, business people, military officers, politicians, and even members of the royal family were detained on the premises of the Ritz-Carlton Hotel in Riyadh for questioning over corruption. As all authority is concentrated with a select few decision-makers, the Committee was able to investigate, arrest, charge, prosecute, and issue sentences for all 387 detainees. It recovered US\$108 million of stolen assets, which were returned to the Saudi Arabian treasury.⁷³⁹

The scale and brutality of the anti-corruption effort was unprecedented in the modern history of Saudi Arabia. According to scholars, the event was not only a demonstration of the hardline approach to corruption but also a demonstration of power, aimed at keeping the other royal offspring in line and respecting the prince and the king.⁷⁴⁰ The political implications, however, remain out of the scope of this work. The legal implications and consequences of the event are vital for understanding the current era in the Saudi anti-corruption effort. Firstly, the efficiency of the centralised body demonstrated during this purge evidently convinced the Saudi government of the need to empower one agency with major investigation and prosecution powers to be able to fight corruption more effectively. This assumption is substantiated by the fact that two years later, in 2019 by Royal Decree no 4, of 1440H, OACA was merged with the Control and

⁷³⁷ 2024 is the time when this research was being written.

⁷³⁸ Royal Decree No. A/38 of 1439H corresponding to 2017, art. 1.

⁷³⁹ Salma Ben Souissi, 'Saudi Arabia Anti-Corruption Authority Announces Arrest of Public Servant on Corruption Charges' (*Jurist News*, 30 January 2024) <<https://www.jurist.org/news/2024/01/saudi-arabia-anti-corruption-authority-announces-arrest-of-public-servant-on-corruption-charges/>> accessed 22 February 2024.

⁷⁴⁰ Dr Fatiha Dazi-Héni, 'Saudi Arabia: Mohammed Bin Salman's Gamble on Youth' (IRSEM 2021) Report No. 80 <<https://www.irsem.fr/media/5-publications/etudes/etude-irsem-80-dazi-h-ni-en.pdf>> accessed 3 May 2024.; Feras Klenk, 'Attempting to Consolidate Power: Analyzing Muhammad Bin Salman's Policies in Saudi Arabia' (1 January 2018) <<https://papers.ssrn.com/abstract=3152009>> accessed 5 March 2024.

Investigation Board and the Administrative Investigations Department, which massively increased the size of OACA's apparatus (currently, OACA has nine offices across Saudi Arabia).⁷⁴¹

As discussed in section 4.1, OACA's jurisdiction also grew substantially, allowing it access to previously 'restricted' spheres including defence. However, to date, the oil and gas sector remains outside of its reach as there are no statistics for OACA investigations in this area. Overall, the 2017 purge was a dubious precedent for the legal system as it essentially violated Articles 2, 4, 6, and 7 of criminal procedure law, which clarifies the rights of those accused of crime to be safe from harm, and to have legal protection and impartial court litigation.⁷⁴² However, the event became the starting point for both legal and governance reforms in the forthcoming period of the late 2010s to the early 2020s, which benefitted the anti-corruption effort by strengthening the institutional capacity of Saudi Arabia to prevent, expose, and prosecute crimes of corruption.

To continue on this reform path, in 2023, Mohammed bin Salman declared a war on corruption inspired by Vision 2030 in which "transparency and accountability reforms" were mentioned.⁷⁴³ The effort to increase transparency can be seen in the pursuit of the digitisation of government services. One notable example of this effort is the establishment of the Real Estate Market platform in 2023, which is supervised by the Ministry of Municipal and Rural Affairs and the Saudi Central Bank. The platform allows access to information about real estate transactions and their value, property portfolios, and other information. The same platform can be used to make purchases, sales, gifting, mergers, and a range of other property deal types.⁷⁴⁴ This platform can be perceived as evidence of a corruption-prevention policy because it minimises human interaction and therefore limits the influence of interpersonal ties as a cause of corruption.⁷⁴⁵ However, there is no legal requirement to use the platform when processing property sales or purchases, so the effect of the reform might not be profound unless it is legislated to become the primary mode of service access and delivery.

In the sphere of accountability, the Saudi Government introduced the Law of Evidence in 2021, strengthening the transparency of the judicial system and the accountability of transactions in both the public and private sphere. According to the new law introduced in 2021, every transaction that involves a public body and exceeds an equivalent of 100,000 Saudi Riyals must be stated in writing, thereby constituting written evidence. Besides contracts, written evidence can also encompass emails, telephone recordings, and any form of data that can be translated into a written form (either electronic or analogue).⁷⁴⁶ Importantly, digital (electronic) records (e.g. electronic signatures, messages, voice recordings) are also authorised to be valid instruments of proof in court.⁷⁴⁷

⁷⁴¹ 'Authority Branches' (*Nazaha*, n.d.) <<https://nazaha.gov.sa/PageDetails/?q=ErU+Ujky6BtFAZW9I3sqLA==>> accessed 4 March 2024.

⁷⁴² Royal Decree No. (M/39) dated 1422H corresponding to 2001.

⁷⁴³ Salma Ben Souissi, 'Saudi Arabia Anti-Corruption Authority Announces Arrest of Public Servant on Corruption Charges' (*Jurist News*, 30 January 2024) <<https://www.jurist.org/news/2024/01/saudi-arabia-anti-corruption-authority-announces-arrest-of-public-servant-on-corruption-charges/>> accessed 22 February 2024.

⁷⁴⁴ 'Saudi Justice Minister Launches Platform for Transparent Real Estate Transactions' (*Arab News*, 28 August 2023) <<https://arab.news/8ep5h>> accessed 4 March 2024.

⁷⁴⁵ Tomáš Diviák and Nicholas Lord, 'Tainted Ties: The Structure and Dynamics of Corruption Networks Extracted from Deferred Prosecution Agreements' (2022) 11 *EPJ Data Science* 1.

⁷⁴⁶ Royal Decree No (M/43), dated 1443 H corresponding to 2021, art. 30.

⁷⁴⁷ *Ibid.*

The significance of this law is that it sets an obligation to document any dealings with public funds, creating a source of data for OACA's corruption investigations and consequently written proof of corruption/lack of thereof. The broad definition of what constitutes written evidence ensures that various methods of communication can be monitored and audited, leaving fewer gaps for corrupt practices to go unnoticed. Therefore, this law also serves as a deterrence mechanism since potential perpetrators would know that transactions must be documented and could be scrutinised. On the other hand, implementation challenges may have to be anticipated. The ability of public bodies to ensure compliance, and the training of personnel in handling and maintaining digital records will be the important factors that affect the practical significance of the law for eliminating corruption.

Secondly, this law makes the legal process more straightforward and reduces uncertainty in the judicial process. Since Saudi Arabian criminal offenses, including those pertaining to corruption, remain loosely codified and in many instances rely on Sharia Law, the introduction of the Law of Evidence requires judges to consider the specified evidence as valid proof rather than relying on their interpretations, which might vary across cases. Therefore, this law reduces the reliance of the judge on discretionary judgements and thus improves the predictability of the outcome, which in turn strengthens the legal framework on corruption and allows the legal process to be streamlined and standardised.⁷⁴⁸ However, the digital nature of many records introduces complexities related to privacy, data integrity, and cybersecurity, which emphasises the power of discretionary judgement and the judiciary's capacity to interpret and utilise digital evidence.

In September 2023, OACA's President Mazin bin Ibrahim Al-Kahmous signed the new initiative with the UNDP to cooperate in regional anti-corruption efforts through the Organisation of Islamic Cooperation (OIC).⁷⁴⁹ This was seen by the UNDP as a step towards meeting the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of OECD. The convention is not yet signed by Saudi Arabia, but it is reported that Al-Kahmous works closely with UNDP partners to establish the groundwork for the convention to function in the country. Among such efforts is the establishment of a public funds and procurement management body, which has only been announced. However, concern remains over whether a new structure will be sufficiently empowered to scrutinise procurement deals. The reason is that the two similar agencies tasked with overseeing public finances and procurement, namely, the Shura Council and General Auditing Bureau, only feature a supervisory role while the entirety of decision-making power is vested with Council of Ministers, headed by King Salman and Mohammed bin Salman themselves.⁷⁵⁰ Hence, it remains to be seen if the new agency will significantly boost the anti-corruption effort in the sphere of public procurement; this will depend on its independence and privileges.

In addition to accountability measures, in 2024, the new law on whistleblowing was announced and has already been approved by the cabinet. This law is designed to protect not only the reporters but also their families. Available information about this law indicates that it establishes a unit within OACA to protect

⁷⁴⁸ Leszek Leszczyński, 'Open Axiology in Judicial Interpretation of Law and Possible Misuse of Discretion' (2020) 29 *Studia Iuridica Lublinensia* 39.

⁷⁴⁹ 'Nazaha and UNDP Continue Engagement on Anti-Corruption in Saudi Arabia' (UNDP, 2023) <<https://www.undp.org/saudi-arabia/news/nazaha-and-undp-continue-engagement-anti-corruption-saudi-arabia>> accessed 21 February 2024.

⁷⁵⁰ Bassam Albassam, 'Managing Public Debt: The Case of Saudi Arabia' (2021) 10 *International Journal of Economic Sciences* 20.

whistleblowers and victims of corruption by ensuring their safety against retaliation and the confidentiality of the reports provided by them.⁷⁵¹ In essence, this law will become the first piece of legislation to protect whistleblowers because to date, there has been no official protection granted to the individuals reporting corruption.⁷⁵² It is likely that this law will further increase corruption reporting unless serious loopholes emerge from it. At the moment, the text of the law is not publicly available, so further academic evaluation is pending to establish its practical and theoretical significance for the anti-corruption effort in Saudi Arabia.

To summarise, the latest period of the Saudi Arabian history of fighting corruption can be characterised as plentiful in terms of reform initiatives in the spheres of the legal framework and institutional capacity. Following the crackdown in corruption, crucial additions in the face of the Law of Evidence and the Whistleblower Law have been made to the legislative framework on corruption, which is likely to further improve OACA's ability to investigate and prosecute corruption. In cooperation with international partners, Saudi Arabia has also taken steps to strengthen the transparency and accountability of the public sector by creating more oversight bodies and digitalising public services to prevent fraud. These actions emphasise the commitment of the current Saudi leadership to fighting corruption, but the effects of these recent improvements are yet to be seen in practice.

6.8 PATH FOR FURTHER REFORMS OF ANTI-CORRUPTION LEGISLATION IN SAUDI CONTEXT

Considering the legal framework on anti-corruption and other efforts such as institution-building and international cooperation, Saudi Arabia has achieved significant progress in reducing the influence of corruption. On the other hand, the judicial system, legal framework, transparency, and accountability are the key areas that require further reforms in addition to those already implemented.

The judicial system requires substantial reform that targets transparency, the accountability of the judiciary, procedural clarity, and, above all, independence. Currently, the judicial system exhibits substantial dependence on the King and has little in terms of procedural clarity, or checks and balances over judiciary discretion. This undermines the ability of the criminal justice system to be effective in the prosecution of corruption cases, especially those of high-profile politicians or elites.

At present, the Saudi legal framework is lacking comprehensiveness as it still does not recognise patronage (cronyism) and clientelism as corrupt and punishable practices. Furthermore, the fragmented nature of the legal base, manifested in the anti-corruption provisions scattered across sector-specific laws, undermines the consistency of interpretation and application. These practices are deeply intertwined with the concept of *wasta*, a cultural networking practice that plays a prominent role in Saudi national culture. The reform,

⁷⁵¹ 'Saudi Council of Ministers: System for the Protection of Whistleblowers, Witnesses and Experts' (*Etqan Law*, 17 February 2024) <<https://etqanlawfirm-sa.com/%d8%ad%d9%85%d8%a7%d9%8a%d8%a9-%d8%a7%d9%84%d9%85%d8%a8%d9%84%d8%ba%d9%8a%d9%86-%d9%88%d8%a7%d9%84%d8%b4%d9%87%d9%88%d8%af/>> accessed 4 March 2024.

⁷⁵² Patrick Daintry, 'Good Law Summary' (*CMS Law*, 2024) <<https://cms.law/en/int/expert-guides/cms-expert-guide-to-anti-bribery-and-corruption-laws/saudi-arabia>> accessed 21 February 2024.

therefore, should navigate these complexities by utilising a legal and social approach that respects traditional values while addressing the underlying issues contributing to corruption.⁷⁵³

In addition, despite the continuous amendments and expansion being applied to the Anti-Bribery Law, its application seems to be resulting in very few convictions (around 5%). As discussed in section 2.2., this flaw persists due to the fact that it is difficult to obtain evidence of corruption. To some extent this issue can be alleviated by the Law of Evidence, which will possibly generate more data for OACA to investigate corruption with, but the effort of solidifying proof also requires an expansion of the instrumental scope and applicability of the anti-corruption laws. Firstly, the introduction of the 'Undue Advantage' concept will allow OACA to bypass the problem of proof of intent. In line with international standards, the concept of undue advantage instead focuses on the nature of the advantage gained or given, regardless of the intent.⁷⁵⁴ This shifts the focus from the subjective intent to the objective outcome of the actions.

To further strengthen the applicability aspect, the Saudi Arabian Anti-Bribery Law could introduce provisions that allow for a reverse burden of proof for certain high-risk and high-value cases. With this amendment, the accused will be required to prove the legality of their income or assets beyond reasonable doubt if there is substantial evidence suggesting unlawful enrichment. This is particularly effective in cases where direct evidence of bribery is hard to obtain. With the reasonable objections to such an amendment being the presumption of innocence as protection from judiciary abuse of power, there is still merit in reversing the burden of proof, provided that mechanisms of proof are clarified in the law. As argued by Jayawickrama and colleagues, the acceptability of exception to the presumption of innocence will depend on the wording of the law and the significance and/or relevance of its application.⁷⁵⁵

Specifically, the framework requires laws that explicitly criminalise nepotism, patronage, and clientelism and other practices such as abuse of public trust. These laws should define these practices clearly, outline penalties, and establish mechanisms for enforcement. In parallel, agencies such as OACA should incorporate *wasta* awareness in its training and awareness sessions. They can emphasise its cultural significance and differentiate between its positive aspects, such as community support and networking, and its negative implications for fairness and meritocracy in public administration and business. This approach can help to ensure complementarity between prohibitive legal and preventive social actions against corruption. E-government, electronic procurement, and other digitalisation activities of the Saudi government, as well as the upcoming Whistleblower Protection Law, seem to be strengthening the preventive aspect of the framework, but further codification of the legal base and a focus on the cultural roots of corruption could help to improve on these achievements.

While acknowledging the Saudi Arabia's leadership recent efforts in raising transparency, such as digitalisation of government services and procurement, and forcing any sizable transactions to be supported with written data, there are still a few crucial gaps that need to be addressed. Specifically, as showcased in section 3, there is a lack consistent application and enforceability of transparency principles, especially

⁷⁵³ Bruna Silva, 'Humanizing (Anti)Corruption: The Socio-Legal Values of a Human Rights-Based Approach to Corruption' (2019) 5 *Kyiv-Mohyla Law and Politics Journal* 59.

⁷⁵⁴ Alan Doig, Hoang Xuan Chau and Dao Le Thu, 'Criminalising Corruption: A Study of International Practices and Application for Viet Nam' (UNDP 2013).

⁷⁵⁵ Nihal Jayawickrama, Jeremy Pope and Oliver Stolpe, 'Legal Provisions to Facilitate the Gathering of Evidence in Corruption Cases: Easing the Burden of Proof' (2002) 2 *Forum on Crime and Society* 23.

in defence, procurement, and natural resources, alongside the absence of anti-corruption verification in due diligence processes. This highlights the need for comprehensive reform. Additionally, the opacity of OACA due to its exclusive reporting to the king underscores the necessity for increased transparency of anti-corruption efforts as well.

In line with this, one could emphasise the need for comprehensive transparency legislation aimed at enhancing transparency across all sectors, with specific provisions for procurement, natural resources, and defence. This should include mandatory public disclosure of tender processes, contract awards, and execution status. Such a law must feature standardised protocols for transparency that apply uniformly across all government and public sectors. Since the digital procurement platform (Etimad Portal) does not process the full extent of public procurement deals, its effectiveness would be vastly strengthened by the law mandating its use in any sphere. Another positive initiative would be to establish a public registry of contractors and suppliers who have undergone and passed anti-corruption verification by OACA, enhancing accountability and transparency in the selection process.

In terms of disclosure, to fully meet international standards and build public trust, Saudi Arabia requires a unified, enforceable financial disclosure regime for public officials at both high and low hierarchy levels. Without such disclosure, anti-corruption efforts risk continuing to be perceived as selective or politicised, undermining both the credibility and effectiveness of governance reforms.

From the accountability side, OACA itself poses concerns that warrant reform. Despite the fact that OACA remains a very active agent of positive change in the anti-corruption effort, its own modernisation requires public scrutiny. Scholarly literature indicates that public scrutiny enhances the effectiveness of public institutions and bodies, so OACA could indeed benefit from a stakeholder review of its actions, which will not undermine its independence but provide impetus for improvement.⁷⁵⁶ In addition, it will benefit the public image of OACA which currently remains de-facto a special agency loyal to the King rather than to the people, which might affect OACA's credibility and thus the effectiveness of its public engagement. Thus, there is a need for a law that mandates regular public reporting on OACA's activities, findings, and the status of its investigations, ensuring that its actions and decisions are transparent and the organisation accountable to the public.

Overall, the proposed reforms are already in line with the government's course for expanding the legal framework, and the transparency and accountability of its various agencies. The crucial focus, however, should be on enhancing the applicability and functioning of the existing legislation in order for it to be an effective and comprehensive mechanism against corruption. The opacity in defence and natural resource procurement, however, remain the key sectors where transparency and accountability are lacking; however, as these areas are crucial for national security, the proposed reforms may be outside of the government's scope.

6.9 CONCLUSION AND IMPLICATIONS

⁷⁵⁶ Nor Ali Mohamed and Dayah Abdi Kulmie, 'Role of Effective Monitoring and Evaluation in Promoting Good Governance in Public Institutions' (2023) 12 *Public Administration Research* 2; Alexander De Jaeger, 'Governance and Corruption in Arm's Length Public Institutions: Two Belgian Case Studies' (2023) 25 *Public Integrity* 162.

As demonstrated within this chapter, Saudi Arabia has been advancing its anti-corruption legislation, mostly to widen the net and criminalise as many corruption offenses as possible. In this respect, the Saudi government has achieved a few successes by outlawing bribery, nepotism, money laundering, and forgery in a mostly reliable way, reflecting the nuances of this crime in line with UNCAC. However, the legal framework is not without its flaws as anti-corruption legislation still lacks applicability, seen in the low conviction rates under these laws. This is partly attributable to the difficulties associated with collecting evidence. There is commitment to tackling this issue in the current government, which resulted in the Evidence Law and gave OACA wide powers to investigate and prosecute corruption crimes and provide the legislative initiative.

In addition, transparency and accountability are being improved, evidenced by the introduction of e-purchasing and e-government platforms aimed at preventing corruption from occurring by limiting personal human interactions. Finally, the government intends to implement the Whistleblower Protection Law which, apart from giving strong monetary benefits to whistleblowers, will protect them from possible harm and retaliation. It can be seen that the government is focusing on the punitive, procedural, and preventive aspects of anti-corruption, which results in noticeable improvements in Saudi Arabia's international corruption rating.

Despite advancements, the efforts of Saudi Arabia have certain notable gaps. Firstly, independence, rule of law, and separation of powers are lacking in the criminal justice system, which underscores the challenges of meeting UNCAC and UN guidelines in relation to an effective judiciary. In addition to the above-mentioned applicability problem, the law does not yet criminalise patronage, which ties the problem of corruption to the cultural practice of *wasta*. Secondly, digitalisation, transparency, and accountability remain an issue, not only for public finances but also for crucial areas (defence, natural resources), and for anti-corruption agencies themselves. Substantial mindset and legal advancements are required to ensure that the public service is accountable to the king and to the people of Saudi Arabia. Most importantly, the government has taken a hard and proactive stance against corruption, which shows that in the present period, the fight against corruption has already witnessed many advancements in its legal, political and social dimensions.

CHAPTER 7. FIGHTING CORRUPTION IN THE UAE: CHALLENGES AND OPPORTUNITIES

7.1 INTRODUCTION

According to the UAE Government, combatting corruption remains a top priority because the country is striving to achieve the best service performance possible and to become a stronger hub for international trade in the Gulf region.⁷⁵⁷ Indeed, the UAE's bilateral trade volumes and number of business exchanges with Western countries are substantial: imports and exports to and from the US, China and India exceed those of Saudi Arabia and Kuwait by 2–3 times.⁷⁵⁸ This means that as any other country that values a favourable and transparent business climate, the UAE is vigilant of its reputation as a trade partner. This vigilance translates into the new policies and laws discussed in this chapter. Corruption tarnishes this reputation and undermines the country's credit ratings and the trust of international partners should any major corruption scandals occur or, worse, become more frequent. Thus, in 2022, Transparency International reported that the UAE was being grey-listed by the French accountability and transparency agency called Financial Action Task Force (FATF) due to it allegedly becoming a safe haven for gold smugglers from African countries.⁷⁵⁹ In 2024, the FATF returned the UAE to the 'green list' of countries safe for performing financial transactions and operating business in response to its increased attention to the matter, manifesting in a number of prosecutions.

The UAE is a significant case study on national efforts to fight corruption because it demonstrates mostly successful outcomes. According to Transparency International's global ranking of corruption, the UAE is ranked 23rd from a total of 180 countries. Its perceived corruption score is 68 points, which places it in first place among the Gulf countries, where Kuwait has a score of 46, and Saudi Arabia 59, which corresponds to 65th and 38th place in the global ranking, respectively.⁷⁶⁰ This chapter discusses the possible reasons why the UAE's anti-corruption strategy stands out as more successful and explores the legislation and policy that allow it to achieve higher ratings. A detailed analysis of how and why the countries under comparison have such standings and whether these ratings accurately represent the level of success in combating corruption is discussed in Chapter 8 (the comparative chapter).

The United Arab Emirates (UAE) is a federal state comprising seven emirates: Abu Dhabi, Dubai, Sharjah, Ajman, Fujairah, Ras Al Khaimah, and Umm Al Quwain. Emirates retain a high degree of autonomy specifically with regard to domestic matters. Abu Dhabi, as it is the capital, has a major influence on politics

⁷⁵⁷ UAE Government, 'Accountable Government Performance' (*The Official Portal of the UAE Government*, 2024) <<https://u.ae/en/about-the-uae/uae-competitiveness/steps-to-enhance-government-performance/accountable-government-performance>> accessed 22 September 2024.

⁷⁵⁸ WITS, 'United Arab Emirates Trade Balance, Exports, Imports by Country and Region 2021' (*World Integrated Trade Solution*, 2021) <<https://wits.worldbank.org/CountryProfile/en/Country/ARE/Year/2021/TradeFlow/EXPIMP>> accessed 22 September 2024.

⁷⁵⁹ Transparency International, 'Unfinished Business: Despite FATF Money Laundering List Exit, UAE Has...' (*Transparency.org*, 23 April 2024) <<https://www.transparency.org/en/news/money-laundering-list-exit-uae-much-to-prove>> accessed 22 September 2024.

⁷⁶⁰ Higher score = less corruption, higher ranking = less corruption. 'United Arab Emirates' (*Transparency.org*, 23 April 2024) <<https://www.transparency.org/en/countries/united-arab-emirates>> accessed 22 September 2024.

and finance. Because of this federal arrangement, anti-corruption measures can involve both federal and emirate organisations, which may result in jurisdictional fragmentation as will be discussed in more detail in section 7.2.1.

This chapter adopts the same structure as Chapters 5 and 6 on the anti-corruption efforts in Kuwait and Saudi Arabia. Therefore, the chapter first explores the most notable anti-corruption legislation in UAE, its challenges and achievements while also offering a perspective on legal development. Next, the chapter focuses on anti-corruption efforts in public contracts and procurement, and reviews the anti-corruption agency structure. Thirdly, the chapter discusses the analysis of the anti-corruption strategy of the UAE by international organisations and foreign analytical entities. Finally, the chapter examines UAE's anti-corruption policy solutions and draws critical conclusions on possible paths for improvement.

7.2 CRIMINAL JUSTICE SYSTEM IN THE UAE

Understanding the UAE's criminal justice system is important for understanding how the institutional design of the UAE impacts its approach to anti-corruption. Judicial independence, the separation of powers, and rule of law are essential for the anti-corruption framework as they allow the state agencies to prosecute and punish corruption more effectively, transparently and consistently.⁷⁶¹ The UAE's structure of judiciary shows clear strands of civil law, Shariah, and some common law systems (with Shariah being the key determinant), which produces a mixed legal environment. The UAE has made important steps towards modernising its legal system over the years, but the independence of the judiciary, the executive, and the transparency of processes remains a challenge. This section examines the UAE's criminal justice system in terms of constitutional foundations, judicial structure, separation of powers, and rule of law.

The UAE's criminal justice system is governed by a constitutional (federal) and legal foundation, contained in the 1971 Federal Constitution, which establishes the basic framework for governance and affirms the independence of the judiciary.⁷⁶² The Constitution also establishes Shariah as a primary source of legislation yet is largely limited to matters of *hudud*, *qisas*, and *diya* (Article 7).⁷⁶³

Some recent reforms, including Federal Decree Law No. 15 of 2020, have localised and modernised some portions of the criminal code, via a reduction in the use of corporal punishments, and by bringing legal procedures more in line with international standards. However, the Constitution does not serve as a supreme source of law, in the Western sense, and amendments to the Constitution can be made by Federal Decree (i.e., by supreme ruler) which essentially limits its function in some ways as a bulwark against executive overreach in the area of criminal justice.⁷⁶⁴ So while the UAE has a formal system of law, its ability to guarantee fundamental legal protection is limited by constitutional fragility and vulnerability to political manipulation.

The UAE operates a multi-tiered judicial structure that includes a federal system and a number of local court systems, along with other independent common law jurisdictions; the Dubai International Financial

⁷⁶¹ UNCAC, art. 11

⁷⁶² UAE Constitution, art. 94.

⁷⁶³ UAE Constitution, art. 7.

⁷⁶⁴ 'United Arab Emirates' (*Judiciaries Worldwide*, n.d.) <<https://judiciariesworldwide.fjc.gov/country-profile/united-arab-emirates>> accessed 11 June 2025.

Centre (DIFC) and the Abu Dhabi Global Market (ADGM) courts are examples. The general structure contains: a) first instance courts; b) appellate courts; and c) cassation courts (supreme courts). Federal and local courts have the same hierarchy. The federal judiciary covers the majority of Emirates, but Abu Dhabi, Dubai, and Ras Al Khaimah maintain their own judicial jurisdiction and public prosecution service, including cassation courts.⁷⁶⁵

Judges in the UAE are typically Emirati nationals who have undergone training in civil law or Shariah Law. They are approved by the Federal Judicial Council, or in the case of local courts, by the local Emir.⁷⁶⁶ In addition, there is no complete security of tenure for judges and they can be removed by the executive authority, even when there is no evidence of malfeasance or misconduct, which limits the structural independence of the judiciary. This also undermines the separation of powers, as the same authority that enacts and enforces the law also controls the appointments and tenures. This limits the independence of the oversight from a judicial council with the power to take decisions, and if judges are part of the executive and appointed by their executives, they may be vulnerable to political pressure or influence.

The DIFC and ADGM courts operate in English and function according to common law principles, with most of the judges being from foreign jurisdictions, and they have their own governing structures. While the pluralism of this model permits legal innovation and supports international commerce, it produces legal fragmentation and different levels of judicial independence. Different levels of judicial independence in a unitary system have the potential to inhibit the application of anti-corruption law uniformly, and they impact predictability in enforcement, which is integral to the rule of law and public confidence.

According to the Freedom House report on the UAE judiciary, the employment of short-term contracted judges in independent jurisdictions undermines the rule of law because there is no long-term institutional commitment on the side of the judge, who then is prone to judicial oversight and error, biased judgements motivated by contract renewal, and detachment from the local legal and political context.⁷⁶⁷ This is particularly troubling for cases involving corruption, where the accused could potentially be politically connected. When a judge at either the federal or emirate level makes decisions in a matter where the executive may have a vested political influence, the prospect of executive interference creates a serious risk that the result will not be credible or legitimate and may dissuade public prosecutors and judges from pursuing high-level or politically sensitive cases. Consequently, the standards outlined in Article 11 of the UNCAC for the independence of the judiciary are not fully met.

The principle of rule of law in the UAE is guaranteed by the Constitution and is reflected in the existence of a court hierarchy. However, there is no precedent under the system, which diminishes legal certainty, especially for cases involving corruption or abuse of office.⁷⁶⁸ In addition, the courts' judicial reasoning is not published and public access to case law remains restricted, which undermines the accountability of the justice system and public confidence in it.

⁷⁶⁵ Ibid.

⁷⁶⁶ Ibid.

⁷⁶⁷ 'United Arab Emirates: Freedom in the World 2022 Country Report' (*Freedom House*, 2022) <<https://freedomhouse.org/country/united-arab-emirates/freedom-world/2022>> accessed 11 June 2025.

⁷⁶⁸ Valerie Pelton, 'Rule of Law in the U.A.E.: The Peaceful Path to Nation-Building in Abu Dhabi and the U.A.E. through Global Best Practices' (2018) 51 *The International Lawyer* 87.

There is some level of appellate review through both a court of appeal and cassation process, at both the federal and local levels. This allows for reassessment of procedure and the substantive content involved. However, as the executive may still intervene by way of granting a pardon or issuing directives, judicial decisions can still be overshadowed within corruption cases and the ability to provide neutral enforcement of legislation pertaining to corruption is still impacted. Although courts in the various financial free zones such as the DIFC and ADGM provide clearer procedures and enable the publication of judgements, their jurisdiction is limited and does not reflect the practices of the wider criminal justice system. In turn, this may reflect a weakness in adequately assessing corruption uniformly across all of the UAE as in some Emirates, the anti-corruption framework may be stronger because of a more independent and accountable judiciary.

In sum, the UAE's criminal justice system exhibits a hybrid and structurally complex legal system, integrating civil law, Shariah, and common law practices through special jurisdictions. However, while efforts are made to modernise institutions, most notably in commercial law and financial regulation, major structural vulnerabilities inhibit the system from achieving successful and impartial prosecution of public corruption. Thus, the UAE's hybrid criminal justice system only represents a partial compliance with the obligations under the UNCAC and UN Basic Principles on the Independence of the Judiciary.

7.3 LEGAL INSTRUMENTS AGAINST CORRUPTION

The UAE does not have a comprehensive anti-corruption legislation framework as specific provisions relating to corruption offences are located across different federal and local laws. The main source of anti-corruption law is the penal code, which defines and criminalises most corruption offenses. Other sources include the Anti-Money Laundering Law, Human Resources Law, and Financial Crimes Law of Dubai.

7.3.1 UAE FEDERAL PENAL CODE

ACHIEVEMENTS AND CHALLENGES

The UAE Federal Penal Code (hereinafter 'the Code') is one of the major sources of anti-bribery legislation. It was first adopted in 1987 and it is the comprehensive criminal code of the UAE. It lists and defines a variety of crimes and establishes punishment measures for them. The code contains definitions of public servants and public funds; explains the scope, and temporal and spatial application of the law; and elucidates the moral and physical aspects of crimes. Furthermore, it highlights and explains terms such as 'attempt', 'intention', 'criminal complicity', and other important issues pertaining to delivering justice. This study will highlight the most crucial achievements and challenges of the Code in relation to its contributions to fighting corruption. Corruption crimes regulated by the Code are bribery, embezzlement, influence trading, facilitation of bribery, and abuse of power. These crimes are covered in Chapter 2 of the Code in Articles 275-296. Bribery is defined in Article 275 of the code as follows:

“A penalty of temporary imprisonment shall be imposed on any public servant, a person entrusted with a public service, a foreign public servant or an employee of an international organisation who, directly or indirectly, requests, accepts, takes or promises an unentitled gift, privilege or grant, whether in favour of the employee himself or in favour of another person, entity or establishment, in return for performing or omit an act that falls within his job duties or for violating his job duties,

even if he has intended not to perform or omit such act or to violate his job duties, or if such request, acceptance or taking occurs after performing or omitting the act or violating his job duties.”⁷⁶⁹

The obvious strength of this definition is that it mentions direct and indirect forms of corruption. Although the terms ‘direct’ and ‘indirect’ are not defined, Article 280 clarifies that the law indicates intermediaries or brokers of the bribing process. In the law, it is worded as: “any person who acts... in favour of the employee himself or for another person or entity”.⁷⁷⁰ This means that the Code acknowledges the possible complexity of corruption cases and the multilayered nature of relationships and transactions that might occur between parties, thus allowing for the prosecution to apply punishment to all the involved parties, including intermediaries.

An important and unique feature of this definition is the coverage of post-act bribery. The consideration of situations when a bribe is given after the service is rendered/omitted presents an opportunity to prosecute cases where transactions were not pre-arranged. This allows the outlawing of situations where a retrospective reward was involved.

The penal code covers both tangible and intangible forms of bribery. Specifically, it covers not only money as an object of illicit gain but also services or influence which increases the pool of potential transgressions and therefore minimises loopholes by which bribers and bribees can escape justice. Yet, the practice of prosecuting intangible forms of corruption is scarce. Thus, Stein acknowledges that having proof of a promise of a bribe being made or, in other words, corrupt intentions, is difficult to establish and bring to court as proof, due to the covert nature of corruption.⁷⁷¹

Among the other strong sides of the Code in terms of aiding the fight against corruption is extraterritorial jurisdiction. Specifically, Article 285 stipulates that crimes related to corruption can be prosecuted, provided that the victim or the perpetrator is a UAE citizen or if the matter concerns UAE public funds regardless of the place it was committed in. This extraterritoriality aids the UAE in pursuing corruption across its borders and making sure that justice cannot be evaded, even if the perpetrator has fled the country or was operating outside of the UAE. This also indicates that the UAE’s penal code aligns with UNCAC in the sphere of cross-border corruption, as UNCAC emphasises the need for international cooperation and stipulates in Article 57 the need to return stolen assets that were transferred to another country.

However, extraterritoriality does not expand to the private sphere. Specifically, the Code does not stipulate punishment for either UAE or foreign companies if any of the corruption crimes were committed by their subsidiary.⁷⁷² This flaw is critical as it leaves a significant vulnerability in the legal framework where perpetrators in the main companies can avoid liability for corrupt actions if they operate through a subsidiary. By not holding such individuals accountable for the corruption actions performed through a

⁷⁶⁹ The UAE Penal Code, Article 275

⁷⁷⁰ The UAE Penal Code, Article 280

⁷⁷¹ Alex Stein, ‘Corrupt Intentions: Bribery, Unlawful Gratuity, and Honest-Services Fraud’ (2012) 75 *Law & Contemp. Probs.* 61.

⁷⁷² CMS Law, ‘Anti-Bribery and Corruption Laws in United Arab Emirates’ (*CMS Law*, 2022) <<https://cms.law/en/int/expert-guides/cms-expert-guide-to-anti-bribery-and-corruption-laws/united-arab-emirates>> accessed 2 October 2024.

subsidiary, the law might incentivise businesses to perform corrupt practices in jurisdictions with weaker enforcement.

In addition, the Code lacks clarity in defining terms such as "unentitled gift", "privilege", or "grant", which can lead to interpretation difficulties. Without the Code having definitive provisions, thresholds, or guidelines on what constitutes a privilege or grant, the application of the law might vary. This might in turn result in inconsistent rulings. Inconsistent rulings erode legal certainty, which is crucial for people's confidence in the legal system and its ability to punish corruption equally and efficiently.⁷⁷³

LEGAL DEVELOPMENT

From the legal development perspective, the Code is considered by Al-Muhairi as a product of the Westernisation of the UAE, but other scholars such as Yahia or Angel disagree. The very establishment of the nation-state of the UAE and the adoption of the notion that the state is the source of the law is alien to Sharia, where the holy Qur'an, *Sunnah*, *Ijma'* (consensus), and *Qiyas* (analogical reasoning) are sources of law. The establishment of a codified body of criminal laws in 1986 in the face of the Code is considered a culmination of the process of Westernisation of the legal system, which correlated with the national development and growing globalisation of the country's economy.⁷⁷⁴

Until the 1960s, the Emirates (existing as 'Trucial Emirates') under the British protectorate did not have stable administrative divisions and the legal system was mostly based on Sharia law. In this period, in the Emirates, there were no courts that served as a standalone judicial institute. Instead, judicial power was situated in the hands of tribal leaders, Sheikhs, who may have passed a dispute resolution to local judges (*qudi*).⁷⁷⁵ *Qudi*, individuals who were considered by the Emir and tribespeople as wise and knowledgeable, but had no formal education or judicial training, would then apply Sharia laws to settle a dispute. No formal procedural practices or process structure were applied, which led to each Sharia court having their own different procedures. More so, litigants could reject the Sharia court's decision and appeal to Sheikhs for final settlement.⁷⁷⁶ Due to the dependence on *Qudi* or a Sheikh's interpretation of the Qur'an, and the fact that rulings often reflected local oral traditions, legal outcomes were often very diverse. This legal system was somewhat functional in Trucial Emirates with no centralised authority, but was inadequate and not conducive to the development of a unified state; an opportunity for this presented itself when the British protectorate ceased to exist.

Trucial Emirates were similar to other British protectorates in the Gulf in that they also had British Courts. However, the influence of British Courts on the modernisation and development of the legal framework was rivalling that of Sharia courts which governed over cases related to family matters, penal matters, financial and property issues. The British courts (The Joint Court and the Joint Court of Appeal) regulated cases related to British subjects, individuals protected by the British Empire or non-Muslims, and also foreign trade disputes. Despite the fact that British Courts functioned in the Trucial Emirates for more than a century,

⁷⁷³ John Braithwaite, 'Rules and Principles: A Theory of Legal Certainty' (2020) 27 Australasian Journal of Legal Philosophy 47.

⁷⁷⁴ Butti Sultan Butti Ali Al-Muhairi, 'Islamisation and Modernisation within the UAE Penal Law: Shari'a in the Modern Era' (1996) 11 Arab Law Quarterly 34.

⁷⁷⁵ Butti Sultan Butti Ali Al-Muhairi, 'The Development of the UAE Legal System and Unification With the Judicial System' (1996) 11 Arab Law Quarterly 116.

⁷⁷⁶ *Ibid.*, 123.

they did not have much of an impact on the development of the legal system in the Emirates. This is due to the fact that the number of cases considered by British courts was very limited and rarely concerned matters of state or province-wide importance.⁷⁷⁷ Western researchers such as Pelton, however, indicate that besides the belief in the rule of law, the UAE adopted from the British empire the intolerance for corruption and the culture of business transparency, which then translated into the Penal Code as one of the earlier legislations.⁷⁷⁸ Thus, despite the minimal integration of the British legal and judicial system into the Emirates in the first half of the 20th century, the UAE inherited some of the British legal principles such as the rule of law, judicial independence, and the intolerance for corruption.⁷⁷⁹

Besides the influence of the British protectorate, the Penal Code can be also considered as a reflection of national development influenced by the experiences of international partners and economic needs. The codification of crimes and penalties is a significant departure from the variability of the Sharia courts existing in the Trucial Emirates, and a move towards a civil law system that was in use in many Western states.⁷⁸⁰ Such a change is considered to have also been influenced by the discovery of oil in the Emirates and the need to expand trade and business relationships with clients as part of the process of commercialisation of natural resources.⁷⁸¹ On the other hand, the adoption of codified laws was influenced by close economic and diplomatic ties with Egypt, Sudan, and other Arabic countries, which also started establishing civil law systems and reforming their countries based on the principles of the supremacy of the constitution, separation of powers, protections of rights and freedoms, and equality before the law.⁷⁸² The same principles and reforms were soon adopted in the UAE, leading to the establishment of the Penal Code in 1987, among other pieces of legislation. Hence, the main and the earliest source of law on corruption is a product of many historical factors and international influences, the latter of which reflects the intolerance for corruption.

7.3.2 FEDERAL LAW NO. 20 OF 2018 ON ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM AND FINANCING OF ILLEGAL ORGANISATIONS

ACHIEVEMENTS AND CHALLENGES

The Federal Law No. 20 of 2018 on Anti-Money Laundering and Combating the Financing of Terrorism and Financing of Illegal Organisations (hereinafter “Federal AML Law”) is another element of the UAE’s legislative framework against corruption specifically targeted at financial crimes.

Article 1 of the Federal AML Law defines money laundering as knowingly assisting in or transferring, concealing the source, location or true nature of, acquiring, possessing or using the proceeds of a felony or a misdemeanour. It mandates financial regulators and businesses to report suspicious transactions,

⁷⁷⁷ Ibid., 126.

⁷⁷⁸ Valerie J Pelton, ‘Rule of Law in the UAE’ (2018) 51 *The International Lawyer* 87.

⁷⁷⁹ Naief Yahia and others, ‘Legal Systems in the United Arab Emirates: Overview’ (*Practical Law*, 2024) <[https://uk.practicallaw.thomsonreuters.com/w-032-5816?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/w-032-5816?transitionType=Default&contextData=(sc.Default)&firstPage=true)> accessed 4 October 2024.

⁷⁸⁰ Nicholas B Angell, ‘Regulation of Business under the Developing Legal System of the United Arab Emirates’ (1986) 1 *Arab Law Quarterly* 119.

⁷⁸¹ Adel Omar Sherif, ‘The Origins and Development of the Egyptian Judicial System’, *Human Rights and Democracy* (Brill 1996) <https://brill.com/downloadpdf/edcollchap/book/9789004634985/B9789004634985_s007.pdf> accessed 5 October 2024.

⁷⁸² Taher Aboueleid, ‘Legal Culture in Egypt History, Present and Future a Need for Modernization’ (28 January 2019) <<https://papers.ssrn.com/abstract=3324578>> accessed 5 October 2024.

imposes penalties for violations, and grants powers to the Emirati (local) Government and Public Prosecution to freeze and seize illicit proceeds. The Financial Intelligence Unit (FIU) was established to oversee the collection and analysis of financial data. Additionally, the Federal AML Law outlines penalties for physical and legal persons involved in illegal financial activities, ranging from fines to imprisonment, and provides guidelines for international cooperation in combatting financial crimes.⁷⁸³

Despite the debated status of money laundering as a corruption crime, combatting money laundering is considered a vital element of anti-corruption efforts. Thus, according to the Financial Action Task Force, money laundering is often tightly linked to bribery, embezzlement, or stealing of public funds.⁷⁸⁴ In this light, a comprehensive anti-corruption effort is impossible without employing all the elements of one's public authority for personal gain. For this reason, the Federal AML Law is considered to be part of the UAE legal framework on corruption.

One evident achievement of this law is establishing the FIU, a body that is entrusted with monitoring, analysing, and reporting potentially illicit transactions.⁷⁸⁵ This enhances the capacity of law enforcement agencies to collect evidence for corruption cases, ensures the efficiency of prosecutors' work, and therefore strengthens the anti-corruption effort. Specifically, the capacity of the FIU to monitor and analyse transactions positively affects not only the ability to prevent and punish money laundering but also bribery, stealing, misuse, and any other illicit operation with public funds, thus assisting in combatting a wide range of corruption crimes. The ability of the FIU to work independently and thus be immune to corruption itself, however, remains a debatable issue due to its dependence on the Central Bank of the UAE. This point is discussed in more detail below in section 7.3.

Another achievement of the law is its reinforcement of transparency in financial institutions and non-financial businesses and professions. Specifically, Article 16 of the Federal AML Law defines the scope of the transparency-related responsibilities of the said actors and establishes a responsibility to identify and analyse the risks related to potential illegal actions aimed at receiving, transferring, or sending illicit funds. There is also a responsibility to undertake necessary due diligence and actions such as creating policies and procedures to prevent illegal actions by keeping accurate and full documentation of the management of funds.⁷⁸⁶ This responsibility being reflected in the law should stimulate the development of a transparency culture in the government, and in business and non-business spheres, which in turn helps to minimise the risk of corruption. On the other hand, the law does not stipulate any specific deliverables or terms that must be adhered to by the responsible agencies or any punishments for non-fulfilment of the responsibilities mentioned in Article 16 of the law. In theory, this undermines the corruption prevention effect of this law. In

⁷⁸³ Federal Law No. (20) of 2018 on Anti-money Laundering and Combating the Financing of Terrorism and Financing of Illegal Organisations, article 2, 3.

⁷⁸⁴ FATF, 'Reference Guide and Information Note on Fight against Corruption' (*Financial Action Task Force*, 2010) <<https://www.fatf-gafi.org/content/dam/fatf-gafi/brochures/reference%20guide%20and%20information%20note%20on%20fight%20against%20corruption.pdf>> accessed 5 October 2024.

⁷⁸⁵ Federal Law No. (20) of 2018 on Anti-money Laundering and Combating the Financing of Terrorism and Financing of Illegal Organisations, article 9.

⁷⁸⁶ Federal Law No. (20) of 2018 on Anti-money Laundering and Combating the Financing of Terrorism and Financing of Illegal Organisations, article 16.

practice, there are no open-source data on the progress and results of establishing and implementing due diligence, reporting, and documents processing.

Among the challenges of the law is that of extending the responsibility for money laundering within companies to legal persons. Article 4 stipulates that:

“The legal person shall be criminally responsible for the crime if it is committed in their name or for its account intentionally, without prejudice to the personal criminal responsibility of the perpetrator and the administrative penalties as prescribed by law”⁷⁸⁷

While this article provides for ‘layered’ accountability where financial organisations cannot shift the responsibility for the crime towards individuals, this same accountability is a source of risk. Prosecutors may apply this provision broadly, leading to criminal charges against companies even when the connection of top management to the crime is unclear. This could result in unfair damage to the reputation of organisations, particularly in situations where wrongdoing occurs at lower levels of management without the knowledge of senior executives.

LEGAL DEVELOPMENT

From the legal development perspective, the law can be considered as an attempt to strengthen the anti-corruption framework to become further integrated into the global economy and protect the UAE’s reputation as a trustworthy partner.

The Federal AML Law, which focuses on increasing transparency and accountability and encouraging client due diligence, is a product of the modernisation of the system of financial relationships that had been in place in the UAE for a long time. According to Teichmann and colleagues, the UAE has historically relied on cash-based transactions, and culturally on respect for client privacy.⁷⁸⁸ Due to these factors, the origins of one’s funds were normally not asked for by banks in the UAE and were therefore scarcely documented. This contrasts with Western banking policies that rely heavily on the know-your-client (KYC) principle and the resulting financial transparency and accountability – prerequisites for corruption-free financial operations. The side effects of privacy and cash-based deals became obvious in 2018 when seven high-profile cases of corruption in Dubai’s real estate sector came under investigation.⁷⁸⁹ Along with FATF recommendations, the UAE government decided to reconsider the laws concerning financial accountability, resulting in the adoption of Federal Law No. 20 of 2018. Thus, it can be seen that the update in the anti-corruption framework came as an attempt to make financial transactions more transparent in order to retain the UAE’s reputation as a lucrative and safe investment environment.

7.3.3 HUMAN RESOURCES LAW

ACHIEVEMENTS AND CHALLENGES

⁷⁸⁷ Ibid.

⁷⁸⁸ Fabian Teichmann, Marie-Christin Falker and Bruno S Sergi, ‘Corruption and the Circumvention of Financial Sanctions via the Extractive Industries in Dubai’ (2020) 7 *The Extractive Industries and Society* 1022.

⁷⁸⁹ Amid Faljaoui, ‘Crise Silencieuse à Dubaï : L’histoire de l’arroseur Arrosé’ (*Trends-Tendances*, 12 June 2019) <<https://trends.levif.be/a-la-une/politique-economique/crise-silencieuse-a-dubai-l-histoire-de-larroseur-arrose/>> accessed 6 October 2024.; C4ADS, ‘Sandcastles: Tracing Sanctions Evasion through Dubai Luxury Real Estate Market’ (C4ADS 2018) <<https://c4ads.org/wp-content/uploads/2018/06/Sandcastles-Report.pdf>> accessed 10 June 2024.

The Human Resources Law promulgated by the Federal Decree Law No. 11 of 2011, and further amended by Federal Decree Law No. 17 of 2016 and Federal Decree Law No. 49 of 2022, has only two provisions relating to corruption. These are nonetheless important and constitute the basis of the anti-corruption framework at the level of federal legislation in the UAE. The UAE Human Resources Law regulates issues related to the appointment, conduct and promotion of federal government workers, ensuring transparency, efficiency, and ethical employment. In relation to the anti-corruption effort, the contributions of the UAE Human Resource Law are concentrated in Articles 27 and 70.

Article 27 of the Law stipulates the ethics of employee conduct whereas sections 12, 13, and 14 specifically mandate the obligation to avoid corruption. In particular, these sections prohibit accepting bribes and gifts, and exploiting one's position "in order to influence or improperly interfere in the procedures carried out by the competent investigation authorities, whether from within or outside the federal entity".⁷⁹⁰ The inclusion of these provisions into the Law as mandated by Federal Law No. 49 indicates that anti-corruption is viewed not just as a legal requirement but as a moral duty within the UAE federal government workforce.

The inclusion of corruption crimes into Article 27 can be perceived as an achievement of the law since it combines the legal and moral aspects of fighting corruption. With this approach, the law promotes integrity and transparency as foundational employee values, which frame bribery and gift-taking as unethical practices betraying public trust. This dual focus on legality and ethics strengthens the UAE's anti-corruption framework, ensuring that violations are seen not only as legal transgressions but also as immoral deeds that undermine governance and public confidence. In that, the law draws inspiration from Sharia Law, where public servants must abide by the principles of integrity and righteousness and avoid deceit.⁷⁹¹

Article 70 prohibits bribe-taking and defines bribes, whether accepted, offered or requested, as "any amount of money, a specific service, or anything of material or moral value to a public employee." It further ties the bribe to conditions of services rendered and provides examples: speeding up the process the employee is tasked with to perform; and not performing assignments or involving another employee to take action/inaction in relation to their work responsibilities.⁷⁹² In that, it expands on the UAE Federal Penal Code by further specifying actions pertaining to bribery. Interestingly, gifts and bribes are viewed separately within the law but the notion of a 'gift' is not defined, except for specifying the only acceptable nature of gifts is those "of a symbolic or promotional nature that bears the logo and name of the presenting party" and source of gifts being "the organizational unit [the Federal Entity] designates."⁷⁹³ The separation of gifts from bribes is a vital cultural distinction that respects the Arab values for gift giving/receiving, and the division between the two notions is beneficial, but the definition of gifts is not present. Nonetheless, the balance between reflecting and retaining cultural values in the law and balancing this with accountability for one's actions from a moral and legal perspective constitutes an achievement of the law.

On the other hand, the law fails to consider other corruption practices such as influence trading or embezzlement as part of the moral and legal code of the federal workforce. The absence of these crimes in the law undermines the coherence and continuity of the legal framework on corruption, which is

⁷⁹⁰ Federal Decree Law No. (49) of 2022 on Human Resources at the Federal Government, article 27.

⁷⁹¹ Al-A'raf; 56; Al-Baqarah; 205

⁷⁹² Federal Decree Law No. (49) of 2022 on Human Resources at the Federal Government, article 70.

⁷⁹³ Ibid.

established by the articles on bribery in the Federal Penal Code and the Human Resources Law. Without explicitly covering a wider range of corruption-related offences, the law leaves a vulnerability for corruption, and exploitation and does not allow the creation of a more accountable governance environment.⁷⁹⁴

LEGAL DEVELOPMENT

From the legal development perspective, the Human Resources Law, and specifically Articles 27 and 70, illustrate the UAE's strategic focus on integrating both moral and legal approaches to combat corruption in line with the international commitments under UNCAC. The UAE ratified UNCAC in 2006 and since then has been developing its legal framework on corruption by introducing federal and local laws exemplified not only by the Human Resource Law (originally established in 2011 and amended in 2016 and 2022) but also by the Financial Crimes Law introduced in 2016 (discussed in more detail below), and the Federal AML Law in 2018. The Human Resource Law in particular demonstrates convergence with UNCAC's focus on prevention through integrity and accountability. Specifically, Article 27 of the Law shifts the focus from merely introducing legal penalties for corruption crimes towards fostering a cultural environment where corruption crimes are also seen as a betrayal of public trust and therefore immoral.

In turn, Article 70 demonstrates convergence with cultural traditions and social norms. The law carefully balances respect for cultural norms while ensuring that gifts are clearly defined to avoid manipulation. It stipulates that only gifts "of a symbolic or promotional nature" are permissible and should bear the logo and name of the presenting entity. This boundary ensures that cultural practices do not become a loophole for corrupt activities. This reflects development progress in adapting traditional values to modern governance because gift-giving is essential in Arab culture.

One could also argue that the development of the Human Resource Law and its emphasis on the moral duties of a public servant are heavily influenced by the principles of integrity and righteousness, which are core to Sharia Law.⁷⁹⁵ Secondly, in Sharia Law, immoral behaviours (*Ifsad*) such as bribery, illegal earnings, and deception are deeds that represent an abuse of the trust put in a public servant and hence are punishable. Gifts on the other hand are defined in Sharia as a transfer of benefit from one to another with no compensation expected, which clearly juxtaposes it to bribery where a payment or gift is given with the expectation of service in return.⁷⁹⁶ The Human Resources Law echoes this sentiment and therefore manages to conform with both Sharia and UNCAC's understanding of corruption.

7.3.4 DUBAI LAW NO. 4 OF 2016

ACHIEVEMENTS AND CHALLENGES

Dubai Law No. 4 of 2016 (Dubai Financial Crimes Law) per se is part of the broader framework on financial crimes but Article 7 contains an important provision on corruption. The Dubai Financial Crimes Law itself

⁷⁹⁴ Anwar Shah, *Performance Accountability and Combating Corruption* (World Bank Publications 2007).

⁷⁹⁵ Mohamed A Arafa, 'Corruption and Bribery in Islamic Law: Are Islamic Ideals Being Met in Practice?' (2012) 18 Annual Survey of International & Comparative Law 9.

⁷⁹⁶ Ibid.

establishes a regional entity tasked with combating financial crimes: the Dubai Economic Security Centre (DESC). Among its functions enumerated in Article 7 of the law, there is the following provision:

“Combat corruption; crimes of fraud, bribery, embezzlement, Public Funds abuse, counterfeiting, forgery, money laundering, and financing terrorism or illegal organisations; and other crimes that may be committed at the entities that are subject to the jurisdiction of the DESC.”⁷⁹⁷

The obvious achievement of this provision is that corruption is recognised as a legal concept, a phenomenon that must be combated. Additionally, the provision categorises a range of serious offences, including fraud, bribery, and embezzlement, as forms of corruption, thus expanding the legal framework to address these complex crimes. By including money laundering and the financing of terrorism or illegal organisations, the law highlights the interconnectedness of corruption with broader criminal activities that pose significant threats to public security.⁷⁹⁸ This approach ensures that entities within the jurisdiction of the DESC are held accountable not only for direct acts of corruption but also for facilitating or engaging in related criminal conduct. In doing so, the law puts corruption in line with other serious offences that involve illicit financial operations.

On the other hand, this specific formulation of the task appears to be misleading and undermines the effective fulfilment of this task by DESC. Firstly, the task defined as ‘combat corruption’ is syntactically delineated by “;” from crimes of fraud, bribery, embezzlement, Public Funds abuse, counterfeiting, forgery, money laundering, and financing terrorism or illegal organisations. This creates ambiguity over what constitutes corruption because the Dubai Financial Crimes Law itself does not define corruption. In the same vein, the term ‘corruption’ is not defined in any law constituting the legal framework for corruption, including the Federal Penal Code, Money-Laundering Law, or Human Resources Law. According to the definition of corruption identified in Chapter 2 on page 34 of this research, forgery may or may not be considered corruption depending on whether the individual committing the crime occupied a public post and whether his function and role were in any way related to the crime. In light of the absence of a clear definition of corruption, these crimes are then to be considered separately and prosecuted in accordance with the UAE Federal Penal Code. This means that the Dubai Financial Crimes Law does not clarify or contribute much to the legal framework of corruption, besides delegating legal responsibility to an agency for combatting it.

LEGAL DEVELOPMENT

From the legal development perspective, the law is a continuation of the effort to tighten the legal framework on financial crimes by establishing financial monitoring bodies at the local level. As follows from Article 3 of the Dubai Law No. 4 of 2016 which establishes its objectives, Dubai as a centre for financial operations and a target for foreign investment requires a dedicated agency to work on financial crimes and monitor the financial activity of public or public-affiliated entities in order to establish financial stability.⁷⁹⁹ The Law’s anti-corruption provision only establishes the precedent that the responsibility for combatting corruption can also be bestowed on local financial agencies and regulators so that public and public-affiliated entities are held accountable for financial and corruption crimes.

⁷⁹⁷ Dubai Law No. (4) of 2016 Establishing the Dubai Economic Security Centre, article 7.

⁷⁹⁸ Ibid.

⁷⁹⁹ Dubai Law No. (4) of 2016 Establishing the Dubai Economic Security Centre, article 3.

Dubai Law No 4, however, does not engage substantively with the phenomenon of corruption and therefore does not represent a development of the UAE's legislative framework against corruption. The analysis of the law's contents suggests that it establishes no continuity between the federal and local anti-corruption agencies and only creates an additional body whose functions in relation to the country-wide anti-corruption effort remain mostly symbolic. The law does not mandate that corruption monitoring should be integrated into national corruption monitoring agencies such as the Financial Intelligence Unit (FIU) established in Federal Law No. 20 of 2018. Hence, there is a certain mismatch between the strength and meaningfulness of local and national anti-corruption legislation.

To conclude, UAE's anti-corruption framework can be characterised as functional but lacking formalisation. The UAE Federal Penal Code defines, illegalises, and identifies punishments for all corruption and affiliated offences involving public service and public funds. Yet there is no evidence of a fundamental and legally established definition of what constitutes corruption or which crimes can be prosecuted as corruption, even though corruption itself is recognised in one of the legal documents (namely, Dubai Law No. 4 of 2016). Thus, combatting corruption as an effort that requires a full understanding of the subject and object of crime lacks definitive and unambiguous promulgation in dedicated acts and statutes. However, considering the said laws from the legal development perspective, the UAE's legal basis for tackling corruption continuously evolves and expands. The development of the framework balances cultural traditions, the Islamic faith, and Sharia legislation with international efforts on corruption in line with UNCAC. Furthermore, the framework reflects the need to conform to business and investment requirements, furthering economic development interests of the country by making the public and private sectors more accountable.

7.4 THE ROLE OF ANTI-CORRUPTION AGENCIES IN INVESTIGATING AND PROSECUTING CORRUPTION IN THE UAE

7.4.1 THE STATE AUDIT INSTITUTION (SAI) OR UAE ACCOUNTABILITY AUTHORITY

LEGISLATIVE MANDATE, FUNCTIONS AND ORGANISATIONAL INDEPENDENCE

The UAE State Audit Institution (SAI) is tasked with auditing revenues and expenditures in order to ensure the government's transparent management of public funds. The SAI was established in 1977 and came to function under Federal Law No. 7 of 1976. The law outlines its mandate as the supervision of all financial activities of the federal government and its ministries, and any company where the State of the UAE has no less than a 25% stake.⁸⁰⁰ A financial audit, undertaken by the entity, ensures that the laws concerning finance are followed. Through this, the correct utilisation of resources is established to avoid misappropriation and ensure good fiscal management in government departments, public corporations, and other organisations in which the government may have a financial interest. Audits in this category include both pre- and post-expenditure reviews where the SAI determines if public funds were used in accordance with the laws, and its year-end financial results are correctly reflected in annual statements.⁸⁰¹ In the process, the SAI reviews the contracts and agreements of specific entities, and, when the situation demands, can conduct investigations (scheduled and unscheduled) of cases of financial negligence, fraud,

⁸⁰⁰ Federal Law No. (7) of 1976 concerning the establishment of State Audit Institution, art. 17

⁸⁰¹ Ibid.

abuse of power, bribery, and other finance-related crimes with a view to protect public resources and improve government performance in general. In addition, one of the objectives of the SAI is to review laws and policies related to public funds management. The SAI can initiate an audit on its own or under a formal request submitted to it by Emirate leaders with regard to the bodies under the SAI's jurisdiction.

With regard to independence, Federal Law No. 7 of 1976 establishes the SAI as a 'supreme' institution, meaning that it is 'functionally, organisationally, and financially' independent from the executive authority exercised by the Federal Council of Ministers and is attached to the legal authority of the Federal National Council (UAE parliament).⁸⁰² The SAI is answerable to the UAE parliament, UAE Council of Ministers, and UAE president in the form of providing annual reports of its activities which the parliament, the president, and the ministers scrutinise. The president of the SAI is appointed by a federal decree and serves at the rank of a minister, which ensures collegiality in appointment decision making and therefore protects the SAI from institutional corruption. At the same time, the SAI is able to initiate an audit of any federal public body including both the UAE parliament and the Council of Ministers. The autonomy of the SAI ensures its access to any documents and financial records and its ability to conduct in-depth investigations without executive restrictions.

Organisationally, the SAI consists of departments responsible for specialised duties such as scrutiny of public contracts, expenditures, legal scrutiny, internal affairs, strategic planning, technological development, and other duties. Heads of each functional department are appointed by the SAI president and are answerable directly to the SAI president.

This organisation of the anti-corruption agency is indeed fairly independent due to its detachment from the executive (ministerial) body, which supports its impartiality. At the same time, the SAI remains accountable to the state in the face of its legislative (parliament) and representational (president) authorities. In particular, the form of report ensures that there is a documental trace of the relations between agencies, which can be scrutinised, and irregularities in the SAI's work can be noted. The pre-post format of audits in turn allows the SAI to detect corruption at various stages to ensure that it is detected and prevented in a timely fashion. The accountability of the SAI, however, is not up to the international standard set by the UNCAC as it does not meet the principle of transparency. In particular, the SAI is answerable only to the federal bodies while the public remains excluded from the process, which means that corruption at the highest level might elude scrutiny.

In 2011, and finally in 2023, the SAI was reformed by Federal Law No. 8 of 2011, and Federal Law no. 56 of 2023. The 2011 law introduced certain notable challenges that enhanced the effectiveness of the agency. In particular, it introduced the responsibility of the federal institutions under SAI's jurisdiction to provide drafts and annual reports directly to SAI. These must contain 'financial data draft annual balance sheet annexed to the reports thereon'⁸⁰³ in order for the SAI agency to approve the said draft before the financial and budgeting documents are signed into effect. The law also authorises the federal bodies under the SAI's jurisdiction to report corruption and provide evidence of it to SAI and collaborate with the agency in any

⁸⁰² Mukdad Ibrahim, 'State Audit Institution in United Arab Emirates' (2010) 52 International Journal of Law and Management 464.

⁸⁰³ Federal Law No. 8 of 2011 concerning the reorganization of the state audit institution, art. 29.

means required; non-collaboration or inhibition of its functions is subject to punishment under the Federal Penal Code.

ORGANISATIONAL INDEPENDENCE AND ACCOUNTABILITY

The 2011 law also introduced further measures to ensure SAI's own accountability before the state. Thus, an independent scrutiny of its activity is possible "by virtue of a resolution issued by the President of the National Council based on a motion by the President of the Institution."⁸⁰⁴ Such scrutiny, under the law, is to be exercised by specialised experts from supreme bodies on financial and accountability audits and members of international organisations specialising in financial and accountability audits. The 2011 law did not in any way change the independence of SAI or its jurisdiction, but rather it merely improved the SAI's accountability and interactions with liable bodies, and expanded the functionality of the organisation, which has nominally increased its potential for combatting corruption.

In turn, Federal Law no. 56 of 2023 fixates certain peculiarities concerning the work of the SAI that were loosely described or undescribed in the 1976 law or its amendment dated 2011. Specifically, the law adds the possibility of the agency reforming its organisational structure, and adding or reducing departments unless this is detrimental to its function.⁸⁰⁵ Secondly, the law formalises the duties of the Chairman (formerly, president) and vice-chairman (formerly, vice president) and makes the appointment and end of duty of the Chairman more transparent. Under the 2023 law, the Chairman is to be dismissed upon reaching the age of 70 and is appointed by the president. With this transparency, however, comes the flaw of reduced collegiality in appointing the head of the agency, which means reduced accountability because the choice of anti-corruption agency head would depend on a single person's decision.

In terms of functioning, the SAI is able to seize the funds of individuals suspected of a criminal offence or of obtaining funds that were gained 'as a result of any violation of financial and administrative corruption, or who is in possession of the money resulting from that, and prohibiting the disposal of these funds.'⁸⁰⁶ Furthermore, the SAI is empowered to extend the seizure of funds from any person or entity connected to the alleged perpetrator, including relatives and family members. Finally, it is able to enforce a travel ban to prevent an alleged perpetrator from leaving its jurisdiction, and this does not require a case to be submitted to the court (yet it must be done within 8 days from the date of the ban). This pre-judicial power to prevent possible stealing or misuse of funds and fleeing with illicit assets is in line with global practice. For example, the UK Anti-Money Laundering Act of 2018 and the US Emergency Economic Powers Act provide similar powers to the relevant national anti-corruption agencies.⁸⁰⁷ However, researchers such as Oldfield note that pre-judicial sanctions that are meant to be preventive measures against corruption are not always a prerequisite for legal action.⁸⁰⁸ Thus, credible and sufficient evidence is required for the court to consider a case against a suspect, and freezing accounts based on suspicion only is not effective as without evidence the ban will be lifted under the law.

⁸⁰⁴ Ibid., chapter 7, art. 30.

⁸⁰⁵ Federal Law No. 56 of 2023 Concerning the Emirates Accountability Authority.

⁸⁰⁶ Ibid., chapter 2, art 23, 1a.

⁸⁰⁷ Jackson Oldfield, 'The Challenges of Asset Freezing Sanctions as an Anti-Corruption Tool' (*Transparency International Anti-Corruption Helpdesk*, 2022) <https://knowledgehub.transparency.org/assets/uploads/kproducts/Sanctions-Asset-Freezes-Anticorruption_2022_final.pdf>.

⁸⁰⁸ Ibid. p. 14

On the other hand, the existence of instruments to prevent or to stop criminal activity involving public funds is a strong mechanism, which indicates that the SAI has a powerful structure equipped with the means to combat corruption. It also shows that the SAI is linked to and has authority over decision making in certain cases in all financial institutions and has links to enforcement agencies. Regarding court cases, the SAI is collaborating with the public prosecution and provides evidence and materials of its investigation to the prosecution, who in turn initiate litigation.⁸⁰⁹ This again speaks of SAI as a powerful agency that is able to fight corruption in the UAE. Unfortunately, the SAI does not publish any reports of its activities for the wider public, which does not allow one to understand its role or contribution to fighting corruption in the UAE using official statistics and numbers.

PREVENTIVE MEASURES AND PUBLIC AWARENESS

According to its own website, in 2009 the SAI was responsible for establishing a 'best practice' guide for federal government institutions to prevent corruption. In 2010, in cooperation with the US Accountability Office, the SAI established a formal audit methodology. In the official and private media, SAI activity has received sparse coverage. In 2010, it was reported that the SAI provided more than 10 cases of federal government corruption to the prosecution.⁸¹⁰ In 2018, the SAI audit led to the seizure of 60 million dirhams (12.5 million GBP) of stolen public funds.⁸¹¹ Technically, since the SAI is auditing only federal government apparatus which, according to 2017 data, houses around 58,000 employees spread across 20 ministries and 35 Federal Authorities. It therefore has a rather small area to audit and its results may not be very impressive from a quantitative perspective. Still, it is crucial that all federal institutions are audited under a common methodology, which SAI develops, updates and executes in line with international best practices and it helps to prevent corruption by issuing guidelines for federal agencies. In that light, the SAI's contribution to the UAE's anti-corruption effort at federal level becomes substantial.

Another facet of corruption prevention is whistleblower protection. At the federal level, whistleblower protection is guided by the Federal Law No. 14 of 2020 The Protection of Witnesses and the Like. The "Protection Program" can include, based on the context and the individual's level of risk, physical protection, relocation, identity change, and remote testimony methods among broader methods of protection and assistance.⁸¹² The law applies to a considerable number of serious crimes and also includes protections for family members and other associates at risk, meaning that the protection offered is not overly limited in focus or geographic area.

There are some gaps in this law. The decision to grant whistleblower protection is with the 'competent authority' and the courts, and based on criteria that may exempt people reporting low-profile corruption (e.g., a small bribe to get service ahead of the queue). Furthermore, the law does not explicitly extend

⁸⁰⁹ UAE Accountability Authority, 'Investigation of Corruption Offences and Financial Violations' (n.d.) <<https://uaeaa.gov.ae/en/core/Pages/investigation.aspx?Source=/en/core/Pages/sairole.aspx>> accessed 29 October 2024.

⁸¹⁰ Issac John, 'UAE Has to Recover Dh1b from Corruption Cases' (*Khaleej Times*, 2012) <<https://www.khaleejtimes.com/business/uae-has-to-recover-dh1b-from-corruption-cases>> accessed 30 October 2024.

⁸¹¹ UAE BARQ, 'SAI Reveals a Case of Public Funds Seizure of AED60 Million' (*UAEbarq*, 2018) <<https://www.uaebarq.ae/en/2018/10/29/sai-reveals-a-case-of-public-funds-seizure-of-aed60-million/>> accessed 30 October 2024.

⁸¹²

protection from retaliatory acts, adverse employment actions, the civil liability of the whistleblower, or administrative sanctions. These were identified in UNCAC Article 33 as fundamental to a proper whistleblower protection mechanism. Thus, the UAE's framework meets some of the requirements of UNCAC; however, it has only partly produced the expected outcome of achieving a socio-legal context of openness and protection for whistleblowers. In addition to Law No. 14 of 2020, the Federal Tax Authority has a programme called "Raqeeb" that rewards and protects the identity of anyone who provides information on tax evasion.⁸¹³ Furthermore, the new Accountability Authority is required to focus on "safeguarding whistleblowers".

Despite this, observers believe that potential whistleblowers are worried about being punished and do not believe the rules will protect them.⁸¹⁴ Strict privacy and cybercrime laws also make it difficult for employees to speak up, because disclosing wrongdoing could mean they break confidentiality rules. In line with UNODC's best practice for whistleblower protection, anti-corruption systems require security protections together with institutional trust models, which support positive use of past conduct and attitudes on the part of those who have engaged in criminal conduct by offering incentives to report evidence.

In addition, there is currently no effort being made to increase potential whistleblowers' awareness of their rights to protection.⁸¹⁵ The services and means of reporting corruption provided by the SAI, UAE Ministry of Finance, FIU, or DESC do not mention that whistleblowers will be offered protection if it is needed. This is against UNODC's best practice on whistleblower protection, whereby a person must be informed of procedures for the protection of their identity, and clear policies and procedures of how their data and personal protection will be handled. With such patchwork compliance and implementation of the best practice, prevention of corruption through robust whistleblower practices remains limited.

TRANSPARENCY

The UAE's SAI has certain issues with upholding transparency. The SAI formally aspires to uphold integrity and transparency, yet, in practice, it is far from transparent: the SAI shares little information on anti-corruption work and because of missing access-to-information laws, outsiders cannot easily access them.⁸¹⁶ Independence from political influence and accountability to the public are also being questioned. The Accountability Authority is answerable to the President and the Federal Public Prosecution is part of the executive-dominated justice system. Naturally, having officials oversee justice can undermine impartiality: high-level misconduct may go unnoticed by courts if their decisions are reviewed by politicians. Because of these structural issues, there is a clear gap between what the UAE declares about fighting corruption and the real transparency required by international standards, including UNCAC.

7.4.2. EMIRATES FINANCIAL INTELLIGENCE UNIT (EFIU)

⁸¹³ Neil McInnes, 'Whistleblower Protection Laws: A Guide to International Requirements' (*Pinsent Masons*, 30 May 2025) <<https://www.pinsentmasons.com/out-law/guides/global-whistleblower-protection-laws>> accessed 1 June 2025.

⁸¹⁴ Beschel and others, note 754.

⁸¹⁵ Adam Vause and others, 'New Whistleblowing Developments in the UAE' (*DLA Piper*, 2 February 2024) <<https://ethicontrol.com/en/blog/new-whistleblowing-developments-in-the-uae>> accessed 2 October 2024.

⁸¹⁶ Robert P Beschel, Oumeyma Chelbi and Isaac Schaidler, 'How Effective Are Arab Anticorruption Agencies? Is the Glass Half Empty or Half Full?' (*Middle East Council on Global Affairs*, 2024) <<https://mecouncil.org/publication/how-effective-are-arab-anticorruption-agencies-is-the-glass-half-empty-or-half-full/>> accessed 1 June 2025.

LEGISLATIVE MANDATE, FUNCTIONS AND ORGANISATIONAL INDEPENDENCE

Besides the SAI, with the Federal Law No. 20 of 2018, the UAE government established the Emirates Financial Intelligence Unit (EFIU) – an agency responsible for analysing reports and information on financial activities of all financial institutions, including suspicious transactions. Article 9 of the Law stipulates the following functions of the agency:

- 1) Requesting information and documentation related to reports/information on suspicious financial transactions
- 2) Exchanging information and findings relating to suspicious transactions with other agencies within the UAE and counterparts abroad
- 3) Establishing and maintaining a database for storing and manipulating data on suspicious transactions
- 4) Providing prosecution and law enforcement with information about financial offences
- 5) Researching and publishing statistics related to money laundering predicate offences and financing of illegal organisations.⁸¹⁷

These functions indicate that the EFIU is not a fully autonomous investigative agency but an analytical/research institution that initiates its activities once it receives data on suspicious financial activities. Inquiries and requests can be forwarded to the EFIU from state and non-state organisations, and from individuals. The inability to initiate its own investigations might be considered a downside, but in the context of UAE's anti-corruption agency framework with SAI taking the lead, the EFIU can be considered as a niche research-focused and task-oriented organisation. In this capacity, its role is to react swiftly and provide accurate information to interested parties.

ORGANISATIONAL INDEPENDENCE AND ACCOUNTABILITY

From the standpoint of organisational structure, the EFIU is subordinate to the UAE National Anti-Money Laundering and Combatting Financing of Terrorism and Financing of Illegal Organizations Committee (NAMLCFTC) established by the same Federal Law No. 20 of 2018 in Article 11. While NAMLCFTC became the regulator and policymaker in the sphere of financial crimes and terrorism-financing prevention, the FIU became a financial investigation, control, and review body. Both are part of the UAE's central bank organisational structure. The Central Bank leadership, headed by the Governor, chairs NAMLCFTC and appoints the leaders of the FIU. In itself, the FIU is divided into departments reflecting its functionality: cooperation, strategy, outreach, research, financial operation analysis, and system infrastructure.⁸¹⁸ This integration of the FIU into the Central Bank structure offers the advantage of streamlined access to financial data and direct influence on banking compliance protocols. This allows it to positively affect the depth of financial investigations into corruption cases and react swiftly to suspicious transactions. In doing so, the FIU aids the anti-corruption effort from the infrastructural standpoint.

On the other hand, such structural dependency hinders EFIU's decision-making as it is influenced by Central Bank policy priorities. For instance, if EFIU's investigation of a suspicious transaction undermines

⁸¹⁷ Federal Law No. (20) of 2018 on Anti-Money Laundering and Combating the Financing of Terrorism and Financing of Illegal Organisations, article 9.

⁸¹⁸ The UAE Financial Intelligence Unit, 'Organisational Structure' (n.d.) <<https://www.uaefiu.gov.ae/en/about-us/organisational-structure/>> accessed 30 October 2024.

a bank crucial for the stability of the economic system of the UAE, the investigation might be affected by the Central Bank leaders, whose priorities include the financial stability and economic growth of the nation. The possibility of such internal pressure raises the issue of safeguards against this influence in the context of the FIU's ability to tackle corruption.

The Federal AML Law mandates the independence of this agency, but this independence is not clearly defined. Article 9, where the establishment and functioning of the EFIU are described, indicates that:

“CBUAE shall establish an independent “Financial Intelligence Unit” (FIU) to which suspicious transaction reports, information on all financial institutions and designated nonfinancial businesses and professions shall be sent exclusively for consideration and analysis and referral to the competent authorities, either automatically or upon request.”⁸¹⁹

Here the law does not define the boundaries of this independence and it can be clearly seen that the Central Bank of the UAE (CBUAE) has the privilege of establishing the FIU. By extension, the director of the Central Bank has the power to dismiss its employees and leadership as the EFIU is technically a subsidiary of the CBUAE. Thus, at least from the legal standpoint, the FIU does not possess the necessary autonomy to expose systemic corruption that concerns the highest members of UAE society, such as leaders or boards of large banks, or the CBUAE itself.

Despite this flaw, the role of the FIU in fighting corruption in the UAE can be considered as significant. Contrary to the SAI, the FIU publishes annual reports of its activity, which allows evaluation of its performance and assessment of its anti-corruption role. According to the latest 2022 report, the FIU worked on 172 cases referred to them from law enforcement agencies and checked 107 juridical and 64 natural person's transactions in relation to corruption suspicions. As a result of FIU investigations, 114 investigation cases were referred back to law enforcement and prosecution, of which 39% ended with a guilty verdict. Nine percent of those were court cases related to corruption (bribery, fraud, misplacement of public funds).⁸²⁰ This indicates that the FIU helps law enforcement to check the evidence of corruption for credibility and thus contributes to the anti-corruption effort.

PREVENTIVE MEASURES AND PUBLIC AWARENESS

Importantly, the FIU analyses statistics of these cases and infers patterns of financial corruption. For instance, the FIU considers and checks transactions where “Funds are received via wire transfers (international or local) from unrelated parties, followed by immediate withdrawals or outward remittances”.⁸²¹ This activity helps financial agencies such as banks to prevent/block such transfers and refer them for investigation. It also helps policymakers and law enforcers to understand how fraud, financial machinations, and public fund stealing are being performed in order to recognise and prevent such activities and improve legislation. For example, among these improvements was the mandate by the CBUAE issued

⁸¹⁹ Federal Law No. (20) of 2018 on Anti-Money Laundering and Combating the Financing of Terrorism and Financing of Illegal Organisations, article 9.

⁸²⁰ The UAE Financial Intelligence Unit, ‘FIU Annual Report 2022’ (2022) <<https://www.uaefiu.gov.ae/en/more/knowledge-centre/publications/annual-report/annual-report-2022/>> accessed 30 October 2024.

⁸²¹ Ibid.

in 2021 in the CBUAE rulebook for banks to report suspicious transactions.⁸²² In the corresponding guideline, the CBUAE explains and defines suspicious transactions in detail and how to report them. In turn, this makes the UAE banking system more resilient against corruption-related transactions as they are more easily spotted and can potentially become material for law enforcement investigations and evidence in corruption cases in court.

TRANSPARENCY

EFIU exhibits moderate, though improving progress towards full transparency. Within widely accepted IMF standards around FIU transparency such as reporting of input/output, methods and outcomes the EFIU publicly issues annual reports, organisational charts and typologies. These documents represent a transparent disclosure of legal mandates, any section-level functions that are carried out, as well as activity metrics (e.g. STR/SAR volumes, communications to Law Enforcement and collaboration metrics), which, combined, support adherence of EFIU with transparency best practice.⁸²³

Nonetheless, some gaps remain. The FATF 2020 mutual evaluation noted that at that time the FIU created limited added-value analysis and disclosed little to no investigative pursuits of FIU disseminations. While improvements in EFIU performance led to the UAE's exit from FATF's "increased monitoring" (grey list) in February 2024, there is limited public evidence which would tie FIU's work to prosecutorial outcomes.⁸²⁴ Disclosure surrounding resource allocations, budgets would improve transparency. Overall, UAEFIU's transparency has somewhat improved due to diligent reporting in routine publications and typology generation, however, independent reporting on outcome-based disclosures remains the next step for enhanced transparency.

7.4.3 LOCAL ANTI-CORRUPTION AGENCIES

Scarce information is available regarding the conduct of UAE's local agencies, which nonetheless requires analysis. Due to this, the issues of legislative mandate, independence, prevention and transparency are discussed within the single section. Dubai Economic Security Centre is a regional anti-corruption agency established in 2016 to prevent and combat corruption and further economic security in Dubai by Law No. 9 of 2019 Amending Law No. 4 of 2016. Under DESC jurisdiction are Dubai local government bodies, entities subsidised by the Dubai government or those in which the government has 25% stake, private businesses and charitable organisations.⁸²⁵ Within its jurisdiction, DESC is mandated to prevent and combat corruption and corruption-related activities such as bribery, embezzlement, fraud, and financial crimes such as money laundering. However, the agency does not have the ability to conduct full-scale audits; it only makes inquiries and conduct investigations if it deems it necessary. Mainly, it is mandated with monitoring financial transactions made and received by entities under jurisdiction, and monitoring financial markets and security trading in order to research and propose regulatory policy improvements to further regional economic stability. DESC holds the authority to request any information it deems necessary for the performance of its

⁸²² CBUAE, '4.4. Suspicious Transaction Report Filing | CBUAE Rulebook' (*Central Bank of UAE*, 2021) <<https://rulebook.centralbank.ae/en/rulebook/44-suspicious-transaction-report-filing>> accessed 30 October 2024.

⁸²³ The UAE Financial Intelligence Unit, n (770).

⁸²⁴ FATF, 'United Arab Emirates: Anti-Money Laundering and Counter-Terrorist Financing Measures' (2020) <<https://www.fatf-gafi.org/content/dam/fatf-gafi/mer/Mutual-Evaluation-Report-United-Arab-Emirates-2020.pdf>> accessed 24 August 2025.

⁸²⁵ Law No. (9) of 2019 Amending Law No. (4) of 2016 on Establishing the Dubai Economic Security Centre, art. 2, 3.

functions.⁸²⁶ Hence, DESC is not an audit agency but it has investigative capacity without the means to freeze or seize suspicious funds, unlike the SAI. Instead, it is engaged primarily with monitoring legal compliance and development of the legislation and policy in the spheres of economic security, accountability, and anti-corruption.

DESC is accountable directly to the Dubai government, executive council, and its chairman, who in turn appoints the DESC CEO. Law No. 9 provides no details on the service term of the CEO, nor mandates DESC's organisational structure, with the latter being decided by the CEO and the DESC board. The business-like structure of DESC, on the surface, ensures a collegial form of government that appears to be more accountable than a fully vertical structure.⁸²⁷ While the law does proclaim its independence, the appointment, as opposed to the election, of the CEO, undermines the organisation's own independence. In that, DESC appears to be similar to its federal counterpart, the SAI, with both agencies answerable only to corresponding governments but not to the wider public. Reports of DESC's activities are also meant only for the Dubai Council and are not available to the wider population.

Importantly, Law no. 6 of 2016 mandates all entities to cooperate with DESC and failure to comply with DESC invokes legal liability in the form of a fine of up to 500.000 AED (104.000 GBP) and/or imprisonment for 3–12 months.⁸²⁸ This is a strict condition that in theory bolsters compliance of all the entities under DESC's jurisdiction. For example, Escobar and Chávez found that industrial regulation compliance rose once inspections and fines were introduced. However, the researchers note that the size of the fine was a more substantial factor of compliance than the fact of its imposition.⁸²⁹

The primary role of DESC in relation to fighting corruption can be characterised as monitoring and deterrence. With the law mandating strict compliance with the agency's inquiries, DESC processes and shares information with the judiciary and law enforcement, which in turn yields accountability and transparency of institutions and firms under its jurisdiction.

DESC's anti-corruption effort is also aided by the Dubai Financial Audit Authority (DFAA). Similar to its federal-level counterpart, the SAI, the DFAA functions include auditing of financial and administrative data, and compliance of auditees in its jurisdiction with the relevant legislation. Organisationally and functionally, the DFAA is mostly identical to SAI, but its jurisdiction includes the same institutions and levels of government as DESC. In large part, DESC and DFAA duplicate their responsibilities in relation to corruption prevention and investigation of suspicious cases. Yet, in comparison, the DFAA is more autonomous in its investigation and performs the function of regular audits, whereas DESC can only perform inquiries as needed. The laws establishing these organisations do not mention their cooperation on matters where their interests intersect. Nor there are any by-laws mandating their cooperation. Instead, their cooperation is based on a memorandum of understanding that these agencies signed in 2021.⁸³⁰

⁸²⁶ Ibid., article 13.

⁸²⁷ John Kaler, 'Responsibility, Accountability and Governance' (2002) 11 *Business Ethics: A European Review* 327.

⁸²⁸ Law No. (4) of 2016 Establishing the Dubai Economic Security Centre, art. 21.

⁸²⁹ Ninel Escobar and Carlos Chávez, 'Monitoring, Firms' Compliance and Imposition of Fines: Evidence from the Federal Industrial Inspection Program in Mexico City' (2013) 18 *Environment and Development Economics* 723.

⁸³⁰ Government of Dubai, 'The Financial Audit Authority Signed MoU and Cooperation with Economic Security Center of Dubai' (*Government of Dubai Media Office*, 2021) <<http://mediaoffice.ae/en/news/2021/november/16-11/the-financial-audit-authority>> accessed 30 October 2024.

In itself, DFAA acts as a substitute for the Financial Audit Agency (FAA), the audit authority of Dubai that was established earlier, in 2007. Compared to the FAA, the DFAA is more self-sufficient as the FAA has to refer cases to Public Prosecution or law enforcement to seize funds and resolve disputes and grievances, while the DFAA can perform these functions itself. This signifies the effort of UAE to empower anti-corruption agencies locally to be more self-sufficient. This is a benefit as it reduces the time it takes to process each case under suspicion and conduct investigations. At the same time, the independence of the DFAA does not lead to a lack of cooperation between the agencies charged with investigatory authority. The necessity to cooperate with law enforcement and prosecution is mandated in Articles 34 and 38 of Law No. 4 of 2018, which means that independence is not detrimental to ensuring that justice is served.

Other Emirates, except for Abu Dhabi, however, do not have dedicated local anti-corruption agencies. Instead, Sharjah, Ras al-Khaimah, Fujairah, Ajman, and Umm al-Quwain rely on local law enforcement and public finance departments to consider corruption allegations. While federal agencies are able to inquire into matters of local governments, this must be done at the formal request of corresponding local governments. This creates an imbalance in how well corruption is tackled across the UAE's territory and administrative regions. It must be noted, however, that Abu-Dhabi and Dubai (the southern Emirates) constitute around 85% of UAE's territory and 66% of the population, and, consequently, a major part of business activity both domestic and international.⁸³¹ Thus, the less developed Emirates mostly rely on federal anti-corruption resources, which stems from the limited need for maintaining dedicated local anti-corruption agencies.⁸³²

From a macro perspective, the role of anti-corruption agencies in investigating and prosecuting corruption in the UAE appears to be significant. The substantial level of independence of federal-level institutions and somewhat independent local agencies in the two most economically active emirates (Abu Dhabi and Dubai) allows to them to conduct their own corruption-related investigations, request all kinds of data from all institutions. Combined, the work of the SAI, FIU, DESC, DFAA, and corresponding Abu-Dhabi institutions covers a variety of anti-corruption efforts from prevention to investigation and action. The requirement of governments and government-affiliated firms to regularly provide data and be cross-audited by anti-corruption and financial audit institutions at local and federal levels creates a robust anti-corruption network which limits the possibility of corruption crimes occurring undetected. There is a notable trend to expand and modernise anti-corruption agencies and empower them with more autonomy and responsibility. Such an effort is evidence of convergence with recommendations and the best practices of the international fight against corruption represented by UNCAC and FATF.⁸³³

Yet, anti-corruption agencies in the UAE also suffer from certain flaws that hinder their contributions. Firstly, except for the EFIU, none of the agencies bears responsibility before the public. This essential quality undermines prevention efforts in terms of public awareness of corruption levels, how the government is addressing the issue, and how citizens may participate. In turn, this circumstance determines the focus of

⁸³¹ Government of Dubai, 'Population and Vital Statistics' (*Government Statistics Center*) <<https://www.dsc.gov.ae/en-us/Themes/Pages/Population-and-Vital-Statistics.aspx?Theme=42>> accessed 30 October 2024.

⁸³² Karen Greenaway, 'How Emirati Law Enforcement Allows Kleptocrats and Organized Crime to Thrive' (Carnegie Endowment for International Peace 2020) <<https://www.jstor.org/stable/resrep26918.12>> accessed 30 October 2024.

⁸³³ Khalid Al Hamrani, 'Showing the Sharp End to Public Corruption: Dubai's New Financial Audit Authority' (*Al Tamimi & Company*, 2019) <<https://www.tamimi.com/law-update-articles/showing-the-sharp-end-to-public-corruption-dubais-new-financial-audit-authority/>> accessed 25 October 2024.

anti-corruption agencies on the top-down fight against corruption with minimal public involvement. This practice is not in line with UNCAC, which mandates transparency and proactivity in relation to public education and public involvement with anti-corruption efforts.⁸³⁴ Furthermore, the appointed status of anti-corruption agencies' leadership also undermines their ability to investigate corruption at the source of their power. While all the agencies considered allow corruption reporting and offer certain legal protection, total public awareness and participation is a prerequisite for comprehensive anti-corruption efforts. In addition, there are no clearly and legally established means and protocols of cooperation between federal and local anti-corruption agencies, which is not conducive to country-wide investigative and prosecution activity. In the UAE, anti-corruption agencies are part of different federal and local groups and they are financed by the government budget. The Abu Dhabi Accountability Authority and the Dubai Financial Audit Authority receive financial support from the local executive agencies. Though this allows the Emirates to address corruption in a tailored manner, the fact that they are missing a unified anti-corruption agency and the fact that they depend on the executive for their budget may reduce national coordination and independence. Finally, not all the UAE emirates are actively involved in tackling corruption, which makes the UAE's progress towards UNCAC standards uneven.

7.5 ANTI-CORRUPTION EFFORTS IN PUBLIC CONTRACT AND PROCUREMENT

The UAE anti-corruption efforts in the sphere of public contract and procurement are boosted by the federal anti-corruption legislation framework as well as procurement legislation. For instance, Article 80 of the UAE Federal Penal Code criminalises “bribery, embezzlement, or misappropriation or damage to public funds”, creating a baseline for handling procurement deals in a manner that does not involve corrupt activity.⁸³⁵ Federal Law No. 11 of 2023 On Procurement in the Federal Government aimed to increase clarity, transparency and efficiency in public spending, which in itself is a prerequisite for reducing corruption. Specifically, the law mandates an open bidding process that reduces the risk of nepotism, price-fixing, and other improper activities with public funds that may lead to violation of the Penal Code. In addition, Article 24 allows a federal entity to cancel any contract and exclude participating suppliers from a tender for:

“Provision of bribes, illegal commissions, bid manipulation, fraud or abuse of power with the aim of unlawfully influencing the Procurement Process, without prejudice to the provisions of any other relevant law or legislation”⁸³⁶

A similar provision on contract cancellation is provided in Federal Law No. 12 of 2023 on Regulating the Federal Public-Private Partnerships (PPP):

“Proving a bribery, illegal commissions, bid rigging, fraud, or power abuse with the aim of illegally influencing the tender procedures, to the extent that such actions have an actual impact on the results of the tender award, without prejudice to the provisions of any other relevant law.”⁸³⁷

Yet, such provisions do not infer any punishment or sanction applied to bidders or suppliers who are excluded from a tender. The UNODC Guidebook on anti-corruption in public procurement and the

⁸³⁴ United Nations Convention Against Corruption, 2004

⁸³⁵ UAE Federal Penal Code, article 80.

⁸³⁶ Federal Law No. (11) of 2023 On Procurement in the Federal Government, article 24.

⁸³⁷ Federal Law No. (12) of 2023 on Regulating the Federal Public-Private Partnerships (PPP), article 20.

management of public finances suggests making a 'black list' of suppliers entangled in corrupt practices, which the law does not feature. Secondly, the guidebook indicates that public hearings are also a noteworthy instrument for making procurement more accountable and transparent.⁸³⁸ None of these provisions/requirements are listed in the UAE procurement law. Yet, the laws on procurement and PPP do include provisions on transparency and integrity that require the federal procurement agency to reveal the following information:

“A summary of all major decisions related to the approval of the partnership project and bidding procedures; and B. Project awarding decision.”⁸³⁹

“The relevant Federal Entity must notify the Participating Suppliers of all major information and decisions related to the tender or affecting the fair competition among them.”⁸⁴⁰

In addition to these provisions, Article 10 of the Federal Law No. 11 of 2023 indicates that conflicts of interest must be considered for any public employee involved in public procurement. While no specific procedure for inquiry into a possible conflict of interest is mentioned in this law, the SAI is mandated to:

“Examine and review procurement processes in Regulated Entities to ensure their correct implementation and approval in accordance with the laws, Regulations and policies regulating them.”⁸⁴¹

Thus, legal efforts in public contract and procurement in the UAE to reduce corruption remain at the basic level, if compared to anti-corruption measures taken in other countries such as the UK. Specifically, the UK Public Procurement Act 2023 also specifies conflict of interest measures, and it provides a definition of conflict of interest, mandates a set of actions to avoid it, and bestows the duty to identify it on public entities and contractors.⁸⁴² Yet, according to a review of non-profit organisations, the conflict-of-interest provision could be strengthened to mandate suppliers and contracting authorities to publish reports on their management of conflicts of interest, so that it can be reviewed annually.⁸⁴³ The absence of a requirement for both UAE government contractors and suppliers to take proactive efforts against possible conflicts of interest might lead to an abuse of power and the awarding of contracts that breach public trust and undermine the public interest. Furthermore, it establishes an environment where the responsibility of both parties in procurement is limited to 'awareness', as formulated by Federal Law No. 11 of 2023 and the basic steps to ensure transparency.

Besides the law that establishes basic anti-corruption barriers, the UAE government is committed to digitising its procurement process, demonstrated by the development and use of an online platform for procurement. E-procurement allows the procurement process to be depersonalised, minimising the risk of offering or accepting a bribe. Currently, the functionality of the UAE digital procurement platform (DPP)

⁸³⁸ UNODC, 'Guidebook on Anti-Corruption in Public Procurement and the Management of Public Finances' (*United Nations*, 2013) <https://www.unodc.org/documents/corruption/Publications/2013/Guidebook_on_anti-corruption_in_public_procurement_and_the_management_of_public_finances.pdf> accessed 31 October 2024.

⁸³⁹ Federal Law No. (12) of 2023 on Regulating the Federal Public-Private Partnerships (PPP), article 27.

⁸⁴⁰ Federal Law No. (11) of 2023 On Procurement in the Federal Government, article 24, article 9.

⁸⁴¹ Federal Law by Decree No. (56) of 2023 Concerning the Emirates Accountability Authority, article 20.

⁸⁴² UK Procurement Act 2023, part 5, section 85.

⁸⁴³ Spotlight on Corruption, 'Spotlight on Corruption Written Evidence to the Procurement Bill Committee' (UK Parliament, 2023) <<https://bills.parliament.uk/publications/49616/documents/2856>> accessed 31 October 2024.

allows interaction between government, government-affiliated entities, and private suppliers to register, apply for a tender, verify, and approve their documentation.⁸⁴⁴ The website guarantees the confidentiality of suppliers' sensitive commercial data and ensures easier interactions between actors. Sanchez-Graells, however, notes that digitalisation does not nullify such risks as the public procurement process cannot be fully completed without personal interactions and closed-door negotiations.⁸⁴⁵ In addition, the use of the DPP is not mandatory for suppliers and they can still apply for tenders offline, which further negates the anti-corruption benefits of E-procurement.

Another facet of anti-corruption efforts in the field of public contracts and procurement is financial disclosure. The UAE's financial disclosure rules demonstrate a significant difference between the relatively strong requirements for corporate transparency and the weak systems of accountability in the public sector. Unlike public officials, who are not subject to a formalised asset declaration system, in the UAE, private sector organisations must comply with fairly sophisticated beneficial ownership disclosure requirements, which encompasses almost all legal entities but excludes some legal person types.⁸⁴⁶ The absence of specific legal requirements for a declared range of high-ranking public officials, or more broadly for ministers and departments, signifies the absence of sufficient institutional frameworks for the application of anti-corruption regulations to public officials, especially with respect to Article 52 of UNCAC, which mandates monitoring illicit enrichment through financial disclosure.⁸⁴⁷ The lack of relevant legal processes and the absence of sanctions for non-disclosure hinder the transparency and accountability of the public servants. To an extent, the SAI's investigative powers somewhat compensate for this discrepancy as the agency can initiate investigation into any public body and individual, as it has access to all the financial records.

At the same time, the UAE has undertaken significant work regulating corporate disclosures, Federal Decree-Law No. 20 of 2018 and Cabinet Resolution No. 109 of 2023 require all companies registered under the Companies Law (with limited exceptions) to produce accurate ultimate beneficial ownership (UBO) information and maintain a register. Errors in UBO reporting may result in administrative penalties while the law also provides a range of penalties for conduct where a company or a corporate entity fails to comply with an analysis. This can lead to a fine or suspension of their licence under the law.⁸⁴⁸ This position provides more transparency (albeit limited in terms of motive) for owners of companies, or legal entities, than exists for most public officials in the UAE; this signals compliance with Article 12 of the UNCAC, requiring robust financial disclosure for private entities.⁸⁴⁹ These reforms enabled the UAE to be removed from the FATF grey list in 2024.⁸⁵⁰ Transparency is essential for integrity and it can support investigating

⁸⁴⁴ UAE Ministry of Finance, 'Digital Procurement Platform (DPP) Supplier Registration User Manual' (*UAE Ministry of Finance*, n.d.) <https://www.moe.gov.ae/Ar/AboutTheMinistry/Documents/MoF_DPP_User%20Manual_Supplier_Registration_ENG_20220420_v8.0.pdf> accessed 31 October 2024.

⁸⁴⁵ Albert Sanchez-Graells, *Digital Technologies and Public Procurement: Gatekeeping and Experimentation in Digital Public Governance* (Oxford University Press 2024).

⁸⁴⁶ Rony Eid and Tala Shomar, 'United Arab Emirates: Changes to the Ultimate Beneficial Ownership Regulations to Address the Complex Structures and Needs of Businesses' (*Baker and McKenzie*, 2024) <https://insightplus.bakermckenzie.com/bm/mergers-acquisitions_5/united-arab-emirates-changes-to-the-ultimate-beneficial-ownership-regulations-to-address-the-complex-structures-and-needs-of-businesses_1> accessed 11 June 2025.

⁸⁴⁷ UNCAC, art. 52.

⁸⁴⁸ Cabinet Resolution No. 109 of 2023 Concerning the Regulation of the Beneficial Owner Procedures (UAE)

⁸⁴⁹ Cabinet Resolution No. 132 of 2023 Regarding Administrative Fines for Violations of the Procedures for Beneficial Owner Data (UAE).

⁸⁵⁰ Financial Action Task Force (FATF), Mutual Evaluation Report: United Arab Emirates (April 2020) <<https://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-uae-2020.html>> accessed 10 June 2025.

potentially nefarious behaviours in terms of undeclared, unexplained, or potentially undisclosed wealth accumulation or the potential misuse of public office, which disrupts trust in government and serves as a basis for the emergence of corruption.

Overall, anti-corruption efforts in the sphere of public contracts and procurement are somewhat lacking but basic defence mechanisms are in place. The UAE strives to digitalise business and documentation for easier administration, transparency, and accountability, which in the long term should increase the country's resilience towards corruption crimes. Currently, however, anti-corruption measures mostly classify as legally mandated awareness, which theoretically contributes towards deterrence. Practically, there is still little transparency or public oversight of the public procurement sphere, which is contrary to the UNCAC guidelines. Specifically, with no obligation for financial disclosure for public officers, corruption may emerge in the form of illicit enrichments. To counterbalance these negatives, the SAI's authority includes oversight and investigation of public contracts and procurement which, to an extent, increases the chances of corruption being prevented or identified.

7.6 FIGHT AGAINST CORRUPTION IN THE UAE ACCORDING TO THE INTERNATIONAL ORGANISATIONS AND FOREIGN ANALYTICAL AGENCIES

The evaluations of the UAE in terms of its ability to fight corruption vary across different international organisations and foreign analytical agencies. For example, the Organization for Security Anti-Corruption and Crime (OMSAC) positively evaluates the legislation and existence of strong anti-corruption agencies but notes on critical weaknesses in terms of transparency. Specifically, the OMSAC commends the effort of the UAE government to update its anti-corruption legislation, strengthen the UAE federal penal code, and empower its audit institutions.⁸⁵¹ In major points, it reflects on the present analysis by noting the lack of effort in the field of public awareness and involvement in anti-corruption efforts, besides making it easy to report corruption. Furthermore, the OMSAC report indicates that transparency remains a crucial weak point of UAE anti-corruption efforts as there is no clarity on the action and contributions of major agents such as the SAI and local anti-corruption agencies, including DFAA and DESC.

The OMSAC report, however, does not feature a comprehensive analysis of the socio-legal environment of the UAE, nor does it have an evaluation methodology. These factors render their analysis somewhat less credible despite their status as a France-based international anti-corruption agency. Nonetheless, the weaknesses of the UAE anti-corruption framework pointed out by OMSAC are supported by other analytical agencies.

In their analysis of defence sector integrity in the UAE, Transparency International accentuated the problematic nature of access to information and defence procurement. Traditionally, for the Gulf countries, national defence remains obscure for external analysis and there are few mechanisms that can help to unveil anti-corruption measures performed specifically to combat corruption in the defence sector. Indeed, according to the data provided by Transparency International, the UAE does not make its defence

⁸⁵¹ OMSAC, 'Assessment of UAE Anti-Corruption Legislation and Enforcement Mechanisms (2020-2023)' (OMSAC, 30 August 2023) <<https://en.omsac.org/post/assessment-of-uae-anti-corruption-legislation-and-enforcement-mechanisms-2020-2023>> accessed 31 October 2024.

budget, defence procurement purchases, or circumstances of the deals publicly available.⁸⁵² The report places substantial emphasis on assessing transparency and the existence of democratic and publicly open mechanisms of review, finding that those are absent in the personnel, operational, procurement, and financial side of the defence industry. The report concludes that the UAE defence integrity index is very low.

At the same time, Transparency International's report is widely based on open-source data that frequently features media articles such as TRT World, a Turkish newspaper which allegedly has ties to the state propaganda apparatus.⁸⁵³ In addition, Transparency International makes some false or unsubstantiated claims, for example suggesting that the SAI is unable to review defence-related spending or that there is no audit of the defence spending. As demonstrated in section 7.3. above, Federal Law no. 56 of 2023 mandates the SAI to conduct self-initiated audits of any state-owned or affiliated organisation or branch of government within its jurisdiction, the Ministry of Finance or Defence being no exception.⁸⁵⁴ The SAI is also mandated to produce reports of such inspections to the UAE parliament. Yet, Transparency International is correct that such activities lack transparency and accountability and it is impossible to assess whether an audit of defence is performed, to what extent, and which irregularities in procurement or finance were found as a result. Still, just because they are not publicly available, this is not proof of audits not being carried out. In any case, the lack of information crucially pointed out by Transparency International creates uncertainty and corruption risk for any interested party.

GAN Integrity, a private business consulting firm, is more positive in its evaluation of the UAE anti-corruption framework. From its assessment of the judicial system, police, public services, land administration, tax administration, customs administration, public procurement, natural resources, and legislation, it has found a moderate risk in public procurement, natural resources, and the judicial system. Among the flaws of the judiciary, GAN Integrity noted a weak dispute resolution system in courts, while suggesting that 'irregular payments and bribes are not commonly exchanged for favourable judgments'.⁸⁵⁵ With regard to public procurement, GAN Integrity, in line with other international analysts, confirmed the lack of transparency, especially in the defence sector. However, according to businesses cited in the report, entrepreneurs have trust in UAE government representatives to make objective decisions and abstain from favouritism, bribery, and irregular payments in the sphere of public contracts and licensing. In its assessments, GAN Integrity also relies on third-party sources, albeit using reputable business analysis reports based on the primary data and official publications of the UAE government.

According to a global private team of anti-corruption investigators, 'Global Investigations & Compliance Review', the UAE demonstrates commitment to combatting bribery and corruption.⁸⁵⁶ Specifically, Gibbon and Abbas commend the consistently high CPI score in the MENA region which, they believe, stems from tightening of the anti-corruption legislation (e.g. the 2019 amendments to the punishments under bribery

⁸⁵² Transparency International, 'United Arab Emirates: Government Defence Integrity Index' (*Government Defence Integrity Index*, 2020) <<https://ti-defence.org/gdi/countries/ united-arab-emirates/>> accessed 31 October 2024.

⁸⁵³ Thomas L McPhail and Steven Phipps, *Global Communication: Theories, Stakeholders, and Trends* (John Wiley & Sons 2019).

⁸⁵⁴ Federal Law no. (56) of 2023 Concerning the Emirates Accountability Authority, part 6, chapter 1, article 31.

⁸⁵⁵ GAN Integrity, 'United Arab Emirates Country Risk Report' (*GAN Integrity*, 2020) <<https://www.ganintegrity.com/country-profiles/ united-arab-emirates/>> accessed 19 October 2024.

⁸⁵⁶ Malak Abbas and Richard Gibbon, 'The UAE Continues to Combat Bribery and Corruption' (*Global Investigations & Compliance Review*, 14 September 2022) <<https://www.globalinvestigations.blog/anti-corruption/the-uae-continues-to-combat-bribery-and-corruption/>> accessed 6 October 2024.

articles of the UAE Penal Code), establishment of the AML Law, and the introduction of bribery punishments for the private sector.⁸⁵⁷ Despite this positive assessment, in 2022 the UAE was included on the FATF grey list. FATF is a global non-profit organisation that monitors finance-related crimes such as money laundering and promotes standards for mitigating the risks of finance-related corruption. The FATF grey list is officially called 'jurisdictions under increased monitoring' that contains countries where, according to the Task Force, there are corruption, money laundering, and terrorism financing issues.⁸⁵⁸ The reason for the UAE's inclusion was cited as: "'strategic deficiencies' in its money laundering controls".⁸⁵⁹ In particular, the UAE has often been a target destination for dubious investments in its real estate sector associated with financial fraud and bribery. Thus, for example, in 2021, an individual was arrested under a charge of attempting bribery of 10,000 dirham of an officer of a government service centre in exchange for the investor's business to be changed from a commercial licence to one for managing real estate investment funds.⁸⁶⁰ Inclusion in that list is reputational damage and countries who value the ability to attract high-value investments from partners are encouraged to stay off FATF grey and black lists.

Most recently however, in 2024, the UAE was officially removed from the FATF grey list. The legal expert community indicates that this decision was made due to three major anti-corruption developments in the UAE: the establishment of the Executive Office and Special Court against money laundering and financial crimes; the adoption of anti-money laundering and fraud guidelines for financial institutions; and the adoption of Commercial Transaction Law adjustments, which address fraud schemes using counterfeit cheques.⁸⁶¹ This effort underscores the link between international monitoring of national corruption issues under the eye of international organisations and the fact that the UAE, as a country tightly integrated into global financial and economic relations, is additionally incentivised to update its anti-corruption framework.

Overall, there is consensus among foreign analysts that the UAE government's anti-corruption effort lacks transparency and the quality of several assessments remains low due to the use of untrustworthy sources. Indeed, transparency is an essential prerequisite for government accountability and effective corruption identification and oversight.⁸⁶² Yet, using this as a cornerstone measure of corruption appears to be too biased, considering that there is little data to prove the existence and scale of corruption outside of the corruption cases and scandals that spill over into the media. Furthermore, it has been argued by Elsayed that there is little to no correlation between the lack of public availability of independent information (e.g.,

⁸⁵⁷ Ibid.

⁸⁵⁸ Heba Al Emara, Assam Ibrahim and Rensche Olivier, 'Analysing the UAE's Removal from the FATF's Grey List' (*Vistra*, 17 April 2024) <<https://www.vistra.com/insights/analysing-uaes-removal-fatfs-grey-list>> accessed 6 October 2024.

⁸⁵⁹ Herbert Smith Freehills, 'The UAE Welcomes Its Removal from the FATF Grey List' (*Herbert Smith Freehills | Global law firm*, 2024) <<https://www.herbertsmithfreehills.com/insights/2024-02/The-UAE-welcomes-its-removal-from-the-FATF-grey-list>> accessed 12 February 2025.

⁸⁶⁰ Afkar Ali Ahmed, 'UAE: Man Jailed for Offering Dh10,000 Bribe to Govt Employee' (*Khaleej Times*, 2021) <<https://www.khaleejtimes.com/uae/crime/uae-man-jailed-for-offering-dh10000-bribe-to-govt-employee>> accessed 12 February 2025.

⁸⁶¹ Ibid.

⁸⁶² Alina Mungiu-Pippidi, 'Transparency and Corruption: Measuring Real Transparency by a New Index' (2023) 17 *Regulation & Governance* 1094.

press freedom) and corruption.⁸⁶³ Thus, some foreign commenters such as Transparency International judge the UAE's anti-corruption system too harshly based on the evidence they provide.

7.7 LATEST POLICY DEVELOPMENTS AGAINST CORRUPTION IN THE UAE

The UAE is known for its business freedom; business regulation in the country is not stringent and hence the country is open to foreign business. In terms of business freedom, the country scores 85 points out of 100, where a higher score means more freedom for business.⁸⁶⁴ In line with this, the UAE government has been proactively establishing a corruption-free business culture to aid its efforts of fighting corruption across the state apparatus and eliminating instances of *proposing* bribes, not only *taking* them. Specifically, in 2019 the UAE government introduced The Emirates Integrity Network, which is an initiative targeting the improvement of business ethics, integrity, and transparency. Among the achievements of this initiative is a collection of relevant anti-corruption legislation that contains not only UAE laws but also laws from other countries.

In addition to improving integrity and transparency and strengthening whistleblowing policies and legislation, the UAE government has been acting on its anti-corruption networking. In 2023, the UAE government hosted the MENA FATF Typologies and Capacity Building Workshop which was attended by over 100 participants from 21 countries. According to Morgan and Lewis law firm, UAE entered 44 mutual legal assistance and cooperation agreements on anti-corruption, which includes memorandums of understanding as well as agreements to exchange legal data.⁸⁶⁵ As a result of this cooperation, the UAE helped South Africa to apprehend corruption criminals. In June 2022, Atul Gupta and Rajesh Gupta were apprehended in Dubai because South Africa had issued an international warrant for their arrest on charges of widespread bribery, corruption, and theft of state assets. According to a bilateral treaty between the UAE and South Africa and in line with UNCAC, which is the only legally binding international law against corruption, the South African government mandated extradition for both individuals. The UAE government complied with the extradition request, and the case is currently under investigation in a UAE court of law.⁸⁶⁶ In addition, cross-border cooperation has been strengthened with legislation that establishes anti-corruption agencies like the SAI and FIU.⁸⁶⁷ Strengthening international cooperation in the sphere of anti-corruption enables professional knowledge and best practice exchange, and the formation of horizontal ties between agencies. In turn, this means that the national UAE framework will be more robust thanks to insights from other countries, especially considering the continuous change that the UAE framework is experiencing.⁸⁶⁸

⁸⁶³ Dina Elsayed, 'Corruption in the Gulf Region: A Black Box' in Dina Elsayed (ed), *Corruption in the MENA Region: Beyond Uprisings* (Springer International Publishing 2021) <https://doi.org/10.1007/978-3-030-55314-2_6> accessed 25 October 2024, p. 97

⁸⁶⁴ Jenn Peretz, 'UAE's Transparency And Good Governance Efforts Pay Off: Ranked Least Corrupt Arab Nation' (*Medium*, 3 April 2023) <<https://medium.com/@writerj/uaes-transparency-and-good-governance-efforts-pay-off-ranked-least-corrupt-arab-nation-6c53417cfd06>> accessed 31 October 2024.

⁸⁶⁵ Chris Warren-Smith, Christopher Brinley and Katherine Seager, 'Bribery & Corruption Laws & Regulations in United Arab Emirates' (*Global Legal Insights*, 2024) <<https://www.globallegalinsights.com/practice-areas/bribery-and-corruption-laws-and-regulations/united-arab-emirates/>> accessed 2 October 2024.

⁸⁶⁶ Charles Russell Speechlys-Karl Masi and Sara Sheffield, 'In Brief: Foreign Bribery Laws in United Arab Emirates' (*Lexology*, 17 February 2023) <<https://www.lexology.com/library/detail.aspx?g=a5f38e01-2cc0-4f2a-b4f1-986e4af286bf>> accessed 12 February 2025.

⁸⁶⁷ Federal Law No. 56 of 2023 Concerning the Emirates Accountability Authority, article 16; Law No. (4) of 2018 Establishing the Financial Audit Authority.

⁸⁶⁸ Emirates News Agency, 'UAE Participates in 10th Meeting of Anti-Corruption Ministerial Committee of GCC States' (*WAM*, 2024) <<https://www.wam.ae/en/article/b5nv6b2-uae-participates-10th-meeting-anti-corruption>> accessed 31 October 2024.

Finally, cooperation between anti-corruption agencies of states enhances the ability to combat cross-border crime and apprehend funds and individuals responsible for misusing them.

7.8 PATH FOR FURTHER REFORMS OF ANTI-CORRUPTION LEGISLATION IN THE UAE CONTEXT

Despite the continuous effort of the UAE government to update its anti-corruption legislation, enact reforms, empower its anti-corruption agencies, and strengthen international cooperation, there is still room for further reform.

One of the most crucial areas for reform is the separation of powers, judicial system independence, and the rule of law. While formalisation of the role of the courts and judges is in place and guaranteed by the constitution, the separation of powers is lacking as supreme political authorities have control over the appointment and tenure of judges. Furthermore, the constitution itself is amendable by royal decree, which highlights the need for substantial reforms in order for UAE to establish a transparent, accountable, and independent criminal justice system to prosecute corruption in line with UNCAC.

Another crucial area for reform is updating its anti-corruption legislation to bring it into further alignment with UNCAC. Firstly, as indicated in section 7.2.1, the UAE Federal Penal Code lacks clarity in its definition of forms of bribery such as "unentitled gift" or "privilege", thus hindering consistency of understanding among judges, prosecutors, and lawyers. Clarity of terminology, in line with Scalia, is conducive to more consistent, just, and correct prosecution and court verdicts.⁸⁶⁹ Extending the anti-bribery provisions of the Code properly to the private sphere is also an essential means of combatting corruption, as bribery and influence trading can often originate in private organisations.⁸⁷⁰ The Human Resources Law could also benefit from expanding the ethics of public sector employees to cover other forms of corruption, such as embezzlement and influence trading, as it currently prohibits only bribe-taking.

Furthermore, regarding legal advancements, the legal framework on corruption in the UAE does not cover the concept of illicit enrichment, which is contrary to UNCAC recommendations for criminalising corruption crimes.⁸⁷¹ Introducing and criminalising this offence strengthens the legal framework by adding another focus of anti-corruption – the possession of unexplained gains of wealth that are beyond values likely to be obtained by an individual.⁸⁷² In turn, this involves activities imposed onto public servants that require them to reasonably explain the source of their wealth and its proportionality to their income, which establishes another barrier to corruption: maintaining supervision of public servants' assets.

In terms of anti-corruption agencies, the UAE government might need to perform an audit of the functions and jurisdictions of all newly created agencies in order to ensure that there are no blind spots or overlapping responsibilities. Currently, UAE agencies such as the SAI, FIU, and DFAA can conduct full-scale audits on

⁸⁶⁹ Antonin Scalia, *A Matter of Interpretation: Federal Courts and the Law - New Edition* (Princeton University Press 2018)

⁸⁷⁰ David Hess and Thomas Dunfee, 'Taking Responsibility for Bribery: The Multinational Corporation's Role in Combating Corruption', *Business and Human Rights* (Routledge 2003).

⁸⁷¹ UNCAC, article 20.

⁸⁷² Noratikah Binti Muhammad Azman Ng, Zainal Amin Bin Ayub and Rohana Binti Abdul Rahman, 'The Legal Aspect of Illicit Enrichment In Malaysia: Is It A Crime To Be Rich?' (2022) 13 UUM Journal of Legal Studies 267.

any state-affiliated entity, yet there is no clarity in the laws on how agencies keep and exchange data on audits, as the FIU and DFAA are each mandated to hold and maintain lists of entities and the financial operations it audits. Hence, to streamline audits and avoid duplication of efforts, the UAE might introduce by-laws to govern cooperation, collaboration, and data exchange policies in relation to audits. At the same time, there are northern emirates that do not have dedicated local anti-corruption agencies and laws regulating local firms' accountability. As a result, there may be extensive pressure on the SAI to audit them without knowledge of local specifics. Conversely, there is insufficient clarity in SAI legislation about governing local audits in these emirates and, consequently, there are loopholes allowing corruption. Tackling this issue would enable even coverage and audits of integrity across the UAE, as currently only Abu-Dhabi and Dubai hold the role of leaders in anti-corruption efforts.

Tying whistleblowing protection firmly to corruption reporting and establishing proper awareness will also help the UAE government to increase incident reporting. Those exposing corruption bear a disproportional risk to their own positions within the organisation and also retaliation from those they attempt to expose.⁸⁷³ Thus, there is a need for national awareness efforts in order for the reporting to work more effectively. Additionally, adding corruption crimes to the list of crimes for which government protection might be offered will further boost the positive impact of whistleblowing on corruption in the UAE.

To further improve awareness as a means of preventing corruption, there is a need for a policy focus to increase public involvement in anti-corruption work. Specifically, university and public-school lectures might be organised by the SAI, FIU or other anti-corruption agencies in order to form an adequate understanding of what is corruption, how to distinguish it from gift-giving/taking, and how to report it safely. Building such a knowledge foundation early could help to increase the UAE's future resilience against corruption in line with best global practices.⁸⁷⁴ However, in order for public initiatives to work, there is a need for a parallel effort aimed at increasing government transparency and accountability.

Specifically, in line with the criticism of foreign observers discussed in section 7.5, there is a lack of public control and awareness of anti-corruption agencies' initiatives and activities. The absence of this mechanism reduces the ability to assess the effectiveness of the said agencies and therefore take corrective action. Amending the corresponding laws to mandate the agencies to make their activity reports public should increase the accountability of the said agencies, as well as boost public trust and the desire among members of the public to cooperate with them.⁸⁷⁵

Finally, there is a need to ensure transparency and accountability in the sphere of public procurement. Currently, there are only basic precautions in place to avoid corruption but in line with global best practice, open and competitive e-procurement should become the norm rather than an option. Secondly, a routine audit of such deals by the SAI should be part of the procurement legislation. The perceived 'absence' of audits means that international partners' perceive UAE public procurement as a high-risk business sphere.

⁸⁷³ Constanze von Soehnen, 'Whistleblower Protection: International Experiences, Global Initiatives and Key Concepts' (UNODC, n.d.) <https://www.unodc.org/documents/treaties/UNCAC/COSP/session8/SpecialEvents/Presentation_-_UNODC_Constanze_von_Soehnen.pdf> accessed 31 October 2024.

⁸⁷⁴ Rasdi Rasdi and others, 'When Students Fight Corruption: A Portrait of Anti-Corruption Education for Elementary School Students' (2021) 3 The Indonesian Journal of International Clinical Legal Education 111.

⁸⁷⁵ Alan Doig and David Norris, 'Improving Anti-corruption Agencies as Organisations' (2012) 19 Journal of Financial Crime 255.

Referring to the specific provisions and authority of the SAI will help to establish clarity and favour a positive investment climate in the UAE.

7.9 CONCLUSION AND IMPLICATIONS

The history of combatting corruption in the UAE is perhaps as long as the UAE itself and this path has been marked by both successes and challenges. From a legal development perspective, the UAE's legal anti-corruption framework has adopted a paradigm that emphasises the unethical nature of corruption, in line with Sharia Law. In turn, present developments have mostly focussed on strengthening clarity, and full coverage of corruption crimes in the law. The main achievement of the legal framework comprising the UAE Federal Penal Code, the AML Law, Human Resources Law, and Dubai Law No. 4 of 2016 are definition and prohibition of all major corruption crimes including bribery, influence trading, abuse of power, facilitation payments, embezzlement and laundering of illicit funds.

Yet, there is the challenge of defining corruption itself as a complex legal phenomenon, and a lack of laws that directly focus on corruption, despite the fact that the term 'corruption' is featured in several UAE laws. Another strong side of the UAE in fighting corruption is a scrupulous, frequent, and continuous audit of all branches of government, individuals, and state-owned, affiliated, and private organisations. Federal anti-corruption agencies such as the SAI and FIU, and local ones such as the DFAA, monitor all financial transactions and investigate suspicious ones using tailored methodologies in line with UNCAC and FATF. However, their work is challenged by the fact that their interactions and cooperation are not clearly defined or mandated by the laws, in addition to their jurisdictions somewhat overlapping.

The UAE is also challenged by a lack of transparency in both procurement and the work of anti-corruption agencies, which undermines the analysis and improvement of anti-corruption efforts in the UAE through means of public scrutiny. Crucially, the judicial system is in need of review and reform as inadequacies remain in the area of the rule of law, independence of the judiciary, and separation of powers. There is also no obligation for public officers to disclose their assets and liabilities, which also undermines transparency and accountability in public service, creating possibilities for illicit enrichment, against UNCAC's guidelines. To an extent, the wSAI's broad investigative powers compensate for this flaw, yet reform would still be beneficial.

Nonetheless, the UAE continuously updates its anti-corruption laws and empowers its anti-corruption agencies, which somewhat explains its status as the least corrupted country in the Gulf, according to Transparency International's rating. On the other hand, the analysis of its anti-corruption framework alongside other countries in the Gulf does not seem to support the notion that the perception of corruption is an accurate representation of the actual corruption situation. The comparative analysis of anti-corruption frameworks in Kuwait, Saudi Arabia, and the UAE provided in the next chapter will explore this issue in detail.

CHAPTER 8. A COMPARATIVE ANALYSIS OF ANTI-CORRUPTION FRAMEWORKS IN THE UAE, SAUDI ARABIA, AND KUWAIT

8.1 INTRODUCTION

Comparative studies of corruption in various states have been scarce. Furthermore, studies analysing and reflecting on complete anti-corruption frameworks rather than just some of their aspects have been largely missing in the literature.⁸⁷⁶ The importance of comparing legal and policy regimes across different countries and countries from the same region cannot be overstated, considering the potential of this comparison for improving one's domestic anti-corruption framework, as well as aiding the search for best practice. According to Heimann, studying the different strategies that nations adopt to fight corruption may enhance one's understanding of what works and help to discover potentially innovative and game-changing elements that can potentially be adopted elsewhere.⁸⁷⁷ Hence, this chapter attempts to address the critical gap in the literature by comparing anti-corruption frameworks in UAE, Saudi Arabia and Kuwait. In-depth analyses of each country's framework presented in chapter 5, 6 and 7 is utilised here as a basis for the comparative analysis.

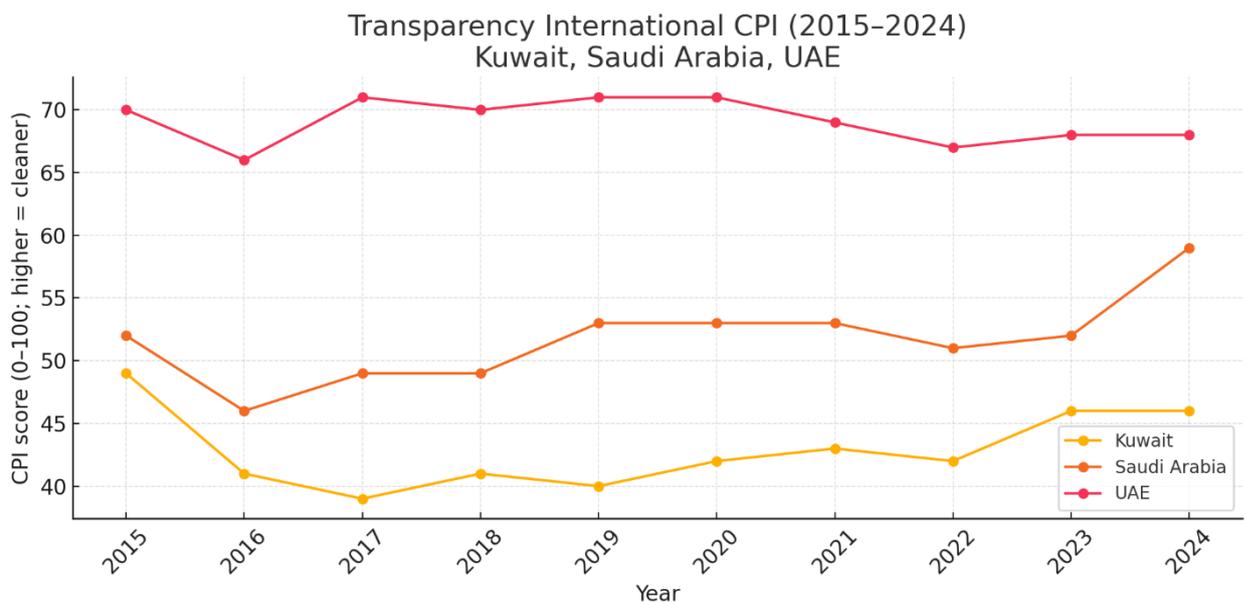


Figure 8.1. Comparative Chart of CPI ratings: Kuwait, Saudi Arabia and UAE (Source: Transparency International).

⁸⁷⁶ Hortense Jongen, 'Peer Review and Compliance with International Anti-Corruption Norms: Insights from the OECD Working Group on Bribery' (2021) 47 *Review of International Studies* 331.

⁸⁷⁷ Fritz Heimann, 'Different Strategies for Different Countries' in Fritz Heimann and Mark Pieth (eds), *Confronting Corruption: Past Concerns, Present Challenges, and Future Strategies* (Oxford University Press 2018) <<https://doi.org/10.1093/oso/9780190458331.003.0023>> accessed 3 December 2024.

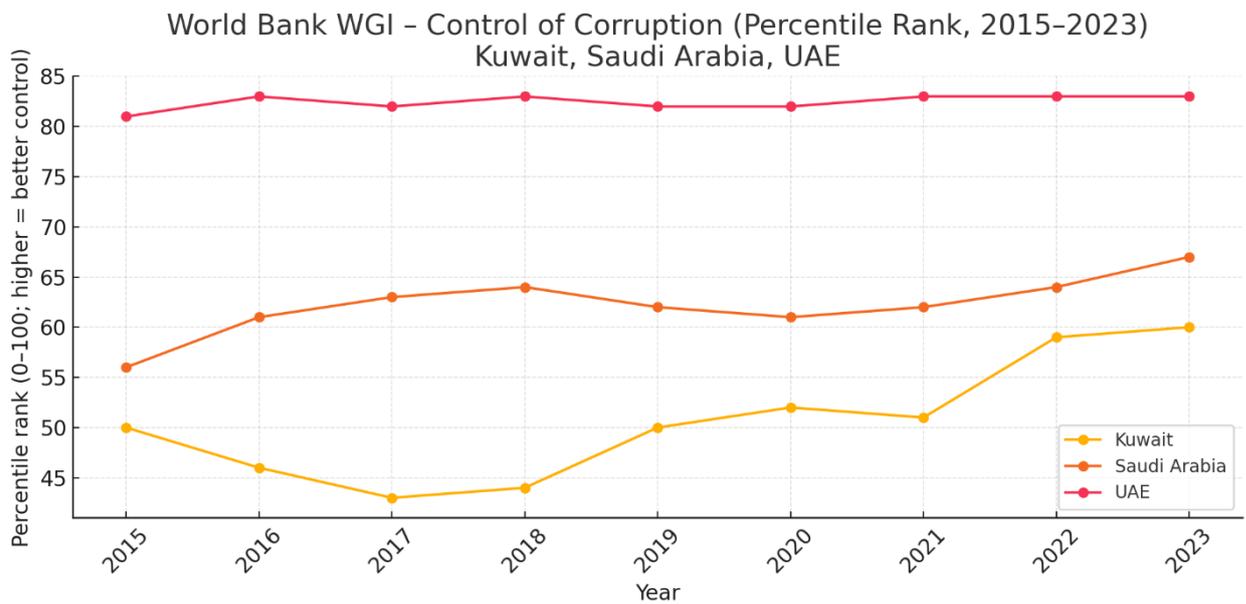


Figure 8.2. Comparative Chart of Control of Corruption Index ratings: Kuwait, Saudi Arabia and UAE (Source: World Bank)

The charts on figures 8.1 and 8.2 provide a baseline understanding of corruption trends across the three country cases and inform the subsequent comparative analysis. The CPI (2015-2024) shows broadly stable, but diverging, trajectories: the UAE remaining consistently high (c. 66-71), Saudi Arabia demonstrating score improvement from the mid-40s/low-50s (2012 to 2023) to 59 (2024), and Kuwait edging upwards from a low of 39 (2017) to 46 (2023-2024). The CCI percentile score (2015-2023) largely supports Kuwait and Saudi Arabia trends - both surge upward to a low of 60 and 67 respectively by 2023, while UAE remains stable in the low 80s. While CPI measures perceived public-sector corruption and CCI reflects a composite "control of corruption" governance signal, they are not identical. Still, they collectively suggest incremental strengthening in corruption control in Kuwait and Saudi Arabia, and stably-high corruption control in the UAE.

There are two interpretive caveats to consider. First, these indices are indicators and not judgments: they are sensitive to source mixes, disclosure events, and enforceability. Second, any year-on-year shifts should also be understood within the context of the comparison - in particular, Saudi Arabia's CPI improvements have direct correlation to increased enforcement; Kuwait's slow upward trend substantively aligns with normative change in legislation; the stable CCI for the UAE invites a closer, context-specific investigation in the substantive chapters (specifically in relation to procurement transparency, judicial independence, and AML enforcement). Overall, the charts, apart from providing an overall comparative picture of corruption trends, motivate and inform the chapter's central task: to better understand why corruption trajectories differ given institutional design, legal differences, anti-corruption agencies, anti-corruption efforts in public contract and procurement as well as policy changes.

The analysis will be split into several defining elements of the anti-corruption framework. Firstly, in section 8.2. the legal instruments and judicial systems will be considered. Next, section 8.3. will compare the role played by anti-corruption agencies in each country's anti-corruption effort. Section 8.4. compares the anti-corruption efforts in public contract and procurement. Section 8.5. comparatively explores the government

policy aspect of fighting corruption. Section 8.6. overviews similarities and differences in the overall institutional design in three countries. Finally, section 8.7. summarises the key aspects discussed in this chapter.

8.2 COMPARISON OF THE JUDICIAL SYSTEMS IN KUWAIT, SAUDI ARABIA AND UAE.

In this section, comparisons will be drawn between the judicial systems of all three countries. Table 8.1 in Appendix A provides a summary of all the key elements, drawbacks, and strengths of each country in terms of structure, separation of powers, rule of law, and judicial independence. This comparison is then followed by an in-depth critical discussion of the differences and similarities of the legal systems in each country.

Effective anti-corruption processes depend on the robust institutional design of the criminal justice system and its ability to conduct investigations and prosecutions in an impartial, effective manner and in line with international obligations such as the UNCAC.⁸⁷⁸ There are important differences between the judicial structures, independence, and capabilities of the systems in Kuwait, Saudi Arabia, and the UAE.

Judicial Structure and Complexity

Kuwait uses a civil law system based on a three-tiered judiciary and centralised Public Prosecution Department (PPD) that combines investigatory and prosecutorial functions. It is intended to improve efficiency, but it offers no built-in safeguards.⁸⁷⁹ In contrast, Saudi Arabia uses a Shariah-based system but has made changes that reflect certain institutional reforms including the establishment of a Public Prosecution Authority independent from the Ministry of Interior.⁸⁸⁰ The UAE has the most structurally complex system since it uses civil law in federal and Emirate-level courts, Shariah-based law for personal matters, and common law in the commercial free zones such as DIFC and ADGM.⁸⁸¹ This hybrid model is modern and flexible, but this flexibility is not uniformly distributed across jurisdictions with the judiciary.

Separation of Powers

While all three nominally support the concept of separation of powers, implementation varies considerably. In Kuwait, the executive dominates the judiciary and public prosecutors, who are constitutionally independent but administratively subordinate to the Minister of Justice.⁸⁸² In Saudi Arabia, there is limited separation as the king has prevailing influence over judicial appointments and decisions.⁸⁸³ The UAE constitution supports judicial independence but in practice, the executive continues to hold disproportionate

⁸⁷⁸ Rachel Kleinfeld, *Advancing the Rule of Law Abroad: Next Generation Reform* (Brookings Institution Press 2012) 45

⁸⁷⁹ Alfahad Hamad, 'Public Financial Crimes: A Critical Analysis of the Role of Kuwaiti Criminal and Regulatory Agencies in the Investigation Process' (Doctoral Thesis, Queen's University 2021) 55

⁸⁸⁰ Al-Hamoudi, note 624, 33

⁸⁸¹ Valerie Pelton, 'Rule of Law in the U.A.E.: The Peaceful Path to Nation-Building in Abu Dhabi and the U.A.E. through Global Best Practices' (2018) 51 *The International Lawyer* 87.

⁸⁸² John Morison and Brian Grimshaw, *Investigation, Process and Legal Standards within the Criminal Justice System in Kuwait* (Kuwait International Legal Research Centre and Queen's University Belfast 2016) 7

⁸⁸³ Cooper C Millhouse, 'Injustice Anywhere: A Comparative Law Analysis of Saudi Arabia's Criminal Justice System' (2024) 47 *UC L. SF Int'l L. Rev.* 40.

influence over the appointment of judges and contract renewals, including for foreign judges.⁸⁸⁴ The actual separation of powers is more tangible, albeit limited, in its commercial jurisdictions. All in all, in all three countries, the judicial branch is dependent on the executive authority, which undermines the possibility of independent judgements on corruption cases, and therefore weakens the anti-corruption framework.

Judicial Independence

Judicial independence is lacking across Kuwait, Saudi Arabia, and the UAE, albeit to differing levels. Prosecutors in Kuwait have limited autonomy since the Public Prosecutor controls their discretion, as decisions about discretion can be shaped by political elites.⁸⁸⁵ Judges and members of the judiciary also do not have security of tenure. The establishment of the Public Prosecution Authority in Saudi Arabia was a positive development in reducing the extent of the executive's direct influence over the judiciary but it remains constrained by the royal prerogative. The independence of courts in the financial free zones in the UAE is notable.⁸⁸⁶ Judges, typically appointed on short-term contracts and often expatriate in nationality (in the DIFC/ADGM courts), may still be subject to executive pressure in the criminal justice domain and notably possess greater procedural and tangible transparency.

Rule of Law and Legal Transparency

Rule of law is under threat in Kuwait, due largely to a variety of concerns over opacity (e.g., appointment of judges and their discretion), a lack of prosecutorial oversight, and the possibility of extensive political interference in high-profile cases. There are no mandatory recording or cautioning procedures, and suspect rights are not consistently protected.⁸⁸⁷ Saudi Arabia began to establish greater legal and procedural transparency by virtue of a number of directives in Vision 2030. While new codified judicial processes are in place that expand access and legal representation, the unreformed use of uncodified processes associated with Shariah continues to limit the predictability of outcomes to those seeking justice. The rule of law in the UAE is also largely under threat due to limited publication of rulings. At the same time, while the fiscal jurisdictions are transparent and allow published rulings and binding precedents, the criminal component offers little transparency, public access to judgements, or binding precedents.⁸⁸⁸

Together, these findings indicate that no system has arrived at credibility or perfection. The UAE currently has the potential for the most UNCAC-compliant structural trajectory, since it has thematic best practices, but these have yet to be translated across all emirates. Kuwait requires more comprehensive reform in order to meet the baseline UNCAC guidelines. Weaknesses of the judicial system translate into potential for high-profile cases to be prosecuted inconsistently, thereby undermining criminal justice with regard to corruption prosecution against international standards.

⁸⁸⁴ UAE Constitution, art. 94.

⁸⁸⁵ John Morison and Brian Grimshaw, *Investigation, Process and Legal Standards within the Criminal Justice System in Kuwait* (Kuwait International Legal Research Centre and Queen's University Belfast 2016) 7

⁸⁸⁶ 'United Arab Emirates' (*Judiciaries Worldwide*, n.d.) <<https://judiciariesworldwide.fjc.gov/country-profile/ united-arab-emirates>> accessed 11 June 2025.

⁸⁸⁷ Cooper C Millhouse, 'Injustice Anywhere: A Comparative Law Analysis of Saudi Arabia's Criminal Justice System' (2024) 47 UC L. SF Int'l L. Rev. 40.

⁸⁸⁸ Valerie Pelton, 'Rule of Law in the U.A.E.: The Peaceful Path to Nation-Building in Abu Dhabi and the U.A.E. through Global Best Practices' (2018) 51 *The International Lawyer* 87.

8.3 COMPARISON OF THE LEGAL INSTRUMENTS

As can be seen from the comparative table representing the main characteristics of countries' anti-corruption laws (Table 8.2 in Appendix B), there are a number of evident similarities among the UAE, Saudi Arabia, and Kuwait in terms of the organisation of their legal frameworks on corruption. The first point of similarity is the codification of corruption crimes.

All three countries are similar in that they have codified legislation related to the main corruption crimes such as bribery, embezzlement, and abuse of public office. All three countries have a penal (criminal) code that serves as the major source of law on corruption. This similarity originates from the development of the legal frameworks in the three countries. Thus, globalisation and the development of international economic partnerships in the second half of the 20th century necessitated a shift away from traditional, Sharia-based definition, punishment, and investigation of corruption crimes.⁸⁸⁹ In an attempt to attract investments and create a positive investment climate, all three countries started to develop a more transparent codification of the laws, in line with global standards. For example, Saudi Arabia, the UAE, and Kuwait became party to UNCAC and have been following their recommendations on developing an anti-corruption framework. As a result, the legislation in all three countries progressed to the point of defining and assigning penalties for all the major corruption crimes.

The codification of corruption crimes in Kuwait, Saudi Arabia and the UAE stands in line with the international best practice of combatting corruption set out by UNCAC. Specifically, UNCAC requires codified laws to establish clarity and uniformity for the effective prosecution of corruption, as well as its deterrence.⁸⁹⁰ Furthermore, Article 15 of the UNCAC establishes the need for signatory states to establish bribery and embezzlement as criminal offenses and thus establish the legal standard. All three countries under analysis have done so. As we saw in each chapter, codification alone is insufficient for effectively tackling corruption because prosecuting corruption depends on many other factors extending beyond the criminalisation of corrupt practices.

Another point of similarity among the states is that they tackle financial corruption by integrating money laundering legislation. Although each country takes a slightly different codification approach, all the governments consider tackling money laundering as a significant part of fighting corruption. Specifically, Kuwait (Law No. 106 of 2013), the UAE (Federal Law No. 20 of 2018) and Saudi Arabia (Royal Decree No. M/39 in 2003) all have dedicated AML laws that criminalise money laundering and outline instruments to establish transparency in financial institutions (e.g., regular audits and reporting). Here, all countries have met the requirements set by Article 14 of the UNCAC, which details measures to combat money laundering, specifically the requirements to detect, monitor, and exchange information about suspicious financial activities.⁸⁹¹

The UAE and Kuwait are also similar in terms of projecting the jurisdiction over corruption offenses overseas, although there are certain differences in details. Thus, Kuwait and the UAE's laws (Article 285 of

⁸⁸⁹ JC Sharman, 'Power and Discourse in Policy Diffusion: Anti-Money Laundering in Developing States' (2008) 52 *International Studies Quarterly* 635.

⁸⁹⁰ United Nations Office on Drugs and Crime, *United Nations Convention against Corruption*, 31 October 2003, 2349 UNTS 41, art. 15.

⁸⁹¹ *Ibid.*, art. 14.

the Penal Code in the UAE, and Article 2 of the Protection of Public Funds Law No. 1 of 1993 in Kuwait) include provisions that enable prosecution of corruption if respective nationals are affected or involved. Saudi Arabia, however, has not included this provision in any of its laws. Instead, the government, OACA, and its ministries take advantage of the Arab Anti-Corruption Convention in the sphere of recovering stolen assets and exchanging information about corruption crimes/criminals.⁸⁹² The similarity between the UAE and Kuwait reflects both countries' reliance on international partnerships and their commitment to fostering security and transparency in foreign direct investments. Saudi Arabia, on the other hand, has relatively recently become active in seeking to develop foreign trade and further opening its economy to the global market. This is substantiated by Saudi's emphasis on developing its legal framework in line with punitive measures, rather than preventive ones.

In enhancing their legislation to cover the issue of extraterritoriality, Kuwait and the UAE have promoted the key principles of UNCAC promulgated in Articles 14, 44, and 45 whereby states are encouraged to establish cross-border partnerships over corruption offenses.⁸⁹³ Saudi Arabia's anti-corruption engagements through the Arab Anti-Corruption Convention are also nominally compliant with the UNCAC's recommendations but the absence of a legal foundation for this cooperation does less to encourage Saudi anti-corruption agencies such as OACA to engage with foreign partners. Furthermore, acknowledgement of extraterritoriality serves as a foundation for effective bilateral extradition and asset recovery agreements between countries.⁸⁹⁴ This circumstance portrays the UAE and Kuwait as more advanced in this regard. Nevertheless, evidence of regional collaboration by Saudi Arabia suggests that it aligns with UNCAC's advocacy for multilateral cooperation in addressing corruption which, in the case of Saudi Arabia, is more focused on regional cooperation. Thus, despite the difference in approaches, UAE and Kuwait seem to be equipped with the instruments necessary to investigate and prosecute corruption within and outside their borders.

Finally, another major point of similarity across the studied states is their focus on public sector accountability, with Saudi Arabia and the UAE progressing somewhat further in eliminating corruption risks in this area. Each country has laws that impose accountability standards for public officials. Thus, in Kuwait the Law No.2 of 2016 establishes asset and liability disclosure; however, the criminalisation of unlawful gains leaves too much room for biased interpretation and prosecution since it does not acknowledge the possible differences in the severity of various corruption crimes.⁸⁹⁵ In Saudi Arabia, the Anti-Bribery Law mandates corruption reporting, although asset disclosure has not been properly mandated in the laws. Instead, the OACA, similar to the UAE government, relies heavily upon inspection and audit organisations to analyse individual and corporate assets and funds, and to reveal suspicious activity.⁸⁹⁶ Kuwait, in addition

⁸⁹² UNCAC Coalition, 'A Glance at the Arab Convention to Fight Corruption' (2012) <<https://uncaccoalition.org/a-glance-at-the-arab-convention-to-fight-corruption/>> accessed 3 December 2024.

⁸⁹³ United Nations Office on Drugs and Crime, *United Nations Convention against Corruption*, 31 October 2003, 2349 UNTS 41, art. 14, 44, 45.

⁸⁹⁴ Pranshul Pathak and Dr Ajay Kumar Bhatt, 'Mapping Legal Sanctity of Extradition Treaties: Contemporary International Relations on the Run' (2023) 9 *International Journal of Law* 34.

⁸⁹⁵ Al-Oumi, 'The Development of Laws in Kuwait to Combat Corruption' 208

⁸⁹⁶ Cabinet Resolution No. 165, dated 28/05/1432H corresponding to 2011, on the establishment of National Anti-Corruption Commission, art. 2.

to having its OACA to review submitted financial accounts, also has the legislation mandate for disclosure. As per UNCAC's Articles 12 and 52, disclosure is a necessary attribute of creating a culture of transparency and corruption prevention.⁸⁹⁷ Not having provisions to mandate disclosure undermines the establishment of such a culture, which means that the UAE and Kuwait are currently a step forward towards an environment where public servants' assets are scrutinised to prevent corruption. The UAE goes further to impose this requirement on the private sector as well, which characterises its framework as even more advanced in this regard.

The very notion of corruption is not always legally defined and explained in the bodies of law of all three countries. Instead, each country defines corruption through the forms that it takes. Specifically, corruption is defined through crimes such as bribery, embezzlement, and abuse of power. One reason for this is the complexity of the concept, and even the UNCAC convention fails to define it.⁸⁹⁸ Secondly, codification and the definition of corruption crimes for Gulf countries, including Saudi Arabia, Kuwait and the UAE, is a relatively recent endeavour from the legal development perspective. All three countries have long followed the Sharia Law tradition whereby codification and definition of crimes are very loose.⁸⁹⁹ Rather, investigation, prosecution, and trial were based on moral and ethical principles, as clarified by the holy Qur'an, Sunnah, and other sources of Sharia Law. The implication of this is that none of the studied countries is sufficiently equipped to address forms of corruption that may emerge in the future, or subtler forms of corruption such as influence peddling (with the exception of Saudi Arabia, which specifically codified this form of corruption).

One major point of difference among the three countries in question is definitions of major corruption crimes. Definitions in themselves are a very important characteristic of the country's legal framework because they establish legal boundaries that serve to instruct institutions and individuals on what constitutes corrupt behaviour and what penalties are established for it. Additionally, precise definitions minimise the risk of inconsistencies and enforcement, which is critical for establishing public trust in the legal system as well as for ensuring its accountability.⁹⁰⁰ In this aspect, each country relied on its own ways to define major corruption crimes. Considering, for instance, the major and most widespread corruption crime of bribery, one can note the following differences:

⁸⁹⁷ UNCAC art. 12, 52.

⁸⁹⁸ Albert W Alschuler, 'Criminal Corruption: Why Broad Definitions of Bribery Make Things Worse' (2015) 84 Fordham Law Review 463.

⁸⁹⁹ Syed Zubair Ahmed, 'An Evaluation of the Anti-Fraud Regime in Saudi Arabia from the Islamic Shariah Perspective' [2021] Universal Journal of Business and Management 94.; M Cherif Bassiouni and Gamal M Badr, 'The Shari'ah: Sources, Interpretation, and Rule-Making' (2001) 1 UCLA Journal of Islamic and Near Eastern Law 135.

⁹⁰⁰ Albert W Alschuler, 'Criminal Corruption: Why Broad Definitions of Bribery Make Things Worse' (2015) 84 Fordham Law Review 463.

Table 8.2.2. Definition of Bribery: Comparison across states and UNCAC

Kuwait's definition	UAE's definition	Saudi Arabia's definition	UNCAC's definition	Colour coding
Source: Law No. 31 of 1970	Source: UAE Federal Penal Code	Source: Anti-Bribery Law 1962	Source: UNCAC	
<p>Any instance of public officer offering, giving, receiving, or soliciting any material or immaterial gift, service, or promise in exchange for actions or inactions related to a public servant's duties.</p>	<p>any public servant, a person entrusted with a public service, a foreign public servant or an employee of an international organisation who, directly or indirectly, requests, accepts, takes, promises (or facilitates) an unentitled gift, privilege or grant, whether in favour of the employee himself or in favour of another person, entity or establishment, in return for performing or omit an act that falls within his job duties or for violating his job duties, even if he has intended not to perform or omit such act or to violate his</p>	<p>Any public servant who solicits, accepts, or receives for himself or for others a gift or payment of any sort, or a promise thereof, as a consideration for:</p> <p>a) not performing an office duty or an alleged office duty, even if such inaction is legitimate,</p> <p>b) breaching his office duties or as a reward for the same, even in the absence of a prior agreement</p> <p>c) performing or refraining from performing any of such duties as a result of a plea, recommendation, or intercession,</p> <p>d) using a real or alleged influence to obtain or attempt to obtain, from any public authority, a contract, order, decision, commitment, license, supply</p>	<p>a) The promise, offering or giving, solicitation or acceptance to (and by) a public official (any person who directs or works, in any capacity, for a private sector entity), directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;</p>	<p>Orange: Subject of the law</p> <p>Green: Action penalised</p> <p>Blue: Medium of offence</p> <p>Red: Type of benefit</p> <p>Purple: Action in exchange for benefit</p>

	job duties, or if such request, acceptance or taking occurs after performing or omitting the act or violating his job duties	agreement, job, service, or privilege of any type shall be considered a bribe		
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As one can see from those definitions, there are notable differences between countries in the subject of the law, classification of benefits, medium of offense, type of benefit, and action in exchange for benefit. Through the differences in these elements of definitions one can understand how well or how poorly the law defines and conceptualises the most critical corruption offenses. The most concise definition provided by the Law No. 31 of 1970 in Kuwait starkly contrasts those of UAE and Saudi Arabia in wording and in key elements present. Compared to the UAE, the Kuwaiti and Saudi definitions lack consideration of bribery in the private sphere, which is also contrary to UNCAC's best practice.⁹⁰¹ They also fail to include others as responsible parties, that is the recipients of the bribe who are also penalised. Action in exchange for benefit is also worded much less specifically compared to Saudi Law. However, in that, it roughly follows UNCAC's definition thus is in line with globally accepted practices of defining bribery.

The UAE's definition is comparatively notable for encompassing situations where there is no direct link between the bribe and fulfilment/non-fulfilment of an officer's job duties. It further accounts for post-act bribery where a bribee accepts benefits after he or she has already rendered/omitted the service. This form of bribery is not widely considered in the literature either, except for Holder, who indicated that such cases are rather difficult to prosecute as the connection between bribe and service has to be clearly established to signify the pre-act or upfront payment.⁹⁰² Although it appears that such bribery is equally, if not more difficult, to collect evidence for, there is insufficient evidence of this clause ever benefitting the prosecution.

As for other notable differences in the definitions, the type of benefit is well-formulated in the Kuwaiti and Saudi versions, although they appear overly strict. Considering bribery as a criminal act punished in accordance with penal code rather than being classified as misdemeanour, the damage caused by the act arguably needs to be considered to avoid a mismatch between the act and the punishment (e.g., being sentenced to 5 years in prison for allowing a relative to skip the queue in exchange for a chocolate bar). Other than that, the level of detail appears to reflect most of the elements of UNCAC's definition, with the exception of Saudi Arabia, which fails to consider indirect mediums of bribe giving/receiving. This means that these definitions are mostly adequate for prosecuting most cases of bribery.

A notable difference between countries is having dedicated anti-corruption laws. Compared to Saudi Arabia and Kuwait, the UAE does not have specific laws dedicated to corruption. Instead, it lists all major forms of corruption in its Penal Code and establishes ethical corruption-free conduct rules in its Human Resources Law. Unlike Kuwait or Saudi Arabia, the UAE government does provide a dedicated law to combat the common predicate offence in corruption-related crimes: money laundering. However, the absence of a dedicated anti-corruption law does not inherently make UAE's legal framework weaker compared to Saudi Arabia or Kuwait. In fact, it is a sign of a different approach that favours avoiding redundancies in standalone laws. It can be argued that by listing all corruption crimes in the Penal Code, the UAE chose to centralise

⁹⁰¹ UNCAC, art. 12

⁹⁰² William E Holder, 'Corrupt Practices in International Commercial Transactions: Remarks' (1979) 73 American Society of International Law Proceedings 36.

its anti-corruption effort within the federal criminal law. This also suits the federal governance structure of the UAE, a peculiarity that is not an issue in Kuwait or Saudi Arabia, both being monarchies. Yet, a dedicated anti-corruption law may still emerge in the future for the UAE. In fact, the UAE has already begun to address specific corruption-related challenges such as whistleblower protection by introducing Law No.14 of 2020, which clarifies the rights for protection if reporting a corruption-related or another crime.⁹⁰³ In this regard, Kuwaiti laws are similarly robust as its legal framework already encompasses whistleblower protection elements in Law No. 2 of 2016.

To conclude, there seems to be no evident leader in terms of legislative framework on corruption. The frameworks of the three countries all have their advantages and drawbacks. For example, Kuwait might have a robust structure of laws covering all major forms of public sector corruption, but it has a somewhat generalised definition of bribery and lacks emphasis on private sector corruption. Compared to others, Saudi Arabia has the least number of codified laws dedicated to corruption. On the other hand, it has a robust and detailed definition of bribery and utilises regional connections to boost its extraterritorial efforts in recovering stolen efforts and prosecuting offenders. The UAE, on the other hand may not have a dedicated anti-corruption law and fails to promote reporting but it does criminalise all major related offenses and legally mandates audits to identify and review suspicious financial transactions.

At the same time, the legal frameworks of Saudi Arabia, the UAE and Kuwait share a lot in common. With all of those countries having evolved from a non-codified Sharia-based justice system, they are still in the process of defining and criminalising corruption, meaning that their respective anti-corruption frameworks are 'work-in-progress'. Furthermore, all of these countries have been undergoing the process of 'matching' their foreign economic and political partners from other, non-Arab nations, which means adjusting the legal frameworks to those adopted globally. Their progress towards alignment has been uneven, however, with Saudi Arabia still having much to codify and adapt. Finally, all countries considered in this research demonstrate a general trend for updating and expanding their legislative frameworks through the adoption of new laws and tightening of the existing laws on corruption, bringing them further in line with UNCAC recommendations.

These considerations indicate that comparing legal frameworks alone does not provide a well-rounded comparison of anti-corruption efforts in different countries. There appears to be no clear indication of which framework is the best-equipped for tackling corruption. Instead, it can be surmised that all of them provide the 'necessary minimum' recommended by UNCAC and all three countries can be deemed UNCAC-compliant, at least from the perspective of the legal framework elements considered in this research. Furthermore, by looking at laws alone, it is equally difficult to understand why the corruption perception index is so vastly different in all three countries. Hence, the study transitions to consider other facets of

⁹⁰³ Federal Law No. (14) of 2020 on the Protection of Witnesses and the Like.

anti-corruption efforts in the UAE, Saudi Arabia, and Kuwait, most notable of which being anti-corruption agencies.

8.4 ROLE OF ANTI-CORRUPTION AGENCIES IN THE UAE, SAUDI ARABIA, AND KUWAIT

With regard to enacting and enforcing anti-corruption legislation, the UAE, Kuwait and Saudi Arabia took mostly different approaches. Their organisational solutions to enact prevention, investigation, and prosecution of corruption differ in scope, powers, and conduct, while also sharing some characteristics in terms of organisational structure and features. All the meaningful characteristics of national anti-corruption agencies analysed in detail in the respective country chapters (Chapters 5, 6, and 7) are summarised in Table 8.3 in Appendix C.

To avoid confusion, the Kuwaiti and Saudi anti-corruption agencies will be referred to by their abbreviated names KACA (Kuwait) and OACA (Saudi Arabia) as they are both commonly called Nazaha domestically. Similarly, the Kuwaiti, Saudi Arabian, and UAE Financial Intelligence Units will be referred to with the acronyms KFIU, SAFIU, and EFIU respectively. Analysing the differences between agencies, several issues stand out.

LEGISLATIVE MANDATE, FUNCTIONS, AND CAPACITY

Firstly, with regard to jurisdiction, only KACA is confined to the public sector. An additional limitation of KACA's jurisdiction is its inability to access financial reports or conduct investigations in defence procurement or natural resources. Those two spheres are classified as state secrets and only the highest royal family members and respective sphere ministers are allowed to have access to this information. Therefore, investigations in this sphere are off-limits to KACA, which is bound by its transparency obligation to publish regular reports and statistics. By contrast, the anti-corruption agencies in Saudi Arabia and the UAE (mostly referring to the SAI) are not bound by such limitations. According to their founding laws, they have access to both public and private organisations where the state has a sufficient stake. Thus, the jurisdiction of OACA in Saudi Arabia exceeds that of KACA. These differences illustrate the varying degrees of comprehensiveness in identifying and punishing corruption across all levels of government and private activity. In that respect, KACA remains the most restricted, while Saudi Arabia and UAE demonstrate more expansive and adaptable scopes. Despite these differences, the primary focus of all these agencies remains with the public sphere, while the FIU agencies in each country investigate suspicious transactions that may be linked to corruption in both the private and public spheres.

With regard to powers and responsibilities, there are a few notable differences and similarities among major anti-corruption agencies. When preventive responsibilities are considered, KACA exercises its function through public means: awareness campaigns, research publications, review of legal framework on

corruption, and suggestions for its improvement. In this aspect, OACA is similar to KACA in that it also uses elements of research and education for prevention purposes, realised through policy ideation and public education. In the UAE, this function is spread across SAI, FIU, and DESC, where SAI is responsible for policy and legal research, and FIU and DESC promote transparency to prevent financial but not administrative corruption. All countries' agencies are bestowed with the function of reviewing and improving legislation on anti-corruption, but since these results are less evident and traceable it is difficult to evaluate whether any nation is ahead or behind in performing this function.

When it comes to detection and monitoring powers, one can observe shared goals but distinct approaches to achieving them. KACA is focused on the preliminary investigation of public entities and individuals' reports and financial statements, attempting to spot irregularities in data without extending its powers to broader investigation. This approach is different to that of OACA, which monitors the activities of both public and public-private organisations in depth. Its robust investigative powers highlight stronger enforcement-oriented monitoring capacity. This difference in power distribution perhaps signifies a more monarchical and hierarchy-based approach to tackling corruption reflected in the Saudi approach, whereas OACA enjoys wider powers but remains an instrument of the royal family first and foremost. Kuwait's approach to detecting and monitoring corruption is distinct for its decentralisation, whereby KACA's role feeds into public prosecution, establishing organisational synergy.

The UAE's approach is most similar to that of Saudi Arabia with broad investigative powers entrusted to federal SAI and local DESC and DFAA. Their routine audits of public contracts, and pre- and post-expenditure reviews allow it to initiate investigations based on suspicions of misconduct. Hence, like OACA, the agencies are more likely to combine detection and monitoring with some degree of enforcement, each with respect to either administrative and/or financial corruption. While all agencies in all states emphasise compliance and transparency, Saudi Arabia and the UAE exhibit more proactive and comprehensive detection powers compared to Kuwait, with the UAE integrating advanced financial monitoring tools and Saudi Arabia combining monitoring with direct enforcement mechanisms. Again, this stems from the extent of power granted to them by the law.

Where FIUs are concerned, in each country they are part of their AML efforts, which simultaneously fulfil the anti-corruption function as these agencies can investigate suspicious financial transactions that may be linked to corruption crimes. Each unit operates with legal responsibilities, roles, and capabilities. The Kuwaiti FIU (KFIU) is independent by law but its operations are closely related with the Ministry of Finance. The Saudi FIU (SAFIU) operates under the umbrella of the Presidency of State Security with increased level of protection afforded to sensitive financial information. The Emirates' FIU (EFIU) functions under the supervision of the Central Bank, which prompts concerns about its actual autonomy despite legal assertions. This means that all three agencies' independence is tied to the different executive bodies, which holds potential for covert influence on their decision-making processes.

The primary roles of all three FIUs revolve around the collection and analysis of STRs. All agencies collaborate closely with both international and national entities to gather intelligence effectively but lack direct enforcement authority in their operations. Instead, they function as an analytical body that react to data received from diverse sources rather than initiating investigations proactively; this approach supports law enforcement efforts and investigations led by respective dedicated anti-corruption authorities (and SAI in the UAE) by supplying them with detailed financial intelligence. Yet, only in Kuwait and Saudi Arabia are FIUs allowed to request data themselves without a court order or an STR, whereas in EFIG such requests rely mostly on submitted data. In reality, the extent to which such discretion is practised is limited as there is no evidence suggesting frequent use of this mandate. This suggests that all three agencies are demonstrating a mostly reactive approach to financial corruption, with KFIU and SAFIU having advanced nominally towards a more proactive approach, which potentially enhances speed of access to crucial evidence—this is much needed in high-profile corruption cases.

The effectiveness of each national FIU is significantly influenced by their capacity to handle tasks efficiently and effectively. KFIUs and SAFIU rely heavily on manual data analysis, despite some progress in adopting automated analytical tools, which slows down the detection of intricate money laundering activities. As a result, SAFIU faces diminished analytical capacity, which restricts its ability to combat sophisticated financial crimes and process all the incoming data within a reasonable timeframe. KFIU, on the other hand, demonstrates no such capacity limitation, processing much more STRs than SAFIU. This may be linked to KFIU being better staffed. By contrast, EFIG benefits from collaboration with the Central Bank, resulting in better access to data and stronger regulatory enforcement. Still, the number of cases it processed and referred for investigation remains lower than in KFIU, signalling lower capacity. These FIUs together showcase strengths but are hampered by operational and structural constraints that undermine their overall effectiveness in combating corruption comprehensively. While all three FIUs demonstrate some adherence to international standards—STR processing, cooperation frameworks, and claims of formal independence—their limited practical independence and limited analytical capacities indicate significant deficiencies in their ability to fully contribute to the anti-corruption effort.

ORGANISATIONAL INDEPENDENCE AND ACCOUNTABILITY

With regard to the source of funding, all states exhibit a similarity in being financed from the national budget, but certain nuances warrant discussion. Thus, the budgeting of Saudi Arabia and the UAE's anti-corruption agencies appears more robust and insulated against possible influence. It is mandated by the respective laws that their budget is managed and stored in separate accounts (with the exception of CMA in Saudi Arabia, and DESC).⁹⁰⁴ This detachment ensures operational autonomy, reducing the risk of interference in agencies' activities. Specifically, ministries and the parliament are not able to alter the volume of financing

⁹⁰⁴ Law No. (9) of 2019 Amending Law No. (4) of 2016 on Establishing the Dubai Economic Security Centre, art. 2, 3.; Cabinet Resolution No. 165, dated 28/05/1432H corresponding to 2011, on the establishment of National Anti-Corruption Commission, art. 12.

or hold SAI, FIU, or OACA responsible for its management. This reduces the pool of potential ways to undermine investigation of ministries themselves and affect the comprehensiveness of investigations in other areas through reducing funding. On the other hand, the risk of the monarchy's change of focus might also affect the budgeting of the organisation. With no hard requirements written in the laws on changing the budget of anti-corruption organisations, there is a risk of respective nation leaders being able to swiftly reduce financing without any checks and balances provided by the parliament.⁹⁰⁵ However, such risks reflect rather the state governance, which in turn allows reflection on anti-corruption agencies' ability to consistently perform their duties. In this respect, KACA's budget, being part of the national budget approved by the PM and the parliament, is better insulated against monarchy-related changes in opinions of the anti-corruption effort.

Consideration of funding issues feeds directly into the question of independence, accountability and transparency. All countries take a somewhat different approach to how to establish independence. The SAI in the UAE retains the most independent (financially, functionally, and administratively), which is mandated by the law.⁹⁰⁶ Yet, unlike Saudi Arabia's OACA and CMA, which are answerable to the king and PM directly, the SAI is accountable to the President, Council of Ministers and the parliament.⁹⁰⁷ Kuwait and Saudi Arabia differ in that respect as their key agencies share allegiance to one body only: the king in OACA's case and the Ministry of Justice in KACA's case. This difference reflects the true independence and the level of constraint that each organisation is potentially facing.

Thus, Kuwait's KACA and UAE's FIU are the most constrained organisationally since their place in the state's hierarchy is the lowest. In KACA's case, the Ministry of Justice depends on the Parliament's decisions with regard to law and policy.⁹⁰⁸ The FIU in turn is a department within the UAE's Central Bank and therefore enjoys little autonomy from its leadership, being forced to account for the Central Bank's fiscal policies.⁹⁰⁹ At the other end of the spectrum is OACA, which resides almost at the top of the state's hierarchy, close to the king himself, who alone is the source of all its power.⁹¹⁰ UAE's SAI fits in the middle with its place being equated to a separate ministry. These accountability positions are congruent with the organisations' respective powers and roles in their national anti-corruption frameworks. Considering the successes of the UAE in terms of reducing corruption domestically, high independence paired with broader accountability appears to be the golden middle that establishes the foundation for the agency's success. It must be noted however, that except for Kuwait's KACA, UAE's FIU and DESC, other agencies face

⁹⁰⁵ Alan Doig and David Norris, 'Improving Anti-corruption Agencies as Organisations' (2012) 19 Journal of Financial Crime 255.

⁹⁰⁶ Federal Law No. (7) of 1976 concerning the establishment of State Audit Institution, art. 17

⁹⁰⁷ Cabinet Resolution No. 165, dated 28/05/1432H corresponding to 2011, on the establishment of National Anti-Corruption Commission, art. 3

⁹⁰⁸ Part II, Article 4 of the Anti-Corruption Law No. 2 of 2016

⁹⁰⁹ Federal Law No. (20) of 2018 on Anti-Money Laundering and Combating the Financing of Terrorism and Financing of Illegal Organisations, article 9.

⁹¹⁰ Cabinet Resolution No. 165, dated 28/05/1432H corresponding to 2011, on the establishment of National Anti-Corruption Commission, art. 3

transparency issues that undermine public trust in the government's anti-corruption efforts and might therefore be detrimental to cooperation and proactivity from the public. Finally, all of the anti-corruption agencies in the three states still exhibit dependence on the executive, no matter the level, which ultimately undermines their position to investigate and prosecute corruption at the highest level and inquire into individuals and businesses who have informal connections to the top of the state hierarchy.

Overall, the anti-corruption agencies in Kuwait, Saudi Arabia, and the UAE share the overarching goals of promoting transparency, accountability, and compliance but differ significantly in their structural, hierarchical, and functional arrangements. In terms of responsibilities, Kuwait's Nazaha emphasises prevention through public awareness and whistleblower facilitation but lacks enforcement powers, limiting its impact to a narrower jurisdiction and less intrusive monitoring. Conversely, OACA and SAI adopt broader, more proactive measures. OACA combines preventive initiatives with strong enforcement, granting it powers to investigate, prosecute, and recover assets, while SAI integrates legislative reform and financial audits with its monitoring responsibilities, which reveals its comprehensive approach towards fighting corruption.⁹¹¹ Underpinned also by the differences in hierarchy, the organisations also exhibit different levels of autonomy and accountability. Whereas KACA demonstrates the least autonomy and most accountability, OACA showcases the reverse, and SAI lies somewhere in the middle.

In conclusion, the structural and functional arrangements adopted by each state shape the effectiveness and credibility of their agencies. Saudi Arabia's autonomous and 'enforcement-centric' model enhances operational authority and speed of investigation and conviction. The UAE's balanced regulatory framework fosters robust prevention, detection, and investigation. By contrast, Kuwait's limited jurisdiction and weaker autonomy restrict its efficacy. These differences underline the importance of integrating independent oversight and expansive jurisdictions to strengthen anti-corruption efforts across varying governance contexts, which are in turn shaped by underlying state power structures.

8.5 ANTI-CORRUPTION EFFORTS IN PUBLIC CONTRACT AND PROCUREMENT: A COMPARISON

Public contract and procurement in the studied Gulf countries have some common regional specifics as well as national variations. A comparative analysis of efforts in public contracts and procurement is summarised in Table 8.4 in Appendix D.

The anti-corruption efforts in public contract and procurement across Kuwait, Saudi Arabia, and the UAE share certain commonalities that reflect a common regional approach aiming to establish corruption-free procurement. In all three countries, significant emphasis is put on preventive and punitive measures to reduce corruption by criminalising potential abuse (e.g. forbidding bribery, influence trading, and

⁹¹¹ Mukdad Ibrahim, 'State Audit Institution in United Arab Emirates' (2010) 52 *International Journal of Law and Management* 464

embezzlement) or incorporating explicit provisions against bribery, fraud, and misuse of public funds. For instance, Kuwait's detailed laws define corruption offences broadly, Saudi Arabia's Tenders and Procurement Law prohibits conflicts of interest and fraud, and the UAE criminalises similar activities through its Federal Penal Code and procurement-specific legislation. These legislative underpinnings aim to establish a deterrent effect, signalling a commitment to integrity in public contracting.

Transparency emerges as a cornerstone in each country's strategy. Kuwait's e-procurement system, Saudi Arabia's amendments targeting pricing irregularities, and the UAE's mandated open bidding processes demonstrate a shared reliance on enhanced visibility in procurement activities. Digitalisation efforts, particularly prominent in Kuwait and the UAE, aim to depersonalise transactions and reduce opportunities for unethical practices. Centralised or semi-autonomous oversight bodies, such as Kuwait's Central Tenders Agency and the UAE's SAI and FIU, underscore a regional trend towards monitoring procurement procedures. Saudi Arabia, while not having an online e-procurement platform at the moment, is actively engaged in its development. The Etimad platform currently allows bidders to find tenders and track application status, but the Saudi Ministry of Finance is working on making e-procurement a more comprehensive process.⁹¹² There is, however, no indication of whether use of the system will be made mandatory.

The three countries also share common flaws with regard to establishing decentralisation and addressing conflict-of-interest regulations. Specifically, Kuwait pursues decentralisation (mainly through e-procurement) to limit undue influence.⁹¹³ By contrast, Saudi Arabia and the UAE adopt narrower conflict-of-interest provisions. Mechanisms for addressing COI violations including tender cancellations and sanctions on the perpetrator are realised in all three systems, but there is a notable lack of legislative clarity on the use of these mechanisms, particularly in Saudi Arabia and the UAE.⁹¹⁴ Whistleblower protections and public oversight remain underdeveloped across the board, undermining efforts to expose corruption. In essence, this means that the whole process of public contract review is conducted internally albeit through nominally-independent agencies such as FIU or CMA. In practice, it is difficult to evaluate the robustness of procurement reviews, which undermines the assessment of the process's legitimacy and the scale of corruption in this sphere.

The three countries' approaches are similar in their reliance on transparency-enhancing reforms and legal deterrence but diverge in implementation specifics, particularly regarding investigatory authority and

⁹¹² Ministry of Justice, 'Procurements' (n.d.) <<http://moj.gov.sa:80/English/Ministry/Pages/tenders.aspx>> accessed 6 December 2024.

⁹¹³ Hind Bassaj, 'Public Procurement & Government Contracts 2023 - Kuwait' (*Chambers and Partners*, 11 April 2023) <<https://practiceguides.chambers.com/practice-guides/public-procurement-government-contracts-2023/kuwait/trends-and-developments>> accessed 4 December 2023.

⁹¹⁴ Awad Ali Alanzi, 'Saudi Procurement System and Regulations: Overview of Local and International Administrative Contracts' (2021) 10 *Laws* 37.; Albert Sanchez-Graells, *Digital Technologies and Public Procurement: Gatekeeping and Experimentation in Digital Public Governance* (Oxford University Press 2024).

proactive oversight mechanisms. While progress is evident, gaps in enforcement, whistleblower protection, and broader accountability persist as systemic challenges across the region.

A comparative analysis of the financial disclosure regimes in Kuwait, Saudi Arabia, and the UAE highlights significant divergences in the mechanisms each state has established for the transparency and accountability of public officials (a summary of the similarities and differences is provided in Table 8.5, Appendix E). For example, Kuwait is noteworthy because it possesses a formal legal disclosure regime, namely Law No. 2 of 2016 and Executive Regulation No. 300 of 2016, which obligate a wide range of public officials, specifically ministers, members of parliament, and undersecretaries, to disclose their assets. The law stipulates that public officials must produce initial, periodic, and final disclosures, with penalties for non-compliance including imprisonment and other substantial fines.⁹¹⁵ In principle, Kuwait has a rigorous regime with KACA being able to scrutinise the submitted reports.

On the other hand, neither Saudi Arabia nor the UAE have a mandatory disclosure regime for public officials. Although there are provisions covering general conduct and anti-bribery in Saudi Arabia, they do not specifically require asset declarations for public officials.⁹¹⁶ The UAE also does not have specific legislative provisions to compel ministers, or high-ranking or low-ranking public officials, to declare their assets, which is a clear violation of UNCAC Article 52. The lack of a mandatory disclosure regime places the institutional accountability and transparency of both countries at substantial risk of corruption, especially for public officials who engage in high-risk activities related to public expenditure, such as the procurement process.⁹¹⁷

Nevertheless, both the Saudi and Emirati anti-corruption agencies, including OACA and the UAE's SAI and FIU, have considerable investigative powers and are permitted to access a range of banking and financial records without requiring public declarations.⁹¹⁸ Although they have broad powers of investigation, which are valuable, proactive transparency measures or preventative regimes are best practice in line with UNCAC. It is evident that notwithstanding the shortcomings of Kuwait's framework in practice, it is a more normative framework—more compliant with UNCAC than either Saudi Arabia or the UAE, which rely primarily on post hoc detection rather than prevention. For these reasons, Kuwait has a more structurally compliant regime, while enforcement and practical safeguards are stronger in the UAE and Saudi Arabia.

Examining the anti-corruption efforts in procurement systems more closely, a few differences emerge as well. Defence and natural resource procurement is equally secretive in Kuwait, Saudi Arabia and the UAE,

⁹¹⁵ Executive Regulation No. 300 of 2016, art 1. 3.

⁹¹⁶ Cabinet Resolution No. 165, dated 28/05/1432H corresponding to 2011, on the establishment of National Anti-Corruption Commission, art. 2.

⁹¹⁷ Eiman Khaled Alqattan, 'The Shortcomings of Anti-Corruption Measures: Kuwait's Financial Disclosure System' (2022) 30 Journal of Financial Crime 665.

⁹¹⁸ Cabinet Resolution No. 165, dated 28/05/1432H corresponding to 2011, on the establishment of National Anti-Corruption Commission, art. 2,3.

yet only in Kuwait does the main and only anti-corruption agency not have the necessary access to review the process.⁹¹⁹ Comparatively, the Saudi Arabian CMA and OACA are legally able to investigate any procurement deal within their jurisdiction. Similarly, the FIU or SAI can initiate an audit of any ongoing or completed state-owned corporation or ministry deal, including those in national defence and natural resources.⁹²⁰ The possible reason for such disparity stems from the different hierarchical positions of the agencies. As noted in section 8.2., Kuwait's position is subordinate to the Ministry of Justice, while UAE's SAI is ranked at the level of a ministry itself (hence the SAI's executive is granted a ministerial rank and privileges). Jurisdiction of agencies also dictate their level of access to state matters. Hence, the ability to access the most sensitive data likely requires a higher level of clearance. This comparison further highlights the issue the insufficient rights and responsibilities of Kuwait's KACA.

Regarding other differences, there is evident unevenness in how countries implement digital procurement as a mechanism to prevent corruption. In this sphere, Kuwait excels at providing a technical solution and the necessary legislation for effective use of e-procurement, while Saudi Arabia is gradually progressing towards more effective e-procurement systems.⁹²¹ UAE's procurement digitalisation is slightly more advanced than that in Saudi Arabia but its non-mandatory nature effectively nullifies the anti-corruption benefits since schemes with ill-intent are likely to use methods leaving as little trace as possible.⁹²² It would be logical to connect this diverging technology adoption status to different levels of digital adaptation. However, the digital economy index presented by the PwC indicates that the UAE and Saudi Arabia are ahead of Kuwait or on par with it in terms of embracing digital innovation and the development of digital products.⁹²³ Hence, there seem to be no technological or social limitations to using e-procurement and the differences in adoption are likely to stem from political will.

To summarise, despite sharing the goals of transparency, accountability, and the depersonalisation of procurement, the countries move at different paces towards meeting them. The key drawbacks in national efforts to create corruption-free procurement are the lack of a normative basis and political will to institute mandatory e-procurement and open natural resource and defence procurement for public scrutiny. Kuwait's measures, while being technically and legally more advanced, remain insufficient to combat corruption effectively due to the lack of access to data. Saudi Arabia, on the other hand, demonstrates a lack of legal

⁹¹⁹ GAN Integrity, 'Kuwait Country Risk Report' (5 November 2020) <<https://www.ganintegrity.com/country-profiles/kuwait>> accessed 6 December 2023.

⁹²⁰ Law No. (4) of 2018 Establishing the Financial Audit Authority, art. 13.; Federal Law by Decree No. (56) of 2023 Concerning the Emirates Accountability Authority, art. 20

⁹²¹ Kaunain Rahman, 'An Overview of Corruption and Anti-Corruption in Saudi Arabia' (Transparency International 2020) <https://knowledgehub.transparency.org/assets/uploads/helpdesk/Country-profile-Saudi-Arabia-2020_PR.pdf> accessed 13 February 2024.

⁹²² UAE Ministry of Finance, 'Digital Procurement Platform (DPP) Supplier Registration User Manual' (UAE Ministry of Finance, n.d.) <https://www.moe.gov.ae/Ar/AboutTheMinistry/Documents/MoF_DPP_User%20Manual_Supplier_Registration_ENG_20220420_v8.0.pdf> accessed 31 October 2024.

⁹²³ PricewaterhouseCoopers, 'Energizing the Digital Economy in the Gulf Countries' (PwC, 2024) <<https://www.strategyand.pwc.com/m1/en/ideation-center/ic-research/2021/digital-economy-index.html>> accessed 6 December 2024.

clarity with regard to due diligence and oversight, while its anti-corruption agency has all the necessary means to fight corruption, albeit with no transparency. Similarly, the UAE's SAI and FIU work in ways that are less publicly visible due to the limited transparency and absence of regular reporting. Thus, the best regional practices are mandatory e-procurement, unobstructed access to investigations, and audits of any state contract past or present. However, none of the studied countries currently combines best practices such as mandatory e-procurement and unrestricted audit access into a fully integrated model.

8.6 POLICIES AGAINST CORRUPTION IN THE UAE, SAUDI ARABIA AND KUWAIT

All three countries have been preoccupied, not only by developing their legislation as shown in section 8.1 or their organisational responses to corruption, as showcased in section 8.2. The policy responses of states are also significant since they demonstrate the key areas of the government's focus and can thus indicate their view on the critical gaps in anti-corruption efforts. In turn, understanding this view can point researchers towards future actions and stances on corruption. Table 8.6 in Appendix F summarises the key policy solutions on corruption discussed in the respective country chapters.

As one can observe, there are several crucial differences in policy orientation among countries. Kuwait appears to target better alignment with UNCAC in terms of transparency and public involvement in fighting corruption, which indicates its focus on the preventive and investigative aspects of its anti-corruption efforts. The adoption of an anti-corruption strategy is a major step towards meeting UNCAC's recommendations in Kuwait, specifically Article 60 of UNCAC, which promotes the creation of a strategic thinking about anti-corruption policy development. By contrast, Saudi Arabia and the UAE do not have a defined anti-corruption strategy. The absence of a formalised strategy may thus limit these countries' capacity for strategic planning in the sphere of anti-corruption, leading to patchy development and implementation of new measures against corruption.⁹²⁴ In turn, this would leave loopholes in legislation and policy, allowing individuals and groups to abuse the system for illicit gain, which undermines the resilience of the overall anti-corruption framework against future challenges. As an example, the development of an e-procurement platform in the UAE without developing a legal basis for its mandatory use undermines the usability of this solution against corruption.⁹²⁵ A good strategy would define the goal of the various solutions and hence focus efforts on their achievement.

Kuwait's strategic policy orientation indicates that there is an understanding and political will in the government to take the fight against corruption to the private sphere as well. One of the pillars of the strategy is the private sphere, which indicates the government's awareness of the limited effort against corruption in private organisations.⁹²⁶ At the same time, the policy orientation does not indicate a shift from the reactive

⁹²⁴ Alan Doig, 'Good Government and Sustainable Anti-Corruption Strategies: A Role for Independent Anti-Corruption Agencies?' (1995) 15 *Public Administration and Development* 151.

⁹²⁵ *Ibid.*, 156.

⁹²⁶ Nazaha, 'Kuwait Integrity and Anti-Corruption Strategy' (2019) <<https://andp.unescwa.org/sites/default/files/2021-07/Kuwait%20Integrity%20and%20Anti-Corruption%20Strategy.pdf>> accessed 1 December 2023.

investigation of corruption whereby information on corruption cases emerges from reports rather than proactively from self-initiated investigation. This indicates that there is a lack of emphasis on expanding KACA's capacity for proactive investigations and a desire to stick with the currently adopted model, which is not as effective as those adopted in Saudi Arabia and the UAE.

Contrary to this, the UAE and Saudi Arabia's recent policy initiatives apparently aim to tackle a few of the gaps they have in their anti-corruption frameworks. Saudi Arabia's recent crackdown on corruption and the overhaul of its anti-corruption agency towards greater autonomy and investigative capacity signals understanding of the previously limited grip on corruption in the public and private spheres.⁹²⁷ Indeed, for the past several years from 2011 to 2018, Saudi Arabia's corruption perception score has not changed significantly, staying between 44 and 49.⁹²⁸ With the crackdown on corruption and expansion of OACA's powers in 2019, Saudi Arabia's score increased by 4 points to 53 and has been relatively stable since, which is an indirect confirmation of the effectiveness of the adopted course.⁹²⁹

Comparatively, up until 2024, Kuwait's score showed a steady improvement, being in the 42–44 range. This demonstrates that a focus on prevention and reactive investigation, along with the development of a legislative foundation, has had a limited effect on the spread of corruption. Yet, one cannot portray these changes as simply cosmetic. Access to information and adoption of strategy are significant steps towards strengthening the overall foundation of the anti-corruption effort.⁹³⁰ However, it is undeniable that pairing those policy enhancements with expansion of investigative and enforcement powers, similar to Saudi Arabia, would boost their effectiveness in the short term as well.

Similar to Kuwait, the UAE's policy efforts are reflective of focusing on corruption prevention and reactive investigation measures while also strengthening cross-border ties. It is evident that the UAE government recognises the need to expand the fight against corruption to the private sphere in line with UNCAC recommendations. Hence, the establishment of the Emirates Integrity Network has contributed to this goal. Whistleblowing was also noted in Chapter 7 as one of the weak points of UAE's anti-corruption framework, which is similar to Saudi Arabia. Hence, the development of the Whistleblower Digital Service, which streamlines reporting corruption and raises awareness of the phenomenon can be considered as a response to this gap. Nevertheless, looking at the UAE's corruption perception index, it was stable at 71

⁹²⁷ Rosie Bsheer, How Mohammed bin Salman Has Transformed Saudi Arabia (*The Nation* 2019) <<http://www.hlrn.org/img/violation/Salman%20Rein.pdf>> accessed 13 April 2023

⁹²⁸ Transparency International, 'Kuwait Corruption Index' (*Trading Economics*, 2022) <<https://tradingeconomics.com/kuwait/corruption-index>> accessed 7 December 2023.

⁹²⁹ Transparency International, 'Saudi Arabia' (*Transparency.org*, 31 January 2023) <<https://www.transparency.org/en/countries/saudi-arabia>> accessed 20 December 2023.

⁹³⁰ Eiman Khaled Alqattan, 'The Shortcomings of Anti-Corruption Measures: Kuwait's Financial Disclosure System' (2022) 30 *Journal of Financial Crime* 665.

points in the four-year period from 2017 to 2021 and then dipped slightly to 67 in 2022 and 68 in 2024, which reflects the relatively limited short-term impact of those policy changes.⁹³¹

Overall, each country seems to be keen to amend the gaps in their current anti-corruption framework, with Saudi Arabia taking a more radical approach than Kuwait and the UAE. Kuwaiti policy has not introduced any major impactful solutions to the domestic corruption issue, preferring to focus on incremental change. According to Chay, debates and factionalism are rife in the Kuwaiti parliament, which makes adopting a policy, especially one that would significantly alter the previous direction, a substantial challenge.⁹³² By contrast, Saudi Arabian monarchs are less constrained by the parliament, which serves more as an advisory institution than as a legislation-making body. The anti-corruption policy is subject to substantial change if the political will of the monarch is to do so. This will was aptly demonstrated in 2019 by Crown Prince Mohammed bin Salman who practically overhauled the OACA, making it the most powerful anti-corruption organisation in the Gulf. These examples indicate that anti-corruption policy is substantially dependent on political factors, specifically the ability and political will to take decisive action against corruption.

The example of the UAE, however, provides hope that incremental policy and legal changes can shape the anti-corruption framework to become the strongest across the Gulf. The example of the SAI, which was established as early as 1979 and since then empowered and overhauled several times, indicates that gradual change can also provide good results but this also requires substantial political will and policy continuity. The UAE's recent policy efforts aimed at tackling the remaining gaps in their already robust framework suggest that there is such a will. Its presence can be explained by the developmental tendency of the UAE to build strong trade partnerships with the west, specifically in the sphere of attracting direct investment. This strategy inherently predisposed the UAE to adapting its anti-corruption framework to conform to the standards of its major western partners such as the US. The UAE is apparently unable to adopt the same radical change approach of Saudi Arabia since its power structure is somewhat different due to the federation-based, collegial form of power distribution with a strong role played by the parliament.⁹³³ This confirms the observation that politics has a substantial influence on the manner in which anti-corruption policy and framework are developed. Despite the obvious nature of this suggestion, it emphasises the merit of factoring in the aspect of politics into socio-legal analysis of anti-corruption efforts.

To conclude, despite evident differences in policy approaches underpinned by the politics of power, all three countries studied in this research demonstrate continuous attempts to expand and fix the gaps in their national anti-corruption frameworks. Whereas incremental changes might be less or more effective as in

⁹³¹ Transparency International, 'United Arab Emirates' (*Transparency.org*, 23 April 2024) <<https://www.transparency.org/en/countries/ united-arab-emirates>> accessed 22 September 2024.

⁹³² Clemens Chay, 'Parliamentary Politics in Kuwait' [2020] *The Routledge Handbook of Persian Gulf Politics* <https://www.academia.edu/43692679/Parliamentary_Politics_in_Kuwait> accessed 22 January 2024.

⁹³³ Kristian Ulrichsen, *The United Arab Emirates: Power, Politics and Policy-Making* (Routledge 2016).

the respective cases of Kuwait and the UAE, short-term gains from a radical increase in the stakes, as demonstrated by Saudi Arabia, does reduce corruption in a relatively short timeframe.

8.7 OVERALL INSTITUTIONAL DESIGN

Having compared the different elements of the institutional design (namely, the laws, criminal justice system, policies, and anti-corruption institutions) that constitute the anti-corruption framework, this section provides a bird's eye view of the institutional design considering the following criteria: coherence and comprehensiveness of laws, independence and capacity of anti-corruption bodies, transparency tools, and robustness of the justice system.

KUWAIT

Kuwait's anti-corruption institutional design is somewhat ambivalent: its legislative framework is among the most formally nuanced in the Gulf, but it operates with significant structural and functional deficits that deeply undermine its effectiveness. Law No. 2/2016 on the establishment of the Nazaha (KACA) and its Executive Regulation No. 300/2016 articulate robust asset disclosure obligations for a wide range of public officials, broad investigative powers, and an independent organisational mandate.⁹³⁴ There are also penalties for non-compliance that comply with the core requirements of the UNCAC, specifically Articles 8, 12 and 52.⁹³⁵

Yet in practice, Kuwait's institutional framework is hampered by the limited independence of the prosecution, a weak enforcement culture, and too much centralisation of power in the PPD (both investigation and prosecution). In turn, the PPD is able to be controlled by the executive (Ministry of Justice). This has serious implications for impartiality and political interference in corruption cases, especially those relating to high-ranking officials. Additionally, there is a lack of safeguards in the judicial system of Kuwait. Firstly, despite Article 163 of the Kuwaiti Constitution⁹³⁶ guaranteeing judicial independence, in practice, the Ministry of Justice and the Supreme Judicial Council (both appointed and controlled by the executive branch and the Amir) are in charge of the appointments, promotions, transfers, and dismissals of judges,⁹³⁷ including judicial security of tenure and procedural protections for suspects. This further erodes the credibility of anti-corruption prosecutions.

Although KACA is institutionally independent on paper, the organisation lacks the necessary enforcement capacities to become a significant anti-corruption force. Its lack of coercive enforcement tools means that it cannot guarantee compliance with financial disclosure legislation.⁹³⁸ Robust disclosure laws, however, are UNCAC compliant, which constitutes a substantial foundation for Kuwait's anti-corruption institutional framework. Although, taken together, the overall design might be reflective of a degree of formal compliance

⁹³⁴ Al-Oumi, 'The Development of Laws in Kuwait to Combat Corruption' 201

⁹³⁵ UNCAC, art. 8, 12, 52.

⁹³⁶ Constitution of the State of Kuwait (1962), art 163

⁹³⁷ Micol Savia, 'Independence of the Judiciary in Kuwait' (*International Association of Democratic Lawyers*, 26 July 2019) <<https://iadllaw.org/2019/07/independence-of-the-judiciary-in-kuwait/>> accessed 30 August 2024.

⁹³⁸ Al-Rashidi, n (129) 322.

with international expectations (e.g. UNCAC), the mismatch between legal form and functional reality results in a fragmented and limitedly effective institutional design.

SAUDI ARABIA

Saudi Arabia is undergoing significant systemic reform related to anti-corruption institutions under the Vision 2030 programme that focuses on centralisation and strengthening oversight and prosecution. Previously, KSA did not have an anti-corruption enforcement body in systemic terms, as corruption cases were internally run and processed by ministers under non-transparent and often politically directed channels.⁹³⁹ However, the establishment of Nazaha and the public prosecution authority have shifted the design towards centralising and professionalising anti-corruption enforcement.

Through consistent empowerment by royal decrees, Nazaha has gained immense powers to investigate and prosecute financial and administrative corruption. For example, it can gain access to an official's personal banking activity to unveil hidden mechanisms, assets, or other useful information without prior judicial approval.⁹⁴⁰ This action, similar to the aforementioned prosecutions, has a substantial impact on the ability to prosecute corruption. However preventive transparency through disclosure limits the overall robustness of the institutional design. There are ethical expectations of officials through the Anti-Bribery Law (Royal Decree No. M/36 of 1992) and administrative codes of conduct, but these ethical obligations do not appear to be codified into a formal rational and complementing asset declaration system.⁹⁴¹ Consequently, the system is not fully compliant with UNCAC guidelines.

In terms of independence, one can still see constraints, not only structurally, but now also conceptually. There are no stated limits on adjudication. As we have seen, there have been attempts to build competent administrative boundaries between branches of the state and to standardise judicial procedures, yet judges in Saudi Arabia are appointed by royal decree and dismissed by similar means.⁹⁴² While this level of centralisation is efficient in some respects, it is detrimental to judicial independence, as it depends on political actors. It assumes that all individuals are equal recipients of the law - particularly in matters of public interest involving politically sensitive actors, or businessmen who often hold greater privilege. Furthermore, resolutions based upon Shariah principles again vary beyond the codified elements.⁹⁴³ This means that there is no systematic code across nations, which limits the predictability of judgements in corruption cases specifically.

⁹³⁹ Millhouse, note 626, 38.

⁹⁴⁰ Benjamin D Jones and Florence Jerome-Ball, 'The New Nazaha Law: More Prosecution Prospects in Saudi Arabia's Fight Against Corruption' (2024) <<https://www.gtlaw.com/en/insights/2024/8/the-new-nazaha-law-more-prosecution-prospects-in-saudi-arabias-fight-against-corruption>> accessed 11 June 2025.

⁹⁴¹ Ibid.

⁹⁴² Abdulaziz K Al-Hamoudi, 'Criminal Defense in Saudi Arabia: An Empirical Study of the Practice of Criminal Defense in Saudi Arabia' (PhD Thesis, University of Washington 2014) 32

⁹⁴³ Millhouse, note 626, 39.

Nevertheless, Saudi Arabia's reforms appear to demonstrate a genuine intention to build up the architecture of anti-corruption enforcement. While problems with independence and transparency remain, the system features an institutional model that is becoming more consolidated with increased operability and state support. Operationally, it exceeds that of Kuwait but at the same time it is less transparent.

THE UAE

The institutional design of the UAE is formed by its sophisticated political infrastructure, hybrid legal system, and tiered jurisdictional systems. Having no dedicated anti-corruption institution, anti-corruption functions are fulfilled by federal public bodies such as the SAI and FIU, which have the capability to access financial and banking information without the need for a court order.⁹⁴⁴ Using sophisticated oversight and compliance technologies, these public authorities are designed to enable the identification and investigation of corruption 'in real time', particularly in relation to the financial sector and corporate entities.

Interestingly, the UAE does not have an effective statutory obligation to require public financial disclosures by government officials. Although there exist codes of conduct that govern some public positions, there is no legal requirement for any civil servants to provide declarations of their assets or liabilities.⁹⁴⁵ This presents a partial breach of UNCAC Article 12 and 52, which calls for asset declarations as a preventative measure for illicit enrichment. Thus, whilst enforcement capabilities are advanced with specific public authorities, preventative transparency lacks development.

Additionally, the UAE's disparate judicial system, comprised of federal courts and separate emirates' courts, along with the common law jurisdictions of the DIFC and ADGM, creates differentiated standards of transparency and independence. DIFC and ADGM courts have gained reputations for independence and procedural rigour, but this independence exists primarily in commercial and financial matters, since foreign judges are often hired and paid for short-term contracts and remain ultimately under the executive authority of Emirs.⁹⁴⁶ This raises concerns over security of tenure and susceptibility to political interference in their decision making.

Furthermore, the publication of judicial rulings is inconsistent and the absence of a binding precedent makes the outcomes of legal processes less predictable, which in turn considerably reduces transparency.⁹⁴⁷ These characteristics undermine the integrity of judicial processes to provide impartial anti-corruption enforcement and sanctions. Despite these shortcomings, the UAE stands out for its institutional modernity

⁹⁴⁴ Federal Law No. (7) of 1976 concerning the establishment of State Audit Institution, art. 17

⁹⁴⁵ Rony Eid and Tala Shomar, 'United Arab Emirates: Changes to the Ultimate Beneficial Ownership Regulations to Address the Complex Structures and Needs of Businesses' (*Baker and McKenzie*, 2024) <https://insightplus.bakermckenzie.com/bm/mergers-acquisitions_5/united-arab-emirates-changes-to-the-ultimate-beneficial-ownership-regulations-to-address-the-complex-structures-and-needs-of-businesses_1> accessed 11 June 2025.

⁹⁴⁶ 'United Arab Emirates' (*Judiciaries Worldwide*, n.d.) <<https://judiciariesworldwide.fjc.gov/country-profile/united-arab-emirates>> accessed 11 June 2025.

⁹⁴⁷ *Ibid.*

and technical capabilities, which could hypothetically provide an effective anti-corruption design if coupled with robust legal assurances and transparency. Currently, the design remains functional but is not normatively complete. Finally, compliance with best anti-corruption design practices remains patchy and is not universal across emirates.

In summary, Kuwait has the greatest formal compliance with international norms, but its anti-corruption bodies suffer from weakness and political dependency, which limits its adherence to the best anti-corruption norms in practice. The UAE has the most technical capacity and institutional sophistication, but it lacks the legal and political architecture to enable accountability across the entire federation of emirates. Saudi Arabia has the most centralised anti-corruption framework, but it lacks transparency and judicial independence and exhibits a flawed institutional design. All three systems have some attributes to be proud of, yet none has a total or credible institutional design necessary for a robust best-practice anti-corruption regime.

8.8 CONCLUSION

In this chapter, the critical comparative analysis was conducted in order to reveal differences and similarities in the approaches taken by Kuwait, Saudi Arabia, and the UAE in combatting corruption. The analysis compared efforts in the legal, institutional (anti-corruption agencies, criminal justice system), policy, and practical (contract and procurement) domains. In the legal domain, Kuwait and the UAE stood out as having the most advanced legal regimes with their own caveats, such as Kuwait having definition and applicability issues while the UAE lacked dedicated anti-corruption laws. Saudi Arabia is not far behind these two countries but it lacks enforcement mechanisms, clarity on the abuse of power concept, and other smaller issues. Furthermore, its anti-corruption provisions are also scattered across multiple legislative acts, which increases ambiguity and creates potential loopholes, while also undermining coordination and public education on corruption. There appears to be no clear leader in terms of legal framework, so each country could adopt and adapt some improvements from its neighbours, considering the strengths and disadvantages of each anti-corruption tool.

With regard to the criminal justice system, all three countries' judiciaries fall behind the best practice outlined in the UN guidelines (UNCAC, UN Principles on the Independence of the Judiciary) on practical supervision of the judiciary by the executive, albeit in various degrees. Thus, no country achieves the necessary prerequisite for being able to independently and impartially prosecute and issue judgements on high-profile cases of corruption. In the UAE, however, certain emirates such as Dubai have more judicial freedom, which is nevertheless undermined by the foreign nationality and 'temporal' status of judges (as they are sourced from abroad).

Concerning the role played by the anti-corruption agencies, the UAE seems to have the most balanced network of institutions, but Saudi Arabia excels in the sheer volume of powers and responsibilities. Thus,

the anti-corruption institutions in these two countries are comparably more impactful than Kuwait's KACA. Transparency and public accountability issues, however, persist in Saudi Arabia and the UAE as they are answerable only to the highest authority level.

In terms of contract and procurement, all three countries took different paths towards establishing common goals for transparency, accountability, and corruption prevention. Kuwait's remarkable e-procurement efforts have been hindered by the limited access of KACA to data for auditing corruption in natural resource and defence procurement deals. Saudi Arabia has a smaller and more ambiguous legislative basis for transparent procurement compared to Kuwait and the UAE, but OACA can put any contract in any sphere under scrutiny. The UAE stands out for the same reason, but Saudi Arabia and the UAE's audits of procurement deals are not transparent and remain closed to outside analysis. None of the countries have fully implemented the best practices suggested by UNCAC.

In terms of policy efforts, Kuwait and the UAE, due to their domestic political power distribution, have been limited to incremental changes in the last decade. Saudi Arabia, however, dramatically increased its anti-corruption effort, which was clearly reflected in its CPI scores. Overall, all three countries face challenges in fighting corruption, but Saudi Arabia and the UAE have higher scores in corruption ratings. This peculiarity provokes one to challenge the international measurements of corruption since they can only explain variance between countries to a limited extent.

CHAPTER 9. CONCLUSION

9.1 INTRODUCTION

This comprehensive dissertation presented a comparative and socio-legal analysis of anti-corruption frameworks in Kuwait, Saudi Arabia, and the United Arab Emirates (UAE). The main goal was to analyse and compare how these three countries responded to corruption and how adequately the legislative and administrative framework of those jurisdictions could limit abuses of power. The study began by clarifying the theoretical approaches to corruption, and reviewing various definitions of corruption and the different global and regional aspects of anti-corruption practices. Chapters on each of the three countries under analysis provided a comprehensive overview of their criminal justice and legal systems as relevant to corruption, the development of their anti-corruption legal instruments, the regulatory capacity of key anti-corruption agencies, such as Nazaha, Financial Intelligence Units, and their anti-corruption efforts in relation to public contracts and procurement. The analysis also delved into recent anti-corruption policy analysis and provided overviews of the international assessments of anti-corruption regimes in each country. Finally, the work culminated in the comparative analysis of every mentioned aspect of the anti-corruption framework and institutional design, with each chapter critically commenting on similarities and differences among countries' approaches to fighting corruption.

This chapter will begin by summarising the key findings of the study in relation to the research questions posed at the outset of this dissertation. It will then state its contribution to the theory and practice in the field of anti-corruption. Finally, it will overview the recommendations for reform, the limitations encountered during the research process, and avenues for future research.

9.2 SUMMARY OF THE KEY FINDINGS

RQ1: To what extent do Saudi Arabia, Kuwait, and the UAE adhere to best practices of fighting corruption?

Saudi Arabia, Kuwait, and the UAE exhibit varying degrees of adherence to international best practices for addressing corruption; this variation stems from differences in institutional designs, laws and policies. All three states are signatories to the UNCAC and thus are fundamentally committed to the global anti-corruption effort. This commitment has been evident in codifying significant corruption crimes in their criminal codes, including bribery, embezzlement, abuse of office and others, as well as generally being consistent with UNCAC's requirements with respect to AML legislation and FIU functions. The UAE, Saudi Arabia and Kuwait even extend jurisdiction extraterritorially for certain corruption offences, seizure of funds

and extradition of individuals, which improves cooperation with international organisations as per UNCAC's Article 43.⁹⁴⁸

However, in other aspects, the level of commitment to anti-corruption best practice varies, and there are a number of areas in which these countries lack compliance with UNCAC, UNODC and OECD guidelines. In terms of legal instruments and institutional foundations, major concerns in all three states are the lack of judicial transparency and independence from the executive, which is contrary to the principle of separation of powers, UN principles on the independence of the judiciary, and Article 11 of the UNCAC, which also stresses the necessity of an independent judiciary.⁹⁴⁹ As a result, there is a risk that high-profile cases are being prosecuted inconsistently, which is exacerbated by the lack of public information on the judicial hearings of such cases. In terms of legislation, Saudi Arabia, Kuwait and the UAE have codified all major corruption crimes in line with UNCAC's Chapter 3, including bribery, embezzlement, influence trading, abuse of office, illicit enrichment, and laundering of proceeds of crime. Problems still persist, however, as proper codification of anti-corruption legislation, such as anti-corruption articles and definitions of anti-corruption crimes, are scattered across various legislative acts, norms, guidelines, and royal/ministerial decrees. This may undermine the judicial process due to potential ambiguities in interpretation and judicial uncertainty.⁹⁵⁰

With regard to anti-corruption agencies, in Kuwait, KACA's leaders appointments and budgeting depend on the Ministry of Justice and Finance, while the organisation's own conduct is not reviewed by independent experts or other signatory states, contrary to Articles 6 and 46.⁹⁵¹ In Saudi Arabia, along with the lack of independent review, OACA's high-level appointments and budgeting are directly linked to the king, which again limits the implementation of UNCAC's Article 6.⁹⁵² The UAE lacks a single holistic anti-corruption law or a fully empowered federal anti-corruption commission as envisioned by UNCAC. Instead, its functions are somewhat undertaken by SAI, which enjoys more independence than KACA and OACA. It is established as a 'supreme' institution answerable to the parliament and a council of ministers and it has its own parliament-approved budget, which ensures that no individual or agency is responsible for the nomination and dismissal of its leaders or the regulation of its funds.⁹⁵³ The FIUs of all three countries share the same friction between independent conduct and structural dependence on the executive, whether it is the Ministry of Finance, Presidency of State Security, or the Central Bank.

⁹⁴⁸ Pranshul Pathak and Dr Ajay Kumar Bhatt, 'Mapping Legal Sanctity of Extradition Treaties: Contemporary International Relations on the Run' (2023) 9 *International Journal of Law* 34.

⁹⁴⁹ UNCAC, art. 11

⁹⁵⁰ Rose-Ackerman and Palifka, note 285, p. 55.

⁹⁵¹ Law No. 2 of 2016 on Establishing Anti-Corruption Authority and the Provisions on Disclosure of Assets and Liabilities, art 6, 18.

⁹⁵² Cabinet Resolution No. 165, dated 28/05/1432H corresponding to 2011, on the establishment of National Anti-Corruption Commission, art. 14

⁹⁵³ Mukdad Ibrahim, 'State Audit Institution in United Arab Emirates' (2010) 52 *International Journal of Law and Management* 464

Whistleblower protection in all three countries has its limitations compared to UNODC's best practice guidelines. Thus, in Kuwait, whistleblower protection is in line with UNCAC, as Nazaha is tasked with protecting their identity. Saudi Arabia goes a step further to grant protection for whistleblowers' families along with also offering compensation for exposing corruption.⁹⁵⁴ The UAE has a dedicated federal whistleblower protection law under which whistleblowers can receive physical protection and identity protection, which also extends to families, as well as offering rewards for exposing corruption. Hence, the UAE excels in this aspect; it is the most compliant with Article 33 of UNCAC and follows the best practice recommendations of UNODC.

Compliance with Article 12 of UNCAC regarding the disclosure of assets by public servants is at best partial in Saudi Arabia, with limitations regarding scope, and exemptions for senior security and royal appointees persisting. In Kuwait, Law No 2 of 2016 mandates asset disclosure for all public servants. It stipulates large fines and prison terms for non-disclosure, but this is however limited by excluding family members of public servants, thus still leaving room for corruption.⁹⁵⁵ In the UAE, asset disclosure covers public departments, agencies, and private companies rather than individual members, whose remunerations are included in annual financial statements. In addition, the Federal Accountability Authority has been established to monitor disclosure compliance.⁹⁵⁶ So, while all countries feature nominal compliance with UNCAC, the UAE's and Kuwait's disclosure systems seem to be more robust, with Kuwait's featuring stringent punishments and the UAE's having better scope.

Against international best practices, the absence of a system of review of public procurement is also noted in Kuwait, Saudi Arabia and the UAE. In Kuwait and Saudi Arabia specifically, the oil and gas and defence sectors are closed to audits, with the exception of closed-door audits by the Saudi Nazaha.⁹⁵⁷ This violates the principle of public distribution of procurement information stipulated in UNCAC Article 9. The UAE, on the other hand, established an open bidding process and the disclosure of conflicts of interest, but it does not accommodate public hearings on procurement deals, against the advice in the UNODC Guidebook on Anti-Corruption In Public Procurement And The Management Of Public Finances.⁹⁵⁸ Thus, while all procurement systems remain exposed to at least some level of corruption in all three countries, UAE seems to have the most transparent one.

RQ 2: What are the social and institutional enablers and challenges of corruption in Saudi Arabia, Kuwait and the UAE?

⁹⁵⁴ Royal Decree No. M36/1412, art. 17.

⁹⁵⁵ Al-Oumi, 'The Development of Laws in Kuwait to Combat Corruption' 208

⁹⁵⁶ Federal Law by Decree No. (56) of 2023 Concerning the Emirates Accountability Authority

⁹⁵⁷ Al-Otaibi, 'The Governance Procedures of Public Tenders in Kuwait'

⁹⁵⁸ Federal Law No. (11) of 2023 On Procurement in the Federal Government, art. 22

Kuwait is experiencing many social and institutional challenges that hinder its anti-corruption efforts. Most importantly, Kuwait's tribal heritage, collectivist society, and gift-giving traditions, as well as the extensive use of personal relationships (i.e., *wasta*) perpetuate corruption by blurring the line between customary generosity and bribery.⁹⁵⁹ This happens in almost equal measure in Saudi Arabia and the UAE.⁹⁶⁰ Institutionally, Kuwait's criminal justice system operates under an inquisitorial legal system, which endows the PPD with the authority to investigate and prosecute. Such a model allows potential political involvement and undermines impartiality. The judiciary's neutrality also challenges anti-corruption efforts as the Minister of Justice appoints and dismisses judges, which might affect the investigation of high-profile cases. KACA operates independently on paper, yet it has limited enforcement and direct prosecution abilities and relies on outside reports and preliminary investigations rather than proactively developing original intelligence.⁹⁶¹ Additionally, Kuwait's anti-corruption institutions such as KACA and KFIU are unable to access to some of the most critical spheres of public finance such as procurement in defence, oil, and gas.

Institutionally, Saudi Arabia's courts have limited independence, as the Saudi King appoints judges and therefore can dictate judicial outcome at will. There is also no binding precedent, so courts can reach differing conclusions in similar cases, which restricts legal certainty.⁹⁶² On the other hand, OACA has extremely broad authority to investigate and prosecute, to the extent that Nazaha can investigate a person's banking activity without needing to obtain prior judicial approval. OACA, similar to SAFIU, also has limited independence, and there is no mechanism for independent oversight to assess the politicisation and transparency of anti-corruption organisations themselves. While OACA is able to investigate defence and natural resource extraction deals, its activities in these spheres are still obscure and not open to public scrutiny.

In the UAE, the institutional anti-corruption framework is somewhat at odds with the federal structure as emirates have considerable independence; this results in jurisdictional fragmentation and uneven anti-corruption effort across emirates. Furthermore, while the independence of the judiciary is assured, the executive still exercises significant influence over appointments and extensions of judge's contracts.⁹⁶³ Federal anti-corruption agencies, such as the SAI or FIU, have broad powers of oversight and investigation but operate largely with no public disclosure, transparency or accountability to the public. The FIU's organisational dependence on the Central Bank might also inhibit its independent conduct.⁹⁶⁴

⁹⁵⁹ Bader Al-Saif, 'Another Invasion of Kuwait' (*Carnegie Middle East Center*, 11 August 2020) <<https://carnegie-mec.org/diwan/82453>> accessed 9 November 2023.

⁹⁶⁰ Annika Kropf and Tanya Newbury-Smith, 'Wasta as a Form of Social Capital? An Institutional Perspective' in Mohammed Ramady, *The Political Economy of Wasta: Use and Abuse of Social Capital Networking* (2016) 4

⁹⁶¹ Part II, Article 12 of the Anti-Corruption Law No. 2 of 2016

⁹⁶² Cooper C Millhouse, 'Injustice Anywhere: A Comparative Law Analysis of Saudi Arabia's Criminal Justice System' (2024) 47 UC L. SF Int'l L. Rev. 40.

⁹⁶³ 'United Arab Emirates' (*Judiciaries Worldwide*, n.d.) <<https://judiciariesworldwide.fjc.gov/country-profile/United-arab-emirates>> accessed 11 June 2025.

⁹⁶⁴ Federal Law No. (20) of 2018 on Anti-Money Laundering and Combating the Financing of Terrorism and Financing of Illegal Organisations, article 9

RQ 3: What are the laws and approaches for preventing, prosecuting and reporting corruptive behaviour in Saudi Arabia, Kuwait and the UAE?

Kuwait's legal anti-corruption framework includes Law No. 16 of 1960 (Kuwait Criminal Code) and its subsequent amendment, Law No. 31 of 1970, which criminalises bribery. The Protection of Public Funds Law no 1. of 1993 added mechanisms to restrain an offender from leaving the country and tracing stolen assets. However, the most substantive addition was Law No. 2 of 2016, which established KACA to lead preliminary anti-corruption investigations, thus aiding the efforts to prosecute corruption. Preventive efforts against corruption are also led by KACA, which is guided by the Kuwait Integrity and Anti-corruption Strategy 2019-2024 which focuses on increased transparency and accountability. KACA is specifically tasked with raising awareness of corruption, conducting anti-corruption policy research and reviewing civil servants' financial statements.⁹⁶⁵ KFIU in turn contributes to prevention by monitoring suspicious financial transactions. In terms of prosecution, the PPD is vested with the power to investigate and prosecute corruption while accepting referrals from KACA. With regard to reporting corruption, KACA has enabled and set in place whistleblower protection under Law No. 2 of 2016, which offers a pardon to bribers if they report the act to the police.

In terms of anti-corruption legislation, Saudi Arabia has a few key laws and royal decrees: Royal Decree No. 43 (1958) prohibits embezzlement and abuse of power, and the main Anti-Bribery Law, which after being updated in 2018 and 2021 criminalises public and private sector corruption crimes (exploitation of official position, taking or giving bribe, nepotism, and favouritism) and a variety of illicit gains. It also covers those individuals performing functions for government-affiliated organizations, including foreign officials. Other relevant laws include the Public Funds Management Law, the Civil Service Law, and the Combating Financial Fraud and Deceit Act (2021), which impose heavy penalties for corruption-related offenses and regulates public and private conduct so as to deter corruption.

In terms of prosecution, the power of national prosecution is shared by OACA and the PPD. As of today, OACA has extensive investigative and prosecuting powers, including the authority to investigate all public servants with no exception and to conduct inquiries with direct access to their personal banking activity. It does not require prior judicial approval and then refers these inquiries to the PPD, which prosecutes them, provided they find substantial ground for doing so.⁹⁶⁶

Reporting corrupt behaviour is encouraged in Saudi Arabia through the Anti-Bribery Law, which authorises substantial monetary rewards and offers protection and confidentiality for whistleblowers and their families.⁹⁶⁷ Saudi Arabia has also taken proactive initiatives to prevent corruption; the Law of Evidence

⁹⁶⁵ Part II, Article 12 of the Anti-Corruption Law No. 2 of 2016

⁹⁶⁶ Cabinet Resolution No. 165, dated 28/05/1432H corresponding to 2011, on the establishment of National Anti-Corruption Commission, art. 2-3

⁹⁶⁷ Annika Kropf and Tanya Newbury-Smith, 'Wasta as a Form of Social Capital? An Institutional Perspective' in Mohammed Ramady, *The Political Economy of Wasta: Use and Abuse of Social Capital Networking* (2016) 4

(2021) requires large public transactions to be documented in writing, and public funds are currently going through a process of digitalisation to reduce opportunities for corruption.

The UAE's legal aspect of the anti-corruption framework consists of the Federal Penal Code, Anti-Money Laundering Law, and Human Resources Law. The Penal Code criminalises major corruption offences such as bribery, embezzlement, and abuse of power, with provisions covering direct and indirect bribery, intermediaries, and extraterritorial jurisdiction for UAE nationals, or public funds. However, private sector bribery by foreign companies is not criminalised. The Anti-Money Laundering Law reinforces the UAE's financial transparency, and also created the FIU, which aids financial institutions to identify and investigate suspicious transactions. The Human Resources Law sets out rules for ethical conduct for UAE federal employees, which aligns with Islamic principles.

Prosecution of corruption is primarily led by the public prosecution aided by the SAI, now the UAE Accountability Authority, which has full audit powers over all public sector entities and highly ranked public officials. The SAI also investigates allegations of financial and administrative misconduct, and has some unique powers, including the ability to impose travel bans. FIU and SAI investigations are then handed over to public prosecution.⁹⁶⁸

Preventative strategies predominantly include explicit requirements for open bidding in public procurement, which help to eliminate the possibility of corrupt behaviours. Public servants are required to disclose accounts as part of their agency's annual reporting. Reporting of corruption is aided by the Federal Law No. 14 of 2020 on the Protection of Witnesses and the Like. This law establishes a 'Protection Program' for whistleblowers, and, although there are strong provisions for reporting corrupt behaviour, citizens are often not aware of the protections available to them.

RQ 4: What lessons can be drawn from the comparative analysis of Kuwaiti, Saudi Arabian, and UAE anti-corruption frameworks?

Firstly, the structural and functional independence of anti-corruption bodies is very important for anti-corruption institutions to perform their functions. The analyses show that, while bodies may be legally independent in name, practical dependence on the executive authority limits the degree to which they can operate independently, which therefore affects their ability to fight corruption at the highest levels. In the case of Kuwait, while there are good disclosure and preventive mechanisms, KACA and FIU still have very limited authority for investigations. In addition, they are subordinated to the Ministry of Justice, which creates practical limits for fighting corruption. While OACA has substantial authority for investigations and prosecutions, it is still closely tied to the royal authorities, raising questions over potential political involvement in their work. The UAE presents a relatively more balanced structure because of the amount

⁹⁶⁸ Mukdad Ibrahim, 'State Audit Institution in United Arab Emirates' (2010) 52 International Journal of Law and Management 464

of investigation capacity it has dispersed to various authorities, yet it still has limitations similar to those of Kuwait and Saudi Arabia such as executive control, which limits its power. Structural and functional independence are important because they rid the anti-corruption system of undue political influence and grant it the necessary proactivity (defined as having the necessary authority and resources) to perform its function of fighting corruption.⁹⁶⁹

Second, proactive investigative capabilities and sufficient resources are essential for anti-corruption agencies to fulfil their anti-corruption functions. Relying merely on submitted corruption reports does not advance the task of combatting corruption in terms of the ability to launch full-scale investigations and arresting suspicious accounts as is the case in the UAE or Saudi Arabia. Staffing also remains a crucial issue as the ability to process reports and conduct investigations into potential corruption requires personnel and financing which, as noted, need to be independent of the will of single executive branches.⁹⁷⁰

Third, while technological advancement can enhance the transparency of public finance, e.g., through electronic procurement, it requires mandatory use and legislative support to successfully serve as a means of corruption prevention. In this regard, Kuwait's e-procurement systems are particularly advanced, but it cannot be stated convincingly that in Kuwait they have a meaningful impact on corruption, because it is not mandatory for them to be used by all procurement process actors, especially in the defence and natural resource sectors. Thus, if technology is to be successful in promoting transparency and serving as a pillar of the anti-corruption effort, it has to be aligned with other policy frameworks and followed through with meaningful implementation and political commitment to enforcement.⁹⁷¹

To answer the main research question, none of the studied countries have sufficient legislative, policy or institutional frameworks to completely limit abuses of power, although in the UAE there are more useful mechanisms in place to combat corruption. While Kuwait and Saudi Arabia's agencies have flaws in their monitoring and/or proactive investigation of corruption, the UAE's real-time monitoring of risks, wide coverage of suspicious transactions, broad investigative capabilities spread across several organs, and better transparency in public procurement demonstrate a more robust approach, as seen from its CPI rating. Despite lacking comprehensive anti-corruption legislation and a dedicated anti-corruption agency, the UAE's anti-corruption framework is proactive, has more fiscal accountability across the board, and is overall closer to UNCAC's standards than either Kuwait or Saudi Arabia. On the other hand, all three countries face challenges with institutional independence, procedural clarity, transparency, and genuine engagement with the public in the sphere of corruption prevention, which undermines the robustness of their frameworks.

⁹⁶⁹ Luís de Sousa, 'Anti-Corruption Agencies: Between Empowerment and Irrelevance' (2010) 53 *Crime, Law and Social Change* 5.

⁹⁷⁰ Alan Doig, 'Good Government and Sustainable Anti-Corruption Strategies: A Role for Independent Anti-Corruption Agencies?' (1995) 15 *Public Administration and Development* 151

⁹⁷¹ Gemma Aiolfi, 'New Perspectives in E-Government and the Prevention of Corruption' (Basel Institute on Governance 2017) Working Paper 23 <https://baselgovernance.org/sites/default/files/2019-06/WP_23_web.pdf> accessed 16 July 2025.

So, if there are extensive anti-corruption frameworks in place, why does corruption persist? The answer is - formal rules get routinely outmatched by weak enforcement, a lack of institutional independence, opaque decision-making procedures, and established political hierarchies. Firstly, as exemplified by Kuwait, KACA primarily builds cases based heavily on external reports where it reacts to calls for investigations rather than being proactive in investigation itself. Secondly, very little institutional independence exists: notably, in Kuwait, KACA's arrangements for leadership are through the Ministry of Justice including budgeting; in Saudi Arabia, OACA, the senior appointments and budget are also authorised by the King and in the UAE oversight bodies are subjected to limited political accountability which undermines credibility and deterrence as established in Chapter 8.

Third, the transparency issues persist in public finance and justice: there has been little to no meaningful scrutiny or audit of procurement in both the oil and gas sector as well as defence sector. Although the UAE has introduced a mildly more open bidding process in its procurement in recent years, the bidding remains closed to public hearings. Across these country cases there is scant knowledge of high-profile corruption trials, which weakens legal certainty and public trust. Fourth, political hierarchies undermine independence: ministers appoint and remove judges in Kuwait; in the Saudi context the King appoints the judiciary; and in the UAE the executive holds authority over the judicial contracts. These arrangements provide space for elite corruption escaping scrutiny and lead to inconsistent adjudication.

Last, and maybe most importantly, the comparative analysis contends that where laws may be UNCAC-compliant on paper, structural dependence, lack of resources, and fragmented mandates reduce the relevance of anti-corruption framework. Independence, investigative capacity as well as mandated transparency are still binding constraints across the three systems. In short, anti-corruption frameworks may exist but systemically ineffective provided that the enforcement is insufficient, institutions are subordinate, information is closed to scrutiny, and where power is relatively vertically concentrated. These conditions contribute to reproducing corruption despite the formal reforms.

9.3 RESEARCH CONTRIBUTION

One contribution of this research to theory is that the results demonstrate support and clarification of the conventional claims on the relationship of corruption to democracy, economic development, and the rule of law. First, the findings of this work reinforce the theoretical move away from regime-type determinism (e.g. in the works of Treisman⁹⁷², Langseth⁹⁷³, Chowdhury⁹⁷⁴): monarchic, low-competitive systems like Saudi Arabia and the UAE can show relatively low levels of corruption if institutional quality is good (centralised enforcement, strong audit bodies, routine controls), while democracies with weak anti-corruption institutions

⁹⁷² Treisman, n (354), 399.

⁹⁷³ Langseth, n (355).

⁹⁷⁴ Chowdhury, n (356), 96.

perform poorly. This is in line with the theoretical argument that institutional quality manifesting in independent judiciary, separation of powers, credible oversight is more significant than democratic government style.⁹⁷⁵ This was made evident in chapter 3, in the examination of Singapore (low corruption without electoral competition) and Bulgaria (democratic but prone to corruption due to weak judicial enforcement).⁹⁷⁶ Thus, the conclusion is made here that institutional quality, as opposed to type of regime, is the best predictor of corruption outcomes.

Empirically, all three Gulf cases examined feature executive control over the judiciary which is against the UNCAC and UN Basic Principles on the Independence of the Judiciary. The limits these places on legislative enforcement and legal certainty in prosecution of corruption cases as discussed in the works of supports the primacy of institutional design over regime descriptors. Kuwait's inquisitorial model, executive control over appointments, and constraints on KACA's investigative powers demonstrate how democratic elements of its political culture (e.g. a functioning parliament) do not inherently translate into functional anti-corruption regime as evident from low CPI and CCI ratings. Saudi Arabia's stronger investigative power at OACA limited by same executive control of the judiciary coupled by the lack of transparency in oversight of sensitive sectors, we can see that enforcement centralisation can deliver some results in fighting corruption but concerns about the rule of law stand to lower the CCI and CPI ratings demonstrating still-high anticipations of corruption. In the UAE, unevenness in the design and implementation of anti-corruption safeguards and executive influence over judicial careers similarly complicates otherwise sophisticated audit and AML architectures, thus undermining CPI scores.

Secondly, the findings of this work challenge the linear claim that economic advancement reduces corruption. Theory predicts that resource dependence without strong institutions increases corruption (the 'resource curse') while diversified, rules-based economies can resist it.⁹⁷⁷ The UAE's economic diversification and increasing attractiveness for foreign investment suggest progress consistent with this view, yet its recent CPI lags suggest that economic modernisation alone does not guarantee improved corruption perceptions. Especially when institutional independence and public transparency are flawed. Saudi Arabia's increasing ties with foreign investors also complicates a straightforward resource curse assumption, but continuing executive control over the courts suggests an institutional barrier to fighting corruption effectively. While Kuwait's efforts to attract foreign investment are ongoing continuing dependence on oil is not the only factor offsetting anti-corruption efforts. Dependent institutional structure, indicates that economic development alone is not a sufficient explanation of increased corruption risks.

Third, the results strongly corroborate the claim that corruption undermines rule of law and, conversely, that depth of rule of law is one of the key anti-corruption pillars.⁹⁷⁸ The study documents lack of prosecutorial

⁹⁷⁵ Hertog, n (368).

⁹⁷⁶ Transparency International n (375).

⁹⁷⁷ Natural Resource Governance Institute n (309).

⁹⁷⁸ Kleinfeld n. (395) 110.

oversight in Kuwait, executive discretion and reliance on Sharia in Saudi Arabia and lack of binding precedent and publication of rulings in UAE as substantial barriers towards prosecuting corruption. Each of these patterns seems to have more relation to deficits in rule of law, rather than regime type or economic development. This fits into a wider theoretical position that corruption undermines democratic governance and the rule of law (necessary for such governance) and that durable progress on either requires independent courts, predictable procedures, and transparent administration.⁹⁷⁹ To summarise, the current state of anti-corruption frameworks in the Gulf reinforces a contextual-institutional view of corruption imbued with de Graaf's theory: government type matters little; economic and legal development without independent enforcement is fragile; rule of law institutions is the necessary prerequisite for robust anti-corruption framework.

The study presents a **context-sensitive comparative framework** that advances the existing methodologies for examining national anti-corruption initiatives. Unlike global measures such as the Corruption Perceptions Index (CPI) or Control of Corruption Indicator (CCI), which primarily employ perception-based information and aggregate views of expert assessments, the framework presented here seeks to integrate in-depth analyses of institutions, laws, and policies, while also considering local cultural and social contexts. This grants an enriched and more contextually meaningful sense of how and why countries are faring better or worse in terms of fighting corruption. For instance, in the study it was indicated that although the UAE achieved a high CPI score, indicating the strength of its enforcement in formal terms, it fell short in terms of civil society engagement and the independence of its key institutions. Similarly, the analysis was able to explain why Kuwait's CPI score is lower: beyond legal shortcomings, Kuwait has structural issues linked to weaknesses of an institutional nature (lack of independence, autonomy, authority) and socio-cultural issues associated with the continuing impact of *wasta* networks, as well as lacking transparency in the key economic sectors.

Unlike other related works in the field (e.g. Alhajri⁹⁸⁰, Hamad⁹⁸¹, Al-Hamoudi⁹⁸² among others), this study has comprehensively considered national institutional designs as deemed relevant to fighting corruption: the independence and operational effectiveness of anti-corruption agencies and courts, as well as assessing legal prerogatives (e.g., the degree of criminalisation of corruption crimes and whistleblower laws), procurement, and policy responses. By analysing these aspects together, it became possible to present a more comprehensive view of anti-corruption efforts than that provided by perception-based indices. Thus, this work not only informs but also expands on CPI and CCI assessments. Finally, this work

⁹⁷⁹ Ibid.

⁹⁸⁰ Alfahad Hamad, 'Public Financial Crimes: A Critical Analysis of the Role of Kuwaiti Criminal and Regulatory Agencies in the Investigation Process' (Doctoral Thesis, Queen's University 2021)

⁹⁸¹ A Alhajri, 'Separation of Powers in the Kuwaiti Criminal Justice System' (phd, Middlesex University 2023)

⁹⁸² Abdulaziz K Al-Hamoudi, 'Criminal Defense in Saudi Arabia: An Empirical Study of the Practice of Criminal Defense in Saudi Arabia' (PhD Thesis, University of Washington 2014)

allows scholars and practitioners to further understand the state's efforts towards robust UNCAC-compliant anti-corruption regimes and the limitations of those efforts in a specific regional context.

This research offers a holistic critical analysis of national institutional design, laws, and policies on corruption, an approach that is mostly missing from the existing literature on anti-corruption in the Gulf and globally. The existing studies, such as those by Torres⁹⁸³ or Graycar⁹⁸⁴, have discussed the notion of a national anti-corruption framework in isolation or from a case-study perspective, giving legal, institutional, and policy aspects superficial regard. In contrast, this study offers a more unified and comprehensive approach that integrates these strands within an overarching analytic framework that is underpinned by socio-legal and comparative methodology. It systematically examines formal legal provisions (criminal code, anti-bribery laws), institutional aspects (e.g., the independence of anti-corruption institutions or anti-corruption courts), and operational policies (e.g., reforms, whistleblowing policy, disclosure regime). Importantly, it assesses not just the presence of laws, policies, and institutions but also whether they comply with the best international practices while considering the political and social context of each of the countries.

By adopting this approach, the research was able to uncover some otherwise invisible weaknesses and strengths within each legal system, which might not have been highlighted through a traditional legalistic or perceptions-based approach. In this way, the research establishes a potential pathway to a much stronger model of anti-corruption regime assessment, moving beyond descriptive or purely normative accounts. This approach thus constitutes a substantive theoretical and methodological contribution to knowledge, providing a basis for comparative and socio-legal studies that look at how systems fight corruption domestically.

Another major contribution of the research is the emphasis on the underexplored socio-cultural causes of corruption in the Gulf context. Most of the literature on the legal and policy aspects of corruption concentrates on institutional capacity or legal compliance, while this research gives more consideration to the role of cultural phenomena (e.g., gift-giving, tribalism) and religion, which all impact how corruption is construed and practised and how laws, institutions, and policies develop. The socio-cultural imperatives, as shown here, sometimes blur the line between social obligation and unlawful benefit. The majority of the western literature on corruption (e.g., Harrington⁹⁸⁵, De Jaeger⁹⁸⁶, Stein⁹⁸⁷) often considers the issue of

⁹⁸³ Gloria Perez Torres, 'The Effectiveness of the International Anti-Corruption Legal Framework in the Context and Practice of Colombia' (2020) 27 *Journal of Financial Crime* 437.

⁹⁸⁴ Adam Graycar, *Handbook on Corruption, Ethics and Integrity in Public Administration* (Edward Elgar Publishing 2020) 31

⁹⁸⁵ Joanna Harrington, 'Addressing the Corruption of Foreign Public Officials: Developments and Challenges within the Canadian Legal Landscape' (2019) 56 *Canadian Yearbook of International Law/Annuaire canadien de droit international* 98.

⁹⁸⁶ Alexander De Jaeger, 'Governance and Corruption in Arm's Length Public Institutions: Two Belgian Case Studies' (2023) 25 *Public Integrity* 162.

⁹⁸⁷ Alex Stein, 'Corrupt Intentions: Bribery, Unlawful Gratuity, and Honest-Services Fraud' (2012) 75 *Law & Contemp. Probs.* 61.

corruption from a legal, institutional, or administrative standpoint, forgoing the considerations of how laws and institutions might be underpinned by cultural constructions of legality. Hence, this dissertation provided a significant socio-legal view of how, despite advancing their legal and institutional frameworks, Gulf countries still struggle with the influence of informal social norms, which contribute to the persistence of corruption. Thus, by facilitating the understanding of different elements of the anti-corruption framework and their relationship, this work critically underscores the need for re-evaluation of universal approaches to studying corruption efforts, in favour of careful consideration of cultural aspects.

This research is significant to both academics and policymakers. It offers a nuanced and context-specific understanding of anti-corruption initiatives that transcends mere legal compliance or perception-based indices. It gives scholars a novel interdisciplinary framework that incorporates legal analysis, institutional design, socio-cultural dynamics, policy, and practice, thereby enriching theoretical conversations surrounding governance and anti-corruption regimes. It gives practitioners important contextually adapted analysis of anti-corruption interventions in relation to international best practices and context-specific reforms rather than one-size-fits-all solutions. Moreover, by highlighting the limitations of global indices like the CPI, the research indirectly encourages policymakers to use these rankings with critical caution, and to create interventions that address root problems rather than mere symptoms. Overall, this study makes critical contributions that bridge theory and practice, and it provides a useful foundation for evidence-informed policymaking and future academic research.

9.4 REFORM RECOMMENDATIONS

Based on the conducted in-depth and comparative analysis of Kuwait, Saudi Arabia and the UAE's anti-corruption frameworks, policy and reform recommendations can be made. In order to enhance its anti-corruption framework, Kuwait should focus on expanding the investigative and prosecutorial powers of its Anti-Corruption Authority (KACA) to bring them more in line with its neighbours such as Saudi Arabia and UAE, where the fight against corruption has been more successful. Currently these powers are limited and KACA should be legally mandated to pursue independent investigations against a wider range of actors (e.g., the financial records of relatives of public officials or major public procurement contracts). Simultaneously, KACA should be reinforced with skilled personnel to enable it to perform its other duties. From the legal aspect, the definition of "public official" also needs to be expanded to include senior executives of state-owned enterprises, to better align with UNCAC and support an accountability culture consistent with the idea of public office. Kuwait could also consider institutional changes that introduce self-verification of asset declaration forms and proof of income, thereby lessening the work burden for prosecutors and limiting evasion opportunities. Kuwait can also amend its criminal code to make it illegal for public officials to leave Kuwait, if they are subject to an investigation. Kuwait also needs to bring the independence and autonomy of its institutions in line with UNCAC by reducing the power of the executive to appoint judges and the leaders of KACA. This will make KACA and the judiciary more effective at

investigating and prosecuting corruption, especially at the higher hierarchy levels. Alongside this, powers must be balanced by oversight mechanisms, such as habitual parliamentary audit routines for KACA and FIU to prevent abuse and selective underuse of power. Larger public engagement is needed in order to explain the difference between corruption and networking and to stop *wasta* feeding corruption. In sum, these targeted and isolated reforms would enable Kuwait to build a stronger, more holistic, proactive and enforceable anti-corruption regime.

Based on the findings of this research, Saudi Arabia is advised to increasingly focus on strengthening its judicial independence and transparency. More specifically, bolstering separation of powers as well as adding procedural protections against executive interference would lead to a more impartial enforcement of anti-corruption legislation. Following the example of Kuwait or the UAE, Saudi Arabia could adopt public servant asset declarations from officials and their family members. This would likely bolster accountability around public service conduct. By introducing concepts such as "undue advantage", and a reverse burden of proof on the prosecutor in the case of high-risk offences, Saudi Arabia could also better align its framework with UNCAC, which would strengthen prosecution in circumstances where proof of intent is a concern. Nazaha could commit to a long-term strategy of routine public reporting on activities, benefits, and stakeholder reviews, to independently assess the agency's impact in the long-term following calls for civil oversight. Finally, similar to Kuwait, *wasta* awareness training across public domains would help to reconcile socially developed realities with the legal changes and criminal code. All of the above reforms could add value and help create a much more transparent anti-corruption system that is culturally appropriate and accountable.

Despite being one of the least corrupted Gulf countries according to CCI and CPI indexes, the UAE should still reform its framework in order to better align with UNCAC and become more accountable and transparent. Specifically, the UAE should focus on judicial independence by reforming the selection and tenure of judicial appointments, limiting executive influence, and reinforcing impartial adjudication. The Federal Penal Code should include clear definitions of concepts related to bribery offences, such as "unentitled gift" and "privilege", with these terms being consistently interpreted and applied. As private entities play a considerable role in public contract delivery, expanding anti-bribery provisions into the private sector would be warranted, as would the introduction of a standalone antic-corruption law criminalising all corruption offenses. Introducing the concept of illicit enrichment into such a law would also help streamline the judicial process in the sphere of anti-corruption and enable public officials to justify unexplained wealth, which could positively influence deterrence.

When looking to enhance institutional integrity, the UAE should undertake a holistic review of anti-corruption institutions to differentiate jurisdictions, identify potential synergies, and eliminate duplication, especially in emirates that do not have a local anti-corruption framework. The UAE should also identify existing programmes to engage and promote core integrity values in education from an early age, thus countering the negative effects of *wasta*. Finally, the UAE should pursue the complete transparency of public access

to information within the context of procurement processes, the auditing of public spending, and contractual arrangements with third parties. Such measures should help to reduce the risk of corruption and would ultimately build public confidence in the public procurement framework. Collectively, these recommendations would contribute toward a more transparent, accountable, and ultimately more resilient anti-corruption framework in the UAE.

9.5 RESEARCH LIMITATIONS

While this thesis provides a thorough comparative and socio-legal analysis of anti-corruption frameworks in Kuwait, Saudi Arabia, and the UAE, there are a number of limitations. Methodologically, the thesis only focuses on qualitative data, in particular, the legal texts, policy documents, and secondary literature, which limits the possibilities for empirical validation and consideration of anti-corruption law and policy enforcement outcomes. Also, the lack of primary fieldwork (i.e., interviews with policymakers or anti-corruption officials) limits the insight into implementation realities and institutional dynamics. Additionally, critical engagement with certain cultural issues (e.g., *wasta*) is based more on the literature than on primary ethnography or sociological data. Due to issues of data transparency and availability in the UAE and Saudi Arabia, data on institutions' work and access to case law was limited. Finally, a focus on only three countries may make it difficult to generalise the results, although the findings of the thesis remain relevant for applications in the Gulf and other resource-rich contexts with similar socio-political characteristics.

9.6 PERSONAL REFLECTION AND OBSERVATIONS

Reflecting upon the reforms within Kuwait, Saudi Arabia, and the UAE as a whole, my assessment is that legal and institutional changes have had inconsistent real-world effects. Where there have been rules with credible enforcement power and predictable procedures I observe more substantial improvements; where there are rules that are mostly textual, fragmented, or that are subject to and dependent upon executive discretion, the outcome appears to be surface-level compliance rather than deep integrity improvements.

The anti-corruption framework in Kuwait has improved mostly theoretically: the establishment of Nazaha, the adoption of integrity strategy, and asset declarations are important but practically there are unaddressed concerns. The constrained levels of KACA's mandate, the narrow definition of "public officials", procedural vulnerabilities (e.g. fleeing suspects) result in limited prosecution outcomes. Thus, the reforms read as process-focused and low on impact: the state shows intent and adherence to international standards, yet weak proactive investigation of corruption means that transitioning from statutes into convictions or actual corruption prevention is impeded. The political will to tackle corruption appears intermittent: there is enough will to legislate, not enough to empower. As a result, the perceptions of corruption have stagnated.

In Saudi Arabia, the combination of centralised investigative powers, publicised actions (e.g. the 2017–19 crackdown on corruption), and digitalisation of administrative processes have resulted in observable deterrent effects in parts of the public sector. There are new corruption reporting channels, increased

corruption case reporting, and some procurement frictions were resolved. However, these benefits are co-existing with continuing opacity in security-sensitive sectors and limitations in judicial independence. My opinion is that Saudi Arabia exhibits the strongest short-term political will to tackle corruption among the three nations, but its effects are limited by institutional independence: without more robust separation of powers and public sector transparency requirements, enforcement risks remaining selective and therefore exposed to criticism of politicisation.

Overall, the legal-institutional toolkit is most developed in the UAE, notwithstanding executive influence over the judiciary, lack of access-to-information and uneven federal-emirate coverage: robust penal code, improved AML law, proactive FIU, advancing audit authority and action (not only on money laundering), and increasing efficiency in the state's administrative mechanisms and cross-border enforcement. The system is performing well in a technocratic space and shows efficiency against corruption, but in terms of public facing transparency and independent scrutiny it is lagging, which risks undermining the culture of legality and wide-spread corruption awareness.

Across all three states, I observe that that the most important constraints are institutional independence and transparency. Saudi Arabia's top-down will led to visible action, which now must be politically insulated; Kuwait should shift from the formal adoption of best practices to empowering enforcement. The UAE should leverage their institutional capacity to deepen the rule of law and institutional independence and build on integrity. Without those reforms, gains in corruption perceptions will remain limited and uneven.

This assessment as well as the findings of the work itself are nevertheless should be subject to future scrutiny due to ongoing process of anti-corruption framework reform in all three countries even though currently-implemented adjustments are not fundamental. In Kuwait, incremental legislative change is ongoing with tightening law on embezzlement of public funds and possible expansion of Nazaha's functions on top of the e-filing of asset disclosure.⁹⁸⁸ In Saudi Arabia, legal changes are also underway. However, no major shifts are expected in terms of institutional independence. Specifically, whistleblower law entered into force in summer 2024, but it is yet to demonstrate its effects on the rate of corruption reporting and exposure of high-profile corruption.⁹⁸⁹ In UAE, framework changes also remain cosmetic, with most recent additions being related to tightening whistleblower protections.⁹⁹⁰ Hence, in the short-term frameworks are likely to remain stable with no evidence of systemic reforms underway which nevertheless justifies a subsequent re-investigation after a more substantial period of time has elapsed.

⁹⁸⁸ Kuwait Times, 'Kuwait Takes Big Steps in 2025 to Enhance Justice, Transparency' (Kuwait Times, 26 April 2025) <<https://kuwaittimes.com/article/26991/kuwait/other-news/kuwait-takes-big-steps-in-2025-to-enhance-justice-transparency/>> accessed 12 August 2025.

⁹⁸⁹ 'Royal Decree D/148 Approving the Law on the Protection of Whistleblowers, Witnesses, Experts, and Victims – Decree' (2024) <<https://decreesa.com/p/502202/>> accessed 12 August 2025.

⁹⁹⁰ Richard Gibbon, Malak Abbas and Molly McKenna, 'Time Is of the Essence to Implement New ADGM Whistleblower Protection Regulations | Global Investigations & Compliance Review' (*Squire Patton Boggs*, 2025) <<https://www.globalinvestigations.blog/whistleblowing/time-is-of-the-essence-to-implement-new-adgm-whistleblower-protection-regulations>> accessed 12 August 2025.

9.7 SUGGESTIONS FOR FUTURE RESEARCH

This research opens certain pathways for future research on anti-corruption frameworks in the Gulf region. First, qualitative field investigations using semi-structured interviews with decision makers and anti-corruption agents could deepen understanding of how politics influence the actual enforcement of anti-corruption legislation. Most importantly, such research could uncover the informal processes that could influence anti-corruption practices, especially the extent to which institutions are free from external pressures, thus providing another layer of evidence to the suggestions made in this comparative desk-based research, which is mostly theoretical.

Secondly, there is much research to be done on digital innovations in the context of the Gulf region, such as AI-powered analytics and investigations, and digital procurement platforms. This research could explore how such technologies contribute to transparency and the monitoring of corruption in public procurement and public financial disclosure. Empirical research could help establish whether and to what extent new digital means of information exchange are vulnerable to corruption compared to the traditional processes, with practical suggestions for policy.

Thirdly, the role of public engagement, such as whistleblower protection and public awareness campaigns, could be considered further through case studies that employ either public surveys or ethnographic methods to assess the level of citizen participation in fighting corruption. These could also measure citizens' levels of trust in anti-corruption institutions.

Finally, more comparative research of this kind could deepen the current evidence base. New studies could add additional regional players' perspectives to those of the existing three compared in this study and identify best practices and holistic frameworks for policy initiatives transferable throughout the Middle East. In summary, there is significant opportunity for future research to explore technological and public engagement dimensions to enhance the depth of our understanding and the practicability of anti-corruption policies regionally.

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APPENDIX A: JUDICIAL SYSTEMS IN KUWAIT, SAUDI ARABIA AND UAE

Table 8.1. Comparison of the Judicial Systems in Kuwait, Saudi Arabia and UAE (summative information from chapters 5,6,7)

Country	Structure of Judiciary	Separation of Powers	Judicial Independence	Rule of Law	Strengths	Drawbacks
Kuwait	Civil law-based system with a three-tier court structure (First Instance, Appeal, Cassation). Prosecutors are part of the judiciary but under Ministry of Justice.	Formally recognised but weak in practice. Executive dominance undermines judicial and prosecutorial autonomy.	Public Prosecutors administratively subordinate to executive. Judges lack security of tenure and face political interference risks.	Rule of law compromised by lack of prosecutorial oversight, procedural deficiencies, and opaque processes.	Formal structure and institutional setup exist; adoption of UNCAC; some accountability mechanisms in place.	Concentration of prosecutorial power; executive interference; poor procedural safeguards; non-compliance with UNCAC Articles 11 and 36.
Saudi Arabia	Shari'ah-based system with hierarchical courts. Recently established Public Prosecution Authority to increase	Limited. King holds central authority over judiciary; High Judicial Council not fully independent.	Gradual reforms to enhance prosecutorial independence, but judiciary remains under strong royal influence.	Efforts to standardise procedures ongoing, but religious interpretations and executive discretion weaken legal	Introduction of Public Prosecution Authority; specialised courts; some codification efforts under Vision 2030.	Dominance of executive over judiciary; unclear separation of powers; judicial decisions not fully autonomous.

	independence.			predictability		
UAE	Mixed system: civil law and Shari'ah in federal courts; common law in financial free zones (DIFC, ADGM). Separate federal and emirate-level courts.	Constitutionally enshrined, but executive influences judicial appointments and tenure. Inconsistent across emirates.	Judicial independence varies by jurisdiction. DIFC/ADGM courts more independent; federal and local courts under executive influence.	Rule of law more developed in commercial jurisdictions. Lack of binding precedent and publication of rulings limits broader legal transparency.	Modernised court infrastructure; independent commercial courts (DIFC/ADGM); hybrid legal system accommodates global standards.	Fragmented judiciary; short-term contracts for judges; inconsistent application of law across jurisdictions; limited transparency.

APPENDIX B: LEGAL INSTRUMENTS AGAINST CORRUPTION IN KUWAIT, SAUDI ARABIA AND UAE

Table 8.2 Summary of the key legal instruments against corruption in Kuwait, Saudi Arabia and UAE (summative information from chapters 5,6,7)

Country	Laws	Anti-corruption elements introduced	Strengths	Weaknesses
Kuwait	Law No. 16 of 1960	Broad bribery definition, consideration of intangible benefits	Foundation for subsequent laws	Gaps in applicability
	Law No. 31 of 1970	Enhanced bribery definition, introduced the confiscation of illegal gains, recognises the concept of ill intent	The shift of the punishment on public servants, compliant with UNCAC	Gaps in applicability (difficulty in proving intent)
	Law No. 1 of 1993	Introduced transaction monitoring, reporting obligations, international cooperation and increases severity of penalties	Focused on asset recovery and scaling punishment to the severity of crimes.	Complexity of conditions for applicability left loopholes for subtler crimes like insider trading
	Law No. 2 of 2016	Established the Nazaha Anti-Corruption Authority; introduced and properly defined asset disclosures and illicit gains definitions, protects whistleblowers, defined many corruption crimes such as embezzlement, influence trading, etc.	Zero-tolerance approach to corruption; promoted transparency and whistleblower protections.	Excluded certain public servants; broad discretion for "illicit gains" led to potential for abuse.
Saudi Arabia	Royal Decree No. 43 of 1958	Criminalised embezzlement and abuse of power; laid initial anti-corruption legal foundation.	Broad application to public and private sectors.	Lack of clarity on abuse of power; no enforcement mechanisms for asset tracing.

	Anti-Bribery Law (1962, amended 2018 & 2021)	Expanded definitions to include nepotism, favouritism, and private-sector bribery; introduced cross-border applications.	Strong focus on expanding coverage to private sector and multinational entities.	Proof of intent difficult to establish; cultural practices (e.g., wasta) create enforcement challenges.
	Combating Financial Fraud and Deceit Law (2021)	Enhanced penalties for financial fraud; introduced escalating punishment for recidivism.	Scaled penalties proportional to the severity of crimes; addressed gaps in financial fraud prosecution.	Overlaps with other laws create enforcement inconsistencies; lack of codified anti-corruption framework.
UAE	Federal Penal Code (1987)	Criminalised bribery, embezzlement, and influence trading; included provisions for post-act bribery and extraterritorial jurisdiction.	Comprehensive scope; addresses complex bribery scenarios, including indirect transactions.	Ambiguity in defining "privileges" or "grants"; limited enforcement for subsidiaries operating abroad.
	Federal Law No. 20 of 2018 (AML Law)	Established the Financial Intelligence Unit (FIU); mandated financial transparency and international cooperation.	Focused on preventive measures; supports asset tracing and international collaboration.	Over-reliance on financial institutions; lack of enforcement incentives for non-compliance.
	Federal Human Resources Law (2011, amended 2016 & 2022)	Introduced ethics standards for public servants; defined bribery and prohibited exploiting positions for personal gain.	Combined legal and moral obligations; reinforced transparency as a value for federal employees.	Limited coverage beyond federal employees; lack of detailed guidelines for enforcing ethical standards.

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APPENDIX C: ANTI-CORRUPTION AGENCIES IN KUWAIT, SAUDI ARABIA AND UAE

Table 8.3. Summary Table on Anti-corruption Agencies in Kuwait, Saudi Arabia and UAE (summative information from chapters 5,6,7).

Country	Name of the Agency	Jurisdiction	Powers and Responsibilities	Source of Funding	Independence, Accountability and Transparency
Kuwait	Nazaha (Kuwait Anti-Corruption Authority, KACA)	All spheres of public sector except for natural resources and defence	<p><u>Prevention:</u> Developing anti-corruption measures and suggesting improvements for anti-corruption legislation, promoting public awareness of corruption, and facilitating whistleblowing and the protection of whistleblowers.</p> <p><u>Collaboration:</u> Nazaha assists in identifying illicit enrichment offences and reporting corruption cases to other authorities such as Public Prosecution Office.</p> <p><u>Detection and monitoring:</u></p>	Funded through the national government budget.	As per the law, the Nazaha's leadership is appointed by the Minister of Justice, including the Chairman and Board of Trustees. The Minister also supervises Nazaha to whom it is accountable. This structure ties the agency to the executive branch, potentially affecting its autonomy. The agency publishes regular annual reports and provides news on its activities on the website.

			<p>preliminary investigation of submitted financial and administrative reports</p> <p><u>Enforcement:</u> none.</p>		
Saudi Arabia	Oversight and Anti-Corruption Authority (Nazaha/OACA)	Public and private sectors where the government has a significant stake.	<p><u>Prevention:</u> policy analysis and ideation, public education.</p> <p><u>Collaboration:</u> represents Saudi Arabia in international anti-corruption forums and contributes to policy development.</p> <p><u>Detection and monitoring:</u> monitoring compliance with anti-corruption laws, collection and investigation of corruption reports and conducting follow-up inquiries</p> <p><u>Enforcement and prosecution:</u> investigating corruption allegations,</p>	Saudi Nazaha enjoys financial independence. Its budget is managed separately from other ministries and branches of government and is held in a special account with the Saudi Arabian Monetary Authority.	As per the law establishing Nazaha, the agency reports directly to the King, ensuring high-level autonomy from other government bodies. The agency's president is appointed by royal decree and holds ministerial rank. While this structure guarantees independence from ministerial influence, it ties accountability to the monarchy. Transparency is severely limited by the direct accountability to the King only. The

			authorising arrests, recovering assets from overseas.		agency publishes no annual reports and only news on its meetings and collaborations.
	Capital Market Authority (CMA)	Public and Private organisations involved with capital markets and Saudi stock exchange.	<p><u>Prevention:</u> Ensures fairness, efficiency, and transparency in securities transactions by helping the legislation branch to develop policies and laws.</p> <p><u>Collaboration:</u> Collaborates with other agencies like Nazaha on financial corruption cases intersecting with public and private corruption.</p> <p><u>Detection and monitoring:</u> controls for illicit enrichment, insider trading, and fraudulent practices in the capital market, investigates suspicious transactions.</p> <p><u>Enforcement:</u> none.</p>	CMA operates under the government's financial framework but maintains financial and administrative autonomy.	CMA reports to the President of the Council of Ministers (the Prime Minister). The agency's independence is safeguarded by the law through its direct connection to the Prime Minister, avoiding collective accountability to the Council of Ministers, but this also centralises authority over its operations.

UAE	State Audit Institution (SAI)	Federal government entities, including ministries and public organisations where the government owns at least a 25% stake. SAI can, upon request from local authorities, investigate entities in specific Emirates.	<p><u>Prevention:</u> proposes improvements to laws and policies.</p> <p><u>Collaboration:</u> collaborates with other institutions, including those abroad, by engaging in international cooperation to adopt best practices in financial auditing and anti-corruption efforts.</p> <p>Domestically, SAI works closely with federal and local entities to enhance compliance and facilitate investigations through legal obligations for cooperation.</p> <p><u>Detection and monitoring:</u> reviews financial records, audits public contracts, enforces compliance with financial regulations via pre- and post-</p>	SAI is funded through the national budget, operating with financial independence. Its budget is managed separately and is held as a special account to ensure autonomy in its operations.	Functional, organisational, and financial independence from the executive authority guaranteed by the law. SAI reports to the UAE Parliament, Council of Ministers, and President. The SAI president is appointed by federal decree and serves at a ministerial rank, ensuring a substantial degree of independence from executive influence while remaining accountable to federal authorities.
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			<p>expenditure reviews and the scrutiny of federal government entities. SAI has the power to initiate audits on suspicion.</p> <p><u>Enforcement and prosecution:</u> seizing funds of individuals suspected of financial or administrative corruption and imposing travel bans on such individuals. SAI also refers cases of financial misconduct, fraud, or corruption to public prosecutors and law enforcement agencies, providing evidence and materials from its investigations to facilitate legal action.</p>		
	Financial Intelligence Unit (FIU)	Covers all financial institutions and designated	<p><u>Prevention:</u> researching statistics on financial crimes and corruption</p>	Funded through the UAE Central Bank	Operates under the UAE Central Bank, with limited autonomy. The director is

		non-financial businesses and professions in the UAE.	<p><u>Collaboration:</u> Exchanges information with domestic and international agencies; assists law enforcement and prosecution.</p> <p><u>Detection and Monitoring:</u> Analyses reports (on its own request) of suspicious financial transactions to detect illicit activities. Maintains a database for tracking suspicious transactions.</p> <p><u>Enforcement:</u> none. Refers financial crime cases to competent authorities.</p>		appointed by the Central Bank Governor, creating potential dependency. Delivers open-access annual reports for transparency.
Dubai Economic Security Centre (DESC)	Covers Dubai government entities, entities subsidised by the Dubai government, private businesses,	<p><u>Prevention:</u> Monitors financial transactions and promotes compliance with anti-corruption laws.</p> <p><u>Collaboration:</u> Shares information</p>	Funded by the Dubai Government	Accountable to the Dubai government and Executive Council. Reports activities to the Executive Council but does not publish reports in	

		and charitable organisations within Dubai.	with judiciary and law enforcement; works with Dubai Financial Audit Authority (DFAA). <u>Detection and Monitoring:</u> Investigates suspicious financial activities within its jurisdiction. <u>Enforcement:</u> Limited to compliance monitoring; cannot seize funds or impose sanctions directly.		open-access. Independence is constrained by appointment-based leadership.
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APPENDIX D: ANTI-CORRUPTION EFFORTS IN PUBLIC CONTRACT AND PROCUREMENT IN KUWAIT, SAUDI ARABIA AND UAE

Table 8.4. Key features of anti-corruption efforts in Kuwait, Saudi Arabia and UAE (summative information from chapters 5,6,7)

Country	Key Anti-Corruption Features	Strengths	Limitations
Kuwait	<ul style="list-style-type: none"> - Legislative framework: Law No. 25 of 1996 (Disclosure of Commissions), Law No. 31 of 1970, Law No. 1 of 1993, and Law No. 2 of 2016 (set the main principles, procedures and safeguards for corruption and fraud-free procurement process). - Emphasis on transparency through digitalisation (e.g., e-procurement) and decentralisation of tender processes. - Mechanisms for confiscation and forfeiture of illicitly gained funds. - Central Tenders Agency for monitoring contracts. - Broad definitions of corruption-related offenses such as bribery and embezzlement. 	<ul style="list-style-type: none"> - Detailed legal definitions cover multiple corruption offences. - Digitalisation and decentralisation enhance transparency and accountability. - Effective mechanisms for fund confiscation and monitoring. 	<ul style="list-style-type: none"> - Financial disclosure system lacks effectiveness. - Lacking transparency in oil and gas and defence procurement. - E-procurement's anti-corruption benefits are limited by legal exemptions in sensitive sectors such as defence and oil and gas due to being classified as state secret.
Saudi Arabia	<ul style="list-style-type: none"> - Tenders and Procurement Law (2020) establishes cancellation of tenders/contracts for corruption-related offenses (e.g., bribery, fraud). - price regulation prevents price-fixing. - conflict of interest and nepotism among public officers is reflected in the Tenders and Procurement Law 2020. - Centre for Spending Efficiency establishes tender-related data follow-up. 	<ul style="list-style-type: none"> - Comprehensive legislative approach with cancellation clauses for corruption cases. - enhanced procurement fairness thanks to Pricing regulation and conflict-of-interest provisions. 	<ul style="list-style-type: none"> - Ambiguity in enforcement mechanisms leads to potential misuse. - Lack of bidder transparency and accountability (lacking due diligence for bidders). - no mandatory and consistent application of e-procurement system (Etimad).
UAE	<ul style="list-style-type: none"> - Federal Penal Code Article 80 and Federal Laws No. 11 and 12 of 2023 addressing bribery, fraud, and abuse of power. - Mandated open bidding and 	<ul style="list-style-type: none"> - Digitalisation efforts (e.g., DPP) reduce risks of bribery and promote transparency. 	<ul style="list-style-type: none"> - Digital platform is not mandatory which limits its anti-corruption effectiveness. - Insufficient whistleblower protection.

	<p>conflict-of-interest provisions.</p> <ul style="list-style-type: none"> - Use of Digital Procurement Platform (DPP) to enhance transparency SAI oversight for procurement processes. -Efforts primarily focus on transparency and digitalisation to reduce corruption risks. 	<ul style="list-style-type: none"> - Conflict-of-interest measures and SAI oversight provide basic safeguards against corruption. 	<ul style="list-style-type: none"> - public hearings are not conducted. - Conflict-of-interest measures lack enforcement clarity.
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APPENDIX E: PUBLIC FINANCIAL DISCLOSURE RULES IN KUWAIT, SAUDI ARABIA AND UAE

Table 8.5. Comparison of public financial disclosure rules (summative information from chapters 5,6,7)

Country	Who Must Disclose	Disclosure Requirements	Penalties for Non-Disclosure	Exemptions	Governing Laws	Compliance with UNCAC
Kuwait	Public officials across 3 tiers (e.g. ministers, MPs, undersecretaries) under Law No. 2/2016	Initial, periodic (every 3 years), and final disclosure; assets and liabilities declared	Up to 3 years' imprisonment and fines (KD 3,000–30,000), though rarely enforced	None explicitly stated in the law	Law No. 2/2016 and Executive Regulation Decree No. 300/2016	Partially compliant; strong on paper but weak enforcement
Saudi Arabia	Senior public officials and those in sensitive positions under the Anti-Bribery Law and Code of Conduct	Limited requirement; varies by agency; internal compliance declarations rather than public asset registries	Administrative or disciplinary action; no routine public prosecution for non-disclosure	Some senior security and royal appointees may be exempted informally	Anti-Bribery Law (Royal Decree No. M/36 of 1992); Public Sector Conduct Codes	Partially compliant; limited scope and poor implementation

UAE	No comprehensive asset disclosure law for public officials; some codes of conduct exist	No mandatory disclosure of assets or liabilities for ministers, judges, or MPs	No penalties exist due to absence of mandatory framework	Most public officials effectively exempt due to lack of applicable law	UAE Penal Code (general provisions) ; no standalone disclosure law	Non-compliant; absence of disclosure obligations contradicts UNCAC Article 8
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APPENDIX F: POLICIES AGAINST CORRUPTION IN UAE, SAUDI ARABIA AND KUWAIT

Table 8.6. Summary of all key policy developments by country (summative information from chapters 5,6,7).

Country	Policies	Main Changes
Kuwait	Anti-Corruption Strategy 2019-2024	Clarifies the priorities of the government in addressing the key issues in public, private, societal spheres and special organisations. Emphasises the need for public corruption awareness and reporting.
	Access to information (policy and law)	Grants any every citizen, non-national, or organisation to request information from the government. Also provides an ability to request information about public procurement and contracts. National defence procurement and natural resource procurement are exempt from this law.
Saudi Arabia	Crackdown on corruption, (zero tolerance policy)	Expedited investigation, arrest, and seizure of stolen assets; initiation of significant anti-corruption actions
	Nazaha (OACA) Reform of 2019	Expansion of jurisdiction, capability and responsibility thanks to merging with other organisations. Centralisation of anti-corruption authority in Saudi Arabia and establishment of personal control by the King.
	Real Estate Market Platform	Digitisation of property transactions to enhance purchase and sale transparency and reduce opportunities for corruption and fraud.
UAE	Emirates Integrity Network	An initiative targeting the improvement of business ethics, integrity and transparency.
	Widening cross-border cooperation	Hosting MENA FATF Workshop to share and discuss global best practices in fighting corruption. As of 2024, UAE entered 44 mutual legal assistance and cooperation agreements on anti-corruption (memorandums of understanding and data exchange).
	Whistleblower Digital Service	Enhancing availability of whistleblowing services and awareness of their existence throughout the population.

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