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Note

Going from Bad to Good: Combating Corporate Corruption on World Bank-Funded Infrastructure Projects

Courtney Hostetler[†]

Large-scale infrastructure projects are a vital part of the World Bank's development agenda, but the World Bank and host countries alike have placed little emphasis on combating corruption attached to these projects. Investigation of ongoing corruption and punishment of offenders is an important end goal in itself, and can be an important deterrent to future corruption. The World Bank and host countries face challenges in properly pursuing investigation and punishment, but the results certainly are worth the effort. This Note explores the importance of investigating and punishing corporate corruption on World Bank-funded large-scale infrastructure projects, and presents practical suggestions as to how investigation and punishment processes might be made more effective. Specifically, host countries and the World Bank should utilize a "trigger" mechanism, by which investigations by one party automatically trigger investigations by the other, in order to increase accountability. Other factors – including the willingness of third party states to assist in these efforts – also influence the outcome, but the triggering mechanism may be an important step forward. The outcome of the Lesotho Highlands Water Project corruption investigations provides a useful illustration of how such a cooperative triggering mechanism might work.

INTRODUCTION

The World Bank has identified corruption as one of the "greatest obstacles to economic and social development."¹ In response, it has

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1. Overview of Anticorruption Continued, WORLD BANK, <http://go.worldbank.org/K6AEEPROC0> (last visited Jan. 27, 2011); see also *Combating*

developed extensive, aggressive anti-corruption campaigns and offered financial support to good governance programs aimed at reducing corruption in loan-recipient countries. Yet corruption remains an obstacle even to the disbursement of Bank aid; Jeffrey Winters estimates that “[s]ince its founding, the World Bank has participated mostly passively in the corruption of roughly \$100 billion of its loan funds intended for development.”² These funds usually are transferred to developing countries via loans, which place the burden of repayment on future generations who will have to pay the entire principal and accrued interest despite having initially received only seventy cents on the dollar for these loans.³

These figures take into account all types of corruption, most notably the direct looting of loan monies by government officials. Winters cautions that corporate corruption – usually in the form of bribes to government officials in order to circumvent neutral bidding processes – makes up only a minor percentage of the estimate.⁴ Yet these statistics mask the gravity of entrenched corporate corruption on large-scale infrastructure projects in developing countries. These projects have the potential to assist countries in meeting their development goals by increasing revenue and fulfilling the economic and social needs of their most impoverished communities,⁵ but they also act as lightning rods for corruption, environmental degradation, and human rights violations against the communities that the projects are intended to benefit.⁶ Corruption exacerbates the problems of environmental degradation and human rights violations.⁷

Dealing with these challenges is vital, as infrastructure projects have been important to the World Bank’s development strategies, and likely will remain so in the future. In 2009, Robert Zoellick, President of the Bank, pledged to increase Bank lending to infrastructure to \$45 billion over the next three years, citing such projects’ ability to “create jobs as well as build a foundation for long-term economic growth.”⁸ This pledge will increase

Corruption in the Multilateral Development Banks: Hearing Before the S. Comm. on Foreign Relations, 108th Cong. 1-2 (2004) (statement of Sen. Richard Lugar, Chairman, S. Comm. on Foreign Relations).

2. Jeffrey A. Winters, *Criminal Debt*, in *REINVENTING THE WORLD BANK* 101, 101 (Jonathan R. Pincus & Jeffrey A. Winters eds., 2002).

3. *Combating Corruption in Multilateral Development Banks: Hearing Before the S. Comm. On Foreign Relations*, 108th Cong. 25, 28 (2004) (statement of Jeffrey A. Winters, Associate Professor, Northwestern University) [hereinafter Winters Statement].

4. *Id.*

5. See, e.g., WORLD BANK, *THE WORLD BANK ANNUAL REPORT* 21 (2009).

6. See George Ledec & Juan David Quintero, *Good Dams and Bad Dams: Environmental Criteria for Site Selection of Hydroelectric Projects* 1 (World Bank, Sustainable Development Working Paper No. 16, 2003), available at http://siteresources.worldbank.org/LACEXT/Resources/258553-1123250606139/Good_and_Bad_Dams_WP16.pdf.

7. See, e.g., Wangari Maathai, *Foreword: Water in the Community: Why Integrity Matters*, in *GLOBAL CORRUPTION REPORT 2008: CORRUPTION IN THE WATER SECTOR* xix, xix (2008).

8. WORLD BANK, *supra* note 5, at 2. This spending far outstrips spending on good governance. See *id.* at 25.

World Bank spending on infrastructure development by \$15 billion when compared to the \$30 billion it spent from 2006-2009.⁹ The Joint International Financial Institutions/Development Finance Institutions Action Plan for Africa named “increasing lending to infrastructure projects” a primary objective for financial assistance to the region.¹⁰ The World Bank seeks to increase aid flow to infrastructure projects despite the economic downturn, and considers infrastructure projects to be a crucial source of jobs in the short-term of the financial crisis and a means by which countries might recover.¹¹ Furthermore, the World Bank’s influence over infrastructure development is compounded because even its minimal financial or technical support may signal to other potential financiers that the project is a legitimate and profitable investment.¹²

The ability of the World Bank, donor countries, and recipient countries to limit corruption on these projects will greatly influence the effectiveness of infrastructure spending. Although prevention programs are important, this Note argues that post-corruption investigation, prosecution, and punishment mechanisms are also critical to the successful deterrence of corrupt practices in Bank-funded procurement projects. The World Bank has developed investigation, prosecution, and punishment protocols, but has not utilized them effectively or consistently. The question remains whether the World Bank is capable of implementing them and willing to do so. In order to answer this question, this Note examines two hydroelectric dam projects: the Yacyretá Dam in Argentina and Paraguay and the Lesotho Highlands Water Project (LHWP) in Lesotho and South Africa. Both received World Bank funding, and both have been criticized for high levels of corruption. Yet while no corporation was prosecuted in relation to the Yacyretá Dam, the World Bank ultimately sanctioned two multinational corporations (MNCs) that received LHWP contracts after Lesotho successfully prosecuted the responsible government official and corporations.

The Lesotho example forms the basis for my central proposal as to how to improve the investigation and punishment of corporate corruption on World Bank projects. The World Bank has been greatly criticized for its initial refusal to investigate MNCs involved in the LHWP,¹³ and commentators have thus far used the LHWP scandal to demonstrate the weaknesses in both the borrowing government and World Bank approaches to corruption punishment and deterrence.¹⁴ While these points

9. WORLD BANK, *supra* note 5, at 16.

10. *Id.* at 8.

11. *Id.* at 2, 16, 21.

12. See, e.g., Korinna Horta, *The World Bank’s Decade for Africa: A New Dawn for Development Aid?*, 1 YALE J. INT’L AFF. 4, 15 (2005).

13. See, e.g., Lori Pottinger, *Lesotho Highlands Water Project: What Went Wrong?*, Presented at Chatham House Conference “Corruption in Southern Africa: Sources and Solutions” (July 10, 2000), available at <http://www.internationalrivers.org/en/africa/lesotho-water-project/lesotho-highlands-water-project-what-went-wrong>.

14. *Id.*

are valid, I argue that from this scandal may emerge a new “best practice” for investigating, prosecuting, and punishing firms guilty of bribery and fraud on Bank-funded infrastructure development projects.

Substantial changes must be made if the World Bank is to effectively combat corporate corruption and overcome institutional inertia in its infrastructure projects. In this Note, I offer a proposal for change that, if implemented, may improve the efficacy of corporate sanctioning processes in the World Bank and in domestic legal institutions. The proposed plan is three-pronged. First, I argue that the World Bank Sanctions Committee should introduce a trigger clause into its procedures. Under its terms, when either the borrower state or the Sanctions Committee opens a corruption investigation pertaining to the Bank-funded project, the other party must also open or re-open its own investigation into the alleged corruption. The Bank and the borrower state should either refuse to award contracts to corporations under investigation for bribery or fraud, or make awards contingent upon the corporation being found innocent of the charges. The second element of my proposal for change will require the borrower state and World Bank investigators to share information learned from the investigation. Third, the World Bank will establish a support fund for borrower governments that need monetary assistance to pursue corruption investigations and prosecutions.

These elements are aimed at lessening – if they cannot altogether alleviate – the problem of lack of will. A constant threat to this approach’s success is global willingness to sanction corporate corruption; however, I argue that even assuming imperfect willingness, this combined approach is far more likely to decrease corporate corruption than an approach that utilizes only administrative sanctions or criminal prosecutions.

The Note proceeds in four parts. In Part I, I provide reasons why it is important to focus on corporate corruption. I also explore why investigation and punishment are crucial components of comprehensive anti-corruption strategies. In Part II, I compare the Yacretá Dam with the LHWP and place them both in the context of other large-scale infrastructure development projects. I then review the details of the LHWP scandal and identify explanations as to why the World Bank took action against corporations involved in the LHWP but has not investigated the Yacretá Hydroelectric Project corruption allegations. I ultimately conclude that the willingness of domestic jurisdictions to investigate and prosecute offending MNCs is the most important of these variables. In Part III, I review the merits and weaknesses of the domestic hard law approach to the issue, and the merits and weaknesses of the World Bank’s administrative remedy approach. In Part IV, I examine the merits and weaknesses of using a combined approach, ultimately finding that this approach is superior to alternative processes.

I. INVESTIGATING CORPORATE CORRUPTION ON LARGE-SCALE INFRASTRUCTURE PROJECTS: PURPOSE AND IMPORTANCE

A. Targeting Corporate Corruption in Infrastructure Projects

In the mid-1990s, the World Bank adopted a comprehensive anti-corruption strategy that consists of five pillars, the first of which is to “prevent[] fraud and corruption within World Bank projects.”¹⁵ The Bank continues to fall short of meeting this goal for three reasons. First, World Bank staffers often prioritize the organization’s anti-corruption agenda below infrastructure project completion.¹⁶ World Bank officers feel “a pressure to lend” in the World Bank’s results-focused approach to aid.¹⁷ As one senior official explained, “[w]e look more than anything else at what the project achieves . . . We look, for instance, at whether schools get built, not how the money was spent to build them.”¹⁸ The World Bank governance structure may further contribute to this “culture of loan approval.”¹⁹ As a result, the World Bank may be likely to accept some corruption as a cost of development. Second, the World Bank has traditionally focused its anti-corruption efforts on institutional structures.²⁰ Third, when the Bank does combat corruption on its development projects, it tends to focus its energies on government officials – who represent the institution – and not the corporations who supply the bribes.²¹

15. MARIO A. AGUILAR ET AL., WORLD BANK, PREVENTING FRAUD AND CORRUPTION IN WORLD BANK PROJECTS: A GUIDE FOR STAFF 2 (2000).

16. Parthapratim Chanda, *The Effectiveness of the World Bank’s Anti-Corruption Efforts: Current Legal and Structural Obstacles and Uncertainties*, 32 DENV. J. INT’L L. & POL’Y 315, 347 (2004) (noting that Bank staff may perceive corrupt development projects as an acceptable “second-best” and favorable to cancelling the projects entirely).

17. Winters Statement, *supra* note 3, at 28.

18. Winters, *supra* note 2, at 111 (quoting World Bank senior official Katharine Marshall).

19. Chanda, *supra* note 16, at 342-343.

20. Tara Polzer, *Corruption: Deconstructing the World Bank Discourse* 20 (London Sch. of Econ. Dev. Stud. Inst., Working Paper Series No. 01-18, 2001), available at <http://www2.lse.ac.uk/internationalDevelopment/pdf/WP18.pdf>.

21. For example, the World Bank’s first published guidelines stated that if consultants are granted contracts through methods of misprocurement, the World Bank may revoke the funding promised to the borrower, but the guidelines did not identify punishments for the contracting company or consultant. Only in recent revisions have they incorporated anti-corruption language that targets the companies, as well. WORLD BANK, GUIDELINES: SELECTION AND EMPLOYMENT OF CONSULTANTS BY WORLD BANK BORROWERS, §§ 1.17, 1.22 (2006 rev.) [hereinafter CONSULTANT GUIDELINES]; WORLD BANK, GUIDELINES: PROCUREMENT UNDER IBRD LOANS AND IDA CREDIT, §§ 1.12, 1.14 (2006 rev.) [hereinafter PROCUREMENT GUIDELINES]; see also WORLD BANK, HELPING COUNTRIES COMBAT CORRUPTION: THE ROLE OF THE WORLD BANK 30, 32-33 (1997) (identifying modifications made to the Procurement and Consultant Guidelines in 1996 and 1997, respectively, to punish bidders that have engaged in fraud or corruption); Frank Vogl, *The Supply Side of Global Bribery*, 35 FIN. & DEV. (1998), available at <http://www.imf.org/external/pubs/ft/fandd/1998/06/vogl.htm> (discussing efforts to target both sides of corruption in international financial institutions). The Procurement and Consultant Guidelines were each revised in 2011. The relevant language pertaining to misprocurement, fraud, and corruption remain substantially similar. The 2011 versions of the Procurement and Consultant Guidelines broaden the definition of agent to ensure that companies cannot engage in bribery using unofficial agents; explicitly state that a sanctioned firm or individual may not be hired as a subcontractor on a Bank-financed contract;

Certainly the costs of corporate corruption are minimal relative to the costs of grand, or “high-level,”²² corruption.²³ However, anti-corruption programs that focus solely on grand corruption risk overlooking the ways in which corporate corruption feeds into grand corruption. They also overlook the ways in which corporate corruption can cripple long-term development.²⁴ Once these relationships are taken into account, a new picture emerges – one in which corruption on development projects and the problem of bribe-offering companies moves into the foreground.

MNCs play an active role in subverting the development process, using bribes and fraud to circumvent bidding processes and operating regulations. This hinders the World Bank’s anti-corruption and economic development agendas in three ways. First, corruption negatively influences a country’s economic productivity,²⁵ the stability of its political institutions and democracy,²⁶ and its social development.²⁷ Second, corruption on large-scale infrastructure projects also creates an environment of impunity that may instill a public conception that corruption is acceptable. As Susan Rose-Ackerman has noted, “a policy of active tolerance [for bribery] will undermine the prospects for long-term reform” and “delegitimize government in the eyes of its citizens.”²⁸ Finally, corrupt deals made to win infrastructure development projects skew government spending and development agendas; such deals encourage officials to seek aid money for

and state that these provisions apply when a U.N. agency provides technical assistance to, or otherwise supports, a project. WORLD BANK, GUIDELINES: SELECTION AND EMPLOYMENT OF CONSULTANTS UNDER IBRD LOANS AND IDA CREDITS & GRANTS BY WORLD BANK BORROWERS §§ 1.19, 1.23 (2011 rev.); WORLD BANK, GUIDELINES: PROCUREMENT OF GOODS, WORKS, AND NON-CONSULTING SERVICES UNDER IBRD LOANS AND IDA CREDITS & GRANTS BY WORLD BANK BORROWERS §§ 1.14, 1.16 (2011 rev.). The 2006 versions of the Procurement Guidelines and the Consultant Guidelines were in place when the World Bank conducted its second investigation into the LHWP, and therefore this Note relies on the content of that version of the Guidelines.

22. Susan Rose-Ackerman, “Grand Corruption and the Ethics of Global Business,” 26 J. OF BANKING & FIN. 1889, 1889 (2002); see also Adam Graycar, *Corruption*, in INTERNATIONAL CRIME AND JUSTICE 215, 216 (Mangai Natarajan ed., 2011).

23. Winters Statement, *supra* note 3, at 26 (noting that corporate corruption is minimal compared to the criminal debt that arises in the relationship between development banks and borrowing governments); *Combating Corruption in Multilateral Development Banks: Hearing Before the S. Comm. on Foreign Relations*, 108th Cong. 32, 36 (2004) (statement of Manish Bapna, Executive Director, Bank Information Center) [hereinafter Bapna Statement] (“[T]he most systemic corruption is the pervasive, across the board corruption embedded in governments.”).

24. John Brademas & Fritz Heimann, *Tackling International Corruption: No Longer Taboo*, 77 FOREIGN AFF. 17, 18 (1998).

25. SUSAN ROSE-ACKERMAN, *CORRUPTION AND GOVERNMENT: CAUSES, CONSEQUENCES, AND REFORM* 3 (1999); Derick W. Brinkerhoff, *Assessing Political Will for Anti-Corruption Efforts: An Analytic Framework*, 20 PUB. ADMIN. & DEV. 239, 240 (2000); Daniel Lederman et al., *Accountability and Corruption: Political Institutions Matter*, 17 ECON. & POL. 1, 1 (2005).

26. See United Nations Convention Against Corruption, G.A. Res. 58/4, pmbl., U.N. GAOR, 58th Sess., U.N. Doc. A/RES/58/4 (Oct. 31, 2003).

27. See, e.g., Daniel Kaufman et al., *Governance Matters* 1 (World Bank Policy Research Policy Working Paper No. 2196, 1999) (finding that good governance may result in lower infant mortality and higher literacy rates).

28. ROSE-ACKERMAN, *supra* note 25, at 17.

projects that promise profits in the form of bribes and kick-backs, rather than for projects that are more beneficial but less profitable for the officials.²⁹

Scholars already have eloquently articulated the economic, political, and social ramifications of corruption.³⁰ It is sufficient here to focus on the fact that corporations that engage in corrupt practices exacerbate corruption's overall negative consequences for development. Corporate corruption increases the cost of development projects, leaving a greater burden of repayment on the impoverished communities in borrowing countries.³¹ A worst-case scenario is provided by the extreme example of the Bataan nuclear plant in the Philippines, constructed in the early 1970s. Westinghouse Electric Corporation allegedly gave President Ferdinand Marcos \$80 million in kickbacks on a project that ultimately cost \$2.3 billion, far more than the cost of a similar plant in South Korea. Taxpayers will be financing the debt until 2018, although the plant was never put into operation.³² In addition, even those projects that become fully efficient and profitable upon completion may not be able to generate enough profit to cover loans made more expensive because corporate corruption increased the cost of construction. The state also will have fewer resources to dedicate to infrastructure maintenance or new project development.³³ Either way, taxpayers bear the costs without seeing commensurate returns.³⁴

Corruption also vastly decreases the likelihood that a project will be successful. At best, corporations that land lucrative contracts as a result of bribery and fraud do so at the expense of superior competitors whose proposals would have better met the qualifications of the project. These corporations also are not bound by bidding requirements or operational duties, and have more incentive to cut corners.³⁵ As one World Bank task manager noted:

29. See Brinkerhoff, *supra* note 25, at 240; Andrei Shleifer & Robert W. Vishny, *Corruption*, 108 Q. J. ECON. 599, 614-15 (1993); Vito Tanzi & Hamid Davoodi, *Corruption, Public Investment, and Growth*, in *THE WELFARE STATE, PUBLIC INVESTMENT, AND GROWTH: SELECTED PAPERS FROM THE 53RD CONGRESS OF THE INTERNATIONAL INSTITUTE OF PUBLIC FINANCE* 41, 42 (Hirofumi Shibata & Toshihiro Ithori eds., 1999); Charles Kenny, *Measuring and Reducing the Impact of Corruption in Infrastructure* 18 (World Bank Policy Research Working Paper No. 4099, 2006), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=952071; THE CORNER HOUSE, *EXPORTING CORRUPTION: PRIVATISATION, MULTINATIONALS AND BRIBERY* 3 (Briefing No. 19, 2000); WORLD COMMISSION ON DAMS, *DAMS AND DEVELOPMENT: A NEW FRAMEWORK FOR DECISION-MAKING* 187 (2000).

30. See, e.g., ROSE-ACKERMAN, *supra* note 25; Brademas & Heimann, *supra* note 24; Ben W. Heineman, Jr. & Fritz Heimann, *The Long War Against Corruption*, 85(3) FOREIGN AFF. 75, 76 (2006); Shleifer & Vishny, *supra* note 29.

31. Winters Statement, *supra* note 3 at 25, 28; Bapna Statement, *supra* note 23, at 35.

32. THE CORNER HOUSE, *supra* note 29, at 6.

33. Tanzi & Davoodi, *supra* note 29, at 47.

34. Kenny, *supra* note 29, at 4.

35. See Tanzi & Davoodi, *supra* note 29, at 45; Kenny, *supra* note 29, at 17-18.

You cut corners and nobody cares. If you let out a contract for \$2 million, and you get the few civil servants at the top sharing \$600,000 or 30 percent, do they care if the contractor puts in concrete that is just sand and water? Do they care if the contractor doesn't put reinforcing steel in the structures? They don't care. So when Bank people say we're at least getting 70 cents of good development on the dollar, no you don't. Because the contractor either has to make back the money that he's kicked back, or he just figures, "hey, it's open season, I do what I want and no one is going to challenge me." And so you have this feeding frenzy, and the end result is you get very little development.³⁶

A lack of corporate accountability may contribute to project delays, postponing development benefits and increasing the number of years over which loan interest accrues. It may also lead to inefficiency and shoddier workmanship.³⁷ Dam projects, for example, require careful feasibility studies, design, and engineering. Mistakes during construction may require costly repairs and limit the dam's operational capacity.³⁸ The inferior projects then require maintenance that would not otherwise have been needed.³⁹ Yet as previously noted, the upfront costs of the corrupted project means that the state may not have the resources to pay for these repairs,⁴⁰ further jeopardizing development.

Corporations that were awarded dams due to corrupt dealings may not be as capable of meeting environmental standards as other firms, as bribe-receiving public officials likely will not hold the corporations to the mandated environmental standards or human rights regulations that World Bank contracts require. Many projects are complex and require careful planning to avoid an overly negative environmental impact – dams in particular often require massive community displacements – and environmental degradation and human rights abuses become more likely when the lead construction corporations and consultants are not bound by the standards meant to mitigate these damages.⁴¹

These dire consequences are made even more problematic by the high probability of corporate corruption on development projects. MNCs pay approximately \$80 billion per year in bribes⁴² in an attempt to gain access to

36. Winters, *supra* note 2, at 120 (quoting a World Bank task manager).

37. See, e.g., Brinkerhoff, *supra* note 25, at 240; Kenny, *supra* note 29, at 17-18; Tanzi & Davoodi, *supra* note 29, at 46.

38. WORLD COMMISSION ON DAMS, *supra* note 29, at 37-38.

39. Tanzi & Davoodi, *supra* note 29, at 45-46.

40. See *supra* text accompanying note 33.

41. See, e.g., Winters, *supra* note 2, at 120-21 (quoting a World Bank task manager); Thayer Scudder, *Hydropower Corruption and the Politics of Resettlement*, in GLOBAL CORRUPTION REPORT 2008 96, 97 (2008) ("Engineering and other firms have reneged on promises or otherwise cheated resettlers, as with India's Maheshwar Dam.").

42. THE CORNER HOUSE, *supra* note 29, at 2. Although this is a small amount relative to the \$1 trillion that the World Bank Institute estimates to be the total amount of money paid in

lucrative infrastructure development work that is an important component of economic development agendas.⁴³ In 2004, the Engineering News Record estimated that the top twenty-five firms in the field performed work worth \$98 billion annually.⁴⁴ There is a high incentive to win these contracts, and Transparency International's Bribe Payer's Index reveals that MNCs working in "public work contracts and construction" are perceived to be the most corrupt across two variables. They are the most likely to bribe government officials, and the most likely to engage in "state capture," or the "exert[ion of] undue influence on the policy process using financial or other means."⁴⁵ MNCs, therefore, are a part of the corruption narrative that hinders vital projects and saddles already-impooverished people with extra debt.

Finally, there are fewer companies capable of supplying bribes in order to get large-scale infrastructure project contracts than there are potential bribe-receiving government officials,⁴⁶ and these "[m]ultinational firms are central actors in many large-scale corrupt deals."⁴⁷ These corporations "approximate . . . rational economic actor[s]."⁴⁸ Therefore, it is more efficient to target these few companies than the potential bribe-receivers who are more difficult to identify or predict.⁴⁹ For these reasons, although the problem traditionally has been defined in terms of the demand side of bribes, and the attention has been given to the bribe-receivers,⁵⁰ an effective solution must consider both the supply and demand sides of corruption.⁵¹

B. The Importance of Investigation and Punishment

Corporate corruption on infrastructure projects obstructs anti-corruption and development agendas.⁵² Any solution to this problem must involve post-corruption investigation and punishment. Ben Heineman and Fritz Heimann have identified four measures required to tackle corruption.

bribes annually, it is substantial in absolute terms. As one practitioner noted, it is roughly the amount that the United Nations believes is required to eradicate global poverty. See *The Costs of Corruption*, WORLD BANK (Apr. 8, 2004), <http://go.worldbank.org/LJA29GHA80> (last visited June 23, 2011).

43. WORLD BANK, *supra* note 5.

44. Ashwin Mahalingam et al., *Cultural Clashes in International Infrastructure Development Projects: Which Cultures Matter?*, International Symposium on Procurement Systems: The Impact of Cultural Differences and Systems on Construction Performance 2 (Las Vegas, NV, Feb. 2005) (citing ENGINEERING NEWS RECORD SOURCEBOOK 2004).

45. TRANSPARENCY INT'L, BRIBE PAYERS INDEX 2008 10-11 (2008), available at <http://www.transparency.org/content/download/39275/622457>.

46. See KIMBERLY ANN ELLIOTT, CORRUPTION AND THE GLOBAL ECONOMY 129 (1997).

47. ROSE-ACKERMAN, *supra* note 25, at 185.

48. William W. Bratton, *Never Trust a Corporation*, 70 GEO. WASH. L. REV. 867, 870 (2002).

49. See, e.g., Jeff Huther & Anwar Shah, *Anti-Corruption Policies and Programs: A Framework for Evaluation* 8 (World Bank, Policy Research Working Paper No. 2501, 2000) (identifying various reasons that individuals may be motivated to accept bribes).

50. Vogl, *supra* note 21.

51. ELLIOTT, *supra* note 46, at 148.

52. See *supra* Part I.A.

Three are preventative: prevention via legislation and regulations, prevention via long-term state building and institutional reform, and prevention via norm and value changes. The fourth is enforcement “to deter future misconduct by investigating and prosecuting existing corruption.”⁵³ Prevention policies are less effective when they do not include such enforcement mechanisms, particularly when corruption is entrenched in a sector, country, or corporate culture.

Punishing project-based corruption can serve as a stop-gap measure in place of long-term prevention policies.⁵⁴ It takes time to implement anti-corruption regulations and oversight, and even longer to change a corporation or country’s culture with regard to corruption. Once in place, preventative measures still must compete with the financial incentives of corruption. “A foreign company’s quickest route to maximizing profits in developing and transitional nations may indeed be bribery of a public official . . . the potential for huge profits makes the violation of the law seem worth the risk of punishment.”⁵⁵ When the investigations and punishments are sufficiently costly to the firm, they can be effective deterrence mechanisms that quickly change the firm’s cost-benefit calculus.⁵⁶ However, if the institutions capable of conducting investigations into and punishing corrupt behavior opt not to do so, it sends a strong signal to corporations that bribery is acceptable. This undermines efforts to instill new norms or otherwise eradicate corruption. Preventative measures are therefore weakened when investigation and punishment mechanisms are lacking.

Practically, fining corporations may also enable the World Bank or the borrowing country to recoup financial losses suffered due to corruption. Sanctions may help the World Bank and borrowing countries choose non-corrupt bidding companies for future contracts. Fines and sanctions also limit a corporation’s ability to financially benefit from corrupt deals.

II. RESPONDING TO CORRUPTION: CASE STUDY OF THE YACYRETÁ HYDROELECTRIC PROJECT AND LHWP

The World Bank has determined that hydroelectric dam projects are valuable to achieving development goals. “Since its founding, the Bank has supported more than 550 dams around the globe, with over US\$90 billion . . . in loans and guarantees.”⁵⁷ Approximately \$30-45 billion is spent on large

53. Heineman & Heimann, *supra* note 30, at 77.

54. See THE WORLD BANK, HELPING COUNTRIES COMBAT CORRUPTION: THE ROLE OF THE WORLD BANK 25 (1997).

55. Barbara Crutchfield George & Kathleen A. Lacey, *A Coalition of Industrialized Nations, Developing Nations, Multilateral Development Banks, and Non-Governmental Organizations: A Pivotal Complement to Current Anti-Corruption Initiatives*, 33 CORNELL INT’L L. J. 547, 557 (2000).

56. Susan Rose-Ackerman, *Corruption*, in READINGS IN PUBLIC CHOICE AND CONSTITUTIONAL POLITICAL ECONOMY 551, 553 (C.K. Rowley & F.G. Schneider eds., 2008).

57. INT’L RIVER NETWORK, THE WORLD BANK’S BIG DAM LEGACY 1 (2007).

dam projects annually.⁵⁸ Yet these projects are not without controversy. Although they promise to generate much-needed revenue for the host country and electricity for impoverished or industrializing communities, in practice dams also result in massive human displacement, substantial changes to the environment, and sometimes severe environmental degradation and human rights abuses.⁵⁹ Dam projects are also vulnerable to corrupt practices by government officials and contracting corporations.⁶⁰ In order to determine what factors contribute to the successful investigation and punishment of corrupt actors involved in World Bank projects, this section examines two dam projects plagued by corruption scandals that afflict many large-scale infrastructure projects.

A. The Yacyretá Hydroelectric Project

The Yacyretá Hydroelectric Project is a joint venture between Argentina and Paraguay, administered by a bilateral institution, the Entidad Binacional Yacyretá (EBY).⁶¹ The two countries signed a treaty in 1973, and construction on the dam began ten years later, in 1983.⁶² Yacyretá is a complex project to construct dams along sixty-seven kilometers of the Paraná River, which forms the border between the signatory countries. Paraguay was to bear the bulk of the environmental and social costs of the project, while Argentina would consume the large majority of the electricity produced and pay revenue to Paraguay for that electricity. Initial estimates suggested a final cost of \$1.35 billion, although the budget subsequently expanded to \$5.3 billion.⁶³ The actual costs far exceeded the initial budgets; final costs reached approximately \$11.5 billion.⁶⁴ The World Bank initially contributed \$460 million in loans.⁶⁵ By the project's end, the World Bank had lent \$895 million to the project, and the Inter-American Development Bank lent an additional \$840 million.⁶⁶ The project also experienced extreme delays. Construction began in 1983; as of 1991, the project was only 85% complete and running nine years behind schedule.⁶⁷ Although

58. Chris Hails, *Global Water Crisis*, in 3 U.N. ENV. PROGRAMME, FINANCING DAMS AND SUSTAINABLE DEVELOPMENT 34 (2004).

59. See THAYER SCUDDER, *THE FUTURE OF LARGE DAMS* 1 (2005).

60. *Id.* at 2; see also Janelle Plummer, *Water and Corruption: A Destructive Partnership*, in GLOBAL CORRUPTION REPORT 3, 9 (2008) (table identifying the types of corruption that emerge in water-related construction projects).

61. Kay Treacle & Elías Díaz Peña, *Accountability at the World Bank: What Does it Take? Lessons from the Yacyretá Hydroelectric Project, Argentina/Paraguay*, in DEMANDING ACCOUNTABILITY: CIVIL-SOCIETY CLAIMS AND THE WORLD BANK INSPECTION PANEL 69, 70 (Dana Clark, Jonathan Fox & Kay Treacle eds., 2003).

62. Treacle & Díaz Peña, *supra* note 61, at 70.

63. *Id.*; Hails, *supra* note 58, at 35.

64. Hails, *supra* note 58, at 35.

65. SAROJ KUMAR PAL, *LEXICON ON GEOGRAPHY OF DEVELOPMENT* 231 (2005).

66. Treacle & Díaz Peña, *supra* note 61, n.4.

67. *Id.*

the project began generating initial electricity in 1994,⁶⁸ the final turbine did not become operative until 1998.⁶⁹ As of 2006, it was operating at only 60% capacity and required additional work – 1,167 building projects over four years, costing an additional \$563 million – to reach full capacity.⁷⁰

Yacyretá also has been “fraught with corruption scandals [and] gross mismanagement” as well as construction delays and cost overruns,⁷¹ largely caused by corruption. In 1990, Argentine President Carlos Menem described the project as “a monument to corruption.”⁷² Evidence suggests that contracting firms won lucrative contracts through corrupt practices.

The first “complete technical and economic feasibility study” was conducted in 1971 by Harza y Asociados, a consortium that included Harza Engineering (USA), Lahmeyer International GmbH (Germany), Analisis y Desarrollo Economico S.A. (Argentina), Yacyretá S.A. (Paraguay), and Cuyum S.A.T.C. (Argentina).⁷³ The same consortium, renamed Harza y Consorcios, Consultores Internacionales de Yacyretá (CIDY) and reformulated to include Harza as the lead firm, Lahmeyer as its partner, a group of six Argentine engineering firms, and a group of six Paraguayan engineering firms, was again hired to prepare the final design and to supply the technical supervision of the project’s execution.⁷⁴ The contract was renewed in 1986; the ten-year contract netted the consortium an additional \$132 million.⁷⁵ CIDY won the design and oversight consultancy bid even though its feasibility study was not satisfactory and it did not achieve the highest score in the bidding process.⁷⁶ CIDY’s contract has been renewed most recently in 2002.⁷⁷ Experts in Argentina denounced this latest contract as inefficient.⁷⁸

The \$1 billion construction contract was granted to ERYDAY, an ad hoc and complex consortium comprised of the two final bidding consortiums: one group of thirteen firms led by Impregilo (Italy) and another group of nineteen firms led by Dumez (France), with Impregilo leading the whole.⁷⁹ The bidding process took seven years. Both final bidders were linked with political lobby groups in Paraguay and Argentina, and each accused the other of corruption.⁸⁰

In 2003, EBY renewed its health insurance policy with British Insurer

68. *Id.* at 72.

69. Juan Pablo Conti, *The Ten Billion Dollar Dam*, POWER ENGINEER, Feb./Mar. 2006 at 23, 24.

70. *Id.* at 26.

71. Treagle & Díaz Peña, *supra* note 61, at 70.

72. PAL, *supra* note 65, at 231; Hails, *supra* note 58, at 35.

73. GUSTAVO LINS RIBEIRO, TRANSNATIONAL CAPITALISM AND HYDROLOGICS IN ARGENTINA: THE YACRETÁ HIGH DAM 35-36 (1994).

74. *Id.* at 37.

75. *Id.* at 38.

76. *Id.* at 36-37.

77. Conti, *supra* note 69, at 25.

78. *Id.*

79. RIBEIRO, *supra* note 73, at 39.

80. *Id.* at 38-39.

Health. There is evidence that the contract was made without a public bidding process and was overpriced by approximately \$1.5 billion per year.⁸¹ It also appears that \$17 million was “unduly paid to Italian generator supplier Ansaldo.”⁸² The borrowing states have brought a lawsuit to recover this money. ERYDAY has filed its own lawsuit against EBY for \$1.5 billion, arising from a dispute over the price paid for workers’ lunches.⁸³

Although the Yacyretá Dam was brought before the World Bank Inspection Panel, the panel’s investigation focused on the environmental and social failures of the project, not the financial corruption nor the connection between financial corruption and the environmental and social failures that followed.⁸⁴ Despite President Menem’s declaration, no substantive investigations or prosecutions appear to have been carried out by either country, any third-party country, or by the World Bank or Inter-American Development Bank.⁸⁵

B. The Lesotho Highlands Water Project

The LHWP is a multi-billion dollar civil engineering project agreed to by the governments of Lesotho and South Africa and administered by the Lesotho Highlands Development Authority (LHDA), a special Lesotho government agency specifically tasked with oversight of the project. Through the construction of five hydroelectric dams and a series of tunnels and pumping stations, the project was designed to control the flow of the Senqu and Orange Rivers in order to provide water for South Africa’s industrial Gauteng province.⁸⁶ The project was intended to provide Lesotho with much-needed electric power, and with revenue from the export of water to South Africa.⁸⁷ Lesotho is a small state that ranks 141st on the Human Development Index and is considered to be a Least Developed Country.⁸⁸

81. Conti, *supra* note 69, at 25.

82. *Id.*

83. *Id.*

84. WORLD BANK INSPECTION PANEL, REVIEW OF PROBLEMS AND ASSESSMENT OF ACTION PLANS: ARGENTINA/PARAGUAY YACYRETÁ HYDROELECTRIC PROJECT (1997). Although the Panel criticized the project for having insufficient financial resources to be properly completed, see Treake & Díaz Peña, *supra* note 61, at 77, it did not investigate or remark on corruption charges and remained focused on the environmental and social costs of the project. See generally *id.* (discussing the Inspection Panel claim and investigation).

85. *Yacyretá Dam*, INT’L RIVERS NETWORK, <http://www.internationalrivers.org/en/latin-america/paraguay-paran%C3%A1-basin/yacyret%C3%A1-dam> (last visited Mar. 1, 2010).

86. Horta, *supra* note 12, at 14-15; Fiona Darroch, *The Lesotho Highlands Water Project: Bribery on a Massive Scale* (prepared for Transparency Int’l), http://www.ipocafrika.org/index.php?option=com_content&view=article&id=71&Itemid=66 (last visited Jan. 9, 2011); *Overview of the Lesotho Highlands Water Project*, LESOTHO HIGHLANDS WATER PROJECT, <http://www.lhwp.org.ls/overview/default.htm> (last visited Mar. 1, 2010) [hereinafter *Project Overview*].

87. Horta, *supra* note 12, at 15; *Project Overview*, *supra* note 86.

88. *Human Development Report 2010: Lesotho*, UNITED NATIONS DEV. PROGRAMME,

Early feasibility surveys initially were conducted in the 1950s.⁸⁹ Lahmeyer International formed part of the consortium that carried out a joint detailed feasibility study of the project between 1983 and 1986.⁹⁰ The governments of Lesotho and South Africa signed the Lesotho Highlands Water Project Treaty on October 24, 1986,⁹¹ and the World Bank began providing “critical support for the technical design of the project” the same year.⁹² Further engineering studies were conducted in subsequent years, and construction on the first phase of the project began in 1989.⁹³ The construction is taking place in several different places. As of 2010, Phase 1A – the construction of the Katse Dam and related work – and Phase 1B – the construction of Mohale Dam and related work – have been completed.⁹⁴ Work on the remaining dams is ongoing. The entire project is expected to cost an estimated \$8 billion. The World Bank provided over \$110 million in funding for project design and for Phase 1A construction, and coordinated the financial program, which assisted Lesotho in securing additional backers for the project.⁹⁵

The LHWP was plagued by reports of environmental degradation, human rights violations, mismanagement, and corruption.⁹⁶ Lesotho’s efforts to root out corruption on the project began in 1993, when military rule in Lesotho ended and a newly elected government ordered an audit of the LHDA. The audit revealed several types of corrupt activity by government officials, including the LHDA’s Chief Executive Officer, Masupha Ephraim Sole. As chief executive of the LHDA, Sole had control over the award of construction and consultancy contracts. It was in this capacity that he received bribes, often via middlemen operating in or around Lesotho.⁹⁷ The MNCs paid extravagant fees to their agents, made conditional upon the company being awarded the contract; the agent, upon receiving the fees, immediately transferred substantial portions of that fee to Sole.⁹⁸ Twelve firms ultimately were implicated in the bribery and fraud schemes.⁹⁹

<http://hdrstats.undp.org/en/countries/profiles/LSO.html> (last visited Feb. 20, 2011).

89. *Project Overview*, *supra* note 86.

90. *Id.*

91. *The Treaty, LESOTHO HIGHLANDS WATER PROJECT*, <http://www.lhwp.org.ls/overview/treaty.htm> (last visited Mar. 1, 2010).

92. Horta, *supra* note 12, at 15.

93. *Project Overview*, *supra* note 86; *A Brief History of Africa’s Largest Water Project*, INT’L RIVERS NETWORK, <http://www.internationalrivers.org/en/node/931> (last visited Mar. 1, 2010).

94. INT’L RIVERS NETWORK, *supra* note 93.

95. Horta, *supra* note 12, at 15; INT’L RIVERS NETWORK, *supra* note 93.

96. Pottinger, *supra* note 13.

97. A. Earle, *The Role of Governance in Countering Corruption: An African Case Study*, 9 WATER POL’Y 69, 76 (2007).

98. *Id.*

99. Lori Ann Warlin, *The Gap Between Promise and Practice in the Global Fight Against Corruption*, 6 ASPER REV. INT’L BUS. & TRADE L. 209, 222 (2006); *see also* Pottinger, *supra* note 13 (identifying the twelve companies implicated in the bribery scandal).

In 1996, the government of Lesotho initiated civil proceedings against Sole and the investigation revealed financial transfers for which Sole provided no explanation. Judgment was entered against Sole in 1999, a decision upheld on appeal in 2001.¹⁰⁰ Soon after the civil judgment was rendered, the government of Lesotho initiated criminal proceedings against Sole and eighteen corporations, consortia members, and individual intermediaries. The court ordered that the defendants be tried separately, and in 2001 the first criminal case against Sole began.¹⁰¹ In consideration of the sensitive nature of the trial, Lesotho brought Judge Brendan Cullinan, an experienced and respected former chief justice of the country, out of retirement for the LHWP corruption cases.¹⁰² In 2002, Sole was convicted on criminal charges of bribery and sentenced to eighteen years in prison for accepting more than \$6 million in bribes,¹⁰³ which was shortened to fifteen years on appeal.¹⁰⁴ The decision by the government of Switzerland to grant the prosecution access to Sole's Swiss bank accounts proved to be an important aspect of the case,¹⁰⁵ as this access provided irrefutable evidence of corruption and implicated several firms.

Utilizing the information that emerged during early investigations of LHDA corruption and during its prosecution of Sole, the Lesotho government then criminally tried Acres International and Lahmeyer International.¹⁰⁶ Acres International was convicted of bribery in 2002 and ordered to pay a fine of C\$3.8 million, reduced to C\$2.6 million on appeal.¹⁰⁷ Lahmeyer International was convicted of bribery in 2003 and ordered to pay a fine of C\$2.2 million, increased to C\$2.5 million on appeal.¹⁰⁸ Spie Batignolles,¹⁰⁹ a French firm, and the Italian firm Impregilo have both pled guilty to bribery and have been ordered to pay fines.¹¹⁰

The World Bank initially opposed Lesotho's decision to remove Sole from his position at the LHDA while its audit was ongoing because the Bank was concerned that his removal "would interfere with project construction timetables and could lead to costly overruns."¹¹¹ In 2002, after Sole had been convicted of bribery, the World Bank initiated investigations into the behavior of Lahmeyer International and Acres, and cleared both corporations of any wrongdoing. After Lesotho's successful prosecutions,

100. Darroch, *supra* note 86, at 1.

101. *Id.*

102. Wanlin, *supra* note 99, at 223.

103. Kristen Lewis & Roberto Lenton, *Corruption and Water Resources Management: Threats to Quality, Equitable Access and Environmental Sustainability*, in GLOBAL CORRUPTION REPORT 2008 18, 24 (2008)

104. *Sole v. Crown* (CRI/T/111/91) [2003] C. of A. (Apr. 14, 2003).

105. Wanlin, *supra* note 99, at 224.

106. THE CORNER HOUSE, DAMS INC. 2: LAHMEYER INTERNATIONAL (2003), <http://www.internationalrivers.org/files/LahmeyerCornerhouse.02.28.03.pdf>.

107. *Acres Int'l Ltd. v. Crown* (CRI/T/144/02) [2003] C. of A. (Aug. 15, 2003).

108. *Lahmeyer Int'l GmbH v. Crown* (CRI 6) [2003] C. of A. (Mar. 26, 2004).

109. Spie Batignolles is now Schneider Electric S.A. Wanlin, *supra* note 99, at 223.

110. Wanlin, *supra* note 99, at 223.

111. Pottinger, *supra* note 13.

however, the World Bank responded with more substantial investigations into the involved corporations. In 2004 and 2006, the World Bank Sanctions Committee temporarily debarred Acres International and Lahmeyer International, respectively, for bribery and fraud in relation to their contracts on the LHWP.¹¹²

C. Similar Histories, Different Consequences

Both the Yacyretá Hydroelectric Project and the LHWP have been plagued by accusations of corruption, but in only the latter case did the World Bank investigate these claims. Although a variety of factors influenced the trajectory of the projects and corruption claims, the willingness and ability of Lesotho to pursue domestic criminal claims was an important impetus for the World Bank to conduct its own investigation.

The similarities between the two dams are striking. Both dam projects were bilateral, and in each case the more impoverished country – Paraguay and Lesotho, respectively – was to bear the environmental and social burdens and reap the largest profit, while the relatively more developed country – Argentina and South Africa, respectively – would reap the benefits of increased resources (electricity and water) and pay revenue in return. Both dam projects were conceived of and formalized via bilateral treaties. At the time that the treaties were signed and construction began, final authority and control over project financing rested with undemocratic governments; Paraguay, Argentina, and Lesotho all were military dictatorships,¹¹³ and the apartheid government controlled South Africa.

Despite these political concerns, the World Bank provided financial and technical support for the projects and supported their development.¹¹⁴ Indeed, it “provided critical support for the technical design” of LHWP in 1986, as international sanctions against South Africa’s apartheid government hindered the project’s progress.¹¹⁵ The Bank’s financial support, though essential to the projects’ success, was modest in comparison to the projects’ total costs, although the Bank did contribute a much larger amount of funding to the Yacyretá Hydroelectric Project than it has thus far contributed to the LHWP. In 1996, the year that the World

112. Acres International, a private Canadian firm, was debarred in 2004 for a period of three years, and Lahmeyer International, a private German firm, was debarred on November 3, 2006, for seven years. *World Bank Listing of Ineligible Firms: Fraud and Corruption*, WORLD BANK, <http://web.worldbank.org/external/default/main?theSitePK=84266&contentMDK=64069844&menuPK=116730&pagePK=64148989&piPK=64148984> (last visited Feb. 5, 2011); see also Wanlin, *supra* note 99, at 227.

113. Cinnamon Carlarne & John Carlarne, *In-Credible Government: Legitimacy, Democracy, and Non-Governmental Organizations*, 6 PUB. ORG. REV. 347, 360 (2006).

114. This was in keeping with the World Bank’s non-political, economics-based approach to development aid at the time. Until the mid-1990s, “if there was an economic case for lending to a corrupt and abusive regime, then the Bank was obligated to do so.” HEATHER MARQUETTE, *CORRUPTION, POLITICS AND DEVELOPMENT: THE ROLE OF THE WORLD BANK 1* (2003).

115. Horta, *supra* note 12, at 15.

Bank first developed a debarment process for corporations found to have engaged in corrupt activities while bidding or working on World Bank projects, construction on the Yacyretá Hydroelectric Project and the LHWP had been ongoing for fifteen years and nine years respectively.

In addition, there is overlap between the two dam projects with regard to the MNCs that were hired as lead or partner firms in the consultancy and contractor consortia. Lahmeyer International, Impregilio, and Dumez, three firms that were prosecuted for corruption in Lesotho, have lucrative contracts in the Yacyretá Hydroelectric Project.¹¹⁶ Regional similarities emerge as well: the lead and partner firms on the major contracts on both dams are MNCs based in North America or Europe.

There are significant differences between the two dams, however. For example, although all four countries have transitioned to democracy since the projects began, the governments have had remarkably different responses to project corruption. While Lesotho's newly elected government immediately initiated an audit of the project, neither Paraguay nor Argentina have taken this type of active stance against corruption on the Yacretá Hydroelectric Project, and some evidence suggests that corporations were able to cultivate suspect relationships with politicians in order to win contracts on the project.¹¹⁷ In addition, LHDA controlled the bidding process for LHWP contracts. Lesotho was able to focus its investigation on a single bureaucrat without affecting members of the newly elected government. The corrupt practices were more diffuse in Paraguay and Argentina and involved legislators, making domestic investigations more complex and less likely to occur at all. However, while these differences may help explain the failure of Argentina and Paraguay to initiate investigations, they do not adequately explain why the World Bank failed to investigate the corruption on the Yacyretá Hydroelectric Project.

It is possible that the World Bank's decision not to investigate or act upon corporate corruption claims with regard to the Yacyretá Hydroelectric Project rests upon variables not yet discussed. This Note cannot hope to exhaust all the variables that distinguish Yacyretá and LHWP; regional and political differences are enormous. Nuanced bilateral relationships between the borrower countries, the World Bank's donors, and the corporations' home countries certainly may influence the World Bank's response to allegations against the dams. However, these variables have not completely prevented the World Bank from taking action with regard to Yacretá; in 1996, the World Bank Independent Inspection Panel recommended that the World Bank authorize a full investigation of the dam project's environmental and resettlement policies.¹¹⁸ Therefore, political variables alone cannot account for the World Bank's complacency with regard to the financial corruption of the Yacyretá but not the LHWP.

116. Pottinger, *supra* note 13.

117. See, e.g., RIBEIRO, *supra* note 73, at 37-38.

118. Treakle & Díaz Peña, *supra* note 61.

That Lesotho was willing and had the means to pursue criminal charges against the offending companies was clearly an important impetus for the World Bank in reopening its own investigations.

III. EVALUATING THE OPTIONS

Allegations of corruption may be brought before the World Bank via its Sanctions Board, or before the administrative or judicial mechanisms available in the host country. In addition, third-party states, multilateral organizations, and non-government actors have utilized their own formal and informal investigatory and punishment methods. In this Part, I review each party's methods and determine that none are singularly capable of investigating and punishing large-scale infrastructure corruption within their respective jurisdictions.

A. The World Bank Sanctions Board

The World Bank Sanctions Board governs the investigation and punishment of corruption on World Bank infrastructure projects. The Articles of Agreement of the International Bank for Reconstruction and Development (IBRD) and the Articles of Agreement of the International Development Agency (IDA) provided the World Bank with an early mandate against corruption. The IBRD Articles of Agreement requires that "[t]he Bank shall make arrangements to ensure that the proceeds of any loan are used only for the purposes for which the loan was granted."¹¹⁹ The IDA Articles place identical stipulations upon its financing.¹²⁰ In 1995, the World Bank revised and expanded its *Guidelines: Procurement Under IBRD Loans and IDA Credits* (Procurement Guidelines) and in 1997, it produced a second set of guidelines for borrowers, *Guidelines: Selection and Employment of Consultants by World Bank Borrowers* (Consultant Guidelines), both of which included clauses regarding corruption. The Procurement Guidelines stipulate that the World Bank will reject proposals of bidding corporations that engage in "corrupt, fraudulent, collusive, or coercive practices," cancel portions of a loan if the borrower engages in corrupt practices and fails to take corrective measures, sanction firms that have engaged in corrupt practices on a Bank-financed contract, and reserve the right to contractually require firms to permit the Bank to inspect their accounts.¹²¹ Similar clauses are included in the Consultant Guidelines.¹²²

The World Bank developed a debarment process in 1996, and in 1998

119. INT'L BANK FOR RECONSTRUCTION & DEV. [IBRD], ARTICLES OF AGREEMENT, art. 3, § 5(b) (as amended Feb. 16, 1989).

120. INT'L DEV. ASS'N [IDA], ARTICLES OF AGREEMENT, art. 5, § 1(g) (1960).

121. PROCUREMENT GUIDELINES, *supra* note 21, § 1.14(b)-(e); *see also* WORLD BANK, GUIDELINES: PROCUREMENT UNDER IBRD LOANS AND IDA CREDITS, § 1.15(b)-(e) (1995).

122. CONSULTANT GUIDELINES, *supra* note 21, § 1.22(b)-(e); *see also* WORLD BANK, GUIDELINES: SELECTION AND EMPLOYMENT OF CONSULTANTS BY WORLD BANK BORROWERS 1.25(b)-(e) (1997).

created a Sanctions Committee to review allegations and recommend decisions to the World Bank President.¹²³ In 2002, it engaged Richard Thornburgh to evaluate the committee and recommend changes,¹²⁴ many of which it subsequently implemented.¹²⁵ In 2007, the sanctioning process began operating according to a new set of procedures, which were again revised in 2010.¹²⁶ The Bank adopted a two-tier sanctioning process consisting of the Sanctions Board and Evaluation Officers.¹²⁷ To initiate procedures, the Integrity Vice Presidency of the World Bank (INT) submits a Statement of Accusations and Evidence to the Evaluation Officer.¹²⁸ If the Evaluation Officer determines that the accusations are sufficiently supported, INT will issue a Notice of Sanctions Proceedings to the Respondent.¹²⁹ The Respondent may contest the allegations by making a written submission to the Sanctions Board, which will then hear and make a ruling on the case.¹³⁰ In the case of either conditional non-debarment or debarment with conditional release, the INT appoints an Integrity Compliance Officer to notify the parties of the conditions they must meet in order to be released from or avoid debarment, and to monitor compliance with any sanctions.¹³¹ The INT may temporarily debar a company during the INT's investigation or pending the outcome of the hearing.¹³²

The World Bank has the ability to sanction firms for engaging in corrupt behavior on any Bank-funded project, regardless of whether the firm's contract involved a part of the project funded by the World Bank.¹³³ If the World Bank provided any financing to the project, it may consider allegations of corrupt behaviors and sanction offending corporations.

This system offers several advantages. Both the new and old procedures allow for notice, hearing, and opportunity to be heard,

123. World Bank, Sanctions Committee, <http://go.worldbank.org/BJ9P6TARY1> (last visited Mar. 10, 2010).

124. REPORT CONCERNING THE DEBARMENT PROCESSES OF THE WORLD BANK, WORLD BANK, <http://go.worldbank.org/BJ9P6TARY1> (last visited Feb. 20, 2011).

125. World Bank, Sanctions Committee, *supra* note 123.

126. WORLD BANK, SANCTIONS PROCEDURES (2010), http://siteresources.worldbank.org/EXTOFFEVASUS/Resources/SanctionsProcedures_9_15_2010.pdf. Under the system in place between 1998 and 2007, the committee was made up of World Bank staff members appointed by the World Bank President. The Department of Institutional Integrity investigated allegations of fraud and, if warranted, referred the case to the Sanctions Committee. The Sanctions Committee reviewed the evidence, notified the Respondent, received its written submissions, and held a hearing. If evidence of corruption was sufficient, the Committee recommended reprimand, debarment, or other sanctions to the World Bank President, who had final authorization. *See generally* WORLD BANK, REFORM OF THE WORLD BANK'S SANCTIONS PROCESS, http://www-wds.worldbank.org/external/default/WDSPContentServer/WDSP/IB/2004/06/29/000160016_20040629112806/Rendered/PDF/295270rev.pdf.

127. WORLD BANK, SANCTIONS PROCEDURES, *supra* note 126, § 1.01(b).

128. *Id.* § 3.01(b).

129. *Id.* § 4.01(a).

130. *Id.* § 5.01(a).

131. *Id.* § 9.03.

132. *Id.* §§ 2.01, 4.02.

133. *See id.* § 1.01(c).