

ENGINEERING COUNCIL OF ZIMBABWE

"Regulating Engineering Practice in Zimbabwe"



Anti-Corruption Strategies for Optimising Construction and Development Projects Delivery in the Developing World: Experiences and Models for Sub-Saharan Africa.

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Outline of My Presentation

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- **Role of All stakeholders in Construction Corruption**
- **Recommendations**
- **Conclusion**

Corruption and Sustainable Development: They cannot co-exist together !!!



Wrong Reasons to be in the News

**professional engineers board
singapore**

» NICOLL HIGHWAY COLLAPSE

**Ex-Ford Engineer Charged With Stealing
Trade Secrets**

**engineer suspended
from practice for two years**

Engineering panel
rules that he failed to
exercise due diligence

By GOH CHIN LIAN

PRESS RELEASE

**CANCELLATION OF ACCREDITED CHECKER'S REGISTRATION
UNDER THE BUILDING CONTROL ACT AND PROFESSIONAL
ENGINEERS' REGISTRATION UNDER THE PROFESSIONAL
ENGINEERS ACT**

Building and Construction Authority



PRESS RELEASE

LEGAL ACTION AGAINST TWO PROFESSIONAL ENGINEERS

THE STRAITS TIMES FRIDAY, SEPTEMBER 13, 2013

Former hospital exec gets jail for seeking bribe

He offered to favour old
friend's firm in tender for
contract worth \$17 million

By IAN POH

as its deputy director (projects and development) in December 2008, Peh contacted Mr Sim Geok Soon, a close friend and executive director at PBT's parent company.
He told his friend that he had joined the hospital and was handling a "fast-paced" project, the court heard.
After Mr Sim confirmed that PBT would be interested in the project, Peh showed him around the

firm's bid was only the seventh lowest of 10 received.

Shocked, Peh gave a series of instructions to the hospital's project consultant that would favour his firm.

He told the consultant to "find some reasons to disqualify the lowest bid and proceed to the next stage of tender, and also mentioned some of the irregularities made by PBT during an earlier tender process."

Ex-BP engineer charged with deleting texts after Gulf oil spill seeks dismissal of indictment

By Associated Press, August 27, 2013

Introduction

- Corruption is broadly defined as the abuse of public office for private gain and has been generally acknowledged to be a universal problem. It encompasses all activities involving bribery, deception and/or dishonesty in order to gain personal or corporate profit.(It occurs both in the developed world and the developing world).
- The harmful effects of corruption are severe on the poor in the developing world like Africa who:
 - are hardest hit by economic decline,
 - are most reliant on the provision of public services,
 - are least capable of paying the extra costs associated with bribery, fraud, and the misappropriation of economic privileges.
- Corruption kills as it sabotages policies and programs that aim to reduce poverty.

Introduction

- Corruption ranks high as among the greatest obstacles to economic and social development.
- It undermines development by distorting the rule of law and weakening the institutional foundation on which economic growth depends.
- Corruption is pervasive in developing countries because of weak institutions and the lack of effective checks and balances.
- It is mainly the funds from the developed world, the development banks and donors that circulate in corrupt practices in the developing world.
- The construction sector is thus particularly vulnerable to corrupt practices since it involves significant building contracts as well as monopolistic services.

Categories of Corruption

■ **Corruption practices found in the Construction sector can be grouped in three broad areas:**

- 1. Corruption within the public sector**
- 2. Corruption in the interaction between public and private sector (procurement)**
- 3. Corruption between public sector and consumers (petty corruption).**

Nature and Extend of Corruption in Africa and the Developing World : Myths versus Reality.

- Corruption 'occurs in all nations, both developed and developing countries, in public and private sectors, as well as non-profit organizations'.
- The problem of corruption within or across nations is not a recent phenomenon, nor is it exclusively a Third World problem . (Ghazanafar and May, 2000).
- However, corruption exists both in developed and developing countries in different forms, degrees and has differing consequences.
- Furthermore, within those countries falling in the category of developing countries, ranging from the bigger, relatively well developed countries such as Indonesia to the smaller poorly developed countries such as Equatorial Guinea, we can observe differences in corruption practices pertaining to the unique economic, political, and social features of each country.

Background to Changing Anti-Corruption Environment

Previously.....

- 20 years ago, corruption was widely regarded as being:
 - “normal”
 - “part of the culture”
 - “an inevitable part of business life”
 - “a necessary economic oil”.
- Business people from developed countries which enforced anti-corruption rules domestically believed that different rules applied when working in developing countries.
- It was inconceivable that a UK director would go to jail for a corrupt act committed overseas, or that a UK company would be convicted and fined for overseas corruption.

But now.....

- 20 years later, there are numerous examples in the UK, USA and internationally of corporate prosecutions or plea bargains, and jail sentences for individuals for corruption.
- What has changed, and why?
- What will this lead to?

The realisation that corruption was damaging

- Change probably started in the 1990s with the gradual realisation that corruption was damaging.
- Evidence emerged that:
 - Corruption kills. e.g. houses collapse in earthquakes and kill people.
 - Massive plunder was taking place of public funds.
- Economists who previously argued that corruption helped growth were silenced, and a consensus emerged that corruption retarded growth.

Counting the costs of corruption.

- Corruption is one of the greatest obstacles to the development of safe and adequate infrastructure.
- Project funds are diverted to corrupt officials, funders, contractors, consultants, suppliers and agents.
- Human cost
 - **Stealing of public money**
 - **Fewer good roads, schools and hospitals**
 - **Poor safety and environmental procedures**
 - **People die due to lack of food and healthcare, and dangerous infrastructure.**
- Economic cost
 - **World Bank and EU Commission estimate of the cost of corruption (bribery and fraud) generally: 5% of the world's gross product = US\$1.5 trillion p.a.**
 - **Conservative estimate of cost of corruption in the international construction sector: 5% of the global construction sector = US\$200 billion**
- National Development is affected by levels of development
- Project implementation is compromised by corruption

Moves toward change

- With the growing realisation that corruption was damaging, demands for change emerged.
- In the 1990s, several organisations led change. For example:
 - Transparency International established.
 - The Organisation for Economic Co-operation and Development (OECD) established anti-bribery working group.
 - The USA began to advocate that other countries adopt similar legislation to Foreign Corrupt Practices Act 1977
- Realisation grew that nothing would change unless there was international consensus. Calls emerged for international anti-corruption treaties to be signed.

International treaties

- Many international and regional treaties have been signed during the last 15 years requiring member states to implement anti-corruption laws and procedures. For example:
 - The United Nations Convention against Corruption (2003)
 - The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1999)
 - The African Union Convention on Preventing and Combating Corruption (2003)
 - The Inter-American Convention against Corruption (1996)
 - The Council of Europe Criminal Law Convention on Corruption (2002)

The purpose of the treaties

- Treaties require signatory countries to increase their anti-corruption efforts by:
 - improving their laws to criminalise corrupt acts
 - increasing resources allocated to investigating and prosecuting corruption, and
 - improving co-operation and exchange of information between countries.
- The two treaties which have probably had the most impact are:
 - The United Nations Convention against Corruption
 - The OECD Convention.

Laws

- Most countries have changed their laws in accordance with treaty requirements. Bribery and other corruption offences are therefore crimes worldwide.
- All OECD countries have now made it a crime for their nationals and organisations to bribe overseas. As a result, a person or organisation may be liable for corruption both:
 - In the country where the corrupt activity took place; and
 - In person or organisation's home country.
- The US Foreign Corrupt Practice Act 1977 and UK Bribery Act 2011 have had a significant impact.

Donor requirements

- Donors (World Bank, AfDB, ADB, IADB, EBRD, EU etc.) and Export Credit Agencies (ECGD, USAid etc.) have tightened up on anti-corruption requirements.
- Most of them debar companies and individuals which have committed corruption.

Prosecution (1)

- Prosecution agencies worldwide are now starting to investigate and prosecute companies and individuals for corruption. The US is particularly active. The UK is becoming active. There have been many recent major cases in the infrastructure sector.
- **Siemens:**
 - Siemens has settled with German and US prosecutors for fines of \$1.6bn. Some Siemens executives imprisoned in Germany.
- **Alstom:**
 - Swiss subsidiary of French engineering company Alstom fined \$42m by Swiss authorities in 2011 in relation to bribery in relation to securing power station contracts in 15 countries.

Prosecution (2)

- **TSKJ joint venture - Bonny Island - Nigeria:**
- US Department of Justice fines for bribe payments to secure liquified natural gas contract:
 - Halliburton (Kellogg Brown and Root) (USA): \$579m (2009)
 - Technip (France): \$338m (2010)
 - Snamprogetti (ENI/Saipem) (Italy): \$365m (2010)
 - JGC (Japan): \$218m (2011)
 - Marubeni (Japan): \$54m (2012)
- Individuals imprisoned:
 - KBR CEO
 - TSKJV agent.

Prosecution (3)

- **Balfour Beatty:**
 - Serious Fraud Office (UK) in 2008 obtained a Civil Recovery Order of £2m against Balfour Beatty in relation to payment irregularities during the construction of the Bibliotheca Project in Alexandrina, Egypt.
- **AMEC:**
 - SFO in 2009 obtained a Civil Recovery Order of £5m against AMEC in relation to the receipt of irregular payments from a project in which AMEC was a shareholder.
- **Mabey Bridge**
 - Mabey Bridge convicted and fined £3.5m for corruption. Managing director and sales director imprisoned.

Recent Prosecution China Railway Corruption Case Study

Former railway minister Liu Zhijun was given a suspended death sentence in July (2013) for accepting **a total of 64.6 million yuan** in bribes to help 11 people secure contracts and promotions. His female colleague Ding Shumiao is accused of giving Liu more than 49 million yuan and arranging sexual favours for him, she will face trial in Beijing for bribery and illegal business activities after she "intervened in bidding for dozens of railway projects", the China Daily (2013, September) reported, citing prosecutors.

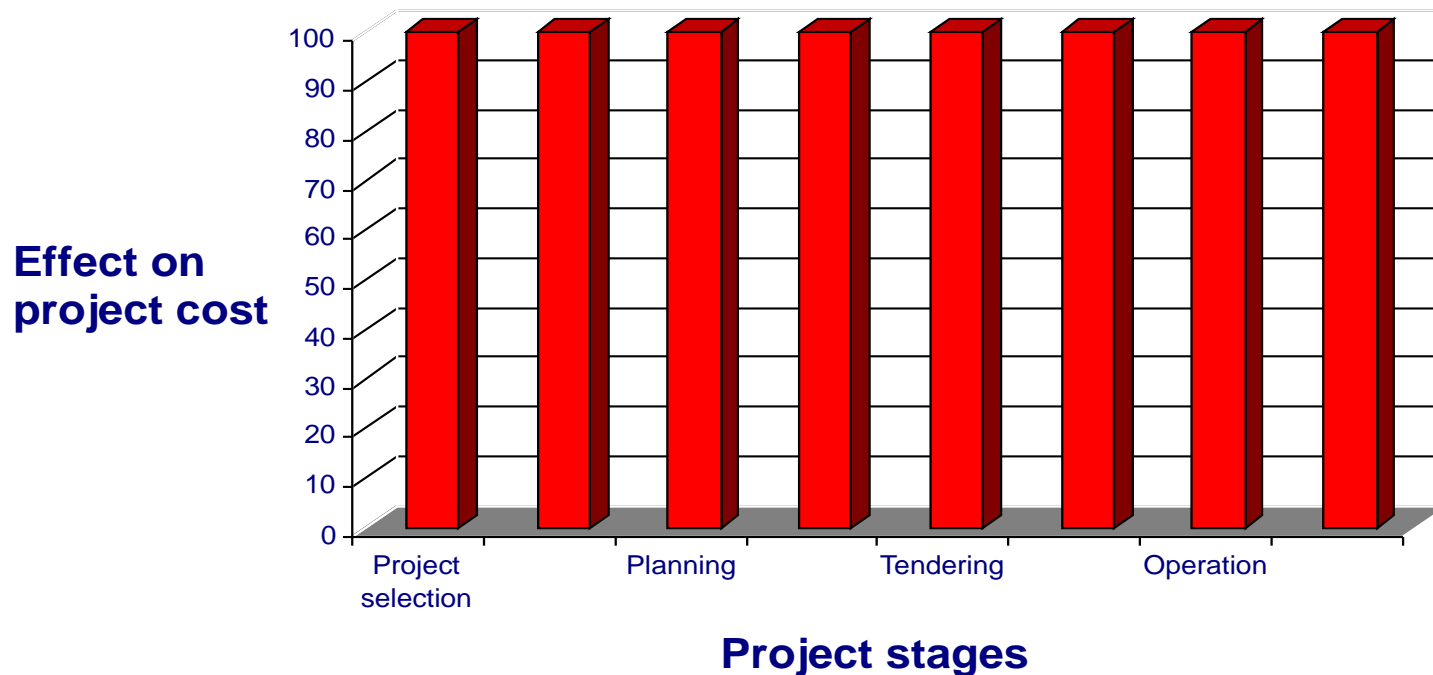


.....China Railway Corruption Cases

- The alleged total in inappropriate activities were equivalent to a quarter of China's entire national railway investment in 2010.
- In March the railways ministry was disbanded, with its administrative functions handed to the transport ministry and its commercial role given to a new China Railway Corporation.
- The anti-corruption campaign has also targeted a former senior economics policymaker, top executives from a major state-owned oil firm and numerous low-ranking officials, but has not yet introduced systematic but has not yet introduced systematic reforms in China.

A framework & scope for Analyzing Corruption in Construction Projects.

- Corruption risk assessment needs a project cycle approach.
 - It is widely acknowledged that corruption vulnerabilities in infrastructure provision needs to be seen through the lens of the project cycle.
 - Assessing corruption risk from the early stages of project identification and design through pre-qualification and tender, construction and operation stages all the way to commissioning and maintenance.



A framework & scope for Analyzing Corruption in Construction Projects.

- A stakeholder analysis of preventive measures should be applied to yield better results.
 - These strategies reflect the view that much of the problem can be addressed by focusing on deterrence and prevention in key areas.
 - This should be done by all stakeholders who include:
 1. **Multilateral and bilateral donors**
 2. **Export credit agencies (ECAs) and commercial banks**
 3. **National governments**
 4. **Civil society, media and NGOs**
 5. **Private sector companies**
 6. **Inter-governmental systems and international legal systems**

Construction and engineering initiatives

- Several anti-corruption initiatives have been established in the international construction and engineering industry:
 - ACET - Global Anti-Corruption Education & Training Project
 - CIECI - Construction Industry Ethics & Compliance Initiative
 - CoST - Construction Sector Transparency Initiative
 - FIDIC - International Federation of Consulting Engineers
 - GIACC - Global Infrastructure Anti-Corruption Centre
 - UK Anti-Corruption Forum
 - WEF PACI - World Economic Forum – Partnering against Corruption Initiative
 - WFEO - World Federation of Engineering Organisations AC

Anti-corruption management systems

- It is not sufficient merely to have good laws and prosecution. Corruption prevention is increasingly seen as a vital management issue.
- Good management in government, in companies and on projects can materially reduce corruption.
- Corruption prevention should be treated in a similar manner to quality and safety management.

Implementation of management systems

- Significant number of businesses internationally have responded to the changing legal and ethical environment by implementing anti-corruption management systems within their organisations.
 - Partly because it is the right thing to do.
 - Partly to ensure that the organisation and its employees do not fall foul of anti-corruption laws.
- Not good enough for a business to implement controls only within its own organisation. Ethical businesses also need to ensure that their partners and supply chain adopt anti-corruption programmes.

BS and ISO Standards

- Organisations now beginning to look for independent verification that their clients, partners, and supply chain have implemented anti-corruption systems.
- British Standards Institution (BSI) in 2011 published BS 10500 - Specification for an anti-bribery management system.
- Organisation can obtain certification to BS 10500 in a similar way to obtaining certification to 9001, 14001 and 18001.
- ISO in 2013 established a Project Committee (led by BSI) to publish a new ISO anti-bribery standard. Target to publish by mid 2015.

Corruption is a Management Issue

- **British Standard BS 10500 :Specification for an Anti-bribery Management System**
 - BS10500 is applicable to small, medium and large organisations in the public, private and voluntary sectors in the UK and internationally
 - Compliance with BS10500 doesn't provide assurance that no bribery will occur, but offers proofs that the that the organisation has implemented reasonable and proportionate measures

Corruption is a Management Issue

BSI10500:Major REQUIREMENTS

- 1:Anti-bribery policy
- 2:Anti-bribery Management System
- 3:Communicating the anti-bribery policy and ABMS
- 4:Education, training and/or guidance
- 5:Compliance Manager
- 6:Risk assessment
- 7:Due diligence
- 8:Implementation of ABMS by controlled organisations and business associates

BSI10500:Major REQUIREMENTS OF BS 10500

9: Employment procedures

10: Gifts, hospitality, donations and similar benefits

11: Facilitation payments

12: Delegated decision-making

13: Anti-bribery contract terms

14: Financial controls

15: Procurement and other commercial controls

16: Raising concerns

BSI10500:Major REQUIREMENTS OF BS 10500

17: Investigating and dealing with bribery

18: Documenting the ABMS

19:Monitoring and reviewing the ABMS

20:Improvement of the ABMS

21:INDEPENDENT CERTIFICATION TO BS 10500

The problems?????

- Despite these considerable positive developments, there are still major corruption problems in many countries.
- But laws oblige organisations and their employees to take adequate measures to avoid this corruption.
- Avoiding corruption is both the right thing to do and a legal necessity.
- Failure to do so can result in prosecution and fines for organisations, and imprisonment for employees.

Strategies to Combat Corruption

- **Consequently, tackling corruption in the Construction sector requires the elaboration of a comprehensive strategy that involves efforts from all stakeholders, including public sector, private companies and consumers.**
- **Such a strategy should aim at promoting and consolidating the rule of law.**
- **Measures must of course be tailored to fit the Particular context of a country's governance and legal system and efforts can only be effective if they reflect a country's own priorities.**
 - An example is since the UK Bribery Act came into force in 2011, anyone involved in accepting, offering, giving or receiving bribes for a UK company, or public sector body faces a possible **10-year prison sentence** and a **potentially unlimited fine** for the organisation. Prosecuted organisations could also be **banned from bidding for public sector contracts**.

Strategies to Combat Corruption

- The stakeholders must all play their part if the battle against corruption is to succeed.

1. Multilateral and bilateral donors

- Governance Improvement Plans (GIPs) should be a routine part of donor projects (e.g. all project lending should require corruption risk assessments and governance improvement plans with independent monitoring).
- A skilled assessor, or team of assessors, given appropriate access to documents and individuals for the duration of the project, could play a material role in preventing and uncovering corruption.
- Key project participants should commit to a strict anti-corruption policy.
- This reinforces the notion that long-term mechanisms to fight corruption must be an integral part of sustainable infrastructure development similar to safeguard policies for environment and social management aspects.

Strategies to Combat Corruption

2. Export credit agencies (ECAs) and commercial banks

- Anti-corruption measures on financing should be harmonized by ECAs and incorporated in the Equator Principles.
- This requires adopting and applying anti-corruption and bribery measures, disclosure policies and standards.
- This reflects an important message from industry and finance institutions that corruption is not only bad for business, it distorts trade, and increases risks and costs for all extending financing for public sector projects.

Strategies to Combat Corruption

3. National governments

- ◆ **Anti-corruption tools should be adopted in national / sectoral governance systems dealing with projects.**
- ◆ **On the public sector's side, enhancing or promoting the culture of transparency and accountability as well as promoting effective regulation are crucial.**
- ◆ **This requires adapting tools appropriate to fight corruption in national systems of governance with related capacity building support from the donor community.**
 - **National Integrity Pacts (NIPs) for overall regulatory systems;**
 - **Project Integrity Pacts (PIPs) for the implementers and government agencies, and;**
 - **Business Integrity Pacts (BIPs) for project companies and corporations.**
 - **Among other measures, public companies and enterprises may be required to publish salaries and representation limits of staff members, or require senior staff to make an annual declaration of assets.**
 - **At the project level, adopting tools like the Compliance Plans.**

Strategies to Combat Corruption

4. *Civil society, media and NGOs*

- Civil society and NGO involvement in governance reform around projects should be strengthened, especially independent monitoring, social accountability and compliance activities.
- Civil society can play a role in providing transparency and enabling local people most vulnerable to the effects of corruption to have a voice in anti-corruption measures on projects that impact them.
- An effective communications strategy on infrastructure projects can ensure that beneficiaries have the information they need to monitor the delivery of project benefits and hold providers accountable.
- Consumers' active participation in programs designed to increase accountability of service providers should be promoted by for example enhancing the advocacy capacity of consumer associations.

Strategies to Combat Corruption

5. Private sector companies

- Private sector companies involved in project development and equipment supply should adopt transparent mechanisms to promote integrity in business transactions.
- Project companies developing or managing assets and companies supplying equipment or services should meet recognized good practice standards for corporate governance and have explicit internal anti-corruption policies.
- Companies should apply monitorable codes of ethics across the company, from executive levels to the shop floor.
- Industry associations can provide anti-corruption guidelines, either on an international or a regional basis in order to reach members not directly involved in donor or ECA financing.
- On the private sector's side, corporate governance and transparent practices need to be reinforced.

Strategies to Combat Corruption

6. Inter-governmental systems and international legal systems

- Existing UN and OECD Conventions to combat North–South Corruption should be enforced and measures should be introduced to target high corruption-risk infrastructure sectors.
- The critical factor will be to demonstrate in clear and convincing terms the many adverse impacts that corruption in construction projects has on national development strategies.

Strategies to Combat Corruption

- **Effective anti-corruption strategy as proposed by stakeholders including the World Bank, Transparency International and professional Institutions (e.g. of Engineers, Architects etc.).**
 - 1. Increasing Political Accountability**
 - 2. Strengthening Civil Society Participation**
 - 3. Creating a Competitive Private Sector**
 - 4. Institutional Restraints on Power**
 - 5. Improving Public Sector Management**
- **To reduce the corrosive impact of corruption in a sustainable way, it is important to go beyond the symptoms to tackle the causes of corruption.**

Stakeholder Responsibility as a Solution

- Construction companies stakeholder responsibility that requires that companies be committed to the curtailment of corruption by considering:
 - **Basic Value Proposition**
 - How do we make our stakeholders better off?
 - What do we stand for?
 - **Sustained stakeholder cooperation**
 - What are the principles or values on which we base our everyday engagement with stakeholders?
 - **An understanding of broader societal issues**
 - Do we understand how our basic value proposition and principles fit or contradict key trends and opinions in society?
 - **Ethical leadership**
 - What are the values and principles that inform my leadership?
 - What is my sense of purpose? What do I stand for as a leader?

Recommendations of Actions to combat corruption in Africa.

Numerous initiatives, focusing largely on legal frameworks, have been undertaken in recent years to deal with governance and corruption issues:

- Peer review process like NEPAD. (May rubber stamp decisions).
- adoption of anticorruption laws and international best practices (better if done uniformly or by regions e.g SADC, COMESA, ECOWAS, EAC).
- establishment of Councils on Good Governance to advise on anticorruption policy.
- legal reforms to improve the business environment.
- establishment of anticorruption commissions.

Recommendations of Actions to combat corruption in Africa.

- civil service law to promote a professional civil service with merit-based appointments (unabated brain drain to developed world makes the developing countries vulnerable).
- a law on the declaration of income and assets of high state officials (leadership code to declare assets).
- reforms to make public finances more transparent.

Recommendations and Actions to combat corruption in Africa.

- Professional Engineering Associations should come up with impeccable code of ethics, and rules of conduct for its members. These are the biggest players in construction. They represent all the stakeholders in one capacity or the other. If Engineers are ethical there will be a significant reduction in corrupt practices.
- Implementation of international codes and best practices for all stakeholders involved in anti-corruption will go a long way in reducing corruption in the developing world.

Recommendations and Actions to combat corruption in Africa.

- **Implementation of capacity building, and upgrading of managerial skills will improve the calibre of public officials.**
- **Practical enforcement and implementation of above actions are slow, and in practice, these actions have not yet had significant impact.**
 - For example, there have been no prosecutions under the anticorruption law, and the councils on good governance have had unclear and overlapping mandates.
 - Action plans and anticorruption strategies have consisted mainly of lists of proposals to change the legal framework and carry out public information campaigns.
 - The laws to improve the business environment have not been implemented, and the regime of multiple inspections of business activity remains essentially unchanged.

Conclusion

- In order to optimise infrastructure funding, you need to ensure that good management practices are applied from start to finish throughout the project cycle. In project selection, design, funding, tendering, and project management.
- There must be good systems and controls in place at the client (public sector or private sector), contractor, funder and major consultants and sub-contractors.
- These management systems are those which are now incorporated into the new British Standard BS 10500, and which will soon, hopefully, be incorporated into the new ISO Standard as soon as consensus is achieved.

Conclusion

- Corruption has been identified as one of the greatest obstacles to countries' development since it distorts public expenditures, undermines institutions and deters further investments.
- Anti-corruption policies must be improved in order to increase the effectiveness of development programs aimed at reducing poverty.

Conclusion

- Infrastructure sectors are particularly exposed to corrupt practices since they involve monopolies or quasi monopolies of critical public services, huge construction works and opportunities for concessions or privatisations; all of them possible sources of huge profits.

**• THANK YOU FOR YOUR
ATTENTION**