

Submission
to the
U.S. Senate Committee on Foreign Relations
Regarding the
MDB Roundtable Discussion
On Multilateral Development Bank Corruption
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United States Congress

By

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Mr. Chairman, Senators of the Committee, it is my pleasure to make a submission to the U.S. Senate Committee on Foreign Relations, as it seeks to understand the full impact of corruption in multilateral development bank lending and to identify ways of bringing about greater transparency and accountability on the part of the MDBs. I understand the results of this discussion will be considered in the reauthorization of U.S. funding of the African Development Bank, the Asian Development Bank and the World Bank.

As an economist and the executive director of Probe International, a Canadian nonprofit research group, I have researched the environmental, financial, and social effects of MDB projects over the past 25 years. Recently, I helped found a U.S.-based NGO, Probe International Foundation, to carry out its work in tandem. In Canada, Probe International has 20,000 supporters and more than half of our 40,000 daily Web site visitors reside in the U.S.

My major work in the area of MDB corruption began in 1991 when I wrote a book, *Odious Debts: Loose Lending, Corruption, and the Third World's Environmental Legacy*,¹ which exposes how corruption led to unrepayable debts, environmental harm, and the demise of democracy throughout the Third World. My submission today will be based on my experience testing and challenging the accountability of the MDBs. I will also rely on my detailed monitoring of the ongoing Lesotho corruption cases against the engineering firms that worked on the World Bank-funded Lesotho Highlands Water Project.

Senator Lugar, in his October 14, 2004 letter, asked us to provide three recommendations to enhance transparency and accountability in the multilateral development banks (MDBs) in order to reduce corruption in their operations.

I recommend:

- 1) effective deterrence;
- 2) vigorous enforcement; and
- 3) increased U.S. Congressional scrutiny.

I'll explain my reasons with the following example.

In 1999, prosecuting authorities in Lesotho stunned the development world by indicting 12 prominent engineering multinationals from six countries for bribing the CEO of their World Bank-funded Highlands dam scheme.² No American firm was indicted. This, I believe, was no coincidence.

The U.S. Foreign Corrupt Practices Act has effectively deterred many American executives from corrupt acts. Americans can be prosecuted, jailed, their firms can be barred from work, their names disgraced, and they can face stiff financial penalties.

Not so in other OECD countries. Until recently, firms could deduct bribes as legitimate business expenses and governments facilitated corrupt acts rather than stopped them.³

Because U.S. firms make unlikely partners in crime, corrupt players keep them away from MDB contracts. In the Lesotho case, for example, the first company to be convicted of bribery was a Canadian engineering company called Acres International. One of the favors that Acres received for its \$260,000 in bribe payments, according to court documents, was advice on how to beat the competition that Acres was facing from the American firm, Bechtel.⁴ Bechtel, needless to say, was not on Lesotho's list of indicted firms.

For all western suppliers to face penalties comparable to those Americans face, MDBs must have effective deterrents. Unless the cost of corrupt acts becomes greater than the benefit, bribery will continue to pay and firms will have an incentive to develop evermore elaborate ways to hide their crimes.

Deterrents today are slaps on the wrist. The World Bank has debarred Acres, but it has done so more in name than in fact. After Acres was charged, it continued to receive World Bank contracts, the last one after its conviction and just one week before its debarment. Today, Acres has six ongoing projects with the World Bank, which will cushion the financial penalty of its debarment over the next three years.

In the five years that it took the World Bank to first consider taking action against Acres until its decision to sanction the firm, Acres did business with the Bank "pretty much as usual," observed Nordic industry publication, *Development Today* in its September 21, 2004 issue. Edith R. Wilson, the Communications Advisor at the Department of Institutional Integrity at the World Bank, told *Development Today* that under the current sanctions procedures, "a firm is eligible until it is debarred."⁵

The Honorable Dick Thornburgh, Counsel of Kirkpatrick & Lockhart LLP and Former Attorney General of the United States, described the danger of such a policy in his testimony before the United States Senate Committee on Foreign Relations on July 21, 2004, "Plainly, the Bank has an obligation to protect funds entrusted to it from misuse at the hands of a party who has already been shown by credible evidence to have engaged in fraudulent or corrupt practices, and the Bank would only look foolish were it to award further contracts under such circumstances on the mere technicality that it had not completed its formal processes."⁶

Meanwhile, no other MDB has debarred Acres. In the MDB system, a firm can be debarred by an MDB for corrupt behavior one day and awarded a contract by another MDB the next day.

I recommend that the MDBs follow the principles in the Foreign Corrupt Practices Act and debar a company or individual under investigation or after indictment, until its innocence is established. I also recommend that debarment by one MDB be a debarment by all. Finally, because the U.S. government is the single largest shareholder in the MDBs, I recommend that the U.S. debar firms found guilty of corruption by any MDB.

Strong U.S. actions will be well received in the Third World. According to Guido Penzhorn, the prosecutor in the Lesotho trials, in his testimony to the Senate Committee on Foreign Relations

on July 21, 2004, there is a lingering impression in southern Africa that the First World countries were more interested in protecting the interest of the corrupt companies than seeing them prosecuted.⁷ This is clearly the case in Canada, where Canadian government agencies defended Acres from debarment on the grounds that Third World courts can't be trusted because *they* are known to be corrupt.⁸

Moreover, the Canadian government continues to support Acres with federal funds through aid and export credit agencies, leading one Canadian journalist to say "Acres won a get-out-of-jail-free card from the feds."⁹ Equally as bad, is the Canadian government's absolute absence of remorse for its part in defrauding the World Bank and Lesotho citizens: Acres' agent in Lesotho, a Mr. Zalisiwonga Bam, the person who arranged Acres' bribery payment for which it was later convicted, was a Canadian federal cabinet appointee. Mr. Bam was Canada's Honorary Consul in Lesotho. We have demanded that the Canadian government cease to disparage the Lesotho judicial system,¹⁰ that it accept responsibility for its part in this criminal act, and that it immediately disqualify Acres from all government contracts. Companies found guilty of corrupt acts, we believe, should be debarred from all government contracts. If the U.S. takes the lead in doing so, countries like Canada will likely follow.

As Guido Penzhorn said in his testimony to this Committee, because firms cannot be sent to prison, the only real punishment that would match taking away a natural person's liberty is "sanctions by the international donor/lending agencies."¹¹

Finally, the MDBs cannot be expected to vigorously police themselves or to self-enforce their promises to rid their operations of the cancer of corruption. Their internal conflicts of interest are too many: for example, an executive director's job is to lobby for his countries' firms to be awarded MDB contracts, not to expose their corrupt activities or to disqualify them; senior Bank staff will always have an incentive to cover up the negligent or corrupt practices of junior staff to limit charges of incompetence or malfeasance on their own part; if MDBs discover their past loans were used corruptly they may lose their legal claim to repayment of those sums, threatening the Banks' preferred creditor status and, ultimately, their credit rating.¹² Moreover, the MDBs are, in law, answerable to no one.¹³ The anti-corruption standards to which they adhere, and their investigative processes, are malleable and, in the end, compromised by the taint of self-interest and bias. No other institutions in western society have the same immunity from public accountability, regulatory oversight, market discipline, and legal action, as the MDBs. Given their extraordinary immunity, it is not surprising that they now stand accused of having allowed billions of dollars in public assets to be turned illegally into private assets over the past 60 years.¹⁴ The MDBs should no longer be allowed to police themselves.

I recommend that the U.S. Congress make reauthorizations and capital increases for all of the MDBs conditional upon regular and spot audits (including forensic audits when necessary) of the effectiveness and enforcement of MDB anti-corruption programs. These audits should be conducted by a U.S. agency, such as the Government Accountability Office (GAO).

I have confidence that the GAO could credibly perform this function because the GAO is

unambiguously accountable to the U.S. Congress and the American people. In my experience over the last 25 years, both have taken more responsibility than any other legislature or citizenry for correcting the harmful effects of the MDBs. Furthermore, as the investigative arm of Congress, the GAO is independent and nonpartisan and thus would have the necessary reputation to carry out a fair and unbiased review of MDB expenditures. As the agency of the U.S. Congress that studies how the federal government spends taxpayer dollars, it is appropriate that the GAO exercise oversight over U.S. contributions to the MDBs.

A possible alternative, which we discussed in our roundtable discussion on October 29, 2004, is for a team of Auditor Generals – GAO equivalents – from MDB member countries, to audit the MDBs. If such a body could be structured to receive its authority and its funding from MDB member legislatures (and not from MDB member governments), and thus to be accountable to legislatures, and to report to legislatures, it might have the same credibility that the GAO would have in auditing the MDBs.

The U.S. Congress should make U.S. replenishments for the soft loan windows and capital increases for each of the MDBs conditional upon such an independent auditing body having unfettered access to Bank records and the right to interview staff, borrowers, contractors and other stakeholders. U.S. funding should also be conditional upon each MDB regularly publishing estimates of funds illegally appropriated, costs inflated due to corrupt arrangements, and bribes paid, as well as funds recovered from such activities. The GAO, as the MDBs' auditor or as a participant in a multinational auditing body, should determine whether or not the MDB meets U.S. enforcement of anti-corruption standards. If it does not, then U.S. taxpayers cannot be assured that their funds are used as intended and that American firms haven't been unfairly disadvantaged. In this case, the U.S. should withhold funds from the MDB in question.

The U.S., as the major shareholder in the MDBs and their largest funder, has more clout than any other country. The U.S. Congress, as the legislature that is more accountable to its own citizens than any other, has always been the most effective legislature at restraining the harmful effects of the MDBs. The U.S., as the country with the toughest anti-corruption laws in the world, should not accept lower standards from the MDBs that it supports with American taxdollars. We, in other countries, will do our part to get our governments to catch up with the U.S., but we urge you not to wait.

Thank you.

ENDNOTES

1. *Odious Debts: Loose Lending, Corruption and the Third World's Environmental Legacy* by Patricia Adams, Earthscan, London and Toronto, 1991:

<<http://www.odiousdebts.org/odiousdebts/index.cfm?DSP=content&ContentID=53>>

2. According to the Indictment in the High Court of Lesotho Held at Maseru, July 1999, 12 companies from OECD countries were initially indicted. They included the following firms (in partnership, consortium, or solely): one from Canada (Acres International), one from Sweden (Asea Brown Boveri Generation AG), one from Italy (Impregilo SpA), two from the U.K. (Kier International Limited and Sir Alexander Gibb and Partners), two from Germany (Asea Brown Boveri Schaltanlagen GmbH and Lahmeyer International GmbH), and eight from France (Sogreah, Spie Batignolles, a consortium of Spie Batignolles and Ed Zublin, Dumez International, Cegelec – a partnership which includes CGEE-Alstom and General Electric – of France, and Coyne et Bellier).

3. “Foreign aid corruption case puts Canada on trial” by Patricia Adams, *National Post*, August 20/1999: <<http://www.odiousdebts.org/odiousdebts/index.cfm?DSP=content&ContentID=1>>

Also see: “Acres' partners in crime” by Lawrence Solomon, *National Post*, August 23, 2003:

<<http://www.urban-renaissance.org/urbanren/index.cfm?DSP=content&ContentID=8213>>

4. See p. 151 of *Rex v Acres International Limited*, Judgment, delivered by the Honourable Mr. Justice M. L. Lehohla on September 13, 2002, Lesotho.

<<http://www.odiousdebts.org/odiousdebts/publications/JugdmentAcres.pdf>>

5. According to the Norwegian journal, *Development Today (DT)* (“Acres signs last Bank contract in Uganda one week before debarment,” Sept 21, 2004), Acres currently has six World Bank-financed contracts, with the latest contract, an electricity project in Uganda, signed a week before the debarment was announced. According to *DT*, Ms. Wilson’s records show Acres has five uncompleted contracts with a total contract value of approximately US\$2.3 million. The projects are located in the West Bank and Gaza, Ethiopia, Tanzania, Ghana, and one is a regional project in Africa. Then, “as late as July 15 of this year – just eight days before Acres was blacklisted – the World Bank assigned Acres for a contract on the Fourth Power Project in Uganda. The contract concerns a feasibility study for the rehabilitation of the Tororo-Opuyo-Lira 132-kV transmission line, worth about USD 300,000,” reports *DT*. John Donaldson at World Bank External Affairs confirmed to *DT* that the contract was awarded to Acres after international bidding and is financed by an International Development Association credit. According to Donaldson, the Bank gave its “no objection to the bid evaluation report” on May 4, 2004.

6. See the testimony of The Honorable Richard Thornburgh Of Counsel Kirkpatrick & Lockhart, Washington, DC on July 21, 2004.

<<http://foreign.senate.gov/testimony/2004/ThornburghTestimony040721.pdf>>

In the case of Acres, there was “credible evidence” that the company had engaged in corrupt practices: 1) the Bank’s own investigators (Arnold and Porter) concluded in their March 21, 2001 report to the World Bank

<<http://www.odiousdebts.org/odiousdebts/publications/DebarmentProceedings.pdf>>

that, “The evidence is reasonably sufficient to conclude that Respondent Acres engaged in a corrupt practice by paying monies to Mr. Sole through Mr. Z.M. Bam so that Acres could influence Mr. Sole and the LHDA in connection with work being performed by Acres on the LHWP”; 2) the Lesotho High Court convicted Acres of bribery in September 2002; and, 3) the Lesotho Court of Appeal upheld one of the two counts of bribery in August 2003. Despite this evidence, it took the World Bank until July 2004 to debar Acres.

7. “Comments on the Current Lesotho Bribery Prosecutions” by Guido Penzhorn SC, Presentation Before the Senate Foreign Relations Committee on July 21, 2004.

<<http://www.odiousdebts.org/odiousdebts/publications/SenatePaperJuly04.pdf>>

8. “Acres' partners in crime” by Lawrence Solomon, *National Post*, August 23, 2003:

<<http://www.urban-renaissance.org/urbanren/index.cfm?DSP=content&ContentID=8213>>

9. “Acres and acres of graft,” by Eric Reguly, *The Globe and Mail*, September 24, 2004.

<<http://www.odiousdebts.org/odiousdebts/index.cfm?DSP=content&ContentID=11568>>

10. *Inter Press Service News Agency* reported on November 16, 2003 (“Groups fear Canadian funding for Romanian mine” by Stephen Leahy) that Export Development Canada (the Canadian export credit agency) spokesman, Rod Giles said, “it's not the role of financial institutions to punish companies for these [corrupt] things.” Nor can you dismiss Acres continued insistence that it was not involved in bribing officials in Lesotho, Mr. Giles added. “Had the case been heard in an Ottawa courtroom, there might have been a different outcome,” he said.

Also see “Acres’ partners in crime” by Lawrence Solomon, *National Post*, August 23, 2003:

<<http://www.urban-renaissance.org/urbanren/index.cfm?DSP=content&ContentID=8213>>

11. “Comments on the Current Lesotho Bribery Prosecutions” by Guido Penzhorn SC, Presentation Before the Senate Foreign Relations Committee on July 21, 2004.

<<http://www.odiousdebts.org/odiousdebts/publications/SenatePaperJuly04.pdf>>

12. See *Odious Debts: Loose Lending, Corruption and the Third World's Environmental Legacy* by Patricia Adams, Earthscan, London and Toronto, 1991.

<<http://www.odiousdebts.org/odiousdebts/index.cfm?DSP=content&ContentID=53>>

13. For example, in the case of the World Bank, the Honorable Richard Thornburgh Of Counsel Kirkpatrick & Lockhart, Washington, DC states in his July 21, 2004 testimony to the Senate Committee on Foreign Relations that “except under certain exceptional and narrow

circumstances, the Bank is not subject to the jurisdiction of the courts of any nation.” See: <<http://foreign.senate.gov/testimony/2004/ThornburghTestimony040721.pdf>>

14. Dr. Jeffrey A. Winters, Associate Professor of Political Economy, Department of Politics, Northwestern University, Evanston, Illinois in his testimony before the U.S. Senate Committee on Foreign Relations <<http://foreign.senate.gov/testimony/2004/WintersTestimony040513.pdf>> estimated that, since its founding, the World Bank has participated in the corruption of roughly \$100 billion of its loan funds intended for development. If the corruption of loan funds from the other MDBs over the same time period are included, the figure doubles to roughly \$200 billion.