

Report
Concerning
the Anti-Corruption Framework of
The Inter-American Development Bank

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I. Introduction

A. Summary of the history and responsibilities of the Inter-American Development Bank

Almost half a century ago, the Inter-American Development Bank (hereinafter the “Bank” or the “IDB”) was established by an agreement among the nations of the Western Hemisphere.¹ Its described purpose was to contribute to the acceleration of the process of economic and social development of the member countries, individually and collectively. To implement that purpose, the Bank was charged with promoting the investment of public and private capital for the development of its members – by utilizing its own capital and funds that it could raise in financial markets, and by encouraging direct private investment.

Today the region served by the Bank extends from the Rio Grande to Tierra del Fuego and contains an increasing number of countries with rising middle-income populations and governments directed by democratically-elected officials. The Bank’s shareholders include member countries located within the Western Hemisphere, as well as in Europe, Asia, and the Middle East. Slightly over fifty percent of the Bank’s shares are held by borrowing members, and less than fifty percent by contributing members, a structure not adopted by most of the other multilateral development banks (“MDBs”) in which control rests in their lenders. It is operated essentially as a cooperative. It is a unique institution, reflecting the culture and heritage of the region it serves, and is widely considered to have proven itself as both progressive and effective.

The value of the loans approved by the Bank’s Board of Executive Directors (the “Board”) in 2007 totaled nearly \$10 billion, materially exceeding that of any other regional development bank. Despite these resources, however, as a result in part of the

¹ The *Agreement Establishing the Inter-American Development Bank* became effective on December 30, 1959.

expanding availability of other funding sources to several of the nations of the region, the Bank's loans to its member countries are becoming a smaller and smaller proportion of those countries' total external debt. The Bank is in the process of redirecting and prioritizing its efforts toward the support of undertakings – by both public and private institutions – that can most effectively serve the long-term development needs of its borrowing countries, especially those countries that may find themselves less able to attract adequate funding from alternative sources. In connection with this redirection, the Bank has embarked on a major realignment of its operations. This review is intended to assist the Bank in its consideration of that realignment with regard to a relatively narrow field of its operations – operations pertaining to the Bank's response to fraud and corruption in projects financed with Bank funds, and pertaining to the Bank's support of good governance in the countries of the region.

B. The potential effect of fraud and corruption on the Bank's efforts to fulfill its responsibilities

All countries around the world, including those of Latin America and the Caribbean, are continuing to evolve – socially, democratically, and economically. Some have reached world-class standards in several respects; others have found the path to progress far more difficult and more lengthy. In all regions, some countries have faced, to varying degrees, the necessity of attempting to overcome a singularly troublesome and endemic problem: a toleration of favoritism, petty bribery, and routine kickbacks in commercial and governmental transactions. While as individual events these perhaps may not be seen as particularly serious in themselves, their characteristics have become embedded in the local culture of many countries in several regions. In recent decades they have escalated in some countries to systematic bribery and large-scale extortion, with a by-product of economic and political power often gravitating toward concentration in a few individuals or organizations to the detriment of the larger society.

Such fraud and corruption causes all national interests to suffer, and some, from the point of view of economic development, to suffer tragically. A nation cannot devise and maintain effective programs affecting transportation, education, agriculture, health,

energy or other areas of governmental interest if funds it allots for such purposes are diverted for the private benefit of contractors and government officials. To the extent that those funds are derived from international or multilateral development banks, either directly or indirectly, those institutions also suffer a loss – the funds, once diverted, no longer are available for their intended purpose; the funds are lost to the pool of funds available to borrowing members for other worthwhile projects; and, potentially more significantly from a long-term standpoint, the reputation of the institution itself is called into question. In the case of the IDB, any such diversion of funds from their intended purposes is contrary to the Bank's Charter.

C. The Bank's recognition of the problem posed by fraud and corruption

As was the case with regard to all other multilateral development banks, and virtually all other transnational institutions, the problems of fraud and corruption for many years were paid little heed by those engaged in the day-to-day processes of the Bank's operations. Those involved in these processes were not oblivious to the indications of fraud and corruption in specific projects, nor to the likelihood of fraud and corruption in many other projects in which such indications had not yet surfaced, but the primary emphasis of Bank operations lay in getting funding to the field and not in attempting to assure the pristine and transparent character of its field operations. Any losses were considered by the Bank to be trivial in comparison to the benefits of the projects to the countries involved.

By the 1990's, however, concerns about the long-term deleterious effects of fraud and corruption on development began to increase, and began to be discussed more seriously within the countries of the region. In recognition of these problems, the IDB undertook an overhaul of its procurement policies to permit the Bank to take action in cases of fraud and corruption. In 1996, the Bank's Board of Executive Directors approved the institution's policy on Modernization of the State and Strengthening of Civil Society, designed to consolidate democratic systems and strengthen governance processes in the region. That same year, at the initiative of the Organization of American States, the countries of the Americas signed the Inter-American Convention against

Corruption, openly recognizing the seriousness of the problem and resolving to undertake collective action against it, the first such regional convention anywhere in the world.² While other international institutions also began to recognize the world-wide scope of the problem, among the multilateral development banks, the Inter-American Development Bank was one of the first to respond to that recognition. At the instigation of the Bank's governing body, its Board of Executive Directors, and with the subsequent support of Bank management, the Bank assigned a working group to undertake a careful review of the consequences of corruption and possible means by which it might be countered. The group's work resulted in the preparation of a seminal Bank document on "strengthening the systematic framework against corruption" (the "Systematic Framework") which was adopted by the Board of Executive Directors in 2001. In this document, the group proposed a restructuring of Bank activities at all levels that would help to ensure integrity in the Bank's internal operations, to protect development of projects being funded by the Bank, and to assist national governments in their independent efforts to foster principled operations within their borders.

In the Systematic Framework, the authors noted "the Bank's need to address its member countries' rising concern with the limitations to development caused by corruption." The authors went on to observe:

"The challenge of preventing and combating corrupt behavior is common to most societies and is being currently undertaken by public and private institutions both domestic and international. Corruption affects both the public and the private sector, distorting economic realities and creating perverse incentives that impact all levels of society. It is a threat to democratic institutions, serves as a detriment to the economic and social development of national economies and, if condoned and permitted to

² Shortly thereafter, the Bank and the OAS signed a memorandum of understanding to cooperate in strengthening the implementation and monitoring of the convention. The region remains the only one that has agreed to undertake full regional cooperation in addressing the problems of corruption.

flourish, can seriously undermine the credibility of the state's institutions and structures....

“Corruption and its effects are receiving greater attention in the vast majority of our member countries. Among the factors for this increased attention are governments that are intent on preserving the economic and democratic transformation of their countries over the last decade; a citizenry that is less tolerant and more vocal regarding the threats posed to the social and economic fabric of a country; a free press that more actively engages in investigative journalism; and local governments that are increasingly called to shoulder responsibility for delivery of services that previously were within the purview of national governments. The private sector is also concerned about the threats corruption poses to the proper functioning of the marketplace, in economies that are based on the belief that the marketplace is the most effective mechanism for allocating resources.”³

After a careful analysis of the problems, the authors concluded:

“The Bank's member countries share a deep concern regarding the negative impact of corruption on development and on the risk that it poses to the Bank's allocation of resources and to its corporate culture. It is therefore timely and appropriate for the institution to articulate a comprehensive and systemic approach to combat corruption on all of these fronts, taking into account the needs of the Latin American and Caribbean region.”⁴

³ *Strengthening a Systemic Framework against Corruption for the Inter-American Development Bank*, (Document GN-2117-2), 15 February 2001, p. 1.

⁴ *Id.* at p. 14.

D. The Bank's development of remedial and preventive efforts to address the problems of fraud and corruption

Following the submission of the Systematic Framework, which called for a systemic approach to combating fraud and corruption, the Bank reviewed its various mechanisms that were directed to one or another of the several aspects of the problem and made changes to its operations and programs related to its remedial efforts and its internal and external efforts to address such problems.

In connection with its remedial efforts, the Bank's initiatives to respond to instances of fraud and corruption included the following:

- With regard to ensuring integrity within the Bank, (i) the Bank's Code of Ethics was substantially revised and expanded following a review by outside experts, and (ii) the Ethics Committee (recently reconstituted as the Committee of Ethics and Professional Conduct) was charged with responsibility for reviewing allegations of misconduct constituting violations of the Code of Ethics and, more recently, the Respect in the Workplace Policy (previously, the responsibility of the now defunct Conduct Review Committee).
- With regard to ensuring that funds disbursed by the Bank are used for the designated purposes, the Procurement Committee was identified as responsible for investigating allegations of fraud and corruption in the project procurement process involving Bank loan resources and further changes were made to strengthen the Bank's procurement policies and documents.
- With regard to recruitment and promotions, the Bank undertook to make its procedures more transparent and to ensure accountability.
- With regard to investigating allegations of fraud and corruption in any Bank activity, responsibility was delegated to the Office of the Auditor General (and later assigned to the Office of Institutional Integrity), with support principally from the Legal Department and independent external auditors.

In connection with its internal measures to preventive corruption within Bank-financed projects and to ensure the existence of a proper control environment, the Bank's initiatives included the following:

- With regard to its activities in a country, the Bank expanded the scope of the Country Paper, the major operative guideline for the Bank's actions in a particular country, to explicitly address governance within the country and, where applicable, to address corruption as well.
- With regard to project identification and design, the Bank increased its emphasis on preventive controls being applied earlier in the process, refined its efforts on risk analysis, and strengthened its capacity for institutional analysis of government agencies responsible for executing projects and for fiduciary assessments in borrowing countries, in particular within the area of public procurement and financial management.
- With regard to project execution, the Bank reviewed and adjusted its monitoring processes and oversight mechanisms so as to maximize efficiency, integrity, and transparency and undertook to ensure transparency related to procurement opportunities, contract awards and contract execution within Bank projects in a more timely and comprehensive manner by promptly posting such information on the Bank's website.
- With regard to project evaluation, efforts were made to ensure that project completion reports adequately address questions of whether or not operations were properly designed and executed and whether or not corrupt practices may have been present, and the Office of Evaluation was directed to incorporate the evaluation of the Bank's compliance with its anti-corruption mandates into its program of activities.

In connection with its external measures to assist countries in their efforts to prevent corruption and to promote good governance, the Bank's priorities include the following:

- With regard to its programs designed to consolidate the rule of law and support transparency, the Bank expanded its support for programs that strengthen parliaments and justice systems, including the assurance of politically independent and technically competent magistrates and prosecutors, and that promote financial management at all levels of government, reform of public procurement regimes, and the capacity for more efficient controls by the offices of auditing institutions, such as offices of controllers.
- With regard to governments of member countries and non-sovereign levels of government, the Bank expanded its support for the development and implementation of credible, comprehensive anti-corruption programs and strategies and for efforts to eliminate corruption in specific sectors.
- With regard to civil society, the Bank continued to promote efforts that would facilitate a more proactive intervention on the part of civil society and responsible participation by civil society in grass-roots projects and in the delivery of public services.
- With regard to the private sector, the Bank encouraged proper corporate governance in the entities with which it deals and took a more active role in supporting corporate codes of conduct, corporate governance frameworks, and transparent pacts of integrity.

In addition to these specific measures, the Bank's management concluded that the Bank needed general oversight and coordination of its remedial anti-corruption initiatives. As a result, in mid-2001 the President announced the establishment of an independent Oversight Committee on Fraud and Corruption ("OCFC" or "Oversight Committee") to coordinate responses to all allegations of fraud and corruption in connection with Bank activities or operations, to oversee any resulting investigations, and to assure appropriate dispositions. The OCFC was to be chaired by the Executive Vice President, would include the Vice President for Planning and Administration, the General Counsel, and the Auditor General, and would report to the President. The OCFC would receive allegations of fraud and corruption through its secretariat, which would be housed for administrative purposes in the Office of the Auditor General. All allegations would

be reviewed by the OCFC, and then referred to the appropriate office for investigation – usually the Office of the Auditor General, the Procurement Committee, the Ethics Committee, or the Legal Department. The OCFC would then be responsible for overseeing the investigative process, would monitor implementation of recommendations (including sanctions) arising from the investigation, and would recommend to the President the forwarding of particular cases to appropriate national authorities.

Over the course of the next few months, revised procedures under the guidance of the OCFC were put in place, a secretariat was established, office space was arranged, and necessary administrative mechanisms were developed. Support from Bank staff was encouraged through the development of a website describing the Bank’s overall program, the common indications of fraud and corruption to which staff should be alert, and the procedures for reporting suspected violations. Eventually, existing investigative procedures were replaced by a refined set of rules for administrative investigations to insure the proper governance of the conduct of all Bank investigations. Shortly thereafter, the Bank adopted detailed rules for the protection of whistleblowers and witnesses.

In late 2003, as a result of a steady increase in the number of allegations of fraud and corruption received by the Bank and a concomitant increase in matters being referred for investigation, the Bank’s management approved the creation of an Office of Institutional Integrity (“OII”), an independent office designed to serve as a clearly identifiable focal point for matters related to integrity in Bank activities.⁵ It was to be located within the Office of the President and responsible directly to the President. The Office was to be staffed by professional investigators, and would be charged with responsibility for all investigations in the Bank Group with regard to fraud and corruption, ethics violations, and violations of the Respect in the Workplace Policy, and then reporting the results of its investigations to, as appropriate, the OCFC, the Ethics

⁵ It was intended to focus upon matters that differed from those customarily addressed by the Office of the Auditor General, which, while frequently encountering matters raising integrity concerns, is more absorbed with near-term, management, and client-oriented problems.

Committee, or the Conduct Review Committee, as the committees were then constituted. OII was also to serve as the secretariat for each of these committees. In addition, OII was assigned primary responsibility for ensuring that all Bank staff members receive appropriate training concerning their obligations under the Code of Ethics. OII began its operations in early 2004.

Throughout this process of undertaking to develop a sound structure to address and prevent problems involving fraud and corruption within the framework of the fiduciary responsibilities of the Bank, the representatives of Bank management and the members of the Board of Executive Directors worked cooperatively, and with a degree of relative harmony not necessarily common in multilateral institutions, in seeking to resolve their individual and institutional differences and meet the problems they all recognized to be of significance to the region. In the view of one senior Bank official, the result has been nothing less than “a cultural change.”

E. The Bank’s request for a review of its program to address the problems of fraud and corruption

More than four years have passed since the last major change in the structure of the Bank’s program to address to fraud and corruption. During that period, the work under the program expanded at an accelerating rate, prompting both enthusiasm and circumspection on the part of those observing the process, and exposing both gaps and overlaps in Bank anti-corruption operations. This engendered occasional proposals for further changes in both the structure and the focus of the program. These proposals tended to concentrate upon distinct aspects of the overall program, promoting the value of their adoption without adequately addressing their integration.

In late 2006, the President directed the creation of a Bank Anti-Corruption Working Group to undertake an assessment of the anti-corruption program in a broader context. The Working Group produced an analysis and a series of recommendations in

early 2007.⁶ This came at a time, however, during which a much more basic reassessment and realignment of all Bank activities was already under way – a reassessment and realignment that is still in progress – and the Working Group’s recommendations thus have yet to be implemented in a comprehensive fashion.

As a result of these developments, the President, at the instigation of the Executive Directors, concluded that it would be timely to have an outside, independent group undertake a fresh review of the overall anti-corruption framework in the context of the developing realignment, and thus have called for an external review of the Bank’s “mechanisms and capacity to detect and prevent corruption as well as the adequacy of the structures, procedures, and management in place to receive, investigate and sanction allegations of fraud or corruption.” Specifically, the review is intended to evaluate: the overall structure and mechanisms to deter and prevent fraud and corruption in the Bank’s operations and activities; the means of detecting such fraud and corruption; the investigative process; and the process for responding to results of investigations.

The requested review has been undertaken by the four authors of this Report.⁷ The review, it should be reemphasized, constitutes a limited part of the much more fundamental, comprehensive, and thorough reassessment by the Bank of the means by which it might best serve the interests of the countries of the region. That broad-scale reassessment has been underway for more than two years at this point, and has already resulted in a number of significant alterations in the Bank’s concentration, structure, and operation. It is in that context that this Report should be read.

⁶ *The IDB’s Anti-Corruption Activities, Review and Recommendations*, February 20, 2007.

⁷ One of the authors began the project with a thorough understanding of the history, operations, and procedures of the Bank, which was developed in the course of his previous retention to undertake a detailed analysis of the Bank’s practices with regard to a related area – ethics standards and responses to their violation. Three of the authors began the project with an understanding of fraud and corruption concerns and procedures from the standpoint of other multilateral development banks, having been retained on three occasions to review aspects of the anti-corruption procedures and practices of the World Bank, and having had previous exposure to related problems affecting the United Nations. All four authors are keenly aware that the particular strengths and problems of the Inter-American Development Bank are different in a number of respects from those of other institutions, and accordingly have undertaken to assure that their assessments recognize those differences.

F. The approach of the review process

The review process was begun with a review of more than two thousand pages of public and non-public Bank documents pertaining to its history of attempts to address problems of fraud and corruption, including documents concerning general policies, rules and procedures, investigative files, case histories, inter-office cooperation, Board-management coordination, work with other multilateral lending institutions, and work with country officials. These materials were augmented by review of writings prepared by related institutions, non-governmental organizations, and independent analysts and reporters. The review of the written materials was followed by a series of confidential interviews with present and former Bank Executive Directors, management officials, employees in Washington and in country offices, contract personnel, individuals in other multilateral development banks, and knowledgeable individuals in non-governmental organizations and in the private sector.⁸ In all, nearly 90 individuals were interviewed, with an average interview encompassing about an hour in duration. This Report was prepared on the basis of our analysis of those written materials and the confidential interviews with officials of the Bank, as well as officials of governments from borrowing and lending countries represented on the Board,⁹ and representatives of civil society organizations that focus on anticorruption activities or development in the region,¹⁰ in the context of our perception of the Bank's needs.

⁸ Interviews took place largely at the Bank's Headquarters. Additional interviews with officials in field offices were facilitated through video conferences with a number of Bank officials serving in selected country offices, including in Argentina, Bolivia, Brazil, Paraguay, and Peru.

⁹ Although no field travel was considered for the reviewing team, its members were open to bilateral discussions with the Executive Directors representing member countries. Working meetings were held with the Executive Director from Colombia, who was then serving as the President of the Board, as well as representatives from Argentina, the Bahamas, Barbados, Canada, Chile, Guatemala, Japan, Mexico, Panama, Paraguay, Peru, the United Kingdom, the United States, and Venezuela.

¹⁰ Among these were meetings in Washington with Transparency International – USA, the Interamerican Dialogue, and the Due Process of Law Foundation.

II. Overview of the Bank’s current framework for addressing problems of fraud and corruption

A. In general

In the abstract, the remedial aspects of any overall Bank program to combat fraud and corruption¹¹ focus largely upon (1) identifying funds that have been diverted from their proper purposes; and (2) to the extent possible, attempting to recover those funds or at least preclude the companies or individuals that had engaged in wrongdoing from again being in a position to repeat the corrupt activities. The preventive aspects of any such program focus upon (1) making it more difficult for a potential wrongdoer to be in a position to commit an act of corruption, or, if in such a position, to escape detection; and (2) strengthening response systems to the extent that they routinely can identify, investigate, and sanction such acts, thereby dissuading future would-be violators from committing such acts.

Both the remedial and the preventive aspects are important to the Bank’s internal anti-corruption program, and, importantly, to its external anti-corruption program which seeks to minimize fraud and corruption affecting countries and the region as a whole.

The Bank, in its own anti-corruption program designed to fulfill its fiduciary responsibilities to protect Bank funds – its internal program – has undertaken to incorporate both the remedial and the preventive approaches. Its internal, fiduciary program includes the remedial approaches of investigating and sanctioning persons and firms that divert Bank funds from the purposes for which they were intended, and such preventive approaches as encouraging high ethical standards of Bank employees, undertaking data review and analysis, assuring due diligence precautions, and engaging in cooperative work with other international financial institutions.

¹¹ The terms “fraud” and “corruption” are used in this Report as now defined by the *Uniform Framework for Preventing and Combating Fraud and Corruption* prepared by the International Financial Institutions Anti-Corruption Task Force in September of 2006 (hereinafter the “Uniform Framework”), which has been adopted not only by the Bank but by all of the principal multinational development banks.

The Bank is also beginning to undertake greater initiatives in its country-support program – its external program – that would assist in the development of improved country-level remedial and prevention measures. Its external, country-support program is, as yet, less fully developed than its internal program, but it incorporates remedial components, including assistance to countries in respect to specific fraud and corruption problems, and prevention components of a “good governance” nature, including assistance to promote country institutional strengthening, particularly with regard to enhancement and reform of judicial systems, national accounting systems, procurement regimes, local administration, and related functions.

B. Overview of the Bank’s internal remedial measures

The Bank’s policies and procedures governing its fulfillment of its fiduciary responsibilities through the investigation of allegations of fraud and corruption in Bank-financed projects are derived from its Charter and are contained in the Operating Manual of Guidelines of the OCFC and the Operating Manual of OII. All allegations of fraud and corruption received by the Bank are referred to OII. Upon receipt of an allegation involving third-party bidders, contractors, consultants, concessionaires, or sponsors (or their respective officers, employees, or agents) in Bank-financed projects or private sector loans, OII notifies the OCFC of the allegation, and logs and records it in a database in a manner that assures any requested confidentiality. OII does not have authority to investigate, and the Bank does not have the authority to sanction, actions by public officials of the borrowing countries; accordingly, if evidence of fraudulent or corrupt activities by public officials comes to the attention of OII, such matters may be referred to law enforcement authorities in the appropriate countries.

In matters over which OII is given authority under the applicable policies and procedures described above, it begins the investigative process by undertaking a preliminary review of the matter in order to gather sufficient information to make a determination whether a full investigation is warranted. At the preliminary review stage OII seeks to establish (i) whether the allegation concerns a Bank-financed activity, (ii) if the allegation should prove to be true, whether it would constitute a violation of the

Bank's administrative policy prohibiting fraudulent or corrupt practices, and (iii) whether the information is sufficiently credible to support the allegation. If those questions can be answered in the affirmative, then OII proceeds to conduct a full investigation. If, at the end of the preliminary review or at any other stage of the investigation, OII concludes that there is not a sufficient basis to warrant continued investigation, OII advises the OCFC of that determination, and the OCFC has the final authority to decide whether that the matter is to be closed.

Full investigations conducted by OII's investigators (known as "integrity officers") rely on evidence that is obtained by OII from Bank staff members, country officials, and individuals associated with the subject of the investigation, as well as from documents pertaining to the project. If necessary and appropriate, OII will undertake mission travel to conduct interviews with local staff and review public record information. All mission travel is coordinated with the Country Representative, and prior to the visit the applicable Executive Director is advised of the subject matter of the allegation.

OII presents the results of its investigations to the OCFC, and the OCFC is responsible for deciding whether a sanctions proceeding should be commenced. If OII has not found sufficient evidence to support a conclusion that there has been fraud or corruption in a Bank-financed project, it will accompany its report with a recommendation that the OCFC authorize the matter to be closed. If OII recommends further action on a matter and the OCFC agrees, the OCFC either refers the matter to the Sanctions Committee or pursues the matter itself. Cases involving bidders, contractors, consultants, or concessionaires (or their respective officers, employees, or agents), in Bank-financed projects using public sector loans, are referred to the Sanctions Committee. In all other matters, such as those involving allegations of fraud or corruption in contracts between the Bank and third-parties or in projects funded by Bank loans to the private sector, the OCFC retains jurisdiction. The procedures followed in all such matters, whether reviewed by the Sanctions Committee or the OCFC, are handled pursuant to the Bank's Sanctions Procedures. In exceptional circumstances and for good

cause shown, the OCFC may suspend an accused party from consideration for award of other contracts while the matter is being reviewed and while it is pending a final decision.

If the OCFC determines that there is sufficient evidence to support a finding that an act of fraud or corruption has occurred, it may direct OII to prepare a Notice of Administrative Action (“Notice”). The Notice must identify the individual or entity that may be subject to sanctions (the “Respondent”), state the allegations of fraud or corruption, and summarize the facts relevant to the basis for the allegations. In addition, OII is required to attach to the Notice all evidence relevant to the determination of a sanction, including all exculpatory or mitigating evidence, explain in the Notice the opportunities that the Respondent will have to respond to the allegations, and describe in the Notice the scope of the sanctions that the Bank may impose. The Respondent is given sixty days to respond in writing to the allegations set forth in the Notice if it should choose to present evidence to refute the charges or of mitigating circumstances. OII and the Respondent then have one further opportunity to reply in writing to each other’s submissions. Based on the entire written record, the Sanctions Committee (or the OCFC, in cases that come before that body), determines whether the Respondent engaged in an act of fraud or corruption in connection with a Bank-financed project. The standard of proof for making this determination is whether “the evidence is sufficient” to support such a finding.¹²

If any firm, entity, or individual bidding for or participating in a Bank-financed project is found to have engaged in fraudulent or corrupt practices, the Bank has the authority, under its “General Conditions for Loans” and the “Policies for Procurement of Works and Goods Financed by the Inter-American Development Bank” and the “Policies for the Selection and Contracting of Consultants Financed by the Inter-American

¹² This standard is slightly different from the “more probable than not” standard that has been agreed upon among the multilateral development banks. *International Financial Institutions Principles and Guidelines for Investigations*, September 2006. Nevertheless, we find either standard to be appropriate as each is respectful of the due process rights of the respondent and each can be easily understood by members of the sanctioning body and others with an interest in the process.

Development Bank” (hereafter the “Procurement Policies”), to take a variety of actions to protect its interests. Under the Procurement Policies, the Bank may:

- i. decide not to finance any proposal to award a contract or a contract awarded for works, goods, and related services financed by the Bank;
- ii. suspend disbursement of the operation if it is determined at any stage that evidence is sufficient to support a finding that an employee, agent, or representative of the Borrower, Executing Agency, or Contracting Agency has engaged in an act of fraud or corruption;
- iii. cancel, and/or accelerate repayment of, the portion of a loan or grant earmarked for a contract, when there is evidence that the representative of the Borrower, or Beneficiary of a grant, has not taken the adequate remedial measures within a time period which the Bank considers reasonable, and in accordance with the due process guarantees of the borrowing country’s legislation;
- iv. issue a reprimand in the form of a formal letter of censure of the firm, entity, or individual’s behavior;
- v. issue a declaration that an individual, entity or firm is ineligible either permanently or for a stated period of time, to be awarded or participate in contracts under Bank-financed projects except under such conditions as the Bank deems to be appropriate;
- vi. refer the matter to appropriate law enforcement authorities; and/or
- vii. impose other sanctions that it deems to be appropriate under the circumstances, including the imposition of fines representing reimbursement to the Bank for costs associated with investigations

and proceedings. Such other sanctions may be imposed in addition to or in lieu of other sanctions.”¹³

The Sanctions Committee has the authority, under iv and v above – in any case involving bidders, contractors, consultants, or concessionaires in Bank-financed projects – to issue a letter of reprimand to, or to impose a temporary or permanent debarment upon, any firm, entity, or individual that it finds to have engaged in fraudulent or corrupt practices in relation to the bidding or contract execution stages of the project. Under vii above, the Sanctions Committee also has the discretion to impose other sanctions on such parties as it deems appropriate. If the fraudulent or corrupt practices also involve a Bank staff member, any consequences to the staff member are handled by the Committee of Ethics and Professional Conduct rather than the Sanctions Committee. As noted above, if the matter involves employees of governments or other parties who are not subject to the jurisdiction of the Bank pursuant to the Procurement Policies or the Bank’s bid or loan documents, the Bank has no authority to impose a sanction, but the OCFC may recommend to the President that the matter be referred to appropriate law enforcement authorities in the country involved. Any such referral is transmitted through the Executive Director to the Governor of the Bank for the appropriate country. To date, a limited number of these referrals have been made, but only one has led to a criminal prosecution in the country to which the referral had been transmitted.

Before the Sanctions Committee reviews a matter involving a firm, entity, or individual bidding for, or participating in, a Bank-financed project that is alleged to have been the subject of fraudulent or corrupt practices, the subject of the investigation is informed of the allegations in a “Notice of Administrative Action,” which includes OII’s statement of the case that is to be presented to the Sanctions Committee. The subject then has the opportunity to submit any relevant information it may wish the Sanctions Committee to consider; OII is given a chance to reply in writing to such a submission; and the subject is given one additional opportunity to submit further materials in reaction to OII’s reply. OII is required to submit any mitigating evidence in its possession to both

¹³ *Procurement Policies*, Paragraph 1.21(b).

the Sanctions Committee and the subject of the investigation. The Sanctions Committee reviews the written submissions and may render a decision based solely on the written record. Under the Sanctions Procedures, the Sanctions Committee may, in its sole discretion, choose to hold a hearing, but the Sanctions Procedures do not give the subject of the investigation a right to a hearing. In practice, the Sanctions Committee has decided all matters to date on the basis of the written record without a hearing.

Sanctions imposed by the Sanctions Committee are announced on the Bank's website,¹⁴ as well as being sent in writing to the party subject to the sanctions, the relevant Bank managers, and the Executive Director or Executive Directors of the affected countries.

Subject to certain matters that are discussed in more detail in this Report, overall, we find that the procedures adopted by the Bank for the conduct of investigations by OII and the review of OII's findings and the imposition of sanctions – including, in respect to the procedures to investigate or respond to allegations, the standard of proof applied to determine whether remedial action should be taken and the adequacy of current disclosure of results of the Bank's investigations – to be sound and balanced. They enable the process to uncover and present evidence of wrongdoing when it exists and, at the same time, with regard to the administrative procedures, they are respectful of due process considerations as to the suspected wrongdoers.

C. Overview of the Bank's internal and external preventive measures

The Bank's internal preventive measures designed to fulfill its fiduciary responsibility to protect Bank funds against fraud and corruption have tended to concentrate on improving the project procurement process and related processes so as to

¹⁴ Recently the Committee, as permitted by the provisions of the current rules, has declined to publicly announce a sanction consisting solely of a letter of reprimand in cases where the Committee found mitigating circumstances and the absence of a business purpose to be served by the publication.

make it more difficult for Bank funds to be diverted for improper purposes.¹⁵ The Bank has also sought to develop early indicators of potential problems during the bidding stage or the project initiation stage of contemplated Bank-funded projects, in order that, when diversions of funds do take place, the Bank might respond promptly and thereby mitigate the potential losses. Development of these measures has involved collaborative work among a number of Bank offices, including the Office of the Auditor General, the Legal Department, the Procurement, Disbursement and Portfolio Monitoring Division, the Risk Management Office, and OII. It has also involved collaborative work with other multilateral development banks, the OAS, and the UN. These programs have received general support from all levels of the Bank.

The Bank's external preventive measures – country support programs – have recently begun attracting greater Bank attention. They involve providing advisory assistance, and potentially funding, to member countries to support them in improving their own capacities for directly or indirectly addressing problems of fraud and corruption. OII, in conjunction with the Bank's operational offices, for some time has undertaken training programs for country officials concerning anti-corruption approaches. More recently, as part of the 2007 reorganization and realignment of the Bank, a new Institutional Capacity of State Division (“ICS”) was created within the Institutional Capacity and Finance Sector to draw together in one place all of the Bank's general good governance measures and to encompass assistance to countries in developing broad-scale, systemic improvements. In the initiatives aimed at implementing the Bank's anti-corruption objectives, any such assistance would appropriately be preceded by the development of accurate measures of the extent of country-specific corruption, then by the use of the accumulated data to identify the particular kinds of programs that could best assist the country in framing systemic responses. With this in mind, a program to expand the Bank's capacity for extensive data collection and analysis has recently been developed by ICS, working together with OII.

¹⁵ In addition, they have included such matters as the development of ethics codes and related internal training programs, financial disclosure requirements, and other integrity-related measures.

III. Observations concerning operations under the current framework

A. In general

The Bank has established itself as a leader both in recognizing the long-term problems posed by fraud and corruption and in attempting to respond to those problems in an effective manner. It has developed, as noted above, a regime to assist in fulfilling its fiduciary responsibility to assure that the funds entrusted to it are employed for their intended purposes, and also various programs to assist member nations in the establishment and implementation of governance standards to help make certain that their own funds, as well as those of the Bank, are expended only for their designated development purposes. Such programs are designed in part to be remedial, and in part to be preventive. While the Bank has undertaken a wide range of well-conceived and well-executed activities aimed at supporting countries' anti-corruption activities, as a whole, these initiatives have been disjointed and uncoordinated. As the Anti-Corruption Working Group noted in its February 2007 report, "There is not a single comprehensive strategy or framework that identifies and prioritizes the anti-corruption activities that the Bank wishes to endorse and undertake itself."¹⁶

Despite the need for greater cohesion in its anti-corruption efforts, the Bank has achieved relative success not only in establishing an array of programs, but in garnering a reasonable degree of support for these programs at all levels of the Bank – from Executive Directors, through management and professional staff, both at Bank headquarters and in the field. This is no small accomplishment. Transnational institutions attempting such programs often find that their efforts immediately collide with philosophical and practical objections on the part of those whose support is most necessary to success. Executive Directors occasionally find themselves potentially conflicted when their governments and their own countrymen are suspected of being implicated in serious wrongdoing. Managers find their limited workdays interrupted by the need to supervise unfamiliar activities designed to protect Bank assets. Those serving

¹⁶ *The IDB's Anti-Corruption Activities, Review and Recommendations*, February 20, 2007, p 14.

in the numerous professional capacities required by the Bank report that they find their established procedures and long-standing practices rendered more complicated by the additional requirements associated with the Bank's anti-corruption initiatives. Field personnel encounter paperwork frustrations and practical concerns that new anti-corruption measures will further reduce the small pool of bidders eligible for significant projects.

Nonetheless, at all levels of the Bank, the overwhelming response to the general program has been one of strong support. Everyone exhibits an understanding that any bank's reputation is of fundamental importance to its effective operation; that, once damaged, a reputation is very difficult to repair; and that a sound anti-corruption program can help to avoid such reputational damage. Everyone also exhibits an understanding that a sound anti-corruption assistance program, as a component of the Bank's development agenda, can be of material help to member countries in augmenting their own capacity to protect their integrity and to remedy their problems.

It is quite apparent in speaking with officials, employees, and contract personnel throughout the Bank, that they are pleased with the Bank's foresight concerning the importance to the member countries of an effective anti-corruption program, and that they are well willing to work toward the program's success. What criticisms they have offered are usually constructive.¹⁷ Many of those criticisms have been accompanied by suggestions for modifications of the program's administrative structure, for increased coordination among affected Bank offices, for early notice to collaterally-affected persons of actions being undertaken pursuant to the program, for expansion of those aspects of the program intended to help countries improve their national anti-corruption systems, and for adequate funding to achieve the results that the Bank is seeking. Despite

¹⁷ Two matters that were mentioned frequently involved: (i) an internal investigation (not conducted by OII) into the conduct of a Bank staff member in which there was a perception among some within the Bank that the Bank failed to take remedial action against the staff member due to his close association with an Executive Director, even though the staff member's conduct ultimately lead to prosecution by local authorities in Washington, and (ii) isolated problems created by delay in providing information to certain Executive Directors about investigations into projects in their countries.

the concerns prompting such criticisms, not a single person among the scores we interviewed would call for elimination of a program to counter fraud and corruption, and very few would suggest changes that might lead to a substantial reduction of the program's compass.¹⁸ To the contrary, virtually all observers were supportive. Given the sensitivity of the subject area, we found this to be notable.

Although, as observed, acceptance of the general program appears to be almost universal, there are several areas in which some modification of existing requirements and procedures would seem to be in order.

B. The Bank's remedial program against fraud and corruption

It should be reiterated at the outset that the purpose of the Bank's internal remedial program is to enable it to fulfill its own fiduciary responsibility to protect the funds entrusted to it. It is in no respect a substitute for national governments' exercising their own responsibilities for such protections through country auditing systems and criminal justice systems (a reason for the development of the Bank's external remedial program, which is designed to enhance the capacity of country members to prevent and respond to acts of fraud and corruption). Moreover, the program is remedial only to a limited extent. Although it is aimed at ferreting out and responding to corruption generally, as a practical matter it must be directed only against the contracting personnel involved, and not against the country official who sometimes constitutes the other component necessary to the existence of corrupt activity. The remedies to be undertaken against the official remain, as a matter of jurisdiction, the province of the country's

¹⁸ The few favoring some degree of restrictive change would prefer leaving the resolution of fraud and corruption problems to national governments, perhaps facilitated by Bank funding of national preventive and remedial programs. At least one Executive Director taking this view was expressly opposed to a Bank anti-corruption program that contained an investigative capacity, perceiving this as a police agency function that would better be left to the national administrations of the borrowing countries. Some isolated comments were made by the same sources as to what appeared to them to be an over-emphasis on prosecutorial procedures and an unnecessary influence of the Anglo-Saxon culture over a different way of conducting business in a Latin American or Caribbean environment. With regard to the proposed reliance on national preventive and remedial programs, it should be noted that the September 2007 report of the Center for Strategic and International Studies found that "Law enforcement authorities in the Latin American region often lack the resources or technical expertise to effectively monitor, investigate, and prosecute cases of corruption."

governmental system. When an official is involved, the Bank's only recourse is to provide the official's government with information upon which its judicial system may proceed, to decline to engage in future transactions with the official or the government agency for which the official works, and to acquaint other development banks of the corrupt activity that the Bank had encountered.

1. The Oversight Committee on Fraud and Corruption

a. In general

It has been over six years since the original creation of the Oversight Committee on Fraud and Corruption. During this period, its original responsibilities – for coordinating responses to allegations of fraud and corruption, overseeing any resulting investigations, and assuring appropriate dispositions – have in large measure been assumed by other entities that have emerged in the course of progressive organizational changes. Paramount among the changes has been the creation of OII and the Sanctions Committee. OII currently serves the role of managing the conduct of investigations, and the Sanctions Committee currently has responsibility for taking action on the basis of the results of those investigations (except in areas involving allegations of fraud or corruption in contracts between the Bank and third-parties or in projects funded by Bank loans to the private sector, where the OCFC retains jurisdiction). As a result, the circumstances that caused the original impetus for creation of the OCFC have spawned more specialized offshoots that tend to render the Committee largely redundant – at least for its original purposes.

Primarily as a result of the emergence of this apparent redundancy – and thus of a material lessening of the need to press managers, lawyers, and auditors into the supervision of investigations – several members of the OCFC have not only questioned the Committee's continued necessity, but have expressed discomfort with regard to its existence in its current form. They have also expressed a certain degree of frustration at being caught up within a process that has outlived its initial justification – a process moreover that is addressed to matters outside the bounds of their professional training and that absorbs more time than they can afford to divert from their principal

responsibilities. Two members have summarized their concerns in almost identical verbiage – in substance, that they “do not know what they are doing and do not have time to do it.”

One important function that continues to be within the exclusive purview of the OCFC is deciding, under exceptional circumstances, temporarily to suspend the subject of an investigation from eligibility for further contracts in Bank-financed projects during the period in which the Sanctions Committee is reviewing the matter. This is a critical aspect of the Bank’s program to protect assets deployed in projects it finances. Although the Bank’s decision to debar bidders or contractors from participating in Bank-financed projects is applied only prospectively (to avoid causing harm to borrowers who might already have projects in the implementation stage that involve the same bidder or contractor, and that would be disrupted if work could not proceed under those preexisting contracts), there is no reason to preclude the Bank from temporarily withholding their eligibility for new contracts, in appropriate cases. Without the ability temporarily to preclude such eligibility, if a bidder or contractor that is the subject of a matter before the Sanctions Committee were to be awarded a contract in a Bank-financed project during the pendency of the Sanctions Committee’s proceedings, any debarment ordered at the conclusion of the process would not apply to that newly-secured contract. This would risk further abuse of Bank-provided funding. Also, if OII’s already-completed investigation were to contain compelling evidence of that party’s wrongdoing, it could cause reputational damage to the Bank if it were to allow another contract to be awarded despite the information already in its possession. To avoid such situations, the Bank, under carefully circumscribed circumstances, permits the temporary suspension of the party’s eligibility to participate in new Bank-financed projects pending the final disposition of a matter investigated by OII. This is clearly a responsible approach. As discussed below, however, we are not convinced that this function should continue to be within the ambit of the OCFC.

b. Membership

i. Experience

There is no doubt that the members of the Committee are highly experienced professionals. Indeed, as noted, that is part of the problem. With the Executive Vice President, the General Counsel, the Auditor General, the Vice President for Finance and Administration, and recently the Vice-President for Countries charged with meeting periodically to undertake the vestiges of responsibilities now handled directly by OII and the Sanctions Committee (and occasional charges involving and third-party and private-sector contracts), the loss of time from attending to their regularly assigned and often all-consuming duties is difficult to justify. Certainly the diminution of its operational role is a reason to question the continuation of the OCFC in its present form.

ii. Availability

The members' availability is constrained by the time demands of their principal responsibilities. Although the Committee no longer meets with its original regularity, it continues to be required to meet at least in order to fulfill its ongoing responsibility for reviewing cases after each step of the process, for authorizing the closure of specific cases in which OII has found no reason to investigate further, for resolving matters involving third-party and private-sector contracts, and occasionally for related responsibilities. The periodic case review burden has been partially addressed by its gradual reduction to a more perfunctory process which places greater reliance upon the professionalism of OII and the independence of the Sanctions Committee. Even this circumscribed attention, however, still requires more preparation time and meeting time than the members – and the Bank – can easily afford. As a result, an informal arrangement has been worked out wherein the General Counsel and the Vice President for Countries read the documents to be presented to the OCFC for its review, and bring major issues to the attention of the other members. This procedure may help alleviate some of the time pressure on other members, but it is simply a palliative that fails to address the question whether there remains any real reason for the continued existence of

such a high-level body. We believe that there is, as will be noted later, but in a policy role rather than an operational one.

iii. Potential conflicts of interests

More than one Bank official has stated the view that members of the OCFC are potentially subject to charges of conflicts of interests, or at least the appearance of such conflicts, in connection with their role on the OCFC. Such expressions of conflict of interests arise in light of the indirect oversight role that certain members of the OCFC have for the operations that may be the subject of an OII investigation that is under the direction of the OCFC. While we have seen nothing to suggest that any member of the OCFC would act other than in a professional, impartial, and objective manner on matters before the OCFC, even the appearance of a conflict of interests can undermine the credibility of the process. In theory, such difficulties may be avoided by a member's recusal from participation in situations in which the member has had direct involvement. The problem may be perceived as somewhat broader, however, inasmuch as senior officials involved in core activities of the Bank will often be found to have had some form of ultimate supervisory responsibility for many of the matters coming to the attention of OII. Although there is a legitimate question as to whether the potential for conflicts is more theoretical than real in situations in which the original supervisory responsibility was at an elevated level, some concerns may arise about an OCFC member having any prior connection at all, however attenuated, with a case being supervised by the OCFC. While the logic underlying such concerns is tenuous, lesser connections than these have been known to prompt litigation.

c. Source of support and credibility for OII

There is no doubt that the ability of OII to act under the authority of the OCFC is one of two major factors that impart to OII a stature and authority in the eyes of Bank personnel, and in the eyes of others with whom OII must work, that otherwise would be difficult to achieve. (The other such factor is OII's direct reporting line to the President.) Although the OCFC's role as a source of direction to OII has become somewhat attenuated, the Committee itself continues to be perceived as very much a foundation of

OII's strength and effectiveness. In addition, the interaction between OII and the OCFC provides OII with regular access to leaders who can keep OII informed of important developments and occurrences in the management of the Bank and assure OII awareness of political or operational concerns in projects under investigation.

2. The Office of Institutional Integrity

a. In general

The Office of Institutional Integrity, as noted above, has been tasked by the President of the Bank to lead the Bank's efforts to investigate fraud and corruption in Bank-financed projects. The establishment of an independent office to perform these responsibilities reflects a recognition that this work is unlike anything within the mandate of other operational or administrative components of the Bank.

Operational officials within the Bank, both at headquarters and in the field, have expressed appreciation for OII's existence because it takes them out of the awkward position of having to pursue issues of alleged fraud and corruption with the very "clients" with whom they interact on the design and implementation of development projects. It is simply impractical for the Bank officials who rely on their professional relationships with agencies and public officials in the countries and regions in which they work to maintain collegial and constructive relationships if they are also seen as the Bank's "policemen" when questions arise about the integrity of a project. Furthermore, at a minimum there would be a perceived conflict of interests were the Bank to expect its operational departments to investigate allegations of wrongdoing in the very projects for which they had been responsible for bringing on line in the first place. In the absence of a clear demarcation between the operational and investigative functions, and in the absence of a strict adherence to the notion that the investigative function must be performed with independence and autonomy, the Bank's efforts in this realm would lack credibility and would be subject to second-guessing among the Bank's various constituencies.

Bank officials carrying primarily advisory responsibilities are also relieved of burdens by the existence of a professional investigative office. Certainly it is desirable

that non-operational components of the Bank – such as the Office of the Auditor General and the Legal Department which fill specialized roles and rely on professionals with auditing and legal experience – avoid being distracted by a separate, though related, set of responsibilities that are associated with an investigative function. For this reason, as well as to avoid conflicting responsibilities, the creation of OII is widely seen within the Bank as an appropriate and logical reaction to the perceived need for an internal capacity to respond effectively to alleged instances of fraud and corruption in Bank-financed projects.

b. Organizational position

From an organizational perspective, OII's location within the Office of the President has certain advantages, as noted before, in that it carries with it the authority of that Office. However, two concerns have been expressed about the perceptions created by the current structure. First, some officials within the Bank have suggested that the arrangement seems “odd,” and that it raises concerns whether OII's investigations are perceived as being truly independent and impartial. Second, some members of the Board have pointed out that it may appear to create the impression that the President himself is involved in the investigative initiatives. In addition, an entirely different but commingled problem is presented by the fact that, since OII is within the Office of the President, it does not appear by name on the Bank's organizational chart, which has the unintended consequence of lowering its profile as an active, operational entity within the Bank and thereby undermining its potential effectiveness. Other components of the Bank that report directly to the President, such as the Office of the Auditor General, do appear on the organizational chart as separate from, but directly under, the Office of the President. This structure accords these offices the benefits of having access to the President and the respect that comes from acting under the direct authority of the President, while still suggesting a greater degree of independence associated with being somewhat removed for organizational and budgetary purposes from such a close organizational relationship with the President and his senior staff. A similar arrangement would be likely to benefit OII by making its identity and its operational role more apparent, and would also be

likely to help reduce any hint of political considerations affecting OII's decisions to initiate or to abandon investigations.

c. Perception of the Office within the IDB

The perception of OII that was expressed widely among those interviewed for this Report is that of a highly professional office that operates impartially and with the highest standards of integrity.¹⁹ The OII leadership was frequently singled out for particular accolades. Unlike the perception in some quarters of similar offices in other multilateral development banks, the investigators in OII were seen as collaborative, not overly zealous or heavy-handed in their work. Two observers perceived a prosecutorial bent, but a reasonably restrained and professional one. Generally, almost all Bank officials found distinct benefits in having OII in the Bank, and were confident that the leadership and staff of OII were committed to the broader mission of the Bank and to focusing on ways that OII could serve as a resource to help fulfill that mission.²⁰

At the same time, concerns were expressed that some members of OII's staff lack the experience in the Bank that would enable them to understand the nuances of certain issues and, as a result, despite their best intentions, they may incorrectly assume that

¹⁹ Even those opposed to the very existence of an investigative office within the Bank (see note 12, above), focused their concerns upon the concept of such an office rather than the competence of the personnel of OII.

²⁰ In the course of our interviews of Bank personnel we found both the uniformity of these views and some of the terms used to convey them to be noteworthy. A few examples may be informative. The creation of the Office was considered "a very positive step;" a "fantastic decision" for substantive purposes from the standpoint of country representatives. The Office professionals are considered "straight," "capable people" who "can be trusted," and who are "very good on professional and practical advice." In their investigative work, they are considered "tough and aggressive when they should be," but are "methodical" and "do not act precipitously," being well aware of "the thin line between sloppiness and fraud." They "instill confidence;" they possess a degree of integrity that is "really high;" and because they have the "trust" of other Bank offices, they are "able to work cooperatively." Of the senior leaders of the Office, one was described as "superb" – an "extremely able" and "honest, solid guy" who is "reasonable, rational, and competent" as well as "very professional and non-inflammatory," and who thus instills "full confidence"; another received similar assessments, and was summed up as being "a real star." As a result of the creation of the Office and its staffing, one senior Bank official found its accomplishments "extraordinary," and another observed that it had produced "a major change in quality" in country-level work. The sources of these particular assessments ranged from country-level employees, to senior Bank officials, and to Executive Directors.

wrongdoing has occurred when it had not,²¹ or at least expend more time than they should in assessing a matter. Others observed that, given the small number of investigators in OII, the volume of cases that OII is handling makes it difficult to resolve matters in a timely fashion, particularly where it proves necessary to travel to the countries in which the alleged acts of fraud or corruption had occurred. The limited staff was also been cited as causing the Office to become overextended – a result of the Office having been given tasks beyond its current capacities.

Certain members of the OCFC and the Sanctions Committee have expressed concern that some of OII's written materials have not been as effective as they could be in presenting evidence against the respondent and demonstrating that the evidence is sufficient to support a conclusion that the respondent engaged in an act of fraud or corruption in connection with a Bank-financed project. OII has independently recognized this fact as, in part, an unfortunate by-product of its expanded responsibilities and caseload, as well as the complications associated with a process that involves investigations that are conducted and documented in Spanish but must be described in reports drafted in English for presentation to the OCFC and the Sanctions Committee. Several months ago, OII hired a part-time editor to review all documents to be disseminated outside the Office, and a preliminary evaluation suggests that the quality of OII's written materials has since improved.

Another observation has to do with the stature of the targets of OII's investigations and the seriousness of their suspected activities. Several Bank officials have noted that, to date, none of the targets have been major firms or high-level officers in such firms, and that the nature of the offenses pursued by OII have seemed somewhat minor. This is to some extent a consequence of the Bank's current procedures which contemplate that OII will react to all evidence that is brought to its attention by Bank staff and others who suspect wrong-doing in a Bank-financed project. This approach has

²¹ Observers have noted in particular that some OII personnel are not yet familiar with the general Bank procedures concerning procurement and related matters – a lack of familiarity that has resulted in dismissal of at least one case by the Sanctions Committee.

restricted OII's ability to concentrate its limited investigative capacity upon matters that appear to be of relatively greater importance. Nevertheless, there appears to be no foundation for any concern that OII has avoided taking on "bigger" or more important cases, nor, for that matter, that the lack of referrals to OII of more high-profile matters suggests an absence of fraud and corruption in such projects. For these reasons, we are recommending in subsequent sections of this Report that OII undertake a more proactive approach to investigating fraud and corruption.

Overall, despite the legitimate reservations that have been expressed about the results produced by OII, we find that in its relatively short period of existence OII has grown into a well-managed office with a highly qualified staff, and that it is viewed by counterpart offices in other multinational institutions as demonstrating considerable competence and leadership. In the future, it is expected that OII will be evaluated on its performance in identifying and resolving more challenging matters than have come before it thus far.

d. Responsibility for investigations not involving fraud and corruption matters

Although OII was established in response to a commitment on the part of the Bank's management to be able to pursue allegations of fraud and corruption in projects using its funds, OII has also been assigned a broader range of investigative responsibilities. In particular, OII (i) has been given a central role in the process designed to manage integrity and reputation considerations in the Banks' private sector projects, and (ii) until recently, had primary responsibility for investigating all matters involving staff misconduct, whether arising under the Bank's Code of Ethics or under Staff Rule 323 concerning Respect in the Workplace, and continues, at present, to have responsibilities in this area when requested by the Ethics Officer.

i. Managing Integrity and Reputation Considerations

Beginning in September 2005, OII participated in a working group – comprised of representatives of the IDB, the Inter-American Investment Corporation ("IIC"), and the

Multilateral Investment Fund (“MIF”) – that was convened to recommend a conceptual integrity framework to guide the Bank’s private sector operations and to develop related integrity review procedures and monitoring mechanisms. While the Bank, with central OII involvement, had previously been addressing integrity matters for the Bank’s public sector projects, the Bank lacked a consistent approach to dealing with similar concerns in its private sector operations. In May 2006, the working group recommended that the Bank expand its due diligence, beyond traditional financial and legal issues, to include integrity matters as well as anti-money laundering and counter-terrorism considerations.

As a result of the working group’s recommendations, OII has been assigned an active role in advising management of the Bank and project teams on a variety of integrity and reputational issues relating to the Bank’s private sector projects.²² In 2007, OII’s work on integrity matters involving a number of private sector transactions utilized approximately 25 percent of OII’s non-investigative resources. Its involvement included clarifying information regarding potential risks, reviewing information related to potential reputational consequences, and supplying specialized assistance for more complex integrity issues as they surfaced in proposed transactions.²³

ii. Investigating Staff Misconduct

At the outset of our review, all of Bank’s internal investigative capabilities and resources were within OII, including investigations into alleged staff misconduct whether or not involving acts of fraud or corruption. While it is understandable that the Bank would find it convenient and logical to place all responsibilities for conducting

²² OII’s involvement has included: (i) advice to projects teams as potential integrity or reputational issues arise during the project cycle; (ii) advice and recommendations to the Private Sector Committee and to senior management of the Bank; (iii) consultation on database selection, investigation firms, and transaction specific terms of reference for analysis by third parties; (iv) support for the set-up and implementation of a training program designed to strengthen projects’ teams understanding, abilities, and analytical capacities with respect to integrity and reputation risks during identification, due diligence, design and implementation of operations that involve the private sector; and (v) cooperation with other MDBs on integrity matters. Report to the Coordination Committee regarding Integrity considerations for Bank Group projects with the private sector: Working Group recommendations, dated 25 May 2006, Paragraph 2.25.

²³ *Office of Institutional Integrity, 2007 Annual Report.*

investigations in one office, serious reservations from many sectors of the Bank were expressed as to whether these broad assignments detracted from OII's fulfillment of its paramount mission – to investigate fraud and corruption.

Investigating allegations of staff misconduct involves a substantial commitment of time and must be given highest priority, even when the nature of the offense may seem relatively minor. This has necessarily diverted OII's attention and resources from other pending work. Such investigations are particularly time-consuming, especially when travel to the field is required. Also, although certain basic investigative capabilities are required to respond effectively to allegations concerning fraud or corruption generally and staff misconduct in particular, the skills and knowledge required for investigations of such distinct natures are not necessarily complementary. In recognition of the fact that very different interests are to be served by investigations of the Bank's own staff, and by investigations of third-parties involved in Bank-financed projects, the Bank has established separate sets of procedures to which the investigators must adhere.

The separate procedures employed in these two instances also lead to separate means of adjudication and separate consequences. In a case in which a contractor is found to have engaged in fraudulent or corrupt practices, the Sanctions Committee is called upon to determine, for example, whether that contractor should be barred from participating in future Bank-financed contracts. In a case in which a staff member is found to have engaged in an ethical violation or other serious misconduct, an Ethics Committee proceeding is employed to determine whether the staff member should be terminated or receive some lesser employment-related penalty.²⁴ These are very different sets of proceedings that serve very different purposes.

²⁴ Since January 2008, the results of investigations into staff misconduct are referred to the Ethics Officer, then to the Ethics and Professional Conduct Committee (the "Ethics Committee"), and ultimately may be appealed to the Administrative Tribunal. Prior to January, the referral process for staff investigations went through differently-composed channels, but the process was nevertheless separate from, and unrelated to, referrals made to the Sanctions Committee.

The conduct of ethics investigations, although important to the Bank, has put a significant strain on OII's resources and has interfered with its ability to carry out investigations of fraud and corruption – its intended central purpose.

As a result of various concerns, including the issues discussed above, the Bank implemented revisions to its Code of Ethics and Professional Conduct in January 2008. Under the revised Procedures for the Code of Ethics and Professional Conduct, the ethics-related and conduct-related investigative functions that had been performed by OII were transferred to the Ethics Officer,²⁵ with OII continuing to have responsibility for investigations involving allegations of fraud and corruption by Bank staff.²⁶ Severance of this function was proposed by management, with the support of both OII and the Ethics Officer. The new regime appears to be a much more logical and efficient arrangement of responsibilities.²⁷

e. Capacity to fulfill remedial responsibilities

As presently organized, OII is responsible for responding to all allegations that it receives concerning fraudulent or corrupt practices in Bank-financed projects. Those referrals come from a variety of sources; some through official channels and some through channels that protect the identity of an informant who wants to remain anonymous. Due to the many factors that can deter a would-be informant from bringing

²⁵ The Ethics Officer has no staff or resources to conduct investigations, and OII is still requested by the Ethics Officer to conduct certain ethics investigations – investigations that continue to absorb a significant degree of OII resources. We recommend in the subsequent parts of this Report that OII should be relieved from investigating violations of the Code of Ethics. This responsibility should rest exclusively in the Ethics Office, and appropriate resources and staff should be provided to the Ethics Officer for this purpose.

²⁶ The new Ethics Procedures also brought clarification to other areas in which there has been organizational overlap between matters involving fraud and corruption and staff members. In particular, where there had been uncertainty in the past over how to handle parallel cases with respect to such matters, the new procedures make clear that in a case involving allegations of fraud and corruption by a Bank staff member and also by outside third-parties, the proceedings by the Ethics Officer concerning Bank staff are to be suspended until the related matters have been resolved by the OCFC or the Sanctions Committee, as the case may be.

²⁷ We had been asked by senior Bank officials about our view of the matter in December of 2007, and had responded that we intended to recommend that the responsibility for ethics investigations be transferred to the Ethics Office.

allegations to the attention of OII, the Bank is well-served by providing different means by which it might encourage the supplying of useful information. Nevertheless, even if the Bank were to facilitate every opportunity for obtaining such information, it would be limiting its ability to root out and identify instances of fraud and corruption if it were only passively to await the initiative of third parties to bring such activities to its attention.

i. Ability to learn of suspected fraud and corruption

1) E-mail, website, and hotline

The Bank has followed the practice of other multilateral development banks by establishing a “hotline” that may, if the caller chooses, be used anonymously to provide information on suspected acts of fraud and corruption. In addition, such information may be provided to OII by e-mail and through its website – two means that have proved to be particularly valuable.²⁸ By whatever means it is provided, all such information is subject to the Bank’s confidentiality policy. The sources of much of the information provided have been Bank staff members.

Bank staff members have to contend with certain professional disincentives with regard to the reporting of wrongdoing in a project in which they are involved. Reporting the wrongdoing could result in a slowdown in the progress of their project, or they themselves could be blamed for the problem. In either case they could harbor some concern about the manner in which their action might be reflected in their annual review.

There is an even greater likelihood that staff members will be disinclined to report wrongdoing if they have concern that they could also experience some other form of adverse consequence simply by virtue of the fact they chose to come forward. Often anonymous avenues are believed by staff members to provide the only practical opportunities for exposing wrongdoing in Bank-financed projects because they fear the

²⁸ OII estimates that about 68 percent of past investigations were initiated by information acquired by electronic means, and that only about one percent were initiated by calls on the hotline. That latter estimate, however, encompassed a period during which technical difficulties precluded the hotline’s effective operation – difficulties that have since been overcome.

possibility of reprisals if they were to come forward publicly. While the Bank has appropriately stated its commitment to protecting persons who provide credible information (sometimes referred to as “whistleblowers”), there are still rational grounds that could give some Bank staff pause about coming forward if they are going to be identified as making allegations against a contractor, a co-worker, or a government official. Indeed, Bank staff working in the field have been known to be required to leave the country in which they work if they have done something that displeases the government.

In addition, there is an aspect of the way the Bank structures its relationship with some staff members that makes those staff members feel especially vulnerable to some form of retaliation. This arises in the case of Bank staff members on fixed-term contracts because, at the end of the term, their contracts can be allowed to expire – resulting in their employment terminating without any affirmative act on the Bank’s part and without any reason being given for such termination. Whether such concerns are based in reality or not, there is a perception among some such “temporary” staff members that if they cause problems for their superiors, they will simply be let go when their contracts expire. For many staff members at Bank headquarters and in some field offices, not only would this mean that their career at the Bank would be over, but their visas would terminate and they would have to leave the country in as little as thirty days. The prospect of losing one’s job and having to uproot one’s family can have a chilling effect upon one’s willingness to raise critical but potentially controversial issues no matter how well justified they may be. It is beyond the scope of our review to offer an opinion on whether the use of temporary contracts is always in the Bank’s best interest, but their use does bolster the view that the Bank needs to have avenues through which a person can provide information on a confidential basis.

Parties outside the Bank may also fear reprisals if they pass on information to the Bank. Sometimes the feared reprisals might include physical harm or even death. In such circumstances, the Bank often would have no opportunity to obtain such information without offering assurances that the identity of the informant would be protected.

The challenge for the Bank is not whether it chooses to receive anonymous allegations – such allegations invariably will be forthcoming in some form and under some circumstances. The real challenge lies in deciding how the Bank should treat that information. This has been a matter of some concern. Indeed, the acceptance of anonymous allegations as a basis for undertaking an investigation has been criticized by some members of the Board as an example of an investigative approach that is alien to the culture of many of the borrowing countries. In view of this sensitivity, it is critical to make it clear that OII uses such information only if it appears worthy of some degree of attention and, upon a preliminary inquiry, appears capable of leading to reliable corroborative evidence and sources of information that could warrant a full-fledged inquiry. Clearly, the mere receipt of a statement alleging fraud or corruption would not justify remedial action against the accused. Similarly, though, the mere fact that allegations come from an anonymous source should not be deemed to render the information useless or invalid. OII should be able to make an initial inquiry into any such matter and determine if the allegations are credible and can be corroborated, and, if they can, then the accused should not escape an appropriate sanction merely because OII initially became aware of the wrongdoing from an anonymous source.

A related concern that has been raised relates to the manner in which OII should handle allegations coming from a source who is known to have made false or unfounded allegations in the past. Any such allegation would be viewed with great circumspection. Still, no investigative office should be required to disregard such an allegation if a preliminary inquiry indicates that there is a credible basis for concluding, based on independent evidence of wrongdoing, that the new allegation is valid. On the other hand, if OII determines that a source has made an allegation that is false, and in fact was known by the source to be false, remedies against such a person should be pursued by means of sanctioning, ethics procedures, referral to country authorities, or other means – the availability of which will vary depending upon the individual's relationship to the Bank and to the country involved. In the case of a Bank staff member, the Staff Rules would consider such action to be a serious form of misconduct.

2) Referrals from other offices and agencies

Information concerning apparent fraud and corruption will frequently be brought to the attention of OII by other offices or agencies in positions causing them to be exposed to indications of misconduct. These include a number of offices at Bank headquarters, including the Office of the Auditor General, the Ethics Office, and the Office of the Ombudsperson, but also operational offices that occasionally come across records or other information that may appear to warrant investigative attention. Regional Bank offices are potentially a major source of referrals, although, for the reasons noted above, some of the information from field personnel will be proffered to OII anonymously. National authorities on occasion may openly offer information concerning improprieties in connection with Bank projects, whether motivated by a lack of professional or political capacity to undertake remedial measures themselves, or by a desire to pursue what may appear to be a symbiotic working relationship on such matters. Other MDBs clearly can be a particularly useful source, especially with regard to information stemming from activities beyond the Bank's regional borders, and information concerning projects co-financed by another MDB. In addition, civil society contains organizations working on general anti-corruption initiatives that occasionally may yield information concerning specific transgressions. Because OII has developed a reputation for cooperative and professional work, it is frequently the recipient of potential leads from all such sources.

ii. Ability to undertake necessary investigations in a timely manner

One concern that was expressed by several Bank officials – including operational personnel with whom OII interacts on investigations, and officials who receive and act upon the results of OII's investigations such as members of the OCFC and the Sanctions Committee – relates to the timeliness with which OII completes its investigations. Although OII received praise for its ability to respond quickly to new allegations and to begin investigations promptly, it did not receive similar praise for the timeliness of its closures. There are several factors that cause OII's investigations to take considerable time to complete.

First, as discussed below, OII's staffing resources are limited. Second, OII's integrity officers are often required to travel to the country in which the affected project is being, or was, performed. With a limited number of integrity officers to cover all of the member countries and regions, it is not possible to pursue multiple investigations in multiple locations at any one time. OII must schedule travel by its personnel efficiently in order to get the most out of each trip. In some instances this means waiting until there are a sufficient number of cases in a country to warrant a visit (a matter that has led to the consideration of regional OII offices). Third, once an investigation has been completed, the results must be reduced to writing in a report to the OCFC which report is then forwarded to the Sanctions Committee if the OCFC concludes that it warrants further action. Documents that are prepared in Spanish must often be translated into English before submission to the committees. The drafting process can be quite time-consuming since, as the sole basis on which the Sanctions Committee is made aware of the facts supporting the allegations, the report must be thorough, detailed, and complete. This process can be painstaking because the legal language does not always have parallel terminology or concepts in both languages. Fourth, the magnitude and complexity of OII's caseload is increasing more rapidly than its complement of professional personnel. Country officials have noted that, as OII's reputation becomes a more widely known, more cases are being called to its attention. It appears probable that, for some period of time, increases in OII's caseload will continue to outrun increases in its necessary personnel.

iii. Ability to undertake effective pursuit of complex or sensitive cases

As discussed below,²⁹ OII is limited in its overall capacity by its small staffing complement. In addition, there are a variety of other factors that may limit OII's effectiveness – despite the general perception that OII's integrity officers are well-qualified by their prior professional experience to conduct investigations of IDB projects.

²⁹ See section III B 2 j.

First, there is a concern that OII's personnel need a better understanding of the Bank's internal operations, policies, and procedures, especially in the area of procurement, to fully appreciate the details of matters they may expect to encounter in the course of their work. This appears to be a common complaint heard about investigators in all MDBs, and it often appears to be a justified one. Second, OII is not a law enforcement agency and does not possess governmental authority or subpoena power or comparable ability to compel the production of documents or other information. Third, in several instances, OII has not received more than token cooperation from local government officials who might have access to relevant information or the means to obtain it. Fourth, OII has been faced with an increasing number of relatively minor cases which demand the utilization of scarce resources – a problem that should abate as a result of the recent transfer to the Ethics Office of cases involving ethics violations and similar staff misconduct, and, if adopted, as a result of a process enabling OII to triage cases as a component of a refined case-weighting system.

iv. Ability to manage caseload

1) Triage of cases

As mentioned above, OII has in the past been perceived as devoting substantial resources to pursuing allegations of relatively minor consequence. Although this perception emerged during the time when OII was responsible for ethics investigations as well as fraud and corruption investigations, it has led some to question whether OII has the capacity to undertake more significant investigations, and occasionally even to question whether senior management in the Bank may have induced OII to avoid or ignore more serious allegations when they involve sensitive matters or more prominent subjects.

On the other hand, OII and the Bank as a whole profess “zero tolerance” of fraud and corruption. The employment of a public policy of “zero tolerance” is perceived to have some degree of deterrent effect, and it probably does, especially since the Bank is generally recognized to be serious in its anti-corruption efforts. The concept of “zero tolerance,” however, commonly is being construed to mean that all instances of apparent

corruption, no matter what the amount of monies involved or what the level of the manager or official involved, will receive the same treatment – from the investigation and processing of the case through the Sanctions Committee to the point of the imposition of an appropriate sanction. Such a construction is noteworthy for its ambition and its compelling view of evenhanded justice. It is also unrealistic, inefficient, and frequently counterproductive.

In this imperfect world, all instances of fraud and corruption cannot be addressed by any administrative or adjudicatory process with less than unlimited funding. Any office or agency charged with investigation of fraudulent activities would soon find itself overwhelmed by its workload and mired in its paperwork if it seriously sought to investigate fully all questionable activities coming to its attention – including those involving petty as opposed to major amounts, inadvertence rather than planning, and laxity instead of connivance. The most important problems must be able to be given some degree of priority. Thus some form of triage system, as a component of a general case-weighting system, is necessary in any institution’s anti-corruption program to assure that time and funding will be available to address the most serious cases coming to the attention of the investigative office. The Bank is no exception.

2) Employment of outside investigators

The Bank has occasionally relied on outside professionals, such as lawyers and forensic accountants, to perform investigations. While this might be useful on a temporary basis when there are no resources within the Bank to pursue a particular inquiry, in the long-run this can be a very costly practice. Each time a new investigator is brought in from the outside, it will become necessary for that person to spend considerable time learning about the Bank and its procedures. The cost of retaining such professionals is quite high, and, once they have completed their assignment and they leave the Bank, the lessons they may have learned through their investigation will be lost to the Bank. For these reasons, the Bank would be better served by finding a way to make resources and positions available to recruit, train, and retain a sufficient number of its own personnel to manage the number and kinds of cases the Bank would reasonably expect to process over the medium term.

3) Closure of unproductive investigations

Currently, the Chief of OII has the ability to open investigations, but investigations may be closed only with the approval of the OCFC. While it might be useful to have a body within the Bank that reviews the general practices of OII in closing cases to evaluate whether priorities are properly being implemented, such reviews on a broader scale could be accomplished more effectively as a routine business-practice audit. In any event, by this time the Bank seems to have had sufficient experience with the professionalism of those it entrusts with the leadership of OII to be able to accept their judgment in applying Bank standards to determine whether a case is worth further pursuit. Finally, since OII has substantially greater knowledge than the members of the OCFC about the particulars of any investigation, and since the members are seldom in a position to acquire more information than that which has been available to OII, it would seem inefficient to require the OCFC routinely to review OII's decisions in this area rather than simply charging OII with the responsibility for making these judgments. Still, were OII to have the authority to close cases, it would be advisable to have OII report on a regular basis to the OCFC on the cases that have been closed and the reasons for doing so. If systematic problems in the manner with which cases are disposed of should come to the attention of the OCFC or other senior Bank managers, they can be addressed with comprehensive changes in policies and procedures rather than on a case-by-case review.

v. Ability to access necessary information within control of others

Since OII does not have the authority traditionally available to law enforcement agencies, it must rely exclusively on information that is volunteered to it and information contained in the records of various parties involved in a project. In the latter context, OII must rely on the cooperation of those in possession of such records.

1) Bank offices

For OII to have access to documents within the Bank's control, it is critical that offices within the Bank, both at Headquarters and in country offices, understand the need to cooperate with OII. Producing documents that may be requested by OII is not part of

the regular operations of any component of the Bank. As such, it requires time and resources that would otherwise be used for normal operations, and thus it necessarily competes with those operations. For this reason, in order to ensure an adequate level of cooperation with OII, the management of the Bank must make it clear to all levels of Bank staff that OII has its full support and confidence and that it expects everyone within the Bank to provide reasonable support to OII in its performance of the mission assigned to it.

2) Contractors

OII's ability to obtain records from contractors in Bank-financed projects derives from the Procurement Policies and the language contained in the bid and loan documents and project contracts. In 2006, the Bank updated its language in these documents to address fraud and corruption more effectively, and has continued to work with other multilateral development banks to harmonize the language used by each. As a result, contractors are now required to agree at the outset that they will make project documents and files available to OII in the course of an investigation. This is a positive step, but the Bank should periodically review and revise these documents to ensure the appropriate ability to compel the cooperation of parties that bid for, and are awarded, Bank-financed projects.

3) Regional governments

The level of cooperation that OII receives from executing agencies and others within the applicable governments depends on a number of factors. Unsurprisingly, some agencies and some governments are more receptive to OII's activities than others. Particularly in a situation in which one or more officials in the executing agency is a possible subject of the investigation, the agency is apt to give little if any cooperation to OII. For these reasons, OII is not able, at this point in its evolution, to count on full cooperation even from agencies within governments that may have been, directly or indirectly, the victims of acts of fraud or corruption. Nevertheless, as a result of OII's ongoing participation in training programs and other activities in support of local prosecutors and other law enforcement officials, OII's effectiveness over time should become enhanced. Moreover, as a result of recently adopted legislation by certain

national governments of the region, if cooperation is not forthcoming from national or local authorities the Bank may formally request access to official documents which those authorities may then be required to produce.³⁰

After referrals of matters allegedly involving fraud or corruption are made by the Bank to local authorities, there exists no formal mechanism requiring such authorities to inform the Bank of the findings and actions undertaken with respect to the alleged misconduct. The receipt of such information, however, would be of obvious importance to the Bank. Procedures for the conveyance of such information should be implemented, perhaps through clearly established conditions in the loan documents between the Bank and the borrowing countries or perhaps by a modification of the Bank's charter. In addition, the final results of the investigations undertaken by the local authorities should also be communicated to OII, and the results of a successful criminal prosecution or civil action brought by local authorities as a result of such referrals should be made public through the Bank's website.

f. Relationship with other Bank offices

i. In Washington

OII's relations with operational components at Headquarters appears to be quite strong. Most Bank officials have expressed a high degree of confidence in OII, and appreciation for the way it has approached investigations of projects under the supervision of their departments. Relations with non-operational components are also favorable, including the two with responsibilities prompting the most frequent contacts with OII – the Office of the Auditor General and the Legal Department

The relationship of OII with the Office of the Auditor General involves regular communication and cooperative work. Although the Bank's investigative capacity

³⁰ Certain countries of the region have adopted legislation to promote access to official documents and public information corresponding to the rights provided under Freedom of Information Acts of Mexico, the United States, and Canada. The Bank itself, when promoting good governance practices, has fostered the adoption of these legal regimes that can provide additional tools to OII.

originally had been housed in the Office of the Auditor General, both offices agree that the separation has been beneficial and has permitted each to concentrate its attention more effectively in its particular area of responsibility.³¹ In instances in which an OII investigative matter requires an analysis by a professional auditor of a firm's financial records or general business processes, the Office of the Auditor General has loaned personnel to assist in OII's efforts. The personnel of each office demonstrate a clear respect for the other's professionalism and competence. They have effectively institutionalized a positive working relationship.

The relationship of OII with the Legal Department also involves frequent communications. Of necessity, the Legal Department will find itself concerned with several aspects of the work assigned to OII, given the broad range of OII advisory and operational responsibilities of a nature commonly handled by lawyers in national jurisdictions, and given the particular sensitivity of OII's investigative functions. Certainly it is the remedial aspects of OII's work that are the most likely to prompt occasions for joint attention. With lawyers constituting a significant component of OII's staff, with the legal and policy issues presented to each office often being without precedent, and with the relationship between any two such offices being rife with possibilities for awkwardness at the very least, we have found it notable that their interrelationships have been comparatively smooth. This is quite different from the situations that have obtained between similar offices in some other multilateral development banks. It may be considered a tribute to the professionalism of the personnel of both offices, and their common recognition of the importance to both offices of an effective anti-corruption program. As a result, these two components of the Bank have been able to engage in productive collaboration on a variety of matters, including: developing the terms of reference for the reconstituted Ethics Officer and the new Ombudsman; providing assistance to the Ethics Officer on new policies and procedures; developing the Bank's ethics training programs; reviewing and strengthening the Bank's

³¹ The World Bank and the United Nations also have split the functions into two offices; the Asian and African Development Banks continue to combine both functions in a single office.

Procurement Policies and bid and loan documents; and drafting documents relating to the integrity issues in private sector lending.

ii. In the region

For the most part, OII appears to be respected in Bank offices in the field. The relationship has been somewhat challenging as a result of OII having had the dual role of investigating fraud and corruption and also investigating ethics charges against Bank staff. As a result, some Bank staff in the field have had a tendency to see OII as a threat rather than as a partner. This problem should abate with the recent transfer of ethics investigations to the Ethics Office.

g. Relationship with the Executive Directors

i. Formal reporting relationship with the Audit Committee

OII's official contact with the Board of Executive Directors occurs through the Audit Committee. OII regularly reports to the Audit Committee on its ongoing activities, although OII properly does not report the details of individual cases.

ii. Ad hoc communications with individual Executive Directors

OII interacts with individual Executive Directors from time to time on matters involving projects in an Executive Director's country, and routinely advises the applicable Executive Directors of missions to their countries by OII. For the most part, these communications are conducted in a way that respects OII's responsibility for protection of the sensitive details of an ongoing investigation, but communications can be awkward when matters pertain to country-level fraud and corruption. The Executive Directors are put in a difficult position because they have obligations to keep their governments informed. A particular challenging situation arose early in OII's existence when the preliminary stages of an investigation became public and the matter was being exploited for domestic political purposes before the country's Executive Director had

been informed that the investigation was underway. This raised serious and legitimate concerns as to the appropriate balance between the need to maintain the confidentiality of an investigation so that it does not run the risk of being subject to undue political influence or derailed by premature disclosure to those under investigation, and the need to communicate relevant information in a timely manner to member countries which, after all, are the overseers and clients of the Bank. While this case caused some consternation at the time, it helped to highlight the sometimes conflicting responsibilities that are not subject to easy resolution by application of broad principles, and that probably will continue to require individual case-by-case consideration and the application of balanced judgment. Nonetheless, it has resulted in a more regularized practice of notifying the appropriate Executive Director about particular allegations under review prior to undertaking an OII mission to the country represented by the Director.

iii. Varying levels of support among the Executive Directors

OII has experienced varying levels of support from the Executive Directors ranging from a complete commitment to the Bank's anti-corruption mission among most, to a conviction among others that the Bank should refrain from undertaking investigations on its own and instead should rely upon local law enforcement agencies and prosecutors to pursue any necessary inquiries.

h. Relationship with other multilateral development banks

OII has extensive contacts with counterparts in other multilateral development banks, and has been a major participant in the increasingly successful effort to share information on policies and practices, to harmonize documents and definitions governing development projects and loans, and to regularize procedures among the investigative components of those institutions – all with the objective of one day being in a position to implement procedures whereby one institution will honor debarments imposed by another.

i. Relationship with national investigative, prosecutive, and judicial agencies

OII's relationships with national investigative, prosecutive, and judicial agencies have been limited to date, but this is an area that probably will need to be expanded as OII develops more cases that uncover evidence of criminal behavior under the laws of particular jurisdictions. Stronger ties in these areas will redound to the benefit of OII, and also to the benefit of the authorities in the Bank's member countries, as would a formal procedure whereby the local authorities would keep OII abreast of the actions being undertaken as a result of referrals by the Bank of matters involving alleged fraudulent or corrupt practices.

j. Staffing and funding

OII currently has 13 full-time staff positions, one of which is vacant and is under recruitment. OII also employs two full-time consultants as research fellows. Seven staff positions and one research fellow are assigned to the Investigations Division. This includes the Principal Integrity Officer, five investigators, and one investigative assistant. The Prevention and Advisory Services Division has three staff positions and one research fellow, which includes the Senior Policy Advisor, one staff member focused on fiduciary prevention, and one staff member focused on private sector integrity; only the research fellow position has yet been filled. Two staff members are assigned principally administrative duties – the Chief and the office assistant. One additional staff member splits her time between administrative work and the Prevention Team. In order to make the most effective use of office personnel, OII has recently been using non-lawyers and law student interns to undertake support work that previously had taken the time of the Office's investigators. The budget for OII for 2008 is \$2.5 million.

By way of comparison, The World Bank, with annual loan commitments that are approximately three times the amount loaned by the IDB each year, provides staffing and funding for its investigative unit, the Department of Institutional Integrity ("INT") many times greater than OII's. The World Bank currently reports a new INT budget in excess of \$100 million and anticipates a staffing level in excess of 100.

Despite its proportionally smaller resources, the mandate of OII is ostensibly broader than that of INT. For example:

OII has significant responsibility for private sector integrity due diligence matters. At the World Bank, this is handled by staff internal to the International Finance Corporation.

OII's prevention unit is dedicated both to supporting fiduciary prevention and to assist in supporting member countries' own integrity activities. INT has plans to expand to create a similar consulting unit, but will be adding staff positions to do so.

In 2007, OII expended significant resources supporting operational activities such as developing an anti-corruption trust fund; developing a memorandum of understanding with the OAS to support the implementation of the Inter-American Convention against Corruption, and leading various coordinative activities with the United Nations Office of Drugs and Crime, the Organization for Economic Cooperation and Development, the Partnering Against Corruption Initiative of the World Economic Forum, and various non-governmental organizations, in support of integrity programs.

In 2007, OII opened 136 cases and completed more than it opened – 162. In the same year, INT opened 292 cases and closed 241.

3. The Sanctions Committee

a. In general

The Sanctions Committee's role is to review evidence developed by OII concerning allegations of fraud and corruption in Bank-financed projects, to determine whether acts of fraud or corruption in fact have been committed, and, if so, to decide what action would be appropriate to protect funds advanced by the Bank from being

misused or misappropriated in other projects. To perform these functions, the Sanctions Committee receives written reports, prepared by OII and referred to the Sanctions Committee by the OCFC, setting forth the facts that support charges of fraud and corruption, and also receives written responses to the charges submitted on behalf of the individuals or firms accused of wrongdoing.

b. Scope of authority

The Sanctions Committee has authority to impose sanctions on bidders, contractors, consultants, and concessionaires in Bank-financed projects, which authority is derived from the Bank's Procurement Policies, Sanctions Procedures, and bid and loan documents. The Sanctions Committee has no authority to take any action with respect to Bank staff or government officials who may have been involved in the underlying activities that give rise to sanctions against private individuals and firms, nor does it have authority under the Sanctions Procedures, as currently drafted, to take any action with respect to bidders or contractors under agreements directly with the Bank or under agreements involving private sector lending projects.³² The sanctions that may be imposed on behalf of the Bank can include declaring the individual or firm ineligible to participate in Bank-finance projects permanently or for a specified period of time, or issuing a letter of reprimand. The Bank may want to consider development of a broader range of possible sanctions, together with guidance for choosing among them.

c. Membership

The Sanctions Committee is composed of five members, all of whom are current employees of the Bank. Each member serves in an operational role at the Bank, and none would be considered part of the senior management of the Bank. The Committee is supported by a secretariat currently composed of a lawyer who provides periodic

³² Matters involving Bank staff are handled by the Ethics Officer and the Ethics Committee; matters involving public officials are to be referred outside the Bank to local law enforcement; and matters involving technical assistance contracts or private sector lending are handled by the OCFC.

assistance to the Committee while serving on a full-time basis in the Legal Department, a paralegal, and an assistant.

i. Experience

The members of the Sanctions Committee bring a wealth of experience in operational matters to the performance of their responsibilities. This is extremely valuable in that it enables the members to understand the context in which the charged activities were conducted. Nevertheless, none of the members of the Sanctions Committee has a background in judicial or investigative matters, and the members have expressed concern that this has made it difficult to assess the quality and credibility of the evidence and to determine the appropriate weight to be given different kinds of evidence. These concerns have led some members of the Sanctions Committee, as well as some other Bank officials, to suggest that the Bank might be well-served by adopting a process under which some members of the Sanctions Committee would be appointed from outside the Bank to augment the background, expertise, and experience of the Bank employees.

ii. Availability, and time for case preparation

As noted, all members of the Sanctions Committee and its Secretary have full-time responsibilities at the Bank that they must fulfill in addition to their work on the Sanctions Committee. To find time to review the extensive case files and to analyze the written reports, the members of the Sanctions Committee and its Secretary must devote long hours on nights and weekends. In addition, they must find time during the work week for meetings of the Committee, which time would otherwise be spent on their regular responsibilities. Due to other business and travel schedules, it can take some time before a meeting is able to be scheduled. As a result, from the time the complete written record (including all of the parties' documents) is first submitted to the Committee, it often takes up to six months for the members to reach a final decision.

iii. Comfort in undertaking responsibilities

Although the members of the Sanctions Committee take their work very seriously and selflessly devote a great deal of time and attention to their deliberations, several members of the Committee expressed concern about their competence to make the kinds of determinations they are called upon to make. As mentioned above, none has experience in making findings of fact in complex quasi-judicial or administrative proceedings, and none has been given any special training or instruction on how to do so as members of the Committee.

Some Committee members have also expressed concerns of a quite different nature – concerns about the consequences to which individual members of the Committee could be subjected if they were to make decisions that would be found objectionable by the particular governments with which they regularly interact as Bank staff members. These concerns ranged from the impact on the performance of their operational responsibilities to concerns about their personal safety when in the field.

d. Meetings and approach to determinations

The Sanctions Committee meets from time to time to consider a matter when the Secretary of the Committee determines that the submissions from OII and the respondent are complete. The Committee reviews the written record, and, on rare occasions, has asked a representative of OII to meet with the Committee to answer questions about the documentation.³³ The Committee does not hold a hearing at which the respondent is invited to appear and present oral arguments before the Committee. After assessing all the records, the Committee members then deliberate among themselves and reach a decision whether the evidence is sufficient to support the allegations of fraud or corruption. If so, they then determine the appropriate sanctions.

³³ Since so much of the work of the Sanctions Committee is conducted on the basis of the written record, for the process to work effectively it is essential that the reports provided by OII be complete, clear, and thorough. As noted above, some officials have expressed concern that this has not always been the case – a concern that OII is undertaking to address, recognizing that confidence in its work product must be one of OII's highest priorities.

e. Available sanctions

The sanctions that may be imposed on behalf of the Bank can include declaring the individual or firm ineligible from participating in Bank-finance projects permanently or for a specified period of time, or issuing a letter of reprimand to the individual or firms. Although the nature of available sanctions is understood by the members of the Sanctions Committee, members of the Committee have expressed reservations about their ability to determine the criteria that should be applied in selecting the appropriate sanction in a particular circumstance. The Committee has tried to do what is reasonable in its judgment, and is starting to develop a set of criteria based on its prior decisions. Nevertheless, the Bank has not provided guidance that would enable the Committee to have a better understanding of the priorities that the Bank expects to implement through the sanctioning process.

f. Finality of determinations

Decisions of the Sanctions Committee are final and are not subject to appeal. This has made some members of the Sanctions Committee uncomfortable because they would feel more assured about the process if there were some other party or body that could evaluate the decisions independently. This has led some members of the Sanctions Committee, as well as other Bank officials, to suggest that the Bank might be well-served by adopting the process followed at the World Bank, under which an independent review of each case is made by a designated Bank official and a specific sanction is recommended by that official before the matter is presented to the Sanctions Committee.

g. Publication of determinations

When the Sanctions Committee decides to impose sanctions in a particular matter, the respondent is informed in writing of the terms of the sanction. In addition, notice is given to the Executive Directors from the countries in which the affected project is located and from which the respondent does business, as well as the applicable ministries and executing agencies. While this information must be conveyed so that the relevant actors are informed of what has happened, an equally important purpose is served by also

announcing the sanctions on the Bank's website. This public disclosure sends an important confirmation – to the Bank's constituencies and would-be malefactors alike – that the Bank is diligently pursuing its stated goal of showing no tolerance for fraud and corruption, and that serious consequences will result if the Bank finds evidence of fraud and corruption in projects it finances. This cannot help but have a deterrent effect on those otherwise bent upon taking improper advantage of the funding process, and gives credibility to the Bank's efforts in this area.

Questions have been raised within the Bank whether it might be appropriate to consider publication of the results of an investigation in a situation in which there has been publicity about a suspected act of fraud or corruption, and the person being investigated ultimately is cleared of wrongdoing. In evaluating possible responses to such questions, the key word is “cleared.” Most terminations of investigations – whether conducted by OII, by another MDB, or by a national government – occur as a result of inadequate probative evidence and do not constitute a “clearing” of the person suspected. The inadequacy of the evidence adduced may be the result of the suspect's innocence, or it may be a result of the suspect's active suppression of evidence or intimidation of witnesses, or, most frequently, it may be the result of the simple inability of the investigators to adduce sufficient facts to come to a conclusion one way or the other. Certainly in the relatively rare situation in which Bank investigators have affirmatively concluded that the person investigated had not in fact engaged in wrongdoing, the Bank should have a means of offering the formerly-suspected person a public statement to that effect. In other situations, the Bank should be free to employ its discretion on an ad hoc basis, recognizing that many investigated persons would probably not wish a forthright public announcement of the reason their investigation had come to an end.

h. Results of the Work of the Sanctions Committee

It is beyond the scope of this review to assess the decisions reached by the Sanctions Committee in particular cases. While the authors of this Report have reviewed a select number of case files, we are not sufficiently familiar with all the evidence considered by the Sanctions Committee in any of those cases to substitute our judgment

for that of the Committee when it comes to the proper disposition of a case.

Nevertheless, based on our limited knowledge of those cases and the decisions taken by the Sanction Committee, it is our impression that the Sanctions Committee operates in a reasonable, balanced, fair, and deliberative manner. Despite that impression, in light of their other commitments to the Bank, we do not find it realistic or appropriate to expect the members of that Committee or its Secretary to have the capacity to continue to meet their responsibilities as members of the Sanctions Committee by making time available on nights and weekends. This condition will only be exacerbated as the number of cases increases in the future.

C. The Bank's preventive program against fraud and corruption

1. In general

It is commonly recognized that the more effective way to reduce persistent problems of fraud and corruption is to prevent them – to inhibit the commission of such acts in the first instance, rather than to await their commission and then instigate the investigative and sanctioning processes to try to remedy the damage that has taken place. Such inhibition may be achieved through various kinds of programs to deter potential transgressors. Some programs undertake to do so by making such persons' misuse of funds more difficult, some by raising their awareness of the likelihood of adverse consequences, and some by reinforcing their general moral precepts.

The preventive programs introduced by the Bank have employed several internal mechanisms to assure that funds for Bank-supported projects are controlled through means that will reduce the likelihood of improper diversion. The external preventive programs, at the country level, have undertaken to encourage member nations to develop more effective legal and judicial systems, accounting methods, auditing processes, record-keeping methodologies, procurement practices, and other procedures that are designed to stifle inclinations, and to reduce opportunities, for engaging in fraudulent or corrupt practices.

2. Preventive activities to protect Bank funds

Perhaps the single most significant action the Bank has undertaken to reduce fraud and corruption in Bank-funded programs has been the Bank's very announcement that it had initiated an anti-corruption program, followed promptly by the assembling of a high-level committee to supervise the new program, and followed some time later by the assignment of overall anti-corruption responsibilities to a special office within the Office of the President. Expression of seriousness of purpose, bolstered by administrative action to demonstrate that the purpose will be given effect, is the first step toward achieving an effective program. Moreover, for a while at least, it can in itself dissuade less-than-scrupulous bidders and contractors from engaging in improprieties that previously might have been considered matters of routine practice. It can also serve as an important shield by discouraging governmental officials from seeking to collect "rent" or obtain other favors from companies engaged in Bank-financed projects.³⁴ Unless such administrative action is followed relatively soon by implementing measures, however, any deterrent effect will quickly dissipate.

As noted, the Bank's announced program has been followed by the establishment of implementing procedures, a series of OII investigations into suspected misconduct, a number of debarments by the Sanctions Committee, and, importantly, publication of those debarments on the Bank's website in order to deter would-be violators from future misconduct. They have also been followed by the employment of other means of discouraging fraudulent and corrupt behavior, largely through informal and formal instructional programs to acquaint other Bank offices with techniques that might be employed to discourage, or to facilitate the investigation of, fraudulent and corrupt activities.

³⁴ One company disclosed that it routinely contrives to assure that in every project it undertakes there is at least some IDB funding involved, thereby alleviating pressure to hire unqualified friends of government officials.

a. Adoption of a risk-based procurement approach with fiduciary safeguards

The most significant of the Bank's purely preventive activities is the recent development by OII, in conjunction with the Procurement Area of the Procurement, Financial Management and Portfolio Monitoring Division, of a "Red Flags Matrix." The Matrix is designed to assist Bank offices at several levels in the early identification, and thus the prospective prevention, of the most common fraudulent and corrupt practices found in Bank-financed activities. It was developed through an analysis of 94 prohibited practices that occurred in 52 cases investigated by OII over a three-year period, and was informed in part by analysis of the experiences of other multilateral development banks and the experience of the United Nations Procurement Office.

Both the Matrix, and its supporting report, are organized according to the four different phases of the project procurement process: the preparation phase, the bid or proposal submission phase, the evaluation phase, and the execution phase. Significantly, the data underlying the development of the Matrix indicated that 56 percent of the prohibited practices occurred during the first three phases – before the finalization of the contract. With a web-based reporting system as contemplated by the program, the implementation of the program will permit rapid analysis of patterns suggesting apparent problems, and will prompt defensive measures on the part of the Bank. This will enable the Bank to avoid the kinds of losses that for decades have proved very difficult either to identify or to circumvent.

The concept of the Red Flags Matrix approach to addressing potential fraud in the project procurement process has been promoted by the Office of Risk Management and the Office of Evaluation and Oversight. Its recent development has received widespread support among the several Bank offices that could benefit from the program, and considerable enthusiasm from program managers. It is currently in the process of being adapted for implementation.

b. Collaborative fund-protection work among Bank offices

As a lending institution, the Bank contains a number of subcomponents bearing direct or indirect responsibilities for insuring against loss of Bank funds. A principal one is the Office of the Auditor General – the office in which the anti-corruption investigative function was originally housed. As noted before, this Office and OII today work together regularly on an informal basis, given their common responsibilities in restraining the effect of fraud and corruption upon Bank activities. The cooperative relationship is particularly useful as it brings together different professional approaches and complementary skills. It is viewed by both offices as comfortable and useful.

The Legal Department is also recognized as having an appropriate interest with regard to this aspect of OII's operations. Although it is the remedial, investigative aspects of OII's work that are most likely to prompt occasions for joint attention, the preventive aspects also raise issues within the proper concern of both offices. An example of OII's collaborative work with the Legal Department was the development and presentation of an anti-corruption training program for prosecutors and investigators from nineteen countries of the region. The session was particularly well received and, in response to requests by the participants for replication of the workshop at the sub-regional level, the offices are proceeding to develop additional training programs.³⁵

The significant support of the Procurement Office in the development of the Red Flags Matrix has already been noted. The mutual effort is commonly considered to have resulted in an approach to fraud and corruption that will prove particularly valuable.

A number of other Bank offices have been involved in various aspects of other Bank activities that pertain in some measure, either directly or indirectly, to the prevention of fraud and corruption. They include the Risk Management Office, the Office of Evaluation and Oversight, and the Institutional Capacity of the State Division.

³⁵ Among other matters, the Legal Department and OII have undertaken a joint effort to ensure that all Bank legal documents and policy statements contain consistent descriptions of the Bank's anti-corruption policies.

Their common partner has been OII, and their common experience has been viewed by the participants as a cooperative and useful one.

c. Collaborative fund-protection work involving international financial institutions

All of the major multilateral development banks have, over the past several years, gradually come to the realization that a preventive program against fraud and corruption can be more cost-effective than a remedial program. Indeed, the “Uniform Framework for Preventing and Combating Fraud and Corruption,” which was adopted by all seven of the principal international financial institutions, specifically calls for its member banks “to develop analytical tools designed to assess risks of corruption in individual countries, sectors, and regions and institutional capabilities to respond to those risks.”³⁶ Not all of the banks, however, have undertaken much in the way of action to give effect to such realizations and recommendations. While some have provided a degree of attention to risk indicators, none have approached the degree of sophistication that is exhibited in the Bank’s Red Flags Matrix approach. OII, in its role as a principal leader in the coordinative work among the multilateral development banks with regard to fraud and corruption matters, is in the process of working with the Procurement Office to acquaint their counterparts in the other banks with the potential of the Matrix approach. It may be expected that the program will be widely adopted, as have other, more general preventive approaches that have been presented for common consideration. To the extent that these approaches become routine practices in the multilateral bank community, the combined experience and growing database of risk avoidance mechanisms will add to the effectiveness of all the banks.

3. Preventive activities to promote good governance in member nations

It needs to be kept in mind that the Bank’s anti-corruption program was adopted as a matter of perceived necessity. If all nations of the region themselves had in place

³⁶ *Uniform Framework*, note 11, *supra*, Part 6.

effective programs to deter fraud and corruption, and also had in place the necessary governmental capacity and political will to investigate and prosecute those instances of fraud and corruption that do occur, there would be a diminished need for a lending institution to attempt to supply its own mechanisms to deter and remedy such improper acts. Unfortunately, many nations of the region do not yet have effective programs in place, and certainly all nations could benefit from additional assistance in this area. This leads to the question why the Bank has not placed greater emphasis upon providing such assistance – even though provision of such assistance was one of the three central themes of the founding document underlying the creation of the Bank’s anti-corruption program.³⁷

One answer is that the Bank has heretofore believed it appropriate to concentrate its anti-corruption attention on protecting the funds with which it has been entrusted. The implicit assumption is that fund-protection warrants priority, and that, from the Bank’s standpoint, it is more cost-effective to undertake its own efforts to protect its funds than to attempt to foster a general improvement of corresponding country efforts to the degree that the Bank funds would receive roughly equal protection. That assumption is probably correct. But such an approach addresses only one of the two anti-corruption interests that are inherent in the Bank’s overall responsibilities – protection of the funds with which it is entrusted. It does not address the independent interest – and clearly, from a long-term standpoint, the more significant interest – of promoting anti-corruption as a key element of development and a component of good governance among the countries of the region. Any good governance improvement flowing from the Bank’s anti-corruption program has been treated in the past as simply a welcome, collateral benefit that might eventually reduce the Bank’s need to employ its own investigative and sanctioning measures.

General good governance is a goal that the Bank has sought to encourage in member countries, as part of its efforts to foster development, through several kinds of unrelated assistance programs. Those programs, which have encompassed such matters

³⁷ *Strengthening a Systemic Framework against Corruption for the Inter-American Development Bank* (15 February 2001).

as modernization of the state, technical cooperation, and to some degree good governance generally, have involved contributions by the former State and Civil Society Programs Divisions of the three Regions, the former State Governance and Civil Society Division of the Sustainable Development Department, and the Legal Department. The programs have been of value, particularly programs to enhance country general accounting offices, procurement regimes, and some aspects of judicial systems. The Bank has not yet, however, undertaken to provide material assistance to member countries for the specific purpose of improving a country's capacity to address problems of fraud and corruption as an essential part of a broader good governance program. One exception, as noted above, has been OII's work with the Legal Department and the Office of the Auditor General, as well as operational staff, in presenting anti-corruption training for prosecutors and investigators from nineteen countries of the region; another has been OII's series of brief missions to twelve countries to expose them to the Bank's anti-corruption program and also to the possibilities of a sound national anti-corruption program. The problem has not been a lack of interest or capacity; it has been a lack of a strategic plan, coordination, and emphasis.³⁸ It is hoped and expected that the problem will abate upon eventual adoption and implementation of an approach along the lines of that in the "Action Plan to Support Member Countries in Their Efforts to Combat Corruption and Enhance Transparency" (the "Action Plan") being developed by the recently-created ICS, with input from OII.

Some Executive Directors have suggested that direct anti-corruption assistance might be a more welcome approach from the standpoint of their governments than simply relying upon the Bank's own remedial efforts. Also, several senior Bank managers have suggested that such assistance probably would lead to a more effective long-term approach to the problem – not by eliminating the need for the Bank's protective measures, but by reducing the necessity for relying upon such measures. There seems to be a general agreement that the time has come for the Bank to initiate a serious examination of how such a program might be conceived, funded, and implemented. Such

³⁸ For an excellent analysis of the situation as it stood in early 2007, see *The IDB's Anti-Corruption Activities; Review and Recommendations*, February 20, 2007

a process would require a specific mandate from the Board and clear support from management.

a. Collaborative good-governance work among Bank offices

Anticipating an eventual need to undertake a broader good-governance program, ICS has initiated an effort to develop, in collaboration with OII, the Action Plan to support member countries in their efforts to combat corruption and enhance transparency.

The Action Plan is still in the process of development. It is being formulated on the basis of a highly sophisticated compilation of data by ICS, followed by a carefully constructed analysis that can indicate the probable presence or absence of particular kinds of corrupt activities in each of its member countries. Its diagnostic evaluations are based upon 600 to 700 indicators of questionable activities – far more than the factors employed by other organizations working in this field – and appear to be far more sophisticated than the analogous approaches that have been taken by other institutions in the past. The data are capable of country-specific interpretation, and the results of their trial use in particular countries have received commendation by local officials for their insight and accuracy. The expectation is that the knowledge that can be extrapolated from such data will be able to identify vulnerabilities in a country’s administrative practices, laws, and procedures, thereby permitting targeted remedial actions to reduce the opportunities for corruption and to increase the likelihood of successful responses.

With the understanding provided from the problem-identification stage of the emerging Action Plan, the Bank for the first time would be in a position to identify with a comfortable degree of accuracy the most troublesome kinds of corruption problems plaguing a particular country, to work with the country to devise a tailored program to overcome those problems, and to arrange for appropriate funding by the Bank, either alone or in combination with other potential funders. Implementation of such a plan would assist countries in fulfilling the obligations they themselves have assumed as signatories to the OAS and UN conventions against corruption. Implementation of such a plan would also mark a particularly important milestone in the Bank’s anti-corruption efforts.

b. Collaborative good-governance work involving the OAS, the UN, and other international organizations

While the majority of the Bank's anti-corruption work with other transnational institutions has been focused upon education, training, and development of standards with regard to remedial measures, collaborative needs concerning prevention and good governance are beginning to be addressed. OII has participated in the development of such programs together with the other multilateral development banks pursuant to the provision of Part 6 of the Uniform Framework for Preventing and Combating Fraud and Corruption which specifies that "member institutions should seek to develop a proactive and coordinated approach to assist member countries in the development of institutions, as well as administrative systems and policies, that eliminate opportunities for fraudulent and corrupt practices." Also, OII, ICS, and other Bank offices have worked with the OAS, the United Nations, Interpol, the Organization for Economic Co-operation and Development, and other international institutions in encouraging initiatives to deter and prevent fraud and corruption in national and international operations, and in otherwise supporting the implementation of the OAS and UN conventions. This is, however, an area in which much more attention is justified, and in which more effort should be undertaken to develop collective support, as well as Bank support, for national programs that would enhance the capacity of governments to operate without debilitating levels of fraud and corruption.

c. Overall Bank coordination of preventive programs in member nations

Since its creation in 2007, ICS has been given the mandate to provide good governance and institutional capacity support to countries in a broad range of areas, including those related to anti-corruption projects. In establishing this mandate, the Bank recognized that a comprehensive anti-corruption program involves much more than legal reforms and providing assistance to investigators, prosecutors, and the judiciary, and must include, among other things, strengthening of the national accounting systems, reforms of the civil service and regulatory agencies, administrative simplification, and

enhanced opportunities for civil society to participate in overseeing their administration. Nevertheless, initiatives to strengthen a country's legal framework and institutions remain particularly important. Previously, OII had a central role in the development of several of the various preventive programs designed to forestall fraud and corruption. In the future, we believe that OII should continue to serve as a valuable resource to the Bank in developing and executing projects in these areas since the Office's personnel have a broad understanding of the workings of, and possible solutions to, particular manifestations of fraud and corruption.³⁹ Many OII staff members have professional backgrounds as investigators or lawyers operating in national jurisdictions, which provides them with a pragmatic, as well as academic, understanding of both the promise and reality in the functioning of national justice systems, and which also provides them with significant credibility in the eyes of government officials in the countries being proffered such preventive assistance. Such credibility can be of critical importance to the acceptance and success of preventive programs.

IV. Recommendations

The Bank's anti-corruption program has evolved over the course of years into an operation that, in several respects, has been able to function reasonably well. Under any reconstituted and expanded program, many aspects of the current policies and procedures can be continued with only modest changes to accommodate the more significant modifications in an expanded program. Accordingly, in proposing the following changes, we are assuming that those policies and procedures that are not mentioned will continue in essentially their current form.

³⁹ One Bank official raised the question whether OII might be subject to a charge of a conflict of interests if it were called upon to conduct an investigation involving fraud or corruption in a prevention program that it had been responsible for developing. Even though it is not clear whether the presumed conflict would be assumed to favor or disfavor the person to be investigated if that person was not an OII employee, any connection would create no greater a problem than if the person was an employee of any other office with which OII regularly works. If a particular concern about a potential conflict of interests involving OII were to arise in any such case, and certainly in a case in which an OII employee is suspected of wrongdoing, the investigation could, as a matter of regular practice, be assigned to an outside investigator to be supervised by another office, such as the Office of the Auditor General.

The following recommendations for change and for clarification are made after assessments of a variety of possibilities. Many of the recommendations are set forth in somewhat summary form since much of the rationale will be apparent from the observations set forth in Part III of this Report. Others have been set forth with a more detailed explanation because of the currency, or particular sensitivity, of the issue involved.

It will be apparent from a reading of the recommendations that priority should be given by the Bank to the consideration of the recommendations appearing in Subsection A. These recommendations are focused upon the creation of an improved policy-setting and oversight capacity by which the Bank might assure appropriate planning and guidance in the whole of its anti-corruption program. Once this capacity is in place, many of the remaining recommendations can be addressed simultaneously. We expect that the Bank will find it advisable to give early attention to the recommendations concerning OII and the Sanctions Committee.

We encourage the Bank to give the recommendations the consideration warranted by the importance of the overall anti-corruption program.

A. The Oversight Committee on Fraud and Corruption

- 1. Remove the Committee's responsibility for supervising the handling of individual cases, and limit its role concerning the operations of OII and the Sanctions Committee to matters concerning general policies and responsibilities.**

Much of the operational role that originally prompted the creation of the OCFC has been assumed by subsequently-created Bank components – principally OII and the Sanctions Committee. While the OCFC continues to have responsibility for reviewing cases and imposing sanctions in certain prescribed cases, and has the authority to temporarily suspend the subject of an investigation while the matter is before the

Sanctions Committee, the OCFC today acts, from an operational standpoint, largely as a document forwarding facility,⁴⁰ and the members' limited availability makes performance of this function a cause of nettlesome delays in the work of the other components involved in the remedial process. Moreover, this reduced role is not one that the Committee members consider a serious responsibility, and others in the Bank recognize that it has become an unjustifiable commitment of the limited time available to these senior officials. Now that OII has evolved into an established unit of known capacity, and that the Sanctions Committee has developed sufficient familiarity with its responsibilities, the Committee should be freed of the function of filtering documents traveling between the two. There are more important functions that the Committee could serve, including having general oversight of OII's activities and results, as opposed to an operational role in the conduct of particular investigations.

2. Convert the Committee's function to that of policy direction, development, and oversight with an emphasis upon preventive measures.

The policy role of the Committee, as opposed to the operational role, continues to be of great importance. Previously this role has been called into operation only on a sporadic basis as activities in the implementation of the Bank's developing anti-corruption program prompted questions of process and propriety. The need for such ad hoc policy determinations will continue. Indeed, as the Bank's anti-corruption program has matured, it is becoming increasingly evident that integrated policy direction, development, and oversight, based upon foresight and sensitivity to long-term Bank goals, has become a matter of paramount importance.

The setting of general policy direction is the principal function of the Board of Executive Directors and of the Office of the President. But particular policy decisions at such levels are best informed by intelligent assessment not only by specialists in the area

⁴⁰ As noted in section III B 1, above, in matters involving suspected corruption in private sector loans, the Committee does retain a supervisory responsibility of OII investigations and also performs the adjudicatory and sanctioning function otherwise assigned to the Sanctions Committee.

but by senior generalists charged with thinking about such matters in the context of the Bank's overall interests. With regard to the Bank's anti-corruption policy, the membership of the Committee, with minor modification, is ideally positioned to proffer thoughtful, collective advice and recommendations to the President and to the Board.⁴¹ Moreover, the Committee is similarly well-positioned not only to initiate exercises to explore new, coordinated approaches to the overall problems of corruption – particularly preventive approaches – but to provide oversight monitoring of ongoing approaches and to continue its undertaking of ad hoc policy decisions as immediate problems arise.⁴²

3. Change the name of the Committee to reflect its policy function.

The proposed change of function suggests the advisability of a change to a more descriptive name. One possibility would be simply the “Committee on Fraud and Corruption Policy,” but retention of the word “Oversight” might further the understanding that its function, beyond the crucial responsibility of developing overall fraud and corruption policy, would be one of general supervisory attention and guidance of work performed by other Bank offices.

4. Undertake, as the Committee's first priority, the preparation and approval of an overall, Bank-wide anti-corruption strategy.

Since the adoption of the Strategic Framework in 2001, the Bank, as noted, has made significant progress in developing wide-ranging initiatives in support of its anti-corruption program. These developments have taken place, however, in the absence of

⁴¹ It has been suggested that the work of the Committee might benefit from the insights and experience that could be brought by the addition of other senior managers in the Bank, such as the Vice President for Private Sector and Non-Sovereign Governmental Operations (“VPP”), and representatives of the Office of the President (“PCY”), the Office of Strategic Planning and Effectiveness (“SPD”), and the Private Sector Credit Risk Assessment Office (“RMG”).

⁴² We note that one observer has suggested that the policy and oversight role described in this section IV A 2 and the succeeding sections might be more appropriately carried out by the Operations Policy Committee (with participation from OII and the Office of the Auditor General when issues of fraud and corruption are discussed) rather than a reconstituted OCFC. Whatever body within the Bank fills this role, it is crucial to ensure that these important policy-making and oversight functions receive attention from the managers of the Bank at the highest levels.

coordinated direction by a single, senior-level body, and the considerations guiding the emergence and operation of the components of the program have not been subject to uniform efforts to weigh their relative values and their internal consistencies. Moreover, as noted by the Anti-Corruption Working Group in 2007, a Bank-wide anti-corruption strategy and framework is not yet complete.⁴³

Under guidance from the Board of Executive Directors, and pursuant to directions of the President, the Committee should undertake the framing of a complete, interrelated plan for implementing the entirety of the Bank's announced anti-corruption policy – for the Bank's internal operations and for the effective governance of the countries of the Inter-American region – taking into consideration the Bank's general goals together with the 2007 recommendations of the Bank's Anti-Corruption Working Group,⁴⁴ the proposals of the final version of the Action Plan, and the observations and recommendations in this Report. The next effort of the Committee should be to identify, rationalize, update, and prioritize the purposes and the functioning of the existing components of the program – including remedial measures and internal and external preventive measures – and to make necessary modifications and additions.

5. Concentrate the Committee's ongoing focus upon coordination of the various Bank offices with responsibilities relating to the improvement of responses to fraud and corruption by the Bank and by national governments.

The Committee's policy direction to individual Bank components will be required as they develop – in implementation of the Bank-wide strategy encompassing both internal and external elements – anti-corruption initiatives concentrated upon their own

⁴³ See *The IDB's Anti-Corruption Activities, Review and Recommendations*, February 20, 2007, p 14.

⁴⁴ The report of the Working Group, which was prepared in early 2007 through the contributions of 23 Bank officials and employees from a number of different offices, contains a well-organized and particularly thoughtful assessment of the Bank's anti-corruption activities. Its recommendations remain pertinent, and we commend them to the attention of the proposed Policy Committee. *The IDB's Anti-Corruption Activities; Review and Recommendations*, February 20, 2007.

areas of principal responsibility. Early direction can avoid the expenditure of time on unproductive initiatives. Major proposals for anti-corruption programs, particularly preventive programs involving more than one Bank component or involving active participation by national governments, should make up a larger portion of the Committee's future agendas. Some degree of attention should still be accorded to narrower, compartmentalized plans, but these should require relatively little Committee time, and could be filtered not only through the Committee's secretariat but through the Supporting Group proposed in recommendation IV A 9, below.

6. Adjust the Committee's membership to facilitate its revised function.

In addition to the Committee's current, very senior membership – the Executive Vice President, the General Counsel, the Auditor General, the Vice President for Finance and Administration, and the Vice-President for Countries – the nature of the new Committee's expanded responsibilities suggest the desirability of adding as members the Chief of the Office of Institutional Integrity⁴⁵ and, because of what is expected to be a heightened future importance of assisting countries in their national anti-corruption programs, the Vice-President for Sectors who oversees the Institutional Capacity and Finance Sector.⁴⁶

7. Set quarterly meetings, with interim meetings only as needed.

An initial spate of meetings will be required upon the Committee's assumption of its new responsibilities. Thereafter, however, since the ongoing role of the Committee would be principally one of guidance rather than operational control, quarterly meetings should suffice. To the extent that a potential agenda item received by the Committee secretariat would appear to warrant earlier, interim attention, the Committee may still elect to give it more immediate consideration.

⁴⁵ See recommendation IV B 1, below, proposing that OII be made a separate Executive Advisory Office.

⁴⁶ As noted in section IV A 2, above, representatives of the following have also been suggested as members of this committee: PCY, SPD, RMG and VPP.

8. Maintain an informal, interactive relationship between OII and the Committee members.

A relationship permitting OII to engage in informal, ad hoc communications with the Chairman of the Committee and other Committee members, as a supplement to formal meetings, is useful for a variety of purposes. Certainly it is often necessary in order to assure that this particular spectrum of senior management is timely informed of sensitive findings, and of changes in the status of particularly sensitive cases, that may carry not only policy considerations but potential reputational risks, or potential political consequences, for the Bank. It is similarly necessary to permit timely guidance concerning the advisability of acquainting Executive Directors with the existence of such sensitive findings and cases. Less pressing, but nonetheless significant, is the occasional need for consultation about approaches to be undertaken in complex or otherwise challenging investigations, and about other situations in which prompt communication would clearly be helpful. Finally, regular contact with senior management serving on the Committee would offer OII the opportunity to be made aware of developing policy and programmatic priorities and anticipated changes that might be relevant to OII's work. Although the contemplated communications would involve matters of policy interpretation or policy application, they would be of a nature or an imminence that would make it impractical to await a full Committee meeting.

Although the necessity of such informal communications has lessened as the remedial part of the Bank's anti-corruption program has matured over the past several years, the availability of such ad hoc channels will continue to be advisable.

9. Consider the establishment of a Supporting Group to facilitate the Committee's work.

In order to permit the Committee to provide the general guidance and oversight contemplated, and yet to do so largely through quarterly meetings (after its initial preparation and approval of an overall, Bank-wide anti-corruption strategy), it may prove advisable to provide the Committee with a level of assistance beyond that which ordinarily would be supplied by a secretariat.

Everyone familiar with the Bank's current anti-corruption program recognizes that it affects a very broad range of Bank offices. The remedial programs required for fulfillment of the Bank's fiduciary obligations affect all sectors. The internal preventive programs that involve converting lessons learned into improved mechanisms, practices, regulations, and policies carry consequences for almost all Bank offices. The external preventive programs need to call upon widespread Bank experiences both at the field level and at the headquarters level. Given the widespread effects of the overall program, and the importance that a refined and expanded program be developed with as much informed foresight as the Bank can muster, we suggest that consideration be given to the development of a supporting group, at a senior sub-manager level, to assist the Committee and its secretariat in the course of their future work.

B. The Office of Institutional Integrity

- 1. Remove OII from within the Office of the President to a separate position as an Executive Advisory Office, with OII continuing to report directly to the President.**

As the Bank's anti-corruption program becomes more important to its operation, the role of OII necessarily becomes more important also. Yet OII's role is masked. Bank personnel in Washington who have had occasion to work directly with OII are generally aware of the nature of its assigned role, but Bank personnel who have not had experience in working with the Office have only a vague understanding of both its responsibilities and its authority, and personnel in field offices are even less certain. Persons outside the Bank, even those maintaining similar positions in other multilateral development banks, are commonly unable to identify even the general position level of OII within the Bank's hierarchy. Understanding of its authority appears even more limited among governmental officials whom OII representatives sometimes have reason to contact. Recourse by such individuals to any of the Bank's published organizational charts provides no illumination: OII's name simply does not appear.

OII has an important mission to perform, and to perform it effectively OII must be visible. Its hierarchical prominence needs to be more apparent if its personnel are to be

able to achieve prompt cooperation from those from whom they need information or assistance. Even those made aware of OII's current placement may find it to carry a somewhat temporary aura. Certainly at the time of the Bank's original creation of OII, its particular placement – an expedient giving it de facto authority and protection – may in fact have been considered tentative in light of the ongoing, piecemeal evolution of the Bank's anti-corruption program which undoubtedly was expected to continue to undergo further change. At this point, however, it would be useful to the Bank to clarify OII's position, and thereby, indirectly, the Office's permanence and its importance, which is particularly relevant to the successful operation of the external portion of the Bank's anti-corruption program. Certainly this would assist in facilitating OII's work in addressing fraud and corruption in Bank-financed projects, and, perhaps more importantly, in demonstrating Presidential-level backing for Bank support to member countries as they seek to undertake their own anti-corruption initiatives.

For these reasons, we would encourage the Bank to realign OII from an office within the Office of the President to an office parallel to that of the Auditor General and other Executive Advisory Offices. This would not change OII's structure or its functions. It would, however, provide it with far greater visibility as a result of its appearance on the Bank's published organizational chart. This, in turn, should prompt at least some increase in the effectiveness with which it is able to perform the remedial and preventive responsibilities with which it has been entrusted.

2. Reaffirm the OII reporting relationship with the Audit Committee, and, in conjunction with the revamped Oversight Committee, refine and regularize standards and procedures for reporting to individual Executive Directors.

OII's reporting relationship to the Audit Committee has been a useful one from the perspective of both entities. The Audit Committee has a clear interest in assuring that the Bank is undertaking adequate measures to fulfill its responsibility for protecting Bank funds through internal programs of a remedial or preventive nature, and individual Executive Directors on the Committee have frequently expressed strong interest in OII's

preventive operations and in the related good-governance programs being developed for external application by ICS in conjunction with OII. From the perspective of OII, it is particularly useful to be exposed to the views expressed by individual Executive Directors with regard to ongoing and contemplated programs rather than having to await a formal action of the Audit Committee setting forth a conclusion in terms reflecting a homogenization of viewpoints.

The reporting of matters concerning particular cases, however, is more problematic for OII, especially with regard to applying the appropriate standards and procedures for briefing an individual Executive Director about investigative matters connected with the country the Director represents. The difficulty arises from the recognition of the inherent awkwardness of the position of a Director in such instances. An Executive Director is at once an international official with a professional role at the apex of a multinational bank, and also an appointee of his national government. It is a rare individual who has the ability to balance with ease the professional and ethical responsibilities implicit in such a duality. Yet, whether easy or not, in almost all instances such matters seem to be successfully balanced, with the Executive Directors fulfilling their responsibilities for assuring that Bank funds are safeguarded, and yet sharing an appropriate degree of information with the country involved in order to enable it to protect its own legitimate interests in a manner, and with timing, that does not jeopardize the Bank's anti-corruption efforts and the Bank's critical need to maintain confidentiality during the course of an investigation.

Certainly it will always be advisable for OII to notify the appropriate Executive Director before undertaking a mission to a country. However, due to the particularly sensitive nature of the details of some ongoing investigations, it may prove contrary to the interests of the Bank to risk even a slightly elevated possibility of inadvertent disclosure of information about a particular investigation. Accordingly, it would appear best that the level of detail and the timing of any disclosure to an Executive Director, or any other government official, should be matters subject to the informed discretion of the Director of OII acting pursuant to standards and criteria promulgated by the new Oversight Committee.

3. Augment the capacity of OII with regard to the procurement and project development practices of the Bank.

Due to the complex and somewhat unique nature of the procurement and project development practices of multilateral development banks, it may be difficult for someone without operational experience within such an organization to appreciate the significance of particular activities or relationships. Certainly an understanding of such practices would not come intuitively. The Bank needs to find ways to enhance OII's capacity in this area by considering alternatives such as adding personnel from operational components of the Bank or other similar institutions who already possess extensive knowledge of procurement and project development practices of MDBs, or by intensifying the training of OII investigators. In addition, it is particularly important that all OII integrity officers participate in the training programs offered to operational staff as part of their orientation to the Bank, and OII should work with procurement and operational components of the Bank to develop ongoing training programs specifically designed for its integrity officers.

4. Develop a refined OII case-weighting system to facilitate concentration on cases that can have the greatest deterrent impact.

Because of the practical constraints imposed by finite Bank resources, all Bank programs must operate with a less than optimal level of funding. The program against fraud and corruption is no exception. As a consequence, OII, even in a significantly expanded configuration, will not be able to undertake the number and scope of the investigative activities that appear to be warranted. As the volume of cases increases, OII will need to be accorded greater authority than that indicated under the Bank's current framework for prioritizing its workload and concentrating on those cases that are the most important to the Bank. The only reasonable response to this reality is to employ the Bank's considerable capacity for data mining and econometric analysis to develop a sophisticated system for case-weighting in the selection of matters for processing beyond the point of preliminary investigation.

Any realistically constructed case-weighting system developed by the Bank will need to incorporate a triage component in order to reach a workload that can be processed by OII's staff. This by itself is a reasonable justification for development of a case weighting system. Yet the process of weighing case factors would also develop means of suggesting appropriate resources that thereafter should be allocated in support of the various cases competing for staff attention. The cost-benefit component of the weighing process could assign weights to everything from the potential for recovery of lost funds, through the relative deterrent prospects of pursuing different kinds of offenses, to the present value of future deterrence. At the very least, such an approach – by forcing the identification of relevant factors and sharpening thinking about their interrelationships – offers the prospect of more thoughtful resolution of competing considerations than less focused forms of evaluation.

The newly-reconstituted Oversight Committee would be the appropriate body within the Bank to supervise the development of a refined case weighting system. The work in structuring such a system will require, and deserve, collaborative efforts on the part of several Bank offices. In addition to participation by the lawyers and investigators in OII and by Bank specialists in econometric analysis, thoughtful participation will be required from Bank professionals with responsibilities in procurement matters and in risk assessment. It will also be advisable to assess the views of other operational staff, particularly in country offices, who would be affected by standards that would lead to occasional decisions to forego a full investigation of a matter within their portfolios.

Without preempting the internal consideration that should be given to these questions, and recognizing that this is not an exhaustive set of criteria, we would suggest that the following factors should be among those considered in prioritizing cases: the potential of Bank personnel to learn from the specific conduct and thereby prevent losses from occurring in similar future projects; the potential deterrent effect upon contractors and others involved in future Bank projects; the likelihood that a respondent has engaged in similar conduct in prior projects; the possibility for the investigation to lead to other findings of wrongdoing by a number of actors rather than just the individual or entity specifically accused at the outset; the novelty of the issues or practices presented; the

degree to which the matter involves a geographic region, a particular sector, or a type of violation that in the past has not received as significant a degree of attention as others; and the amount of the loss to the borrower resulting from the alleged wrongdoing. We would also suggest that, in recognition of its first-hand experience, OII should be given a reasonable degree of latitude in deciding how to implement the factors in specific situations.

5. Implement a triage procedure as a part of a case-weighting system, clarifying that “zero tolerance” is not incompatible with necessary triage.

A triage program will need to be acknowledged by the Bank as a necessary component of its general case-weighting system.

The employment of a system to recognize case priorities cannot fairly be interpreted to contradict the sincerity of the Bank in expressing “zero tolerance” for fraud and corruption. If a system of priorities is developed to insure that every suspected instance of impropriety that is referred to the Bank will receive at least a preliminary assessment by OII, if instances apparently involving even relatively low levels of seriousness are occasionally brought to the point of sanctioning, and if all countries of the region and all sectors of the Bank’s operations garner some degree of appropriate investigative attention, then the concentration of the majority of the Bank’s resources on the most significant cases can hardly be faulted. Such a system could reach most of the more important cases, and a large proportion of the lesser cases. The prioritizing process, by considerably increasing the prospects of the Bank’s overall efficiency in addressing fraud and corruption, should be seen as effectively furthering the underlying purpose of the Bank’s “zero tolerance” policy, not derogating from it. As noted in section III e iv 3, OII should report to the OCFC regularly (perhaps once every six or twelve months) on cases that are not investigated so that the Bank can have a clear understanding of the nature and potential ramifications of such cases.

6. Increase opportunities for significant proactive investigations by implementing a more refined system for identifying instances of potential fraud or corruption through “red flags” arising from risk management monitoring and other systemic techniques.

OII’s investigative activities thus far have been exclusively reactive – responding to allegations of fraud and corruption that it receives from others. It has not engaged in any significant efforts to undertake investigations based upon indicators of possible corruption that it has sought to ferret out on its own. The Office does not have a mandate to do so, nor does it have the personnel required to undertake such proactive examinations.

With the reduction of its ethics-related responsibilities, and the possible implementation of a triage system coupled with a more realistic approach to a policy of “zero tolerance,” OII should be given the authority and the mandate to engage in proactive detection and investigation of corruption risks in the Bank’s operations. These activities would not focus on individuals but on broader systemic risks that can be identified through data mining and other analyses of the Bank’s portfolio. One tool that has been used with some success by both the Asian Development Bank and the World Bank is proactive analysis of the entirety of select portfolios or projects, tailored to identify common indicators of fraud or corruption. The data generated from such broader reviews can provide more accurate measurements of the existence of fraud or corruption than can be gleaned from the anecdotal data of reactive investigations. Certainly the results of such proactive, systemic reviews should be valuable in designing prevention and risk-mitigation strategies. OII should be directed to work in this manner with the Office of the Auditor General and the Vice President for Countries to select and analyze project portfolios, and with the Office of the Auditor General and the Vice President for the Private Sector and Non-Sovereign Governmental Operations to analyze specific industry practices and portfolios. In implementing such programs, the proactive work should be done in close coordination with the countries involved.

In the vein of undertaking a more pro-active approach to enhance the fiduciary responsibilities of the Bank, the “Red Flags” program is a particularly promising initiative. It should be fully implemented through further coordinative work of the Office of Evaluation and Oversight, the Office of the Auditor General, the Project Procurement, Financial Management and Portfolio Division (Project Procurement Division), and OII. The program’s collaborative expansion with the counterpart World Bank offices should continue in the interest of establishing a framework that can be employed by all MDBs.

- 7. Enhance OII coordination with the Office of the Auditor General on matters within the purview of both offices, particularly with regard to having forensic auditors who can be called upon to assist OII for specific tasks.**

The cooperative relationship between these two offices is particularly important to the success of the Bank’s fulfillment of its fiduciary responsibilities and the internal aspects of its anti-corruption program. With OII’s shedding of its responsibilities with regard to ethics matters, and with reassessment and development of a case-weighting system that incorporates necessary triage, and with a reasonably augmented multi-professional staff, OII will have an expanded capacity to focus upon more serious, complex cases. This inevitably will require a greater degree of collaboration with the Office of the Auditor General in order to take advantage of that Office’s capacity for sophisticated forensic auditing.

- 8. Facilitate OII coordination with the Risk Management Office to include evaluation of potential problems in the course of the Bank’s consideration of sovereign supported loans as well as non-sovereign loans.**

OII has worked productively with the Risk Management Office, as have the Legal Department and other Bank offices, in the development of a standard means for undertaking careful assessment of the risks in contemplated projects at the time of the projects’ conception. The Risk Management Office is in the process of creating a common risk language that in the future may be used for evaluating potential problems to

the Bank that could result from a country's regulatory environment, political vulnerability, and susceptibility to becoming victimized through fraud and corruption. Clearly the effort constitutes a very sensible part of the Bank's overall risk prevention program.

The Risk Management Office wishes to expand its work with OII in developing a common evaluation language to encompass not only non-sovereign loans, which is the area in which the two offices have cooperated to date, but sovereign loans as well. It recognizes, however, that OII is not currently staffed for this. We would encourage the Bank to find a means of facilitating OII's participation in this phase of the project, given that, as a significant preventive measure, it is a more cost-effective safeguard than most remedial measures.

9. Undertake measures to assure the appropriate staffing levels required by OII to meet its assigned remedial, proactive, and preventive responsibilities.

As noted, OII's ongoing activities, together with its newly-created ability to undertake a proactive approach and concentrate on complex systemic cases, will require evaluation of the appropriate levels of staffing needed to fulfill the Office's multi-professional requirements and to cope with a more demanding caseload. Such evaluation could achieve particularly cost-effective staffing levels in the medium and long terms if undertaken on the basis of a clearly defined strategy for implementing other recommendations in this Report – such as the case-weighting and triage systems that would allow OII's staff to use their time more efficiently – and identifying the appropriate role for OII in offering assistance in the Bank's various internal and external prevention initiatives.

- 10. Consider the utility of appointing individual Bank staff members in field offices to serve as the central points of contact to assist OII in its in-country investigations, to facilitate OII's access to information sources in the field, and to encourage informal communications with local investigative officials.**

Designating principal points of contact in field offices to cooperate with OII could provide more rapid and less costly initiation of preliminary investigations to determine whether or not a matter would warrant further attention. There have been several instances in the past in which, for budgetary reasons, OII investigators were compelled to wait for some months before a sufficient number of matters requiring attention had accumulated within a region to the point that, from a travel expense standpoint, the visit could be justified – sometimes leaving ongoing fraudulent schemes affecting Bank resources to continue in the interim. In addition, such designated Bank staff in field offices could also greatly enhance informal cooperation and exchanges of information with OII's investigative counterparts in the countries of the region, thereby comporting with the interest expressed by some Executive Directors in bringing the Bank “closer to its clients.” The collateral value of this last element alone should not be discounted.

- 11. Explore the possibility, in instances in which it appears practically and politically possible, for joint investigations with local investigative authorities.**

There probably would not be many opportunities for joint investigations by OII and country investigators without raising at least some degree of concern about perceptions and collateral consequences, but there will be some, and in those instances joint investigations could prove very productive from the standpoint of both the country and the Bank. Guidelines alone might not be sufficient to govern OII's participation in such investigations, and probably such participation should be subject to specific authorization by the new Oversight Committee. Such investigations, when appropriate, certainly could be facilitated by the Bank's utilization of designated Bank staff in field offices, as suggested above. In any event, in many instances in which joint participation

in an investigation may not appear appropriate, exchanges of information and other lesser degrees of cooperation between OII and the country officials would continue to be available.

12. Clarify understanding of the Bank's standards with regard to informing targets of investigations, local Bank offices, and national authorities of contemplated or ongoing investigations, including standards governing the means and timing of imparting such information.

For various reasons, it is critical that the Bank have in place clear and workable policies governing the manner and timing for notifying the parties who have a legitimate interest in knowing that a matter is being investigated by OII. The target of the investigation must be informed at some point in order to respond to the allegations and provide evidence supporting its position. Local Bank offices must be informed so that they can supply information in their possession or control that may be relevant to the investigation, and otherwise assist OII's personnel on mission. Executive Directors and national authorities must be informed if they are to take appropriate action to assist in the investigation or to be prepared to respond to inquiries if the investigation becomes known publicly. Nevertheless it must be recognized that success in many investigations will depend upon confidentiality during the period that evidence is being gathered, and premature disclosure as a result of notification to any one of these entities could jeopardize such an investigation. The concern is not so much intentional disclosures as inadvertent leaks.

Because of the importance of this matter, the Bank should reexamine its practices with regard to such disclosures. Guidelines governing the timing and manner of giving notice should be promulgated so that there is a regularized process for informing interested parties, but the guidelines should not be so rigid as to require OII to give notice even if there is a reasonable likelihood that doing so could undermine an investigation. Such guidelines should assure that any disclosure must be accomplished in a manner that respects the confidentiality of the investigative process, and should give recognition to

the fact that in instances in which the interests of the Bank conflict with those of a shareholder, the principal obligation of those undertaking the decision is to protect the interests of the Bank. The appropriate body to consider the nature and scope of the guidelines is the new Oversight Committee in its general policy-making capacity as recommended above.

13. Develop a voluntary disclosure program specifically designed to encourage borrowers and contractors themselves to reveal promptly their deviations from authorized practices, in order to minimize damage and deter future misconduct.

Specific encouragement to report fraud or corruption is now commonly given persons in a position to observe such wrongdoing by others. It is important to recognize, however, that a successful anti-corruption program should also consider means of inducing the senior officials of an errant agency or corporation to initiate notification to the Bank promptly of apparent wrongdoing on its part, and to participate in stopping, or at least stemming, the potential for losses. Certainly a prompt revelation may indicate that the organization itself should not be considered the wrongdoer, and that only the individuals involved may ultimately be found to warrant sanctioning. At the least, prompt reporting by an organization should certainly be considered a factor that would warrant amelioration of the sanction that otherwise would be found appropriate.

14. Reduce concerns about anonymous allegations by clarifying both the need to consider such information and the steps undertaken by OII before launching a full investigation.

This is a subject that has generated sufficient concern within the Bank that it would appear to warrant a more extended discussion than otherwise might seem necessary.

It has frequently been pointed out that the remedial anti-corruption program of any multilateral development bank cannot properly be analogized to a national criminal justice system. Among many other differences, national systems have coercive

investigative authority. Even in national systems, however, investigators of corrupt activities find it necessary to rely heavily upon information volunteered by concerned citizens – the alternative being either a far greater amount of successful crime or a much more repressive exercise of investigative authority. As a consequence, national governments have found it advisable to encourage citizens to report instances of apparent corrupt activity and to provide such citizens with what today is commonly termed “whistleblower” protection. Indeed, all of the nations that are signatories to the United Nations Convention against Corruption have bound themselves in Article 32 to protect such persons and their families, including, where appropriate, protection of their identities.

In the case of a multilateral lending institution, which, unlike a national justice system, cannot compel revelation of information through legal processes, the need to encourage volunteered information is considerably more compelling. As a consequence, the Bank, together with the African Development Bank Group, the Asian Development Bank, the European Bank for Reconstruction and Development, the European Investment Bank Group, and the World Bank Group, have jointly adopted investigative principles and guidelines that direct protection of whistleblowers in matters involving fraud or corruption.⁴⁷ This adoption augmented the Bank’s pre-existing provisions providing protection for its own employees.⁴⁸

Such protection of persons reporting fraud and corruption is crucial for two reasons. First, it is commonly a necessity to assist in inducing persons to overcome their natural reticence about exposing misconduct on the part of others with whom they frequently are in contact – an understandable, human hesitation – and, after balancing such concern against their recognition of the societal damage caused by such corruption, electing to report it to authorities charged with undertaking a proper inquiry into the

⁴⁷ *International Financial Institutions Principles and Guidelines for Investigations*, September 2006 (hereafter “Principles and Guidelines for Investigations”). This supplemented the Bank’s pre-existing provisions providing protection for employees.

⁴⁸ PE-Staff Rule No. 328, *Protection for Whistleblowers and Witnesses*.

matter. Second, such reporting frequently encourages retaliation – sometimes simply by ostracism, and sometimes by serious physical or financial injury – against the reporting person or the family of the person. It would appear inappropriate not to provide anonymity to the extent possible in order to encourage good faith reporting, just as it is currently well-recognized that it would be unjust to deny such anonymity to a whistleblower who had summoned up the courage to make a report before obtaining such an assurance.⁴⁹ A person who makes a good-faith allegation anonymously is frequently simply a whistleblower with a pronounced fear of retaliation. To ignore an anonymous allegation could prove very risky to the Bank.⁵⁰

Nonetheless, to pursue an investigation based *only* upon an anonymous allegation could be deemed reckless and unjustifiably detrimental to the subject of the charge. It is this consideration that has been the subject of some recent expressions of concern within the Bank. We recognize that in some countries of the Inter-American region there has been an unfortunate history of false allegations commonly being made anonymously to law enforcement authorities, allegations frequently termed “denunciations,” in an effort to prompt a public investigation that by its mere existence could destroy, or at least damage, the reputation of political or economic adversaries or competitors. In such instances, when the allegation is prompted by a vexatious purpose, the principal damage is done by the undertaking of the public investigation itself. Even if the person making the allegation were subsequently to be identified, the remedies provided by systems employing continental European legal traditions – such as civil or criminal actions for defamation or calumny – would commonly prove either illusory or insufficient. This problematic history has prompted the question whether the Bank’s policies of acting upon anonymous allegations should be changed.

⁴⁹ In this regard, it may be worth noting that not only is there a particularly serious need for the Bank to have a strong confidentiality policy for those who do come forward and provide their identity along with their information, but such a strong confidentiality policy may in fact reduce the number of individuals who otherwise would seek to report only anonymously and hence remain unavailable to provide further details or leads to corroborating evidence.

⁵⁰ Of the allegations currently received by the Bank, only about 15 percent are submitted anonymously. Their importance, however, is measured not by their number but by the nature of the information conveyed.

The question is both serious and important. The Bank’s policies and practices, however, are reasonably designed to avoid such misuse of Bank resources. OII does not investigate persons, it investigates misconduct. An anonymous allegation of misconduct by an individual or organization that comes to the attention of the Bank through use of the website or other means will not result in an investigation unless a preliminary inquiry into the records of the project presumably affected confirms that some questionable activity, by someone, may indeed have taken place. As a practical matter, OII does not have excess staff that it can assign to pursue unsubstantiated allegations. As a professional matter, it would not do so in any event, and this is reflected both in its operating procedures⁵¹ and in its statistical records.⁵² As a consequence, when an allegation is anonymous, and thus the person reporting the matter cannot be contacted to provide supporting information, there is very little likelihood that the substance of the allegation will be disclosed outside OII in the absence of independently derived, confirmatory evidence.

Finally, it might be appropriate to note the obvious – any person who has made such an allegation in other than good faith, and whose identity subsequently has become known, will not receive the protections otherwise accorded to whistleblowers pursuant to international conventions and Bank staff rules.⁵³ Furthermore, in the case of an intentional misrepresentation by a staff member, the allegation would constitute misconduct under the Bank staff rules, subjecting the person knowingly making the allegation to punishment by the Bank.

⁵¹ “The Investigative Office shall accept all complaints irrespective of their source, including complaints from anonymous or confidential sources.... All complaints shall be registered and reviewed to determine whether they fall within the jurisdiction or authority of the Investigative Office.... Once a complaint has been registered, it will be evaluated by the Investigative Office to determine its credibility, materiality, and verifiability. To this end, the complaint will be examined to determine whether there is a legitimate basis to warrant an investigation.” *Principles and Guidelines for Investigations*, Paragraphs 27, 29, and 30.

⁵² OII finds only about 14 percent of anonymous allegations can be substantiated to the point that investigation is warranted.

⁵³ See *United Nations Convention against Corruption*, Article 33; *Inter-American Convention against Corruption*, Article III 8; PE-Staff Rule No. 328, *Protection for Whistleblowers and Witnesses*, paragraph 107.

In sum, fraud and corruption involve largely covert activities, and are necessarily difficult to ferret out. Thus the ability to receive and consider anonymous allegations is particularly important to the success of the Bank's anti-corruption program. The key to responsible handling of such a circumspect allegation lies in recognizing that it is more likely to be spurious than allegations from persons whose identity is known, and in having OII's professional staff make an especially careful assessment of its probable veracity before launching an investigation. This is precisely the process followed by OII under current guidelines and procedures. That process should continue.

15. Enhance OII's capacity for preventive training of personnel in the Bank, including the Bank's country offices, and for supporting ICS's initiatives for preventive training in national institutions.

We believe it important to the Bank and to the region that the Bank's anti-corruption training programs – using both investigators and experienced personnel other than investigative specialists – be expanded. We also recommend that the overall responsibility for such programs related to internal prevention and fiduciary responsibility reside within OII as it has in the past, while ICS would have the principal role in initiatives aimed at assisting countries in the development and strengthening of their institutional capacity with OII serving as an important resource to ICS in this area. The concerns of some Bank officials – whether an office charged with investigating fraud by the nationals of a country would be effective in presenting training programs for country nationals⁵⁴ – would diminish if overall responsibility for such programs is assigned to ICS, whose principal focus is on development, rather than investigation of wrongdoing.⁵⁵ Conversely, the concerns of persons familiar with the opinions of national

⁵⁴ The persons and agencies most likely to be suspected of participating in fraudulent activities of course are not usually the same persons and agencies that would invite the Bank's presentation of remedial and preventive training programs. The latter would welcome effective anti-corruption programs, rather than fear them.

⁵⁵ A related question – whether OII could impartially investigate persons who had attended one of its training programs – raises no more a practical problem than a question whether the Ethics Office could impartially investigate an employee who had attended the Bank's ethics training program, or whether the Office of the Auditor General could impartially audit the records controlled by an employee who had

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investigators and prosecutors – whether development specialists are capable of presenting professional-level law enforcement training programs – would be ameliorated by the participation of OII, which has developed a reputation for competence and impartiality in a wide range of countries in the region.

16. Assure that OII is subject to periodic auditing by the Office of the Auditor General.

The Office of the Auditor General should periodically assess OII’s investigative processes and its administrative practices to assure that it meets the business standards applicable to all Bank offices. Although this has been done once in the past, there is no reason not to initiate the process on a regularized basis and there is clear reason to do so.

C. The Sanctions Committee

1. Extend the jurisdiction of the Sanctions Committee to cover all matters involving fraud and corruption, including private sector contracts and contracts let directly by the Bank.

Parties engaged in acts of fraud and corruption in private sector lending and grant projects, whether under the auspices of the Structured and Corporate Financing Department (“SCF”), the Opportunities for the Majority Sector (“OMJ”), MIF, or IIC, are not currently subject to the jurisdiction of the Sanctions Committee. This relates, in part, to a perception that these kinds of activities are of a different nature than the larger and more traditional public sector loans made by the IDB, and, in the case of IIC, in part, to its separate legal status which excludes its programs from actions taken on behalf of the IDB. While these distinctions may be relevant in some contexts, there is no reason that the funds deployed through these channels should be subject to any less rigorous a regime

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received AUG training. In all such instances, even in a case in which an interconnection appeared under the circumstances to be more than theoretically influential, any difficulty would hardly appear insurmountable; in those relatively rare instances, the inquiry could always be transferred to another Bank component or to an outsider retained for the purpose.

for purposes of scrutinizing fraudulent or corrupt practices. We recommend that parties who engage in fraud or corruption in projects sponsored or funded by SCF, OMJ, MIF, and IIC be made subject to the jurisdiction of the Sanctions Committee. In doing so, it may be appropriate for the composition of the Sanctions Committee to be adjusted to include a representative from IIC or MIF when hearing a matter concerning one of their projects. Furthermore, the relevant legal documentation with parties engaging in private sector loans should make clear the applicability of the sanctions process to potential borrowers from these entities.

Under current Bank practices, although parties who engage in fraud or corruption in matters involving technical cooperation, or involving other projects in which the Bank contracts directly with the contractors or consultants, are not subject to the jurisdiction of the Sanctions Committee, they may be sanctioned by the OCFC using the sanctioning regime that is applicable to the Sanctions Committee. This disparity arises as a result of language in the Sanctioning Procedures that refers to “firms, entities and individuals bidding for or participating in *Bank-financed projects*” (emphasis added).⁵⁶ That language has been interpreted to exclude similar entities in other kinds of bank-supported projects, such as projects funded directly by the Bank. As a result, the OCFC has been understood to have retained authority for such projects, and consequently, if fraud and corruption in such projects is to be addressed by the Bank, it is the OCFC that must do so. We find this parallel process to be ill-advised and unnecessary, and even if we were not recommending a substantial change in the role of the OCFC, we would recommend that the Sanctions Committee be vested with the authority to hear all matters of this nature.

As a result of these considerations, we recommend that the Sanction Procedures be amended to give the Sanctions Committee clear jurisdiction over all matters involving fraud and corruption involving funds originating from the IDB, IIC, and MIF, and that the Boards of IIC and MIF take the necessary action to authorize the Sanctions Committee to exercise such authority in their projects.

⁵⁶ *Sanctions Procedures*, Paragraph 2.1.

- 2. Modify the membership of the Committee to include persons from outside the Bank who have had extensive procurement experience in multilateral institutions at the headquarters or field levels, experience with institutional adjudicative practices, or experience in other relevant areas.**

There are at least three ways in which the Bank could select members of the Sanctions Committee. First, it could maintain the current practice of drawing members of the Committee exclusively from the ranks of the Bank staff. Second, it could establish a Sanctions Committee composed solely of individuals from outside the Bank whose services would be retained for a fixed period of time and whose backgrounds would be expected to bring a useful dimension that might not be available among current Bank staff, as in the case of the Administrative Tribunal. Third, it could establish a mixed Committee composed of members drawn from each of such categories.⁵⁷

Of the available options, we would recommend that the Committee be made up of both current Bank employees who have relevant responsibilities but who are not among the Bank's most senior managers, and of individuals who are not current Bank employees but have experience either in procurement and operational practices of multilateral development banks (such as retired officials of such institutions) or in investigative, administrative, or quasi-judicial proceedings (such as retired law enforcement officials or academicians of the region). The number of members available to serve could be in the range of seven to nine, divided roughly evenly between Bank staff members and non-Bank staff members.

- 3. Assure not only that the Bank employees being selected to serve on the Committee have the requisite level of seniority for such a**

⁵⁷ In the future, as collaboration and cooperation in anti-corruption initiatives among MDBs becomes more extensive, other more far-reaching alternatives for the composition of a sanctioning body might be considered that would promote an exchange with other MDBs and would foster progress toward cross-debarments. Proposals in this respect include (i) appointing staff from among the MDBs to serve on the sanctioning bodies of the others or (ii) establishing a committee composed of representatives from each MDB that would serve as the sanctioning body for all the MDBs (or at least those that chose to participate).

responsibility, and the necessary experience in the substantive areas that commonly come before the Committee, but assure also that their principal responsibilities in the Bank can be adjusted to permit them to devote appropriate time to Committee cases.

While including non-Bank staff members on the Sanctions Committee would lessen the time commitment of the Bank staff members on the Committee, as the caseload expands, the demands on the time of Bank staff members will increase. The Bank must take this into account when selecting Bank staff to serve on the Committee, and should find ways to make time available out of the normal workday so that Committee members are not obliged to struggle to balance their Committee work with their other responsibilities at the Bank and with their personal lives.

- 4. Permit the Committee to perform its responsibilities using panels of three members (including at least one member from outside the Bank), with a panel decision serving as the decision of the Committee.**

With an expanded Sanctions Committee consisting of up to nine members (plus alternate members for matters involving IIC or MIF), the workload could be assigned to subgroups or panels of the whole Committee in order to relieve the members from having to participate in every case and to minimize scheduling difficulties. Each panel would be composed of three members, with at least one member of the panel drawn from the Committee members who are not current Bank employees. We believe that a careful iteration of such an approach reasonably could be expected to minimize concerns about the current system – regarding membership availability and allocation of time, conflicts of interests, outside influences, and pressures of increasing caseload – while maintaining necessary membership experience and expertise.

5. **Assign a senior Bank employee, who is experienced either in procurement matters or legal matters, as a Case Analyst to assess cases to be transmitted to the Committee and to assist the Committee in its work.**

The Bank's current procedures for submitting a matter to the Sanctions Committee are time-consuming and burdensome. First, they require the Oversight Committee to review all investigations after they are completed by OII and to determine whether there is sufficient evidence of fraudulent or corrupt activity to warrant referral to the Sanctions Committee. Second, if the Oversight Committee makes a referral to the Sanctions Committee, before the matter is considered by the Sanctions Committee it is transmitted to the Secretary to the Committee, who is currently a member of the Legal Department with full-time responsibilities in that capacity. The Secretary to the Committee is responsible for assembling all the documents to be reviewed by the Committee, giving notice of the charges to the respondent, reviewing the file to determine whether it is complete (and, if it is not, requesting additional information from OII or the respondent), scheduling and attending all meetings of the Sanctions Committee, and assisting the Committee members in their deliberations.

We recommend that this process be streamlined and regularized by eliminating the role of the OCFC and by appointing a Bank official as a full-time "Case Analyst" to fulfill both sets of current responsibilities. The Case Analyst would have sufficient seniority and experience to make a determination whether the matter merited consideration by the Sanctions Committee, and would relieve the senior Bank managers who serve on the Oversight Committee from what has become, in fact, an outmoded and currently unnecessary responsibility. The Case Analyst would also be expected to have sufficient time to give the Sanctions Committee the support it will require as its caseload increases, and would provide a continuity that does not exist under the present structure in which the position of Secretary is filled on an ad hoc basis.

- 6. Authorize the Case Analyst to recommend an appropriate sanction to the Sanctions Committee in a contested case, and also, in an uncontested case in which the respondent does not elect to respond to the charge, to make a summary disposition of the matter compatible with Committee standards for assessing appropriate sanctions.**

The Case Analyst could serve another important function if authorized not only to filter less-than-convincing cases from proceeding to Sanctions Committee consideration, but, in cases warranting such consideration, to recommend a specific sanction in the event that the Committee found an act of fraud or corruption to have occurred. Such a recommendation would be helpful to the Committee by giving it a point of reference in weighing the appropriate disposition of a matter based upon the Case Analyst's application of the Committee's sanctioning guidelines.⁵⁸

Sanctions recommendations by the Case Analyst could also bring an additional level of efficiency to the processing of cases in which the respondent does not elect to contest the charges. In providing notification of the charges to a respondent, the Case Analyst could be required to include notification of the sanction that appeared to be appropriate in light of the Committee's guidelines. Under those circumstances, the respondent could elect not to contest the charge and to accept the sanction recommended by the Case Analyst with the certainty that would come with knowing the outcome, and the matter therefore would not have to proceed to Sanctions Committee consideration. In a case in which the evidence is either overwhelming or uncontested, this process would be a benefit both to the Bank, because the Sanctions Committee's time would not be expended on a matter that could be disposed of more easily, and to the respondent, because it could weigh the costs and risks of contesting the charges against the impact of accepting a sanction with full knowledge of its details.

⁵⁸ See recommendation IV C 9, below.

- 7. Authorize the Case Analyst, in instances in which it appears appropriate, to impose a provisional restraint on further dissemination of funding in a case being transmitted to the Committee.**

Another critical role that the Case Analyst could play would be to identify situations in which funds provided by the Bank could be misused or misappropriated by the respondent during the time between the completion of OII's investigation and the completion of the Sanctions Committee's review, and to declare the respondent ineligible to receive contracts in Bank-financed projects during the pendency of the matter. This would no longer be an appropriate function for the OCFC to perform if it is reconstituted as recommended above, and the Case Analyst would be well-positioned to take on this responsibility as a neutral actor in the process (being neither an advocate for the Bank's case, as OII, nor the ultimate decision maker in such cases, as the Sanctions Committee).

- 8. Accord a respondent the option of a hearing on the allegations only in a case in which the Legal Department, on the basis of unusual circumstances, has determined that it should be considered advisable to do so and communicates that determination to the Committee.**

We recognize the clear advantages in terms of time and costs, to both the Bank and the subject of an investigation, of having the Sanctions Committee dispose of matters on the basis of the written record. While we agree that this should be the usual practice, there may occasionally be circumstances in which, as a result of complicating facts or unusual legal considerations, it might be prudent to hold a hearing on the matter at which the respondent and representatives of OII could appear in person to address the allegations and answer questions from members of the Sanctions Committee. If a respondent insists upon a hearing, it would be advisable to have the Legal Department review the basis for the request and make a determination whether the request may warrant a deviation from standard Bank policy. If the Legal Department determines that the circumstances justify holding a hearing in a particular case, and the Oversight Committee concurs, the hearing before the Sanctions Committee should be informal,

strict rules of evidence should not be utilized, OII and the respondents should each be given an opportunity to present relevant evidence but should not have the ability to compel the attendance of witnesses, and each should be required to present its case within reasonable time limits.

9. Develop standards for choosing, from a range of possibilities, appropriate sanctions that will reflect the nature and seriousness of the violations and foster a useful level of deterrence.

The Bank could assist members of the Sanctions Committee by promulgating a set of criteria that should be considered in determining the appropriate sanction to impose when fraud or corruption is found in a project. Such criteria would be aimed principally at protecting funds to be advanced by the Bank in future projects, but should also take into account a number of additional factors in a manner designed to further the various goals of the Bank's anti-corruption program. Those factors would differ in several respects from the factors employed by OII under a case-weighting system since they are addressed to different considerations, but there would be some degree of overlap. In any event, the factors employed by the Sanctions Committee should include such matters as: the magnitude of the funds that were lost due to the acts of the respondent; the impact of such losses on individuals or groups intended to benefit from the project; evidence of repeated prior acts of fraud or corruption by the respondent; the level of cooperation provided by the respondent during the investigation; and internal steps taken by a corporate respondent to prevent similar conduct within its organization in the future.

10. Assure widespread publication of the Committee's decisions, and of the imposed sanctions, in order to make use of their deterrent value.

The Bank should continue to announce publicly all instances in which sanctions are imposed, and should continue to post the names of the sanctioned parties, and the particular sanctions imposed, on its website. This disclosure should be made in a simple, non-technical manner that expressly describes the nature and seriousness of the offense, so that any member of one of the Bank's constituencies or the larger public is able to perceive the kinds of activities involved even if the reader is not fully versed in the

technical rules and requirements of the Bank. This publication procedure should be used to establish a record of the Bank's lack of tolerance for fraudulent or corrupt practices and to achieve the maximum deterrent impact from the sanctioning process. In addition to disclosing sanctions, in the relatively rare case in which the results of an investigation in fact exonerate an individual or firm that has been the target of the investigation, the Bank should be prepared to announce such an exoneration on the website if doing so would be beneficial to the reputation of the party who has been exonerated.

11. Build on the progress that has been made in harmonizing the procedures followed among the MDBs in investigating and sanctioning acts involving fraud and corruption, with the objective of eventually having collaborating MDBs honor each other's debarments.

It has been suggested that it would be appropriate to undertake a "cross-debarment" procedure under which other MDBs and supra-governmental organizations might accept each other's debarment determinations for purposes of precluding a contractor's eligibility for projects those institutions are funding or supporting. Today, largely as a result of initiatives by OII, substantial progress has been made in terms of harmonizing the standards that define what constitutes fraud and corruption, and the standards with which bidders and contractors are required to comply. As yet, however, there is no commonality in the procedures and practices employed for making findings concerning the allegations against a respondent nor for selecting sanctions to be imposed. As the IDB and other MDBs implement regularized, common procedures and practices across the full scope of their sanctioning policies, it should be a goal to develop a mutual level of confidence in the conclusions reached by, and sanctions imposed by, the various MDBs to the extent that each would feel comfortable in honoring the determinations of the others. For now, informational exchanges alone may be all that can be expected, whether achieved through publication of the Sanctions Committee decisions on the Bank's website or by specific notice of a sanction being transmitted directly to other MDBs.

D. Related Matters

1. Secure a clear endorsement by the Board of Executive Directors of the Bank's overall program against fraud and corruption.

The Bank's Board of Executive Directors has in fact been very supportive of the developing anti-corruption program, probably more so than the boards of other MDBs. While the members may not be unanimous as to the components of the program that they believe to be the most beneficial, and while some may harbor concerns about particular aspects or particular means of implementation, there certainly exists a general appreciation of the program's importance. Yet there persists – to some degree within the Bank but largely outside – an impression that Bank management has been acting on its own initiative and that there is a fair degree of consternation within the Board that management has been causing the Bank to overstep its bounds. Such an impression jeopardizes the potential cooperation that OII and other implementing offices expect and need from Bank employees and from contractors and country officials.

The difficulty could be stemmed, and should be, by an unambiguous, public confirmation by the Board of its encouragement and support of the Bank's commitment to addressing problems of fraud and corruption internally and externally. This might best be achieved by a Board mandate containing a clear mission statement describing the goals of the overall program. Such a document could serve as an identifiable mandate for the conduct of investigations, and the support of country efforts, by OII, and as a strategic mandate that can encourage countries to welcome the capacity-building assistance offered by ICS and other components of the Bank. It could also serve as a record that future Executive Directors can use as a point of reference for understanding the nature of the support accorded the program and the authority of its various components.

2. Strengthen measures aimed at reducing fraud and corruption in Bank-funded programs.

a. Fully implement the “Red Flags” program and the recommendations contained in the document concerning “Red Flags in Procurement”.

The developers of the “Red Flags” program have made a series of recommendations that warrant adoption by the Bank.⁵⁹ Most concern the training of personnel, and the preparation of procedures and mechanisms, to implement the Bank's utilization of the recently developed “Red Flags Matrix” designed to provide early detection of possible fraud or corruption in Bank financed projects. As described earlier, the matrix is a relatively simple application prepared on the basis of a very sophisticated analysis, and its successful implementation could be particularly useful in reducing instances of diversion of Bank funds. Attention should also be given to the recommendations numbered 5, for creation of a voluntary program for disclosing deviations from the project procurement process, and 6, for establishing an interdepartmental team responsible for keeping the program current. Certainly the contemplated team should include representatives from the two offices primarily responsible for developing the program – OII and the Procurement area of the Procurement, Financial Management and Portfolio Monitoring Division – in coordination with the Office of the Auditor General, the Office of Risk Management, and the Office of Evaluation.

b. Require bidders to certify whether they have ever been sanctioned by another MDB.

The logic of this provision is evident, and it has been strongly recommended by the International Financial Institutions Anti-Corruption Task Force.

⁵⁹ See III C 2 a, above.

- c. Require bidders to certify that they have in place an effective anti-corruption compliance program meeting a standard higher than that currently required.**

There is no reason today why any bidding company should not be expected to have in place some form of anti-corruption compliance program. There consequently is no reason why the Bank should not expect bidders, as a matter of routine, to be able to certify that they employ such protective standards. Major corporations should be able to certify the existence of programs providing a very high level of insurance against misappropriation of funds, while the programs of even smaller companies still should be able to meet basic standards found desirable by the Bank. The Bank should identify those standards, and assure that they serve as a requisite to consideration of all bidding documents.

- d. Require bidders to certify that they will use their best efforts to assist the Bank and national authorities in uncovering any evidence of fraud or corruption relating to the project on which they are bidding.**

Such a practice would at least make it clear to a bidding corporation that, if it failed to comply with the certification, it would be unlikely to be entrusted with Bank funding in future projects. The adoption of such a requirement has been encouraged in the International Financial Institutions Principles and Guidelines for Investigations.⁶⁰

⁶⁰ See note 8 , above, at paragraph 16.

- e. **Develop a regularized basis for suspending disbursements to a government if the government fails to ensure reasonable Bank access to evidence of fraud or corruption, or to use its best efforts to assist in obtaining such evidence, in a Bank-financed project being undertaken in that country.**

This is a logical requirement, and one that that any lending institution should be able to expect to be accepted. Certainly it should be expected by a multilateral development bank using funds supplied by member governments for the benefit of a country requiring assistance. The mechanism for suspending disbursement, however, should be carefully drafted to reflect the narrowness of the intended basis for suspension.

- f. **Clarify the means by which fraud and corruption, ethics violations, and similar problems may be called to the Bank's attention.**

It can be confusing to Bank employees, and certainly to persons outside the Bank, that there exist so many offices through which it might be appropriate to report different kinds of suspected wrongdoing to Bank authorities. A person stumbling across aberrant conduct ordinarily does not think in terms of fraud or corruption, ethics violations, workplace conduct violations, or other such bureaucratic categories. Most persons would simply recognize that something appears to be wrong and that the Bank probably should look into the matter. If the problem appears to such persons to be sufficiently serious that they are induced to bring it to the Bank's attention themselves, and then undertake to do so, they will find that they are faced with a confusing variety of offices to which they might properly report – perhaps sufficiently confusing to dissuade them from proceeding further. This is not in the Bank's interests. There appears to be no reason why a single e-mail address, website, and telephone number (perhaps controlled by the Ombudsperson's office) might be publicized as the appropriate recipients of any expression of concern with Bank operations, with the office receiving the communication then having responsibility for assessing the nature of the expressed concern and routing it to the appropriate entity within the Bank.

g. Revise guidelines for the protection of whistleblowers.

The Bank has published reasonable guidelines for protecting from Bank retaliation any Bank employee who discloses fraud or corruption to appropriate authorities.⁶¹ The Bank, however, has published no analogous guidelines for protecting whistleblowers who are not employees, but who instead are consultants or persons having no Bank affiliation. It is important for an investigative office to be able to inform such individuals that the Bank, to the extent that it is able, will seek to assure that they will not be harmed by their good-faith providing of information revealing that the Bank has been, or is being, victimized by persons committing acts of fraud or corruption. Although the publishing of such guidelines may not itself be important, it is important that OII have regularized standards for providing such assurance in appropriate circumstances.

h. Refine standards and procedures for, when reasonably practicable, referring OII findings of possible criminal conduct to national law enforcement agencies for the purpose of facilitating the enforcement of national laws.

The Bank's current procedures provide for the OCFC to decide whether the results of an investigation should be referred to appropriate law enforcement authorities, and, if so, for the referral to be made through the Executive Director to the Governor of the Bank for the appropriate country. Since the legal systems differ dramatically in the countries to which a referral might be made, it is likely that the content of OII's case reports will be more useful and will be given greater priority in some countries than others. Nevertheless, it is appropriate that the Bank be willing to provide credible evidence of criminal conduct to its member governments so they can take steps to protect their interests and enforce their laws. As OII handles more cases over time, and as country justice systems continue to improve in their capacity to address fraud and

⁶¹ PE-Staff Rule 238, *Protection for Whistleblowers and Witnesses*. This measure accords with the provisions of paragraph 13 of the *Uniform Framework for Preventing and Combating Fraud and Corruption*.

corruption, it is likely there will be more instances in which referrals of findings are found to be appropriate.

In anticipation of this situation, the Bank should have guidelines, developed under the reconstituted OCFC, for deciding when, to whom, and how a referral should be made, and that specify the role the Bank will play in assisting the national authorities. These guidelines need to recognize the legitimate interests of the Bank's member governments, as well as the interests of the Bank in protecting its privileges and immunities. In addition, the Bank needs to recognize that its interest in uncovering wrongdoing in Bank-financed projects – so that it can protect funds provided by the Bank and the parties intended to be benefited by those projects – is separate and distinct from the interest of national law enforcement and judicial systems in enforcing their domestic laws and prosecuting criminal conduct. For this reason, referrals to national agencies cannot be seen as a substitute for a vigorous internal capacity within the Bank to investigate and sanction bidders and contractors who engage in fraud and corruption.

A system of monitoring and following up on referrals made to local authorities should be put into place. It would be valuable for the Bank to receive information from local authorities about how they have proceeded to investigate matters referred to them. Such information should be received by OII, which should monitor the cases and report to the Policy Committee about the level of cooperation and collaboration between the Bank and local law enforcement agencies. The duty of local authorities to provide information to OII concerning such matters should clearly be defined either as a contractual obligation that is specified in the Bank's loan documents, or as a duty of a member country that emanates from the Bank's Charter.

- i. Develop standards and procedures for, when reasonably practicable, permitting OII to cooperate with national law enforcement agencies in an ongoing investigation.**

While the Bank's anti-fraud and corruption framework expressly contemplates circumstances under which the Bank would make referrals of OII's findings to national law enforcement agencies, it does not have procedures in place that would be applicable

to situations in which OII might appropriately cooperate with local authorities, at their request, in an ongoing investigation concerning a matter of significance to both entities. OII should be capable of participating under limited circumstances, but those circumstances would need to be detailed with particular care. Although there could well be mutually beneficial synergies in combining resources and capabilities, there could also be political and practical pitfalls and risks.

If OII is to assist in such circumstances, it will important that it have policies and procedures in place that will not only facilitate the sharing of information between investigators, but also assure the usefulness of that information to the other party. As one example, OII would need to be able to satisfy country requirements to provide assurances as to its capacity for protecting the confidentiality of information and witnesses that are disclosed to it by country law enforcement agencies.

- j. Encourage other MDBs to work cooperatively toward further harmonization of their investigative and sanctioning procedures in order to increase standardization in international practices and to facilitate the possibility of future cross-debarments.**

All members of the International Financial Institutions Anti-Corruption Task Force have concluded that it would be beneficial to be able to achieve mutual recognition of sanctions imposed for violation of common anti-corruption standards. Such mutual recognition of enforcement actions could substantially assist in deterring corrupt practices. A prerequisite would be further work of the MDBs toward harmonization and standardization in their anti-corruption programs. OII has been a leader in that effort, and its coordinative initiatives should be encouraged and should continue.

k. Undertake a review of the effectiveness of the integrity framework governing the Bank Group’s private sector operations.

The integrity review procedures and monitoring mechanisms developed through the collaborative work of the former Office of the Private Sector Coordinator (now the Vice President for the Private Sector and Non-Sovereign Governmental Operations) and OII should be reviewed for effectiveness, as recommended in the framework itself.

l. Consider the development of Bank-wide standards of conduct to cover all ethics-related matters.

We have not encountered any clearly-articulated reason why the Bank should not merge its ethics-related rules and establish uniform standards of conduct – applicable to all of the Bank’s contract employees, employees, officials, and Executive Directors. The existence of separate standards applicable only to Board members unnecessarily raises questions, and speculation about possible answers, when none should exist. While it presumably would be necessary to apply these standards through separate procedures in the case of the Executive Directors, uniform standards of conduct would appear to be desirable.⁶²

m. Reassess the Bank’s financial disclosure requirements to assure appropriate coverage and implementation.

It is appropriate to require general financial disclosure requirements for all persons who may be perceived to be in positions through which they might affect Bank contracts, Bank loans, or Bank policy implementation – including mid-level employees through Executive Directors. The Bank should review its financial disclosure reporting regime to assure that it comports with reasonable best practices in the public sector, balancing the need to be able to review such information in appropriate situations, against

⁶² One checklist of relevant considerations would be the *International Code of Conduct for Public Officials* contained in the annex to the UN General Assembly resolution of December 12, 1996.

the corresponding duty to recognize any legitimate privacy concerns of those compelled to supply such personal revelations.

3. Strengthen measures aimed at reducing fraud and corruption in national programs.

We have noted above that preventing instances of fraud and corruption can be far more cost effective than attempting to remedy them once they have occurred. Yet it can be argued that efforts by the Bank in helping countries develop preventive programs to avoid fraud and corruption would not carry the same cost-benefit advantages from the Bank's fiduciary standpoint, the reason being that most prevention programs would be broad-scale and only occasionally assistant in protecting Bank-funded projects. The Bank's help with regard to remedial programs, on the other hand, could be focused so that the Bank itself could reap a share of the benefits.

Such an argument, however, does not take account of the fact that the Bank is not an ordinary commercial lender. As emphasized earlier in this Report, its special status as a regional development bank imparts a responsibility for recognizing that its interest, and the region's interest, lies not only in funding specific development projects and in ensuring that Bank-sponsored loans in support of those projects are used for their intended purposes, but also in promoting general good governance in the countries of the region.

a. Enhance the capacity of other Bank offices, as well as ICS and OII, to develop and support country programs to reduce fraud and corruption.

We have previously stressed the importance we attribute to the inventive work of the newly created ICS, with support from OII, in developing a proposal for the Action Plan for targeted assistance meeting the particular anti-corruption needs of individual countries. There are also a number of other Bank offices, however, that, to some degree, have begun shifting attention away from the employment of various kinds of remedial efforts to respond to fraud and corruption, and instead are concentrating more on

developing means of assisting governments of member countries in avoiding successful fraud and corruption in the first instance. Those changes have been encouraging. In many instances, however, these offices do not possess adequate resources for such work. It would be useful for the Bank to obtain a brief assessment from the reconstituted Oversight Committee with regard to particular Bank offices that might appropriately be provided some additional degree of funding for specific country initiatives that the Committee believes would be helpful to the overall program. That assessment could best be undertaken after the completion of the Action Plan and its endorsement by Bank management and by the Board.

b. Encourage other MDBs to work cooperatively with the Bank to improve the ability of countries to reduce fraud and corruption.

Other multilateral development banks, as noted, share an interest in developing means of reducing corruption in national programs. They have recently demonstrated recognition that they also share a responsibility for coordinating their efforts to encourage a reasonable degree of standardization, and hence greater potential effectiveness. As a result, a little over a year ago the International Financial Institutions Anti-Corruption Task Force recommended in its Uniform Framework⁶³ that “member institutions should, within their respective mandates, seek to develop a proactive and coordinated approach to assist member countries in the development of institutions, as well as administrative systems and policies that will eliminate opportunities for fraudulent and corrupt practices.” The coordination urged in the proposal should be pursued. It would be particularly advantageous to enhance cooperation between the Bank’s ICS and OII and their counterpart offices in the World Bank. Both the two Banks, and the countries involved, would benefit.

⁶³ See note 8, above.

- c. **Encourage national governments, with a clear strategic mandate from the Office of the President, to work with the Bank in enhancing their capacity to reduce fraud and corruption at the country level by improving national procurement and administrative systems, and related systems.**

The Bank, together with other multilateral development banks, clearly has the understanding and experience necessary to take leadership in assisting countries in developing sound financial management, public auditing institutions, and national procurement regimes, and in developing the administrative machinery to permit their effective implementation. It also has a small core of professional personnel capable of assisting countries in this regard. With the creation of the Bank's Red Flags Matrix, and with the eventual emergence of a carefully thought-out Action Plan for assisting national governments, the time would appear ripe for arranging a major initiative to implement such assistance programs. The country-specific data accumulated by ICS would assist greatly in adapting both the Matrix and the Action Plan to local conditions. What is needed is consideration and direction from the new Oversight Committee, and allocation of sufficient resources to initiate the program in countries interested in adapting their systems to make them more effective.

Two other steps would be necessary to the launching of the program. The first is Board approval of an Anti-Corruption Action Plan. This would be a major initiative stressing for the first time the preventive aspects of the Bank's anti-corruption program. We expect that guidance and approval from the Audit Committee would be forthcoming, in view of the fact that several of the Executive Directors have expressed strong interest in supplementing the institution's emphasis upon remedial actions with a significant augmentation of its capacity for prevention assistance at the country level, and in view of the recent, concrete demonstration of such interest by the Norwegian government's provision of resources to support such efforts through the Anti-Corruption Activities Trust Fund. This latter development is of particular significance. The second step would be an announced determination by the President to pursue such programs in cooperation with member countries, and to encourage countries to invite assistance in the cooperative

development of such improvements. The new Office of Partnerships should be enlisted to help expand political and financial support for such programs.

- d. Encourage national governments, with a clear strategic mandate from the Office of the President, to work with the Bank in enhancing their capacity to reduce fraud and corruption at the country level by making improvements in general good governance practices, and especially in national justice systems.**

Although assistance to countries in developing improved procurement and related systems would be a major development in the Bank's anti-corruption program, a far broader, and potentially far more significant form of assistance would be to help countries undertake major reforms in introducing good governance practices, one of which is crucial to this Report – that involving national justice systems.

All efforts to enhance development by encouraging countries to strengthen their governance practices should include a special emphasis on programs for broad scale reform of penal laws and criminal procedures. Such programs may carry the greatest promise for long-term benefits to a country, and therefore should be considered as among the more worthy programs for attention by the Bank. Related programs to encourage effective selection, training, and retention of competent officials bearing investigative, prosecutorial, and judicial responsibilities should also be considered, as should programs to make necessary reforms in national civil justice systems. Such programs would constitute, perhaps, the ultimate form of good governance assistance. There can be no doubt as to the fundamental importance to a government of criminal and civil justice systems that can operate effectively – and that can be perceived as operating effectively – to the success of all other governmental programs.

Successful pursuit of any significant reform initiative is always difficult for any country. Part of the problem lies in making a thoughtful, comprehensive assessment of the nature and extent of the reform that is necessary; another part lies in determining what external assistance would be helpful and where the necessary funding could be secured.

Although the Bank may be very sympathetic to such needs, it would appear that it is not currently in a position to make more than minor contributions to the assessment, the assistance, or the funding.

The Bank could well be in a position, however, to participate in identifying the kinds of assistance that would be helpful to a country that is seriously interested in pursuing civil or criminal justice reform projects, especially if the Bank were to work with other transnational organizations in helping to assess specific country needs. Obvious potential collaborators in such assessments would be the OAS, the World Bank, the UN Criminal Justice Reform Unit, the UN Development Program, and the Organization for Economic Cooperation and Development. There probably are several others that are less obvious.

The Bank could also be in a position to participate at least to some degree in the funding of such reform projects. The Anti-Corruption Activities Trust Fund, to which, as noted earlier, the government of Norway has already contributed, would be a logical vehicle for channeling funds for portions of such projects. Certainly it is possible that collaborative funding might be worked out with the World Bank and the UN Development Program, together with national agencies that in the past have funded judicial assistance programs in the Americas (including the Canadian International Development Agency and the U.S. Agency for International Development).

We would encourage the Bank to provide at least some near-term attention to this more expansive kind of approach, keeping in mind that any such effort would require a degree of ongoing participation, not only by ICS specialists but with assistance from professionals in OII and perhaps in the Legal Department. In this regard, we would hope that the Bank would undertake to supplement its current legal staffing with at least two senior specialists in national legal and judicial reform matters. The positions should be filled by experienced lawyers familiar with the theoretical and practical operation of the region's different forms of national criminal justice systems. Such lawyers ideally should have considerable practical experience in dealing directly with investigative, prosecutive, and judicial officials in different nations, and should be capable of working cooperatively

with ICS, other Bank offices, and outside agencies in assessing the implications of empirical data illuminating the strengths and weaknesses of current legal systems. Such a modest increase in staffing would assure that the Bank has the necessary legal capacity for evaluating the importance and practicality of contemplated legal assistance programs, for participating in their design, and for assisting in the selection of appropriate national advisers in their implementation.

- e. Enhance the Bank’s capacity to provide good governance assistance and direct advice concerning judicial assistance, using Bank professionals to the extent feasible and appropriate, as an alternative or a supplement to providing funding for justice advisory programs.**

Funding of outside experts to assist countries is often the most practical way of providing professional help with regard to specific projects. There are some subject areas, however, in which the most competent authorities are those in the Bank’s own offices. In such areas, it can be cost effective to send out the appropriate Bank professionals to assist countries, on a temporary basis, in improving particular aspects of their operations and improving governance practices that foster development. National anti-corruption efforts fall within the subject areas in which country efforts have not yet been highly developed, and in which Bank-employed experts can make useful periodic contributions. The relevant offices should be evaluated for possible expansion in order to provide such expertise on a more regular basis.

- f. Consider expanding the Bank’s good governance components in administrative and judicial assistance programs to sub-national governmental units.**

Although direct support for sub-national governmental units has not previously been undertaken by the Bank, the possible utility of such approaches should be considered by the new Oversight Committee in conjunction with Bank units that would be called upon to assess and implement any such programs. The organization of governmental responsibilities in some countries would not lend itself to this kind of an

approach; in other countries, especially those with some sub-national administrative units encompassing large metropolitan areas, progress in addressing the country's anti-corruption needs might be able to be made on a piecemeal, regional basis under the general framework of supporting good governance at different governmental levels.

- g. In the Bank's assessment of a loan application for an administrative or judicial assistance program, consider including as a factor whether the borrowing country has established a law reform commission.**

A frequent key to assuring an effective administrative or justice system is a national law reform commission charged with authority to recommend that the legislature enact revisions of laws that have proved inadequate or unfair. Accordingly, with regard to potential loans for such system improvement projects, the Bank might use the opportunity to encourage the establishment of reform commissions by specifying their existence as one of the factors the Bank will consider in assessing such projects. Certainly, any project contemplating the revision of national laws would appear more promising if the country involved possesses an operating law reform commission with sufficient authority to assure that the proposals for change will be considered seriously by national legislators.

- h. In the Bank's assessment of a loan application for any loan, consider including as a factor whether the borrowing country and the potential contractor's country are parties to, have ratified, and are implementing, the anti-corruption conventions of the OAS and the UN.**

This would be a convenient and potentially effective way for the Bank to express support for the conventions, and would provide notice that the Bank intends to take seriously the national obligations assumed by the members signing of those conventions.

V. Conclusion

For over a decade, the Bank has been a leader in recognizing that efforts to assist countries in attaining reasonable levels of prosperity can be thwarted by governmental and commercial corruption to the extent that the hoped-for benefits to the citizenry cannot be achieved. It has also been a leader in attempting to overcome this fundamental impediment. It has worked closely with the Organization of American States to develop a regional convention against corruption. It has cooperated with other multilateral institutions in efforts to coordinate international standards and procedures. It has undertaken measures to reduce corruption in the projects that the Bank itself funded. It has encouraged national governments to develop effective programs to reduce the incidence and the effect of corrupt activities.

These efforts by the Bank have had positive effects beyond its geographical region. Its work with the OAS was one of the factors leading the way toward the development and adoption of the United Nations Convention against Corruption, thereby creating for the first time a worldwide framework with the potential to facilitate transnational cooperation in responding to serious forms of bribery, extortion, fraud, and related activities. Its ongoing work with other multilateral banks has been a primary impetus to the development of a number of common definitions, practices, and procedures, thereby facilitating greater international cooperation.

The Bank's efforts to prevent and redress fraud and corruption affecting the projects it has selected to fund were prompted not only by a genuine interest in having the projects succeed, but also by the necessity of fulfilling its fiduciary responsibility to assure that the funds entrusted to it by member nations were expended only for their intended purposes. The Bank has undertaken an incremental approach to this subject – starting with a supervisory Oversight Committee, later adding a professional investigative capacity, and eventually creating a body to assess the investigative report and impose an appropriate sanction. In doing so, it succeeded in avoiding the pitfalls of contorting the process to one encrusted with excessive legalisms, recognizing that it was not pursuing a national criminal justice adjudicatory process but was engaged in a business decision whether to decline to further engage companies that had undertaken efforts to defraud the

Bank. The Bank has continued to monitor these mechanisms that it has chosen to employ in its anti-corruption program, and has augmented its capacity to discover and redress instances in which such activities take place. It has also developed a heightened deterrent capacity in the interest of forestalling such practices in the first instance. Both the remedial and preventive aspects of the Bank's program to protect its funds, however, now warrant further modification, augmentation, development, and support.

The Bank's interest in having the countries of the region develop their own effective capacities in addressing such matters is only beginning to be accorded a similar degree of attention. Certainly the Bank could, through loans and other means, assist governments not only in improving their financial management, public accounting, and procurement practices, but in refining their laws and legal procedures, and in devising means of assuring high standards in the selection and operation of their investigative, prosecutive, and judicial personnel. This would help countries deal effectively and fairly with corrupt activities at the national level. More importantly, it would help countries move toward the goal of overall good governance. Recommendations for a nascent, wide-ranging program to provide such help are now emerging within the Bank. Clearly this is an appropriate area for future Bank attention.