

## **Final Report of the External Panel of Experts**

### **Re: The Padma Multipurpose Bridge Project**

#### **Executive Summary**

After receiving information from the World Bank, the Bangladesh Anti-Corruption Commission (ACC) confirmed there was sufficient evidence to launch a formal investigation into allegations of a criminal conspiracy in relation to the selection of the Construction Supervision Consultant for the Padma Multipurpose Bridge Project (PMBP). To this end, the ACC issued a First Information Report (FIR) against seven individuals identified by information provided to the ACC as being involved in the criminal conspiracy. The FIR indicates that they are suspected of having attempted to obtain financial gains for themselves and others by favoring SNC Lavalin and its partners in the tender process. The Panel agrees with the decision to pursue a formal investigation of the seven named individuals but maintains that there was no legal reason to exclude the name of the former Minister of Communications, from the initial list of persons to be investigated. (See Annex 1 - Letter from the Chairperson of the Panel to the chair of the ACC). Thus, as of the date of this report, the Panel cannot conclude that the activity of the ACC constitutes a full and fair investigation. A final assessment of the adequacy of the ACC's investigative activities should be done at the end of the ACC investigation.

#### **Observations on the preventative impact of the World Bank**

In accordance with its mandate to “provide any other preventative or technical observations to the World Bank”, the Panel presents the following observations:

The World Bank was able to obtain in real time, information about an ongoing conspiracy related to one project. As a result, the World Bank was able to fulfill its fiduciary duties, to reduce its exposure to fraud and corruption risks and also to manage reputational risks. Additionally the World Bank referrals triggered national criminal investigations in Bangladesh and Canada.

The facts and circumstances of this matter should be analyzed and used as a biopsy to provide relevant information to refine the World Bank's strategy to detect, control and prevent corruption while still delivering its services and to increase consistency in its risk management strategy.

The Panel makes three recommendations that it believes warrant further analysis:

1. Adoption of a more active approach to engage the private sector;
2. Adoption of practices to enlarge engagement with national authorities and other lending agencies to ensure enhanced coordination, investigative efficiencies and improved risk mitigation; and
3. Evaluation of the increased value from "alternative implementation arrangements" and the use of an external Panel of Experts as part of the World Bank mechanisms to fulfill its fiduciary duties.

#### **A) Panel Mandate**

The mandate of the Panel was to assess the investigation by the Anti-Corruption Commission of Bangladesh (ACC) into allegations of corruption in the Padma Bridge Multipurpose Project, advise the World Bank on the completeness, correctness, transparency, adequacy and fairness of the investigation, facilitate collaboration with and among the ACC and other international and national authorities and the World Bank and provide any other preventative or technical observations to the World Bank and the Government of Bangladesh (GoB).

#### **B) Summary of the activities performed**

**October 10-13, 2012 - Tokyo, Japan.** The Panel had preparatory meetings with World Bank authorities, other donors involved in the Padma Bridge Multipurpose Project and Bangladesh government officials. The Panel understood the importance of the timing of the investigation. In accordance with the agreement between the World Bank and the Bangladeshi government, a full and fair national investigation was required before the Bank would take a decision on the proposed financing of the Padma Bridge Project. The Panel also took note of the importance to update all the actors involved in the Project of the progress of its activities.

**October 14-16, 2012 - Dhaka, Bangladesh.** The ACC informed the Panel that the information collected in Bangladesh to date did not yet provide the level of suspicion required to move the case to the investigation stage. The ACC requested assistance, including in obtaining cooperation from other authorities and training.

The Panel had extensive meetings with Ms. Ellen Goldstein, Country Director, and Mr. Stephen Zimmermann, Director of Operations, Integrity Vice-Presidency, to better understand the bidding process and concerning new information the World Bank planned to share with the ACC.

**November 9, 2012.** The World Bank provided additional information to the ACC.

The Panel evaluated the new information provided to determine whether it raised sufficient suspicion to warrant moving from the inquiry stage to the formal investigation stage for any individual.

**December 2-5, 2012 - Dhaka, Bangladesh.** The Panel had meetings with the ACC and discussed in detail the evidence it had received from the World Bank. Investigative matters, including the quantum of evidence implicating the former Minister of Communications, were the subject of an extensive, open and frank dialogue between the ACC and the Panel. The Panel expressed its views that there was sufficient evidence against four individuals working for the Bangladesh Government to warrant opening an investigation against each of them.

**December 17, 2012.** The ACC issued the First Information Report starting the formal investigation phase. In the FIR, the ACC concluded that the evidence raised sufficient suspicion of a criminal conspiracy in relation to the selection of the Construction Supervision Consultant for the Padma Multipurpose Bridge Project (PMBP). Seven persons were named in the FIR for having attempted to obtain financial gains for themselves and others by favoring SNC Lavalin and its partners in the tender process. They are the former Secretary and the former Superintendent Engineer of the Bangladesh Bridge Authority, an Executive Engineer of the Roads and Highway Division and four individuals associated with SNC Lavalin. The ACC said that the roles of the former Minister of Communications and former State Minister for Foreign

Affairs in this “conspiracy would be scrutinized” but these individuals were not formally listed in the FIR as subjects of the launched investigation.

**January 9, 2013.** The Panel sent a letter to the ACC Chairman acknowledging that the issuance of a FIR was a positive first step by the ACC. However, the Panel considered that the evidence suggested a criminal conspiracy that included the former Minister of Communications as the most senior official personally involved. The ultimate award of the contract likely required his approval. He met with SNC Lavalin managers at the request of the former Secretary which was likely in furtherance of the negotiations for an illegal payment. His name and the indication of a payment of 4% were subsequently included in a list of people that were to receive compensation for their alleged involvement in the conspiracy. The Panel considered that in order to achieve a complete and fair investigation, the former Minister of Communications should be named in the FIR and placed under investigation. Nonetheless, the Panel took note of the ACC Chairman’s observation that the former Minister will be under rigorous scrutiny during the investigation. The Panel also requested additional information from the ACC.

**January 21, 2013.** The ACC provided an answer to the information requested by the Panel. The ACC stated that it has yet to draw its final assessment on the role of the former Minister of Communications in the alleged act of conspiracy, as the case is at the investigation stage. The ACC also informed the Panel that it had conducted a series of investigative measures, including the arrest of two of the public servants allegedly involved in the conspiracy. Additionally the ACC provided several annexes with additional information related to its investigation.

**January 31, 2013. Letter from the Bangladeshi Minister of Finance to the President of the World Bank.** The Minister wrote to President Kim informing him that Bangladesh was withdrawing its request for funding for the Padma Multipurpose Bridge Project, reassuring “that the investigation of alleged corruption will continue unabated and vigorously” and expressing his hopes that the World Bank’s Panel of Experts will continue to assist the ACC’s investigation.

## **C) Conclusion of the Panel**

### **On the ACC activities**

The Panel considers that after receiving the additional information provided by the World Bank, the ACC acted correctly in issuing a First Information Report against seven of the eight individuals allegedly involved in the criminal conspiracy. However, the Panel maintains that there were no legal reasons to exclude the name of the former Minister of Communications from the initial list of persons under investigation. Annex 1 presents a detailed analysis of the evidence and the opinion of the Panel on the ACC actions. The Panel would not be able to make a final assessment as to whether the investigation was “full and fair” until the end of the investigation of this matter.

### **Observations on the preventative impact of the World Bank**

1. **Main conclusion of the case.** The World Bank was able to obtain in real time, information about an ongoing conspiracy to pay bribes thus successfully preventing significant financial losses before they occurred and fulfilling its fiduciary duties. The World Bank also minimized reputational risk while at the same time providing for a reasonable way forward with respect to the Project at hand. Additionally, the World Bank referrals led to national criminal investigations in Bangladesh and Canada.

**The case as a biopsy of more general issues.** This matter should be used as a biopsy to refine the World Bank’s strategy to detect, control and prevent corruption while still delivering its services and to increase consistency in its risk management strategy.

2. **The Bank should consider requesting more of bidders.** The “Padma Bridge” Project showed that bidders’ behavior is a significant factor in determining the level of risks associated with Bank operations. The scope and application of procedures to prevent fraud and corruption by commercial entities participating in contracts financed by the World Bank is critical to mitigate integrity risks and would allow the Bank to better fulfill its fiduciary obligations. Mobilizing collective action by the private sector should include specific tools and obligations that go beyond simply good intentions.

- a. The information collected in the case shows that the company, rather than preventing fraud and corruption, was actually promoting a kick-back payment and that such behavior may have been systemic.
- b. Ethics codes and moral commitment were in place within the company and co-existed with a confidential policy to offer bribes. The company's code of ethics stated specifically that "We must not, directly or indirectly, offer, promise, grant or authorize the giving of anything of value – money, gifts, entertainment, employment, contracts or advantages of any kind – to a government official to influence official action or obtain an improper advantage."
- c. As soon as the corruption was documented and exposed the incentives for the company changed and the CEO was removed.
- d. The possibility of further disclosure through court proceedings may provide clarity on the past behavior of the company. In this connection, and in line with the spirit of the UK Bribery Act 2010, the World Bank may wish to require a bidding company to show evidence of having issued ethics codes for all senior staff of the company and all staff involved in the project, and having in place an effective internal monitoring system to ensure compliance. In this regard, it should be explored if the Company can adopt an independent private inspector-general model.
- e. The case shows that the other companies involved in the bidding process did not have enough incentives to publicly disclose information in their possession about illegal activities. When asked by the ACC about the alleged actions of the Minister requesting bribes in relation to the formulation of the Padma Bridge contract, bidders publicly denied the existence of such requests. The World Bank should analyze how to modify private sector incentives to act with integrity and promote collective action among bidding companies to further mitigate integrity risks. In this regard, the World Bank should analyze whether to consider the possibility of monetary rewards for whistleblowers as is possible under rules recently adopted by the United States Securities and Exchange Commission (SEC).

- f. The World Bank should engage in a dialogue with companies involved in its operations to discuss how best to prevent unfair competition through illegal payments. The Panel suggests a meeting led by the World Bank President and including the CEOs of companies working on Bank projects, to mark the launch of a new private sector engagement. Under new leadership, the same companies that previously offered to pay bribes, could share their transformational experiences to learn from their failures and lead a private sector effort to ensure transparency and compliance with the legal framework.

**3. Engaging National authorities and other cooperation agencies to further mitigate World Bank risks and increase preventative impact.** The enforcement of anti-bribery legislation and prevention efforts by national authorities and other external partners as a key element of the World Bank's strategy to manage integrity risks and keep its focus on delivery of its products and services, should be maintained and expanded.

- a. The referrals of the Integrity Vice-Presidency of the World Bank to the Royal Canadian Mounted Police triggered an investigation that included the search of the Company's office and the collection of information related to the Padma Bridge conspiracy. Moreover, through the efforts of INT, the Company agreed to provide relevant documents to the Integrity Vice-Presidency.
- b. The World Bank referred several different cases to the ACC since 2009. The referral report provided to the ACC on the ninth of November, 2012 included evidence that triggered a criminal investigation in Bangladesh. The ACC's activities confirmed the existence of a criminal conspiracy related to a World Bank loan, implicating Bangladeshi public officials in the conspiracy and expanding the list of subjects of investigation to include the Canadian company's managers.
- c. The World Bank should also expand its involvement in the work of national and international organizations tackling these issues, such as the OECD Working Group on Bribery in International Business Transactions and

efforts to expand the impact of the United Nations Convention against Corruption (UNCAC).<sup>1</sup> In particular, Article 16 of the UNCAC obliges countries to make the offering or giving of bribes, and the soliciting or acceptance of bribes a criminal offence. Articles 5, 8, and 9(1) of the UNCAC recommend actions to enhance the conduct of public officials and to improve the integrity of public procurement. Moreover, the World Bank should explore how to make better use of other civil tools, such as regulations related to the tax treatment of bribes,<sup>2</sup> bribery in exports credits,<sup>3</sup> books and records and auditing rules,<sup>4</sup> and systems of debarment from public procurement.<sup>5</sup>

- d. New legislation concerning foreign bribery was also recently adopted in the UK, US, China and most recently proposed in Canada.
  - i. In April 2010, the UK adopted the Bribery Act 2010, followed in April 2011 by a “Guidance about procedures which relevant commercial organizations can put into place to prevent persons associated with them from bribing (section 9 of the Bribery Act 2010)”.
  - ii. On May 1, 2011, the Eighth Amendment to the Criminal Law of the People’s Republic of China (the “PRC”) came into force. It specifically criminalizes acts by Chinese citizens and companies bribing foreign officials.
  - iii. The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) was enacted in 2010, in response to a long series of corporate scandals (it was passed in the wake of Bernie Madoff’s and

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<sup>1</sup> OECD Convention, Art. 1; UNCAC, Arts 5, 8, 9 (1), and 16

<sup>2</sup> OECD, *Recommendation of the Council on the Tax Deductibility of Bribes to Foreign Public Official* (1996) ([http://www.oecd.org/officialdocuments/displaydocumentpdf?cote=c\(96\)27/final&doclanguage=en](http://www.oecd.org/officialdocuments/displaydocumentpdf?cote=c(96)27/final&doclanguage=en)).

<sup>3</sup> OECD, *Working Party on Export Credits and Credit Guarantees – Council Recommendation on Bribery and Officially Supported Export Credits* (2006) ([http://www.oecd.org/officialdocuments/displaydocumentpdf?cote=td/ecg\(2006\)24&doclanguage=en](http://www.oecd.org/officialdocuments/displaydocumentpdf?cote=td/ecg(2006)24&doclanguage=en)).

<sup>4</sup> OCDE Convention, Art. 8.

<sup>5</sup> See Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0018:en:HTML>); World Bank *Listing of Ineligible Firms & Individuals*. (<http://web.worldbank.org/external/default/main?theSitePK=84266&contentMDK=64069844&menuPK=116730&pagePK=64148989&piPK=64148984>).

Sir Allen Stanford's widely-publicized Ponzi schemes). It amended the Securities Exchange Act of 1934<sup>6</sup> (SEA) by incorporating a new Section, 21F, which created a whistleblower program designed to provide monetary incentives –as well as anti-retaliation measures - for people who provide original information regarding violations of securities laws, rules, and regulations to the SEC, thus creating increased opportunity for successful enforcement actions. On August 12, 2011, the SEC adopted the final rules governing the new whistleblower program as Regulation 21F.3.<sup>7</sup>

- iv. In addition, on February 5, 2013, the Government of Canada tabled amendments to the Corruption of Foreign Public Officials Act (CFPOA). The Foreign Affairs Minister, John Baird, said that the federal government wants to make clear that Canadian businesses are expected to "play by the rules".

**4. World Bank internal process.** The internal procedures of the World Bank to fulfill its fiduciary duties and to fight corruption should be proportionate to the integrity risks arising in its operations. The procedures should make a clear distinction between the World Bank's fiduciary duties and World Bank's support to efforts by national authorities to control corruption.

- a. The Bank task team supported by the Integrity Vice-Presidency developed a series of measures to mitigate risks well before the evidence was provided to the Bank. The Panel observed close and positive collaboration among these and other areas of the Bank during the investigation, demonstrating a shared commitment to find the best way forward.
- b. However, no policies or procedures are capable of detecting and preventing all bribery. Indeed, the extensive mitigants adopted in the Padma Multipurpose Bridge Project would still not have been sufficient to prevent the conspiracy. This underscores the importance of the Bank's ability to collect information through investigations as a critical element to detect and

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<sup>6</sup> <http://www.sec.gov/about/laws/sea34.pdf>

<sup>7</sup> 17 C.F.R. § 240.21F et. seq.

prevent conspiracies to offer or receive bribes.

- c. The World Bank received clear information about the existence of a conspiracy after the approval and the signing of the loan. In September 2011, and again in April 2012, the World Bank submitted two reports to Bangladeshi authorities urging them to investigate these matters fully and, where justified, prosecute those responsible for corruption. The decision to delay the effectiveness and not to terminate the contract while referring the problems to the Bangladeshi government provided a clear opportunity for the national authorities to find and implement an adequate solution to the situation.
- d. The Bangladeshi government reshuffled its cabinet but did not address the corruption conspiracy. To resolve the tension between its fiduciary duties and its lending mission, the Bank discussed with the Government of Bangladesh, the adoption of a four pronged strategy that included:
  - i. National investigations;
  - ii. Public officials allegedly involved in illegal activities being placed on administrative leave;
  - iii. An external Panel of Experts appointed by the World Bank to assess whether the investigations are full and fair, and
  - iv. An alternative implementation arrangement to manage the loan.
- e. The Bangladeshi government's failure to adopt this strategy obligated the Bank to terminate the loan on June 29, 2012. Ultimately the World Bank could not delegate its fiduciary responsibilities to national authorities and could not proceed with the project in the absence of a full and fair national investigation. This demonstrates the importance of harmonizing the development mission of the Bank, its good governance programs, its interest in creating national capacity to tackle corruption, as well as the institution's own fiduciary responsibilities.
- f. Despite the decision not to proceed with World Bank financing for the Padma Multipurpose Bridge Project, the new arrangements were finally adopted on September 12, 2012, implemented and found to be of value. Indeed, the Bangladeshi government expressed satisfaction and "hopes that

the World Bank's Panel of Experts will continue to assist the ACC's investigations". The "alternative implementation arrangement" was also designed and ready to be rolled out were the Project to proceed. These two options should be further analyzed by the World Bank, and eventually included within the menu of possible responses to future integrity concerns.

- g. The confidentiality of the information obtained by the World Bank made it difficult to share it with interested third parties, including national enforcement agencies and other lending institutions. The Bank should analyze how the exchange of information in such situations could be further improved, increasing possibilities for cooperation and collective efficiency.
- h. In order to take lessons from the "Padma Bridge case" and avoid misperceptions and damage to the World Bank's reputation, a proper communication of the case should be implemented, including to World Bank staff, the relevant national and multinational organizations, the Government of Bangladesh and the companies involved.
- i. Recognizing the importance of corruption prevention in works projects, and the crucial role the private sector can play in this respect (para 5 (d) and (g) above), the Integrity Vice-Presidency should also explore how it may further enhance the installation, implementation and monitoring of effective preventative systems in the private sector.

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