

Lesotho Highlands Water Project, World Bank's Responsibilities and Impregilo Involvement in Corruption Court Case

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Subject: Lesotho Highlands Water Project, World Bank's responsibilities and Impregilo involvement in corruption court case

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Dear President Wolfensohn,

We are writing to you on behalf of Campagna per la riforma della Banca mondiale, a coalition of 40 Italian development NGOs and environmental and human rights associations that has been, and still is, following with great attention and concern the developments of the court case on alleged corruption by several companies, such as Italy's Impregilo, in the Lesotho Highland Water Project. Impregilo is accused of having given bribes amounting to at least US\$250,000 to the former CEO of the Lesotho Highlands Development Authority.

We welcomed your decision to promote a meeting with all the funders of the Lesotho Highlands Water Project which was held in Pretoria a few days ago to discuss about the corruption case which came to light last July regarding the Lesotho Highlands Water Project (LHWP).

It is our understanding that , a trial was started at the end of last July at the Maseru Magistrate's Court on the allegations that Mr. Masupha Sole, former director of the Lesotho Highlands Development Authority (LHDA), took around two million US\$ bribes from 12 multinational corporations contracted under phase 1A and 1B of the project in the period 1988-1998. Over the past week, the companies were served with summons to appear before the Maseru Magistrate's Court on November 29 on charges of corruption.

Local and international NGOs still fear that the trial could not get to a verdict in the short term because of the strong political interference which could influence the work of the court. The case of the inquiry committee set to investigate the Butha-Buthe massacre of five Basotho workers occurred in September 1996 during a peaceful demonstration highlighted the bad record of the judiciary system in Lesotho as regards the investigations on human rights, policies and law violations occurred in the country during the implementation of the LHWP. The results of that inquiry have not yet been made public and the families of the killed workers have never received a compensation.

We appreciated the last months' efforts by the Government of South Africa in supporting the investigations and the trial in the neighboring country. On the other hand, only few of the 12 corporations involved in the case declared their availability to cooperate with the magistrates on the investigations.

After our fact-finding mission to the project sites in February 1999, I got closely in touch with local NGOs which have monitored the project on the field and have advocated local communities' requests to the authorities.

Local NGOs have never opposed the project, even if they claimed several times to the LHDA, the Lesotho Government and the World Bank for the respect of the compensation and resettlement policies and for the reparation of the damages caused by the activities of the project contractors during construction works.

After the corruption scandal came to light, we have registered a strong disappointment in our partner NGOs in Lesotho. The Lesotho Council of NGOs, which signed a Memorandum of Understanding with LHDA in 1997 in order to better implement impact mitigation actions designed under the project on the field, clearly stated through its Cluster of NGOs monitoring the LHWP last month that: "since the inception of the project 12 years ago, the NGOs in the country have always indicated that the way the project was conceived is not transparent and there might be hidden agendas and self-enrichment going on. Furthermore, it has to be noted that the role of the World Bank in this case has to be brought to light. 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. We want to suspect that the former Chief Executive may not be the only one implicated; therefore we strongly suggest a commission of inquiry to be instituted to look into the former and current senior officials of both the LHDA and the Ministry of Natural Resources."

We firmly believe that the institution you head cannot avoid addressing these specific requests coming from civil society organisations representing PAPs (Project Affected Populations).

During the meeting I attended between you and French NGOs aside of the European Conference ABCDE of the World Bank Group held in Paris from 21-23 June 1999, you personally invited international NGOs to meet the new anti-corruption task force set in Washington's headquarters to fight the virus of corruption worldwide. As you stated in Paris, the Bank wants to get a leadership in this fundamental fight nowadays.

At the same time we registered how the issue of corruption is increasingly being addressed by international institutions while confronting the urgency of the problem. A new "zero-tolerant" spirit regarding bribe payers and recipients is spreading in the most influential international fora. The new OECD Convention on combating bribery of foreign public officials in international business transactions came into force in mid-February this year and is in the process of being ratified by its 34 signatory countries. All the 12 companies implicated in the scandal in Lesotho are from countries that have signed the OECD Convention, which makes it a crime to bribe public officials abroad and furthermore imposes forfeiture of a contract's total value in instances of proven corruption.

As pointed out in a Transparency International press release on the case "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."

We have been pleased that the South African government intends to join the OECD Convention so that it can play a significant role in extending the scope of the Convention and help protect itself and other countries in Africa and elsewhere from similar incidents.

In your statement at World Bank/IMF AGM 1997 in Hong Kong you 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'd better watch out."

The same spirit has been confirmed once more in your speech at the 9th international anti-corruption conference held in Durban last October.

We unfortunately had to notice that such a strong stance from your side to actively fight corruption was not reflected in the Bank's press release on the case in Lesotho, in which World Bank officials tried to shun off any competence on this case by stating that the Bank would apply its anti-corruption rules only if the companies which allegedly bribed the LHWP official were working on parts of the project directly funded by the Bank (World Bank Press Release, July 30, 1999).

In our opinion this is a restrictive and damaging interpretation of the World Bank procurement guidelines, according to which the firms "engaged in corrupt or fraudulent practices in competing for, or in executing, a bank-financed contract" will be "ineligible, either indefinitely or for a stated period of time, to be awarded a bank-financed contract".

Looking at the past history of the project, it is clear that the World Bank was crucial to guarantee the financial feasibility of such a massive development project in 1986, when both South Africa and Lesotho were ruled by two undemocratic government. The Bank's involvement gave enough guarantees to other funding institutions to be part of the multibillion dollar project, which is at the moment the second biggest water-transfer project under construction in the world. As clearly stated in the July 2, 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.

The World Bank cannot reduce its role to individual funder of the project and care only about the use of its own funding. It is important to remind that the implementing agency of the project, as personally referred to me by its current CEO Mr. Marumo during an informal visit to LHDA's headquarters in Maseru at the end of February 1999, became operational in 1988, about 2 years after the beginning of the construction works. Mainly because of that no environmental impact assessment has been carried out for phase 1A.

The Bank is still to publish the Completion Report for phase 1A. According to what we understand, until now no draft of the report has been circulated to local and international NGOs. We urge you to open a new dialogue with Lesotho, South African and international NGOs to assess the responsibilities of the Bank during the first phase of the project so that all mistakes of the past will not be repeated anymore.

Specifically we refer to the allegations revealed in September that the Bank gave official support to the corrupt project head, currently on trial: in 1994, six years after Mr. Sole's established at the head of the LHDA, a senior bank official sent a strongly worded letter to the Lesotho government urging that no action be taken against Mr. Sole because it would "seriously jeopardise the progress of the project". (source: Business Day, November 17, 1999)

In his reply to our letter (letter dated July 2, 1999), the LHWP Task Team Leader Mr. Guinard replied to some specific requests - which are included in the trip report we produced after our visit to the project sites - inviting us to refer our recommendations directly to LHDA for response, since, in his opinion, the implementation of the project is the responsibility of the LHDA. Since my visit in February we received no information on the overall phase 1B financial plan as kindly requested to the LHDA CEO. Once more the agency has proved to be non-transparent and unreliable.

Furthermore, the attitude expressed by the Task team Leader to our request of information confirms the fact that your institution seems to be still far away from what has been personally defined by you to be a knowledge bank both at World Bank/IMF AGM 1998 and during your October visit to the South African Government. The whole LHWP requires an analysis by the Bank which has been missing up to now. A knowledge Bank which is taking on a "comprehensive development framework" approach considering issues of corruption, crime, governance and the political position of the borrower should necessarily support and control implementing agencies in what they are not able to do yet on the field.

We agree with you that a new partnership with the private sector, as considered fundamental for the new attitude of the World Bank Group within the newly shaped global financial architecture, should be based on clear rules of good governance. However, several companies involved in the Lesotho corruption scandal have already been involved in scandals in several projects in the past - some of which received World Bank funding too.

In the light of the above, let us conclude, Mr. Wolfensohn, by sharing and reiterating once more the calls for transparency and accountability voiced by International and local NGOs, such as Transparency International, International Rivers Network, Environmental Defense Fund, Highland Church Solidarity Action Center, Group for Environmental Monitoring and many others.

We urge your institution to play a major role in the case of the LHWP and we ask for a suspension of the contracts of the 12 multinational corporations allegedly accused of bribing the former LHDA CEO until the verdict of the trial will be issued. In the case the verdict will confirm the allegations of bribing, the

companies should be debarred from the project and any other World Bank funded project for a certain period of time as conceived in the World Bank procurement guidelines.

Since the risk of corruption is considered still high in the implementation of the project now, we strongly support the request of local NGOs for the establishment of a Commission of inquiry including NGO representatives to look into the former and current senior officials of both the LHDA and the Ministry of Natural Resources.

Such undertakings by the World Bank would surely represent a first important step in a new active fight against corruption. We would appreciate to receive an update directly from your office on the results of the Pretoria meeting as soon as possible. We thank you in advance and remain sincerely yours,

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<http://irn.org/programs/lesotho/wbletter.991119.html>