# High Crimes In Lesotho

## Transnational Criminals – Part 3

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As noted in **Part 1** of this series, in the last six months we have seen a flurry of transnational corruption cases that involve misbehavior by leading First World companies in developing countries. All these cases raise basic questions about our current approach to investigating, prosecuting, and penalizing transnational corruption – and our understanding of its roots.

The following article, Part 3 in this series, takes a close look at another recent case, **Lesotho's Highland Water Project (LHWP**), a huge World Bank-financed dam project where a half dozen leading Canadian and European engineering and construction firms are now being prosecuted for bribery by one of southern Africa's smallest, most poverty-stricken countries.

This particular case suggests that, in principle, First World development banks and export credit agencies are in a very strong position to curb this kind of behavior, simply by insisting on tight financial controls and penalizing bribery heavily. So far, however, they have been reluctant to do so, apparently because they are reluctant to offend their First World constituents. After all, if politically-influential engineering firms, equipment vendors, and construction companies won't lobby for their budgets and lending authority, who will?

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## THE PROJECT

Next to China's gargantuan **Three Gorges Dam, Lesotho's Highland Water Project (LHWP)** is the world's second largest water transfer project and Africa's largest dam project ever. In the finest traditions of hubristic civil engineering, the project's design contemplates a thirty-year effort to build five big dams and a hydro plant in Lesothu's Maluti Mountains, eventually diverting nearly half of the water – 2 billion cubic meters a year -- from the Orange River (known in Lesotho as the "Senqunyane River" basin) through 125 miles of tunnels to Johannesburg's Vaal Dam.


The basic project concept, which dates back at least to the 1930s, is simple. Lesotho, an otherwise tiny, poor, landlocked, mountainous kingdom, is known as "The Kingdom in the Sky," the only country in the world that is all above one thousand meters. The country is also entirely surrounded by, and dependent upon, its much wealthier neighbor, **South Africa.** Most of Lesotho's 2.2 million people either work as subsistence farmers at home or as migrants in South Africa, which provides jobs for half of Lesotho's labor force. Aside from these labor exports, one of Lesotho's few other natural resources is the abundant rainfall that its mountains receive each summer. Johannesburg's mines and other industries, on the other hand, account for sixty percent of South Africa's economy, and are always hungry for cheap water and energy, as well as cheap labor.

In South Africa's view, all this provided the basis for what appeared to be a "win-win" deal. LHWP was originally designed by South African-retained engineers in the 1970s, and the project agreement was "jointly approved" by the two countries in 1986. Back then -- and of course until 1994 -- South Africa was still an apartheid state, ruled by "whites only," who accounted for just 14 percent of its population. And Lesotho was ruled by a compliant military regime that South Africa had installed only a few months before the LWHP agreement was signed.

These anti-democratic roots did not bother the "global development industry" very much at the time. This industry consists of multilateral development banks and aid agencies, private banks, engineering design firms, equipment vendors, and construction firms, mainly from First World countries and a handful of larger Third

World countries, like Brazil and China. We'll review the "private perp" list below, but among the leading development banks and export credit agencies that agreed to fund this multibillion dollar hydro boondoggle concocted by South Africa's apartheid planners were the **World Bank**, **Canada's EDG, the African Development Bank, the UK's EGCD**, **France's COFACE, Italy's SACE**, and **Germany 's HERMES**. Germany, France, and the UK also provided bilateral foreign aid to the project – an indirect way of channeling subsidies to their own politically-influential contractors.

All told, this global development industry has constructed more than 45,000 large dams in developing countries since the early 20th century, at a cost of more than $2 trillion, the resettlement of at least 50 million people, and untold environmental damage. Indeed, despite the fact that "large dams" have recently become much more controversial among development planners and environmentalists, this industry still builds about 1500 to 2000 new Third World dams per year. See Chart:"Big Dams Per Year"

In the last decade, with the rise of more democratic regimes in leading developing countries like South Africa, Brazil and Russia, First World governments and development banks were essentially compelled to emit more favorable noises about "democracy" and "transparency" -- except with respect to China, where they continued to look the other way at autocracy. In fact, the reality is that the global development industry and its financial supporters actually do much better in situations where popular concerns like forced resettlement, land ownership, the appropriate pricing of natural resources and electricity, soil erosion, and other environmental concerns are subordinated to the priorities of organized interests. This is one key reason for the ***strong negative correlation*** between "big dam projects" and democratic development.

In any case, in Lesotho's case, those who designed LHWP and structured its finances back in the 1980s did not worry very much about the fact that, at the time, they were in gross violation of international sanctions against apartheid. Instead, a group of clever merchant bankers at **Chartered WestLB**, a leading UK international merchant bank, consulted with the World Bank and got its approval to **make pint-sized Lesotho the $8 billion project's official borrower** -- with South Africa kicking back debt service and water royalties under the table to a London-based trust.

This arrangement, in effect, "laundered" LHWP's finances, opening the door to the global pig pile of development funders, private banks, vendors and contractors that we listed earlier. At the time, these players could basically have cared less whether the project served to undermine apartheid or quenched its thirst for water and electricity forever. Meanwhile, Lesotho's official foreign debt was sent soaring, and the potential contractors started arriving in droves to flog their wares and exert influence any way they could.

Two decades later, as of 2003, this bevy of contractors has finished the Katse and Muela dams and 53 miles of tunnels, at a total cost of $2.5 billion. Mohale Dam is due in 2004, for an additional $1 billion, followed by the Mashai dam by 2008 and the final Tsoelike dam by 2017. As noted, the total cost is supposed to be $8 billion by then -- though such cost estimates are rarely worth the paper they are printed on.See Chart: "Average Big Dam Cost Overruns"

Unfortunately KHWP has also hit a few snags. To begin with, the people of Lesotho have been having second thoughts about parting with so much of their water on such one-sided, apartheid era terms. There have also been some nasty side-effects. In January 1996, for example, the sheer weight of Katse Dam's reservoir helped to cause earthquakes in Lesotho that shook many villages. In September 1996, 2,300 workers at Muela Dam were fired for striking illegally when they protested lousy working conditions and wage discrimination. Contractors, including the UK's Balfour Beatty, called in the police and 5 workers at their camp were shot dead and 30 injured. In 1998, partly to deter a possible military coup, but also to remind Lesotho that LHWP was, after all, South Africa's largest infrastructure investment, the "New South Africa" invaded Lesotho, killing 66 people to "restore order." The Johannesburg Star later reported that protecting the dam had been one of the invasion's primary concerns. There has also been a long list of environmental, distributional, and social problems associated with KHWP – with complaints from dam critics about some 24,000 people displaced without adequate compensation for resettlement, and increased erosion.

## ANTI-BRIBERY WINDOW-DRESSING

Most interesting for the purposes of this article, LHWP has also turned out to make history in the field of global corruption, and the enforcement – or lack thereof – of "anti-bribery" statutes by First World governments, multilateral lenders, and export credit agencies.

The roots of these statutes, which have by now been widely adopted by most First World countries, goes back to the **US Foreign Corrupt Practices Act (FCPA) of 1977.** This statute, which was pushed through Congress during the relatively high-minded Carter Administration, has provided American officials with numerous opportunities to lecture their counterparts in Europe and Asia on the importance of taking a strong stand against Third World corruption. (The Europeans and Asians responded, with some justification, that US firms were hardly sin-free, and besides, that any excessive bribery on their parts just offset the substantial US advantage in industrial espionage provided by global electronic eavesdropping networks like **the National Security Agency's Echelon system** -- the fruits of which are increasingly shared with the private sector.)

In reality, the FCPA's actual enforcement has never been a priority for any US administration -- there are few votes in it, since most of the victims are located in distant lands, and most of the perpetrators are major homeland corporations. Since 1977, there has only been one sizeable fine – a $21.8 million charge levied on **Lockheed** in 1994 for paying bribes to win Egyptian defense contracts. Beyond this, there have only been 34 US criminal prosecutions under the FCPA in 36 years, with the median fine levied on 28 convicted corporations a mere $50,000. Just three out of 12 convicted US foreign bribers have ever done any jail time – a total of 34 months for all three! On top of all this, a federal court ruled in 2002 that the FCPA did not even apply to cases where US companies pay off foreign officials to cut taxes or customs duties – in the case at hand, a **Haitian** customs official who had been bribed by a major Texas-based rice exporter. According to this ruling, the FCPA only prohibits bribes made to "obtain or retain business."

Nevertheless, over the next two decades following the FCPA's adoption by the US, pressures for the transnationalization of sanctions against corruption grew, propelled in part by the sheer number of abusive projects that came to light all over the world. Organizations like **Transparency International**, started to publish a "**corruption index**," an annual ranking that claimed to identify the world's "most corrupt" countries, all of which turned out to be developing countries. The Wor**ld Bank also adopted new guidelines** on corruption that were supposed to crack down on contractor/ vendor bribery. At the Annual World Bank Meetings in Washington, D.C. in October 1996, for example, World Bank President James Wolfensohn declared:

> Let me emphasize that the Bank Group will not tolerate corruption in the programs that we support; and we are taking steps to ensure that our own activities continue to meet the highest standards of probity.

In 1999, responding in part to complaints from developing countries, as well the US' continuing whining that America's global competitiveness was suffering because of the failure of other First World countries to adopt similar statutes, all but two **OECD** countries adopted **a new treaty** that provided for increased penalties for First World companies that bribe foreign officials.

Despite these new laws, indices, and declarations, however, the fact is that until the LHWP case exploded in 1999, there had been very little actual enforcement of such rules against bribery, especially against leading First World bribers and their money launderers – major First World construction companies, engineering firms, energy companies, equipment suppliers, banks, and other leading members of the huge global development industry.

This is partly just because it is hard to follow the money trail through the global thicket of offshore companies, secret trusts and bank accounts, and havens. However, as we'll see, even tiny Lesotho was able to break through Swiss and Panamanian banking secrecy in less than two years and make a winning case against some of the world's largest contractors.

The more important obstacle seems to be the fact that, when push comes to shove, many First World countries, export credit agencies, and multilateral donors appear to be deeply conflicted about how hard they wish to pursue the enforcement of such rules against the bribers, as opposed to the "corrupt" local officials. They appear to be concerned not only about alienating influential allies, but also about disrupting the flow of large projects. They may also be concerned that if they really looked hard at what has been going on around them, some of the revelations might be too hot to handle. **(See Part 4 - The SGS Case.)**

## THE LESOTHO CASE

In July 1999, tiny Lesotho charged its former CEO for the Lesotho Highlands Project, **Masupha Sole**, with receiving more than $2.5 million in bribes by way of Swiss accounts, from almost all the key contractors involved in LWHP's first three dams.

A Canadian-trained engineer, Sole had been Lesotho's highest-paid public official when he was put on leave in 1995, pending the outcome of this investigation. He had worked as a director in Lesotho's Department of Water, Lands, and Energy until October 1986, when he was appointed first CEO of the Lesotho Highlands Development Authority, the contracting agent for the project.

In that capacity, Sole had overseen all the tenders for the project. Everything had proceeded quietly until a new Minister of Natural Resources decided to hire **Ernst and Young** to audit LHWP's account in 1994. The audit turned up discrepancies, and further investigation revealed that Sole had received large transfers to his Johannesburg bank accounts from accounts in his name at **three Swiss banks** – **Union Bancaire Prive** and **Banque MultiCommercial** in Geneva, and **UBS** in Zurich.

With the help of Durban lawyers, Lesotho managed to track down precisely who had paid bribes and how the money had flowed. The astonishing indictment listed all those international contractors and provided initial estimates of the amounts they'd paid:

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- **Zublin** - $444, 466, plus its share of $57,269 paid by LHPC and LHPC-Chantiers' $63,959
- **Impregilo** - $250,000, plus its share of $733,404 paid by the HWV consortium
- **Acres International** - $260,000
- **Spie Batignolles** - $119,393, plus its share of LHPC's $57,269 and LHPC-Chantiers' $63,959
- **Dumez** - $82,422
- **ABB -** $40, 410
- **Sogreah** - $13,578, plus its share of LHPC-Chantiers' $63,959
- **Lahmeyer/ RWE**- $8,674
- **Diwi** - $2,439
- **Balfour Beatty** – its share of LHPC's $57,269 and LHPC-Chantiers' $63,959
- **LTA** - its share of LHPC's $57,269 and LHPC-Chantiers' $63,959
- **Hochtief** - its share of $733,404 paid by the HWV consortium
- **Bouygues** - its share of $733,404 paid by the HWV consortium
- **Keir Int'l** - its share of $733,404 paid by the HWV consortium
- **Stirling Int'l** - its share of $733,404 paid by the HWV consortium
- **Concor** - its share of $733,404 paid by the HWV consortium

o **Sir Alex Gibb** – its share of the LHPC-Chantiers' $63,959
o **Coyne & Bellier** - its share of the LHPC-Chantiers' $63,959
o **Knight Piesold** - its share of the LHPC-Chantiers' $63,959

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In August 1999, Lesotho courageously decided to prosecute 14 of these companies, plus three French and South African intermediaries that had helped to provide "safe escort" for the bribes.

Swiss authorities, who decided to help Lesotho for reasons that may actually include a sudden surge of ethical responsibility, also found that at least 14 companies had made deposits to these accounts by way of two **Panama** shell companies and other accounts in the **Channel Islands**, all of which had been set up by **one of Panama's leading law firms, Morgan y Morgan.** The haven-neering employed was surprisingly crude – whoever structured the bribe path neglected to add extra layers upstream to conceal the payors' identities, and had also made the gross error of setting up Swiss accounts in Sole's name and transferring funds directly to him. The two Panamanian shell companies used as conduits were Universal Development Corp (UDC) and Electro Power Corporation.

UDC had been created by Morgan y Morgan way back in December 1981, under the control of a French agent, **one Max Cohen**, who had worked with **Spie Batignolles** on numerous other projects. It was only dissolved on September 2, 1998, when Cohen got wind of the Lesotho investigation. Its sheer longetivity is just one indication that Lesotho was probably not these contractors' only victim. Electro Power Corporation, also under the control of *Les Grand Messieur* Cohen, was created in October 1989, and was dissolved on September 2, 1998. UDC and Electro Power had their own accounts at **UBS** and **Union Banque Privee** in Jersey and Switzerland. The funds flowed from the contractors' banks to the bank accounts of these two companies, then on to Sole's Swiss accounts, and finally to his accounts at **Standard Bank** in Johannesburg.

In any case, except for **ABB, whose Chairman Goren Lindahl admitted** knowing about "the problems" in Lesotho since at least 1987, and agreed to cooperate with authorities, all the contractors vehemently protested their innocence. They were not so worried about the fines that Lesotho might impose. What really caused them sleepness nights was the fear that the World Bank, in particular, might exclude them from the $7 to $10 billion of loans and credits that it still distributes each year to Third World infrastructure projects.

In **May 2002**, after a year-long trial, **Sole was convicted** on 11 counts of bribery and 2 counts of fraud in Lesotho High Court, and sentenced to 18 years in prison. The court concluded that he had taken payments from the international contractors and agreed "to further their private interests." In March 1991, for example, just one month before a key contract worth more than $250 million dollars was signed with one of the two key consortia in the case, the court found that the consortium had paid him more than $1.2 million by way of the secret accounts.

**THE LINE-UP.** Sole's conviction set the stage for Lesotho's prosecution of the companies, and a frustrating effort to have them blacklisted from bidding on contracts in international development projects.

In October, 2002, after a seven-month trial, **Canada's** **Acres International**, a leading engineering services firm, was convicted of bribing Sole with $260,000, and fined $2.2 million. 66 As the presiding judge commented, "This is the first time a first world company operating in the third world has been convicted of bribing a public official." As Lesotho's Attorney General explained, "The attitude has always been that Africans are corrupt. We want rich world corporations and countries to acknowledge their role. "We are telling them it that it is no longer business as usual."

Following the conviction, Acres International continued to deny any involvement in the bribes. But in August 2003, the conviction was affirmed by Lesotho's highest court, although it did reduce the fine from $2.2 million to $1.5 million. Nevertheless, in November 2003, NGOs around the world were compelled to decry the refusal by Export Development Canada (EDG), that country's export finance agency, to bar Acres from future contracts.

In August 2003, **Lahmeyer International**, another leading construction engineering company that is owned by **RWE AG**, one of Germany's top five companies, was convicted and fined in the same Lesotho bribery case. Other German firms involved in the case include **Hochtief**, another RWE AG company, and **Diwi Consulting**, an engineering company.

Many other leading companies are also awaiting trial. So far the "transnational perp walk" in Lesotho includes the following companies:

~France's **Schneider Electric**, one of the world's largest electrical distribution companies, has been implicated in the case by way of its acquired company, **Spie Batignolles**. It is awaiting trial. Other French firms also awaiting trial in the case include Dumez International, another leading engineering firm that is now a subsidiary of **Suez-Lyonnaise-Eaux;** and **Bouygues**, a construction and media giant.

~Switzerland's **ABB**, a giant industrial conglomerate and power equipment supplier, has also been accused of bribery in the case, and is awaiting trial.

~Many other firms have been charged indirectly, as members of the project consortium that led the project and allegedly made payoffs. These including Italy's **Impreglio SPa**, owned by **the Fiat Group**; **the UK's Balfour Beatty, Stirling International Civil Engineering Ltd., Mott McDonald, Sir Alexander Gibb and Partners Ltd, Kier International Ltd., Kvaerner Boving Ltd., ABB Generation (UK). and Knight Piesold**; **Germany's Hochtief (RWE)** and **Zublin AG**; **France's Coyne et Belier, GEC Alstom, Campenon Bernard, and Sogreah**; and South Africa's own **Concor** and **LTA**.

~These firms were also assisted by several leading international private banks, including the UK's merchant banks **Chartered WestLB** and **Hill Samuel**, France's **BNP** and **Credit Lyonnais**, Germany's **Dresdner Bank** , and all **five top South African Banks**.

## RECIDIVISTS

Interestingly, quite a few of these firms are recidivists -- Lesotho is not the first time that they've been involved in shady Third World construction projects. This is yet another indication of just how inadequate legal sanctions and enforcement with respect to such transnational crimes really are.

~In the early 1990s, for example, the UK's **Knight Piesold** (backed by the **ECGD**, the UK's export credit agency, Spie Batignolles, and Sogreah, as well as GE Alsthom and Norconsult, were also involved in **Kenya's notorious Turkwell Gorge dam**, later described by Kenya's press as "the whitest of white elephants" and "a stinking scandal." Knight Piesold was also the lead designer for Kenya's **poorly-conceived Ewaso Ngiro** dam project.

~**Balfour Beatty** was also prime contractor for **a corruption-ridden project in Singapore**, and **the Pergau dam in Malaysia**, for which Balfour's Chairman inadvertently bragged to a British journalist that he had personally handed over the requisite bribes to Malaysian officials.

~**Impregilo SPa** and **Dumez** were prime contractors, and **Lahmeyer** a leading member of the consortium responsible for the **disastrous $12 billion Yacryeta hydro dam** on the Parana River in Paraguay, still unfinished after 20 years -- even former Argentine President Carlos Menem called a "monument to corruption," with **over $6 billion of funds completely missing**.

~Fiat's **Impregilo SPa** was also prime contractor on **Honduras' costly El Cajon hydro dam**, and **Guatemala's notorious Chixoy Dam**, where it was also assisted by **Lahmeyer** and **Hochtief**.

~**ABB** has supplied turbines and power generation equipment to numerous Third World dam disasters, including the disastrous **Tucurui hydro dam** in the Amazon.

## THE WORLD BANK'S RESPONSE?

One might have thought that the World Bank, for all of its recent rhetoric about "transparency" and "fighting corruption," would have taken swift action in this case. However, in February 2002, eager to get on with the project, the World Bank reported that its own internal investigation had dismissed the bribery claims against all fourteen contractors charged by Lesotho for "lack of evidence," and it refused to blacklist any of them from future projects. The World Bank also presented a new, narrower interpretation of its own rules.

According to this new standard, only if it were shown that bribes actually make use of World Bank money, or are related to a portion of a project **directly funded** by the Bank, would briber-companies involved be blacklisted. One only has to ponder this for a minute to understand how wide a loophole it creates.

So, while the World Bank currently lists some 78 contractors on its "Ineligible List,"as of late 2003 this list still contains **none of the LHWP contractors**, after more than three years of court hearings, and no major international contractors, vendors, or banks at all. Nor, for that matter, have there been any sanctions imposed by any other development banks, or export finance agencies -- indeed, in the case of the US and the UK, there have never been any sanctions imposed by export credit agencies because of allegations, suspicions or evidence of corruption.

Undoubtedly the World Bank, other development banks, and the export credit agencies all face intense pressures from leading First World countries – the World Bank's "shareholders" -- to maintain the eligibility of key contractors. Apparently the World Bank also cares a great deal about seeing the big projects that it finances move along as quickly as possible.

Indeed, in Lesotho's case, leaked correspondence between the World Bank and Lesotho's government revealed that the World Bank had known about the Sole investigation as early as 1994. Its reaction? World Bank officials expressed great concern to Lesotho's authorities that ***by suspending Sole, they might slow the project down.***

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