

FIGHTING CORRUPTION IN LATIN AMERICA WITH MULTILATERAL DEVELOPMENT ASSISTANCE

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ABSTRACT

At the firm level, bribery and corruption can substantially distort international trade by giving unfair advantages to potentially less-competitive firms, allowing bribe recipients to rely on personal enrichment rather than quality to assess the market. At the state level, bribery and corruption can similarly distort the market by skewing the delivery of goods and services to the government in favor of corrupt firms. Anti-bribery laws exist at the state and multilateral level in many instances, but these laws have limited reach and suffer weak enforcement in many countries. Some laws, such as the U.S. Foreign Corrupt Practices Act, have been applied extraterritorially through evidence of a U.S. nexus. But many firms avoid scrutiny by focusing on domestic transactions, including those with their own government institutions.

Two mechanisms have arisen recently to enhance the push for broad acceptance and enforcement of anti-bribery laws. These include trade agreements and multilateral loan agreements. Many trade agreements such as the Trans-Pacific Partnership include strict anti-bribery provisions applicable to member nations. These often promote fairness in sourcing and procurement and, accordingly, trade and investment. Likewise, loan agreements from multilateral institutions such as the World Bank include rigid anti-corruption policies and investigative and enforcement offices that can debar contractors across a number of multilateral institutions, risking millions in loans to countries in need. Both of these mechanisms apply incentives and disincentives to encourage compliance with principles of fairness and transparency in doing business.

Much has been written about anti-corruption provisions in trade agreements already.¹ In this paper, I will address the application of anti-

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bribery and anti-corruption provisions in the context of multilateral loan agreements entered into by multilateral development banks (MDBs), specifically focused on those facilitated by the Inter-American Development Bank for Latin American countries. I will explain the applicable policies and enforcement of those provisions and provide an analysis of their effect on levels of trade and corruption in recipient countries.

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INTRODUCTION

The impact of corruption is disproportionate to the level and frequency at which it occurs and [it] often has serious ramifications in terms of public confidence across public and private sectors.²

If a bank were to provide you with a loan of \$1 million to fund a start-

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1. See, e.g., Amy Novak Fuentes, *How Free Trade Agreements Can Improve Anti-corruption Enforcement: A Case Study of the United States and Colombia*, 45 PUB. CONT. L.J. 479 (2016) (suggesting that the United States could cut off the demand for bribes by invoking Free Trade Agreement (FTA) provisions to enforce anti-corruption obligations with its trading partners); ALINA MUNGIU-PIPPIDI, ANTI-CORRUPTION PROVISIONS IN EU FREE TRADE AND INVESTMENT AGREEMENTS: DELIVERING ON CLEAN TRADE 5 (2018) (claiming that “international trade agreements have the potential to act as the exogenous factor breaking the vicious circle of corruption in economies based on privileged connections rather than fair competition”).

2. NATIONAL CRIME AGENCY, NATIONAL STRATEGIC ASSESSMENT OF SERIOUS AND ORGANISED CRIME 13 (2004).

up venture that you proposed, and you spent 75% of that money on the business and the other 25% on a much-needed vacation, so long as you paid back 100% of the loan, the bank's objectives would be met. The fact that you only required \$750,000 for your business is of no consequence so long as the bank is repaid. However, the additional debt resulting from your vacation splurge creates a strain on you and others (such as your spouse or business partners) that must repay the debt.

In many ways, this has been the attitude of multilateral lending institutions, such as the World Bank and the Inter-American Development Bank (IDB), in the provision of development aid to countries in need. They loan money to countries with certain deliverables in mind, such as the construction of a dam, improvement of public schools, or development of more transparent governance programs. Whether the loan is in fact utilized completely for the project may be less important to the lender than completion of the stipulated goals.³ Completion of the project becomes the basis for the loan, and the loan recipient is left to determine how best to utilize those funds while still completing the contract. However, unlike in the case of a personal loan, the burden to repay the entire debt falls upon the recipient country's taxpayers, who may not be benefitting completely from the investment.

This approach has allowed corruption, already pernicious in Latin America, to seep into these loan agreements and substantially weaken their effect on economic development. The IDB and other multilateral development banks (MDBs) have turned a corner in the last two decades by bringing corruption into the sunlight and exposing it for what it is: a drain on economic growth and development. MDBs today combat corruption by including *prohibited practice* clauses that identify four types of corruption that would lead to investigation and potential debarment from future contracts for a period of time. As part of this effort, MDBs now cross-debar firms to prevent corrupt entities from receiving contracts from several institutions in that or other countries.⁴ Accordingly, companies looking for work with a government that is being funded by an MDB should be incentivized to follow the anti-corruption standards laid out in these agreements.

3. See Courtney Hostetler, *Going from Bad to Good: Combating Corporate Corruption on World Bank-Funded Infrastructure Projects*, 14 YALE HUM. RTS. & DEV. L.J. 231, 235 (2011) (noting that the bank "look[s] more than anything else at what the project achieves . . . We look, for instance, at whether schools get built, not how the money was spent to build them." (quoting Jeffrey A. Winters, *Criminal Debt*, in REINVENTING THE WORLD BANK 101, 111 (Jonathan R. Pincus & Jeffrey A. Winters eds., 2002))).

4. CROSS DEBARMENT: AGREEMENT FOR MUTUAL ENFORCEMENT OF DEBARMENT DECISIONS AMONG MULTILATERAL DEVELOPMENT BANKS, <http://lnadbg4.adb.org/oai001p.nsf/> [<https://perma.cc/Q9J4-3XUR>] (last visited Mar. 31, 2019).

MDBs provide approximately \$100 billion in annual loans to facilitate development projects, improve governance and promote democratic best practices.⁵ Rampant corruption throughout the target recipients of this development aid threaten to dramatically limit the impact of that aid. Accordingly, these institutions have turned their attention to accountability efforts that help them to reduce the likelihood that donor funds are misappropriated for fraudulent or corrupt purposes. Mandating compliance with these anti-corruption practices is now a standard aspect of the loan and procurement process.⁶

In this paper, I consider the effectiveness of anti-corruption provisions within multilateral loan agreements, with an emphasis on loans in Latin America provided by the IDB. I begin with a brief overview of corruption and efforts to combat it in the region, as well as an examination of its effects on communities and economic development. I then discuss the loan procurement process through the IDB with particular emphasis on anti-corruption provisions. I go on to discuss examples of anti-corruption actions in practice to highlight the ineffectiveness of efforts made by the IDB to combat corruption. And finally, I close with suggestions for working toward more effective anti-corruption efforts in the future.

I. CORRUPTION

“Just as fish moving under water cannot possibly be found out either as drinking or not drinking water, so government servants employed in government work cannot be found out [while] taking money [for themselves].”⁷

In his comprehensive history of corruption through the ages, Italian scholar Carlo Alberto Brioschi explains that the act of gift-giving in exchange for favors or positions was routine, accepted, and often encouraged.⁸ According to Brioschi, from ancient Mesopotamia through biblical times, it was expected that a suitable gift be given to politicians and church leaders to gain favor or even to be given an audience. There was no association between what we would consider to be *bribery* and unethical actions.

5. REBECCA M. NELSON, MULTILATERAL DEVELOPMENT BANKS 4 (2018), <https://fas.org/sgp/crs/row/R41170.pdf> [<https://perma.cc/NAC5-ZGKW>].

6. Courtney Hostetler, *Going from Bad to Good: Combating Corporate Corruption on World Bank-Funded Infrastructure Projects*, 14 YALE HUM. RTS. & DEV. L.J. 231, 235 (2011).

7. KAUTĀLYA, CHANAKYA’S ARTHAŚĀSTRA, OR, SCIENCE OF POLITICS 80 (R. Shamasastri B. A. trans., 1908).

8. CARLO ALBERTO BRIOSCHI, CORRUPTION: A SHORT HISTORY (2017).

Bribery can be defined as “a corrupt benefit given or received to influence official action so as to afford the giver better than fair treatment.”⁹ Looking back on historical precedents reminds us how routine bribery, fraud, and collusion were to the conduct of business and politics. Very few examples of efforts to combat these practices or even to draw attention to their negative impact on the broader economy can be found prior to the modern era. Corruption ensured that those with power maintained that power, and those without would remain oppressed.

The United States Constitution may be one of the oldest documents establishing provisions to fight corruption. Article I section 9 of that document prohibits the acceptance of gifts or favors by U.S. government officials from foreign governments or their representatives.¹⁰ Commonly known as the *emoluments clause*, the language reads as follows: “no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince or foreign State.”¹¹ While no certain definition of *emolument* has been settled upon, this clause has been the basis of at least two lawsuits against the Trump Administration for profits received from President Trump’s private property holdings.¹²

Little effort to combat corruption arose between the passage of the U.S. Constitution, which did very little to prosecute corruption, and the U.S. Foreign Corrupt Practices Act of 1977 (FCPA), the first major law to outlaw bribery.¹³ The FCPA is the most widely enforced anti-corruption legislation in the world, yielding substantial fines and high-profile, cross-border prosecutions. The U.S. Securities and Exchange Commission (SEC) and the U.S. Department of Justice (DOJ) are the agencies responsible for the enforcement of this Act and have taken aggressive measures to do so.¹⁴ The number of cases brought by the SEC and DOJ since 2006 has dramatically increased, reflecting a growing trend toward

9. See James Lindgren, *The Theory, History, and Practice of the Bribery-Extortion Distinction*, 141 U. PA. L. REV. 1695, 1699 (1993) (explaining the distinction between bribery and extortion, finding the former to be paying for an undeserved benefit and the latter to be extracting a payment for a benefit already earned).

10. U.S. CONST. art. I, § 9.

11. *Id.*

12. E.g., Katie Benner, *Judge Denies Trump’s Request to Dismiss Emoluments Lawsuit*, N.Y. TIMES, Sept. 28, 2018.

13. 15 U.S.C. § 78dd-1 (2012).

14. *Spotlight on Foreign Corrupt Practices Act*, U.S. SEC. & EXCHANGE COMMISSION (Feb. 2, 2017), <https://www.sec.gov/spotlight/foreign-corrupt-practices-act.shtml> [<https://perma.cc/5R8K-L4HJ>].

leveling the global business playing field through the use of disincentives.¹⁵

What prompted passage of the FCPA was a series of events that led to public, and subsequently congressional concern over illicit payments to foreign officials. Among these were a series of payments made by major U.S. firms, such as Lockheed Martin, Northrop Grumman, Gulf Oil and Mobil Oil, all of which appeared to be intended to influence foreign elections.¹⁶ In addition, in 1974, Colombia, Costa Rica, Ecuador, Guatemala, Honduras, Nicaragua and Panama united to form an export cartel for bananas in an effort to raise the price of banana exports to the United States. The cartel initially proposed an export tax of \$1.00 for every forty-pound crate of bananas exported to the U.S. After threats by major banana companies to withdraw from these markets, some countries dropped their tax. In Honduras, the tax was reduced to \$0.50. After the head of United Fruit Brands jumped to his death from their corporate headquarters in New York, the SEC opened an investigation into United Fruit's activities in Honduras. The SEC discovered that the company had paid \$2.5 million in bribes to the Honduran Minister of Economy to reduce the tax from \$0.50 to \$0.25 per crate. When this occurred, no law existed to prevent bribery of foreign officials by U.S. companies. Accordingly, there was no possibility to bring a bribery or corruption lawsuit.¹⁷

With no direct tools to punish the actions of the U.S. fruit companies, the SEC chose to release information about their actions in Honduras to shareholders of United Fruit given the effect that it might have on the value of the stock. That revelation led to public outcry in Honduras, leading to a revolution in Honduras that overthrew their military government.¹⁸ It became apparent that a more targeted solution to foreign bribery needed to be put into place.

The 1977 FCPA makes it unlawful for any issuer (entity traded on a U.S. stock exchange) or any officer, director, employee or agent of that entity, to offer a payment or promise to pay or gift anything of value to a foreign official in an effort to influence that official to violate the law or secure an improper advantage in order to obtain or retain business.¹⁹ An

15. See DOJ and SEC Enforcement Actions per Year, FOREIGN CORRUPT PRACTICES ACT CLEARINGHOUSE, <http://fcpa.stanford.edu/statistics-analytics.html> [<https://perma.cc/96ZS-N5C5>] (reporting a rise from 14 cases in 2005 to 56 in 2010).

16. See Mike Koehler, *The Story of the Foreign Corrupt Practices Act*, 73 OHIO ST. L.J. 929, 932–35 (2012) (discussing the Watergate Scandal and the subsequent investigation that led to a number of bribery accusations of U.S. firms).

17. *Id.*

18. See Arthur F. Mathews, *Internal Corporate Investigations*, 45 OHIO ST. L.J. 655, 665–67 (1984) (describing the conditions leading to the revelation of governmental involvement in the Bananagate scandal).

19. 15 U.S.C. § 78dd-1(a) (2012).

exception was made in the Act for *facilitation payments*, which include payments made to facilitate an already legal process.²⁰ Passage of this Act was a milestone in anti-corruption efforts, as it was the first major law that attempted both to root-out bribery in corporate America and also to govern foreign bribery by ensnaring any business that had an association with the United States.²¹

Initially, the FCPA was used only in a handful of prosecutions, resulting in minimal fines.²² But in the past decade, the FCPA has become a viable threat against corrupt businesses and both prosecutions and fines have soared. Significant FCPA prosecutions have included United Technologies,²³ Credit Suisse,²⁴ Dun and Bradstreet,²⁵ and Legg Mason,²⁶ all of which settled their cases in 2018. Actions have not been limited to U.S. firms. The SEC has prosecuted companies such as UK-based Glaxo-Smith-Kline,²⁷ Brazil-based Embraer,²⁸ and the France-based Total,²⁹ among many others. However, it is important to note that these are all multinational companies trading on the U.S. stock exchange.

Since 2006, the FCPA has served as a model for successful investigation and enforcement of domestic and multinational firms engaged in corrupt acts. Between 2007 and 2009, the SEC doubled the number of

20. 15 U.S.C. § 78dd-1(b) (2012).

21. Hurd Baruch, *The Foreign Corrupt Practices Act*, HARV. BUS. REV., Jan.–Feb. 1979, at 32.

22. See Amy Deen Westbrook, *Enthusiastic Enforcement, Informal Legislation: The Unruly Expansion of the Foreign Corrupt Practices Act*, 45 GA. L. REV. 489, 495 (2011) (noting that only a handful of cases were brought between 1977 and 2006).

23. Press Release, U.S. Secs. & Exch. Comm'n, United Techs. Charged with Violating FCPA (Sept. 12, 2018), <https://www.sec.gov/news/press-release/2018-188> [<https://perma.cc/Z6H7-E7DZ>].

24. Press Release, U.S. Secs. & Exch. Comm'n, SEC Charges Credit Suisse with FCPA Violations (July 5, 2018), <https://www.sec.gov/news/press-release/2018-128> [<https://perma.cc/G9UB-3U7T>].

25. Press Release, U.S. Secs. & Exch. Comm'n, SEC Charges Dun & Bradstreet with FCPA Violations (Apr. 23, 2018), <https://www.sec.gov/enforce/34-83088-s> [<https://perma.cc/c57GQ-GN7H>].

26. Press Release, U.S. Secs. & Exch. Comm'n, Legg Mason Charged with Violating the FCPA (Aug. 27, 2018), <https://www.sec.gov/news/press-release/2018-168> [<https://perma.cc/E4X8-WSAX>].

27. *GlaxoSmithKline Pays \$20 Million Penalty to Settle FCPA Violations*, U.S. SEC. & EXCHANGE COMMISSION (Sept. 30, 2016), <https://www.sec.gov/litigation/admin/2016/34-79005-s.pdf> [<https://perma.cc/4QJ7-XFPY>].

28. Press Release, U.S. Secs. & Exch. Comm'n, Embraer Paying \$205 Million to Settle FCPA Charges (Oct. 24, 2016), <https://www.sec.gov/news/pressrelease/2016-224.html> [<https://perma.cc/B5XE-545S>].

29. Press Release, U.S. Secs. & Exch. Comm'n, SEC Charges Total S.A. for Illegal Payments to Iranian Official (May 29, 2013), <https://www.sec.gov/news/press-release/2013-2013-94htm> [<https://perma.cc/FR39-CBR4>].

cases brought in the first 30 years of the FCPA.³⁰ As of 2018, the SEC and DOJ have brought over 500 enforcement actions under the FCPA with penalties for firms and individuals totaling over \$18 billion.³¹ This number includes the largest FCPA settlement in history, resulting in a \$3.5 billion fine paid by the Brazilian construction firm Odebrecht in 2016.³²

Beyond the FCPA, a number of domestic and multilateral conventions intended to prevent bribery have come into existence.³³ Perhaps the most substantial of these conventions are the 2005 United Nations Convention Against Corruption (UNCAC),³⁴ which was proposed only two years after the FCPA took effect, and the 1999 Organization for Economic Cooperation and Development (OECD) Anti-bribery Convention.³⁵ Those two international laws bind state parties and not private entities, as the FCPA does. The OECD Convention is narrow in scope and applies only to cases of bribery of public officials. It also only applies to OECD member countries, which stand at thirty-six as of this publication.³⁶ However, it is stricter than the FCPA in that it forbids facilitation payments, which the FCPA allows in many instances.³⁷ UNCAC is much broader, as it applies to public and private entities engaged in bribery, money laundering, and

30. John Ashcroft & John Ratcliffe, *The Recent and Unusual Evolution of an Expanding FCPA*, 26 NOTRE DAME J.L. ETHICS & PUB. POL'Y 25, 27 (2012).

31. See, e.g., Stephanie Ashe, *Stanford Law School and Sullivan & Cromwell LLP Expand Foreign Corrupt Practices Act Clearinghouse*, SLS (Oct. 15, 2018), <https://law.stanford.edu/press/stanford-law-school-and-sullivan-cromwell-llp-expand-foreign-corrupt-practices-act-clearinghouse/> [<https://perma.cc/2DEQ-8AFG>] (“Since its enactment in 1977, the FCPA has generated more than 500 enforcement actions by the Department of Justice (DOJ) and the Securities and Exchange Commission (SEC), implicating transactions in more than 100 countries. Defendants in these actions have paid global fines and penalties in excess of \$18 billion.”).

32. Press Release, U.S. Dep’t of Justice, *Odebrecht & Braskem Plead Guilty & Agree to Pay at Least \$3.5 Billion in Glob. Penalties to Resolve Largest Foreign Bribery Case in History* (Dec. 21, 2016), <https://www.justice.gov/opa/pr/odebrecht-and-braskem-plead-guilty-and-agree-pay-least-35-billion-global-penalties-resolve> [<https://perma.cc/69Y2-W7C>].

33. E.g., U.K. Bribery Act 2010 (Eng.); Convention Against Corruption Involving Public Officials, 1977 O.J. (C 195) 1.

34. U.N. Convention Against Corruption, *opened for signature* Dec. 9, 2003, 2349 U.N.T.S. 41 (entered into force Dec. 16, 2005) [hereinafter UNCAC].

35. OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Dec. 17, 1997, 37 I.L.M. 1 (entered into force Feb. 15, 1999) [hereinafter OECD Anti-Bribery Convention].

36. *List of OECD Member Countries*, OECD, <http://www.oecd.org/about/membersandpartners/list-oecd-member-countries.htm> [<https://perma.cc/67MM-LAAZ>].

37. See Jon Jordan, *The OECD’s Call for an End to “Corrosive” Facilitation Payments and the International Focus on the Facilitation Payments Exception Under the Foreign Corrupt Practices Act*, 13 U. PA. J. BUS. L. 881, 881–82 (2011) (explaining the 2009 change to the OECD Convention prohibiting facilitation payments).

abuse of power. It also has a much broader scope, applying to 186 countries.³⁸

These conventions and statutes govern corrupt practices within the parameters set by their governing institutions, such as the UN for the UNCAC, the Organization of American States (OAS) for the Inter-American Convention Against Corruption (IACAC) and the OECD for the Anti-bribery Convention. Similarly, individual countries often enact domestic legislation prohibiting corrupt practices that operate within their domestic jurisdictional parameters in addition to signing on to these multilateral conventions. For instance, Colombia adopted the platform of the IACAC in 1997, laying the foundation for its domestic anti-bribery regime.³⁹ It went on to sign UNCAC in 2003.⁴⁰ Colombia's criminal code prohibits bribery of public officials and of private entities.⁴¹ Colombia also ratified the OECD Anti-corruption Convention after updating their domestic legislation to align with the requirements of that Convention.⁴²

However, the mere adoption of anti-bribery platforms does not necessarily translate to a reduction in bribery and corruption. Countries must take the initiative to dedicate resources to the enforcement of these laws. Colombia, for instance, recently enacted the Transnational Corruption Act (2016) to strengthen enforcement of existing anti-bribery laws and has begun to investigate and prosecute criminal bribery, levying fines of \$1.8 million and \$50,000 in two recent prosecutions.⁴³ However, the Colombian legislature subsequently failed to enact reforms that would have provided more transparency to transactions by government officials—including the publication of tax returns—because the legislators, which the reforms targeted, did not constitute a quorum for a vote.⁴⁴ Similarly, Brazil recently faced the largest corruption and bribery scandal to confront Latin

38. *Signature and Ratification Status*, UNODC, <https://www.unodc.org/unodc/en/corruption/ratification-status.html> [<https://perma.cc/KVS2-3CML>] (last updated June 26, 2018).

39. L. 412, Noviembre 6, 1997, DIARIO OFICIAL [D.O.] (Colom.).

40. L. 970, Julio 13, 2005, DIARIO OFICIAL [D.O.] (Colom.) (implementing the provisions of the UNCAC).

41. L. 404, Septiembre 16, 1997, DIARIO OFICIAL [D.O.] (Colom.); L. 405, Septiembre 30, 1997, DIARIO OFICIAL [D.O.] (Colom.); L. 406, Octubre 24, 1997, DIARIO OFICIAL [D.O.] (Colom.).

42. L. 1778, Febrero 2, 2016, DIARIO OFICIAL [D.O.] (Colom.).

43. Matteson Ellis, *Colombia Ramps Up Enforcement of Transnational Bribery Law*, FCPAMÉRICAS BLOG (July 12, 2018), <http://fcpamericas.com/english/anti-corruption-compliance/colombia-ramps-enforcement-transnational-bribery-law/> [<https://perma.cc/BVC9-A7FN>].

44. Julia Symmes Cobb, *Colombian Anti-Corruption Referendum Fails to Meet Quorum*, REUTERS (Aug. 26, 2018, 4:57 PM), <https://www.reuters.com/article/us-colombia-referendum/colombian-anti-corruption-referendum-fails-to-meet-quorum-idUSKCN1LB0GI> [<https://perma.cc/7NNZ-D4XG>].

America in decades, tied to bribes made by the state-owned oil company Petrobras. Brazil signed on to the UNCAC in 2005, long before the Petrobras scandal broke out. Seeing that being a part of that convention was not enough, Brazil enacted its own anti-corruption law in 2014 to align it with the principles of the OECD.⁴⁵ That law, known as the Clean Companies Act, provided for civil and administrative penalties for bribes of public officials. Shortly thereafter, the Brazilian congress attempted to modify its criminal code to include more severe penalties for acts such as those committed in the vast *Car Wash* scandal (this legislation is pending as of the time of this publication).⁴⁶

Thus far, many companies in Latin America have faced few repercussions for engaging in corrupt practices. According to OECD Chief of Staff Gabriela Ramos, more than half of OECD member states have never prosecuted an anti-bribery case.⁴⁷ With one of the strongest anti-bribery regimes in the region, Colombia has prosecuted only two cases, with an additional twelve under investigation as of late 2018.⁴⁸ Another star performer in the region, Chile, has only prosecuted one case as of 2018.⁴⁹ And though new laws, regulations, and threats of heightened enforcement have proliferated, the risk of prosecution for some companies may still be outweighed by the potential benefit of unethical practices.

This is where organizations such as MDBs may play a significant role in combating corrupt practices and encouraging the implementation of effective compliance regimes within companies. Throughout Latin America and across most emerging markets, firms often depend on opportunities provided by the state, from construction to power generation to education. These opportunities can be very lucrative and offer secure income since, in many instances, the funding is being partially or wholly provided by an MDB. And while a state may have few incentives or resources to investigate and prosecute corrupt practices within those recipient firms, MDBs are actively examining their practices and creating

45. Decreto No. 12.846, de 1 de Agosto de 2013, DIÁRIO OFICIAL DA UNIÃO [D.O.U.] de 2.8.2013 (Braz.).

46. Sérgio Fernando Moro, *Preventing Systemic Corruption in Brazil*, 147 J. AM. ACAD. ARTS & SCI. 157, 165 (2018).

47. See, e.g., OECD WORKING GRP. ON BRIBERY, ANNUAL REPORT ON ACTIVITIES UNDERTAKEN IN 2012 (2013), <https://www.oecd.org/daf/anti-bribery/AntiBriberyAnnRep2012.pdf> [<https://perma.cc/69WD-EXAP>] (describing the data on the enforcement of the OECD Convention on Combating Bribery).

48. Matteson Ellis, *Colombia Ramps Up Enforcement of Transnational Bribery Law*, CORP. COMPLIANCE INSIGHTS (Sept. 6, 2018), <https://www.corporatecomplianceinsights.com/colombia-ramps-up-enforcement-of-transnational-bribery-law/> [<https://perma.cc/R6F8-WN67>].

49. OECD WORKING GRP. ON BRIBERY, IMPLEMENTING THE OECD ANTI-BRIBERY CONVENTION: CHILE PHASE 4 REPORT 11 (2018).

significantly more risk for their contractors. The penalties for unethical practices under an MDB contract strike at the livelihood of the business enterprise itself.

The MDB process for reducing corruption is at a more transactional level than that of conventions and statutes. Though it is government that signs the loan agreement with the MDB, contractors that carry out the work under the contract are bound by the terms of that loan agreement, including the anti-bribery provisions contained therein. In the event that a contractor is found to have violated those provisions, the consequence is not prosecution by the MDB, but disbarment from that and future contracts. In addition, MDB sanction investigations often result in findings that are shared with national governments, potentially paving the way to domestic prosecution under criminal laws.⁵⁰ And despite the more than 700 disbarments issued by the World Bank alone, many contractors remain unaware that their work is part of a larger MDB project subjecting them to the anti-bribery provisions of that agreement.⁵¹

The World Bank began to examine corruption as an element that may be preventing effective economic development strategies in their investments in 1996, when then Bank President James Wolfensohn referred to the “cancer of corruption.”⁵² The World Bank Sanctions Committee was established in 1998 to investigate and report on allegations of corruption among borrowing countries.⁵³ That group was moved into the newly formed Department of Institutional Integrity in 2001. Six years later, this group was elevated to the Vice Presidency level within the World Bank. Today, the two-tiered sanctions system within the World Bank consists of an Office of Suspension and Debarment (OSD) that assesses evidence in allegations of corrupt practices, and the World Bank Group Sanctions Board, an independent body that reviews OSD recommendations *de novo* when accused parties appeal the first-tier decision.⁵⁴

With respect to Latin America, where the IDB focuses its efforts, the IACAC is in place to try and combat the rampant regional perception of

50. *Id.* at 6 (referencing cases investigated in tandem by the World Bank and DOJ, for instance).

51. Brian Whisler et al., *The World Bank's Enforcement Arm and Its Impact on Multinational Companies*, RISK & COMPLIANCE MAG., Jan.–Mar. 2018, at 3.

52. Vinay Bhargava, *Curing the Cancer of Corruption*, in GLOBAL ISSUES FOR GLOBAL CITIZENS: AN INTRODUCTION TO KEY DEVELOPMENT CHALLENGES 341, 341 (Vinay Bhargava ed., 2006).

53. WORLD BANK GRP., SANCTIONS SYSTEM ANNUAL REPORT FY18 5 (2018), <http://pubdocs.worldbank.org/en/227911538495181415/WBG-SanctionsSystemARFY18-final-for-web.pdf> [<https://perma.cc/38HH-FVSN>].

54. *Id.* at 5–6.

corruption.⁵⁵ The IACAC was enacted in 1996 by the OAS, a body comprised of most countries within the Latin American region.⁵⁶ The key element of that Convention is Article VI, which requires member states to criminalize acts of corruption, principally targeting bribery.⁵⁷ Bribery for purposes of the Convention is defined as corrupt practices by state officials within the territory of the state.⁵⁸ Most member states made modifications to their laws to prohibit corruption and criminalize corrupt acts.⁵⁹ However, scholars note the vast gap between legislation and enforcement of legal provisions such as these.⁶⁰

First, corruption negatively influences a country's economic productivity, the stability of its political institutions, and its democratic integrity. Second, corruption on large-scale infrastructure projects creates an environment of impunity that may instill a public conception that corruption is acceptable. . . . '[a] policy of active tolerance [for bribery] will undermine the prospects for long-term reform' and 'delegitimize government in the eyes of its citizens.' Finally, corrupt deals made to win infrastructure development projects skew government spending and development agendas; such deals encourage officials to seek aid money for projects that promise profits in the form of bribes and kick-backs, rather than for projects that are more beneficial but less profitable for the officials.⁶¹

According to some estimates, corruption may be affecting up to 20% of the funds being distributed by the MDBs, resulting in hundreds of millions of dollars being siphoned-off with no economic development value.⁶² Other reports suggest that corruption is so rampant in some target

55. See generally Bruce Zagaris & Shaila Lakhani Ohri, *The Emergence of an International Enforcement Regime on Transnational Corruption in the Americas*, 30 L. & POL'Y INT'L BUS. 53 (1999) (providing a comprehensive examination of the IACAC).

56. Inter-American Convention Against Corruption, Mar. 29, 1996, 35 I.L.M. 724.

57. *Id.* at art. VI.

58. *Id.*

59. See Giorleny D. Altamirano, *The Impact of the Inter-American Convention Against Corruption*, 38 U. MIAMI INTER-AM. L. REV. 487, 509–25 (2007) (describing state-level efforts to criminalize bribery and corruption in Latin America).

60. See Benjamin B. Wagner & Leslie Gielow Jacobs, *Retooling Law Enforcement to Investigate and Prosecute Entrenched Corruption: Key Criminal Procedure Reforms for Indonesia and Other Nations*, 30 U. PA. J. INT'L L. 183, 186 (2008) (describing the importance of effect enforcement mechanisms to implement anti-corruption legislation). *But see* Altamirano, *supra* note 59, at 540 (suggesting that legislation can often make citizens and officials more aware of corrupt practices even if they are not prosecuted).

61. Courtney Hostetler, *Going from Bad to Good: Combating Corporate Corruption on World Bank-Funded Infrastructure Projects*, 14 YALE HUM. RTS. & DEV. L.J. 231, 236–37 (2011) (internal quotations omitted).

62. *The World Bank and Corruption*, COUNCIL ON FOREIGN REL. (Apr. 21, 2006),

donor recipient countries that, despite extensive lending, economic development is receding rather growing.⁶³ These are not minor accusations, and they must be addressed in the context of MDB lending. In the following section, I will examine the efforts of the World Bank and the IDB in combating this “cancer.”

II. COUNTRY-LEVEL LENDING BY MULTILATERAL INSTITUTIONS

The role of multilateral lending institutions in facilitating effective economic development cannot be understated. The World Bank was created in 1944 as the International Bank for Reconstruction and Development (IBRD), with the initial mission of working to rebuild the economies of post-World War II Europe.⁶⁴ The Bank’s first loan was to France for reconstruction following devastation after the war. The World Bank is funded through contributions made by wealthy member countries such as the United States, Japan and Germany, as well as through returns on market investments and interest when loans are repaid.⁶⁵

The World Bank operates as a lender of last resort for countries. They provide low-interest loans to middle-income countries to assist with development projects such as building roads and schools or providing clean drinking water. Those same loans are available to low-income countries without interest and on more favorable terms.⁶⁶ Loans are provided only for part of the proposed project—the remainder of the funding is provided by the country and other lending sources, ensuring that the country has “skin in the game.”

As noted above, the original mission of the IBRD in 1944 was to provide funding to rebuild countries after World War II. The mission of the IBRD began to evolve following successful post-war reconstruction efforts, as evidenced by the creation of the 1960 International Development Association (IDA). The IDA focused on development loans for poor countries and operated with the same staff and resources as the rest of the

<https://www.cfr.org/backgrounder/world-bank-and-corruption> [<https://perma.cc/SBR5-H2YQ>].

63. Leonard F. McCarthy, *Fighting Economic Corruption Around the World: Successes, Challenges, and Staying the Course*, HERITAGE FOUND. (Aug. 29, 2011), <https://www.heritage.org/global-politics/report/fighting-economic-corruption-around-the-world-successes-challenges-and> [<https://perma.cc/PB49-XBME>].

64. *Who We Are: History*, WORLD BANK, <http://www.worldbank.org/en/about/history> [<https://perma.cc/3QG8-MXBF>] (last visited Apr. 4, 2019).

65. *Getting to Know the World Bank*, WORLD BANK (July 26, 2012), http://www.worldbank.org/en/news/feature/2012/07/26/getting_to_know_theworldbank [<https://perma.cc/2MNG-NN2J>].

66. *Id.*

World Bank. However, politics and hesitation among the Bank's Board of Governors⁶⁷ to assist needier countries slowed down the implementation of the new economic development agenda facilitated by the IDA.⁶⁸

The World Bank was largely reformulated in the 1960s following the appointment of former U.S. Defense Secretary Robert McNamara as its President in 1968.⁶⁹ He understood the importance of economic development in creating political stability and thus refocused the Bank on lending principally to low-income countries. McNamara shifted not only the focus of the Bank's lending activities, but also its operation. He expanded the staff dramatically and emphasized hiring from developing countries, significantly diversifying a staff that had previously only included 5% of representatives from those countries.⁷⁰ During his tenure there, McNamara oversaw a shift in focus from economic development projects in Europe to economic development in low and middle-income countries around the world. During McNamara's 1968 inaugural speech, he solidified a new role for the Bank—not as a state-focused lending institution,⁷¹ but as a global economic development agency.⁷² This was the beginning of the Bank as an active participant in economic development efforts.⁷³

Finally, in the late 1990s, the World Bank again shifted its focus—this time, away from development loans for infrastructure projects and toward loans to build institutions in developing countries that would help them create sustainable, successful futures. This began with a 1999 speech by then Bank President Wolfensohn, highlighting the need to focus on effective and accountable institutions and capacity-building. “Providing good policy advice is not enough; the Bank needs to focus even more than it has in the past on helping governments develop the processes and incentives to design and implement good policies themselves.”⁷⁴ As part of

67. Consisting of member country Economy or Development Ministers.

68. Jonathan Cahn, *Challenging the New Imperial Authority: The World Bank and the Democratization of Development*, 6 HARV. HUM. RTS. J. 159, 163–64 (1993).

69. William Clark, *Reconsiderations: Robert McNamara at the World Bank*, FOREIGN AFF., Sept. 1, 1981, at 167–68.

70. *Id.* at 169.

71. Note that through the creation of the International Finance Corporation as part of the IBRD in 1956, the Bank also lends to private companies and financial institutions in developing countries. *Who We Are: History*, WORLD BANK, <http://www.worldbank.org/en/about/history> [https://perma.cc/BC9A-MPD2] (last visited Apr. 4, 2019).

72. Clark, *supra* note 69, at 170.

73. For a comprehensive summary of the World Bank's initial foray into development aid, see Sophie Smyth, *World Bank Grants in a Changed World Order: How Do We Referee This New Paradigm?*, 30 U. PA. J. INT'L L. 483 (2008).

74. PUBLIC SECTOR GROUP, WORLD BANK, REFORMING PUBLIC INSTITUTIONS AND STRENGTHENING GOVERNANCE xii (2000).

this new emphasis, the Bank would focus on anti-corruption as part of its economic development efforts.⁷⁵

In addition to efforts by the World Bank, four regional development banks exist to provide targeted funding for economic development and institution-building in their regions. These institutions are partners of the World Bank and are largely based upon the same precepts and structures, but they act independently of the World Bank strictures.⁷⁶ These banks include: the African Development Bank, established in 1964; the Asian Development Bank, established in 1966; the European Bank for Reconstruction and Development, established in 1991 and targeting post-Soviet countries; and the Inter-American Development Bank, established in 1959.⁷⁷

The Inter-American Development Bank, the focus of this analysis, was established with the mission of facilitating economic development in the Latin American region.⁷⁸ It was created by the Organization of American States with the following mission statement: “The purpose of the Bank shall be to contribute to the acceleration of the process of economic and social development of the regional developing member countries, individually and collectively.”⁷⁹ It consists of twenty-six borrowing member countries that, unlike other regional development banks, control 50% of the voting power within the institution.⁸⁰ An additional twenty-two countries are non-borrowing members, meaning that they fund the bank and play a role in its governance.⁸¹ The United States is the most significant of these latter countries, controlling 10% of the voting

75. *Id.* at 87–88.

76. See Andrew Hansen, *The World Bank and International Development Lenders*, COUNCIL ON FOREIGN REL. (June 1, 2007), <https://www.cfr.org/backgrounder/world-bank-and-international-development-lenders> [<https://perma.cc/PX75-PXPK>] (providing a summary of each of the four regional development banks).

77. *Id.*

78. See, e.g., Enrique R. Carrasco et al., *Governance and Accountability: The Regional Development Banks*, 27 B.U. INT’L L.J. 1, 32–46 (2009) (explaining the structure of the IDB).

79. Agreement Establishing the Inter-American Development Bank art. I, § 1, Apr. 8, 1959, 389 U.N.T.S. 69, <http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=781584> [<https://perma.cc/GPQ9-3ZHJ>].

80. Bahamas, Barbados, Belize, Bolivia, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Haiti, Honduras, Jamaica, Nicaragua, Panama, Paraguay, Suriname, Trinidad and Tobago, Uruguay, Argentina, Brazil, Chile, Colombia, Mexico, Peru, and Venezuela.

81. United States, Canada, Japan, Israel, the Republic of Korea, the People’s Republic of China, Austria, Belgium, Croatia, Denmark, Finland, France, Germany, Italy, The Netherlands, Norway, Portugal, Slovenia, Spain, Sweden, Switzerland and the United Kingdom.

power in the institution.⁸²

Today, the IDB consists of two bodies—the Inter-American Investment Corporation (IIC), which provides support for small and medium-sized enterprises in the region, and the Multilateral Investment Fund, which focuses on private sector growth with an emphasis on microenterprises.⁸³ The strategy of the IDB is divided into two parts: development challenges and cross-cutting challenges. The development challenges focus on social inclusion and equality, productivity and innovation, and economic integration. The cross-cutting challenges address gender equality and diversity, climate change and environmental sustainability, and institutional capacity and the rule of law.⁸⁴ The last two challenges envelop the issue of corruption in governance.

Below, I will explain the process for applying for and funding development project loan assistance through the IDB.

a. The IDB Lending Process

The IDB provides funding to support member country development projects with financing in the form of loans and investment guarantees. This financing emphasizes three principal goals: 1) investment lending to support goods and services that promote social and economic development; 2) policy-based lending to support institutional and policy reforms; and, 3) special development lending that assists countries in a crisis situation.⁸⁵ Loans from the IDB are, in most cases, combined with government financing, as well as financing from other MDBs and the private sector.

The nature of the funding for countries depends on whether a country is shaping a project around one of the IDB's strategic goals or whether it is seeking funds to close a funding gap for a project that is on that country's development agenda. Funding from the IDB falls into two categories: non-reimbursable grants and reimbursable loans. Non-reimbursable grants facilitate certain predetermined outcomes identified by the IDB as priority areas for assistance. Countries apply for funding within these select categories to receive technical cooperation in the form of grant funding to achieve targeted outcomes. IDB subject-matter experts work with countries to help them match their specific funding needs to these grant

82. Carrasco et al., *supra* note 78.

83. *Who We Are*, IDB, <https://www.iadb.org/en/about-us/who-we-are> [<https://perma.cc/ZA7F-B8C8>] (last visited Apr. 4, 2019).

84. *About Us*, IDB, <https://www.iadb.org/en/about-us/overview> [<https://perma.cc/KY4S-XWYJ>].

85. *Public Sector Financing*, IDB, <https://www.iadb.org/en/about-us/idb-financing/public-sector-financing> [<https://perma.cc/5LD9-SZ8B>] (last visited Apr. 8, 2019).

categories.

IDB reimbursable loans, on the other hand, are constructed on the basis of country-need and do not fall within any predetermined category. Countries apply for funds for specific projects for which they have already sought other external funding to support. These loans are offered at below-market interest rates and serve as supplemental development assistance to funding from other MDBs and similar organizations.

Each of the funding mechanisms—non-reimbursable grants and reimbursable loans—include a *prohibited practice* clause that requires the loan recipient and all parties associated with the agreement to maintain compliance with IDB anti-corruption guidelines. Failure to do so may lead to withdrawal of funding and possible debarment of parties who violate the stipulated rules, including one or more of the contractors that operate under that loan, whether they are aware of that relationship or not.

In the next section, I will describe in more detail the anti-corruption efforts established by the World Bank and those adopted by the IDB for loan agreements.

b. Anti-Corruption Efforts in Loan Agreements

The World Bank began integrating anti-corruption provisions into its loan agreements in the 1990s.⁸⁶ In that initial effort, the Bank defined corruption as:

Fraudulent and corrupt practices include the solicitation, payment or receipt of bribes, gratuities or kickbacks, or the manipulation of loans or Bank Group-financed contracts through any form of misrepresentation. Fraudulent or corrupt practices also include any situation in which staff members have abused their position or misused World Bank Group funds or other public funds for private gain.⁸⁷

The guidance provided by the Bank focused on five pillars to combat corruption in member countries: 1) preventing fraud and corruption within World Bank projects; 2) helping countries that request Bank support in their efforts to reduce corruption; 3) taking corruption more explicitly into account in country assistance strategies, country lending considerations, policy dialogues, analytical work, and the choice and design of projects; 4) adding voice and support to international efforts to reduce corruption; and

86. MARIO A. AGUILAR ET AL., PREVENTING FRAUD AND CORRUPTION IN WORLD BANK PROJECTS: A GUIDE FOR STAFF 2 (2000), <http://www1.worldbank.org/publicsector/anticorrupt/fraudguide.pdf> [<https://perma.cc/TUD5-N3UA>].

87. *Id.* at 1.

5) protecting the Bank from internal fraud and corruption.⁸⁸

In the World Bank Procurement Guidelines, the term *corrupt practice* is defined as the “offering, giving, receiving, or soliciting . . . of anything of value to influence the action of a public official in the procurement process or in contract execution.”⁸⁹ The Guidelines go on to describe the three possible remedies the Bank will employ if it discovers that corrupt practices were utilized during the procurement or execution process for the loan. They may: 1) reject a proposal if a bidder engaged in corrupt procurement practices; 2) cancel the portion of the loan allocated to a contract in which corrupt practices were engaged in by the bidder or their representatives or any loan beneficiary; and 3) debar a firm if it engaged in corrupt practices during the procurement or execution of the loan.⁹⁰

The IDB has sanction rules similar to those of the World Bank. The rules are found in the Prohibited Practices document of the IDB.⁹¹ That document states that all parties subject to the IDB rules, including direct and indirect parties—government entities and private contractors,⁹² are prohibited from engaging in corrupt, fraudulent, coercive, collusive, or obstructive practices in the procurement or execution of the loan.⁹³ Though all of these practices relate to anti-corruption efforts, I will limit my analysis to “corrupt practices,” which the IDB defines as: “offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party.”⁹⁴

88. *Id.* at 2.

89. WORLD BANK, GUIDELINES PROCUREMENT UNDER IBRD LOANS AND IDA CREDITS art. 1.14(a)(i) (2004), documents.worldbank.org/curated/en/886341468128096812/pdf/954720PUB0Box3000ProcGuid0050040ev1.pdf [<https://perma.cc/ZLX9-TGU6>].

90. *Id.* at art. 1.14(b) – (d).

91. *Sanctions Procedures*, IDB, <http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=39676437> [<https://perma.cc/83B6-D3V5>] (last visited Apr. 8, 2019).

92. *See id.* at § 1.2 (stating “(i) in the case of a Project that is not a non-sovereign guaranteed (NSG) Project or a Project financed by the Corporation, any party involved in such a Project whether by virtue of a contract with a member of the Bank Group or with other parties in connection with a Project, including, *inter alia*, borrowers, recipient of grants, beneficiaries of a technical cooperation, bidders, suppliers, contractors, subcontractors, consultants, subconsultants, service providers, applicants, concessionaries and financial intermediaries (including their respective officers, employees and agents); (ii) in a non-sovereign guaranteed (NSG) Project or a Project financed by the Corporation, any party involved provided that such parties are direct contract counterparties of the Bank or the Corporation, including counterparties that are borrowers, sponsors, guaranteed parties, direct beneficiaries of guarantees, and investee companies (including their respective officers, employees and agents), as applicable; (iii) parties who contract with the Bank or Corporation for advisory services to be performed by the Bank or Corporation; and (iv) contract counterparties of the Bank or Corporation in relation to corporate procurement by the Bank or Corporation or any other matter not covered by clauses (i), (ii) or (iii), above.”).

93. *Id.* at § 2.2.

94. *Id.* at § 2.2(a).

The investigation process utilized by the IDB to identify corrupt practices begins with the Office of Institutional Integrity (OIC). Once an allegation of corruption (or other prohibited practice) has been made, the OIC opens an investigation to gather evidence to substantiate the claim.⁹⁵ If the OIC concludes that a preponderance of the evidence supports the claim that a party engaged in a corrupt practice, the Chief of the OIC refers the matter to a Sanctions Officer appointed by the President of the Bank by issuing a *Statement of Charges*.⁹⁶

Upon review of the *Statement of Charges*, the Sanctions Officer will have three options for how to proceed: 1) dismiss the allegations for insufficient evidence of passage of the statute of limitations;⁹⁷ 2) issue a Notice of Administrative Action; or 3) refer the matter to another IDB group for review.⁹⁸ If the Sanctions Officer concludes that the evidence is sufficient and issues a Notice of Administrative Action, the country has sixty days to file a response.⁹⁹ Failure to respond is equivalent to an admission.¹⁰⁰ Following the sixty-day period, the Sanctions Officer issues a Final Determination that is presented to the IDB Sanctions Committee for review.

The IDB Sanctions Committee will allow forty-five days for the respondent party to appeal the Sanctions Officer's Final Determination, unless they choose to waive that appeal.¹⁰¹ Following that period and the Committee's review of the evidence, the Committee shall then determine whether enough evidence exists to issue a sanction, which has immediate effect.¹⁰² The Committee is not bound to apply the sanctions recommended by the Sanctions Officer. Rather, they have the following options open to them:

1. Reprimand: sending a formal letter to respondent but providing no further punishment.¹⁰³
2. Debarment: temporarily or permanently debarring the entity for direct or indirect participation in any future IDB projects.¹⁰⁴
3. Conditional non-debarment: mandating certain remedial measures to be employed to avoid being debarred from future

95. *Id.* at §§ 3.2, 3.3.

96. *Id.*

97. Applies to allegations of fraud that took place more than 10 years prior to the submission of the statement of charges. *Id.* at § 4.2.2.

98. *Id.* at §§ 4.2, 4.5, 14. 5.

99. *Id.* at § 4.7.

100. *Id.* at § 4.8.

101. *Id.* at § 6.1.

102. *Id.* at §§ 7.2, 7.3.

103. *Id.* at § 8.2.1.

104. *Id.* at § 8.2.2.

IDB projects.¹⁰⁵

4. Conditional debarment: debarring the entity from future IDB projects unless and until certain remedial measures are implemented.¹⁰⁶

5. Other sanctions: including fines to reimburse the cost of the investigation or restitution of funds.¹⁰⁷

If the entity is debarred, it may be debarred from other multilateral lending institutions through a procedure known as cross-debarment (discussed below).¹⁰⁸

The *prohibited practice* clause is referenced in its entirety in all IDB loan and grant agreements and is referenced throughout those agreements as a basis for cancellation or exception from loan disbursement.¹⁰⁹ This includes clear application to the government entity signing the agreement as well as all parties bidding for work under the agreement. However, in effect, the punishment burden falls upon the contractors more than it does upon the government recipient of the loan.

Finally, I will describe the sanctions process for World Bank and IDB loans.

c. Debarment

The punishment adopted as part of the World Bank's anti-corruption program is the temporary removal of a company from an authorized list of vendors to work on Bank projects. This punishment, known as debarment, is similar to that utilized by the U.S. government in its procurement procedures.¹¹⁰ Debarment means that a sanctioned firm or individual will be prohibited from working on Bank-funded projects for the duration of a given period of time or, in some extreme cases, forever. The World Bank's debarment program was initiated in 1996 and is supported by a sanctions committee that was established two years later.¹¹¹

Debarment is the principal remedy employed by MDBs to incentivize

105. *Id.* at § 8.2.3.

106. *Id.* at § 8.2.4.

107. *Id.* at § 8.2.5.

108. *Id.* at § 8.2.6.

109. See *IDB Loan Contract No. 3340/OC-BH between the Commonwealth of the Bahamas and the Inter-American Development Bank*, IDB (Feb. 4, 2016), <http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=40819780> [<https://perma.cc/74DQ-LS76>] (referencing "prohibited practices" 12 times throughout the contract).

110. *Suspension and Debarment Program*, EPA, <https://www.epa.gov/grants/suspension-and-debarment-program> [<https://perma.cc/Z7ZS-57JT>] (last visited Apr. 8, 2019).

111. *World Bank Group Sanctions Regime: An Overview*, WORLD BANK, <https://www.worldbank.org/content/dam/documents/sanctions/other-documents/osd/Overview-SecM2010-0543.pdf> [<https://perma.cc/7YHQ-WQF4>] (last visited Apr. 8, 2019).

compliance with loan requirements, including the anti-corruption provisions therein. In the case of World Bank financing, debarment is the first out of five possible sanctions levied by the Suspension and Debarment Officer (SDO), which include:

1. Debarment
2. Debarment with conditional release
3. Conditional debarment
4. Restitution
5. Reprimand letter¹¹²

Yet like the IDB, the World Bank relies most heavily on the use of debarment with conditional release as its primary remedy for anti-corruption cases.¹¹³ The goal is not to limit the field of potential contractors, which can be thin, but rather to improve the transparency and good governance of those entities to prepare them for future economic development work. For this reason, the Bank frequently enters into Negotiated Resolution Agreements that provide clear terms for a firm or individual to come into compliance and regain access to Bank funding.¹¹⁴

Debarment from one institution might deter a domestic firm that relies on projects from that government; however, a multinational firm would be able to offset a single-entity debarment by leveraging projects in another region in which they are not debarred. To prevent this debarment sidestep, the World Bank has entered into an agreement with other multilateral institutions to establish a system of cross-debarment, which enables the entities to expand the reach of debarment penalties by preventing culpable parties from securing work from any of the included entities.¹¹⁵ This procedure was initiated by the World Bank in 2010 and includes the African Development Bank Group, the Asian Development Bank, the European Bank for Reconstruction and Development, and the Inter-American Development Bank Group.

Cross-debarment is a practice that has long been in place for U.S. federal government contractors. If a contractor is barred by one federal agency, they are automatically barred from contracting with any other federal agency.¹¹⁶ With cross-debarment between partners of the World

112. Pascale H. Dubois et al., *The World Bank's Sanctions System: Using Debarment to Combat Fraud and Corruption in International Development*, AIIB YEARBOOK INT'L L., 2018, at 129, 139–40.

113. *Id.* at 140.

114. *Id.*

115. WORLD BANK GRP., SANCTIONS SYSTEM ANNUAL REPORT FY18 7 (2018), <http://pubdocs.worldbank.org/en/227911538495181415/WBG-SanctionsSystemARFY18-final-for-web.pdf> [<https://perma.cc/38HH-FVSN>].

116. FAR 9.401 (2011).

Bank, however, cross-debarment is only automatic if certain criteria are met.¹¹⁷ And while a good case could be made to support automatic debarment here as well, the discretionary power enables the other institutions to leverage the threat of debarment to incentivize more immediate change.¹¹⁸

I will now turn to an analysis of the effects of the *prohibited practice* clause and suspension and debarment process upon corruption within Latin America.

III. IS IT WORKING? EXAMPLES OF ANTI-CORRUPTION ACTIONS BY THE IDB

Fighting corruption requires a concerted effort by governmental institutions and a commitment to change past practices. But it also requires a change in the culture of governance and business. Scholars Ben Heineman and Fritz Heimann¹¹⁹ suggest the following four factors to reduce corruption: “prevention via legislation and regulations, prevention via long-term state building and institutional reform, and prevention via norm and value changes,” and enforcement “to deter future misconduct by investigating and prosecuting existing corruption.”¹²⁰

IDB President Luis Alberto Moreno convened an Advisory Group of governance and anti-corruption scholars to identify innovative ways to combat rampant corruption in Latin America. Their 2018 report began with a dire warning:

It is impossible to overstate the urgency of this effort.

117. *Agreement for Mutual Enforcement of Debarment Decisions*, ASIAN DEV. BANK (Apr. 9, 2010), <https://www.adb.org/sites/default/files/institutional-document/32774/files/cross-debarment-agreement.pdf> [<https://perma.cc/DD89-VY8B>] [hereinafter AMEDD]; see also Edouard Fromageau, *Cross Debarment*, MAX PLANCK INST. (Mar. 2016), http://www.mpi.lu/fileadmin/mpi/medien/research/MPEiPro/EiPro_Sample_Cross_Debarment_2017-Mar.pdf [<https://perma.cc/HF9X-2NSX>] (stating “1) the debarment must be sanctioning fraud, corruption, collusion or coercion; 2) it must be public; 3) it must be for at least one year; 4) it must have been made after the entry into force of AMEDD; 5) it must have been made within ten years of the date of commission of the misconduct; 6) it must not be based on a decision of national or other international authority”).

118. See Christopher R. Yukins, *Cross-Debarment: A Stakeholder Analysis*, 45 GEO. WASH. INT’L L. REV. 219, 232 (2013) (discussing the desirability and drawbacks of stricter debarment and cross debarment rules).

119. Ben W. Heineman, Jr. & Fritz Heimann, *The Long War Against Corruption*, 85 FOREIGN AFF. 75, 77 (2006).

120. Courtney Hostetler, *Going from Bad to Good: Combating Corporate Corruption on World Bank-Funded Infrastructure Projects*, 14 YALE HUM. RTS. & DEV. L.J. 231, 240 (2011) (quoting Ben W. Heineman, Jr. & Fritz Heimann, *The Long War Against Corruption*, 85 FOREIGN AFF. 75, 77 (2006)).

Corruption is rampant at the highest levels of government, society, and the economy. It is linked to the pernicious presence of state capture by the elites in much of the region and, as illustrated in the Lava Jato case, operates across borders. The evidence suggests that on balance, over the past two decades, there have been no significant improvements in the region in key governance dimensions, or worse—in fact, with some exceptions, the region has performing poorly in the implementation of the rule of law and in control of corruption. The distortive impact of money in politics in the region is associated with policies and practices benefiting the elite few and, with failed reforms, undermining public trust in government and in democratic institutions.¹²¹

The expert panel went on to describe how most Latin American countries are so deeply corrupt that resources are not able to achieve their public purpose, and how the rule of law and good policy are undermined.¹²² They also highlighted the worsening environment of transparency in light of the preoccupation of countries such as the United States and United Kingdom, which had previously been critical in shining light on policies and practices in extractive industries in Latin America but are at present focused on other priorities.¹²³ Finally, the report identified a connection between high levels of corruption and inequality, which is equally rampant in the region, explaining that corruption and poor governance divert resources toward the wealthy and away from projects that would help the poor.¹²⁴

The IDB has only a handful of cases in its history that resulted in debarment. The most recent (as of January 2019) is the case of GL Systems, an American software firm that was providing services in Barbados. The firm was debarred for four years in connection with its work with the Barbados customs service, the Barbados Competitiveness Program, and an IDB corporate contract.¹²⁵ This was the IDB's first

121. EDUARDO ENGEL ET AL., REPORT OF THE EXPERT ADVISORY GROUP ON ANTI-CORRUPTION, TRANSPARENCY, AND INTEGRITY IN LATIN AMERICA AND THE CARIBBEAN v (2018), <https://publications.iadb.org/sites/default/files/publications/english/document/Report-of-the-Expert-Advisory-Group-on-Anti-Corruption-Transparency-and-Integrity-in-Latin-America-and-the-Caribbean.pdf> [<https://perma.cc/7TMP-QW8A>] [hereinafter IDB ADVISORY REPORT].

122. *Id.* (“In most LAC countries, corruption and capture are systemic. Networks of interconnected political and economic elites often undermine sound policymaking and the rule of law, entrenching impunity, and diverting public resources and investment away from the public good.”).

123. *Id.* at 1.

124. *Id.* at 4.

125. *IDB Announces Settlement in Connection with Prohibited Practices*, IDB (Aug. 21,

debarment resulting from a settlement agreement, which included stipulations requiring the firm to hire an independent third-party consultant to analyze its compliance program.¹²⁶ That debarment is also subject to cross-debarment sanctions across other MDBs.

The *GL Systems* case is similar to other cases of debarment by the IDB, with very few details made publicly available.¹²⁷ In other cases, details about the debarred firm's activities are only revealed by third parties, such as the case of two Trinidadian firms in Guyana that worked on an IDB citizen security project and were debarred for, according to local news sources, delivering expired or nearly expired medicines to the Ministry of Health, among other things.¹²⁸ On the contrary, the World Bank typically issues a press release announcing its own debarments and providing some insight into the circumstances of those investigations.¹²⁹

However, this does not exempt the Latin American region from corruption investigations and suspensions. Because many loan recipients receive funding from both the IDB and the World Bank, corruption investigations may be initiated by the World Bank and, through cross-debarment provisions, the firms are prohibited from receiving IDB funding as well.¹³⁰ For instance, in the case of three Argentinian firms alleged to have misrepresented progress under an agricultural development project in

2018), <https://www.iadb.org/en/news/idb-announces-settlement-connection-prohibited-practices> [<https://perma.cc/QCR5-627S>].

126. *Id.*

127. See, e.g., Ava Turnquest, *IDB Bans Companies for Fraud and Corruption*, TRIBUNE 242, July 7, 2017, <http://www.tribune242.com/news/2017/jul/07/idb-bans-companies-fraud-and-corruption/> [<https://perma.cc/543K-K7UU>] (describing the debarment of 10 Bahamian firms for fraud and corruption but not explaining the acts).

128. Carol Corbin, *Ministry Single-Sourced Contract to Western Scientific Even Though Probe Urged Blacklisting*, GUY. NEWS & INFO., Sept. 4, 2017, <https://guyana.hoop.la/topic/ministry-single-sourced-contract-to-western-scientific-even-though-probe-urged-blacklisting-ppc-to-investigate> [<https://perma.cc/TS7N-BH44>]; *Trinidadian Companies Blacklisted by IDB for Fraud in Guyana*, LOOP NEWS, Jan. 4, 2017, <http://www.loopnews.com/content/trinidadian-companies-blacklisted-idb-fraud-guyana> [<https://perma.cc/3FPF-A5YP>].

129. See, e.g., Press Release, World Bank, World Bank Group Announces Debarment of Three Companies in Argentina (Feb. 1, 2018), <https://www.worldbank.org/en/news/press-release/2018/02/01/world-bank-group-announces-debarment-of-three-companies-in-argentina> [<https://perma.cc/UMA8-F2SK>] (discussing the conditions leading to the debarment of firms in Argentina); Press Release, World Bank, World Bank Group Announces Debarment of Companies in Connection with Misconduct in Projects in Bangladesh, India and Timor-Leste (Mar. 28, 2018), <https://www.worldbank.org/en/news/press-release/2018/03/28/world-bank-group-announces-debarment-of-companies-in-connection-with-misconduct-in-projects-in-bangladesh-india-and-timor-leste> [<https://perma.cc/54SG-UJHA>] (describing the conditions for debarring firms in three countries).

130. See AMEDD, *supra* note 117 (describing the conditions in which debarment decisions are mutually enforced by multiple institutions).

that country in 2018, the World Bank debarred those firms for 18 months.¹³¹ The IDB cross-debarred those same firms for the same period of time.¹³²

One positive effect resulting from the more visible and broad-based anti-corruption program instituted by these MDBs is an increased awareness of the need for internal compliance programs by contractors looking to work with foreign governments in developing countries. In the past, engaging in corrupt acts outside the auspices of the FCPA or UK Anti-bribery Act meant minimal risk of prosecution or penalties. Today, a contractor found complicit in these MDB prohibited practices may face debarment across all countries in which it had previously done business, making for a much riskier environment for firms—especially multinational firms—working in this space.¹³³

A WAY FORWARD: CONCLUDING REMARKS

According to the 2018 report of the World Bank Sanctions Committee, eighty-three firms were debarred or otherwise sanctioned by the World Bank that fiscal year.¹³⁴ Of the 1,426 complaints filed with that office, 927 were dismissed as requiring no further action, and 68 new investigations were opened.¹³⁵ Of those investigations that began in 2018, 10 were in the Latin American region.¹³⁶ Between 2007 and 2014, the Bank sanctioned 250 firms.¹³⁷ Most of the firms debarred by the World Bank in Latin America resulted in cross-debarment by the IDB.

One significant critique of the sanctions regime in place by both the World Bank and other multilateral lending institutions is that the target of

131. Press Release, World Bank, World Bank Group Announces Debarment of Three Companies in Argentina (Feb. 1, 2018), <https://www.worldbank.org/en/news/press-release/2018/02/01/world-bank-group-announces-debarment-of-three-companies-in-argentina> [<https://perma.cc/UMA8-F2SK>].

132. *Sanctioned Firms and Individuals*, IDB, <https://www.iadb.org/en/topics/transparency/integrity-at-the-idb-group/sanctioned-firms-and-individuals%2C1293.html> [<https://perma.cc/BM9N-37N4>].

133. See, e.g., PRICEWATERHOUSECOOPERS, MULTILATERAL DEVELOPMENT BANKS: AN EMERGING GIANT AMONG TRANSNATIONAL REGULATORS (2012) (advising firms working on development projects to consider implementing a compliance program).

134. WORLD BANK GRP., SANCTIONS SYSTEM ANNUAL REPORT FY18 8 (2018), <http://pubdocs.worldbank.org/en/227911538495181415/WBG-SanctionsSystemARFY18-final-for-web.pdf> [<https://perma.cc/38HH-FVSN>].

135. *Id.*

136. *Id.* at 17.

137. THE WORLD BANK OFFICE OF SUSPENSION AND DEBARMENT, REPORT ON FUNCTIONS, DATA AND LESSONS LEARNED 2007-2013, 24 (2014), documents.worldbank.org/curated/en/353781468320949616/pdf/940700WP0Box385412B00PUBLIC00OSDRReport.pdf [<https://perma.cc/CE99-R24W>].

sanctions is generally the private sector, which is working to contract with government entities to secure project financing through these loans; however, the government entity itself—though its direct involvement may aggravate penalties—is largely relieved of liability.¹³⁸ Anti-corruption efforts that address only the effects of a corrupt governance environment cannot possibly achieve the change that institutions such as the World Bank and the IDB are striving for.

In 2004, Under Secretary of the Treasury for International Affairs John B. Taylor testified before the U.S. Congress about recent reforms within the multilateral lending institutions meant to combat corruption within the institutions and their target firms.¹³⁹ He explained the importance of those institutions in facilitating economic growth through governance reforms, as well as the alignment of MDB policies with U.S. interests abroad. He emphasized reforms in the procurement process that would yield more transparency and accountability for development projects, noting that “the United States has advocated greater availability of information on MDB projects, policies, Board meetings, fraud and corruption cases, and results indicators.”¹⁴⁰

One significant critique of the current sanctions process is the administrative procedure itself. Rather than operating as an administrative procedure like in international trade or domestic taxation, investigations and sanctions for corruption follow a procedure more akin to criminal procedure.¹⁴¹ This can leave the institution in a defensive position whereby it expends significant resources on ensuring due process and fairness to the parties and less emphasis on the investigation and prosecution of bad practices. This is evidenced through the two-tier system in place both at the World Bank and the IDB, with significant discretion built into the system to allow for reevaluation, mitigation, and appeal, as discussed above.

138. See, e.g., Tina Søreide, Linda Gröning & Rasmus Wandall, *An Efficient Anticorruption Sanctions Regime? The Case of the World Bank*, 16 CHI. J. INT’L L. 523, 529–31 (2016) (describing how private firms can be held accountable for corrupt practices more easily than governments).

139. *Combating Multilateral Development Bank Corruption: U.S. Treasury Role and Internal Efforts [Part II]*, Hearing Before the S. Comm. on Foreign Relations, 108th Cong. 4–16 (2004) (statement of John B. Taylor, Under Secretary for International Affairs, Department of the Treasury).

140. Press Release, U.S. Dep’t of the Treasury, John B. Taylor, Under Sec’y of the Treasury for Int’l Affairs, Testimony Before the House Appropriations Subcomm. on Foreign Operations, Exp. Fin. & Related Programs, FY2005 Budget Request for Treasury Int’l Programs (May 20, 2004), <https://www.treasury.gov/press-center/press-releases/Pages/js1669.aspx> [<https://perma.cc/C7G8-9PX3>].

141. Tina Søreide, Linda Gröning & Rasmus Wandall, *An Efficient Anticorruption Sanctions Regime? The Case of the World Bank*, 16 CHI. J. INT’L L. 523, 535–37 (2016).

According to the IDB Expert Advisory Panel Report referenced earlier, effective reductions in governance and corruption can lead to a three-fold increase of GDP per capita in the long run.¹⁴² The IDB Advisory Report also suggests that corruption be addressed in a multi-faceted way, targeting both petty corruption and grand corruption. “Reforms ought to span both the supply and demand sides of corruption and engage the private and public sectors. Any meaningful plan must incorporate both ‘grand’ corruption (including elite capture by powerful vested interests and corruption in politics) and the day-to-day payoffs solicited from ordinary people and small businesses.”¹⁴³ The authors identified four pillars to focus on in this anti-corruption effort:

- (1) regional and global initiatives;
- (2) domestic initiatives;
- (3) engaging the private sector and civil society; and
- (4) the support of the IDB and other international organizations¹⁴⁴

The focus of my analysis is on the fourth pillar. In that area, the report highlights a number of efforts that the IDB could be engaging in to better root-out and reduce corrupt practices and improve governance in Latin America. Among these, the IDB could partner with other entities such as the OECD or the IMF, which also play an important role in supporting economic development in the region;¹⁴⁵ develop benchmarks and best practices in public procurement that could be adopted throughout the region;¹⁴⁶ encourage transparency reforms among state-owned enterprises;¹⁴⁷ ensure that private sector investments through IDB Invest include the same transparency standards found in public procurements;¹⁴⁸ and share relevant information about past investigations to develop best practices for both governing bodies and contracting parties.¹⁴⁹

One of the key recommendations made in the report with respect to loan agreements relates to sanction mechanisms. Currently, as discussed above, the IDB will investigate allegations of corruption in the procurement and implementation process for any loan agreement and will potentially debar a contractor who was found to violate IDB rules. However, the Advisory Report authors suggest that these investigative and disciplinary procedures be done in collaboration with the countries in which the

142. IDB ADVISORY REPORT, *supra* note 121, at 3.

143. *Id.* at 9.

144. *Id.* at 11.

145. *Id.* at 24–25.

146. *Id.* at 25.

147. *Id.*

148. *Id.*

149. *Id.*

behavior is occurring, allowing those governments to take ownership of the situation and build its good governance capacity.¹⁵⁰ More specifically, this recommendation might allow the country to debar the contractor not only from IDB projects, but potentially from all government projects, yielding a much larger disciplinary effect and a stronger incentive to implement internal compliance programs to avoid a potentially debilitating sanction.¹⁵¹

Another recommendation for improving the anti-corruption efforts of the IDB and other multilateral institutions is to enhance the cross-debarment practice beyond the current partnership of institutions. As practitioners in this field are well-aware, firms that compete for contracts with multilateral institutions are also competing for contracts with other domestic and foreign government entities, among others. And as recent cases have highlighted, the fact that a firm is blacklisted by the World Bank and even cross-debarred by its partner institutions does not prevent it from securing contracts from other entities.¹⁵² One possible enhancement to this system is to improve information-sharing among multilateral lending institutions and other governmental entities in the United States and abroad.¹⁵³

Related to debarment is the disproportionate impact of debarment on small and medium-sized enterprises (SMEs) versus larger entities. The typical World Bank sanction is debarment with conditional release, allowing a party to relieve itself of the punishment by making procedural or practical changes in its operation.¹⁵⁴ This sanction may be harder to avoid for an SME that is less familiar with the process of appealing a decision or taking steps to come into compliance with the terms of the loan agreement.¹⁵⁵ To avoid the application of a sanctions regime that

150. *Id.* at 26; see also Brian Whisler et al., *The World Bank's Enforcement Arm and Its Impact on Multinational Companies*, RISK & COMPLIANCE MAG., Jan.–Mar. 2018, at 7 (explaining the World Bank's transparent process for sharing investigation information with governments as well as, in some cases, companies).

151. IDB ADVISORY REPORT, *supra* note 121, at 25.

152. See, e.g., Katia Savchuk et al., *Contractor Blacklisted by World Bank Still Gets Millions in Work*, WASH. POST, Sept. 23, 2016, https://www.washingtonpost.com/business/contractor-blacklisted-by-world-bank-still-gets-millions-in-work/2016/09/23/8bbc0f14-7ea1-11e6-9070-5c4905bf40dc_story.html?utm_term=.814dd42edaf7 [<https://perma.cc/VKZ9-WAGW>] (discussing the case of Chicago-based consulting firm Glocoms, which was debarred by the World Bank but continued to win U.S. government contracts).

153. See Christopher R. Yukins, *Cross-Debarment: A Stakeholder Analysis*, 45 GEO. WASH. INT'L L. REV. 219, 232 (2013) (suggesting more information-sharing to avoid subversion of the purpose of cross-debarment).

154. WORLD BANK GRP., THE WORLD BANK GROUP'S SANCTIONS REGIME: INFORMATION NOTE 6, <https://www.worldbank.org/content/dam/documents/sanctions/other-documents/osd/TheWorldBankGroupSanctionsRegime.pdf> [<https://perma.cc/66SX-436D>].

155. Rohan Schaap & Cecile Divino, *The AMEDD Five Years On: Trends in Enforcement Actions and Challenges Facing the Enforcement Landscape*, 57 HARV. INT'L

disincentivizes small firms from seeking MDB-funded development grants, governments must do a better job in advising potential SME partners about the need for effective compliance practices through trainings and information sessions.¹⁵⁶

International bodies with social and political appeal, such as the United Nations or the Organization for Economic Cooperation and Development, mean well and provide unmatched quality for policy and governance best practices; however, where they often fall short is in their ability to see their policies enforced. Membership in those social and political organizations certainly offers useful incentives, such as recognition and respect,¹⁵⁷ but without the ability to penalize bad acts economically, membership alone does little to create the environment necessary to stem the tide of corruption. This is an area in which MDBs have the potential to have a significant amount of influence over donor recipient country governance and corruption policies, especially given that they are often the last lifeline that many of these countries can utilize for their survival.¹⁵⁸ And as we know from FCPA prosecutions, economic sanctions can be a significantly more motivating factor affecting compliance than political recognition.

The MDBs—and especially the IDB in Latin America—are well-positioned to champion the cause of changing the culture of corruption. For the past 18 years, those institutions have taken up the mantle of identifying corrupt practices as harmful for economic growth and development, and they have consistently enhanced their efforts to combat it worldwide. Today, the World Bank is going to great lengths to “sell” anti-corruption to countries as a means to promote private investment and advance their own interests.¹⁵⁹ World Bank Integrity Chief Pascale Dubois

L.J. ONLINE 1, 12 (2016) (“The fact that some entities have little opportunity to succeed in meeting the conditions for release means that the sanction is essentially a default indefinite debarment which may then result in a default indefinite cross-debarment.”).

156. See, e.g., OECD, RIGHT FROM THE START: INFLUENCING THE COMPLIANCE ENVIRONMENT FOR SMALL AND MEDIUM ENTERPRISES (2012), <https://www.oecd.org/tax/administration/right-from-the-start-influencing-the-compliance-environment-for-smes.pdf> [<https://perma.cc/5NV6-9EDM>] (discussing a governmental approach to encourage tax compliance at the inception of the business formation as a mechanism to foster long-term compliance).

157. See, e.g., Barbara Crutchfield George, Kathleen A. Lacey & Jutta Birmele, *The 1998 OECD Convention: An Impetus for Worldwide Changes in Attitudes Toward Corruption in Business Transactions*, 37 AM. BUS. L.J. 485 (2000) (arguing that the OECD was the motivator for many of the anti-corruption efforts of other multilateral institutions).

158. See HANNAH HARRIS, THE GLOBAL ANTI-CORRUPTION REGIME: THE CASE OF PAPUA NEW GUINEA (2018) (explaining the value and importance of MDBs in promoting good governance).

159. Michael Igoe, *Can the World Bank ‘Sell’ Anti-Corruption?*, DEVEX (May 3, 2018),

recently stated, “[a] country that starts getting a better reputation in terms of fighting corruption will attract much more private sector investment than other countries.”¹⁶⁰

The key to an effective anti-corruption regime starts with the requirement that all financing of economic development projects mandate compliance with the *prohibited practices* clause, and that all investigations and debarments are mutually recognized, publicized and enforced across multilateral lending institutions. But these efforts will only succeed if loan recipients—governments—realize that their development is in their own hands and that without internal changes to institutions, policies, and culture, development aid will remain a lifeline rather than a stepping stone.

<https://www.devex.com/news/can-the-world-bank-sell-anti-corruption-92678> [<https://perma.cc/TLW6-LRMM>].

160. *Id.*