

No Duck No Dinner: How Sole Sourcing triggered Lesotho's Struggle against Corruption

Paper presented at World Water Week 2005 in Stockholm, seminar on 'Corruption in the Water Sector: How to fight it?'

Anton Earle (antonearle@mweb.co.za)
Anthony Turton (aturton@csir.co.za)
African Water Issues Research Unit (AWIRU),
CiPS, University of Pretoria

Abstract

"The Lesotho Highlands Water Project (LHWP), between the Kingdom of Lesotho (KoL) and the Republic of South Africa (RSA), is one of the most comprehensive engineering projects of its kind in the world, aimed at harnessing the water resources of the highlands of Lesotho to the mutual advantage of South Africa and Lesotho" (LHWP website, 2005).

"Massive corruption was discovered on the LHWP in 1999, when more than 12 multinational firms and consortiums were found to have bribed the CE of the project. After the CE himself was found guilty, three major construction firms were put in the dock; thus far, three have been found guilty and charged, and one has been debarred at the World Bank" (IRN website, 2005)

The two excerpts above appear, on first reading, to present two very different images of the same project. One speaks of hope, development and the promise of a better life for the citizens of two developing nations, while the other points to a web of corruption and deceit on an international scale. This paper seeks to show that the two views actually have a lot more in common than is first assumed. Both bring a message of hope – the one of development through the construction of physical infrastructure, while the other through the development of a global precedent for tackling corruption on international construction projects. When the country of Lesotho decided to embark on, and maintain, a process of prosecuting some of the largest multinational construction firms in the world for bribery it scored a victory for good governance and society at large. This it did with very little support (financial or technical) from the international community – no small accomplishment for a country ranked 145th (out of 177) in the Human Development Index of the United Nations Development Programme (UNDP, 2004). In this paper a brief overview of the various trials involving corruption on the LHWP is given. An analysis of the corruption on the project follows, looking at factors that contributed to the corruption taking place and identifying the factors that helped expose the corruption. In the final section, recommendations are made as to what more can and should be done on an international, as well as a local, level to promote the combating of corruption. What this paper does not do is provide an opinion on the various merits and demerits of the LHWP as a whole, whether it was needed at this time, or whether the net impact on the local communities & environment was positive or negative. The focus will be on the corruption components of the project and their implications for water development projects internationally.

Introduction¹

Globally, government procurement accounts for anywhere between 10 and 15 percent of GDP (Wiehen, 1999). The funding made available through governments for infrastructure development projects represents a sizable opportunity for construction and engineering firms. Commensurate with the potential rewards of being involved in these large-scale infrastructure projects is the high level of competition between the various contractors. Operating margins are usually tight, with little leeway for cutting costs further. Technological advantages of one firm over another are generally not that great in the construction industry with most firms being able to adopt the latest methods of design and construction. The net result is that companies make use of any small advantage possible, including building up a good working relationship with the public officials in charge of allocating funding to such infrastructure projects.

In the international context, this function of “relationship building” is frequently outsourced to a local sub-contractor – or representative agent through entering into a representative agreement (Stansbury, 2005). In the cases of corruption this arms-length relationship between the contractor and the public official in charge of a project is exploited, allowing the contractor to feign innocence if evidence of bribery between the representative agent and the official is uncovered. Typically, the representative agreement attempts to provide a veneer of commercial justification for the services of the agent and lists tasks, which the agent will perform, such as providing office space, secretarial and translation services and promoting the contractor in the local country – all with the aim of aiding the contractor to secure the contract (Stansbury, 2005). Included in such an agreement is the stipulation that the agent only receives payment if the contractor is awarded the contract – the “no duck no dinner” clause (Penzhorn, 2004). Frequently the level of remuneration is out of proportion with the services being performed, with the representative agent claiming amounts higher than what the services usually would cost on the local markets.

It is precisely such a situation as described above which was under consideration in the 2001 trial of Masupha Ephraim Sole, the first Chief Executive of the Lesotho Highlands Development Authority (LHDA) in charge of overseeing the LHWP. He was convicted on 11 charges of bribery and two of fraud then sentenced to 18 years imprisonment (reduced to 15 years on appeal) for the way in which he awarded construction contracts on the project. The uncovering of Mr Sole’s corrupt activities started with a disciplinary inquiry at the LHDA into the way he charged private expenses to the project, abused the housing scheme of the project and provided family members with jobs (Darroch, 2004). During his subsequent appeal of his dismissal it emerged that he had mismanaged parts of the contracting, causing the LHDA financial losses. The civil proceedings, which the LHDA brought against Mr Sole to recover the funds, unearthed a complex web of foreign bank accounts with a range of payments. Criminal charges of bribery were finally brought against Mr Sole by the Lesotho prosecuting authority. By 2002 Mr Sole had been

¹ The authors would like to acknowledge and thank Adv Guido Penzhorn, Fiona Darroch and Mr Willie Croucamp for contributing insights, opinions and materials to this research paper.

found guilty on eleven counts of bribery. These bribes he received from various intermediaries – the representative agents referred to above - through a complex process of international financial transfers using his Swiss and South African bank accounts. These agents included Mr Jacobus Michiel Du Plooy (a South African), Mr Zalisiwonga Bam (Lesotho) & Mr Max Cohen (French). In return for the bribes, he would grant preferential treatment to the companies involved – sometimes awarding contracts on a “sole source” basis – in other words not making them open to a competitive bidding process.

The prosecution of Mr Sole unearthed a nest of corruption involving up to 19 construction firms, members of various consortia involved in construction work on the LHWP. Three of these have been found guilty of being involved in corruption and sentenced to the payment of various fines:

- Acres International (Canadian) fined M15 million²
- Lahmeyer Consulting Engineers (German) fined M12 million;
- Spie Batignolles (French) fined M10 million.

With several other international construction firms still on trial the whole process is likely to carry on for some time yet, with repercussions on the international level. Chief amongst these is the debarment of the firms from future work (for a period) with international finance institutions (IFIs) such as the World Bank. The threat of debarment is a more effective deterrent, as the fines imposed on the companies are relatively easy for them to absorb. To get to the point where the World Bank would debar the firms convicted of bribery took a long time. Overall, as will be discussed later in this paper, the international community, including multinational corporations (MNCs), foreign governments and IFIs tried to dissuade, hinder and prevent Lesotho from prosecuting construction firms. In addition, a call in 1999 by Lesotho for financial assistance for conducting the trials went unheeded, with only limited technical assistance being received (Darroch, 2004).

What this points to is a culture of covering up corruption. Corruption is sometimes referred to as a “victimless crime” as there is no obvious victim as you would have in the case of assault (Penzhorn, 2004). However – it is society that suffers, especially those who are already marginalised. They do not receive the goods and services due to them, infrastructure is not built or completed, and services cannot be accessed. The Lesotho case example shows to what degree society tries to cover up corruption – wish it away and get on with the job. It also shows how if all the stakeholders involved work together there is a chance of beating corruption. Governments, MNCs, international banks and IFIs all have a role to play.

This paper will provide an overview of the trials, which have taken place in the context of good governance of water resources for regional development. Factors are identified which assisted, as well as hindered, the identification and prosecution of corruption. The trials have had ramifications throughout Lesotho as well as other parts of the world,

² The Lesotho Maloti trades at direct parity to the South Africa Rand. 1 US\$ = M7 (2005)

specifically amongst the IFIs and the MNCs, which depend on them for income. In this respect, the trial represents a window of opportunity to implement policies and systems aimed at the progressive elimination of corruption on infrastructure development projects.

Lesotho Highlands Water Project

The Lesotho Highlands Water Project (LHWP) is the largest international water transfer scheme in the world (DWAF, 2004). This massive engineering project involves the construction of a series of dams and tunnels in the mountains of Lesotho at altitudes above 2,500 metres. The Phase One catchment dams, Katse, Matsoku and Mohale, store the headwaters of tributaries of the Orange/Senqu River (see Figure 1). From there it is tunnelled by gravity to a holding dam – Muela, which also has a hydroelectric power generation facility. Phase One, completed in 2004, has seen the building of around 110 kilometres of water transfer tunnels and 300 kilometres of access roads in the highlands areas where the construction took place. Another four dams are planned further downstream, although the South African Department of Water Affairs and Forestry (DWAF) is presently investigating whether it is cost effective to proceed with these further phases at this time.

The project was initiated to provide water to the industrial heartland of South Africa – Gauteng province including the city of Johannesburg (Earle et al, 2005). This city is unique in the world in that it is the only major city not situated on a large water source and it is on the watershed dividing two river basins (Orange and the Limpopo).



Figure 1: The country of Lesotho, with the LHWP dams (constructed and planned) indicated

The result is that water is continually draining away from the city. Water is pumped to the Johannesburg from the Vaal River, about 50 km away. Phase One of the LHWP has resulted in the transfer of around 750 million m³ a year of water from Lesotho to South Africa, earning Lesotho enough in royalties (presently at around R220 million a year out of a GDP of \$700 million pa.) to cover all its foreign debt (Earle, 2005; Treaty, 1986, Croucamp, pers comm.. 2005). In 1986 the *Treaty on the Lesotho Highlands Water Project between the Government of the Republic of South Africa and the Government of the Kingdom of Lesotho* (hereafter referred to as the Treaty) was signed between South Africa & Lesotho. The Treaty aims to set in motion the process of enhancing the use of the water of the Orange/Senqu river through storing, regulating, diverting and controlling the flow of the river to deliver water to South Africa and generate electricity for Lesotho (Treaty, 1986).

The Treaty has four protocols covering in detail aspects of design, construction, operation and maintenance, and the institutional arrangements needed to manage such a complex project. Three institutions were created because of the treaty. The Lesotho Highlands Development Authority (LHDA), a parastatal³ tasked with the implementation, supervision and maintenance of the LHWP, was created under Lesotho Highlands Development Order 23. The LHDA is governed by a board of directors but the day-to-day running of its affairs is in the hands of its chief executive (CE). The South African parastatal counterpart to the LHDA is the Trans-Caledon Tunnel Authority (TCTA), responsible for the components of the projects located in South Africa. Article Six (6) of the Treaty established the Joint Permanent Technical Commission⁴ (JPTC), comprised of two delegations. Each delegation is to have three representatives from each country, with one representative from each delegation permanently based in Maseru (Treaty, 1986). Crucially the JPTC has the “right to subject to management audit, all those aspects of the management, organization and accounts” of the LHDA and the TCTA (Treaty, 1986: Article 9 (10)). Section 11 of Article 9 obliges both authorities to gain the approval of the JPTC for a variety of matters including the expenditure budgets of each authority, cost plans, operational plans, the design of Project Works and tender procedures. Of great importance to later events, Article 9 Section 11(g) includes the “appointment of consultants or contractors for the implementation, operation and maintenance of the Project as well as the issuing of variation orders and the settlement of all claims”. It also has authority over all professional and technical staff appointments, although interestingly not over the appointment of the Chief Executives of the two authorities.

Masupha Ephraim Sole was appointed the first Chief Executive (CE) of the LHDA in November 1986. After completing his engineering degree in Canada, Sole joined the Lesotho public service in 1972 and had progressed to the position of Senior Engineer, Water Affairs at the time of his secondment to the LHDA. In the position of CE of a parastatal such as the LHDA Sole wielded considerable power and influence. His official

³ Parastatal: “having some political authority and serving the state indirectly” (Soanes, 2005). This is of importance in defining Sole’s position as a public servant in the trial.

⁴ The JPTC was reconstituted as the Lesotho Highlands Water Commission in 1999, with much the same powers and *modus operandi* as before.

annual salary of around M100,000, though not high by international standards, was around 44 times higher than the GDP per capita in Lesotho during the early 1990s. This also places in perspective the magnitude of the bribes he accepted. He was eventually found guilty of accepting M8,058,877 from various companies and intermediaries over a period of nine years (Rex vs. Sole, 2002a).

The LHWP was financed through a range of international finance institutions (IFIs) including the World Bank (WB), the European Investment Bank (EIB), the Southern African Development Bank (SADB), Banque Nationale de Paris, Credit Lyonnais, Dresdner and several Export Credit Agencies (ECAs) and the government of Lesotho (Darroch, 2003). As the apartheid government of South Africa was under international sanctions at the time of signing the treaty Lesotho applied for the financing from the WB and other EIBs. South Africa is responsible for the repayments of the loans – in this way keeping project financing charges down by avoiding having to make use purely of commercial banks. The construction of Phase One has been completed at a cost of about R13 billion (Croucamp, pers comm. 2005). The total cost of all the phases of the project is estimated at \$8 billion, although it is likely that this could be higher due to cost overruns and factoring in environmental and social remediation actions not a part of the original project design.

The Trials – an overview

“What of the perception of international investors who were or might be attracted to Lesotho? Will their confidence in investment be unaffected by the knowledge that undoubtedly one of the highest paid officials in Lesotho has been involved in corruption on a vast scale, extending over a period of nine years? Who can predict or measure the damage involved? Who can gauge the insidious flow of the poison of corruption?” - Acting Justice Brendan Cullinan in passing sentence on Sole (June, 2002)

Much has been written about the various criminal trials surrounding the LHWP corruption case. The following overview benefits from the in-depth legal analysis provided by Barrister Fiona Darroch in her 2003 case study for Transparency International. In that case study she focuses on the criminal trial of Sole and the trial of Acres International (Canadian), analysing the various legal issues that emerged during the proceedings. Since that case study was completed, the Sole and Acres appeal judgements have been handed down and judgements against Lahmeyer Consulting Engineers (German) (including the appeal judgement) and Spie Batignolles (French) successfully completed.

Appendix 1 contains a summary of the key provisions of those trials that either have been completed or are in progress.

Three key points to have emerged from the trials relate to:

- *Jurisdiction* – on international projects it is usually not possible to prove where the bribery took place as the various actors come from different countries. The court deemed that the trials should be heard in Lesotho, as that is where the effects of the crimes were most felt.
- *Shared responsibility* – both the briber and the bribee (bribe taker) are equally responsible and liable for prosecution. Thus, prosecutions did not end with the judgement against Sole, a national of Lesotho, but went on to convict successfully the international companies who offered him bribes – an international first.
- *Definition of bribery* – the offering of unlawful remuneration to or the acceptance of remuneration by a public official for action or inaction on their part. The crime is deemed committed when the agreement is reached – irrespective of whether the agreed to action or inaction is indeed carried out.

The above points will echo through much of the trial process described below.

Sole's troubles began, although he would not have suspected it at the time, with the end of military rule in Lesotho in 1993. The government, democratically elected that year, took steps towards improving governance in the country, promoting transparency and accountability. By that time rumours of mismanagement within the LHDA had begun to surface – relating to both financial issues as well as staff appointments. Many of the Basotho staff felt they were being sidelined by foreign engineers on the project and were not being trained to take up positions of increasing responsibility as what was meant to happen under the management contracts entered into with some of the consulting engineers (Rex vs. Sole, 2002a). The Minister of Natural Resources called for an audit into the affairs of the LHDA. This initial audit was conducted by Ernst and Young and identified several administrative irregularities. This resulted in personal audits of Sole and Mr Reatile Mochebelele (Lesotho's Chief Delegate to the JPTC), during which time both were suspended from their positions.

While Mochebelele's name was cleared by the audit and he was reinstated, Sole's affairs were found not to be in order. He had abused the housing scheme of the LHDA, charged personal expenses as if they were work related, taken his wife overseas at LHDA's expense, and provided jobs for members of his family (Darroch, 2003). The identification of these irregularities (the term "fraud" was not being used at this stage) resulted in the Minister deciding to embark on a full-scale disciplinary enquiry into Sole's affairs at the end of 1994. While the enquiry was taking place Sole launched a court challenge to the Minister's powers to hold such an enquiry. Sole contended that the Minister had no mandate to launch an enquiry as Sole's appointment was made under the Treaty. Sole lost the court battle as well as being dismissed by the Minister in October 1995. In January 1997 he also lost a court challenge against his dismissal, effectively ending his influence at the LHDA (Rex vs. Acres, 2003).

Two significant points emerged from the disciplinary enquiry:

1. Sole was clearly living beyond his means. His cars, houses, gifts and travel arrangements are classic "red flags" signifying irregularities (Darroch, 2003). Private wealth aside it was highly unlikely that a civil servant in Lesotho

would be able to afford the standard of living he displayed purely on a legitimate income.

2. Sole had, over and above his private use of LHDA funds, cost the LHDA substantial sums through bad management of contracts.

The two contracts in question were 129a (Muela Power Station civil work) and 129b (Muela Dam infrastructure and operations building). According to Darroch “there were alleged irregularities concerning the awards of both these contracts:

- In the tenders for 129A, the lowest tenderer had been a company called Skanska. MHPC’s tender contained a modification which had not been revealed when the tenders were opened, but which had the effect of reducing its tender price. Contract 129A was awarded to MHPC, with the result that the African Development Bank withdrew from sponsoring the contract, and the LHDA was obliged to finance the work with commercial loans
- In the negotiations which arose from 129B, MHPC required the escalation clause to be applied before, rather than after the deduction of advance payments, which had the effect of increasing the contract price. The LHDA negotiating committee refused to agree to this, as it would have been unfair on the unsuccessful companies who had tendered on the basis that escalation clause should only be applied after the advance payments had been deducted. The MHPC responded by going over the heads of the negotiating committee, dealing directly with Sole, who signed the letter of acceptance. The European Commission, the sponsor for the contract, refused to pay the amount by which the contract was now increased, and again the LHDA had to finance that part of the contract elsewhere” (Darroch, 2003).

In an effort to recoup some of the lost money the Minister decided to proceed with civil proceedings against Sole. This trial started in 1996 and had the important effect that Sole’s private banking records would now be examined, through the exchange of documents relevant to the trial – a process known as “discovery” (Penzhorn, pers comm. 2005). Thus, the court compelled Sole, on LHDA’s request, to reveal all his banking records. Once he had done this his Maseru bank manager was subpoenaed and indicated that Sole had a bank account in Ladybrand, South Africa in addition to the ones he had declared to the court. The records for this account were produced in court in April and May of 1997 and led to bank accounts at the Union Bank of Switzerland, Zurich and an account in Bloemfontein, South Africa being identified (Darroch, 2004). Sole claimed, in a sworn affidavit, that he did not have any accounts in Switzerland (these being difficult for the prosecution team to gain access to).

This could have been the end of the trail, as the South African bank accounts contained relatively little of interest to the prosecution team and amounted to little more than a breach of Lesotho’s foreign exchange regulations (Penzhorn, pers comm.. 2005). Swiss banking regulations are notoriously protective of accounts held in that country. However, by the mid 1990s, in the wake of the banking scandal involving Swiss banks secretly holding onto bank accounts of World War Two victims, a degree of transparency had been introduced in that country’s banking laws. The Lesotho prosecution team made an

application in August 1997 to have Sole's Swiss banking records handed over to them. For such an application to be considered under Swiss banking law a sound evidential basis in law needs to be demonstrated – one cannot trawl through everything in the hope of finding something of relevance. The Swiss authorities were extremely helpful in proceeding efficiently with the matter, with the Swiss magistrate, Mme Cova, ruling in 1998 that the accounts be disclosed. Sole as well as most of the contractors and consultants working in Lesotho on the LHWP fiercely contested this ruling and the application process preceding it. They lost their appeal against the handing over of the banking records and early in 1999 they were presented to the Lesotho ambassador.

Securing the Swiss banking records of Sole, and later on those of intermediaries and the companies, was the crucial breakthrough for the anti-corruption prosecution (Penzhorn, pers comm. 2005). This allowed the prosecution to conclude successfully the civil case as they had proved Sole had large amounts of money, outside the country, he had not declared. In October 1999 the court awarded damages of M8.9 million in favour of the LHDA.

Sole's problems were only just beginning. Not only had he contravened foreign exchange regulations of the country on a large scale, lied under oath to the court and been forced to pay over most of his wealth, but he was in July 1999 also charged of the common law offence of bribery – a criminal matter. One cannot help but wonder at this stage if Sole had any regrets for initially challenging his dismissal in the courts – in so doing provoking more in-depth analysis of his affairs. As was acknowledged by Cullinan AJ during his sentencing of Sole “the accused was a hard-working, efficient and popular Chief Executive, who, as part of a team, was instrumental in raising finance to in part fund the Project, and in particular whose persuasive influence in respect of Lesotho's independence in the matter of hydropower, ultimately saw the construction of the Muela Hydropower Station” (Rex vs. Sole, 2002b). This was no “lame duck” official – it was a highly driven and technically competent professional – making his fall from grace all the more devastating. By now, Sole had exhausted all his assets, including his foreign funds and lost his house. He made an application for legal aid, which was granted – partly in the interests of a fair trial. The criminal proceedings against him went ahead with the government paying for both his prosecution as well as his defence.

The first two criminal trials – Sole's and Acres' – have justifiably attracted the most attention, discussion and analysis. Many of the issues that were dealt with at these trials have become precedents for the ensuing trials. The Lesotho Prosecution Authority realised from the outset that the trials were going to be contentious and fiercely resisted by the defendants, making the process protracted and expensive. An expatriate judge was brought in specifically for the trials – Judge Brendan Cullinan, a former Chief Justice of Lesotho. The first reason for doing this was that the cases were of such a high profile – large MNCs well known internationally and in their domestic markets would be vulnerable to the damage prosecution would do to their reputations. With the stakes so high it was to be expected that the accused companies would do everything they could to obstruct prosecution. An experienced judge was thus necessary to command credibility (due to his long experience) and who could provide comprehensive rulings in a relatively

short space of time. Second, having a judge outside of Lesotho preside over the trials would dispel any suggestion of corruption or government interference. In this way the defendants could not claim they had not had a fair trial (Darroch, 2003).

Darroch identifies four important issues, which needed to be settled prior to the individual trials taking place. The four issues are pertinent to the subsequent trials and judgements as the pattern and methodology employed by the subsequent bribers is almost the same as that described in the first trials. The four issues identified by Darroch are:

- *Citation* – whether the company should be named on the indictment. Both Acres and Lahmeyer claimed that it was not the corporations which had to be cited, but rather the authorised representatives of their companies. If they had succeeded it would have proved difficult to gain extradition orders for the employees (or ex-employees in the case where a person had left the service of the organisation) to stand trial in Lesotho. Cullinan AJ ruled that it should indeed be the companies who are cited.
- *Joinder* - who appears on the indictment to be jointly tried with other defendants. Most of the defendants insisted on being tried separately – claiming they were being accused of separate offences. The defendants were successful in this application and thus each of the 19 accused would be tried separately, adding to the length and costs of the trial process.
- *Bribery* – what are the elements of the offence, which have to be proved by the prosecution? Bribery, in the Roman-Dutch law of South Africa (also followed in Lesotho) is a common law offence. Thus there is not one clearly spelled out definition of bribery – previous cases and judgements have to be studied for guidance on how to handle the case at hand. For this purpose Cullinan AJ referred to a 1919 definition of bribery in the South African Criminal Law and Procedure:
“It is a crime at common law for any person to offer or to give to an official of the State, or for any such official to receive from any person, any unauthorised consideration in respect of such official doing or abstaining from or having done or abstained from, any act in the exercise of his official functions.” (Darroch, 2003).

Furthermore, Cullinan AJ deemed that for the crime of bribery to be proved the following elements need to be found common to both briber and bribee:

1. Unlawfully
2. Intentionally
3. A state official
4. Offering or agreeing to give or take any consideration
5. In return for action or inaction by the bribee in an official capacity.

Defence council for Sole argued that he was no longer a public official while working for the LHDA and thus should not be the subject of bribery charges. Cullinan AJ ruled however that as he was seconded by the Minister to perform duties representing the state on a parastatal he was indeed still acting as a public

official. He also ruled that the offence of bribery had been committed once the agreement is made. Thus, no action or inaction was necessary to prove that bribery had in fact taken place – the mere offering and accepting of a sum of money is sufficient. The offence is committed by both the briber and the bribee and they are thus both liable to prosecution.

- *Jurisdiction* – should the case be tried in Lesotho or another country? The defence argued that the High Court of Lesotho did not have jurisdiction to try the matters as it could not be proved where the agreement to make and accept a bribe had taken place. The payments were made mainly in Switzerland – outside the Lesotho High Court’s jurisdiction. To settle this issue Cullinan AJ gave a review of several cases where jurisdiction was an issue (one involving a collision of a French ship with a Turkish ship in international waters and another involving a case of a blackmail letter posted in England to a person in Germany, see Darroch, 2003). He decided that even if payment was made outside Lesotho it was made with the expectation that Sole would exercise his influence in Lesotho, in favour of the contractor. Thus the impacts of the bribery would be felt in Lesotho, no matter where the agreement or the payment was made and therefore the Lesotho High Court did indeed have jurisdiction over the cases.

Sole was charged on 16 counts of bribery and two of fraud. According to Darroch “the indictment now alleged that :

1. Sole was a civil servant, in the employ of the Lesotho Government, and therefore a public official. Whilst retaining that status, he was seconded to the LHDA as its Chief Executive Officer. HWV, Sogreah, Spie Batignolles, LHPC, ABB Germany, ABB Sweden, Lahmeyer, Acres, Dumez, Gibb, Cegelec and Coyne were contractors and/or consultants who were contractually involved in the building of the LHWP.
2. The counts of bribery arose from
 - (a) payments made by those contractors and consultants to Sole, into his Swiss bank accounts, either directly or through intermediaries, intended for his benefit in Lesotho, which money he then transmitted to Lesotho, either directly or through South Africa.
 - (b) Contracts negotiated, concluded and executed in Lesotho by the contractors/consultants, from which they would benefit
 - (c) Variation orders and/or contractors claims arising out of those contracts
 - (d) Payments made or to be made, by the LHDA to those contractors/consultants under those contracts, payments being made, initiated or authorised in Lesotho.
3. On a series of occasions, within certain periods, but on unknown dates, the contractors/consultants offered payments to Sole, in return for him exercising his influence/powers in his official capacity to further their private interests, which payments Sole accepted.” (Darroch, 2003)

A forensic accounting expert, Jean Roux, from PriceWaterhouseCoopers (PWC), Forensic Services (PTY) was called as expert witness for the prosecution. Roux had performed a detailed analysis of Sole's banking records and produced a summary of who had been paid how much and by whom. This showed a total of M8,058,877 being paid to Sole over a period of nine years. Most of this was paid to him via one of the intermediaries (representative agents referred to in the Introduction of this paper) – Cohen, Du Plooy or Bam (see

Appendix 1 for details of the amounts involved). The complex web of payments from the companies concerned through one of the intermediaries to Sole showed a pattern. Payments made to one of the intermediaries by a contractor on the project were within a matter of days usually followed by payments to Sole's Swiss bank account. In the case of Du Plooy and Bam, the percentages were constant – a 50 percent split by the former, while Bam paid 60 percent to Sole. Cohen paid varying and much smaller percentages over to Sole (Rex vs. Sole, 2002a).

The prosecution managed to show beyond reasonable doubt that the above web of transfers amounted to bribery, the bribes being offered by the companies involved, via the intermediaries, and accepted by Sole. In return, the companies were favoured in the bidding process – although it was not necessary to have to demonstrate this as the act of bribery is performed on agreement to a bribe. In fact, it was acknowledged by Cullinan AJ that in Phase One of the project it would appear that the work was indeed carried out to the specified standards (Rex vs. Sole, 2002b). This may have been the case, but the effect of the bribe payments would have been to add to the cost of the contract – a cost borne by the water users in Gauteng, South Africa. Sole was convicted on 11 counts of bribery and two of fraud (relating to fabricated expense claims while on an overseas trip). He was sentenced to 18 years imprisonment, reduced to 15 years on appeal. He has remained silent throughout his trial and subsequently, leading to speculation that he is protecting someone.

In the case of Acres it was the “sole sourced” Contract 65 which was proved to have been unfairly awarded. Contract 65 was funded by the World Bank and involved the provision of technical assistance services by Acres to the LHDA. These services related to the establishment and implementation of the construction contract for Katse Dam, transfer tunnels and delivery tunnels. The contract was not put out to tender and was awarded to Acres, without the necessary approval from the JPTC – as Sole was meant to do under Article Nine of the Treaty (Treaty, 1986).

The core of the prosecution's argument was that monies transferred to Bam by Acres were in fact intended, knowingly on the part of Acres, to bribe Sole. Acres was accused of two counts of bribery Count 1 for CAD 493,168.28 and Count 2 for CAD 188,255.48. Prosecution claimed that the representation agreement (RA) was a facade intended to provide a cover of legitimacy should the matter ever be investigated. The RA usually sets out a list of services which the agent is to perform for the contractor. They usually have a “no duck – no dinner” clause – if the agent is not successful in assisting the contractor secure the contract being tendered for the agent receives no payment. This is a classic red flag signalling possible corruption and is treated with great scepticism when found in an RA (Penzhorn, pers comm. 2005).

The services which Bam was to provide in terms of the RA were:

1. Keep Acres informed of all developments with respect to the services.
2. Keep Acres informed of general conditions and developments in Lesotho which could affect Acres interest in undertaking the services of which could adversely affect Acres ability to complete the services in a fully effective manner.
3. Make Acres known to and assist if necessary in registering Acres with appropriate agencies and staff
4. When requested by Acres, collect appropriate documents and information for forwarding to Acres.
5. Promote Acres interest in Lesotho by presenting brochures and other publicity material to appropriate officials
6. Assist Acres in seeking, negotiating and securing a contract or contracts in Lesotho for the performance of the services.
7. Assist Acres in the conduct of business, financial and other affairs of Acres in Lesotho so as to meet the legal requirements of the Government of Lesotho and properly and lawfully to minimize taxes and other public impositions to be met by Acres
8. Provide to Acres support facilities in regard to office, secretarial, accounting, banking, telecommunication and other such matters as mutually agreed from time to time.
9. Assist Acres maintain good relationships with LHDA and assist in expediting payments due to Acres in accordance with its Agreements with LHDA.

Appearing in Darroch, 2003; “Michael Davies, Q.C, Chairman, Committee on Corruption and Bribery, of the Canadian Council for International Business sets out a helpful and comprehensive list of potential red flags which could emerge during the exercise of due diligence by a corporation in evaluating a potential representative, where the candidate:

- does not reside in the same country where the customer or the project is located.
- does not have any significant business presence within the country
- represents other companies with a questionable reputation
- requests that commissions be paid into a third country or to a numbered bank account or to some other person
- requires payment of the commission, or a significant portion thereof in advance of, or immediately upon, award by the customer of the contract to the company
- claims that he can help secure the contract because he knows all the right people
- has a family or other relationship that could improperly influence the customer’s decision; or
- arrives on the scene just before the contract is about to be awarded.

The RA with Bam sets off many of the above red flags. He was living and working in Botswana during the period of his agreement with Acres and, most crucially, during the awarding and negotiating of Contract 65. He wanted his payments made to secret Swiss

bank accounts. The value of the services was out of all proportion with the payment he was receiving for them. Acres already had a longstanding relationship with the LHDA and had seconded several high-ranking staff to work with the LHDA under Contract 19 (most notably Mr Witherell a Director of Acres who was in the position of Assistant Chief Executive of the LHDA at the time). He had such RAs with several other contractors – claiming to be representing their interests in Lesotho, pointing to a possible conflict of interest. In addition, work started on Contract 65 even before it was signed. This would have placed Acres in a highly risky financial position as they were incurring costs while not having any legal guarantee, of being granted the project. What would have made them so certain that they would be granted the contract?

The Swiss banking records showed that Acres was paying Bam on a monthly basis. Bam had been transferring 60 percent of the funds he received from Acres as a monthly “honorarium” to Sole (Rex vs. Acres, 2003). From January 1997, the regular payments to Bam from Acres dropped to 40 percent of their previous amount. The payments from Bam to Sole ceased. January 1997 happens to be the period when Sole’s appeal against his dismissal was lost. The Acres’ defence team argued that this was a coincidence, and that their payments to Bam were reduced because of a change in the nature of the services he was providing (ibid).

The trial judge, Hon Lehohla, stated that the pieces of evidence taken one at a time may admit an innocent interpretation, but taken as a whole lead to an overwhelming proof of guilt. He found Acres guilty on two counts of bribery and fined the company M22,058,091. On appeal, this was reduced to one count of bribery and a fine of M15,000,000. This has now been paid by the company.

Lahmeyer was the next company to have charges of bribery brought against it. Their trial proceeded in much the same way as the Acres trial described above. During the period in question Lahmeyer had been involved in securing Contract 46 – the construction of the delivery tunnel from Muela storage dam to the outflow in South Africa. This contract was also funded through the World Bank. The alleged amount of the bribes paid by the company to Sole via Bam was M2,300,000 – a similar amount to what Acres had paid. Lahmeyer was found guilty on 7 count of bribery and fined M10,650,000. This was appealed by the prosecution, with the final judgement being against Lahmeyer on nine counts of bribery and sentencing them to a fine of M12,000,000 (Rex vs. Lahmeyer, 2004). The fine has been paid in full by the company.

Next was the case brought against Spie Batignolles (now Schneider Electric). A complicating factor in this case was the merger between Spie Batignolles and Schneider Electric SA in 1995. The new company (Schneider Electric) claimed it had been cited incorrectly. According to Moran et al “Specifically, on 19 May, 1995, Spie Batignolles had entered into a ‘contribution and divestment agreement’, with a French company called Gesilec. By the terms of the agreement, Spie Batignolles divested itself of all its assets and liabilities, into ‘Gesilec’, which renamed itself Spie Batignolles, on 27 June 1995. On the same date, the original Spie Batignolles, now merged with another company, namely Schneider SA, the new company assuming the name Schneider Electric

SA. Crucially, before making any of these moves, it made no attempt to dissociate itself from any partnership agreements in Lesotho. The consequence was that the arguments which it deployed to avoid prosecution were all doomed to failure” (Moran et al, 2004). This manoeuvring, though legal, presented a particular challenge to the prosecutors and would seem to have been carried out as a defensive action to avoid being brought to trial on corruption charges. The name change process took place at just about the same time as Sole’s fall from grace.

The Lesotho prosecution team received assistance from OLAF, the EU’s specialist anti-corruption unit to prove that the original Spie Batignolles had become Schneider Electric SA and that it was responsible for the original company’s past actions. Once this issue had been settled in court through a judgement by Nomngcongong J the company pleaded guilty on 16 counts of bribery involving the payment of M16,000,000. It had paid these bribes to Sole via Max Cohen as an intermediary in much the same way as the above companies used Bam. It was fined M10,000,000 in February 2004.

The final trial completed to-date is that of Jacobus Michael Du Plooy of South Africa. He was originally indicted in March 2001 for his part in securing bribes for Sole from a consortium called HWV. This joint venture was led by Impregilo of Italy and included Keir International of the UK. The contract involved was number 123 – the construction of the Katse Dam (the largest single contract of the project). The prosecution alleged that he received \$1,139,000 from HWV, about half of which he paid over to Sole. Several requests were made to Du Plooy to turn Prosecution witness. He refused to do this and later stated that he feared for his life if he should testify. This was in fact one of the mandates of the prosecution team – to try to get as many accused as possible to testify – in an effort to uncover all the components to the case (Penzhorn, pers comm.. 2005). Finally, in September 2003 he pleaded guilty to the charge and was sentenced to three years imprisonment or a M500,000 fine, which he chose to pay. He is presently assisting the prosecutors in their cases against other accused.

Charges of bribery have been brought against Impregilo for its role (as lead contractor) in bribing Sole. It is likely that they will be using a similar defence to that used by Schneider Electric SA – that they have been incorrectly cited.

New charges of bribery have recently been brought against Lahmeyer in a second case involving the company. This time it is alleged that the company Lesotho’s Chief Delegate to the Highlands Water Commission (formerly the JPTC), Mr Reatile Mochebelele. It is alleged that the bribes totalled in excess of M1,000,000.

Discussion

The international community initially responded with scepticism towards Lesotho’s decision to bring to trial not only one of its own nationals on charges of bribery but also to pursue the MNCs involved (Penzhorn, 2004). For instance, the suspension of Sole from his post on the project in 1994, while the disciplinary enquiry into his affairs was

being conducted, was criticised by the World Bank (WB). Praful Patel of the WB's Southern Africa Department sent a letter to Mr Pekeche, Principal Secretary of the Ministry of Natural Resources, claiming that Sole's suspension "would interfere with project construction timetables and could lead to costly overruns" (Hidayard, 2000).

By 1999 the Lesotho prosecution team was starting to make progress in uncovering the web of corruption – principally through the granting of access to the defendants' Swiss banking records. By then the level of support for the investigations from the International Financial Institutions IFIs generally and the WB in particular was beginning to change, with technical as well as financial support offered. In November 1999 a meeting was convened in Pretoria to inform various IFIs and commercial banks of the trials. Representatives of the WB, ABN-AMBRO, Banque Nationale de Paris, British High Commissioner to Lesotho, Credit Lyonnaise, DBSA, EIB, EU, Lesotho & South African Government representatives, LHDA, LHWC and the TCTA attended the meeting (Darroch, 2003). An overview of the start of the trials was given and the immense complexity and cost of the proceedings against the various companies described. At this meeting an offer was made by the WB, as well as other IFIs, to provide financial support to Lesotho for the trials. This offer was accepted by the Lesotho government representative present (Croucamp, pers comm. 2005). Subsequently it emerged that the WB representative had spoken in haste and that in fact the WB would not contribute any funding for the trials. This seems to have been the case for the other IFIs who made commitments at the meeting. To date Lesotho has received no financial support for the trials, bearing their full cost internally.

According to Darroch the WB's reasons for not supporting the trials financially are:

1. "The Bank is a development bank: its mandate does not contain a budget for funding litigation. The Bank has explored a number of options for financial assistance for the Lesotho authorities, but all involved the Government borrowing money, which it is unwilling to do.
2. Had it made a direct financial contribution to the prosecution of these trials, then this would have set a precedent which might prove troublesome for the Bank in the future: for example, where a country proposed litigation which was doubtful of success, or where the legal system lacked integrity, and could not ensure a fair trial of the issues" (Darroch, 2003).

In one sense the fact that the Lesotho government has borne the costs of the trials has added credibility to the outcomes. The country had to sacrifice resources & divert expenditure from other areas of its national expenditure in order to cover the costs of the trials. If anything, this served to show that the trials were certainly not politically motivated - to settle old scores or show off in front of the international community. A high profile trial against foreign (Western) MNCs could provide status to a small developing country. The fact that the country has had to make a tangible sacrifice to pursue the trials leaves it worthy of the respect of the international community.

Notwithstanding the above, it would be good to explore ways in which developing nations can be assisted in their fight against corruption. Certainly, the WB, other international bodies, such as OLAF, as well as governments (Switzerland, South Africa, and France in particular) have provided a large amount of technical and political support for the trials. South Africa sought to support Lesotho at the highest political level – promoting the trials domestically and internationally as well as providing a range of technical support services (Croucamp, pers comm. 2005).

In 2004 it became clear that Lesotho was struggling under the financial burden of the trials. The case against Impregilo would not be able to proceed if additional funding was not secured. At that time a decision was made in conjunction with the South African government that bridging finance could be provided out of the project funds to cover the costs of the trial (Croucamp, pers comm. 2005). This was a business decision, based on the fact that the project authorities believe a successful prosecution against Impregilo seems likely. In the event of a successful prosecution against the company the fine imposed by the court will be used to pay back the bridging finance.

Demands for compensation have been sent out to all of the companies that have been found guilty of corruption. It is argued that the bribes paid by the companies increased the net cost of the project – a cost ultimately borne by the water users in South Africa. The companies are in effect being asked to pay over, to the LHDA, the amounts they paid in bribes. To date, only one agreement has been reached – with Spie Batignolles for the repayment of R11,600,000 (Croucamp, pers comm. 2005). This application was successful largely because the contract with Spie for its involvement on the LHWP had not yet been closed, so the claimed amount could be deducted from the final payment. It will prove more difficult to recover the bribe costs from Acres as its contracts have been closed.

Another consequence facing the companies found guilty is debarment from tendering on IFI funded projects. After initially being cleared by a WB investigation in 2001, Acres was debarred for a period of three years in July 2004. During this period they are not allowed to bid on any WB funded contracts. This is something of a pyrrhic victory though as a few days before being officially debarred by the WB it was taken over by another firm – Hatch of Canada. Whether and how the debarment would affect the new firm has not yet been indicated by the WB. The WB is investigating at present whether to debar Lahmeyer.

Several features can be identified which played a role in the prosecution of bribery in Lesotho during the LHWP trials (see Table 1). The political and technical support the prosecution team received during the trial from the Lesotho government contributed to their ability to carry out the prosecutions successfully. The process could easily have been derailed through political interference. In the July 2002 General Election in Lesotho, Sole (while awaiting the outcome of his case) was nominated as a candidate for the opposition Basutho National Party. It was the party's explicit intention to drop the case against Sole if they had come to power (Darroch, 2003). This also highlights the need to

assist countries to handle corruption trials speedily – before the political will to prosecute is lost.

Table 1: Factors influencing the prosecution of bribery during the LHWP trials in Lesotho

Promoted the prosecution of bribery in the Lesotho (LHWP) case	Hindered the prosecution of bribery in the Lesotho (LHWP) case
Changes to the Swiss banking law allowing some access to banking records	Company name changes
World Bank records and outputs of their 2001 investigation into Acres	World Bank letter requesting that Sole's suspension be lifted during his initial disciplinary investigation
French government cooperation (in the Spie Batignolles case)	Lack of financial support for the trials from the international community
OLAF cooperation (in the Spie Batignolles case & others)	The crime of "bribery" is not well defined in common law
Political support within Lesotho for the trials – no interference in the work of the prosecution team	Until recently bribery of a foreign official was not a crime in most OECD countries
	Complicated and opaque banking arrangements of the accused

Technical and legal assistance from the international community played a key role in assisting the prosecution, especially with respect to obtaining access to the banking records of the accused. The OECD Convention Combating Bribery of Foreign Public Officials in International Business Transactions came into force in 1999. Prior to this convention it was not considered a crime, in most European OECD countries, to bribe a foreign official. In fact it was a tax deductible operating expense. This acceptance of bribery in the corporate culture made it difficult at first to gain support from the national governments of the accused companies.

Conclusion

The above case example does not try to shift blame purely on the shoulders of one entity – it seeks to describe the double-sided nature of corruption and specifically bribery. A bribe is offered and a bribe is accepted – both parties have committed a crime. Much like IWRM, one can speak of *demand side* solutions as well as *supply side* solutions to the problem of bribery. It is a fact that some public officials around the world, both in developing as well as developed countries, demand bribes. In some countries the practise may be more widespread than in others. High profile court cases such as those of the LHWP have a direct impact on the demand side of bribery. Several commentators have mentioned that the Lesotho public organisations, NGOs and businesses they deal with have become more attuned to preventing bribery. According to the CEO of Letseng Diamonds (operating in the Lesotho Highlands close to the LHWP) doing business in the country has become considerably easier since the trials started. Public officials carry out their duty in an efficient and transparent manner (Whitelock, pers comm. 2005).

The supply side of bribery has had flow reducing measures implemented in the region. As a direct result of the trials, the TCTA (a South African parastatal with the DWAF as a client on infrastructure construction projects) has included a section on prior involvement of companies in bribery in the pre-qualification to tender process. The companies need to declare whether they or their agents have been accused of bribery, anywhere in the world, during the previous ten years (not only convicted). If they have been, it does not lead to automatic disqualification, but would result in some “in-depth and uncomfortable questions being asked of the companies” (Croucamp, pers comm. 2005). As part of the final tender and contract conditions on award of a contract the company has to declare that it has not committed or been convicted of bribery, corruption or fraud in the preceding ten years, nor have they committed bribery and nor will they commit bribery on the current contract. If it is found, during the project, that the company did not disclose information or is convicted on charges of bribery then it forfeits any profit which it may derive from the contract – deemed as five percent of the total contract price (Croucamp, pers comm. 2005).

Just as bribery cannot take place alone, so too is it not possible to fight bribery alone. National governments in the countries where infrastructure projects are taking place need to develop their legislative and institutional framework to combat bribery. Specialised anti-corruption task forces (such as what has now been set up in Lesotho and exists in South Africa) need to be equipped to investigate the complex cases they may face. They need to be free of political interference and given wide ranging powers of investigation. They also need to receive support from other countries in investigating international corruption. The IFIs need to share information about debarred firms. Debarment is for many of these firms the most credible threat, as it affects their future earnings. Much like environmental legislation, the costs of non-compliance with legislation on corruption needs to outweigh any possible benefits. The national governments of companies accused of corruption need to cooperate fully with the prosecuting teams of countries investigating corruption and pass the relevant local legislation against international and local corruption. In addition, civil society needs to be encouraged and empowered to report bribery when it is identified. All the above groups played a role in the successful struggle against corruption in the Lesotho cases – showing the contributions which will be needed from all to combat corruption internationally.

References

Croucamp, W. 2005: Personal communication with the Director of Infrastructure Services of the DWAF, South Africa. Telephonic conversation on 8 August, 2005

Darroch, F. 2004: Lesotho -'A Sheep or a springbok? The herd boy tackles Goliath'. Paper delivered to the Institute for Security Studies (ISS) seminar on the impact of high-profile corruption cases in Lesotho, Mozambique and South Africa, held in Gauteng, South Africa, March 15-17, 2004.

Darroch, F. 2003: The Lesotho Corruption Trials – A Case Study. Transparency International. Downloaded from www.transparency.org

Department of Water Affairs and Forestry. 2004d. *Introduction to the Orange River Basin*. [online] Available at <http://www.dwaf.gov.za/Orange/> Accessed 15.12.2004.

Earle, A., Malzbender, D., Turton, A.R. & Manzungu, E. 2005: A Preliminary Basin Profile of the Orange/Senqu River (ISBN 1-86854-618-7). AWIRU, University of Pretoria, Cape Town.

Hidayard, N. 2000: What Went Wrong? (Or, rather: What went Right? For Whom?). Presentation to Chatham House Conference , July 10th 2000 "Corruption in Southern Africa - Sources and Solutions", London.

Moran, J., J. Pope & A. Doig, 2004 : Debarment as an Anti-Corruption Means - a review report. Ulstein Anti Corruption Resource Centre.

Penzhorn, G. 2005: Personal communication with Senior Council and head of the Lesotho prosecution team for the LHWP trials. Telephonic conversation on 3 June, 2005.

Penzhorn, G. 2004: Three strikes against graft: assessing the impact of high-profile corruption. Paper delivered to the Institute for Security Studies (ISS) seminar on the impact of high-profile corruption cases in Lesotho, Mozambique and South Africa, held in Gauteng, South Africa, March 15-17, 2004.

Rex vs. Acres, 2003: Appeal Judgement by Hon P. Steyn, Hon J.A Ramodibedi & Hon J.A. Plewman on 15th of August, 2003 Lesotho Appeal Court, Maseru

Rex vs. Lahmeyer, 2004: Appeal Judgement Hon P. Steyn, Hon J.A. Grosskopf & Hon J.A Smalberger on 26th March 2004 Lesotho Appeal Court, Maseru.

Rex vs. Sole, 2002a: Judgement by Hon. Mr Acting Justice B. P. Cullinan on 20th May, 2002 Lesotho High Court, Maseru.

Rex vs. Sole, 2002b: Sentence by Hon. Mr Acting Justice B. P. Cullinan on 4th June, 2002 Lesotho High Court, Maseru.

Soanes, C. A. Stevenson & S. Hawker 2005: Concise Oxford English Dictionary 11th Edition. Oxford University Press, Oxford.

Stansbury, N. 2005: Preventing Corruption on Construction Projects – Examples of Corruption. Transparency International, Available at http://www.transparency.org/in_focus_archive/gcr/neill/2005.03.16.TI_construct_projects.html Accessed 2 June 2005

Treaty on the Lesotho Highlands Water Project between the Government of the Republic of South Africa and the Government of the Kingdom of Lesotho. Signed 1986,

UNDP, 2004: Human Development Report 2004. United Nations Development Programme, New York.

Whitelock, K. 2005: Personal communication with CEO of Litseng Diamonds Pty (Ltd). Telephonic conversation on 6 August, 2005.

Wiehen, M. H. 1999: Transparency and Corruption on Building Large Dams. Report in the World Commission on Dams Knowledge Base. Available at <http://www.dams.org/kbase/> Accessed 2 June 2005.

Appendix 1: Summary of trials

<i>Company or individual name</i>	<i>Country of origin</i>	<i>Trial status / outcome</i>	<i>Size of bribes</i>	<i>Size of fine</i>	<i>Area of project related to trial</i>	<i>Parties involved</i>	<i>Fine paid?</i>
Acres	Canada	Convicted on 2 counts of bribery – reduced to 1 on appeal (15 Aug, 2003)	Count 1: CAD 493,168.28 Count 2: CAD 188,255.48	M22,058,091 Reduced to M15,000,000 on appeal	Contract 65 (granted 1991) – provision of services for the establishment and implementation of the construction of the Katse dam and the tunnels	Sole, Mr Bam, Ms Bam	Y
Lahmeyer	Germany	Convicted on 9 counts of bribery. Appealed. (26 Mar 2004)	M2,300,000	M10,650,000 – increased to M12,000,000 on appeal	Contact 46 – construction of Lesotho delivery tunnel	Sole, Mr Bam, Ms Bam	Y
Lahmeyer	Germany	Trial in progress	M1,000,000 (alleged)		Contract 51 – Muela power project	Reatile Mochebelele	
Spie Batignolles (now Schneider Electric)	France	Pleaded guilty to 16 counts of bribery (Feb 2004)	M16,000,000	M10,000,000	Contracts 124/5/6, and Contracts 129A/B (Muela dam & Muela power station civil works)	Sole, Cohen	Y
HWV - Impregilo	Italy	Trial in progress	\$1,100,000 (alleged)		Contract 123 - construction of the Katse dam	Sole, Du Plooy	NA
ABB	Sweden	Admission of guilt			Contract 134	Sole, Ms Bam	NA
Individuals							
Masupha Sole	Lesotho	Found guilty on 11 counts of bribery & 2 of fraud & sentenced to 15 years	M8,058,877	M8,900,000	Including contracts: 123, 129b, 117, 123/4/5/6, 134, 46, 65, 104, 104, 59/9,	Bam, Ms Bam, Du Plooy, Cohen	Y

<i>Company or individual name</i>	<i>Country of origin</i>	<i>Trial status / outcome</i>	<i>Size of bribes</i>	<i>Size of fine</i>	<i>Area of project related to trial</i>	<i>Parties involved</i>	<i>Fine paid?</i>
		imprisonment (on appeal) (Apl, 2003)					
Jacobus Michael du Plooy	South Africa	Pleaded guilty (Sept 2003)	\$1,139,000	M500,000	Contract 123	Sole	Y
Margaret Bam	Lesotho	Charges dropped?				Sole	NA
Max Cohen	French?	Absconded	FFR 2,802,237 GBP 145,730		29, 124/5, 45, 111, 129b	Sole	NA
<p><i>NB: The above represent the trials which have either been completed or are proceeding through the judicial process. Omission from this list does not imply that charges have not been brought against a specific party.</i></p>							