

CASE INFORMATION SHEET

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LESOTHO: A Precedent for Prosecution of Grand Corruption Committed by Multinational Companies

The Lesotho Highlands Water Project

The Lesotho Highlands Water Project (LHWP) is one of the largest infrastructure projects in the world and was implemented in accordance with a treaty signed by the Republic of South Africa and the Kingdom of Lesotho on October 24th 1986. The multiphase, multipurpose project (ultimately expected to cost approximately US\$ 8 billion) comprises a system of several large dams and tunnels, mostly located in Lesotho's Highlands to augment the water supply to the Gauteng Region of South Africa (which accounts for 60 % of its GDP and 40% of its urban population) and generates electricity for Lesotho in the process.

Today, the LHWP is well known for the grand corruption trials involving several multinational companies and public officials. More than US\$6million in bribes were exchanged to win contracts and secure tenders in the bidding process. The Lesotho trials are the first of its kind where bribery in international business transactions has been brought to light followed by prosecution in the country impacted by the bribes. In this sense, the case demonstrates that it is possible for poor countries to try and punish top officials and evasive and powerful multinational companies for illegal actions, in accordance with transparent legal procedures.

Corruption Problems

The LHWP is an example of grand corruption which often occurs in large infrastructure projects when officials have enormous discretion in their planning, implementation and operational tasks within the back-drop of a weak institutional environment. In the LHWP, the chief executive of the Lesotho Highlands Development Authority (LHDA) – the agency responsible for implementing the LHWP, received US\$6 million in bribes from multinational companies through an extensive international network of bank accounts and 'agents'.

One crucial factor for bribery taking place in international business transactions is that multinationals from developed countries are able to evade prosecution for wrong-doing in developing countries. In many cases, these multinationals escape liability as home governments turn a blind-eye to their operations. The OECD Anti-Bribery convention that encourag-

Project Information

Earle/Turton 2005: *No Duck, No Dinner: How Sole Sourcing Triggered Lesotho's Struggle against Corruption*
Darroch, Fiona, 2007. *Lesotho Highlands Water Project: Corporate Pressure on the Prosecution and Judiciary. Article in Transparency International, Global Corruption Report 2007. London, Cambridge University Press, pps. 87-91.*

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es sanctions against bribing foreign officials in international business transactions, is a crucial first step to combat corruption committed by multinational companies in developing countries.

Prosecution of Grand Corruption in Lesotho

Unprecedented in the history of prosecutions for bribery, the government of Lesotho put the companies and officials involved in bribery on trial. Six successful prosecutions including the chief executive of LHDA, two international consulting companies, one international contractor, and two

local agents have been carried out. The two consulting companies were later debarred by the World Bank for periods ranging from three to seven years. A series of incidents made the trials possible:

Firstly, the chief executive had been found guilty of administrative irregularities such as spending organisational funds inappropriately. These were not defined as a criminal act but motivated the government to further inquire in the case.

Secondly, the role of the Swiss Government was also critical because through changes in its banking secrecy laws in 1997, it was able to hand over relevant bank records to the Government of Lesotho (GoL), which were critical to securing six convictions, including that of the former Chief Executive (CE) of LHDA.

Thirdly, the government of South Africa provided assistance and encouragement to the government of Lesotho. Most important however, was the political will demonstrated by the government of Lesotho in the lengthy course of the prosecution, investing financial resources, time and proving strong political commitment.

Anti-Corruption Strategies

Several points of importance for future bribery prosecutions were set as precedents by these trials, including:

- Bribery – what has to be proven by the prosecution? It was ruled that a crime is committed at the point the agreement is made. The mere offering of a sum of money to a public official, and the acceptance of it, is sufficient to start legal action. This makes the prosecution of the crime easier.
- Financial Transparency – which financial transactions took place? Access to the Swiss banking records of the accused was a major component of successful prosecution.
- Jurisdiction – where did the crime take place? Since the impacts of the crime were felt in Lesotho, jurisdiction was ruled to be in that country.

“One of the major lessons to take from this case study is that it is much more cost-effective and economical to prevent corruption than to deal with it post-facto. To achieve this goal, all project stakeholders involved in financing, approving and implementing large infrastructure projects need to carry out their due diligence to minimize the risks of bribery and other corrupt practices.”
Donal O’Leary, Transparency International Senior Advisor

Lessons Learned

The Government of Lesotho has proved that even a poor country can effectively prosecute corruption if there is a strong political will by the government and a competent judiciary. But it requires enormous financial and administrative resources.

The Government of Lesotho has been commended for its strong stance on corruption and strong political will. This case will serve as a precedent for future cases involving corruption and bribery by multinationals around the world.

The OECD Anti-Bribery convention aimed at reducing corruption in developing countries by encouraging sanctions against bribing foreign officials in international business transactions has been a crucial step to fight bribery in developing countries.

In many cases, Transparency International’s Business Principles for Countering Bribery is found to be a relevant tool to prevent and prosecute such large-scale corruption.