Challenging the Culture of Secrecy:

A Status Report on Freedom of Speech at the World Bank

By the Government Accountability Project
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The Government Accountability Project (GAP) is a nonprofit organization widely known for its defense of whistleblowers in government and corporations. GAP’s mission is to protect the public interest by promoting government and corporate accountability through advancing free speech and ethical conduct in the workplace, litigating whistleblower cases and developing policy and legal reforms of whistleblower laws.

Founded in the wake of the White House scandals of the 1970s, GAP has been on the frontlines of exposing corruption and fraud for over 27 years. GAP helps preserve the integrity of government and corporate institutions through the whistleblower, whose disclosures often bring about lasting change. By bringing whistleblower disclosures to the attention of government officials and regulatory bodies as well as to the general public through the media, GAP is recognized as an expert on laws that protect whistleblowers from retaliation by their employers.

GAP has worked in partnership with various government bodies, multilateral institutions and citizens groups to develop and enhance the use of whistleblower laws in the international context. Since 2003, GAP has implemented a program to assess and improve whistleblower protection systems within the multilateral development banks, which fund projects in developing nations. GAP has also used its substantial legislative and legal expertise in the U.S. to assist the Organization of American States in developing model legislation to implement Article III, Section 8 of the Inter-American Convention Against Corruption. The Convention requires individual nations to create a system that protects citizens who report acts of corruption and fraud.

As a public interest law firm, GAP has defended whistleblowers in hundreds of cases that have exposed billions of dollars in waste and fraud. GAP reviews over 400 potential whistleblower cases per year. It only has the resources to litigate less than ten percent of these cases. With financial support from foundations, individuals and fees from legal cases, GAP serves the public interest through a litigation team of lawyers and with program directors and experts in food safety, national security, nuclear worker safety and corporate accountability. GAP is nonpartisan and receives no government funding. It is headquartered in Washington, D.C. with a west coast office in Seattle, Washington. For more information, visit GAP at www.whistleblower.org.
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Bank Information Center’s (BIC) mission is to empower citizens in developing countries to influence multilateral development bank-financed operations and policies in a manner that fosters social justice and ecological sustainability. BIC aims to democratize the international financial institutions to ensure citizen participation, information disclosure, full adherence to environmental and social policies and public accountability.

Founded in 1987, BIC is supported by private foundations and organizations that work in the fields of environment and development. BIC is not affiliated with any of the MDBs, nor does it receive any funding from them.

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Introduction

In recent years, the World Bank has introduced significant reforms that have improved the transparency, governance and accountability of the institution, not only to their government shareholders but also to civil society and the public. These reforms have included important information disclosure, environmental and social safeguard policies and broader rules for public consultation in Bank operations. The World Bank has also strengthened its approach to corruption, raising the public visibility of corruption’s devastating impacts on poverty alleviation and equitable development.

Largely absent from these reforms, however, has been any focus on protecting the rights and interests of World Bank employees who disclose illegal or corrupt activities. To ensure that Bank employees will play an active and enthusiastic role in addressing fraud, corruption and waste, the Bank must make them feel secure to speak out both internally and externally. Such “whistleblower” protections have been increasingly recognized at the national and international levels as fundamental to democratic governance, fighting corruption and promoting the rule of law.

In this ground-breaking report, the Government Accountability Project (GAP), an international leader in promoting laws and policies to protect the rights of employees, provides a fair and comprehensive critique of the status of the World Bank’s whistleblower policies, relying on a comprehensive and objective checklist specifically designed for use at international financial institutions. Although the report finds that the Bank has met some of the criteria, it concludes that overall the Bank’s approach is “disappointing.”

The report goes well beyond criticizing, however, providing the Bank with a detailed road map for both strengthening its employees’ rights and effectively fighting waste, fraud and corruption. The report makes specific recommendations for improving the Bank’s policies, for example, calling on the Bank to:

- protect whistleblowers who disclose information regarding fraud, mismanagement or corruption to outside parties;
- ensure employees’ right to refrain from violating national and international law; and
- provide an independent adjudication forum free of institutional self-interest.

Like the other recommendations in this report, these reforms are reasonable and appropriate steps for the World Bank—steps that will improve its governance and enhance public confidence that public funding is used efficiently and effectively. Coupled with other policies to combat corruption and fraud, the recommendations in this report will help to ensure that Bank loans effectively promote the important goals of poverty alleviation and equitable development.

Chad Dobson
Director of Policy and Advocacy
Oxfam America
Executive Summary

The Government Accountability Project’s (GAP) *Culture of Secrecy* report is the first critique of the World Bank’s effort to develop an effective whistleblower protection program. GAP prepared a twenty-four-point checklist to score the Bank’s performance. The year-long assessment process looked at information provided by the Bank and other sources. The report found that the Bank had met several of the checklist criteria, but the overall score was disappointing.

**Congressional mandate**

Last year GAP and its allies educated Congress about the need for policies at the multilateral development banks (MDBs) that protect the free speech rights of employees and improve accountability. The resulting law, known as the Leahy-McConnell Amendment, incorporated themes from the Sarbanes-Oxley Act dedicated to combating corruption and improving transparency and from a series of audits undertaken by the investigative arm of Congress—the General Accounting Office (GAO).

The Leahy-McConnell Amendment requires the U.S. Secretary of Treasury to report to Congress on progress at the MDBs toward achieving a set of specific transparency and accountability goals, including whistleblower protection, by June 2005. Meeting these goals will create powerful tools for advancing the rule of law and meaningful development around the world.

In recent years, the world has increasingly embraced whistleblower protection. In late 2003, the United Nations Convention Against Corruption was signed in Mexico. It establishes a detailed list of measures that are expected to set the minimum anti-corruption global standard, including whistleblower protection. GAP also co-authored a model law for the Organization of American States (OAS) to implement whistleblower provisions in the Inter-American Convention Against Corruption.

The mandate in Leahy-McConnell is either an opportunity or a threat, depending on the policies adopted by the MDBs. While whistleblower protection laws are increasingly popular, early largely symbolic versions usually resulted in a legal forum endorsing the retaliation, leaving the careers of reprisal victims worse off than if there had been no whistleblower protection law.

**The need for this report**

The World Bank is the largest and oldest of the MDBs. Over the last three years, the Bank’s annual new lending commitments have averaged approximately $18 billion per year. The influence of the Bank’s financial resources is magnified by the policy advice that often accompanies Bank lending.

The Bank is an extremely powerful institution with the ability to influence millions of people’s lives in the developing world. For much of its history, the Bank has interpreted its mandate as the promotion of economic growth measured as physical increases in production and consumption. Initially, the Bank’s principal mode of operation was lending to national governments, with minimal direct engagement with civil society or the private sector. However, the Bank now has corporate lending and guarantee branches.

It is unsurprising that a closed and insular culture has evolved within an institution having such power. It is also no surprise that the secrecy bias that exists within the Bank’s culture has hurt its mission and standing in the international community. One result of this so-called “culture of secrecy” has been the misappropriation of funds.

The U.S. Senate Foreign Relations Committee held a hearing on May 13, 2004 to spotlight fraud and corruption within the World Bank. Senator Patrick Lugar (R-IN) cited experts who estimate that between $26-$130 billion in loan money has been misappropriated since 1946. Most of the misappropriation has occurred in the implementation of the projects according to experts who have studied the issue. The Bank disputes the amount but most observers agree that a significant level of misappropriation of funds has occurred.

Corruption has become a global issue as developing countries, watchdog groups and some economists complain that poor nations are being robbed of valuable resources as a result of misuse of World Bank funds. The Bank has an obligation to ferret out corruption and to ensure that all its funds are appropriately managed.

One of the key ways to reduce internal corruption and fraud is through a strong set of whistleblower protection policies. The Bank knows that more must be done to protect whistleblowers and to halt corruption. Investigative reporting into whistleblowing disclosures of alleged corruption at the Inter-American Development Bank by *The Washington Times’ Insight* magazine during late 2002 and early 2003 provided additional momentum for congressional reforms for all the MDBs. The GAO also found the World Bank had serious deficiencies in grievance procedures, corruption controls and audits. The outcome of these critiques was a mandate for MDB whistleblower protection, independent audits and other transparency breakthroughs.

The GAO reports, the *Insight* magazine stories and the recent Congressional hearings have spotlighted fraud and corruption issues at the MDBs. This report
Key Findings

The World Bank generally leads the MDBs in setting best practice standards. It is therefore not surprising that, in most respects, the WB has the best set of MDB whistleblower polices among all of the MDBs. Highlights of the positive and negative findings are summarized below.

**Strengths:**
- The ban on harassment comprehensively protects employees who decide to speak out about fraud or corruption. The anti-harassment protection extends to any good faith communication that is made to management. The Bank policy even extends this protection to employees who are threatened with retaliation. The World Bank is the only MDB that provides this complete coverage.
- The modern realistic legal burdens of proof are modeled after the U.S. Whistleblower Protection Act, which give employees a fair chance to defend their rights.
- The Bank substantially protects the confidentiality of employees who make disclosures. The ombudsman’s rules make all communications confidential except in extreme circumstances. The external hotline is run by a contractor and provides for anonymous allegations from interested parties and is not limited to employees.
- The Bank offers an emergency transfer preference for employees who win reprisal cases.
- There is an ambitious ombudsman or mediation system. The Bank has reduced the fear factor in proceeding with both no fault and adversarial options.

**Challenges:**
- Whistleblowers are prohibited from disclosing information regarding fraud or corruption to outside parties. This policy prevents the public from learning about the corruption or fraud issue and leaves the response solely to the Bank. One of the fundamental purposes of whistleblower policies is to expose internal wrongdoing publicly and to ensure that the institution’s response is also subject to public scrutiny.
- There is an ethical ban on disclosures of information that might somehow harm the Bank.
- There is no provision that gives employees the fundamental right to refrain from violating the law. In other words, the Bank lacks an express policy requiring employees or others to obey local or international law. The World Bank appears to go out of its way to avoid any reference to obeying national or international laws. This is important because a whistleblower needs protection from retaliation for making a good faith determination to refuse to disobey the law—even if it is later determined that no law would have been broken.
- The policy protections are limited to staff retaliation against staff for internal Bank conduct. Employees of loan recipients who question the misspending by their employer have no protection even if the money is spent to violate funding terms or undercut the Bank’s official mission.
- Bank policy disenfranchises whistleblowers from participating in the follow-through efforts to resolve their allegations, not even allowing them to comment on draft reports.
- Bank policy fails to provide an adjudication forum for the whistleblower that is free of institutional self-interest. There is no third party review or appeal to an outside court available to Bank staff. This institutionalizes structural conflict of interest. The Bank president controls the administrative due process system. All seven members of the Administrative Tribunal are selected from a list provided by the Bank president.
This report is a comprehensive assessment of the structural integrity of MDB policies for whistleblowers based on an evaluation of all procedures made available by the Bank. Like most other MDBs, the World Bank didn’t provide all the documentation of the rules governing whistleblowers at their institutions. The World Bank didn’t provide portions of the Staff Manual and only provided a few whistleblower case histories from the internal grievance procedure. The World Bank was the last of the MDBs to provide its policies to GAP.

The reluctance to share information is reflective of the institutional bias at each of the MDBs. The World Bank’s partial compliance only came after sustained requests over the last year. Secret law is an oxymoron for whistleblowing. The appendices include a list of all relevant rules and procedures the World Bank shared.

International and domestic laws provide a frame of reference for assessing MDB whistleblower protections. In addition to the Organization of American States (OAS) model law, the accompanying CD includes the United Nations Convention Against Corruption provisions for whistleblower protection and guidelines from the Organization for Economic Cooperation and Development (OECD).°

In a thorough attempt to understand all applicable policies, the research has been reinforced by interviews with Bank experts, including retirees, business partners and representatives of the Bank. GAP has had mixed results attempting to work with the Bank. GAP met with officials of the Department of Institutional Integrity (INT) on January 20, 2004. INT staff made an impressive presentation and promised to provide documents referencing its program. Certain materials were provided subsequently, although the Bank continues to withhold key documents and procedures defining employee free speech and due process rights. Bank representatives also attended and constructively participated in an April 22, 2004, GAP briefing at the Brookings Institution on the preliminary findings of surveyed MDB whistleblower protection programs.

The Bank agreed to review the draft text of this report, to provide notice and facilitate correction of any perceived inaccuracies. Unfortunately, the Bank failed to provide any comments or inform GAP of any factual errors. The draft text was transmitted to the Bank on May 19, 2004. The Bank promised comments by June 4, a deadline that was extended until June 18 when this report had to be submitted for publication. Hopefully the dialogue will be resumed to provide an opportunity to consider minor repairs for fine-tuning the whistleblower program. The World Bank’s policies come closest of any MDB to meeting the minimum standards necessary to recommend that employees risk retaliation by working within it. GAP also reviewed published literature including newspaper articles and academic studies. All material derived from listed websites was available as of June 14, 2004.

The following checklist and descriptive paragraphs in italics are based on GAP’s 27 years of experience in whistleblower law and practice. They were given to each MDB for comment several months prior to the release of this report. The checklist and grading represents whether the World Bank’s policies have the potential to meet each requirement in practice.

The checklist is broken down into five key areas: Scope of Coverage, Forum, Rules to Prevail, Relief for Whistleblowers Who Win and Making a Difference. The first four categories are the cornerstones for an effective whistleblower protection system—who and what activities are covered, whether there is a day in an unbiased court, whether the rules to win are fair and whether the fruits of victory will provide justice. The fifth category, making a difference, is the point for whistleblowers. It is why they take the risk in the first place. Studies repeatedly have confirmed that this factor is far more important than fears of retaliation for eyewitnesses when deciding whether to remain silent observers or blow the whistle.

Graded Chart
Grades are based on policies and associated records provided as of March 2004 and assigned based on the following scale.

<table>
<thead>
<tr>
<th>Scale</th>
<th>Assessment</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>Issue not addressed</td>
</tr>
<tr>
<td>1</td>
<td>Attempted to address issue</td>
</tr>
<tr>
<td>2</td>
<td>Significant but insufficient effort to address the issue</td>
</tr>
<tr>
<td>3</td>
<td>Met most elements of the standard</td>
</tr>
<tr>
<td>4</td>
<td>Fully met the standard</td>
</tr>
</tbody>
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GAP uses the U.S. grading system in assigning the grades below. The U.S. system generally requires a minimum of 70 percent to pass. The World Bank whistleblower program failed, earning seven passing grades out of a possible twenty-four. **

**The Bank receives four bonus points for cooperating with GAP in the preparation of this report bringing the total possible score to 100.
I. Scope of Coverage

The first cornerstone for any reform is that it works. Loopholes that deny coverage when it is needed most, either for the public or the harassment victim compromise whistleblower protection rules. Seamless coverage is essential so that accessible free speech rights extend to any relevant witness, audience, misconduct or context to protect any relevant witnesses against any harassment that could have a chilling effect.

1. “No Loopholes” Context for Free Speech Rights

Protected whistleblowing should cover “any” disclosure that would be accepted in a legal forum as evidence of significant misconduct or would assist in carrying out legitimate compliance functions. There can be no loopholes for form, context or audience, unless release of the information is specifically prohibited by statute or would incur Bank liability for breach of legally enforceable confidentiality commitments. In that circumstance, disclosures should still be protected if made to representatives of institutional leadership, or to designated law enforcement or legislative offices.

The World Bank defines a whistleblower as:

[An] individual who refuses to engage in and or reports misconduct of his/her employer or fellow staff member. More precisely, a “whistleblower” is an individual who provides information to management or any entity within the Conict Resolution System-Network on misconduct, mismanagement, waste of resources and/or abuse of authority within the WBG [World Bank Group] in sincerity, honesty and good faith and where, as a result, that staff member is subjected to selective, arbitrary and/or exaggerated administrative and/or disciplinary action for making the report (retaliation, or reprisal) by his/her chain of command, senior management official(s) or his/her fellow staff members.

Inconsistent with the U.S. legally defined right, an employee is not a “whistleblower” until he or she has experienced retaliation. Under 5 USC 2302(b)(8), all that is required for whistleblower status is to make an eligible disclosure. This technicality in the Bank definition sends the wrong message. It can and should be corrected. The Bank won’t encourage employees to make disclosures if it requires whistleblowers to be reprisal victims.

Most fundamentally, a person who discloses information beyond management or internal bodies is not protected. The World Bank definition of “whistleblower” reveals the problem in a nutshell. Despite many formally protected outlets within the Bank, there are no whistleblower rights for external disclosures. In reality, the whistleblower policies are a secrecy wall against outside oversight. This includes communities harmed by misconduct in Bank-financed projects, government authorities investigating a crime or even national legislatures such as the U.S. Congress engaging in oversight about how taxpayer funds are spent. There has, however, been informal cooperation with national authorities on occasion (#22, infra). There is a presumption of non-disclosure and non-accountability to external audiences affected by the consequences.

The Bank’s 2002 Policy on Disclosure of Information candidly describes the Bank’s discretion to ban any public transparency that hurts. “Public availability of some information may be precluded on an ad hoc basis when, because of its content, wording or timing, or disclosure would be detrimental to the interests of the Bank, a member country or Bank staff.” In relevant contexts, that means the prospect of accountability cancels transparency.

The Bank’s Code of Professional Ethics strongly implies that all information not public already is confidential and directs employees to consult their managers or Professional Ethics Office. “If we become aware of any information which is not public but which might affect any parties to World Bank Group transactions, we must not … disclose confidential or non-public information…” The context is prevention of insider trading or self-dealing, but the language is all encompassing. The Bank should also develop a format similar to U.S. law for classified information, providing a specific designation for information that is banned from public disclosure.

Applying these secrecy boundaries to specific audiences illustrates their noncompliance with Sarbanes-Oxley whistleblower requirements. For example, a memorandum entitled “Reporting Grievances or Misconduct,” issued April 15, 2003 to all staff from Mr.
Shengman Zhang, the Managing Director of the Bank, informs staff of acceptable ways to report misconduct. It does not include any external authorities in the list. It also urges staff to refrain from communicating allegations to multiple recipients, but to follow the procedure outlined in the memo—reporting to one’s manager or consulting with one of four internal offices.¹⁰

The problem is that whistleblowers often need to disclose information to the press, public interest groups or to more than one law enforcement body to make sure the public will be protected from the consequences of institutional misconduct. While the president or Department of Institutional Integrity (INT) chief may review the disclosure and decide to notify appropriate oversight authorities, there is no clear process requiring such action, and certainly none protecting whistleblowers. Bank staff with knowledge of a crime must be free to cooperate with or testify in law enforcement proceedings without prior institutional permission or in some cases even knowledge.

In terms of the Bank’s mission, the Inspection Panel proceedings are where free speech rights are most needed. The Panel hears third party complaints from citizens harmed by alleged violations of Bank rules or policies (#21, infra). Panel procedures are silent, however, about protection for witnesses, whistleblowers such as Bank employees or even parties filing a complaint. Without safe channels to exercise rights and provide evidence, the Inspection Panel is not a legitimate forum for justice.¹¹

**Assessment: Fail.**

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**Leahy-McConnell Amendment**

Senators Patrick Leahy (D-VT) and Mitch McConnell (R-KY) led the successful effort to include in the 2004 Foreign Operations Title of the Consolidated Appropriations Act a provision requiring U.S. representatives on multilateral development banks (MDBs) Boards of Directors, including the World Bank, to encourage the MDBs to implement a list of policy goals that increase transparency and accountability (see appendices).

The Leahy-McConnell Amendment contains benchmarks including:

- greater transparency, from project preparation to Board discussions;
- resources and conditions in each loan and strategy to ensure that applicable laws are obeyed;
- public summaries of independent audits of the institutions’ operational effectiveness, policy compliance and internal control mechanisms;
- effective complaint mechanisms that also protect whistleblowers from retaliation;
- reports to Congress on these and all other aspects of the section by September 1, 2004 and six months thereafter; and
- achieve all the listed goals by June 2005.
Whistleblower systems should cover disclosures of any illegality, gross waste, mismanagement, abuse of authority, substantial and specific danger to public health or safety, and any activity which undermines the Bank’s mission and duties to its stakeholders, as well as any other information that assists in implementing or enforcing the law or achieving its purpose.

The Bank adopts the Whistleblower Protection Act structure for the scope of protected disclosures, but fails due to fundamental loopholes. Like the loopholes excluding protected audiences, this is the type of misconduct for which transparency is needed most because of its consequences for the Bank’s public mission.

The Bank’s definition of “whistleblower” (#1, supra), adopts the structure of the U.S. Whistleblower Protection Act, but omits one of its five main free speech protection components: “substantial and specific danger to public health or safety.”

The definition also does not explicitly include the Whistleblower Protection Act’s primary topic for protected disclosures—“violation of law, rule or regulation.” Under disciplinary procedures, however, the term “misconduct” is defined to include criminal violations, fraud and corruption which covers most illegality.

There is a significant qualifier. Fraud and corruption are much narrower concepts at the World Bank than other MDBs such as the Inter-American Development Bank, which targets any threats to its institutional mission. The Bank’s current sanctions guidelines focus on unjust enrichment. The definition of fraud is: “a misrepresentation of facts to influence a procurement or selection process or the execution of a contract to the detriment of the borrower and includes collusive practices among bidders or consultants.” Similarly, corruption means “the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official in the procurement or selection process or in contract execution.”

The Bank’s disclosure policy should also allow whistleblowers to reveal information about a proposed loan as proof of illegality or an abuse of authority. Bank regulations currently forbid disclosure of that information before the Bank approves a loan. That secrecy wall blocks a whistleblower from disclosures to prevent corruption and sustains vulnerability to provisions camouflaging or shielding misconduct.

Unlike other MDBs such as the Inter-American Development Bank, the Bank’s INT whistleblower retaliation guidance limits the category of wrongdoers whose misconduct a whistleblower may safely disclose, even internally. Protection only exists for disclosures of institutional or personal misconduct by Bank personnel, “within the [World] Bank [Group].” This is a fundamental loophole that cancels protection for the scope and activities of the Bank’s public mission. It should be clarified to cover the full scope of Bank-funded operations, including whistleblowing about corruption by loan or grant recipients or even by members of foreign governments.

2. “No Loopholes” Subject Matter for Free Speech Rights

Whistleblowers Can Reinforce Government Oversight

In the late 1980s, the U.S. Congress formally adopted an interagency process for reviewing MDB proposals, engaging the Departments of Treasury, State, Commerce, the U.S. Agency for International Development and others. This interagency process requires U.S. agencies to review MDB proposals and to assess potential impacts on development, the environment and indigenous populations.

This “Early Warning System” was designed to facilitate the flow of information between U.S. agencies and between countries before government representatives vote to approve or to reject a bank loan or project. The process enables governments and citizens to make well-informed decisions about a wide range of factors, such as the adequacy of environmental impact assessments and the overall benefits and risks of a project. The law mandates that this process be completed before the U.S. Executive Director can vote on the project.

Unfortunately, significant elements of this system have never been implemented and administrative interpretation has weakened the law. Failure to conduct sufficient oversight of Bank operations heightens the need for effective protection of whistleblowers.
3. Duty to Disclose Illegality

This provision helps switch the whistleblowing context from a personal initiative for conflict, to an institutional duty to bear witness.

The Bank imposes a duty to disclose fraud and corruption, although disclosures of other misconduct are discretionary.

Recent guidance on “Reporting Grievances or Misconduct” establishes progressive duties to disclose Bank misconduct: “Staff concerned about possible fraud or corruption with the WBG or in a WBG financed project… have an institutional responsibility to report it.” But “staff who wish to report other forms of possible misconduct involving a staff member may contact—in the first instance—their manager.” Staff may also contact INT directly. In other words, the WB limits the duty to disclose to possible fraud or corruption, but not other possible illegality or abuse of power.

This duty to first contact a staff member’s manager about misconduct by anyone other than the manager is repeated in the Code of Ethics, which calls for reporting up the chain command. The Code of Ethics extends the disclosure requirement to financial conflicts of interest, again without extending the duty to waste, fraud, abuse or corruption. This contrasts with U.S. law that requires government employees to “disclose waste, fraud, abuse, and corruption.” Failure to report this wide set of factual evidence is a violation of ethics law.

Assessment: Pass.

4. Right to Refuse Violating the Law

This provision is fundamental to stop faits accomplis and in some cases to prevent the need for whistleblowing. As a practical reality however, in many institutions, an employee who refuses to obey an order on the grounds that it is illegal must proceed at his or her own risk, assuming vulnerability to discipline if a court or other authority subsequently determines the order would not have required illegality. Thus what is needed is a fair and expeditious means of reaching such a determination while protecting the employee who reasonably believes that he or she is being asked to violate the law from having to proceed with the action or from suffering retaliation while a determination is sought.

There is no process to implement a basic principle accepted by the Bank—an employee’s right to refuse to disobey the law.

The INT whistleblower guidance opens with a promising premise, defining “whistleblower” as “a person who refuses to engage in and/or reports misconduct…” Unfortunately, there does not appear to be any formal process creating protected conduct when an employee becomes a whistleblower. The ensuing guidance is limited to investigating retaliation for making a protected disclosure.

The Bank hasn’t provided any express policy requiring employees or others to obey local or international law. There is vague language in the Code of Professional Ethics’ inoperative definitions reinforced by quotations from authors and philosophers. For example, the Bank quotes Mahatma Gandhi that “[t]he best way to find yourself is to lose yourself in the service of others.” Similarly, the Bank shares Confucius’ wisdom: “What you do not want done to yourself, do not do to others.” The rhetoric creates a stark contrast with the limited tangible protection for enforceable free speech rights provided by the Bank’s whistleblower policies.

The Bank’s Code of Ethics confirms the lack of rights by omission. Unlike the Code of Ethics for the IDB, there is no provision permitting World Bank employees to refuse an assignment based on their belief that performing the assignment would violate the law. Moreover, the World Bank doesn’t appear to have a policy that “[e]mployees may request to be relieved from duties which are in direct contradiction to their personal religious or moral beliefs.”

In contrast to other MDBs such as the IDB, the World Bank’s language so assiduously avoids references to local or international law that it seems intentionally to set itself apart from the rule of law.

Assessment: Fail.
5. Protection Against Spillover Retaliation

The law should cover all common scenarios that could have a chilling effect on responsible exercise of free speech rights. Representative scenarios include employees who are perceived as whistleblowers, even if mistaken (to guard against guilt by association), and employees who are “about to” make a disclosure (to preclude preemptive strikes to circumvent statutory protection). These indirect contexts often can have the most significant potential to lock in secrecy by keeping employees silent, and isolating those who do speak out. The most fundamental is reprisal for exercise of anti-retaliation rights.

Protection covers exercise of appeal rights and most other common scenarios that trigger harassment.

The INT guidance is organized around the principle of extending the Bank’s obligation both to protect whistleblowers from being subjected to pressure or retaliation and from “the fear of such consequences.”

Protection extends to “any communication” that is in good faith to management channels. There are no loopholes for form. The Harassment Policy bans retaliation for exercise of employee rights. The INT’s guidance also notes that a whistleblower threatened with retaliation is eligible to file a reprisal case. This is significant because the chilling effect from a threat can be even more effective at locking in secrecy than retaliation after the fact.

The coverage is still incomplete. The policy should better protect those who suffer from guilt by association or because they appear likely to blow the whistle. The system should be upgraded to protect these scenarios, because associated harassment creates a dampening effect on whistleblowing.

Assessment: Pass.

Chad-Cameroon Pipeline Project*

The Chad-Cameroon Pipeline Project (CCPP) is a World Bank-financed oil development and pipeline endeavor. The CCPP includes a 1,050-km buried pipeline running between the oil production wells in Chad’s Doba oilfields and Cameroon’s Atlantic coast. The pipeline is complete, and oil started flowing in 2003.

The pipeline traverses a largely intact area of tropical rainforest that is home to the indigenous people popularly known as Pygmies. In Cameroon alone, the pipeline makes 17 major river crossings and runs along the Sanaga, one of Africa’s most important river systems. Leaks and oil spills from the pipeline could be devastating to local water supplies, putting at risk both the environment and the people who rely on these rivers for survival. Yet the project’s environmental assessment didn’t include site-specific Oil Spill Response Plans, as would be required in the United States.

The World Bank has provided significant financing for the $3.7 billion dollar pipeline. From the onset of the project, there was a fear that the injection of so much money into a small, impoverished region would create huge problems. The predictions have largely been borne out. Critics have documented violations of indigenous peoples’ rights, inadequate compensation to affected communities, increases in public health problems and labor violations.

Chad, a country plagued by corruption and 30 years of civil war, agreed to enter a partnership with the Bank to address concerns regarding the potential loss of the petro funds to corruption. The partnership calls for most of the government’s share of the revenue to be held in a London escrow account. Chad passed a law saying that 80 percent of the income will be used on internal social safety-net programs. A nine-member group made up of Chadians from civil society, parliament, the Supreme Court and government must approve disbursement of the funds. Nonetheless, whistleblowers continue to allege a variety of problems with the pipeline.

The West Africa Gas Pipeline Project (WAGP) is a proposal by Chevron Corporation to build a 690-kilometer gas pipeline linking Nigerian gas fields with markets in Benin, Togo and Ghana. The World Bank is considering a $60 million loan and $50 million guarantee to support the pipeline and associated gas market development and regulatory projects. Observers think the WAGP will start in 2004.

The project is controversial for several reasons. First, the WAGP region is unstable due to violence in the oil and gas communities of Nigeria’s Niger Delta. Second, the project sponsors have failed to demonstrate how the project will reduce gas flaring in the Delta and bring economic benefits to the region. Third, little information about the project has been shared with local communities. Fourth, no comprehensive environmental impact assessment has been prepared.

Ghanaian nonprofits have raised questions about Chevron’s environmental and human rights record. The Ghanaians are urging the Bank to conduct a comprehensive environmental assessment and require Chevron to employ the best available production technologies. Finally, the pipeline should be sited to avoid fragile ecosystems.

*See Bank Information Center website www.bicusa.org/bicusa/issues/west_africa_gas_pipeline_project_nigeriabenintogoghana*

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The Bank expressly covers only employees and in-house contract staff from reprisal, leaving outside consultants and contractors without protection.

The INT guidance limits the term “whistleblower” to staff subjected to or threatened with reprisal by other Bank staff. Whistleblowers from the ranks of other contractors (such as suppliers of goods or certain services) and recipients of Bank funding proceed at their own risk. Ironically, there are no limitations on their making disclosures as whistleblowers to the relatively new Corruption and Fraud Investigations Unit’s website. In addition to fraud allegations, it receives disclosures of misuse of Bank funds or possessions, gross waste and retaliation.

Bank procedures also do not list coverage of applicants for employment. Whether former employees can initiate appeals after separation or termination is not specified. These omissions may institutionalize vulnerability to blacklisting.

Non-employee contractors and consultants, loan and staff applicants, loan recipients and even Inspection Panel parties (#21, infra) need clear appeal rights and procedures to challenge reprisals for disclosing corruption or other wrongdoing associated with contracts or Bank-funded projects. GAP has seen evidence of highly effective retaliation against both outside employees and contractors who appeal alleged contracting irregularities or even appear likely to blow the whistle.

Assessment: Fail.

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Internal Controls at the Bank

“Given the inherent risks in the banks’ activities, additional assurance on these other categories of internal control—operations and compliance—would provide an added level of assurance to the Bank Group and its member countries that funds were used for their intended purposes.” *

*General Accounting Office Report World Bank Group: Important Steps Taken on Internal Control But Additional Assessments Should Be Made (June 2003).*
To maximize the flow of information necessary for accountability, reliable protected channels must be available for those who choose to make confidential disclosures. As sponsors of whistleblower rights laws have recognized repeatedly, denying this option creates a severe chilling effect.

The Bank offers a high-quality hotline for anonymous disclosures and systematic, qualified confidentiality protection. The whistleblower has no control over when the Bank exercises sole discretion to lift the anonymity shield and may not even receive notice. This is a qualified pass.

**GAO Calls for Improved Grievance Mechanisms**

“Identified shortcomings in the Bank’s grievance process included…”

- overemphasis on formal, adversarial procedures as opposed to informal approaches to resolving disputes, such as mediation;
- lack of expertise and/or independence from management in all Bank units with relevant responsibilities;
- lack of procedural safeguards to ensure that the Appeals Committee and other elements of the system proceed in a fair and equitable manner;
- relative ineffectiveness in addressing complaints of bias and harassment;
- limitations on redress for staff who are found to have been treated unfairly;
- lack of effective measures for holding managers accountable for their actions towards subordinates; and
- insufficient access for the approximately 2,600 employees who are located outside of the Bank’s Washington, D.C. headquarters.

“Grievants, members of Bank units with relevant responsibilities and others with whom we spoke confirmed that these were the grievance system’s predominant shortcomings.”

The above excerpt was extracted from the General Accounting Office Report *World Bank: Status of Grievance Process Reform* (May 1999).

The Bank offers confidentiality in the ombudsman’s regulations and through a telephone hotline. The ombudsman’s rule eight covering “confidentiality” and its adherence to the Ombudsman Association Code of Ethics make all communications confidential and privileged, except where the ombudsman believes there is an imminent threat of serious harm.36

A contractor rather than the Bank runs the external hotline. It provides for anonymous allegations from interested parties including, but not limited to employees and, if directed by the caller, does not make a record of any identifying information including caller ID.37

The INT may reveal the identity of a whistleblower on a “strict need to know basis.”38 This provision may work if properly applied, but a more detailed standard should be established. For example, there is no provision to notify a confidential whistleblower that anonymity can no longer be protected, which also can occur and spark disciplinary proceedings if the Bank decides the employee’s charges were “knowingly false.”39

In practice however, the INT staff has acted sensitively. For example, in one case a whistleblower’s identity had to be revealed to respect the due process appeal rights for those being fired for confirmed misconduct. But INT provided advance warming and arranged transfers that successfully prevented retaliation.40

The staff practice should be institutionalized. There is an inherent problem if whistleblowers can be blindsided by exposure of their identities. The Bank should adopt the Asian Development Bank practice of allowing a whistleblower to withdraw the complaint as an alternative to breaching confidentiality and to offer preemptive remedial help to prevent reprisals if exposure must occur.

It is grounds for dismissal under the Inspection Panel procedures to make a request for an investigation that is “manifestly frivolous, absurd or anonymous.”41 However, those who file requests for investigations by the Inspection Panel may be allowed to do so confidentially if a non-anonymous party represents them (#21, infra).

**Assessment: Pass.**
The proposed Bujagali Dam Project is a 200MW hydropower dam to be located on the Nile River in Uganda. The project was initially proposed in 1991. In 2001, the World Bank approved $225 million to support the project.

There were several criticisms of the project. First, that the dam will disrupt other economic activity in the project region, especially eco-tourism. Second, that the project will displace many people. Third, that the project is rife with corruption. For example, the AES corporation allegedly won the contract without competitive bidding and Ugandan newspapers have accused decision-makers of taking bribes from project proponents (not associated with AES at the time). Finally, analysts have pointed out that few Ugandans will be able to afford the energy.

In May 2002, the World Bank Inspection Panel issued a highly critical report on the project. The Bank’s Inspection Panel found that the project’s planning documents and the inadequate environmental assessment didn’t mention earlier reports that indicated that combined-cycle and geothermal energy projects were more cost-effective. The Inspection Panel also found that the Bank’s economic projections for Uganda were overstated. As a consequence, the need for the project was exaggerated. In August 2003, the AES corporation decided to abandon the project. AES was undergoing financial stress and the controversy surrounding the Bujagali Project made the decision easier. The project remains on hold pending financing.

Any whistleblower law or policy must include a ban on “gag orders” through an employer’s rules, policies, or nondisclosure agreements that would otherwise override free speech rights and impose prior restraint.

The Bank has constructed a system of blanket prior restraint for any external whistleblowing disclosures that could be embarrassing or detrimental.

The Bank’s policy is contradictory. There is a clear channel for internal disclosures to listed outlets such as the INT. However, the Code of Ethics and Information Disclosure Policy and analogous rules summarized below all reinforce the same result: institutionalized blanket prior restraint for outside disclosure of open-ended secrecy categories, such as information that might prove detrimental, sensitive or adverse to the Bank.

Whistleblowers are also gagged by the new Disclosure policy from disclosing any “internal documents and memoranda written by Bank officials or staff to their colleagues, supervisors, or subordinates.” In other words, anything written for internal Bank consumption may not be disclosed.

Each of these secrecy categories could be all encompassing. Employees are liable for disclosure of any information they should have known was restricted as confidential under these criteria. There is no requirement to provide notice through markings or any other warning of the information’s restricted status. As a matter of ethics and disclosure policy, the Bank has imposed a blanket no loopholes gag system of prior restraint for disclosures to any audiences beyond those listed in the whistleblower guidance and related policies.

The bottom line is that the Bank controls all communications with the outside world. Undoubtedly, nondisclosure rules are essential for delicate financial transactions and associated trade secrets. The Bank’s policies go too far, however, because their unrestricted scope creates a wall of secrecy canceling the whistleblower program where and when it is needed most.

Two modifications could upgrade World Bank nondisclosure policies for consistency with the OAS Model Law and analogous U.S. banking whistleblower laws. First, information that is deemed “secret” and could create liability if released should be so designated and not simply labeled with the vague cover note “For Official Use Only.” This gives the whistleblower notice of the information’s restricted status (#2, supra). Second, a qualifier that they do not supersede or otherwise cancel an employee’s whistleblower rights and responsibilities under the Bank program, national or international law must always accompany the nondisclosure restrictions. That qualifier would be consistent with the anti-gag statute in U.S. law passed unanimously by Congress and in effect for the last 16 years.46

Assessment: Fail.
Whistleblowers are not protected by any law, if they do not know it exists. Whistleblower rights, along with the duty to disclose illegality, must be posted prominently in any workplace. Similarly, legal indigency can leave a whistleblower’s rights beyond reach. Access to legal assistance or services and legal defense funding can make free speech rights meaningful for those who are unemployed and blacklisted. An ombudsman with sufficient access to documents and institutional officials can neutralize resource handicaps and cut through draining conflicts to provide expeditious corrective action.

The Bank provides a broad menu of informal assistance to counsel and guide whistleblowers through both no fault and adversarial options.

GAO Calls For Internal Controls at the Bank

“…the World Bank in its report *Clean Government and Public Financial Accountability* acknowledged that borrower countries’ government and external auditors are unable to give the World Bank sufficient assurance that World Bank funds were exclusively used for intended purposes. Risks that Bank Group funds are used for purposes other than those for which loans were granted—whether for concessional or market-based loans—could be mitigated through effective implementation and evaluation of internal controls over operations and compliance.”

*The above excerpt was derived from the GAO Report *World Bank Group: Important Steps Taken on Internal Control but Additional Assessments Should Be Made*, (June 2003).

The Bank has a broad menu of informal resources available for whistleblowers. The Harassment Policy lists six channels for complaints and five additional conflict resolution resources. There are “anti-harassment advisors,” “Health Service Counseling Services” and even “Appeals Committee Counselors.”

INT investigations informally protect whistleblowers, and its good offices have helped prevent retaliation on occasion (#7, supra).

There are several other offices in the Bank, including the Ombudsman, the Office of Mediation, the Office of Ethics and Business Conduct, the Office of Human Resources and the Staff Association that have their own advisors and counselors. In the OAS Model Law, the Ombudsman plays a significant role to make rights meaningful for the legally indigent. The Bank Ombudsman provides general counseling and intervention services and performs a kind of “shuttle diplomacy” allowing the complainant to be protected in many cases through a confidential process. World Bank Ombudsman staff members have earned a reputation as conscientious, good faith professionals.

The Bank’s corporate arm also has an ombudsman of a kind that pertains to the corporate loan and guarantee windows (IFC and MIGA). The Compliance, Advisor, Ombudsman (CAO) combines all three functions for external effects of social and environmental impacts, primarily violations of IFC or MIGA policy. CAO reviews may be requested by management, third party affected persons or the CAO itself. There appears to be no special whistleblower protection provisions except the general statement that confidentiality will be respected. The loophole is significant, because again these disclosures are vital to the Bank’s public service mission.

Assessment: Pass.
The setting to adjudicate a whistleblower’s rights must be free from institutionalized conflict of interest, and operate under due process rules that provide a fair day in court. The histories of administrative boards have been so unfavorable that so-called hearings in these settings have often been traps, both in perception and reality.

11. Right to a Genuine Day in Court

This rule institutionalizes normal judicial due process rights, the same rights available for citizens generally who are aggrieved by illegality or abuse of power. The elements include timely decisions, a day in court on non-proprietary or legally confidential matters, the right to confront the accusers and witnesses, objective and balanced rules of procedure and reasonable deadlines. At a minimum, internal Bank systems must be structured to provide autonomy and freedom from institutional conflicts of interest.

The appearance of due process is belied by reality. While more complex than other MDBs, the World Bank system is not a genuine opportunity for whistleblowers to achieve justice through due process. It lacks legitimacy and is actually dangerous due to lack of independence, part-time status of adjudicators, the lack of a verifiable record for the majority of appeals, arbitrary substitution of secret investigations for due process rights and failure to apply the Bank’s standards in practice during litigation.

The World Bank has an intricate grievance system with fact-finding by an Appeals Committee and possibly again by an Administrative Tribunal of eminent jurists and attorneys. Unfortunately, the system offers little genuine due process.

In 1999 a Bank internal review and a separate GAO report reviewed grievance procedures and found severe shortcomings in several bank units, including the Office of Professional Ethics, the Appeals Committee and the Administrative Tribunal. Confirmed aws included:

- lack of expertise and/or independence from management in venue in Bank units with relevant responsibilities;
- lack or procedural safeguards to ensure that the Appeals Committee and other elements of the system proceed in a fair and equitable manner; and
- relevant ineffectiveness in addressing complaints of bias or harassment.

GAO found the Appeals Committee inadequate, because it consists of existing Bank staff who are vulnerable to management pressure or backlash on controversial matters. The Administrative Tribunal also has problems. It can hear a case directly and issue decisions binding on the Bank unlike the Committee’s recommended decisions. Unfortunately, the Tribunal almost never meets in public. For example, GAO found that the Tribunal only met twice in public since it was created in 1980. GAO also found that the Tribunal met infrequently for short periods of time and its jurists did not always have an understanding of matters at issue.

The overall finding was a failure of legitimacy. An internal Bank Grievance Process Review Committee cited by GAO concluded, “[E]mployees often saw the system as neither fair nor credible and … this lack of confidence deterred employees from attempting to use the system to resolve problems.”

The Bank has adopted scattered recommendations. For example, there are precise timetables in the rules for tribunal cases. Moreover, the World Bank can’t indefinitely suspend the time limits. Unfortunately, the Bank didn’t address the GAO’s primary criticisms. There is no third party review or appeal to an outside court available to Bank staff. This institutionalizes structural conflict of interest. The Board of Executive Directors selects members of the Tribunal. All seven are chosen from a list presented by the president, in effect guaranteeing a majority.

There is only limited, discretionary public access to appeals proceedings on alleged retaliation. The Bank should protect the privacy of harassment victims upon request. But systematically secret trials are an affront to transparency. The Policy provides that “proceedings of internal appeal mechanisms and investigations are not disclosed outside the Bank, except to the extent permitted by Staff Rules.” The Bank does not report cases concluded by the Appeals Committee, unlike Tribunal cases. This excludes transparency in the forum where most cases are resolved.

Most significant is a lack of results. Contrary to assertions by Bank staff that whistleblowers prevail frequently, the facts demonstrate just the opposite. From 2000-2003, whistleblowers did not win a single Administrative Tribunal decision on the merits based on a review of all published documents.

Assessment: Fail.
Ecuador: Structural Adjustment Program*

In 2000, the World Bank, IDB and the Andean Development Corporation announced a three-year-loan program of about $1.7 billion, including a structural adjustment loan of $151.52 million. A letter of intent to the International Monetary Fund concerning this program revealed that it would involve the construction of a new oil pipeline and changes in public utilities. The Banks concluded: “No environmental or resettlement issues are raised by the proposed structural adjustment program.”

No environmental assessment was done because neither the Banks nor U.S. Treasury generally require assessments for structural adjustment and other non-project loans. The failure to require an assessment for these types of loans increases the need for whistleblower protections. Whistleblowers can help protect against violations of law and risks to public health that may exist in flawed pipeline or privatization programs.


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12. Option for Alternative Dispute Resolution With an Independent Party of Mutual Consent

Arbitration can be an expedited, less costly forum for whistleblowers, if the parties share costs and select the decision maker by mutual consent through a “strike” process. It can provide an independent, fair resolution of whistleblower disputes, while circumventing the issue whether Banks waive their immunity from national legal systems. It is contemplated as a normal option to resolve retaliation cases in the model whistleblower law to implement the Organization of American States Inter-American Convention Against Corruption.

The Bank has well-developed alternatives to the formal appeals process in its Mediation and Ombudsman offices, but neither of these in-house mechanisms is sufficiently independent to objectively enforce whistleblower rights.

The Bank’s procedures preclude arbitration selected by mutual consent, let alone independent and external to the Bank. However, the Bank has significantly increased its emphasis on informal conflict resolution as a result of the 1999 GAO report. There are several systems, including the Ombudsman and Office of Mediation, structured to assist whistleblowers.

Mediation can temporarily suspend or operate in parallel to the appeals process. The mediation cycle ends with a Memorandum of Understanding (MOU). All statements except the final MOU are confidential.59 There is no structural independence. The Bank president selects the manager of the Office of Mediation, though the Bank would normally be an adverse party.60 In reality, this is an elaborate first stage settlement opportunity built into the litigation process. There is no independent review. This is better than conflict, but the Mediation Office and the Ombudsman have no inherent authority and not much greater structural legitimacy than the Bank. Moreover, the Bank has supplied no record of results for whistleblowers.


Assessment: Fail.
Some institutions may not usually be subject to the jurisdiction of national courts in whistleblower cases. Most MDBs claim immunity from lawsuits filed in U.S. and other courts, particularly over personnel matters, but they sometimes waive that immunity. They could do so more uniformly, or the immunity might be limited by the member nations. If immunity were waived, whistleblowers would be judged by a jury of peers or other third party not subject to potential retaliation from the institution. If an MDB does not offer employees independent arbitration, waiver of sovereign immunity is unavoidable to overcome the inherent, structural conflict of interest that occurs when an institution is both the defendant and the judge.

The Bank incorrectly asserts immunity from national judicial processes.

There is a long-standing debate about the breadth of MDB sovereign immunity. So far, U.S. courts have generally supported claims of immunity for employment cases. However, any broader statement about immunity does not reflect the somewhat ambiguous language of the Bank’s articles of agreement or nuanced court decisions on immunity from liability, particularly in cases involving contract violations and interest payments on bonds.

Sovereign immunity laws make a distinction between transactions of a commercial nature and other non-governmental functions, which are subject to court jurisdiction, and governmental functions, which are less so. There is also a body of administrative law that checks the governmental functions. There is no need in this report to resolve the issue. The MDBs have often successfully argued in national legal forums that at least with regard to employment cases, they have not waived sovereign immunity and decisions of the Bank’s Administrative Tribunal are final.

The appropriate approach may be to remove or to waive existing immunity for claims that the Bank violated or failed to adequately enforce its own policies or funded violations of law that it should have known about. The Bank waiver could expressly limit punitive damages or provide for independent expert arbitration.

Serious international practitioners and scholars are recommending that international organizations reduce or waive immunity for employment and other cases. For example, the Director of Global Governance and Capacity at the World Bank Institute argues that civil society and private sector involvement and liability for damages and real rewards for applying the law work more efficiently than internally controlled anti-corruption systems. This line of reasoning supports external review of MDB administrative rulings such as judicial review.

Assessment: Fail.
III. Rules to Prevail

The rules to prevail control the bottom line—the tests a whistleblower must pass to prove his or her rights were violated by illegal retaliation, and win.

14. Realistic Legal Standards to Prove Violation of Rights

The U.S. Whistleblower Protection Act of 1989 overhauled antiquated, unreasonable burdens of proof that had made it hopelessly unrealistic for whistleblowers to prevail when defending their rights.

The current standard is that a whistleblower establishes a prima facie case of violation by establishing through a preponderance of the evidence that protected conduct was a “contributing factor” in challenged discrimination. The discrimination does not have to involve retaliation, but only need occur “because of” the whistleblowing. Once a prima facie case is made, the burden of proof shifts to the employer to demonstrate by clear and convincing evidence that it would have taken the same action for independent, legitimate reasons in the absence of protected activity.

Since the federal government switched the burden of proof in U.S. whistleblower laws, the rate of success on the merits has increased from between one and five percent annually, which institutionalizes a chilling effect, to between 25-33 percent, which gives whistleblowers a fighting chance to successfully defend themselves. Many nations that adjudicate whistleblower disputes under labor laws have analogous presumptions and track records. There is no alternative, however, for the Bank to commit to one of these proven formulas to determine the bottom line—tests the whistleblower must pass to win a ruling that his or her rights were violated.

The Bank has adopted the modern burden of proof to demonstrate retaliation, but needs to replace subjective tests that put an employee’s motives on trial with objective standards to determine whether a disclosure deserves protection.

The rules of the INT provide under Standard of Proof: “If the evidence is reasonably sufficient to show that the complainant’s whistleblower was a “contributing factor,” then management must demonstrate by “convincing” evidence that the personnel action would have occurred regardless of whistleblowing.” This language is analogous to the burden of proof section of the U.S. Whistleblower Protection Act.

The lack of objective standards in other components of World Bank policy ranges from counterproductive to treacherous. Bank regulations put the whistleblower’s motives on trial, investigating whether allegations are in “good faith” or “malicious.” Under the OAS Model Statute, those issues are completely irrelevant except as possible credibility factors. The reason is clear. What matters is the evidence of misconduct, not personal judgments about the source. “Reasonably believes” is an objective standard.

The Bank overemphasizes the warnings about knowingly reporting false or frivolous information. The message to whistleblowers is beware of making one’s self a target of investigation. The subjective standard for whistleblower status locks in vulnerability to being fired for any disclosure. The Bank has a legitimate right to prevent abuse of the system but not at the expense of discouraging potential whistleblowers. A credible whistleblower protection system should not create new risks of arbitrary retaliation by the same officials promising protection.

Assessment: Pass.
Although some laws require employees to act within 30-60 days or waive their rights, most whistleblowers are not even aware of their rights within that time frame. Three months is the minimum functional statute of limitations. One-year statutes of limitations are consistent with common law rights and are preferable.

The Bank provides a realistic statute of limitations timeframe to act on rights.

The World Bank President and World Bank Whistleblowers *

A significant 2002 case illustrates the due process breakdown for whistleblowers, at least those challenging high-level misconduct and associated harassment. The appeal involved the Bank’s Financial Sector Vice President, who led the chain of command for that work. He had disclosed alleged widespread mismanagement to his supervisors, the Bank’s managing director and the president about concerns supported by the Staff Association. He also filed an Ethics complaint over leaks of a derogatory draft performance assessment before he could see it or respond. The whistleblower alleged that Bank President James Wolfenson was furious, announced he had investigated the vice president back to his former duties as a Spanish government official and convinced him to withdraw the complaint. The employee was reassigned from his duties, and denied permanent status at the conclusion of his probationary period.

It would be irresponsible to draw any conclusions about the merits of the appeal, but the process cannot withstand scrutiny as a way to achieve justice. In fact, it serves as a warning not to take seriously either the Bank’s rhetoric or rules on paper. The Administrative Tribunal disregarded them systematically and issued a 34-page personal attack on the whistleblower that only can be characterized as punishment for exercising his rights. To illustrate, the Tribunal:

• denied him the opportunity to depose Bank officials, normally the cornerstone of discovery to prepare for hearing, instead substituting an investigation that did not cover retaliation in its charge and whose witness statements were kept secret from the whistleblower;
• denied a public hearing as unnecessary, because of the secret record that had been compiled;
• announced that it would not review the merits of actions against the whistleblower, upon whom it nonetheless relentlessly attacked for personal failings;
• declined to independently assess whether the disclosures in the withdrawn ethics complaint were unreasonable, rejecting them as unworthy of protection because there had never been formal confirmation;
• in other cases concluded the whistleblower’s criticisms of the budget process were “absolutely true,” but concluded he was a bad manager for raising them – effectively defining whistleblowing as misconduct per se; and
• concluded there was “no basis” to find a connection between whistleblowing and reassignment, without applying evidence of angry personal attacks, a short time lag between dissent and commencement of harassment and opening a retaliatory investigation upon learning of the disclosures. Any of these would meet legal standards in the U.S. Whistleblower Protection Act, which the Bank claims to follow.

Compounding the employee’s frustration, the INT refused to open an investigation either of mismanagement or retaliation, because the issues were so closely tied to the Administrative Tribunal appeal. In fact, in its decision the Tribunal did not mention any of the Whistleblower Protection Act legal burdens of proof that the institution takes credit for adopting. (See checklist items 11 and 24.)

The Tribunal generally provides up to 120 days to file an application after exhaustion of all other remedies within the Bank. The above was derived from the World Bank Administrative Tribunal Decision No. 271. “Conte v. IBRD” (September 30, 2002).

Assessment: Pass.  🍎 Apple 🍎 Apple 🍎 Apple

[15. Realistic Time Frame to Act on Rights]

Bank procedures provide, with rare exceptions, 90 working days from receipt of written notice for an adverse personnel action or 30 days after the end of mediation to start a review by the Appeals Committee for personnel challenges. 71

The Tribunal generally provides up to 120 days to file an application after exhaustion of all other remedies within the Bank. 72

Assessment: Pass.  🍎 Apple 🍎 Apple 🍎 Apple

The Bank provides a realistic statute of limitations timeframe to act on rights.
The twin bottom lines for a remedial statute’s effectiveness are whether it achieves justice by adequately helping the victim obtain a net benefit, and by accountability for the wrongdoer.

16. “No Loopholes” Compensation

If a whistleblower prevails, the relief must be comprehensive to cover all the direct, indirect, and future consequences of the reprisal. In some instances this means relocation, or payment of medical bills for consequences of physical and mental harassment.

Prevailing parties do not have a right to reinstatement, the critical factor in meaningful relief for foreign nationals.

The GAO report released in 1999 highlighted the rare reinstatement of employees as a serious weakness in the grievance system. GAO found that since 1990 the Bank has reinstated five individuals in response to Appeals Committee recommendations. No one has been reinstated based on a favorable ruling by the Administrative Tribunal. The GAO report noted that reinstatement has rarely occurred, even when the Tribunal found management guilty of gross malfeasance. In lieu of reinstatement, Bank management has frequently opted to provide successful complainants with monetary compensation. When recommending reinstatement, the Tribunal is specifically required to fix an amount of monetary compensation up to three years net pay in lieu of reinstatement. Final authority to determine reinstatement rests with the Bank president.

The Bank chose compensation in each of the seven cases from 1990-1999 in which the Tribunal recommended reinstatement. During this same period, Bank management elected to provide monetary settlements in two cases in which the Appeals Committee recommended reinstatement. The remote likelihood of reinstatement is unacceptable, given the special circumstance attendant to Bank employment. Many employees are foreign nationals employed in Washington, D.C. They live in the United States by virtue of their status as Bank employees. Unless they find employment with another international organization, they must leave the country within 60 days.

Bank procedures since 2001 give the Tribunal the authority to overrule management and return the whistleblower to full employee status. This extraordinary measure may occur if the Tribunal finds unreasonable management’s determination that such performance or reinstatement “would not be practicable or in the institution’s interest.” The Bank has not provided data on whether or how this authority has been used.

Assessment: Fail.

Kofi Annan calls for improved whistleblower protections at the United Nations:

“Mr. Annan said that the United Nations office of internal oversight services provided a way for staff members to report their concerns privately and that the office of ombudsman afforded a channel for mediation and resolution, but that ‘clearly, these need to be better known and made more accessible to staff at large.’ He promised measures ‘to reinforce formal protection for whistleblowers, while ensuring that they are not used to cloak false accusations.’”

* The above excerpt was derived from the New York Times, “U.N. Study Finds Its Workers Uneasy About Reporting Corruption” (June 16, 2004).
17. Interim Relief

Anti-reprisal systems that appear streamlined on paper commonly drag out for years in practice. Ultimate victory may be merely an academic vindication, for unemployed, blacklisted whistleblowers who go bankrupt while they are waiting to win. Injunctive, or interim relief must occur after a preliminary determination. Even after winning a hearing or trial, an unemployed whistleblower could go bankrupt waiting for completion of an appeals process that frequently drags out for years. Relief should be awarded during the interim for employees who prevail.

The Bank’s program takes tentative steps toward initial interim relief, but offers only limited interim relief as a rare occurrence.

The Appeals Committee may recommend interim relief but cannot require management to provide it. The Tribunal’s rules make clear that “filing of an application shall not suspend the execution of the decision contested.” They make limited provision for a waiver of that presumption by the Tribunal if it is “highly likely to result in grave hardship … that cannot otherwise be redressed.” Relief under this circumstance should be a mandatory, rather than a permissive rule.

An employee should be able to seek a stay for the life of the appeals proceedings and get one unless her chances of prevailing on the merits are low and the costs to the institution of keeping her on the job are high. GAP was not received any data on how much interim relief has been granted.

Assessment: Fail.

18. Coverage for Attorney Fees

Attorney fees and associated litigation costs should be available for all who substantially prevail. Whistleblowers otherwise couldn’t afford to assert their rights. The fees should be awarded if the whistleblower obtains the relief sought, regardless of whether it is directly from the legal order issued in the litigation. Otherwise, employers can and have unilaterally surrendered outside the scope of the forum and avoided fees by declaring that the whistleblower’s lawsuit was irrelevant to the result. Employees can be ruined by that type victory, since attorney fees often reach five to six figures.

The Bank fails to provide a specific guarantee of attorney fees to a whistleblower who substantially prevails, although the Administrative Tribunal awards them regularly.

Authority exists to award attorneys’ fees to prevailing whistleblowers, but it is erratically exercised. The rule on costs states: “An application for costs should be submitted not later than seven days after the listing of the case.” There are express provisions for travel costs and for the attendance of complainants’ attorneys, without mention of fees in either provision.

Moreover, it appears that the Appeals Committee and Tribunal have been inconsistent in using their general authority to award attorneys’ fees. The 1999 GAO report listed attorneys’ fees first among problems with the lack of helpful and effective remedies. GAO noted that the Appeals Committee has the authority to award reasonable attorneys’ fees for successful grievants, but rarely uses it. The Appeals Committee is where most cases are resolved. Conversely, GAP found that the Appeals Tribunal often awards attorneys’ fees.

GAO recommended that the Appeals Committee make greater use of the power to award attorneys’ fees. GAP has yet to receive Bank data indicating whether attorneys’ fee awards have become more prevalent at the Appeals Committee level. A new presumption of an award of fees and costs to the prevailing complainant should be made clear in policy and proven in practice.

Assessment: Fail.
19. Transfer Option

It is unrealistic to expect a whistleblower to go back to work for a boss whom he or she has just defeated in a lawsuit. Those who prevail must have the ability to transfer for any realistic chance at a fresh start. This option prevents repetitive reprisals that cancel the impact of newly created institutional rights.

The Bank has transferred whistleblowers to protect them, but needs to make it clearer that employees have the right to be free from any potentially hostile post-adjudication work environment.

The Administrative Tribunal makes no provision for a transfer preference remedy to protect whistleblowers from having to work under supervisors whom they have just defeated in litigation. The transfer preference provision exists in the Whistleblower Protection Act and the OAS Model Law.83 The Bank did share a case study with GAP demonstrating that transfer relief was provided at least once.

Assessment: Pass.  🟢  🟢  🟢

20. Personal Accountability for Reprisals

To deter repetitive violations, it is indispensable to hold accountable those responsible for whistleblower reprisal. Otherwise, managers have nothing to lose by doing the dirty work of harassment. The worst that will happen is they won’t get away with it, and they may well be rewarded for trying. The most effective option to prevent retaliation is personal liability for punitive damages by those found responsible for violating whistleblower laws. Another option is to allow whistleblowers to counterclaim for disciplinary action, including termination. The most superficial is to make compliance with the whistleblower law a critical element in every manager’s performance appraisal, and for decision makers in reprisal cases to refer responsible officials for investigation to determine if sanctions are appropriate for violating this element.

The Bank has issued a visible, stinging rhetorical warning of liability for harassment, but there is no track record to create deterrence.

The whistleblower guidance and workplace harassment policies described above contain enough references forbidding retaliation and harassment to establish that such persons can be held accountable. The 1999 GAO study reviewed whether disciplinary accountability occurs in practice, and unlinked the Bank for “lack of effective measures for holding managers accountable for their actions toward subordinates.”84

The GAO reflected a concern expressed by many Bank employees that the system has not effectively held managers accountable for complying with the rules. Several of the measures already discussed may help to address this problem. They include clarifying the Bank’s standards and expectations regarding harassment, strengthening the Office of Professional Ethics’ investigative procedures and personnel, expanding the Appeals Committee’s purview to include grievances that are not based on specific adverse managerial decisions.85

The Bank has transferred whistleblowers to protect them, but needs to make it clearer that employees have the right to be free from any potentially hostile post-adjudication work environment.

The GAO recommended that the Bank reinforce accountability by reporting Appeals Committee decisions that clearly indicate mismanagement to offending parties, superiors and sanctioning managers who are found to have committed serious or repeated violations of staff rules. It also recommended advising Appeals Committee witnesses that knowingly making false statements would result in disciplinary action.86

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The Bank has not supplied information that sanctions ever have occurred for whistleblower harassment.

Assessment: Fail.  🟡  🟡

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U.S. Senator Richard Lugar Probes World Bank Corruption

“Corrupt use of World Bank funds may exceed $100 billion and while the Bank has moved to combat the problem, more must be done, the chairman of the U.S. Senate Foreign Relations Committee said…”8

May 13, 2004 Reuters Wire Service
Whistleblowers will risk retaliation if they think that challenging abuse of power or any other misconduct that betrays the public trust will make a difference. Numerous studies have confirmed this motivation. This is also the bottom line for affected institutions or the public—positive results. Otherwise, the point of a reprisal dispute is limited to whether injustice occurred on a personal level. Legislatures unanimously pass whistleblower laws to make a difference for society.

21. Credible Internal Corrective Action Process

Whether through hotlines, ombudsmen, compliance officers, or other mechanisms; the point of whistleblowing through an internal system is to give the employer an opportunity to clean house, before matters deteriorate into a public scandal or law enforcement action. The performance record of these systems will determine whether Banks have that opportunity or are blindsided due to the absence of early warnings from employees. Studies repeatedly have confirmed that the primary reason would-be whistleblowers remain silent is the fear that their actions won’t make a difference and not the concern of retaliation.

The Bank has begun to introduce several in-house mechanisms that promote the flow of information and corrective actions on misconduct. As yet, however, there is no record of their effectiveness in breaking long-term patterns of frustration.

The Bank has employed a variety of mechanisms for reviewing cases of wrongdoing that traditionally have had limited goals—stopping employees and contractors from reaping private or unjust gain from Bank resources through post hoc evaluations of Bank performance that did not bind current practices.

In April 2000, the GAO confirmed continuing corruption problems in the loans to some of the Bank’s largest borrowers. Bank officials estimated losses as high as 30 percent in one of the large borrowing countries. The GAO recommended several steps the Bank could take to better control corruption.

In more recent years the Bank has added an impressive hot-line open to internal and external complaints. It is run by a contractor and allows the caller to obtain a pin number to report anonymously and later trace progress on his or her complaint.

In June 2003, the GAO released a report on the Bank’s new internal controls. GAO noted that the Bank had established a number of offices dealing with fraud and corruption including an Internal Auditing Department, Operations Evaluation Department, Inspection Panel, Quality Assurance Group, Quality Assurance and Compliance Unit, Loan Department, Operations Policy and Country Services, Corporate Committee on Fraud and Corruption Policy and the Department of Institutional Integrity. However, GAO could not find more than a few case examples provided by the Bank on how well these systems work. GAO noted that external audits are also inconclusive on the effectiveness of the systems.

There are two key outlets to challenge Bank abuses of power; the INT for whistleblower allegations and an Inspection Panel for citizen redress. The INT is the hub for most of the Bank’s internal decisions, referring allegations to the relevant offices and submitting reprisal investigation results to the Vice President for Human Resources. Unfortunately, it has three structural weaknesses. First, the Whistleblower Reprisal Guidance focuses on retaliation and not on correcting the causes of confirmed misconduct. The Guidance should also convey how whistleblowers concerns will be handled and instruct the investigators to work with them to correct the problem.

Second, the INT network has a relatively short track record of success that they could share with GAP. It needs to accumulate patterns of visible accomplishments to earn legitimacy.

Third, the program is severely compromised by conflict of interest. Serious fraud allegations can damage the reputation of the Bank and its borrowers. There is substantial institutional pressure to minimize the existence of fraudulent practices. This applies even more to structural challenges—cases concerning overall programmatic problems such as over-charging for loan processing or forcing premature privatization.

The system for dealing with outside parties harmed by Bank misconduct is the Inspection Panel (IP). The IP consists of highly qualified members and staff, but its effectiveness is limited. Frustration with the process has become a regular topic for discussion at meetings of NGO’s that engage in Bank oversight. The critique of the IP consists of the following points.

- There is no protection for whistleblowers or other witnesses in the proceedings.
- The IP doesn’t allow challenges to misconduct involving Bank loans “that are the responsibility of other parties, such as a borrower/recipient.”
The Yacyretá Hydroelectric Project is a massive system of dams on the Paraguay-Argentine border. Yacyretá has experienced countless delays, cost overruns, corruption, disputes, various environmental and social impacts and will ultimately displace over 50,000 people. The project is the subject of an extensive investigative review by Kay Treakle and Elias Diaz Pena in a book dealing with the inspection panels entitled, *Demanding Accountability*. Treakle and Dias Pena chronicled allegations of violations of World Bank and IDB policies regarding the construction of Yacyretá. They found that the inspection panel reviews were slow, failed to follow their own procedures and failed to prevent the dam project from harming the environment and adequately compensating displaced people.

U.S. Senator Richard Lugar recently opened an investigation into World Bank corruption in May 2004. In *Business Line’s* article, “Projecting Corruption In Multilateral Banks”, Lugar was quoted as saying “... the Yacyreta Dam project was budgeted to cost $2 billion when it began in 1973, now has a debt of $10 billion — and is still not completed. [He added that] when developing countries lose development bank funds through corruption, the taxpayers in those poor countries are still obligated to repay the development banks. So, not only are the impoverished cheated out of development benefits, they are left to repay the resulting debts to the banks.”


There are hopeful signs for new approaches, such as an expanded Quality Assurance and Compliance Unit (QACU) that is described on the Bank website as the internal mechanism enforcing operational and safeguard policies. The QACU assists staff and borrowers with questions about these policies and may be able to help would-be whistleblowers. But, there is no verifiable evidence of improved results overall. Finally, there appears to be no specific provision in the QACU dealing with internal or external whistleblowers.

Another positive step is the web posting of Integrated Safeguards Data Sheets designed to improve pre-voting review for compliance with environmental and related safeguard standards by the Bank. The Data Sheet and compliance function are worth noting because they provide the kind of specific guidance about legal, policy and other requirements that helps whistleblowers as well as routine reviewers. The guidance helps potential whistleblowers understand what they may disclose.

Unfortunately, the Bank’s inadequate disclosure of track records for these systems prolongs GAO’s conclusion that outside reviewers lack information to judge their effectiveness. GAO’s study found insufficient evidence to reach conclusions about effectiveness until annual external audits were performed of internal control mechanisms.

Two earlier GAO reports made the same point; the Bank has failed to provide adequate information to judge the effectiveness of internal control mechanisms. Some of the Bank’s offices, such as the Operations Evaluation Department (OED) and Quality Assurance Group, provide useful programmatic analysis after the fact. Some OED reports are now posted on the Bank’s website.

Assessment: Fail.
22. Outside Oversight and Participation in Reform

Like secret free speech rights, secret reforms are a contradiction in terms. It is insufficient for the Bank privately to correct betrayals of the public trust, without transparency through a public record on the nature of alleged misconduct, its causes, and the evidence and corrective action to prevent recurrence. Exceptions must occur to preserve proprietary information or honor preexisting legal confidentiality commitments. However, there is no basis for trust without some ultimate public record, and timely initial notice to government regulatory or law enforcement officials to permit oversight of how the institution handles the dispute. Open proceedings also are a prerequisite for affected public witnesses and others to contribute evidence for a proceeding they otherwise would not know is taking place.

The Bank whistleblower program does not tolerate external review for corrective action, except anecdotally on a voluntary basis.

The question of outside review was at the heart of the 2003 GAO report. GAO found that the World Bank has taken steps to strengthen its assessments and reports on internal controls. However, Bank management has not submitted to external review of its internal control over operations and compliance matters. The Bank has not announced any plans to conduct a comprehensive assessment of those controls. The Bank’s external financial statement audits don’t provide specific assurance about internal controls over operations and whether the funds are spent for their intended purposes. The Bank should address this issue by introducing some level of oversight over these control categories.

The GAO recommended that the Bank undergo a comprehensive assessment of the internal control over operations and compliance matters and conduct annual evaluations of such controls. 101 This recommendation is essentially repeated in the Leahy-McConnell Amendment’s requirement that U.S. Treasury report on the progress of the MDBs toward publishing such independent audits of policy compliance and operations annually.

A review of procedures on procurement fraud reveals the Bank’s structural discretion toward outside parties. The Bank releases the identity of the person(s) and sanction imposed, but not the evidence. However, the duty is not mandatory, potentially depriving national authorities of the ability to make a separate legal judgment. 102 Moreover, the Director of INT can choose not to pursue fraud and corruption allegations. They need only provide semi-annual summaries to the president and two other Bank offices of decisions not to pursue cases. By the time these summaries are drafted, the evidentiary trail may have grown cold even if they are provided to outside authorities, which appears not to be required. On occasion, the Bank has cooperated with national prosecutors leading to the imprisonment of individuals for bribery. 103

Assessment: Fail.
23. Enfranchising Whistleblowers to Participate in Follow-Up

Even more significant is enfranchising whistleblowers and citizens to file formal actions against illegality exposed by their disclosures. In government statutes, these types of suits are known as private attorney general, or “qui tam” actions in a reference to the Latin phrase for “he who sues on behalf of himself as well as the king.” These statutes can provide both litigation costs (including attorney and expert witness fees) and a portion of money recovered for the government to the citizen whistleblowers who file them, a premise that merges “doing well” with “doing good.”

This approach has been tested in the False Claims Act for whistleblower suits challenging fraud in government contracts. It is the United States’ most effective whistleblower law. Civil fraud recoveries in government contracts have increased from $27 million annually in 1985, to over a billion dollars in 2002.

Another tool that is vital in cases where there are continuing violations is the power to obtain from a court or objective body an order that will halt the violations or require specific corrective actions. The obvious analogy for MDBs is the ability to file for proceedings at Independent Review Mechanisms or Inspection Panels, the same as an outside citizen personally aggrieved by institutional misconduct.

The World Bank has no policy that rewards whistleblowers who disclose information resulting in financial recovery. There is nothing improper with using rewards to help curb corruption.

The Bank recognizes the significant, ongoing contribution whistleblowers can make after they file their initial allegations. “[T]here is great value in the Institution being able to contact complainants to ask for additional information or clarification of their complaints to successfully investigate the grievance or allegation.”

In Bank procedures, however, whistleblowers are disconnected from internal investigations, except for being allowed to phone the hotline for progress reports. This needs to be supplemented so that whistleblowers may pursue additional remedies if they are dissatisfied with the pace or quality of the actions taken by the Bank or its contracted assistants. Finally, the program does not allow whistleblowers to comment on draft resolutions of their charges.

Assessment: Fail.

The Bank fails to institutionalize enfranchisement of whistleblowers, either as participants in internal investigations or as parties eligible to file cases with the Inspection Panel.
24. Committed Institutional Leadership

The intangible element of leadership commitment to announced reforms normally is key to determining how seriously institutional staff take it, and how much is accomplished. Unless a leader demonstrates commitment through highly visible public actions, would-be whistleblowers may dismiss the changes as public relations gestures or empty rhetoric, and the changes may not disrupt ingrained patterns of management secrecy enforced by retaliation.

The Bank president deserves credit for maintaining expert analysts who review problems and make programmatic reports to the public, such as the OED, the Office of General Counsel and the INT staff. However, the Bank president must also take responsibility for few tangible victories from internal whistleblowers and many frustrated high profile critics.

Current President James Wolfenson, has made many progressive statements and initiated a number of reforms. The problem is lack of results and questions about his personal commitment. Most significant, the Bank does not have a published track record of any whistleblower successfully defending his or her rights through the Administrative Tribunal, since 1999. (See box on page 25.)

President Wolfenson rarely appears to exercise his power to reinstate prevailing employees, preferring to exile them with a severance payment. This leaves the impression that even a successful complainant will be removed if they blow the whistle or otherwise upset management. The Bank must go beyond “talk” to get a passing grade on this checklist item.

Assessment: Fail. 🐘 🐘

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GAO Calls For Greater Oversight to Fight Corruption

“Internal oversight is key for preventing, detecting, and addressing corruption. Although the Bank has long had an internal audit function and a system of management controls, the Bank recognized that its internal oversight mechanisms were weak, according to several officials we spoke to. These officials indicated that the Bank lacked a central focal point for reporting and reviewing allegations of wrongdoing and sufficient expertise to investigate allegations of wrongdoing. In addition, while the Bank expected its Bank staff to exhibit strong ethical behavior, the Bank did not have a strong ethics awareness program. The Bank’s external auditor reported in 1998 that the Bank’s internal audit department—a key management oversight unit—had a fairly restricted scope of audit coverage and played a limited role within the Bank. For example, about 78 percent of the 206 internal audit reports conducted from fiscal years 1995 through 1997 were focused on administrative compliance issues, such as country mission office procedures, rather than on determining whether project funds were being used as intended.”

*The above excerpt was extracted from the GAO Report World Bank Group: Management Controls Stronger, but Challenges in Fighting Corruption Remain (April 2000).
<table>
<thead>
<tr>
<th>#</th>
<th>Description</th>
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<tbody>
<tr>
<td>#1</td>
<td>“No Loopholes” Context for Free Speech Rights</td>
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<tr>
<td>#2</td>
<td>“No Loopholes” Subject Matter for Free Speech Rights</td>
</tr>
<tr>
<td>#3</td>
<td>Duty to Disclose Illegality</td>
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<td>#4</td>
<td>Right to Refuse Violating the Law</td>
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<tr>
<td>#5</td>
<td>Protection Against Spillover Retaliation</td>
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<tr>
<td>#6</td>
<td>“No Loopholes” Protection for All Citizens With Disclosures Relevant to the Public Service Mission</td>
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<td>#7</td>
<td>Reliable Anonymity Protection</td>
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<td>#8</td>
<td>Protection Against Unconventional Harassment</td>
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<td>#9</td>
<td>Shielding Whistleblower Rights From Gag Orders</td>
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<td>#10</td>
<td>Providing Essential Support Services for Paper Rights</td>
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<td>Right to a Genuine Day in Court</td>
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<td>Option for Alternative Disputes Resolution With an Independent Party of Mutual Consent</td>
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<td>Waiving Immunity From National Courts</td>
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<td>#14</td>
<td>Realistic Legal Standards to Prove Violation of Rights</td>
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<td>#15</td>
<td>Realistic Time Frame to Act on Rights</td>
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<td>#16</td>
<td>“No Loopholes” Compensation</td>
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<td>Interim Relief</td>
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<td>#18</td>
<td>Coverage for Attorney Fees</td>
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<td>Transfer Option</td>
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<td>#20</td>
<td>Personal Accountability for Reprisals</td>
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<td>#21</td>
<td>Credible Internal Corrective Action Process</td>
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<tr>
<td>#22</td>
<td>Outside Oversight and Participation in Reform</td>
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<td>#23</td>
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<tr>
<td>#24</td>
<td>Committed Institutional Leadership</td>
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</tbody>
</table>
1. This figure is comprised of a three-year average of lending by the International Bank of Reconstruction and Development and the International Development Association of the World Bank Group.


3. When GAP met with the Department of Institutional Integrity (INT) unit in March of 2004, INT staff noted that the Bank was considering modifying its burden of proof standards.


5. See accompanying CD for all publicly available documents used in GAP’s analysis.


8. Id ¶90.

9. Id ¶90.


11. See, e.g., the definition of “classified information”, from the Intelligence Identities Act 50 USC 426. “The term ‘classified information’ means information or material designated and clearly marked or clearly represented, pursuant to the provisions of a statute or executive order (or a regulation or order issued pursuant to the provisions of a statute or executive order) as requiring a specific degree of protection against unauthorized disclosure for reasons of national security.”


13. Id ¶90.


18. Whistleblower Reprisal Cases § 7.2.


20. Ibid.


22. Id § 11.


24. Whistleblower Reprisal Cases § 7.2.

25. Id § 7.4.


27. Id § 8.


29. IDB Whistleblower Policy § 403.

30. The IDB policy on whistleblowers specifies “[c]ompliance with applicable local laws” in § 202.

31. Whistleblower Reprisal Cases § 7.2.


33. Whistleblower Reprisal Cases § 7.2.

34. Ibid.


37. John Fitzgerald, co-author, called the Bank hotline and discussed hotline procedures with the employee who answered the call. He said he was employed by a private firm, formerly known as Pinkerton, Inc. He said that each caller was assigned a case number, thereby allowing each caller to track the case’s progress without revealing his/her identity.

38. Whistleblower Reprisal Cases § 7.3.

39. Id § 7.2.

40. World Bank Department of Institutional Integrity, “Case Summaries.” During a meeting with INT in March of 2004, GAP was provided with whistleblower case summaries.

41. Id § 7.2.

42. Harassment Guidelines § 1.0.

43. Whistleblower Reprisal Cases § 7.2.

44. Id § 7.2.

45. Information Disclosure ¶ 87.


47. Harassment Guidelines § 3.0.


50. Office of Mediation § 4.02 (a); infra # 17.


52. Id § 2.8 and 11-12.

53. Id § 6.


55. Unlike the IDB, no suspensions appear in the rules or statute of the World Bank Tribunal.

56. Tribunal Statute art. 4.1 and 4.2.

57. Id § 89.

58. Tribunal Rule 30.


60. Id § 2.01.

61. The articles of the World Bank and those of the Inter-American Bank, the first regional MDB, on this point are more like each others than the newer MDBs. E.g., “Agreement Establishing the Inter-American Bank.” Article XI, Status, Immunities, and Privileges; § 3, Judicial Proceedings, states: “No action shall be brought against the Bank by members or persons acting for or deriving claims from members… and that Property and assets of the Bank …shall be …immune from all forms of seizure…before the delivery of final judgment against the Bank” [emphasis added]. It then states the property and assets of the Bank may not be seized by executive or legislative action; § 4 and § 6 state: “To the extent necessary to carry out the purpose and functions of the
Bank ... assets ... shall be free from restrictions.” It does not imply that violations of contracts or laws, without remedy, are necessary for the Bank to carry out its functions. On the contrary, the Article indicates every intention to comply with final judicial rulings, even as to attachment of assets, and certainly those that do not threaten its ability to carry out those purposes. How such good intentions may best be carried out, however, remains to be determined.

62 E.g., In addition to the general limits on immunity discussed in the footnote above, there is a generally recognized commercial exception to sovereign immunity when the effect of a violation is direct enough upon interests within the jurisdiction of U.S. courts, _Latcher S.A. Celulose e Papel v. Inter-American Development Bank_, 382 F. 2d 454 (D.C. Cir. 1967); _Republic of Argentina v. Weltower_, 504 U.S. 605, 112 Sup. Ct. Rptr. 2160 (1992). There is also the question of criminal liability that may reach individuals guilty of aiding and abetting, and even failure to act. The list of specific human rights and anti-corruption cases and conventions re-acting this principle is lengthy, beginning with the Nuremberg Trials and continuing today. The courts have also indicated that the President, by Executive Order, and certainly the Congress have the authority to limit immunities in the U.S. (to the extent that those immunities are not clearly required by a treaty such as the articles of agreement), e.g. _Atkinson v. Inter-American Development Bank_, 156 F. 3d 1335 (D.C. Cir. 1998). These issues and alternatives are discussed at length in _International Organizations before National Courts_, August Reinisch, Cambridge University Press, (April 13, 2000). The Congress could also decide, without infringing upon the rights of the MDBs at all, to allocate a portion of funds it might otherwise have chosen to appropriate for the MDBs, to a fund for remediation of harms caused in whole or in part by the Bank or its employees in violation of law or Bank policy. These issues could also be discussed during the replenishment negotiations among the Ministers representing members of the MDBs that provide funding for the MDBs.

63 Tribunal Statute art. XI.


66 Whistleblower Reprisal Cases § 7.4.

67 5 USC 1221(e).

68 Whistleblower Reprisal Cases § 7.2.

69 See e.g., remarks of Senator Carl Levin (D-MI), prior to final oor passage of the Whistleblower Protection Act 134 CONG. REC, S10639 (March 21, 1989): “This provision is intended to preclude the Board from considering such factors as...what the motives of the employee may have been in making the disclosure.”

70 Whistleblower Reprisal Cases § 7.2.

71 World Bank Group, “Appeals Committee” [hereinafter Appeals Committee], § 5

72 Administrative Tribunal Statute art. II.2.


74 The Tribunal may order payment in excess of this amount in exception cases.


76 Id § 14.

77 Tribunal Statute article XII.1.

78 Appeals Committee § 7.01.

79 Tribunal Statute Article XII.4 and Tribunal Rule 13.

80 Tribunal Statute Rule 29


83 See 5 USC 3352 for the Whistleblower Protection Act and Article 16 of the OAS Model Law “Protecting Freedom of Expression Against Corruption”.


85 Id § 15.

86 Ibid; the GAP and review committee also recommended coordination between offices. This coordination seems largely to have taken place in the reorganization of some of the offices that followed the 1999 reports.

87 GAO: WBG Management Controls.

88 GAO: WBG Internal Control.

89 Id § 17.

90 Although the Bank’s charters don’t explicitly call for outside review of internal control over operations and compliance, they do state that the Banks are to take the necessary measures to ensure proceeds of any loan made, guaranteed or participated in by them are used only for the purposes for which the loan was granted.

91 Whistleblower Reprisal Cases § 7.2.


93 “Tuesday Group” meetings have for over twelve years been held once a month for sharing information between agency and NGO representatives concerning oversight of MDB policy and practice (projects, adjustment loans, etc).

94 Inspection Panel § 1.2.

95 Id § I.1.

96 Id.

97 Id.

98 For example, a series of loans connected with a hydroelectric dam and related water management in Senegal has been the subject of warnings in USAID reports for years (http://www.usaid.gov/pubs/mdb, 2001 and 1999). The draft USAID report circulated in the fall of 2000 recommended a consolidated list of policy requirements accompany the project throughout its review process. A loan involving that area is now the subject of a compliance data sheet completed by the Bank: “Africa - Senegal River Basin Water and Environmental Management Program Project -- Document Type: Integrated Safeguards Data Sheet.” At http://www-wds.worldbank.org/servlet/WDS_IBank_Servlet?pcont=deta ils&id=000094946_03061904090610.

99 GAO: WBG Internal Control.


101 GAP: WBG Internal Control.


103 World Bank Department of Institutional Integrity “Case Summaries” [hereinafter Whistleblower Case Summaries].

104 The full quotation is “qui tam pro domino rege quam pro sic ipso in hoc parte sequitur.”

105 Reporting Misconduct § 1.

106 In contrast to U.S. law that allows the complainant to comment on the draft, 5 USC 1213(e) (1).
## APPENDIX ONE: World Bank Checklist Summary

### I. Scope of Coverage

<table>
<thead>
<tr>
<th>Checklist Elements</th>
<th>Analysis/Grade</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. “No Loopholes” Context for Free Speech Rights</td>
<td>Fail: ![Rating 1] ![Rating 1]</td>
</tr>
<tr>
<td>Transparency through whistleblower protection stops at the Bank’s institutional walls. Protection for disclosures is limited to specified in-house channels.</td>
<td></td>
</tr>
<tr>
<td>2. “No Loopholes” Subject Matter for Free Speech Rights</td>
<td>Fail: ![Rating 1] ![Rating 1]</td>
</tr>
<tr>
<td>The Bank adopts the Whistleblower Protection Act structure for the scope of protected disclosures, but fails due to fundamental loopholes. Like the loopholes excluding protected audiences, this is the type of misconduct for which transparency is needed most because of its consequences for the Bank’s public mission.</td>
<td></td>
</tr>
<tr>
<td>The Bank imposes a duty to disclose fraud and corruption, although disclosures of other misconduct are discretionary.</td>
<td></td>
</tr>
<tr>
<td>4. Right to Refuse Violating the Law</td>
<td>Fail: ![Rating 1] ![Rating 1]</td>
</tr>
<tr>
<td>There is no process the implement a basic principle accepted by the Bank—an employee’s right to refuse to disobey the law.</td>
<td></td>
</tr>
<tr>
<td>5. Protection Against Spillover Retaliation</td>
<td>Pass: ![Rating 1] ![Rating 1] ![Rating 1]</td>
</tr>
<tr>
<td>Protection covers exercise of appeal rights and most other common scenarios that trigger harassment.</td>
<td></td>
</tr>
<tr>
<td>6. “No Loopholes” Protection for All Citizens With Disclosures Relevant to the Public Service Mission</td>
<td>Fail: ![Rating 1] ![Rating 1]</td>
</tr>
<tr>
<td>The Bank expressly covers only employees and in-house contract staff from reprisal, leaving outside consultants and contractors without protection.</td>
<td></td>
</tr>
<tr>
<td>The Bank offers a high-quality hotline for anonymous disclosures and systematic, qualified confidentiality protection. The whistleblower has no control over when the Bank exercises sole discretion to lift the anonymity shield and may not even receive notice. This is a qualified pass.</td>
<td></td>
</tr>
<tr>
<td>The Bank has state of the art, no loopholes coverage for staff, including whistleblowers, from the full scope of potential harassment.</td>
<td></td>
</tr>
</tbody>
</table>
### 9. Shielding Whistleblower Rights From Gag Orders
**Fail:**
The Bank has constructed a system of blanket prior restraint for any external whistleblowing disclosures that could be embarrassing or detrimental.

### 10. Providing Essential Support Services for Paper Rights
**Pass:**
The Bank provides a broad menu of informal assistance to counsel and to guide whistleblowers through both no fault and adversarial options.

### II. Forum

#### 11. Right to a Genuine Day in Court
**Fail:**
The appearance of due process is belied by reality. While more complex than other MDBs, the World Bank system is not a genuine opportunity for whistleblowers to achieve justice through due process. It lacks legitimacy and is actually dangerous due to lack of independence, part-time status of adjudicators, the lack of a verifiable record for the majority of appeals, arbitrary substitution of secret investigations for due process rights and failure to apply the Bank’s standards in practice during litigation.

#### 12. Option for Alternative Disputes Resolution With an Independent Party of Mutual Consent
**Fail:**
The Bank has well-developed alternatives to the formal appeals process in its Mediation and Ombudsman offices, but neither of these in-house mechanisms is sufficiently independent to objectively enforce whistleblower rights.

#### 13. Waiving Immunity From National Courts
**Fail:**
The Bank incorrectly asserts immunity from national judicial process.

### III. Rules to Prevail

#### 14. Realistic Legal Standards to Prove Violation of Rights
**Pass:**
The Bank has adopted the modern burden of proof to demonstrate retaliation, but needs to replace subjective tests that put an employee’s motives on trial with objective standards to determine whether a disclosure deserves protection.

#### 15. Realistic Time Frame to Act on Rights
**Pass:**
The Bank provides a realistic statute of limitations timeframe to act on rights.

### IV. Relief for Whistleblowers Who Win

#### 16. “No Loopholes” Compensation
**Fail:**
Prevailing parties do not have a right to reinstatement, the critical factor in meaningful relief for foreign nationals.
17. Interim Relief

**Fail:**

The Bank’s program takes tentative steps toward initial interim relief, but offers only limited interim relief as a rare occurrence.

18. Coverage for Attorney Fees

**Fail:**

The Bank fails to provide a specific guarantee of attorney fees to a whistleblower who substantially prevails, although the Administrative Tribunal awards them regularly.

19. Transfer Option

**Pass:**

The Bank has transferred whistleblowers to protect them, but needs to make it clearer that employees have the right to be free from any potentially hostile post-adjudication work environment.

20. Personal Accountability for Reprisals

**Fail:**

The Bank has an impressive rhetorical mandate for punishing individuals who intimidate whistleblowers. The issue is whether the harassers are being given a free pass. The lack of hard data leaves this an open question.

### V. Making a Difference

21. Credible Internal Corrective Action Process

**Fail:**

The Bank has begun to introduce several in-house mechanisms that promote the flow of information and corrective actions on misconduct. As yet, however, there is no record of their effectiveness in breaking long-term patterns of frustration.

22. Outside Oversight and Participation in Reform

**Fail:**

The Bank whistleblower program does not tolerate external review for corrective action, except anecdotally on a voluntary basis.

23. Enfranchising Whistleblowers to Participate in Follow-Up

**Fail:**

The Bank fails to institutionalize enfranchisement of whistleblowers, either as participants in internal investigations or as parties eligible to file cases with the Inspection Panel.

24. Committed Institutional Leadership

**Fail:**

The president’s positive rhetoric and even the expert work of his staff is overshadowed by facts. The Bank has to go beyond talk with credible procedures and a record of success.
APPENDIX TWO: List of Acronyms and Referenced Documents

ADR—Alternative Dispute Resolution
CAO—Compliance Advisor Ombudsman
EPN—Early Project Notification
GAO—General Accounting Office
GAP—Government Accountability Project
GOSRP—General Oil Spill Response Plan
IBRD—International Bank for Reconstruction and Development
IDA—International Development Association
IDB—Inter-American Development Bank
IFC—International Finance Corporation
IFI—International Financial Institution
INT—Department of Institutional Integrity
MDB—multilateral development bank
MIGA—Multilateral Investment Guarantee Agency
NGO—non-governmental organization
NOAA—National Oceanographic and Atmospheric Administration
PRI—Private Sector Department
OAS—Organization of American States
INT—Department of Institutional Integrity
OECD—Organization of Economic Cooperation and Development
SEC—Securities and Exchange Commission
SOX—Sarbanes-Oxley Amendment
USED—United States Executive Directors
USAID—United States Agency for International Development
WBG—World Bank Group

List of Referenced Documents

3. Form of First Section of Application Drawn Up in Accordance With Rule 7, WBG. (2003).
5. Disclosure of Information Policy, IDB.
6. Financial Times
7. Insight on the News.
8. Whistleblower Case Summaries, INT.
17. Inspection Panel Operating Procedures, IBRD and IDA.
24. Sanctions Committee Procedures, IBRD and IDA.

For copies of the documents listed above, please contact GAP. Publicly available Bank documents can be found at www.worldbank.org.
APPENDIX THREE: Leahy-McConnell Amendment

ADMINISTRATIVE PROVISIONS RELATED TO MULTILATERAL DEVELOPMENT INSTITUTIONS
SEC. 581. Title XV of the International Financial Institutions Act (22 U.S.C. 262o-2) is amended by adding at the end the following:

‘SEC. 1504. ADMINISTRATIVE PROVISIONS.
'(a) ACHIEVEMENT OF CERTAIN POLICY GOALS- The Secretary of the Treasury should instruct the United States Executive Director at each multilateral development institution to inform the institution of the following United States policy goals, and use the voice and vote of the United States to achieve the goals at the institution before June 30, 2005:

'(1) No later than 60 calendar days after the Board of Directors of the institution approves the minutes of a Board meeting, the institution shall post on its website an electronic version of the minutes, with material deemed too sensitive for public distribution redacted.

'(2) The institution shall keep a written transcript or electronic recording of each meeting of its Board of Directors and preserve the transcript or recording for at least 10 years after the meeting.

'(3) All public sector loan, credit and grant documents, country assistance strategies, sector strategies, and sector policies prepared by the institution and presented for endorsement or approval by its Board of Directors, with materials deemed too sensitive for public distribution redacted or withheld, shall be made available to the public 15 calendar days before consideration by the Board or, if not then available, when the documents are distributed to the Board. Such documents shall include the resources and conditionality necessary to ensure that the borrower complies with applicable laws in carrying out the terms and conditions of such documents, strategies, or policies, including laws pertaining to the integrity and transparency of the process such as public consultation, and to public health and safety and environmental protection.

'(4) The institution shall post on its website an annual report containing statistical summaries and case studies of the fraud and corruption cases pursued by its investigations unit.

'(5) The institution shall require that any health, education, or poverty-focused loan, credit, grant, document, policy, or strategy prepared by the institution includes specific outcome and output indicators to measure results, and that the indicators and results be published periodically during the execution, and at the completion, of the project or program.

'(6) The institution shall establish a plan and schedule for conducting regular, independent audits of internal management controls and procedures for meeting operational objectives, complying with Bank policies, and preventing fraud, and making reports describing the scope and findings of such audits available to the public.

'(7) The institution shall establish effective procedures for the receipt, retention, and treatment of: (A) complaints received by the Bank regarding fraud, accounting, mismanagement, internal accounting controls, or auditing matters; and (B) the confidential, anonymous submission by employees of the Bank of concerns regarding fraud, accounting, mismanagement, internal accounting controls, or auditing matters.

'(b) Not later than September 1, 2004, and 6 months thereafter, the Secretary of the Treasury shall submit a report to the appropriate congressional committees describing the actions taken by each multilateral development institution to implement the policy goals described in subsection (a), and any further actions that need to be taken to fully implement such goals.

'(c) PUBLICATION OF WRITTEN STATEMENTS REGARDING INSPECTION MECHANISM CASES- No later than 60 calendar days after a meeting of the Board of Directors of a multilateral development institution, the Secretary of the Treasury should provide for publication on the website of the Department of the Treasury of any written statement presented at the meeting by the United States Executive Director at the institution concerning--

'(1) a project on which a claim has been made to the inspection mechanism of the institution; or

'(2) a pending inspection mechanism case.

'(d) CONGRESSIONAL BRIEFINGS- The Secretary of the Treasury or the designee of the Secretary should brief the appropriate congressional committees, when requested, on the steps that have been taken by the United States Executive Director at any multilateral development institution, and by any such institution, to implement the measures described in this section.

'(e) PUBLICATION OF ‘NO’ VOTES AND ABSTENTIONS BY THE UNITED STATES- Each month, the Secretary of the Treasury should provide for posting on the website of the Department of the Treasury of a record of all ‘no’ votes and abstentions made by the United States Executive Director at any multilateral development institution on any matter before the Board of Directors of the institution.

'(f) MULTILATERAL DEVELOPMENT INSTITUTION DEFINED- In this section, the term ‘multilateral development institution’ shall have the meaning given in section 1701(c)(3).’.
Dr. Stiglitz, a Nobel prize-winning member of the Columbia University faculty, continues to call for greater accountability at the MDBs. He was quoted in a newspaper article describing the steps that MDBs employ to strip the assets of developing countries. The Observer summarize Stiglitz’s argument as follows:

Step one is privatization, or “briberization”. National leaders are persuaded to sell national assets cheaply. “Stiglitz noted that ‘you could see their eyes widen’ at the prospect of ten percent commissions paid to Swiss bank accounts for simply shaving a few billion off the sale price of a national asset.”

Step two is “capital market liberalization,” where foreign investors speculate in everything from currency to real estate, create a bubble as prices inflate and then take profits.

Step three is to cut subsidies for food and fuel to balance the government’s books.

Step four is to insist on “free trade”, for example, allowing cheaper subsidized foreign food products to undercut local foodstuffs.

It is equally important to note what happens to Bank employees who “play by the rules”. The MDBs provide extremely generous retirement plans that allow employees to come back as highly paid consultants. Many of the senior management assume highly lucrative positions in the private sector such as Mr. Stanley Fischer, who retired from the IMF to become the head of the new Sovereign Clients Group of CitiGroup International.

Bank whistleblowers are distinct from their counterparts in national governments or foreign services. They are often away from their homes on extended work visas. Staff can easily be dismissed and sent home. The work culture is extremely insular. Many documents are labeled “for official use only.”

Notwithstanding these inherent impediments to the ow of information, whistleblower activities have a long-standing tradition at the MDBs. Bank staff who uncover problems with loans or policies often share documents with outside watchdog groups. This “leaked” information has led to the discovery of countless ill-conceived and harmful projects. These unnamed whistleblowers are unsung heroes who have contributed greatly to efforts to improve the transparency and accountability of the Banks.

The MDBs have been known to retaliate against employees who dare to speak out. In addition to many lesser-known whistleblowers, two well-known authors and professors were once World Bank whistleblowers. A World Bank employee William Easterly lost his job despite being promised a leave of absence to promote a book that criticized the Bank. The book, entitled *The Elusive Quest for Growth: Economists’ Adventures and Misadventures in the Tropics*, chronicled the numerous failures of World Bank development assistance projects and policies.

A higher level World Bank whistleblower is Dr. Joseph Stiglitz, the former Chief Economist who fell out of favor with the Bank after speaking out publicly in opposition to the “Washington Consensus.” The Consensus is for the use of massive privatization schemes and the removal of barriers to capital flows to stimulate economic growth in developing countries and, indirectly, help the poor. While these results are often mixed at best, some involved make large profits, and the countries’ debts are undeniably real.


The process of reviewing proposed MDB loans relies upon several departments and agencies. The agencies work together to assess risks and propose measures, including alternative courses of action, to eliminate loan-associated risks. An underlying goal of sustainable development is maintaining the natural resources base on which economic and social development depend. Even for programs with narrower goals such as reducing poverty, USAID has found that success is transitory unless environmental soundness is fully assessed and integrated into such programs.

Congress determined in the late 1980’s that U.S. assistance to the MDBs should promote the sustainable use of natural resources, the protection of the environment, public health and the status of indigenous peoples. Congress also found that “MDB projects, policies and loans have failed... to provide adequate safeguards” and that borrowers do not ensure that appropriate policies and procedures are in place to use natural resources sustainability.

Congress mandated that Treasury, State, the Environmental Protection Agency, the National Oceanographic and Atmospheric Administration, the Council on Environmental Quality and USAID help develop and promote mechanisms and institutional and procedural arrangements within the MDBs to ensure sustainable use of natural resources and protection of these values. Congress set out several elements of USAID’s role in Title XIII:

- In the course of reviewing assistance proposals of the multilateral development banks, the Administrator of the Agency for International Development shall ensure that other agencies and...overseas missions…analyze…the environmental impacts of multilateral development loans well in advance of such loans’ approval to determine whether the proposals will contribute to the sustainable development of the borrowing country...
- [S]uch reviews shall address the economic viability of the project, adverse impacts on the environment, natural resources, public health, and indigenous peoples, and recommendations as to measures, including alternatives, that could eliminate or mitigate adverse impacts...
- If...any such loan is particularly likely to have substantial adverse impacts, the Administrator...in consultation with the Secretary of the Treasury and the Secretary of State, shall ensure that an affirmative investigation of such impacts is undertaken in consultation with relevant Federal agencies. If not classified under the national security system of classification, the information collected pursuant to this paragraph shall be made available to the public...
- [T]he Administrator...shall identify those assistance proposals likely to have adverse impacts on the environment, natural resources, public health, or indigenous peoples. The proposals so identified shall be transmitted to the Committees [of jurisdiction in the U.S. Congress].

Other sections of the law require U.S. departments and representatives to encourage MDBs to promote renewable, nonpolluting energy and other environmentally benign technologies to enhance development and the environment and, in the process, to coordinate those efforts with USAID.

USAID sends information about proposed MDB loans to its missions around the world for review and comment through its Early Project Notification (EPN) system. USAID is directed to share information derived from the EPN with Treasury, other agencies, and the public.

Complementing the interagency process is the Tuesday Group of concerned NGOs and government agencies. Meeting monthly in Washington for more than a decade, the Tuesday Group reviews MDB projects and policies. USAID and the Bank Information Center co-chair the meetings. Minutes from the meetings are shared with about 165 NGOs worldwide.

**The Pelosi Amendment, Environmental Assessments and the Interagency and Public Review Process (International Financial Institutions Act, Title XIII)**

The Pelosi amendment in most cases requires that the United States not vote in favor of:

- …any MDB action which would have a significant effect on the human environment, unless for at least 120 days before the date of the vote an assessment analyzing the environmental impacts of the proposed action and of alternatives ...has been completed by the borrowing country or the institution, and made available to the board of directors of the institution.

The Pelosi amendment also requires that the assessment or a comprehensive summary must, in most cases, have been made available in the same time frame to the “bank, affected groups, and local non governmental organizations.” Consideration of the adequacy of such assessments is part of the USAID and interagency process of reviewing proposals and making recommendations to the U.S. Executive Directors (U.S. government representatives to each MDB.)
An international review system was required in Title XIII, section 1304 but has not been put in place:

The Secretary of the Treasury, in consultation with the Secretary of State and the Administrator of the Agency for International Development, shall create a system for cooperative exchange of information with other interested member countries on assistance proposals of the multilateral development banks.

From 2000 to 2002, USAID worked with Treasury, State and other government agencies on implementing this process, in a few instances. For example, in the case of the Chad-Cameroon pipeline, USAID received an analysis by the Netherlands Commission on an Environmental Impact Assessment of the project’s General Oil Spill Response Plan (GOSRP) from concerned NGOs. USAID asked other U.S. agencies with special expertise to review the GOSRP. The government experts agreed with the Dutch position and shared this information with USAID. The concern was incorporated into the official U.S. position and led to a requirement that the more detailed response plans be prepared earlier in project’s development.

The Netherlands Commission proposed that an international body be established to review each year a selection of important environmental assessments, particularly ones with international ramifications, to improve the practice worldwide and to provide decision-makers with the best available analysis.

USAID and other core reviewing agencies were encouraging other federal agencies and, as appropriate, other governments, to review the environmental soundness of MDB proposals in 2001. For example, the Interior Department has expertise in migratory birds and other internationally shared wildlife. The National Oceanographic and Atmospheric Administration has special expertise in coastal pollution from oil tanker operations.

In the case of other countries, the G-8 nations have expressed interest in improving the transparency and performance of the MDBs regarding safeguard policies and due diligence. In 2001 and 2002, USAID began to reach out, for example, to the Netherlands, the United Kingdom and Japan, because those nations have indicated a desire to cooperate on these issues.

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2 Title XIII of the International Financial Institutions Act, 22 USC 262m.
3 Ibid.
4 22 U.S.C. 262j and 262f.