

James Wolfensohn,
President
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Dear Mr. Wolfensohn,

The World Bank has repeatedly said in recent years that it is determined to combat corruption. You yourself made a speech at the IACC in Durban last month in which you said that corruption is at the heart of the problem of world poverty.

Your speech, like many others, focused on the problem of corrupt officials and politicians receiving bribes. But someone pays every bribe ú 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 the 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.

Lesotho Highlands Case

The Lesotho Highlands Water Project, which was designed with Bank support and receives funding from the Bank, now provides a challenge to the World Bank's commitment on corruption. The authorities in Lesotho and South Africa have brought a case against an official of the scheme for corruptly accepting bribes. The prosecution has published a detailed list of those bribes, and who paid them ú but no legal action is being taken against these companies in South Africa or Lesotho.

The Bank is due to discuss what action to take on these developments at a meeting in Pretoria on 17th November. The co-signatories to this letter believe that the Bank must take decisive action against the companies concerned, observe its own guidelines and ban from future bank contracts all those companies who have given bribes on this project.

Bank Guidelines

We believe that the Bank is morally obliged to take this action. We also believe that its own guidelines, adopted to combat corruption, oblige it to do so. (These guidelines are published by the bank at its website, and are reproduced in Annexe B attached). We wish to draw attention to what is and is not required by these guidelines:

Administrative Process

The guidelines do not require that a company be convicted of bribery in a court of law. They state that *"findings are made through an administrative process that permits the accused firm or individual to respond to the allegations."* This administrative process was explicitly used as the basis for listing the six firms so far declared to be "ineligible".

Offering or Giving Bribes

The practices concerned need not involve any potential or actual illegality. The guidelines state simply that: *"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"*.

Not Discretionary

The guidelines do not state that the Bank has discretion to ignore established facts. The guidelines simply state that *"The Bank ... 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"*.

Applicable to Parent Companies

The bans should apply not just to the joint ventures and subsidiaries listed as having paid bribes in the Lesotho Highlands Water Project. The World Bank's list of ineligible companies specifically states that the bans cover the parent companies and their subsidiaries: *"The firms listed here, as well as the firms which own or will own the majority of their capital, and any firm of which they own the majority of the capital, are ineligible to participate in World Bank-financed contracts."*

Attached to this letter (Annex A) is a complete list of all the companies named as having paid bribes in the Lesotho Highlands Water case, and the name of the parent company. **These parents include some of the largest multinationals involved in World Bank projects of all kinds: Acres International (Canada); Bouygues, Suez-Lyonnaise (France); RWE (Germany); Impregilo (Italy); ABB (Sweden, Switzerland); AMEC, BICC (UK).**

There is no provision in the Procurement Guidelines for treating large multinational companies any differently from the other, smaller companies which have so far been the subject of bans by the Bank.

Declarations of Ineligibility

The co-signatories to this letter believe that the Bank is therefore legally and morally obliged to carry out an administrative process in respect of all the companies listed, allowing the companies an opportunity to respond, and if as a result it finds that the companies have *'offered or given anything of value to influence the action of a public official'*, then **the Bank must proceed to declare all these companies and their owners, ineligible for future bank projects, and suspend them from all current bank projects.** The bank should publish the results of its investigations.

Action by governments under OECD convention

The governments of the home countries of these companies are all signatories to the OECD Convention on Combatting bribery, adopted in November 1997. That convention required all signatories to make bribery of a foreign official a criminal offence, 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).

We believe that the credibility of the OECD convention requires that these governments also take action against these companies. For this reason we are copying this letter to the governments of Canada, France, Germany, Italy, South Africa, Sweden, Switzerland, and the UK, and to the OECD.

Yours sincerely,

HANS ENGELBERTS
General Secretary
Public Services International Director

LORI POTTINGER
International Rivers Network

<http://irn.org/programs/lesotho/wb991115.shtml>