

DAMS ON TRIAL
THE WORLD BANK AND THE “CANCER OF CORRUPTION”
Donor Governments, Financial Institutions and TNCs’ Responsibilities in
the Lesotho Case

SUMMARY INTRODUCTION

The LHWP corruption story first appeared in the July 29, 1999, edition of the newspaper *Business Day* in South Africa (RSA), as the date of the Lesotho government's court case against the corrupt official, Masupha Sole, was approaching.

9 companies, 3 international consortiums and 3 officials of the largest dam building companies are charged in Lesotho with the bribing of the former head of the Lesotho Highlands Water Project (LHWP), one of the largest infrastructure projects under construction today. The companies were first involved in the scandal during the trial of Musapha Ephraim Sole, the former director of the Lesotho Highlands Development Authority (LHDA), which is the implementing agency of the LHWP.

Sole is accused of having accepted around US\$2 million in bribes from the companies. All of the companies worked on the 185-meter-high Katse Dam, the first of five huge dams planned for the Lesotho Highlands Water Project (LHWP), and on the Muela Hydroelectric Plant. Both Katse and Muela are now complete, and work has begun on a second large scale dam, the 145-meter-high Mohale Dam, and other tunnelling and civil works. Most of the companies involved in phase 1A have been contracted under the new phase 1B of the project.

If carried out as originally planned, by 2027 this water-transfer scheme will divert about 40% of the Senqu/Orange River's water which will be piped into 200 Km of tunnels blasted through the Maluti mountains to be delivered to the South African Guateng River. Work on the project began in 1986 with the crucial support of the World Bank. Since the apartheid regime of South Africa was under international sanctions at that time, a complicated international financial agreement was put in place whereby the money was officially lent to Lesotho, a country far too poor to qualify for the large amounts of international credits, but willing to join the project after the military coup in January 1986. Pretoria was in charge of servicing and repaying the debt and \$ 40 million a year as royalties on imported water while Lesotho was going to pay only for the hydroelectric plant at Muela.

Some of the social and environmental implications of the project were addressed by an Environmental Action Plan produced by the LHDA in 1990 when construction had already started. Its foremost task is to ensure compliance with the 1986 treaty between the two countries which promised that the people of Lesotho's highlands “would not be left with a standard of living inferior to that prevailing at the time of the first disturbance”. Nevertheless the project has caused strong social and environmental impacts on highlands communities' life. The opening of new roads and the presence of foreign labour force severely altered the way of living of the Basotho people as they experienced long delay and under-estimates of their and communal assets to be lost under water of the dam basins. Dam construction workers had not the same rights as foreign workers and those that didn't benefit from any job opportunity in the project have unsuccessfully been waiting for the planned income generation projects expected from the Development Fund. This fund was the first example of a history of misuse of funds and corruption.

Consultants and contractors LHWP phases 1A and 1BSource: *Lesotho Highlands Water Project*, vol. 4, November 1996, Shani Wallis Laserline, UK

JOINT VENTURES	WORKS
<p>ENGINEERING</p> <p>Lesotho Highlands Consultants (LHC): SCBG comprising Sogreah (France), Coyne & Bellier (France) and GIBB & Partners (UK) and Ninham Shand (RSA), Knight Pièsold (RSA), Keeve Steyn (RSA)</p> <p>LMC: Lahmeyer (Germany), Mott MacDonald (UK)</p> <p>Highlands Delivery Tunnel Consultants (HDTC) or Consult 4 (RSA): Ninham Shand, VKE, Keeve Steyn and SRK</p> <p>Lesotho Highlands Tunnel Partnership (LHTP): HDTC and LMC</p> <p>Mohale Consultants Group (MCG): SMEC (Australia), Harza Engineering (USA), Nippon Loei Co. (Japan), BKS Incorporated, Chunnett, Fourie & Partners, Consultburo, Melis & Duplessis, Stewart Scott Incorporated (RSA)</p> <p>Matsoku Diversion Partnership: HDTC and Lesotho Consulting Engineers /FM Associates joint venture (Lesotho)</p> <p><u>Contractors</u></p> <p>Highlands Water Venture: Impregilo (Italy) Sponsor, Bouygues (France), Hochtief (Germany), Kier International (UK), Stirling (UK), Concor (RSA), Group 5 (RSA)</p> <p>Lesotho Highlands Project Contractors (LHPC), Muela Hydropower Project Contractors (MHPC): Spie Batignolles (France) Sponsor, Campenon Bernard (France), Balfour Beatty (UK), Ed Züblin (Germany), LTA (RSA)</p> <p>HMC Tunnelling Venture: Hochtief (Germany) Sponsor, Marti-Inter (Switzerland), Concor (RSA)</p> <p>Mohale Dam Contractors, Matsoku Civil Contractors, Mohale Tunnel Contractors: Impregilo (Italy) Sponsor, Hochtief (Germany), Concor (RSA)</p>	<p>PHASE 1A</p> <p>KATSE DAM – double curvature concrete arch dam on the Malibamatas’o River Design and supervision: LHC <i>in association with</i> SRK (RSA), VKE (RSA), MJM (RSA), Association of Basotho Consultants (Lesotho) Contractors: HWV</p> <p>MUELA 72 MW POWER STATION, BYPASS AND MUELA DAM – 55 metre-high tailpond dam on the Nqoe River Engineering: LMC Contractors: MHPC</p> <p>KATSE INTAKE TOWER AND TRANSFER TUNNEL – 98 metre-high / 45 km-long Design and supervision: SCBG and HWDC (RSA) comprising Ninham Shand, WLP, Keeve Steyn, VKE, SRK and MJ Mountain Contractors: LHPC</p> <p>DELIVERY TUNNEL NORTH – 22 Km-long in South Africa Design and supervision: HDTC Contractors: HMC Tunnelling Venture</p> <p>DELIVERY TUNNEL SOUTH – 15 Km-long Design and supervision: LHTP Contractor: LHPC</p> <p>PHASE 1B</p> <p>MOHALE DAM – rockfill dam on the Senqunyane River Design and supervision: MCG Contractors: Mohale Dam Contractors</p> <p>MOHALE TUNNEL – 32 Km-long Design and supervision: LHTP and Knight Pièsold (RSA) Contractors: Mohale Tunnel Contractors</p> <p>MATSOKU WEIR AND TUNNEL – Matsoku river / 6 Km-long Design and supervision: Matsoku Diversion Partnership Contractors: Matsoku Civil Contractors</p>

PART I

THE CORRUPTION CASE¹

"[Mr. Sole] *did unlawfully, intentionally and corruptly accept bribe moneys, over the period February 1988 to December 1998, from Lesotho Highlands Water Project contractors.*"
trial charge sheet.

List of companies charged in the Maseru Magistrate's Court and reported bribe amounts paid - all figures in US dollars.

Sources: David Greybe, "Official faces charge over R12m bribes", in *Business Day*, 29th July 1999, Cape Town

ABB (Swedish/Swiss) - \$40,410

Acres International (Canadian) - \$185,002

Impregilo (Italian) - \$250,000

Spie Batignolles (French) - \$119,393

Sogreah (French) - \$13,578

Dumez International (French) - \$82,422

Lahmeyer Consulting Engineers (German) - \$8,674

ED Züblin (German) - \$444,466

Diwi Consult (German) - \$2,439

LHPC Chantiers (LHC, international consortium, including Sogreah and Coyne&Bellier of France, Sir Alexander Gibb&Partners of UK, Ninham Shand, Knight Pièsold and Keeve Steyn of South Africa, and Associated Consultants and Project Managers of Lesotho)² - \$63,959

Highlands Water Venture (HWV, international consortium, including

Impregilo, Hochtief of Germany, Bouygues of France, Keir International and Stirling of UK, and Concor and Group Five of South Africa) - \$733,404

Lesotho Highlands Project Contractors (LHPC, international consortium which includes, Spie Batignolles, Balfour Beatty, Campenon Bernard of France, LTA of South Africa, ED Züblin) - \$57,269

Individuals charged are:

Jacobus Michael du Plooy of Ficksburg (RSA), a South African who was an alleged intermediary for bribes given to Sole by Highlands Water Venture;

Margaret Bam of Ladybrand (RSA), another alleged intermediary;

Max Cohen of France, who controlled two Panamanian companies, Electro Power Corporation and Universal Development Corporation.

Sole, a promising young engineer from Lesotho with his Canadian university qualification and experience as a director in the department, was seconded by the Lesotho government from his job in the Department of Water, Energy and Mineral Affairs to be the first chief executive of the Lesotho Highlands Development Authority in October 1986.

Soon he was overseeing the tender process and the building of the Katse Dam, the first phase of the project. But disquiet began to surface with claims that something was wrong with the accounts.

When the civilian government came to power in Lesotho in 1994, the new minister of natural resources decided to check these complaints, asking Ernst & Young to do an audit.

¹ Compiled from: Carmel Rickard, "Greed and Stupidity", in *Sunday Times, Insight*, 30th April, 2000, Cape Town

² idem

Preliminary findings suggested that Sole had some explaining to do and the government set up a disciplinary inquiry into his financial activities and suspended him in November 1994. Sole protested that since he was the chief of the project, he could not be investigated, but the High Court affirmed that the Minister was entitled to go ahead. Therefore he insisted that it was his right to be represented by a full legal team at the inquiry.

That gave the opportunity to the Minister of natural resources to claim the same right, and two South African magistrates, Guido Penzhorn SC and Hjalmar Woker, both of the Durban Bar, were briefed to act in the inquiry on behalf of the government. The two officials were given full government backing in their investigations, and it is only due to their detective work that massive foreign payments, allegedly to Sole, were discovered almost by chance.

The hearing, which began in May 1995, found Sole guilty of 22 of the 23 disciplinary charges against him, ranging from fraud to relatively minor misdemeanours like buying groceries on his official expense account. He also used official vehicles and staff for domestic purposes. The records describe all these activities as "chief executive mission" with the fuel and other costs paid for by the project.

The disciplinary committee concluded that it was to ingratiate himself with the landlords - all of them influential figures in Lesotho society.

In its report, the committee said Sole had become a "saboteur of the very policies, rules and regulations" which he had been employed to uphold.

Instead of making a clean breast of what he had done, he had tried to scuttle the proceedings.

At the same time, he had approached the minister of natural resources, the Prime Minister, members of the inquiry and others, trying to get their support for the hearing to be scrapped.

The committee recommended that Sole be sacked, that steps be taken to reclaim the money he had cost the project, and that certain information obtained in the inquiry be given to the director of public prosecutions to consider criminal charges. Thus, Sole was definitely dismissed from his position.

As bizarre as some of these charges may sound, however, there was still no hint of any large-scale financial irregularity or the involvement of any of the contractors.

The inquiry was followed by a civil claim in the High Court to get back the money Sole had squandered. The LHDA sued Sole for South African Rand (R) 7,776,311.98 – about US\$2 million - arising out of 11 claims he made from July 1988 to July 1991 relating to overseas trips, house rentals and other expenses.

Soon after the scandal appeared on the press in July 1999, the Sole case was transferred from the Maseru Magistrate's Court to the High Court of Lesotho. Despite of the strong international concerns that the case could be whitewashed, in October 1999 the Lesotho High Court awarded damages of over R7 million to the Lesotho Highlands Development Authority (LHDA) against its first CEO Masupha Sole. Judge Michael Ramodibedi took three hours to deliver the judgement - the longest civil case in Lesotho's legal history. The biggest claim was for R6,362,488.31 - which was the sponsorship the Lesotho Highlands Water Project lost from the European Union. Sole authorised the alteration of the conditions of the Muela Dam contract without clearance from the EU headquarters in Brussels, the court heard. Once the EU realised it was not approached for approval, the organisation dropped its sponsorship.³

Ramodibedi said the fact that Sole accompanied an LHDA senior official to the EU in Brussels when they were seeking funds for the project, proved that Sole knew he was supposed to gather

³ SAPA, "Lesotho Judge Awards R7M Damages to LHDA", 21st October, 1999, Maseru

clearance from the EU before authorising the alterations. Ramodibedi said the LHDA claimed that Sole had acted in bad faith with reckless disregard for his mandate and the interests of his employer, and in so doing had caused the damage claimed. He said at the very least, Sole "acted negligently" and that in his view was liable "in as much as he was in breach of his duties to conduct the affairs of the LHDA with skill and care imputed in the Water Treaty".⁴ The other claims which have been awarded to the LHDA include R212,660.43 overpayment of expenses, salary overpayments of R1,674,795.20 made to Sole, not provided for in his contract and to which he was not entitled.

Finally the companies stand on trial

As part of the investigation for this civil case, magistrates Penzhorn and Woker asked that Sole disclose his banking details. He gave them information relating to accounts held in Lesotho and swore under oath that he had no accounts abroad. However, investigators found a Standard Bank account in his name in Ladybrand, South Africa, and learnt that large amounts were being transferred into it from a Swiss account.⁵

After Lesotho magistrates requested Zurich colleagues information on Sole's bank account since 1997, the Swiss Supreme Court sentenced the deliver of such information on 20 May 1999 and to give legal assistance to the Lesotho government in its case against Sole.⁶ Swiss newspaper SonntagsZeitung reported that a court there found evidence that 12 companies had paid money into Sole's bank accounts at the Union Bancaire Prive, the Banque Multi Commercial in Geneve and the Union Bank of Switzerland in Zurich. Therefore Penzhorn and Woker had finally a chance to discover a complex web of payments made by the contracting and consulting consortiums via middlemen to what turned out to be a Swiss bank account in Sole's name.

The prosecution asked the court to find confirmation that these huge sums had been for illegal purposes: and so it was. As a matter of fact these were paid secretly by the consortia to Sole's foreign account through intermediaries at a time when he was considering tenders and variations to contracts in which the consortiums were involved or had expressed interest. Sole had not disclosed these payments. Indeed, he had denied the existence of any outside accounts.

The trial is involving a number of prominent South African lawyers, some defending the accused, others appearing for the prosecution. It's expected to be a lengthy case involving a range of difficult issues such as the Lesotho court's jurisdiction to try international consortiums.

Companies and individuals involved in the case were summoned by the Lesotho magistrates at the end of last November. Two individuals, including Masupha Sole, and representatives of three international companies, appeared for the first time before the chief magistrate of Maseru on 29th November 1999. Companies and individuals involved in the corruption scandal were charged with 16 counts of bribery amounting to R22m which involve various combinations of

⁴ ibidem

⁵ see note 1

⁶ Swiss Supreme Court, 125 II 258 sentence, 20th May, 1999, Zurich

the accused. Sole, who is charged with taking R12m in bribes over a 10-year period ending in 1998, also faces two charges of fraud and one of perjury.⁷

The companies, which were represented in court, included Sogreah, Spie Batignolles and Coyne et Bellier, all of France; Sir Alexander Gibbs of England and Lahmeyer International of Germany; and Lesotho Highlands Project Contractors. JM Du Plooy of Ficksburg in the Free State also appeared on charges of alleged bribery. An arrest warrant was issued for James Griffiths, representative of Canadian company Acres International, who failed to appear in court.⁸

Some more companies newly appeared in front of the magistrate court on 7th December. Represented in court by some of SA's top law firms were: Sole, Du Plooy, Bam, Highlands Water Venture, Sogreah, Spie Batignolles, Lesotho Highlands Project Contractors, Associated Consultants & Project Managers, Lahmeyer International, Acres International, Sir Alexander Gibb & Partners and Coyne et Bellier. The prosecution served the accused present with copies of the Swiss bank records used to prepare the criminal case. The records had been handed over to the Lesotho's director of public prosecutions by the Swiss judicial authorities. The investigating officer in Lesotho also formally invited the accused to make warning statements. All of them declined at this stage.⁹

The corruption trial – originally scheduled to start on 2nd May – opened in the High Court in Maseru only on 5th June and was scheduled to run for approximately five months.

As a matter of fact, at the first session of the criminal trial held at the beginning of May in the Lesotho High Court not all of the accused were present. A lawyer representing several of the accused companies said that his clients refused to appear because the proper international legal procedures were not followed for summoning them.

On 14th June Judge Brandon Cullinan, a former chief justice in Lesotho, called out of retirement to deal with the biggest corruption case in the mountain kingdom's history, adjourned until 18th September. Although 9 companies, 3 international consortiums and 3 individuals were initially indicted, only five of the defendants will be in the dock when the case reopens; they are: Sole, Jacobus Michiel du Plooy, Margaret Bam, Lahmeyer International and Acres International. Cullinan ruled that despite the definition in the Lesotho Criminal Procedure Act that a partnership had the same legal status as a company, the partnership Highlands Water Venture had been incorrectly charged. He accepted arguments by Gerard Farber SC and held that the definition in Lesotho law could be ignored and that the members of the partnership should have been cited individually, as in South Africa. Perzhorn gave notice that the judgement would be taken on appeal in the Lesotho Court of Appeal. It is expected to be heard in October 2000. The decisions means the evidence given in September trial against HWV or its members will go uncontested.

⁷ David Greybe, "Companies face Lesotho bribe claims", in *Business Day*, 18th November, 1999, Cape Town

⁸ Primarashni Pillay, "Representatives of the World Bank and European Union have allegedly assured Lesotho officials that they will help to finance what is expected to be a lengthy and costly court case", in *Business Day*, 30 November, 1999, Cape Town

⁹ David Greybe, "Lesotho bribery case set for May, More than 20 international companies, individuals involved", in *Business Day*, 8th December, 1999, Cape Town

In the meantime, Max Cohen, on behalf of the two Panama-registered companies associated with him, have not presented themselves for trial. The Lesotho police have asked Interpol to locate Cohen as a prelude to launching extradition procedures.¹⁰

Banking records obtained with the help of Swiss authorities show that France's Sogreah and Spie Batignolles and the Anglo-Italian Highlands Water Venture consortium paid more than 1.2 million USD into the account of the Universal Development corporation from Panama. Those sums were then transferred into Electro Power corporation's account from Panama, and then into Sole's accounts. Mr. Cohen seems not be so well known in Panama business community and records at the "Registro Publico" indicate that the two companies' charters have lapsed. The only prominent Panamanian name appearing on the public record is the law firm of Morgan & Morgan, which did the incorporation work for both companies.¹¹

The companies' defence

***"If the companies involved say they have no recollection of the events, we will show them the payment slips and the bank records. Then I think they will remember"* the prosecution in the High Court in Maseru**¹²

The prosecution in Maseru seems quite confident it has a strong case. "We would not show up in court if we did not feel we had an ace up our sleeve", said one prosecution source to the FT correspondent in June 2000.¹³

Strong rejections of any allegation have come from companies' headquarters in Europe and Canada. A number of the companies involved have publicly denied their involvement in the bribery, despite the strong corroboration of the case's basic facts from the Swiss government. According to reports in the Swiss newspaper *SonntagsZeitung* an investigation by the district attorney in Zurich, Switzerland found that 12 firms had paid money directly to the Zurich and Geneva bank accounts of the accused official, or to bank accounts of third parties. The firms' names had been blacked out in the Swiss court documents, but it seems likely they correspond to the 12 firms listed in the Business Day accounts.

The Swiss-Swedish firm ABB has been the only outspoken in its support of the ongoing investigation. The company's CEO Göran Lindahl told a Brazilian magazine in August, "This type of thing cannot be tolerated. Without getting into details, in the Lesotho scandal we have known about problems involving the company since 1987. We decided on our own to cooperate with the prosecutors in Switzerland and in Lesotho. This resulted in the firing of the official responsible." Lindahl is also a commissioner on the World Commission on Dams, the

¹⁰ Peter DeIonno, "Lesotho Investigators eye on SA contractors", in *Business Report*, 19th June, 2000, Cape Town

¹¹ Eric Jackson, "Transnational bribery: the Panama Connection", in *Panama News*, 2000, Panama News, Vol. 6, Num. 14

¹² Nicol Degli Innocenti, "Corruption trial of building companies gets underway in Lesotho", in *Financial Times*, 5th June, 2000, Johannesburg

¹³ idem

international body which is currently reviewing the experience of large-scale dams of last century trying to develop guidelines for future activities in this controversial sector.

Other companies are being more adamant in denying their guilt.

"We vehemently deny the accusation," says Robert Witherell, senior vice president of the Canadian firm Acres International Ltd., Niagara Falls, Ontario. "Nobody in Acres had any knowledge of any payments to Sole. A nearly completed internal probe has turned up no evidence of bribery", he says.¹⁴

Nevertheless, in November 1999 Acres had also confirmed that a Lesotho citizen named in the court papers, who was alleged to have paid bribe money from Swiss bank account to Mr. Sole, had been under contract as a representative for Acres.¹⁵

Recently, Oskar Sigvaldson, president of Acres International, stated in Toronto: "We are not guilty and we are confident that we will be cleared of all allegations".¹⁶

***"We will be vigorously defending our position and we deny all the charges."* Peter Brettell, managing director of Sir Alexander Gibb, UK¹⁷**

Prior to the announcement that the Lesotho authorities would prosecute, Roberto Allione of Impregilo told the Washington Post, "no payment for whatever sum at whatever time has been made by Impregilo" to Sole. Then, Impregilo was reported "to have nothing to do with this story and not to have paid any bribe".¹⁸ Recently Impregilo's headquarter in Milan stated that it was "absolutely confident the judge will clear us of any wrong-doing".¹⁹

Interviewed on 12 November 1998, Anthony Collings, a Sogreah partner and project manager for the Katse dam, said: "We at the moment are still not in a position to say anything other than as far as we are aware nothing of that nature has ever gone on... We wasted quite a bit of time following up what was said in the newspaper about direct payments. We did a major search. We drew a complete blank. We found nothing in there that implied anything improper whatsoever."

Dr. J. Zimmermann, head of hydro-power and water resources development at Lahmeyer International, described newspaper reports alleging his company's involvement in bribery as a pretence. "We can safely state that we do not know of any payments to Mr. Sole and without knowing details we can also not contribute to the clarification of these wrong publications", Zimmermann said.²⁰

¹⁴ Thomas F. Armistead, "Contractors Named in Charges on Huge African Water Project", in *Business & Labor*, 23rd August, 1999, New York

¹⁵ Victor Mallet and Nicol Degli Innocenti, "Western Contractors Face Bribery Charge on Lesotho Dam", in *Financial Times*, 19th November, 1999, Johannesburg

¹⁶ see note 12

¹⁷ see note 15

¹⁸ Riccardo Orizio, "Asse Lesotho-Zurigo sospetto di indagini", in *Il Corriere della Sera*, 11th October, 1999, Milan

¹⁹ see note 12

²⁰ The Cornerhouse, "Dams Incorporated", February 2000, Swedish Society for Nature, Dorset (UK)

“Mr. Sole has a fat bank account, there is no doubt”, said Gavin Hardy, chief executive of the South African construction company Concor. “ But they should not believe what he said. That’s hardly solid information”.²¹

Companies’ corruption record

The companies implicated in this scandal are no strangers to allegations of corruption. For example, Spie Batignolles and Sogreah were involved in Kenya's Turkwell Gorge Dam which, because of bribes reportedly paid to Kenya's president and energy minister, cost more than twice what the European Commission said it should have. Impregilo, Dumez and Lahmeyer were involved in Latin America's Yacyretà Dam, which Argentina's President Carlos Menem called a "monument to corruption". Lahmeyer and Impregilo also had contracts on Guatemala's Chixoy Hydroelectric Project, which lost between \$350 and \$500 million dollars to corruption. And ABB and Dumez worked on Itaipù Dam (Brazil/Paraguay), which has been described as possibly the largest fraud in the history of capitalism: the dam was originally projected to cost \$3.4 billion, but the final cost came to around \$20 billion.

As for Balfour Beatty, it was banned in 1996 from bidding for contracts in Singapore following allegation - denied by the company – of corruption. It was also involved in the Pergau dam in Malaysia. Gregory Palast reported on an article in the Observer on 9th July 2000 the experience of Jeremy Carver, barrister and advisor of Transparency International, as regards the story of this controversial dam: “I went to a DTI (UK Department of Trade and Industry) reception. I was introduced to someone who identified himself as the chairman of a company and we were talking about corruption. He announced with great pride that he personally handed over the cheque to the government minister for the Pergau dam *bribe* in Malaysia”. Identifying Carver’s interlocutor as “chairman of Balfour Beatty”, Palast continues:

“The corporate honcho was not confessing, but boasting about the payment which he may have considered not a bribe but just the cost of doing business Malaysian-style”.

A January 2000 report by Transparency International, a leading anti-corruption NGO, based on in-depth interviews by the prestigious agency Gallup International with more than 770 business executives, lawyers, accountants, bankers and officials of chambers of commerce in 14 leading emerging market countries, the construction industry is seen as the business sector with the most marked tendency to pay bribes to government officials in emerging market economies.²²

PART II

THE LEADING ROLE OF THE WORLD BANK IN THE PROJECT

²¹ see note 15

²² Transparency International, “Construction and Arms Industries Seen as Leading International Bribe-Payers”, *Press Release*, 20th January, 2000, Berlin

The World Bank financed the design of the project and lent a IBRD \$110 million loan under phase 1A in 1989 and a new IBRD \$ 45 million loan on 4th June 1998 under phase 1B.²³ In both phases the Bank played a major role in promoting the project and catalysing the overall financing package.

According to confidential documents, the Bank was also responsible for "effective project management, human resource development and sound financial management", in addition to providing for design and construction supervision, the transfer of engineering and other technical skills to local staff, and oversight of social and environmental impacts.

Since the beginning, the Bank's role as main promoter of the project was clear to Bank staff and other donors. As clearly stated in the 2nd July, 1991 Staff Appraisal Report on the project, the World Bank's role as a catalyst in arranging the entire financing package included setting up mechanisms to "provide some comfort for lenders" who, due to South Africa's apartheid regime, "might otherwise be reluctant to assist in the financing" of this project.

Therefore, from its outset, the Lesotho Highlands Water Project was founded on rule breaking. The project, which is intended to divert water from Lesotho to South Africa, was first conceived during the Apartheid era when South Africa was subject to international sanctions. To avoid the difficulties of international financiers openly aiding the then-apartheid regime, the project's financial advisers — Chartered WestLB — set up a London-based trust fund through which payments could be laundered. It was an arrangement which, to say the least, was of borderline legality - yet it was sanctioned at the highest international level, not least through the Executive Directors of the World Bank.

"Rule breaking on this scale is hardly conducive to encouraging good project governance", so stated Nicholas Hildyard of the British NGO The Cornerhouse at Chatman House Conference on corruption in Southern Africa in London on 10th July 2000.

Excerpts of the 1996 World Bank Guidelines for Procurement under IBRD Loans and IDA Credits:

"Fraud and Corruption

1.15. It is the Bank's policy to require that Borrowers (including beneficiaries of Bank loans), as well as Bidders/Suppliers/Contractors under Bank-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuant of this policy, the Bank:

(a) defines, for the purposes of this provision, the terms set forth below as follows:

(i) "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution; and

(ii) "fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Borrower, and includes collusive practices among bidders (prior to or after bid submission) designed to establish bid prices at artificial, non-competitive levels and to deprive the Borrower of the benefits of free and open competition;

(d) will declare a firm ineligible, either indefinitely or for a stated period of time, to be awarded a Bank-financed contract if it at any time determines that the firm has engaged in corrupt or fraudulent practices in competing for, or in executing, a Bank-financed contract; and []"

²³ World Bank, "US\$45 Million for Lesotho Highlands Water", Press Release n° 98/1800/AFR, 4th June, 1998, Washington

Similar guidelines – OP1.25 -have been adopted by the Bank in 1997 for the Selection and Employment of Consultants under IBRD Loans and IDA Credits.

The internal investigation will potentially overrule the trial verdict

According to the World Bank, evidence of widespread corruption only emerged during the latter part of the civil trial and was disclosed to the Bank in April 1999, only three months before the scandal came onto international press. Therefore the matter was referred to the Bank's Oversight Committee for Fraud and Corruption which opened the Bank's internal investigation on possible cases of corruption which may have occurred in the contracts it has financed, not the overall project. Therefore the Bank is currently investigating only some of the companies involved in the project.

In order to accomplish this task, the Bank has also hired the prestigious law firm Arnold & Porter in Washington DC to help with the investigation. Arnold & Porter, however, does not have complete access to World Bank files, since they are only allowed to copy files which they could have obtained via third parties. Once the Arnold & Porter and Bank's own parallel report is completed, and if any of the allegations are substantiated the case will be referred to the Bank's Sanctions Committee which may choose to debar those companies involved either permanently or for a specific period of time, as provided in World Bank's procurement guidelines. A debarred company is ineligible to compete for any Bank-financed project for the duration of the debarment. The Sanctions Committee is in charge of maintaining the list of ineligible firms under World Bank procurement guidelines.

By relying only on its internal departments' analyses, the Bank risks to weaken its reputation in fighting corruption for several reasons, while international community is expecting strong actions by this institution in the Lesotho case:

1. Notices of debarment are made public only through the World Bank's website, since Bank policy is to protect a firm's reputation until due process has taken place. Therefore the internal investigation will not be made public and only in the case companies be debarred as a result of the investigation, then their names will be made public.

The Board of Executive Directors, to which Bank's management should be accountable, will be only informed of the investigation results without discussing them at all.

2. At the Bank's Annual General Meetings in 1998 the World Bank President defined the new role of its institution as a knowledge bank. To that aim the Bank has been developing a new tool: the "comprehensive development framework" (CDF) approach. Accordingly, issues such as corruption, crime, governance and the political position of the borrower which had been not mainstreamed by the Bank until then would be given proper consideration during the appraisal process of borrowers' development performance. In order to implement the new tool with reference to corruption issues the Bank's decided to strengthen its anti-corruption strategy by investing in capacity-building and institutional restructuring in borrowing countries. At the same time the Bank seems to overlook its monitoring duties by not closely controlling implementing agencies in borrowing countries and support them in what they prove not to be able to properly carry out within agreed timelines.

While facing the Lesotho case, the Bank seems to have already put the CDF in the back of its mind. As a matter of fact, the Bank committed itself to restructure LHDA before disbursing the new loan to the LHWP implementing agency. Once the money started to flow again to Lesotho,

no specific effort has been made by Bank's management to monitor and control the efficiency of the new restructured structures.

3. Ironically, Bank's efforts in strengthening anti-corruption capacities of borrowing countries are completely neglected in Bank's own internal operations. Should the official trial in Lesotho conclude by convicting the companies of bribery, this will have no bearing on future World Bank work with the company. The World Bank will only debar companies if **its own** internal investigation show that a company has been involved in corruption within the confines of a project component directly financed by the World Bank.

By proceeding on its own without regard of the work carried out by national judicial systems, the Bank puts itself in a parallel judicial territory which does not respect borrowing countries' sovereignty. An eventual verdict by Lesotho authorities convicting the accused companies, could be watered down by the results of the Bank's internal investigation, in case these absolve the defendants. Such a contradiction weakens Lesotho magistrates' authority thus neutralising the efforts put by the Bank itself in strengthening the country's anti-corruption structures and capabilities.

4. Confidential sources in the Bank, that preferred not to be quoted, specified in June 2000, that the Bank found no evidence that World Bank staff was in any way implicated and the Bank's internal investigation is about to be completed.

Furthermore, first indications are that the Bank believes its rules may not apply to this high-profile case, because the alleged bribes are not directly tied to bank loans on the project.

Soon after the corruption scandal came into press World Bank officials have said that the Bank will apply its anti-corruption rules only if the companies which allegedly bribed LHWP official were working on parts of the project directly funded by the Bank.²⁴

In a letter to the Reform the World Bank Campaign, Callisto Madavo, Vice President for Africa at the Bank, writes, "the Bank must continue to act in conformity with its own governing rules and guidelines. Due process must be afforded to companies and individuals accused of corruption. ... For these reasons, the Bank can only extend the debarment of contractors to those that were financed by the Bank. We do not have jurisdiction to investigate and declare ineligible every corporation suspected of corruption regardless of its connection to a Bank-financed contract."²⁵

Those who follow corrupt practices believe the Bank needs to take a stronger stance on this case, otherwise the Bank will definitely lose credibility in its war on corruption if it pursues this narrow view of its obligations. Jeremy Pope, executive director of Transparency International, the Berlin-based NGO devoted since 1993 to containing corruption and increasing government accountability worldwide, told the *Washington Post* :

"It's a project the World Bank was involved in, and logic says - if you're bribing, you're bribing; and if you're unfit to be bidding for business, you're unfit."

²⁴ Lori Pottinger and Korinna Horta (IRN/EDF), *Letter to James Wolfensohn*, 23rd August, 1999, Berkeley/Washington

²⁵ Callisto Madavo (World Bank), *Letter to Antonio Tricarico*, 30th November, 1999, Washington

Dr. Peter Eigen, chairman of Transparency International, noted that “both bribe payer and recipient are defrauding the public, wasting resources and hindering development. There is no doubt that the international firms involved deserve censure.”²⁶

Hans Engelberts, general secretary of the Public Service International stated on behalf of an international coalition of trade unions, environmental associations and development NGOs concerned about the results of the extraordinary meeting of the donors of the project held in Pretoria on 17th November 1999: “Last month at the International Anti-Corruption Conference, Bank President James Wolfensohn identified corruption as being at the heart of world poverty. But it’s not good enough to focus on the problem of corrupt officials and politicians receiving bribes. Someone pays every bribe – and as the OECD and others have recognized, the payers of major bribes are most often multinational companies from OECD countries.

The Bank bears a special responsibility here, since it is the sponsor of large and profitable projects, which attract multinationals. The Bank has adopted clauses in its procurement guidelines, which state that the Bank will declare a company ineligible for future Bank contracts if it has engaged in corrupt practices. Some of the world’s largest companies are involved and they should not be allowed to escape the consequences of corrupt activity. Let’s see some action. It’s time to end this scandal of corruption.”²⁷

In October 1999 the South African group Public Services International (PSI) Research Unit, along with the South African Municipal Workers Union (COSATU), issued a statement at the 9th International Anti-Corruption Conference (IACC) held in Durban calling South Africa to prosecute all multinational bribe givers, and impose 5-year bans on all convicted groups and their subsidiaries and their partners.²⁸

What risks accused companies potentially face

If the Bank were to debar companies found to have bribed the Lesotho official, it could have huge ramifications on a number of river development schemes. For example, Hochtief, Impregilo and Dumez are involved in the Bank funded Ertan Dam in China. Acres International, Impregilo, Hochtief, ED Zublin, Spie Batignolles and Dumez all have contracts on Xiaolangdi Dam in China, the Bank's largest loan to China to date. Impregilo is also working on China's Shanxi Yellow River Diversion Project, which will divert water from the already troubled Yellow River to the mining center of Datong; the Lower Kihansi in Tanzania, and Ghazi Barotha in Pakistan. Both Acres and Lahmeyer are involved in the Bank-funded Nam Theun II project in Laos. Acres is also building the Owens Falls Extension Project on the Upper Nile in Uganda, and is producing a study of hydropower and other energy options in Uganda with IFC funding. Many of these companies also are working on non-dam power projects with World Bank funding.

Who knew of corruption and didn’t speak out

²⁶ Transparency International, “International Construction Companies Bribe Top Official in Large Dam Project for South Africa”, *Press Release*, 6th August, 1999, Berlin

²⁷ Public Services International, “Unions, Grren and Aid Group Call for World Bank Action Against Corruption”, *Press Release*, 15th November, 1999, Ferney-Voltaire Cedex, France

²⁸ David Hall, “Privatisation often leads to corruption”, in *Sowetan*, 14th October, 1999, Johannesburg

“We can assist from the outside but...typically it must come from the top and changes at the top.” President Wolfensohn’s speech at the 9th International Anti-Corruption Conference (IACC) held in Durban in October 1999

The Bank's fiscal oversight responsibilities on this project should have placed it in a position to discover this corruption case by itself. The charged Lesotho official was fired in 1995, and yet bribes allegedly passed from the dam companies to his account as late as 1998. According to internal correspondence between the government of Lesotho and the World Bank, the Bank was aware of serious management problems at least since 1994. The Bank’s reaction, however, was to strongly criticise the Lesotho authorities for having suspended Sole from his post pending an investigation into the project’s account. Their reason: it would interfere with project construction timetables and could lead to costly overruns.

In a letter dated 2nd December, 1994 to Mr. Pekeche, Principal Secretary at the Ministry of Natural Resources, Praful Patel of the Bank’s Southern Africa Department, acknowledges that a management audit of the project had taken place and that two officials, including the one who now stands accused of bribery, were suspended from their duties. Then he points out the following: “While the undertaking of a management audit may be normal practice and provided for under the treaty, the suspending of key management staff in order to conduct such an audit is most unusual. In our view the absence of key members senior staff from the project during this critical time could seriously jeopardize the progress of the project”.

The Bank even threatened to take legal action against the government for making the management changes without its permission and clearly asked to rehabilitate the person who five years later would have been convicted in a civil action under the Lesotho law: “Before we consider further legal action under the provisions of the loan agreement we would request that you reconsider these replacements”.

What the Bank knew and the reason why it preferred to wait has a relationship with the untimely approval of the project's second dam, Mohale, now under construction. It was known at the time of approval that this dam's water is not needed for many years, as much as 17 years as estimated by conservation experts from the Guateng region water utility Rand Water in RSA. High-level officials admitted in early 1998 that phase 1B could easily be delayed for seven years if water demand management had been implemented, and up to 11 years or more if new demand side strategies had successfully been put in place.

“It is reasonable to delay this project at least until all issues and alternatives have been fully explored” reported in June 1998 the USAID’s Regional Center for Southern Africa.²⁹

With reference to outstanding social and environmental problems regarding the implementation of Phase 1A in Lesotho, USAID clearly stated that at the time of the approval of the new World Bank loan local communities concerns were not fully assessed and mainstreamed by Bank’s management:

“Phase 1A still has several unresolved social problems including its ability to restore affected people’s income. Also, questions remain about how highlands communities will benefit from the Development Fund and about how effective the Fund will be in reducing poverty in Lesotho. These problems should be fully resolved before the next phase proceeds”³⁰.

²⁹ Office of Environment Bureau for Policy and Program Coordination, USAID, “List of Upcoming Multilateral Development Bank Projects with Possible Environmental Concerns”, June, 1998, Washington

³⁰ idem

Regardless of institutional and non-governmental critiques and recommendations, the Bank insisted on moving forward with its loan package in June 1998. In its press release celebrating the approval of the new loan no mention was given to the outstanding problems on the field. Once the new loan was approved and it became clear to Bank management that the Bank positioned itself in a key role in the project for the following years, the disbursement of the loan was put on hold until compensation claims by highland villagers and project governance issues had been resolved. These conditions were fulfilled - in Bank's opinion - in few months and the money started to flow to LHDA as expected by Lesotho officials.³¹

One of the Bank's reasons for prematurely moving forward with the project was that contractors were already in place from the first dam, meaning there would be no additional costs to "mobilize" the contractors for the second dam.

Many of these contractors are now alleged to have been giving bribes for the project for years - information the Bank claims it did not have when the Mohale loans were approved. In fact, in a letter to International Rivers Network the Bank stated that it only learned of the bribery in July 1999, or a few months earlier, as admitted by some Bank officials in the past months.

However, documents leaked from Switzerland reveal that the Lesotho government requested the Swiss Supreme Court's assistance on the bribery allegations already in August 1997.

Finally, too often has the Bank done little to ensure compliance and has ducked its critics and responsibilities regarding this controversial project maintaining the fiction that Lesotho is the borrower for the project (despite South Africa being responsible for repaying the loans). In 1998 residents of a local township filed a claim with the World Bank's Inspection Panel, pointing out that as the project effectively ignores demand side management in South Africa, it is in breach of World Bank rules for water projects. The Panel recommended the Board of the World Bank not to authorize an investigation into the request for inspection because the valid concerns on the harsh water conditions raised by the claimants did not appear to have connection with any observance or not by the Bank of its guidelines. Bank officials stated: "As important as demand side management in the water sector is, there is no specific reference in the project to such measures, nor is there a legal requirement in the loan for RSA to implement such policies, since this is a loan to LHDA."³²

Why to pay now for the trial?

The World Bank has proclaimed that fighting corruption is essential to its mission of reducing poverty and promoting environmental sustainability. As a mark of its commitment, it has publicly announced its intention to pay for the trial in Lesotho. Pamela Cox, the World's Bank country director for South Africa and Lesotho, said her organisation was eager to provide financial and technical assistance to the case, although the Bank was "very impressed that the Lesotho government is leading this case".³³ It should – however – be pointed out that, as a participant in the Lesotho project, and with clear knowledge of management problems during the years they were taking place, the Bank's financial support of the trial may well constitute a conflict of interest. The same conflict regards any other financial institution that has provided financial support to the project, or individual governments, such as the French, the UK and

³¹ Jonathan Rosenthal, "Threat to Lesotho dam project", in *Business Report*, 26th November, 1998, Cape Town

³² Nicholas Hildyard, "The Lesotho Highland Water Project – What Went Wrong? (Or, rather: What Went Right? For Whom?)", 10th July 2000, presentation at Chattam House, London

³³ Michael Wang, "European Cos Charged With Bribery In Lesotho Dam Project", in *Dow Jones Newswires*, 18th November, 1999, Johannesburg

the German governments that could concede grants for investigations concerning multinational corporations which are based in the countries they rule.

In November 1999, soon after the extraordinary meeting of the project donors promoted by the World Bank in Pretoria, Callisto Madavo, Vice President for the Africa Region, pointed out that “some donors will contribute necessary funds to the Government of Lesotho to assist in investigating the case”.³⁴

In April 2000 the new World Bank Task Manager Andrew Macoun clarified that the Bank has given no specific financial support to support the investigations carried out by the Lesotho magistrates, even if other donors are considering this possibility in the short term. “Publicizing the terms of any assistance is, of course, the prerogative of the donor concerned, not that of the Bank”, he clearly stated in his response to NGOs’ requests of clarification.³⁵

Sources close to the World Bank confirm that the European Investment Bank was as of July 2000 considering the possibility to give a specific grant support to the Lesotho government for the investigation work which is still in progress.

The question remains why the World Bank and other donors intended to intervene only at such a late stage when the scandal came to light and the new loan for phase 1B has been already disbursed. By doing so the Bank has attempted to interfere with the work of the Lesotho magistrates that have already proved to be able to carry out their tasks effectively counting only on technical support from Swiss and South African colleagues.

Local communities don’t trust the Bank anymore

Local NGOs have always worked together with LHDA to try and solve the problems the implementing agency was unable to deal with on its own. A memorandum of understanding between the Lesotho Council of NGOs and LHDA was also signed in 1997.

The news of the scandal radically changed the mood on the field. Local NGOs working directly on the project have quickly called for more accountability on the part of the Bank and have called for immediate justice.

“It is ridiculous to claim that the bribery is not connected to World Bank-funded components of the project”, said Thabang Kholumo, coordinator of the Highlands Church Solidarity and Action Centre, one of the six “cluster” NGOs which daily monitor the project in Lesotho.

“I don’t care if the Bank gave monitoring support, human resource support, spiritual support or whatever.

This is a World Bank project and those [implicated] companies would not be working on the LHWP without Bank involvement.”³⁶

Motseoa Senyane, coordinator of the Transformation Resource Centre, which is also member of the LHWP NGO cluster, stated that “If it is proved that those companies bribed Sole, they should be expelled from their work at Mohale [dam]”, which is the biggest work under Phase 1B of the project and currently under construction.³⁷

³⁴ see note 25

³⁵ Andrew Macoun (World Bank), *Letter to Antonio Tricarico*, 24th April, 2000, Washington

³⁶ Transformation Resource Centre, “Lesotho Highlands Water Project”, in *Work for Justice*, Sept/Oct 1999, Maseru

³⁷ idem

In a public letter sent to the Washington Post on 15th September 1999, two Lesotho NGOs replied to the World Bank stand reported three days before in the same newspaper³⁸ and reminded to Bank's Vice President how everyone had already been aware of the mismanagement of the Development Fund designed for income generation projects for affected local communities: "The fund has been and continues to be a tool of opportunistic politicians....In Lesotho we see the same stretch of road repaired; torn up the next week; repaired again the following week; and then torn up once more at the end of the month."³⁹ In an October 12th 1999 editorial in the Lesotho newspaper *The Survivor*, the whole Lesotho Council of NGOs made it clear: "It is the World Bank whose guidelines were used during bidding by the big companies. Now it surfaces that the bid process itself was riddled with bribery and corruption," the NGOs wrote. "We want to suspect that the former Chief executive may not be the only one implicated...."

We feel that punishing corrupt multinational companies involved in the LHWP and closely monitoring the implementation of the project's social fund would reassure us that the World Bank's aim to alleviate poverty has meaning for us in Lesotho."⁴⁰

Therefore the Lesotho Council of NGOs strongly suggested a commission of inquiry to be instituted to look into the former and current senior official of both the LHDA and the Ministry of Natural Resources.

International NGOs which have monitored the project since the beginning, raised corruption problems a long time before the scandal hit the press. Since 1998, Lori Pottinger of International Rivers Network reported that "official corruption has also risen dramatically since the project began to bring money into the country. The development fund has been hit hard by corrupt officials, resulting in a standstill in fund disbursement. To this day, communities have yet to benefit for the one aspect of the project intended to specifically benefit them".⁴¹

Consequently, soon after the news of the legal prosecution against Sole came to press, International Rivers Network called upon the World Bank to debar the companies until the case is resolved.

In a January 2000 letter to the Swiss Executive Director at the Bank, Peter Bosshard of the Swiss NGO Berne Declaration wrote, "We believe that the dam building companies charged with corruption should be suspended from receiving World Bank contracts while they are under investigation. If the verdict confirms the allegations, the companies should be debarred from the project and any other World Bank funded projects as described in the World Bank procurement guidelines."⁴² Then, echoing the request from local NGOs to have soon an independent commission assessing institutional responsibilities in the events, Bosshard pointed out how the commission should look at the role of the World Bank in the project too. These were also the requests of Reform the World Bank Campaign in a letter addressed directly to President Wolfensohn.⁴³

³⁸ Callisto Madavo, "Corruption and The World Bank", in *Washington Post*, 12th September, 1999, Washington

³⁹ Motseoa Senyane and Thabang Kholumo (TRC/HCSAC), *Letter to Callisto Madavo*, 15th September, 1999, Maseru

⁴⁰ Lesotho Council of NGOs, "LHDA transparency needs more light", in *The Survivor*, 12th October, 1999, Maseru

⁴¹ Lori Pottinger, "Case study: The Lesotho Highlands Water Project", IRN Information Package for World Bank AGM 1998, 8th October, 1998, Berkeley

⁴² Peter Bosshard (Berne Declaration), Letter to Matthias Meyer, 4th January, 2000, Zurich

⁴³ Antonio Tricarico, *Letter to James Wolfensohn*, 19th November, 1999, Rome

**PART III
OTHER DONORS' RESPONSIBILITIES**

Apart from the World Bank, funding for phase 1A of the project has come from other multilateral aid agencies like the European Investment Bank (EIB), the European Development Fund (EU fund to implement EU-ACP cooperation agreement and currently under integration with other EU financial structures), the African Development Bank and the United Nations Development Programme. Also on a bilateral scale the UK Commonwealth Development Corporation and the German, British and French bilateral aid agencies supported the project. Some Export Credit Agencies guaranteed the operations of companies contracted under the project (COFACE from France, Hermes from Germany, ECGD from Great Britain and SACE from Italy).⁴⁴

Financing plan for Phase 1A of the Lesotho Highlands Water Project

Amount (mil USD)

<u>International financing</u>	<u>869.2</u>
a. donor agencies	391,2
The World Bank (IBRD)	110.0
United Nations Development Programme	0.3
African Development Bank	50.0
European Development Fund	57.0
European Investment Bank	20.0
Commonwealth Development Corporation	36.1
Bilateral aid	117.8
b. Export credit agencies	411.0
Hermes (Germany)	118.0
Coface (France)	104.0
SACCE (South Africa)	107.0
ECGD (UK)	82.0
c. Commercial banks	67.0
Dresdner Bank / KfW	15.8
Credit Lyonnais	17.0
Hill Samuel / Credit Lyonnais	14.5
Banque National de Paris	19.7
<u>Common Monetary Area RAND</u>	<u>1,545.6</u>
DBSA / LHDA	230.2
RSA export credit	579.2
CMA capital market	668.2
GoL	57.2
DBSA / GoL	10.8
<u>Total financing</u>	<u>2,414.8</u>

Source: FIVAS, "Power Conflict", January 1996, Oslo

None of the multilateral development banks financing the project, apart from the World Bank, have adopted anti-corruption guidelines for their operations. It seems that only the EIB is willing to conduct its own investigation into the allegations of corruption for the companies involved in the trial. No information have ever been made public on that by EIB, which is

⁴⁴ Susanne Moxon, Water Power & Dam Construction, "Hydro finance; Heart of the Matter", 28th February, 1999, London

financially supporting also phase 1B of the LHWP with two loans totaling 54 million EURO to the LHDA to fund the Matsoku Tunnel and Weir scheme and another 45 million EURO one to the TCTA to finance the foreign exchange costs of the Mohale Dam. The whole loan package was approved by EIB on 4th June 1998.⁴⁵

As to bilateral support for the project through bilateral aid, export credits and credit guarantees, governments involved have not undertaken any action on the matter, nor have non-donors governments whose companies are on trail showed public interest for the case and committed to find out the truth to honour the reputation of its export.

Only the South African government took a stand soon after the corruption scandal came onto the press. Although the companies are being prosecuted for their role in the scandal, the South African Water Minister in charge of the project, Ronnie Kasrils, said that the companies will keep their contracts and later dismissed media accusations that his efforts had been inadequate: "look at the scoreboard. Our side is winning. Now the criminal case is being pursued".⁴⁶

In any case none of the funding agencies have ever vetted the corruption records of the companies bidding for contracts. Even today, there is no binding requirement for any of them to undertake such a vetting process of the companies they award contract to.

The Canadian government has been asked to co-operate in the investigation by the South African and Lesotho governments, but a 20th August 1999 article in The National Post (Ontario) revealed that there was no action being taken at that time. Author Patricia Adams wrote: "When I asked Department of Foreign Affairs and International Trade officer Richard Chappell how the Canadian government was treating this case, he stated that it is 'not treating this issue at all.' When I asked if Canada would give Lesotho 'mutual legal assistance' in collecting evidence for this case, as legislation provides, the Department of Justice's senior counsel in the international assistance group, Kimberly Prost, had 'no comment.' When I asked the Canadian International Development Agency, which paid more than \$100,000 to Acres International for its work on the Lesotho dam project, what it would do should wrongdoing be established - CIDA has a formal anti-corruption policy - it said it would consult the appropriate Canadian authorities, presumably the same Departments of Foreign Affairs and justice that are sitting on their hands."

The role of export credit agencies in massive projects as the LHWP is not very transparent and laying a bribery favouring climate. According to Transparency International, in the case of Export credit insurance schemes bribing foreign officials in order to secure overseas contracts for their contracts has become a widespread practice in industrialised countries, particularly in certain sectors such as exports of military equipment and public works. "The value of the bribes, in general presented as 'commissions', would normally be treated as part of the costs of supply and included in the total contract value covered by the guarantee".⁴⁷

The key role of export credit and investment insurance agencies remains in phase 1B which is currently in progress. Last years' wide political instability following national elections in Lesotho led to the "one-week civil war" in September 1998 concluded by the controversial

⁴⁵ European Investment Bank, "EIB Finance for Lesotho Highlands Water Project", Press Release N° EXT 21/98, 4th June, 1998, Luxembourg

⁴⁶ see note 7

⁴⁷ Dieter Frisch, Transparency International, "Working Paper: Export Credit Insurance and the Fight Against International Corruption", 26th February, 1999, Brussels

intervention of the Southern African Development Community – strongly requested and obtained by the RSA under unclear international circumstances and relations between the two countries. The consequent interim rule for a 18 months period did not bring new elections in the country and the situation remains quite unstable at the time of this writing – Nor has the United Nations intervened to facilitate the stalled process. Under these conditions the financial backing of export credit and investment insurance agencies resulted to be fundamental for multinationals' operations and foreign investors in the project.

The OECD anti-bribery Convention

All of the companies implicated in the Lesotho Highlands Water Project corruption scandal are from countries that have signed the Organization for Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions - adopted in November 1997 and come into force in February 1999. This Convention obliges signatories to adopt national legislation which makes it a crime to bribe foreign public officials, and specifically requires that “Investigation and prosecution of the bribery of a foreign public official ... shall not be influenced by considerations of national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved” (Article 5). Thus far, none of the governments have pressed for charges in this case.

The 2000 OECD Ministerial Meeting reaffirmed in the final communiqué “Shaping Globalisation” that “The fight against corruption is a high priority...Twenty-three countries have completed their internal process, 21 of which have had their implementing legislation reviewed by the Working Group on Bribery [in International Business Transactions]. Ministers commended these countries and urged that deficiencies identified in current implementing legislation be remedied as soon as possible”.

Furthermore, G8 countries recently reaffirmed at the Okinawa Summit in July 2001 the urgency to have a full ratification and prompt implementation of the new OECD Convention: “We renew our commitment to combat corruption. We stress the need for transparency in government in this regard, and call for the ratification and effective implementation of the OECD Anti-Bribery Convention by all signatory parties. Working with other countries, we will prepare for the launch of negotiations in the United Nations on a new instrument against corruption, and instruct the Lyon Group to pursue work on this issue. We look forward to the Second Global Forum to be hosted by the Netherlands as a continued response to our call at Birmingham.”

A Transparency International report shows that most corporations doing business abroad are seen to be exposing their employees to the risk of severe penalties as they appear to ignore the 1999 OECD Convention. “Company doing business abroad will have to wake up to the reality that foreign bribery now is a crime,” Peter Eigen of Transparency International said. “Only a fraction of them indicated awareness of the new Convention, or corporate plans to comply with the new international anti-corruption rules”. Detailed results of questions asked by Transparency International to private sector leaders, including senior representatives abroad of international firms, show that only six percent of those surveyed are familiar with the OECD Convention that was signed by the 34 leading industrialised countries. Only 19 percent of those

surveyed said that a review of bribery practices is planned by their firms as a result of the OECD Convention.⁴⁸

At the same time the 2000 OECD Ministerial Meeting approved the legally not-binding “OECD Guidelines for Multinational Enterprises” based in OECD countries regarding their international activities establishing for the first time a code of conduct for multinational corporations, although based on a voluntary endorsement by the corporations. Under paragraph VI on Combating Bribery, multinational “enterprises should...enhance the transparency of their activities in the fight against bribery and extortion. Measures could include making public commitments against bribery and corruption and disclosing the management systems the company has adopted in order to honour these commitments. The enterprise should also foster openness and dialogue with the public so as to promote its awareness of and co-operation with the fight against bribery and extortion”.

The Lesotho case proved that multinational corporations are still far away from adopting on their own the OECD guidelines, even if voluntary and not legally binding at all. Such reluctance to interact with stakeholders external to commercial practices and to be more transparent on corruption cases in which they are involved should urge OECD countries to put stronger efforts in applying the Convention on Bribery in case of bribing such as the Lesotho one while paying more attention to bribes payers than to bribed officials.

PART IV

⁴⁸ Transparency International, “Construction and Arms Industries Seen as Leading International Bribe-Payers”, *Press Release*, 20th January, 2000, Berlin

THE WORLD BANK ANTI-CORRUPTION FIGHT: A REAL “ZERO-TOLLERANT” APPROACH?

During the World Bank annual meeting in 1996 in Washington, President James Wolfensohn, one year after taking the lead of the world largest development institution, launched the new Bank’s anti-corruption strategy and personally pledged to eradicate **“the cancer of corruption”** around the globe. When he announced the campaign he added: “I made it clear that the Bank’s drive...would not stop at our own doors”.

In his statement to the World Bank/IMF AGM 1997 in Hong Kong, one year after the launch of his “zero-tolerance” fight to corruption, World Bank President Wolfensohn said:

“We are making it very, very clear to all our partners that if there is an element of corruption, then that project is finished, the people are blacklisted and they would better watch out”.

Then Wolfensohn warned that if a government was unwilling to act against corruption, then the World Bank would have to reduce its level of support to that country. The same spirit has been confirmed once more in Wolfensohn’s speech at the 9th International Anti-Corruption Conference (IACC) held in Durban in October 1999: “There is nothing more important than the issue of corruption... At the core of the issue of social equity is the issue of corruption... [Industrialized countries] do not want to give money for development assistance that ends up in offshore bank accounts.”

On 15th July 1998 Wolfensohn sent out an internal memorandum to all Bank staff. He informed of his decision to set up an internal fraud team from the Internal Audit Department in collaboration with the Office of Professional Ethics, and that he alerted the legal department and its regular outside auditors, Deloitte Touche, and hired a special skilled team from the global accounting firm Pricewaterhouse Coopers as well as two outside specialists on fraud matters – a former US federal prosecutor and a head of security for two international oil companies.⁴⁹ “The trigger for these investigations was my decision...that if the bank were going to campaign against corruption in our borrowing countries, we had to be absolutely certain that we held ourselves to the highest standards on the inside”, Wolfensohn said in the memo.

“While I have no reason to believe there is a widespread problem in the Bank, even one case is one too many.”⁵⁰

Nevertheless one investigation sparked by the internal probe had already led to a civil lawsuit against a former Bank official, Fritz Rodriguez, who took tens of thousands of dollars in alleged kickbacks from a contractor on a water utility project in Algeria. In addition to Rodriguez, who resigned during the Bank internal investigation in 1997, two other Bank officials had been notified that they were under investigation and had been suspended while the probe was underway. One of them involved possible misuse of a trust fund set up by the Japanese government to subsidise Bank staff administrative expenses. As revealed by a senior Bank official also projects in Russia and Indonesia had come under scrutiny.⁵¹

In the following weeks the Bank decided also to set up a hotline which allows staff to call in any concerns or information they may have about possible irregularities.

⁴⁹ Andrea Shalal-Esa (Reuters), “World Bank turns anti-corruption effort inward”, 16th July, 1998, Washington

⁵⁰ James Wolfensohn, “Allegations of Corruption”, Letter to World Bank staff, 15th July, 1998, Washington

⁵¹ Lorraine Adams, “World Bank Hires Auditors to Probe Its Own Spending”, in *Washington Post*, 16th July, 1998, Washington

Surprisingly, on 7th January 2000 the Financial Times revealed that in January 2000 Pricewaterhouse Coopers was found guilty by the US Securities and Exchange Commission of “not only a lack of sufficient global safeguards, but also a systematic failure by professionals... to adhere to even their own firm’s existing controls.” SEC found thousands of instances of Pricewaterhouse Coopers’ staff and partners holding shares in companies they audited. The new and not unprecedented scandal surrounding Bank’s activities and lending didn’t go forgotten this time. On 6th April 2000, the General Accounting Office (GAO), the watchdog arm of US Congress, published its report titled “The World Bank, Management Controls Stronger, but Challenges in Fighting Corruption Remain”, in which it exposed significant shortcomings in the World Bank’s ambitious anti-corruption strategy. Mitch McConnell, Chairman of the Senate sub-committee in charge of appropriating funds for international organisations, told the Financial Times that the report **“tells me the Bank has publicly announced an anti-corruption strategy but has not actually done a whole lot”**.

He explained that the Bank had not established priorities over which countries should participate in anti-corruption programmes. Nor had official used a systematic approach in assessing countries’ methods of financial management and procurement. Instead, the assessment were scheduled at the convenience of borrowers and few were completed for the Bank’s ten largest borrowers, which received together 62 per cent of its loans in fiscal year 2000.⁵²

Furthermore, the GAO report points out that the World “Bank and some borrowers do not always comply with Bank procedures and financial management practices”.⁵³

As reported by GAO itself, the Bank reacted sharply to the report noting that “it holds itself to a high control standard and that it had already identified many of the weaknesses we cited through its own self-evaluations and has remedial actions underway”.⁵⁴

According to James Wesberry, Director of the USAID-financed Americas’ Accountability/Anti-Corruption Project, the most serious impediment to stopping corruption in World Bank projects is inadequate auditing procedures. “While audits are required by International Financial Institutions (IFIs), they are generally innocuous, untimely and therefore useless. They furnish IFIs with only cosmetic accountability”.

As pointed out by the British NGO The Cornerhouse, audits of World Bank projects often amount only to looking at the books, without checking whether the records match reality.⁵⁵

Prior review of procurement contracts is undertaken on only a quarter of World Bank contracts; the rest are subject to post-procurement audits with independent firms. Between 1997 and 1999, only 50 projects out of a total of 250 were audited. Yet 100 contracts (out of a total of around 45,000) were declared “misprocured”. Their total value was over US\$ 45 million. As concluded in the GAO report, “the Bank does not have reasonable assurance that project funds are spent as intended”. Conflict of interest seems to be also pervasive in World Bank auditing. The independent firms which the Bank hires to carry out audits are the same ones it employ to set up the accounts, information systems and financial management of its projects.

⁵² Stephen Fidler, “Bank corruption line under fire”, in *Financial Times*, 7th April, 2000, Washington

⁵³ US General Accounting Office, “World Bank. Management Controls Stronger, but Challenges in Fighting Corruption Remain”, GAO/NSIAD-00-73, April 2000, Washington

⁵⁴ *idem*

⁵⁵ The Cornerhouse, “Exporting Corruption. Privatisation, Multinationals and Bribery”, Briefing 19, June, 2000, Dorset, UK

The World Bank's own corruption record^{56 57}

“As a public institution we are accountable for helping our borrowers to see that the money allocated under Bank-financed operations is being spent on what it should be spent on and that our borrowers are getting good value for what is being spent”

World Bank President James Wolfensohn

The record of the World Bank as regards corruption practices is quite different from what could be deduced from the speeches on corruption Wolfensohn has given in the last few years.

The Bank has formed partnership with multinationals which have been convicted of corruption.

One example is Aguas Argentinas where the Bank, through its International Finance Corporation (IFC), is an equity partner alongside Lyonnaise des Eaux (now Suez-Lyonnaise) and Générale des Eaux (now Vivendi), both of which have had executives convicted of bribing French public officials to win contracts (in Grenoble, Réunion and Angoulême) and recently Italian officials in Milan.

The Bank has helped companies keep contracts which may have been obtained corruptly.

HubCo, Pakistan's largest power company, is accused by the government of obtaining its contract corruptly. The World Bank has insisted that HubCo's contract to sell electricity should not be affected by this, whatever the result of the investigation, and asked the IMF to hold back a loan to Pakistan until the Bank was satisfied that HubCo's contract would not be cancelled because of the corruption proceedings.

The case of HubCo provides the opportunity to tell the story of a British consultant that found himself caught in the “zero-tolerance” campaign against corruption. According to an article published by the Financial Times, on November 12, 1999,⁵⁸ this British consultant, Richard Ashby, claimed that he was taken by policemen in Islamabad and subject to harassment and physical violence. He had been involved in the HubCo Powerplant.

It is interesting to know that Ashby was a colleague of Mr. Ibrahim Elwan, a former official that served in the World Bank for 18 years working on the HubCo project, and that in 1994 left to form his own company, Infrastructure Capital Group, based in Washington DC to develop private power projects. In 1992 he was to leave the Bank but decided to stay to continue working to get the HubCo project through and follow the matter until the whole financial package of the deal was finalized in 1994. In 1994 Elwan was subject to an inquiry by the World Bank on his behavior in garnering financial support for the construction of a pipeline connected to HubCo. In early 1997 with the new Sharif government in power, news of corruption around HubCo started filtering to the press. The reaction of the Bank was adamant: this is reason for “grave concern” so stated World Bank vicepresident for South Asia, Mieko Nishimizu. Elwan's name came up again to the Bank's attention, as he was also involved in an inquiry by the Bank's newly formed internal fraud team for his activities in Pakistan. Another investigation was carried out by the Pakistani government's anti-corruption unit, the Ehtesab. Mr Ashby could realize during his detention in Pakistan that the World Bank and the Pakistani government were working in close cooperation. He was shown World Bank confidential

⁵⁶ compiled from idem

⁵⁷ compiled from see note 28

⁵⁸ Stephen Fidler and Nancy Dunne, “Finance consultant swept up in political intrigue”, in *Financial Times*, 12th November, 1999, Washington

documents, and two people that he met after having been arrested were two British detectives from a London-based detective agency, Maxima, hired by the bank together with Pricewaterhouse Coopers to investigate corruption claims. Maxima in fact operated on behalf of the World Bank. Ashby was subject to threats and forced to sign documents accusing Mr Elwan. Ashby's lawyer wrote to the World Bank's counsel Gump Strauss Hauer and Feld, a Washington based law firm, to denounce an "egregious violation of human rights", in which Ashby "captors" were apparently acting in concert with the World Bank investigation. After Mr. Ashby's mother wrote to Wolfensohn, the Bank stated that the two inquiries were separate and that there was no interrelation between the World Bank and the Ehtesab inquiries. After the letter to Wolfensohn, the abuses against Ashby ended until he was released. The case of Ashby was not the only one: other engineers were subject to abuse by Ehtesab, the article concluded.

The independent auditing company appointed by the Bank to investigate corruption in Bank-funded projects has been caught paying bribes.

In 1996 Wolfensohn announced that he had hired the world's largest inspection and testing company, Société Générale de Surveillance (SGS) of Switzerland, to audit Bank projects for evidence of corruption in three countries – Poland, Kenya and Pakistan. "We want to put the fear of God in them", Raghavan Srinivasan, the Bank's chief procurement adviser, said at that time. On 17th December 1997 the Financial Times reported that "SGS has admitted that it paid a substantial commission to a Geneva lawyer [Jens Schlegelmilch]... for 'assistance' [in 1992] in negotiating a pre-shipment inspection services contract with Pakistan". In April 1999, the former prime minister of Pakistan, Benazir Bhutto, and her husband were found guilty of accepting bribes worth US\$9 million from SGS, sentenced to five years in prison, and banned from holding a seat in Parliament for seven years (a judgement the defendants have appealed). But SGS have not been tried for any offence in Pakistan or Switzerland, and have not been banned by the World Bank.

In August 1999, moreover, SGS was banned from operation for five years in Ethiopia for illegal activities including tax evasion and working without proper work licences.

The Bank also insists on privatisation as a condition for loans – regardless of corruption allegations.

In Uganda, the Bank's IFC is financing 80% of a US\$500 million hydropower scheme against political and other risks – on condition that the Ugandan government agrees to privatise the Ugandan Electricity Board. But the Bank has ignored all allegations of corruption over the power purchase agreement on which that scheme depends – in April 1999 the minister for energy resigned because he was accused "of bribe-taking in his brokering of the power purchase agreement between the American/British AES and government."

CONCLUSIONS AND RECOMMENDATIONS

a. External investigation on Bank's responsibilities

In June 1991 the World Bank President Barber Conable appointed Bradford Morse, formerly a UN Under-Secretary-General and then head of the UNDP, to organise an independent review of the measures being taken to mitigate the human and environmental impacts of the Sardar

Sarovar Dam Project on the Narmada River in India, funded by the World Bank through IBRD loans and IDA credits. The work of the review represented the first independent assessment of an internationally supported development project. No lending or aid institution had ever accepted before that its decisions and procedures be submitted to this kind of public scrutiny. In June 1992, the Independent Review's final report not only confirmed all of the criticism of NGOs in India and abroad, it revealed a pattern of gross negligence and delinquency on the part of the World Bank and Indian government much worse than anyone imagined. "There appears to have been an institutional numbness", "a history of omissions, unmet deadlines, and ex post facto revisions" that the Commission concluded amounts to "gross delinquency".⁵⁹ Under intensive pressure from some of the Bank's donors countries and civil society groups in India and abroad the World Bank headed by President Lewis Preston pulled out from the Sardar Sarovar project in 1993.

Four years later two independent reviews of the project were commissioned by President James Wolfensohn on the Pangu Hydroelectric Project on the Bio-Bio River in Chile, funded by the World Bank Group with IFC credits to the Spanish company ENDESA. In Wolfensohn's words in the letter to the then Chilean Minister of Finance Aninat dated 6th February 1997 before making public the Jay Hair report – produced by an independent consultant from IUCN - the "two independent reviews of the project are highly critical of IFC's handling of the environmental appraisal and supervision of the Pangu project and of the compliance of Pangu S.A. and ENDESA with their obligations under the IFC agreements". In the next months ENDESA decided to repay back the IFC credit soon while backed by the private commercial Dresdner Bank of Germany. Thus, the World Bank was forced out from the project.

In both cases regarding dams only through independent investigations could truth come to light and the truth was about the Bank's responsibilities in not controlling the implementing agencies in their operations on the field. Both cases proved Bank's direct responsibilities too in acting against the interest of affected local communities.

In the case of the loans lent for the Lesotho Highlands Water Project, the World Bank reacted to criticism by local and international NGOs by starting its internal investigation on the matter, which has already cleared that Bank staff have had no responsibility in the case. The controversial record of World Bank internal investigations in the past years and the strong critics and allegations surrounding several World Bank hired-auditors in similar cases make it clear that an internal investigation is not sufficient to assess Bank's management responsibilities. This report highlights that the World Bank has either been a highly incompetent fiscal overseer of the project, or has not been truthful regarding its earliest knowledge of the bribery. **In either cases, a full independent investigation into its role is the only way to get to the truth of the matter and to gain a new international credibility as World leading development institution.**

b. Interpretation of World Bank guidelines

The Lesotho case rises several questions on the effectiveness of the World Bank anti-corruption strategy implemented since 1996. The main weakness in Bank's approach turn out to be the narrow interpretation of the procurement guidelines by Bank's management.

In order to get an effective leadership in the fight of corruption worldwide, the World Bank should apply a full interpretation to its guidelines and consider the debarment of companies found guilty of corruption in World Bank-funded projects also in case these were contracted not directly under World Bank loans.

Furthermore, the Bank should also consider the possibility of suspending a company contracted under its loans or World Bank-funded project whenever the presence of

⁵⁹ Morse Commission Report, page 226, 233-234

companies on the field during the investigations could interfere with these. In order to be able to operate in this way the Bank should include such clauses in its procurement and consultancy contracts and invite other financiers and implementing agencies participating to World Bank-funded projects to adopt such clauses in the contracts they sign with companies.

A knowledge Bank, as the World Bank is willing to become, needs to become an high level and internationally recognised standard setter.

c. World Bank anti-corruption strategy

The World Bank anti-corruption strategy should be fully reviewed and improved.

The approach aimed to strengthen borrowing countries' capabilities to fight and prevent corruption – also through general institutional lending support - should be complementary to the support to be given to investigations carried out in the same countries by local courts. That support should be considered not as direct funding for the investigation in order to avoid potential conflicts of interest between companies on trial and donor countries in which those companies are based. On the contrary, **the Bank should recognise and refer to the results of national investigations as a basis for any internal or external investigation it wants to open on its own to assess eventual sanctions for companies or other entities involved in World Bank-funded projects/operations. In order to achieve that, the Bank has to modify its institutional approach to corruption, by giving to its Board the task to assess any allegation of corruption under World Bank operations. Therefore the Sanctions Committee should only implement decisions taken by the Board. Governments from OECD countries represented at the Board of the World Bank should act in the spirit of the new OECD Convention on Bribery of Foreign Officials in International Financial Transactions and request such institutional change within the Bank.**

Secondly, **the Board should have a much stronger control on how World Bank auditors related to anti-corruption work are selected.** Since donor countries have direct relationships with those private auditing agencies both on bilateral and transnational levels, as in the case of EU member countries through EU institutions, they should directly contribute to the selection of the auditors also on the basis of their past records.

Furthermore, **results of any internal/external investigation in corruption cases should be made public even in case the allegations are proven to be false.** The “cancer of corruption” finds a fertile ground where no access to information is available to third parties external to the monitoring, evaluation and sanctioning process. The World Bank invested a lot in the last decade to become a much more transparent and accountable institution also to civil society apart from its board. The recent review of the World Bank guidelines on disclosure of information represents a unique possibility to enlarge the current guidelines towards this direction too.

d. Implementation of the OECD Convention

The Lesotho case might be the first test for the correct and prompt implementation of the OECD Convention on Bribery of Foreign Officials in International Financial Transactions in those countries which have already ratified the Convention and have national companies currently on trial in Lesotho.

South African and Swiss magistrates have already worked closely with their Lesotho colleagues during the investigations in the matter. Several national countries have a long experience in corruption fighting as concerns matters related to ODA funds and projects. Lesotho magistrates have proved that national and international legislations offer valid and sufficient instruments to investigate alleged violations in which private companies might have

occurred in their operations overseas. Too often in the last decade have magistrates in donor countries lacked the willingness to methodically investigate such allegations which came into national and international press several times.

G8 countries should take the lead in the implementation of the OECD Convention by building up from the Lesotho case.

e. International guidelines for all financiers

Regional development banks, export credit and investment insurance agencies and private investors have not yet adopted clear and transparent guidelines on procurement aimed at preventing and eventually sanctioning bribing behaviours by companies contracted in their operations, although donor countries represented in these agencies adopted clear legislations on that.

In order to play a more active role in corruption cases related to their operations, these agencies should adopt binding guidelines similar to those already implemented by the World Bank Group and promote their implementation according to the OECD Convention principles as soon as possible.

f. International database of “blacklisted” companies

A more coordinated international work is needed to harmonise and strengthen anti-corruption campaigns both on national and international level. National governments which operate through ODA and commercial aid should have a common framework and source of information to evaluate private companies records and behaviours regarding corruption practices before any contract be signed with them. **At a global level, concerted international action should be undertaken to set up a comprehensive database of “blacklisted” companies debarred from further aid-financed business because of their involvement in corruption cases connected to projects financed by the World Bank, regional development banks, national aid agencies and export credit agencies.**

Governments, national agencies and inter-governmental agencies around the world could use this consolidated blacklist when deciding to whom they should award the contract. Such a database should be held at the United Nations, by UNCTAD (UN Conference on Trade and Development). The database should be based on verdicts of national trials and on sanctions adopted by international bodies. The list of blacklisted companies should be public.