

BRIEFING P A P E R

**The Role of the New Development
Bank's Regional Office in
Facilitating BRICS Finance in
Africa**

The Case of the Lesotho
Highlands Water Project
2022



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ABBREVIATIONS

ABSA	African Bank for Southern Africa
AFDB	African Development Bank
AFRODAD	African Network for Debt and Development
ARC	African Regional Centre
BRICS	Brazil, Russia, India, China and South Africa
CEO	Chief Executive Officer
DBSA	Development Bank of Southern Africa
DFI	Development Finance Institution
EMP	Environmental Management Plan
EPM	Environmental Policy Management
ERM	Environment Resource Management
ESF	Environmental and Social Framework
ESIA	Environmental and Social Impact Assessment
HA	Hectare
IDP	Information Disclosure Policy
IFI	International Financial Institution
ISS	Integrated Social Safeguards
LHDA	Lesotho Highlands Development Authority
LHWC	Lesotho Highlands Water Commission
LHWP II	Lesotho Highlands Water Project Phase II
MDB	Multilateral Development Bank
MW	Megawatts
NDB	New Development Bank
PNEAR	Polihali North East Access Road
PWAR	Polihali West Access Road
RAP	Resettlement Action Plan
SOLD	Survivors of Lesotho Dams
TCTA	Trans-Caledon Tunnel Authority

EXECUTIVE SUMMARY THE ROLE OF ARC IN FACILITATING BRICS FINANCE IN AFRICA

Background

Established in July 2017, the Africa Regional Centre (ARC), the BRICS New Development Bank's (NDB) Africa's branch based in South Africa was set up mainly for identification and preparation of bankable projects in BRICS and other member countries. Other countries in the Africa region are poised to access funding afterwards after principles on membership admission have been ascertained as well as their proximity and alignment to South African strategic needs. The ARC's role is primarily set to contribute towards plugging Africa's infrastructure gap estimated at over USD\$107,5 billion¹. The ARC is an integral demonstration of the commitment of BRICS to the African continent. This commitment is driven and championed by South Africa, specifically through its support for the continent's industrial and infrastructure development agenda's such as Programme for Infrastructure Development in Africa (PIDA), the Africa Continental Free Trade Agreement (AfCFTA) and overall the African Union's Agenda 2063. In as much as the NDB started as a five-member entity, it started expanding its membership in September 2021 with the admission of Bangladesh, United Arab Emirates (UAE), Uruguay with Egypt being latest addition to the Bank thereby showing strides being made by NDB in further expanding its global outreach.

The purpose of the New Development Bank (NDB) is to "mobilize resources for infrastructure and sustainable development projects in BRICS and other emerging economies and developing countries, complementing the existing efforts of multilateral and regional financial institutions for global growth and development". Since the NDB African Regional Centre (ARC) was launched in August 2017, the NDB has approved 11 projects for South Africa (10 projects in South Africa and 1 project in Lesotho) valued at an estimated USD 5.430 billion². However, the National Treasury rejected the request for a government's guarantee of Sanral's R7bn by the New Development Bank due to concerns that were raised by the media pertaining low e-toll collection rates on the Gauteng Freeway Improvement Project (GFIP).

1 Africa Economic Outlook 2018, Financing infrastructure: Strategies and Instruments, p.61-93

2 https://www.ndb.int/projects/list-of-all-projects/?country_name=5

01

INTRODUCTION

Development banks are public financial institutions typically offering subsidized, long-term financing for socio-economic development. There are many multilateral development banks such as the World Bank (WB), European Investment Bank (EIB) and the African Development Bank (AfDB) emerging lenders such as the New Development Bank (NDB) focusing on distinct areas and countries. The tools they employ vary, but in general they include medium- to long-term credit, subsidized interest rates, credit guarantees, equity, and technical assistance. While it is widely understood that development banks target industrial production and social development, intense discussion exists around the methodologies employed by each bank and the motivation behind them³.

Whilst it is important that finances for development be disbursed for projects that have an intrinsic link to socio-economic development in African states, it is also imperative that the development be monitored by the institutions themselves as well as by civil society.

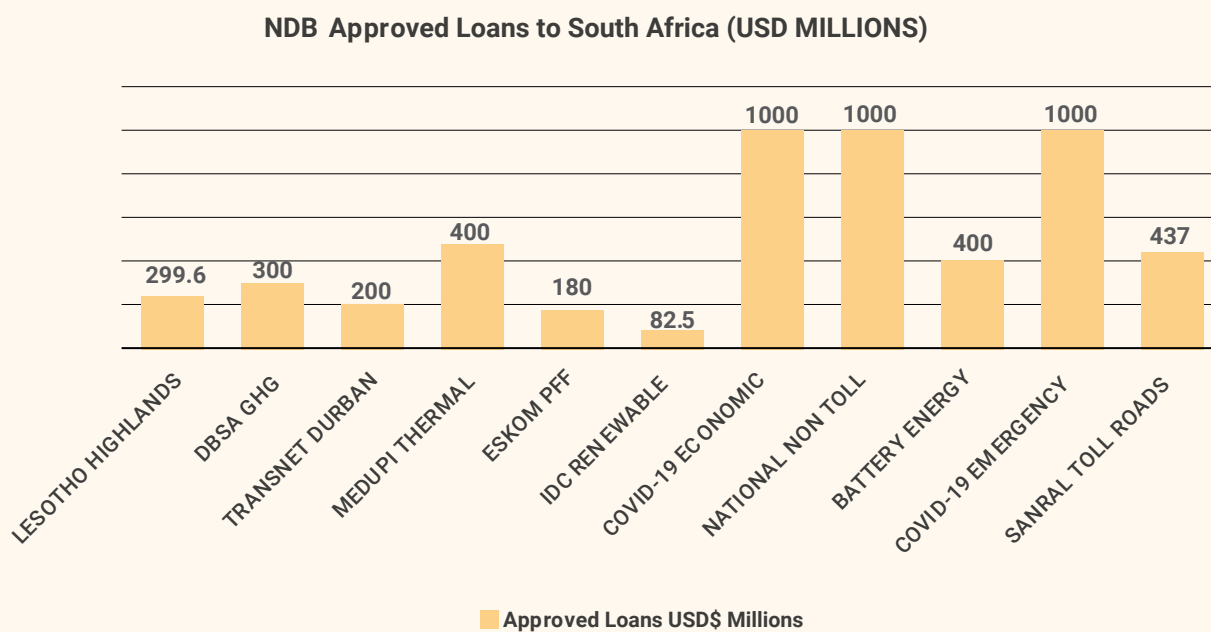
Experience show that otherwise, they may be less effective or cause harm to communities at local level as well as state coffers at national level. Environmental and Social Safeguards (ESS) are meant to ensure that development projects financed by development banks do not harm people or the environment, or discriminate against marginalized groups. It is within this framework of thinking that the role of CSOs is important especially at national level - as compared

³ <http://people.brandeis.edu/~aldom/papers/The%20Role%20and%20Impact%20of%20Development%20Banks%20-%20203-9-2017.pdf>

to international level where most international NGOs have been instrumental in policy advocacy. As such, CSOs especially at national level should be strengthened to monitor and question whether development finance institutions (DFI) financed projects will improve standards of living, protect communities’ economic activities, environment and promote structural gender equality and transformation and local markets development.

The NDB as a development finance institution was established to strengthen cooperation among BRICS countries and supplementing and or complementing the efforts of multilateral and regional financial institutions to achieving the goal of sustainable and balanced growth in countries of the South. In its operations, it has not fell short of criticism as a result of its operations, systems and policies in the assessment of projects and disbursement of funds. In South Africa alone, the controversies have been centred around corruption and embezzlement of funds, information secrecy and lack of public consultation on projects implementation over last 5 years in which more than six projects (Figure 1) have been approved by the NDB Board of Governors.

Figure 1: NDB Approved Loans to South Africa 2016-2021



Source: NDB 2021⁴

The projects that have stolen the lime light of gross underhand dealings and environmental degradation include Eskom and Transnet scandals as well as the Durban Port environmental violations⁵. Given the controversy surrounding NDB projects in South Africa with the possibility of expansion of project financing to the of Southern Africa region and subsequently the African continent, it has been an important concern to assess whether the Banks’ activities adhere to the principles of promoting fiscal responsibility and accountability, business and human rights as well as to its mandates which include sustainably building and strengthening strategic relationships with all business partners, including other MDBs, national development banks, private financial institutions, business communities and

4 <https://www.ndb.int/projects/list-of-all-projects/>

5 <https://mg.co.za/article/2018-06-22-00-brics-bank-fails-to-live-up-to-hype>

sub-national and national governments in South Africa and the Africa region.

The case of the Lesotho Highlands Water Project Phase II (LHWP II) is one such extra-territorial project in which a non-member country of the BRICS is part of the implementation of a project that uses NDB financing. This thereby is the basis of assessment of the role and impact of NDB financing facilitated by the Africa Regional Centre in Africa.





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OBJECTIVES AND SCOPE OF BRIEFING

The work of the NDB comes with its opportunities to countries in the Global South to acquire alternative financing for development contrasted in nature from traditional lenders such as the World Bank Group. These opportunities are aimed at changing both the global financial status quo as well as transforming development trajectories of social and economic nature with and amongst communities where projects are implemented. The NDB is committed to bridge the gaps between need and funding and to be a partner in bringing about sustainable development through providing technical assistance for projects and engaging in information, cultural and personnel exchanges with the purpose of contributing to the achievement of environmental and social sustainability.⁶ For the NDB, poverty reduction and or alleviation is at the core of its project financing however engagement with this notion requires in-depth analyses of projects which have had community impacts⁷. Many of them have been in South Africa where the reality on the ground has been mismatched to its mandate statement where there are limitations on sustainable development of the communities who stand to benefit and or be affected by the projects.

This forms the basis for the development of the Lesotho Highlands Water Project in which this brief proffers policy recommendations for the institutionalisation of sustainability mechanisms that NDB/ARC interventions ought to have before project implementation in

6 <http://www.ndb.int/wp-content/uploads/2017/08/NDB-Strategy.pdf>

7 <https://www.ndb.int/about-us/strategy/environmental-social-sustainability/>

other African countries which are poised to benefit from infrastructure finance facilitated through project preparation and selection by the Africa Regional Centre⁸.

Aim of the Briefing Paper

The strengthening of evidence based and influencing the role of the ARC in facilitating infrastructure finance within the Africa Region.

Objectives of Briefing Paper

- To develop a briefing paper assessing the role of the ARC in facilitating NDB finance for the LHWP II.
- Interrogate the sustainability of financing instruments used by NDB in facilitating project financing for the LHWP in Lesotho.
- Assess the bank's use of country partnership frameworks and environmental and social framework policies in project implementation and how they impact local communities in project areas.

Scope

The scope of work will entail the following aspects which will lead to the development of the briefing paper

- Analyze the NDB's approaches to financing and operations and their implication on transparency and accountability in the implementation of the LHWP.
- Assess the frameworks put in place by both the South African and Sotho governments on international development cooperation for the project.
- Analyze the financing mechanisms/instruments for the LHWP II and their impacts on debt and human rights South Africa and Lesotho and the communities surrounding the project sites.
- Identify and assess concerns and policy challenges that have risen from the implementation and impact of the Second Phase of the Lesotho Highlands Water project.
- Propose possible policy and regulatory measures on making NDB financing pro-people and sustainable.

8 <https://macauhub.com.mo/en/feature/pt-banco-dos-brics-abre-se-a-financiamento-a-paises-nao-membros/>

03

PROJECT BACKGROUND THE LESOTHO HIGHLANDS WATER PROJECT

The Lesotho Highlands Water Project (LHWP) Phase II was signed on 11th August 2011 between South Africa and Lesotho governments. The Phase II Project features the Polihali Dam Reservoir, Polihali to Katse Tunnel, Associated Infrastructure and the Kobong Storage Scheme. Phase II project will also include a Hydropower Power Pump Scheme at Kobong generating 1200MW exceeding by far the current Phase I 'Muela Hydropower capacity of 72MW (LHWC, 2010).

Caption 1: LHWP Phase 1



Source: Construction Review Online 2021

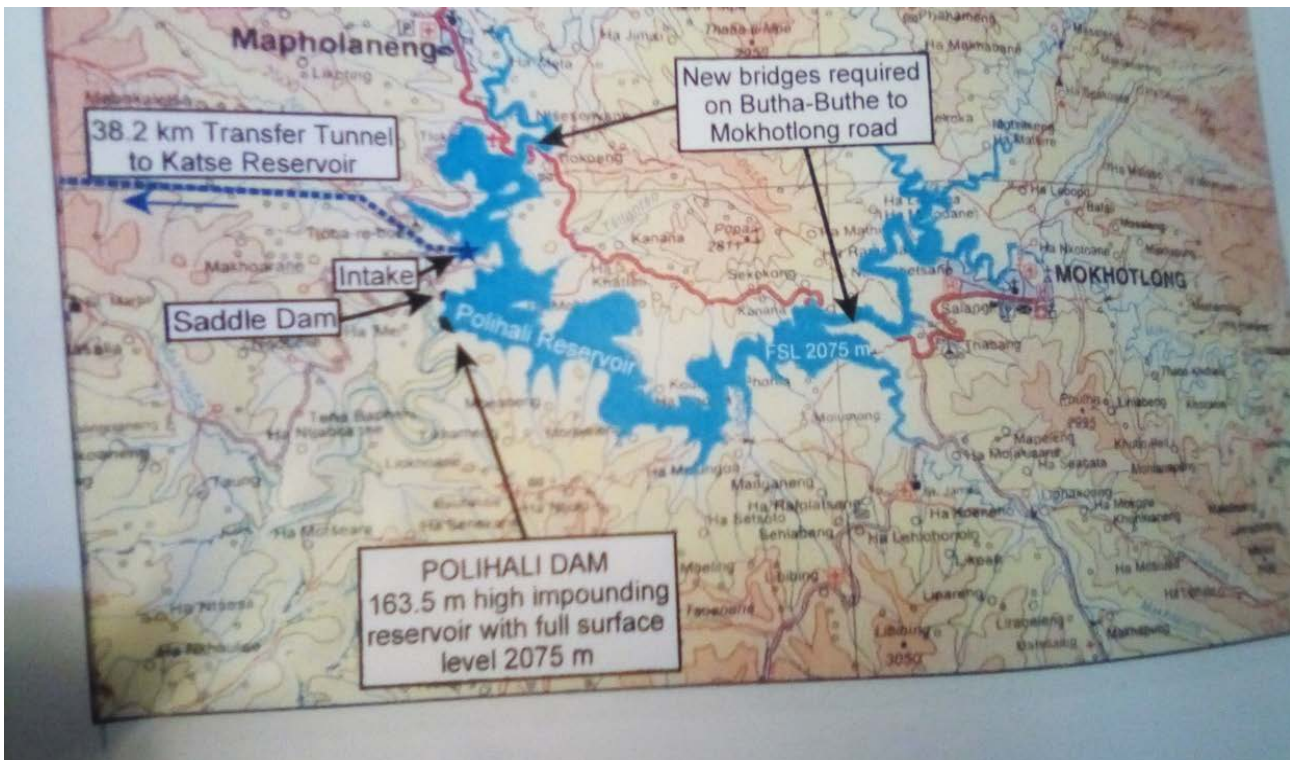
Phase II Project Description

Phase II of the project entails that the Polihali Dam is to be constructed in the Mokhotlong District and will form a reservoir on the Orange and Khubelu rivers, covering an area of 5053 hectares with a total storage capacity of 2,325 million cm. According to the LHWP Phase II agreement, the following 4 features are included in the project.

Polihali Dam

The Polihali Dam will be built at the downstream of the mountainous Lesotho Highlands involving the Senqu and Khubelu Rivers and it will be 163.5 meters high concrete faced rock-fill embankment dam wall (Caption 2).

Caption 2: Polihali Map



Source: Matli, 2005

Polihali to Katse Tunnel - The 38.2 kilometers long, 5 meters diameter Polihali to Katse Dam Tunnel will be built to transfer water from Polihali Reservoir to Katse Dam. Water will be transferred from Polihali Reservoir through the two separate tunnels⁹. The project also has provision of **Advance Infrastructure** development which will involve all the roads that will be surrounding the construction of the Dam, power supply, telecommunication system and camps. The project also entails that **hydropower features such as** a pump storage scheme of approximately 1000mgw utilizing Katse reservoir and upper near reservoir close to the Kobong headwaters will be built¹⁰.

9 Lesotho Highlands Water Project Compensation Policy 2016

10 <https://www.water-technology.net/projects/lesotho-highlands/>

04

IMPACT OF THE PROJECT A VIEW FROM THE TOP

The development of the LHWP II being a legacy project was characterised by the use of Integrated Social Safeguards (ISS) developed and utilised by the African Development Bank (AfDB). This ISS framework was used in the first phase of the LHWP where concerning impacts on communities were observed through midterm and post project closure evaluations. Human rights groups, civil society and even the Bank itself raised concerns on the gaps exhibited from the evaluations, a reason why the ISS were under revision in 2020 and 2021¹¹.

Be that as it may, according to the AfDB Resettlement Action Plan (RAP) for LHWP Phase II; projections are that the LHWP II will have the potential impacts of infrastructural works which may lead to permanent loss of land to those affected, thus resulting in involuntary resettlement. There will also be temporary occupation of land by construction workers who will have labour camps and work stations. The Polihali Dam will supply about 2,075m water level above the sea which will result in affecting more than 5000ha of land in the valleys and tributary catchment of the Senqu and Khubelu Rivers. Although most of the Phase II physical and economic displacement of households will result from the construction of the Polihali Reservoir, permanent land acquisition by the Polihali Northern Eastern Access Road PNEAR, the Polihali Western Access Road (PWAR) and other Advance Infrastructure developments such as

¹¹ <https://www.yumpu.com/en/document/view/14089357/the-social-impacts-of-a-large-development-project-the-le>

bulk power supply and permanent office and residential facilities, will cause additional physical and economic displacement, affecting both household and communal assets.¹² About 2300 households are estimated to be affected by the implementation of the Phase II project with 69.6% (15 villages) to be affected directly by reservoir creation (Table 1). On the positive side, the Phase II project is expected to provide about 3000 jobs from commencement. The project was set to start in 2012 but owing to bureaucratic issues, political instability in Lesotho and a delay in the awarding of construction contracts the project commenced end of 2019 and is scheduled to be completed by 2025¹³.

Table 1: Impacts of LHWP II - AfDB ISS Projection

COMMUNITIES THAT WOULD BE AFFECTED	ASSETS THAT WOULD BE AFFECTED BY THE RESERVOIR
<ul style="list-style-type: none"> Resettlement 17 Villages affected by Polihali Reservoir = 534 households = 2547 people 5 Villages to be fully submerged 12 Villages partially affected (move upslope) 	<ul style="list-style-type: none"> Fields and grazing lands There would be 72 villages affected = 3 312 households = 16 560 people Arable land = 1 125 ha (Acreage for grazing land not specified)
OTHER ASSETS	
<ul style="list-style-type: none"> Houses floor area (m²): 17 747 (<i>optak</i> = 2 617; <i>rondavel</i> = 8 960; <i>polata</i> = 6 170) Trees = 4 812 Business facilities floor area (m²) = 656 Government facilities floor area (m²) = 1 546 Church/school floor area (m²) = 843 Kraals/stables floor area (m²) = 10 647 	
VILLAGES UP INVOLUNTARY RESETTLEMENT	AFFECTED VILLAGES THAT WILL NOT BE RESETTLED
<ul style="list-style-type: none"> Ha Tlhakong Ha Jobere Tsekong Ha Phohla Lits'otsong Ha Sekants'i Sekokong Meeling Tloha Re Bue Masakong 	<ul style="list-style-type: none"> Maluba Lube Thabang Ntlholohetsane Mapholaneng Ha Leboko

Source: AfDB (ISS) Resettlement Action Plan 2021

12 Lesotho Highlands Water Project Compensation Policy 2016

13 http://country.eiu.com/article.aspx?articleid=128786996&Country=Lesotho&topic=Economy&subtopic=Fo_9

05

DEVELOPMENT COOPERATION AND THE LHWP II

Lesotho Highlands Water Project Treaty

The origins of the Lesotho Highlands Water Project (LHWP) can be traced from the Lesotho Highlands Water Project Treaty which was signed in 1986 between the Lesotho Government and the South African government to provide water to the Gauteng Region of South Africa and to generate hydroelectricity for Lesotho. This treaty was signed in Phases with the first one being the Phase 1A and Phase 1B which consists of two Large Dams; Mohale and the Katse Dam and the Phase II project which consists of the Polihali Dam.

The purpose of the Project was to enhance the use of the water of the Senqu/Orange River by Storing, regulating, diverting and controlling the flow of the Senqu/Orange River and its effluents in order to ensure the delivery of specified quantities of water to the Designated Outlet Point in the Republic of South Africa and by utilizing such delivery system to generate hydro-electric power in the Kingdom of Lesotho.

In the Treaty's General duties of the two countries Article 12 of The Treaty notes that

- 'Lesotho shall, in accordance with the provisions of Treaty, have the overall responsibility for that part of the Project situated in the Kingdom of Lesotho and the security thereof.

- South Africa shall, in accordance with the provisions of Treaty, have the overall Responsibility for that part of the Project situated in the Republic of South Africa and the security thereof.
- Lesotho shall establish the Lesotho Highlands Development Authority as an autonomous Statutory body under the laws of the Kingdom of Lesotho in accordance with the provisions of treaty.
- South Africa shall establish the Trans-Caledon Tunnel Authority as an autonomous statutory Body by means of appropriate legislation in accordance with the provisions of this Treaty.
- The Parties hereby establish the Joint Permanent Technical Commission in accordance with the provisions of this Treaty.¹⁴

Lesotho Highlands Development Authority

The Lesotho Highlands Development Authority (LHDA) is a parastatal set up on the Lesotho side and charged with the implementation operations and maintenance of the project within Lesotho. **This includes the** construction, operations and maintenance of all dams, tunnels power stations and infrastructure- as well as secondary developments such as relocation, resettlement, compensation, supply of water to resettled villages, irrigation, fish hatcheries and tourism¹⁵.

Trans - Caledon Tunnel Authority

Trans-Caledon Tunnel Authority (TCTA) is a state-owned entity charged with financing and implementing bulk raw water infrastructure projects. It is an agency of the National Department of Water and Sanitation (DWS), which is responsible for the country's water resources in respect of usage, equitable allocation and distribution. TCTA assists the government in its pursuit of water security for South Africa and in realizing its constitutional obligation of ensuring universal access to this essential resource for all citizens¹⁶. The government of South Africa founded TCTA in terms of a Notice of Establishment published on 12 December 1986. The initial mandate was to finance and build the South African part of the Lesotho Highlands Water Project (LHWP), which delivers water to the Vaal River System in South Africa. It was meant to be a special purpose vehicle for South Africa to use to fulfil its treaty obligations to Lesotho in respect of this project. However, in 2000, the Notice of Establishment was amended resulting in the TCTA being able to undertake other projects where each project is ring-fenced with its own bank account, income agreement and funding programme. Now, in addition to LHWP, TCTA is engaged in other water security projects. These include Olifants River Water Resources Development (ORWRD), Mokolo-Crocodile Water Augmentation Project (MCWAP) amongst others¹⁷.

In this respect, The NDB was approached by the Government of South Africa through the TCTA to provide them with funding for the Phase II Tunnel building from Polihali to South Africa. Observing the objectives of the NDB Policy on Processing of Sovereign Loans & Loans with Sovereign Guarantee, it is safe to say that the NDB has a policy which helps member countries achieve the best possible outcome for their investments while avoiding/minimizing or even offsetting any negative impacts.

14 1986-10 Treaty on LHWP between Lesotho and RSA

15 <http://www.lhda.org.ls/lhdaweb/about/ourStory>

16 <https://www.tcta.co.za/about-tcta/>

17 <https://www.tcta.co.za/about-tcta/>

Therefore, we can assume that there was proper scrutiny with regards to the TCTA request and that the Phase II project was identified as part of its pipeline.

The new development bank (NDB) approved a ZAR3.2 billion loan to South Africa towards implementation of the second phase of Lesotho Highlands Water Project (LHWP) through Trans-Caledon Tunnel Authority (TCTA). Lesotho will be the country that implements this project with the total cost estimated to be M32 billion, the NDB has financed the Tunnel construction of this project with M3.2 billion hence accounting for 10% of the total cost. The remaining balance has been financed by other Multilateral Development Banks, commercial and institutional investors through Bond Issuance by TCTA.

06

POLICY PROCEDURES FOR PROJECT IMPLEMENTATION



Project financing for NDB supported projects are guided by policy frameworks developed by the Bank and facilitated by its regional centres and in the case of the LHWP II, the ARC facilitated agreements between the NDB and the TCTA and the LHDA. The NDBs policies are also put into coordination with those of partner institutions to foster co-financing and public private partnerships¹⁸.

Legal Personality and the Host Country Agreement¹⁹

Signed in August 2017, the Host Country Agreement is one of the key documents between the NDB and the Government of South Africa facilitating the hosting of the Africa Regional Centre in South Africa and ensuring that its operations receives some of the highest recognitions and immunities in the land similar to those given to international banks and the diplomatic corps. To that effect. Article 6 subsection (3) and (4) point out to concerns on holding the Bank accountable to its actions or those that are contracted to use their funds as noted below.

(3) The property, funds and assets of the Bank wherever situated in South Africa and by whomsoever held, shall be immune from seizure, search, requisition, foreclosure, confiscation, expropriation and any other form of interference whether by executive administrative, judicial or legislative action. To the extend necessary for the

¹⁸ <https://www.ndb.int/data-and-documents/ndb-core-documents/>

¹⁹ <https://www.ndb.int/wp-content/uploads/2017/01/Host-Country-Agreement-with-South-Africa.pdf>

operation of the Africa Regional Centre in South Africa and subject to the provision of this Agreement, all property and other assets of the Bank shall be exempt from restrictions, regulations, controls and moratoria of any nature.

(4) Notwithstanding the provisions of sub-Articles (1) and (2), no action shall be brought against the Bank by the Government, or by any of agencies or instrumentalities or by any entity or person directly or indirectly acting for or deriving claims from the Government or from any of its agencies or instrumentalities.

However, the Accountability Framework is silent on whether the NDB has to report to the parliament which undermines the use of country systems. More concerning is the fact that the NDB secured diplomatic immunity with the Government of South Africa (the borrower through the TCTA). This is problematic in that this may impact negatively as communities may not be able to hold NDB accountable to the LHWP II which it is co-financing and undermine the country systems principle. By and large, effective use of country systems is attributed in bringing both financial benefits, such as increased efficiency and effectiveness, and non-financial benefits, such as strengthened domestic systems and greater local capacity.

Environmental and Social Framework

The aim of the NDB Environment and Social Framework (the Framework) is to: manage environmental and social risks and impacts in projects; manage operational and reputational risks of NDB and its stakeholders; mainstream environmental and social considerations into decision-making processes of all parties; and encourage the international good environmental and social practices in its operations and in doing so strengthen the country systems^{20,21}. Amongst at least 8 principles the ESF has principles on country systems, conservation of natural resources, environment and social interests and co-operative functioning and knowledge dissemination²². These are key tenets in the implementation of the LHWP II as they were laid to set the foundation of sustainable development impacts of NDB financed projects, however, the NDB ESF principles were not used for the project but rather the Integrated Social Safeguards of the African Development Bank. At the time the project was initiated, the ISS of the AfDB had not been revised and this begs the question why the NDB would co-finance a project wherein the policy frameworks being used had caused negative development impacts in the LHWP I yet the same framework was utilised for the LHWP II?

The poor application of the ISS in LHWP I had been one of the major reasons why it had negative impacts as there was limited knowledge of the project and its impacts by the communities²³. Given the fact that the LHWP II commenced at a time the ISS had not been reviewed and or revised, it is key to question and understand the thought process and reasoning behind the decision by the NDB to eventually co-finance the project. Key to the lack of understanding of this decision also emanates from the fact that there is scant information on the actual project on the NDBs website thereby undermining the role of key stakeholders to hold the Bank accountable or how it can be accountable for the impacts of its financing where it would have used external policy frameworks.

20 <https://www.oxfam.org.za/wp-content/uploads/2021/08/oxfam-ndb-report.pdf>

21 <https://www.ndb.int/wp-content/themes/ndb/pdf/ndb-environment-social-framework-20160330.pdf>

22 Ibid, pp.4-5

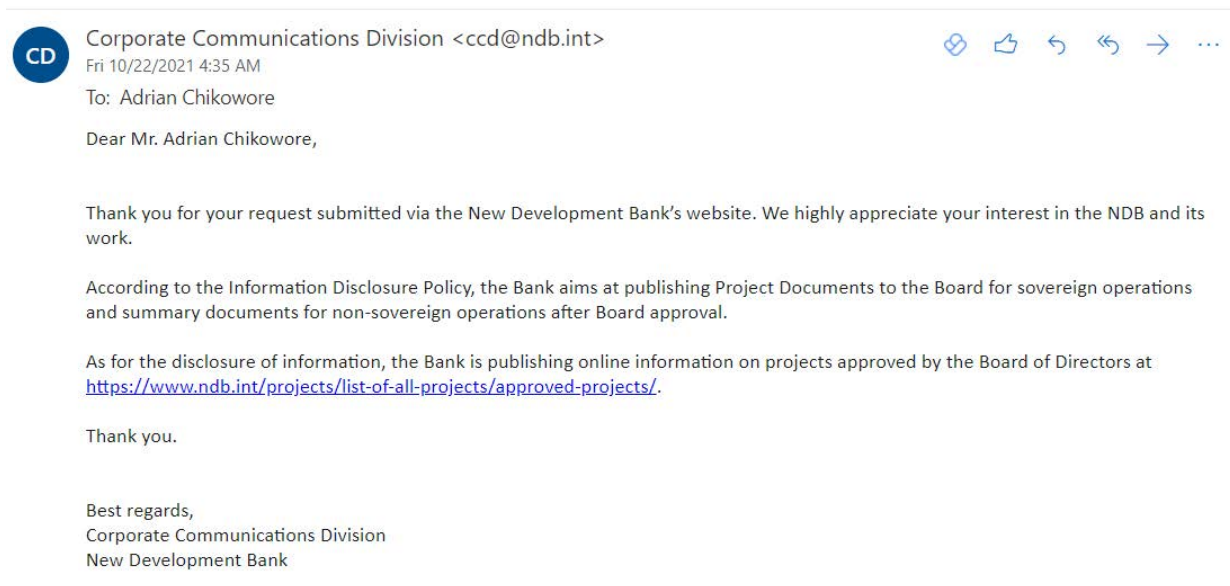
23 [https://bioone.org/journals/mountain-research-and-development/volume-23/issue-1/0276-4741\(2003\)023%5B0007%3ATMBOTL%5D2.0.CO%3B2/The-Mixed-Blessings-of-the-Lesotho-Highlands-Water-Project/10.1659/0276-4741\(2003\)023\[0007:TMBOTL\]2.0.CO;2.full](https://bioone.org/journals/mountain-research-and-development/volume-23/issue-1/0276-4741(2003)023%5B0007%3ATMBOTL%5D2.0.CO%3B2/The-Mixed-Blessings-of-the-Lesotho-Highlands-Water-Project/10.1659/0276-4741(2003)023[0007:TMBOTL]2.0.CO;2.full)

Information Disclosure

The NDB has an Information Disclosure Policy (IDP) that sets out the Bank's approach to information disclosure with the objective of promoting the highest levels of transparency, accountability and probity. It however has provisions that entail the need for the Bank classify certain types of information and apply due process in deciding on the disclosure of such information. Whilst this could be termed the standard operating procedure within the Banking sector, it is important to note that NDB funds are largely public funds thereby it is imperative that the Bank discloses comprehensive information for development projects in-line with the IDP's Chapter III on Disclosure of Information to the public upon request and be acknowledged in five working days and responded to in 30 working days should there be need for clarification²⁴.

For the case of the LHWP II, AFRODAD requested information on the project on the 2nd of September 2022, and received confirmation of receipt well after the stipulated 5 days (22 October 2022) and never received any reciprocating requested information as shown in the response from the NDB (Caption 3).

Caption 3: Information Disclosure Response from NDB to AFRODAD



Source: AFRODAD 2021

²⁴ <https://www.ndb.int/investor-relations/information-disclosure/>

The information AFRODAD requested included the following questions

Table 2: Information Disclosure Request Questions sent to NDB by AFRODAD

- Will the NDB make use of African development Bank Policies and Frameworks for LHWP II, including but not limited to the AfDB Environmental Management Plan/Framework, Gender Policies etc.? Please may you highlight which policies will apply to the project?
- **Resettlement Policy and Resettlement Compensation Plan** - We acknowledge the **NDB's Resettlement guidelines in the NDB ESF in Section ESS2: Involuntary Resettlement** (pages 20-22). Will the NDB be utilizing the AfDB Resettlement Action Plans- RAP (and Compensation Plan) or the NDB Resettlement guidelines as per the NDB ESF?
- In the event that another multilateral development bank's (MDB) policies will be used, what happens if there is a conflict between the NDB's policies and those of another MDB's policies that are being used for a project? Does the policy with the higher (e.g requiring more compensation in cases of involuntary resettlements or greater participation requirements) standard (either NDB or MDB) apply or does the NDB plan to apply the other MDB policy, regardless of whether or not it has lower standards on a particular issue than the NDB.
- Will the NDB be bound by the findings of an Independent Accountability Mechanism (IAM) at the other MDB? In other words, if the IAM at the other MDB makes a finding of non-compliance with the applicable policy will the NDB respect the decision and also take remedial action to correct the non-compliance?
- The Reports of consultations on the LHWP II focussing on **Environmental and Social Impact Assessment (ESIA) and Environmental Management Plans** that have been conducted to date since the March 2019 AFDB ESIA for the Lesotho Highlands Water Project Phase II. This is in light of concerns that this Phase of the project will have different ESIA's and EMPS from Phase I. We are aware that LHWP II comprises different project components, each of which have ESIA's. We are so far aware of the ESIA's conducted for the Polihali Western Access Road (PWAR) and Bulk Power Supply and Telecommunications (BPST). Please may you confirm which ESIA have been conducted and are planned and kindly share the reports for the components that have been conducted?
- **LHWP Community Engagement and Consultation Plan**- With regards to the AfDB ESIA which indicates under the section Community Engagement (page 29) that a total of 39 community meetings were held in the 39 clusters. Over 3,100 people were engaged between 18 January and 16 March 2017. How comprehensive and representative where these consultations considering atleast 3312 households and atleast a total of 16560 people will be affected?
- **Financing Frameworks** - Whilst we understand that the project is co-financed with the NDB being a contributor amongst several multilateral and private sector players. How sustainable are the financing instruments in terms of fiscal liabilities specifically unsustainable debt accrual by the Government of Lesotho? In this respect we kindly request.
 - *Project background information (LHWP II Program loan document between NDB and South Africa; overview of the breakdown of utilisation of the loan funds).*
 - *Monitoring and evaluation documents (project performance assessment and monitoring reports; progress reports).*
 - *Project compliance documents (project compliance reports regarding the loan agreement's covenants and compliance to statutory and legal requirements such as environmental, social and procurement).*
 - *Financial documents (project monitoring, administrative and/or financial appraisal mission reports, audited Financial Statements; other documents/reports on the use of the loan monies).*

The responses of this nature (Caption 3) to information disclosure requests from the Bank itself via official documents and virtual portals remains scant thereby AFRODAD calls for strategic action to ensure that the Bank becomes comprehensively accountable and transparent in line with the NDB Information Disclosure Policy Principles whereby, 'the Bank is guided by an underlying presumption that information concerning the Bank's activities will be made available in a timely manner to the public in the absence of an appropriate reason for confidentiality'²⁵. This should be coupled with continued engagement with the ARC and the NDB HQ representatives who have over time been engaging civil society actors. Despite the NDB having an Information Disclosure Policy, in essence it discloses limited information on its projects, well below what international norms would require, and falls considerably short of the practice of peer development finance institutions and in fulfilling communities' right to access information when a project is still in its proposed stage so that they can take a participatory role. The above assertion is substantiated by the analysis that was done by the International Accountability Project which showed that, the NDB does not disclose any documents, including key environmental and social documents, for any of its projects²⁶.

Country Partnership Plan

Country Partnership Plans and Project Pipelines If one is seeking information about the strategic planning for South African projects, including project pipelines and the reasons for decision making or determination of a project pipeline, then South Africa's country partnership plan, including studies and thematic analyses used in the preparation of such a plan would become vitally important²⁷. A country partnership plan is not to be confused with a host country agreement with South Africa which governs operational issues related to the Bank's presence and cooperation with South Africa. The process for the development of a country partnership plan entails that part of the background work in preparation of a CPP is done by development partners, national and international level think-tanks and agencies, and the government. Additional studies may be commissioned by the NDB in close consultation with member country governments and other development agencies²⁸. As for the LHWP II, these had been done as the World Bank gave technical assistance to the Government of Lesotho in the Phase I project whilst the TCTA, LHDA had engaged consultants for various aspects of the development of Phase II²⁹.

25 <https://www.ndb.int/wp-content/uploads/2017/01/information-disclosure-policy-revised.pdf>

26 <https://www.ohchr.org/sites/default/files/Documents/Issues/IntOrder/GlobalGovernanceSpaces/InternationalAccountabilityProject.pdf>

27 <https://www.oxfam.org.za/wp-content/uploads/2021/08/oxfam-ndb-report.pdf>

28 <https://www.oxfam.org.za/wp-content/uploads/2021/08/oxfam-ndb-report.pdf>

29 <https://online.fliphtml5.com/jepwe/wvdy/#p=20>

07

NDB APPROACH TO FINANCING

The NDB is widely known to loan its member states only. In order to be eligible for funding; International organizations that fall within the scope of the NDB Policy on loans with sovereign guarantee have to have the legal capacity to borrow, and to finance projects that are eligible for NDB funds according to the Agreement on NDB; and be a member country(ies)/shareholder(s) of NDB³⁰. However, the New Development Bank (NDB) being a multilateral development bank with the objective of financing infrastructure and sustainable development projects in BRICS and other emerging economies and developing countries; supports and adds value to the efforts of other financial institutions working towards global growth and development. For it to fulfil its mandate and purpose, it has to support public and private projects by availing loans, guarantees, equity, participation and other financial instruments. These are however guided by Policy frameworks that include.

Policy on Financial Management and Financial Analysis, and Economic Analysis of Projects

The NDB policy on the Financial and Economic Analysis of Projects (FEA)²² states that in order for the NDB to comply with articles 21(vii)xii and article 13(e)xiii of its articles of agreement, it must assess the economic and financial viability of its projects and requires sound financial management practices to be followed by its clients. According to section 18 of the FEA policy, the financial

³⁰ Policy on Loans to International Organizations, page 3

and economic analysis of a project is appended to the project document for the Board, and this can, where necessary and after redacting, be disclosed in accordance with the NDB's IDP³¹. The financial and economic analysis of projects is really important in order to assess sustainability and these do not appear to be publicly available (i.e. one would have to request it through the NDB's information disclosure procedure – and even then, some information may be redacted from the documents). For the LHWP II, this information was not readily available from the NDB and the institution did not avail it even upon request. The information on the financial status of a number of projects were however found on the TCTA website where the latest report is for 2019 to 2020³² where the LHWP II is bundled amongst 6 other projects being implemented by the TCTA.

Co-Financing for the Lesotho Highlands Water Project Phase II

LHWP II has an estimated capital expenditure cost of R32.6 billion and, as with the previous phase, is funded off-budget, meaning funds are borrowed from financial markets. In May 2021, TCTA concluded funding agreements to the tune of R15,4 billion with commercial banks ABSA, Investec, Nedbank, RMB and Standard Bank, and infrastructure financier Development Bank of Southern Africa.³³ The organisation will use the funding to refinance existing debt and to fund capital expenditure on LHWP-2. Of the total funding of R15,4 billion, TCTA has earmarked R3.6 billion for the refinancing of the R9,4 billion WSP-5 bonds, which matured on 28 May 2021. The balance will contribute to LHWP-2 capital expenditure. TCTA relies on the revenue it generates from the IVRS water sales to service the loans it raises towards LHWP, a sustainable, bankable, bulk raw water infrastructure project with an explicit government guarantee. The South African Government is responsible for the full water transfer costs both TCTA and the LHDA incur. These costs are included in TCTA's statement of financial position³⁴. For the NDB, its R3.2 billion contribution to the LHWP is largely aligned to the Banks policy on Partnerships with National Development Banks wherein Section (D) on Forms of Cooperation that the NDB will promote cooperation with the development banks of its member countries and endeavour to form mutually beneficial partnerships with them. The NDB intends to engage in interactions such as Financing and co-financing of projects; Lines of credit, including two-step or back-to-back loan facilities; Currency, interest rate swaps and other derivatives; and Issuance of bonds amongst other forms of cooperation.

Co-Financing Arrangements

New Development Bank - The NDB approved a ZAR 3.2 billion loan to South Africa towards implementation of the second phase of Lesotho Highlands Water Project (LHWP) through Trans-Caledon Tunnel Authority (TCTA). Lesotho will be the country that implements this project with the total cost estimated to be M32 billion, the NDB has financed the Tunnel construction of this project with M3.2 billion hence accounting for 10% of the total cost. The remaining balance will be financed by other Multilateral Development Banks, commercial and institutional investors through Bond Issuance by TCTA.

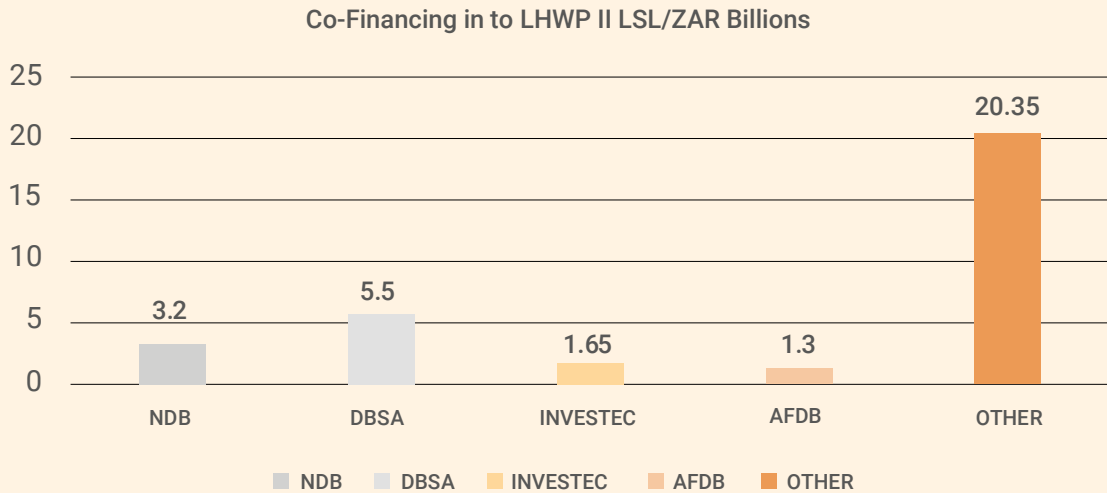
31 <https://www.ndb.int/wp-content/uploads/2020/08/4-2020-Revised-Policy-on-Financial-Management-and-Financial-Analysis-and-Economic-Analysis-20160121.pdf>

32 https://www.tcta.co.za/wp-content/uploads/2021/07/38a8cb_bbd0062d8897428fbb24902047876c55.pdf

33 <https://www.tcta.co.za/case-study/lesotho-highlands-water-project/>

34 <https://www.tcta.co.za/case-study/lesotho-highlands-water-project/>

Figure 2: Co-Financing into LHWP II



Source: Trans-Caledon Tunnel Authority 2021

Development Bank Of Southern Africa

On the 1st June 2021, TCTA and DBSA announced their conclusion of the two loan facility agreement totaling M5.5 billion and spanning 20 years, for the implementation of phase II of LHWP. The investment comprises M3 billion and M2.5 billion loans and was negotiated alongside other facility agreements with the five major banks in south Africa for a total of M15.4 billion. TCTA concluded funding agreements to the tune of M15.4 billion with commercial banks ABSA, Investec, Nedbank, RMB and Standard bank and infrastructure financier Development Bank of Southern Africa.

Investec

Investec was part of the M15.4 billion funding initiative for the TCTA, of which Investec provided a M1.65 billion term facility over 15 years. This money will form part of the funding given to TCTA for the construction of the Lesotho highlands Water Project Phase II in the district of Mokhotlong. This financing transaction will form part of the Investec commitment of ensuring that they fund and contribute to making safe and affordable drinking water for all.

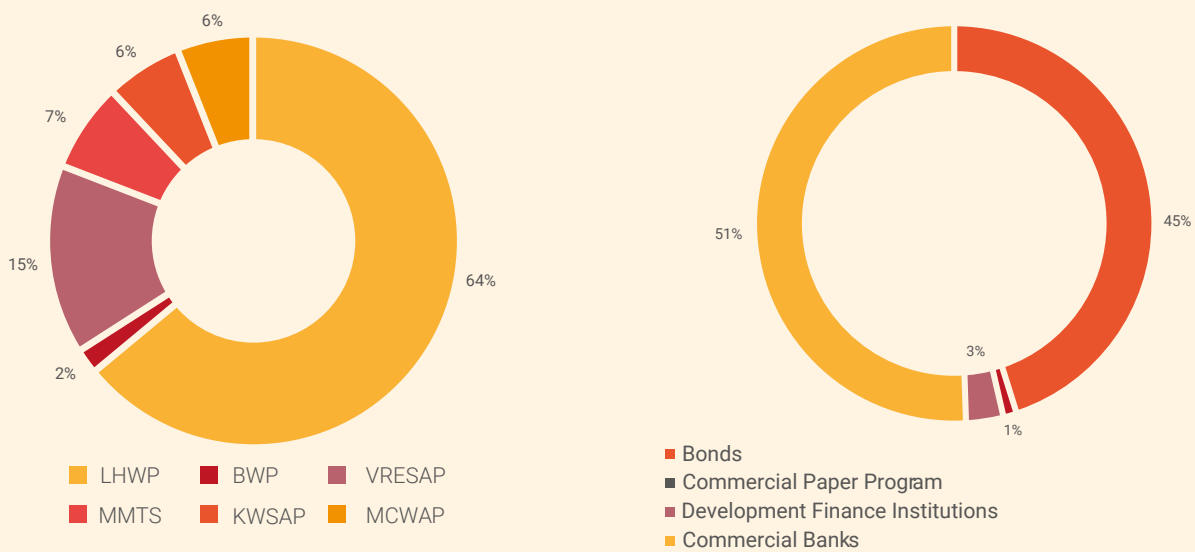
African Development Bank

On the 11th October 2021, the LHDA CEO announced the approval of the AFDB funding of M1.3 Billion. The Bank stated that South Africa’s TCTA will use the money to co-finance the construction of the Polihali Dam by building a tunnel, roads and bridges that will extend electricity and other development infrastructure to Lesotho.

Fiscal and Debt Sustainability

Given that the TCTA is the borrower of the loan from the NDB, any debt accrued is owed by the TCTA. The TCTA's 2019-2020 Annual Report shows that by March 31 2020; the TCTA owed at least R20.8 billion dollars to various lenders wherein the Lesotho Highlands Water Project accounted for 64% (Figure 2) of the debt which amounts to an estimated R13.3 billion³⁵. Most of the debt owed is largely owed to commercial banks 51% and through bond issuances 45% hence loans from development financial institutions such as the NDB account for 3% (R626.4 million). Of the total debt owed as at March 2020, 96% of it was long term liability whilst 4% was short term.

Figure 3 TCTA Debt Stock by Project and Funding Instrument 2020



Source: TCTA Annual Report 2019-2020

35 https://www.tcta.co.za/wp-content/uploads/2021/07/38a8cb_bbd0062d8897428fbb24902047876c55.pdf

08

KEY FINDINGS

OPPORTUNITIES, RISKS AND CHALLENGES POSED BY THE NDBS FINANCING OF THE LHWP II

Opportunities

Provision of Development Financing

It is no doubt that the NDB plays a critical role in the provision of project financing for the LHWP II and its contributions supplements towards funds from other lenders such as the AfDB, DBSA and other commercial lenders to improve the provision of water and hydropower to South Africa and Lesotho respectively. Such funds should continue to be availed but that respect to the core principles of sustainable development and protecting the rights of communities from the adverse impacts of mega projects. In this respect, the NDB should ensure that project operation of the LHWP II addresses Environment and Social Management with respect to environment, involuntary resettlement of indigenous peoples and also equally address issues of gender equality in respect to compensation of female headed households.

Challenges

Environmental and Social Impact Assessments

Whilst the ESIA were conducted by two consultancies, Sechaba Consultants and Environment Resource Management (ERM). These companies approached village dwellers that would be affected through convening community gatherings and informing them about their plans. According to the Lesotho Environment Act 10 of 2008 and associated guidelines, the Phase II Project must have

environmental authorization in agreement with the Department of Environment. Thus, the LHWP II worked or utilized the Environmental Management Policy (EMP) and ESIA in its consultations with communities.

The LHDA convened community gatherings in the Mokhotlong Area to inform communities to be affected about the project, expectations and possible impacts. The LHDA informed communities that would be affected about the compensation that would be received, but did not provide them with a clear understanding about the compensation policy and what their rights were regarding resettlement packages.

Community and Stakeholder Participation

Did the LHDA provide adequate information disclosure to communities?

In interviews conducted by SOLD to the communities to be affected, it was discovered that 1597 Households, 7992 people are to be relocated. Most of them are to lose households, land, fields, fruit trees, cemeteries, kraals and family bonds. SOLD also discovered that at least 10 villages are to face involuntary resettlement and 5 villages will not face resettlement but have been and will be affected by the Polihali dam construction (Table 1).

Caption 4: Snapshot of Community Engagement on Impacts of LHWP II



Source: Survivors of Lesotho Dams 2021

Information Disclosure

A Community Perspective

When asked about the information disclosure from LHDA about the Phase II Project and what it entails or how it will even affect them, at least 80% of community members engaged in Masakong the data collection process claimed to not understand it or how it would work. They knew that they were to be relocated and that most of their livelihood will be affected. How or when they were going to be

relocated is something they had no clue on. Whilst the LHDA did consult with communities about the impacts of this project to them, respondents highlighted that the explanations had not been clear cut as they were left with more questions unanswered. Community leaders or representatives claimed that they did not understand the impacts or how the compensation policy would be implemented. However, a smaller proportion of people believe that this relocation and construction of the Dam is for their benefit in the sense that they are of the view that they are going to have access to water, better roads and health care as promised by the LHDA. It remains to be seen whether some of these benefits will materialize given the challenges the LHDA gave communities in the initial LHWP I.

A Media Perspective

In a recent interview with relevant media Houses about how information of the NDB funding was disclosed to the public especially communities to be affected, it was discovered that there was none! According to reporters at Public Eye, Lesotho Times and MNN Center for investigative Journalism (Media houses who cover LHWP news) there was no information disclosure about the NDB funding or what it entails, let alone how the money was going to be used. They read the media briefing from other news outlets, mostly from South Africa but were never informed about it from the Development Authority in Lesotho.

The LHWP II and Community Grievances

How are the communities benefiting from this Project?

Given that the project was launched in November 2020, communities have not benefited from the project in a way that the LHDA has pointed out through consultations. However, The LHDA promised to compensate each and every one of the affected households³⁶. Recent discoveries from the survey conducted reveals that there are people within the community who found parts of their land such as fields, already taken and implemented without their knowledge. When they made raised concern about it, the contractors claimed they were given the go ahead by the LHDA to use the land hence; this makes this process very questionable especially given that neither person of the used land has been compensated for that particular land. The latter brings up the question, should financial institutions funding these large projects play a bigger role within compliance and accountability? This is because in as much the NDB is financing the project, it has financed the project which largely uses the AfDB ISS. Despite the AfDB having an Independent Review Mechanism which should allow for voices from affected communities to be heard, communities are not informed about the existence of the AfDB IRM or the process by which they can be able to access this mechanism such as when they may be disenfranchised from their land due to displacement. Independent accountability mechanisms (IAMs) are an important form of protection for communities as must be made accessible if they are to be effective in playing their role to serve as a direct accountability path between IFIs and affected communities. For this reason, it is important that the NDB establish an effective and accessible IAM.

Impacts on Women and Community Health

When looking at how many vulnerable people would be affected by this project, the study did not find any with disabilities but more than 50% of the participants in Ha Phohla and Masakong claimed

36 <https://online.fliphtml5.com/jepwe/wvdy/#p=40>

to have chronic diseases such as; high blood pressure, diabetes and heart conditions³⁷. The women identified how the phase II project has affected them and their livelihoods in that there has been a clear deterioration of their livelihoods in which they are no longer able to fetch wood or access quartz stones to build their houses as they used to. Instead, women are chased away by construction workers. The areas where women used to collect the quartz stones are now construction sites. So, the question remains; is development, still development if it leaves those it has affected impoverished or worse than when they found them before?

Impact on Livelihoods

About 60% of the communities to be affected are unemployed and survive on farming, and rearing livestock to put food on the table. Only a few (2%) were employed through this project as unskilled labour, and one of them was later discharged because of health problems. Some claim to sell the produce they make from their fields to social markets in the area like supermarkets and taxi ranks. The community says that this relocation is going to affect how they make a living and support their families. Those who own livestock, make a living by selling wool and mohair.

According to the survey conducted by SOLD, children of the families interviewed cannot read and write, which depicts illiteracy within the community therefore, communities fear that the relocation is going to affect their lives negatively because travelling to school might take longer than anticipated claim it's not rich with nutrients therefore it will be difficult for their livestock. Judging from the community survey conducted, it can be concluded that communities stand to lose the following:

- **Households** - there was an observation that many families have lost significant assets and these include residential and agricultural plots of land, some people indicated that they were using them for daily living like ploughing vegetables to put food on the table, fields, trees, business plots and all of the mentioned are what communities used for commercial purposes.
- **Community Assets** - Mostly assets that are owned by the communities as a whole, these assets will include fields, fruit trees, fuel trees and thickets. These kinds of assets are usually controlled by the head chief.
- **Institutions** - the institutions that can be identified will be schools, churches and the clinics. The assets that will be affected for schools and the clinics are plots, fields and gardens. While the assets that will be affected for the churches are fields, plots and fuel trees.

With the above mentioned, it's clear that communities stand to lose a major component of sources of livelihoods, their cultural beliefs and their way of life. Most stand to lose generations of inheritance which they could have passed on to their children and those after them. The majority of communities mentioned that they fear that this project will not protect their livelihood, they fear the new communities they have yet to meet and how they will welcome them. Some say they do not see how this project will even benefit them as they are only getting 50 years of compensation when it should be a lifetime compensation given that they are uprooting their entire lives, giving up legacies

37 Focus group discussion, Ha Phohla, November 2021

like land they acquired from their fore fathers - land that would benefit them their whole lives and will continue to do so after they have passed for a mere 50 years of compensation. They also say that they thought they would have access to clean water, health and roads but are being moved to areas that are worse than their current ones. What stands out currently is the fact that communities that would be relocated will be relocated to a place called Makalong, an area which does not have access to clean water and the water sources (river streams) are far from the village thereby limiting access to water and fishing points for the resettled villagers.

Risks

Fiscal Sustainability

Whilst it is now evident that the financing of the LHWP II by the NDB is largely the responsibility of the Trans-Caledon Tunnel Authority, it is important to note that the authority's debt stock of R20.88 billion is largely constituted by a large share of the LHWP II (64%). Most of the debt is largely comprised of bonds and commercial bank loans that are traditionally provided at higher rates as compared to that of national development banks and international development finance institutions.

Whilst bonds and commercial loans provide the required capital to ensure large infrastructure projects such the LHWP II it is important to highlight that often times, these instruments come with challenges that include the fact that bonds are traditionally denominated in hard currencies such as the United States Dollar (USD\$) and they come with them foreign exchange risks where any forms of devaluation could generate more debt. For both bonds and commercial loans, interest rates can change thereby increasing the cost of the debt making it difficult to restructure bonds due to the large number of creditors involved in the deal as can be seen in the LHWP II where more than five financial institutions are involved. Over and above, in the absence of a viable sinking fund, the debt may be unsustainable³⁸. This thereby calls for the NDB to re-evaluate its co-financing arrangements within the scope of debt sustainability of countries such as South Africa (69.9% debt to GDP ratio³⁹) and Lesotho (62.8% Debt to GDP⁴⁰) whose debt statistics render them vulnerable to debt crises.

38 A sinking fund is a fund containing money set aside or saved to pay off a debt or bond

39 <https://www.bloomberg.com/news/articles/2021-12-15/south-african-state-debt-nears-100-of-estimate-for-fiscal-year#:~:text=The%20National%20Treasury%20revised%20its,estimate%20of%204.38%20trillion%20rand>.

40 <https://www.afdb.org/en/countries-southern-africa-lesotho/lesotho-economic-outlook>

09

CONCLUSIONS AND RECOMMENDATIONS

The NDB and ARC play an important part in the identification, preparation and financing of projects for South Africa and or in South Africa's areas of interest and contract various institutions for the implementation of projects in which their finances are utilised. The finances are important in complementing government efforts in the provision of services however, in the identification to implementation of projects there has been limited comprehensive participation of key stakeholders, the limited application of NDB policy(s) on the LHWP II which has resulted and will result in some negative impacts being shouldered by communities who would have expected the project to bring sustainability to their communities and livelihoods. As such, this briefing paper sets out policy and structural recommendations for key stakeholders in the project to consider as the project is still under implementation.

Recommendations to the New Development Bank and Africa Regional Centre

Stakeholder Consultations

- The NDB should undertake due diligence for contracted and sub-contracted consultants for projects it is involved in to ensure that processes regulated under its policies such as the ESF are in alignment with what is on the ground in respect to stakeholder participation, which includes convening

meaningful consultations with affected communities to address concerns on compensation, relocation and loss of livelihoods. The NDB should not only act as just a provider of funds but ensure that its funds are utilized within the principles of business and human rights and its policy frameworks where country systems are weak.

Grievance Redress

- The NDB needs to develop a grievance and accountability mechanisms that ensure that socio-economic impacts from projects it finances or co-finances are addressed and compliance on accessing its funding are put to use within the confines of both country systems and NDB policy frameworks. When developing this Independent Accountability Mechanism, the NDB and its clients must ensure that they inform communities on how to access and effectively utilize its provisions in languages best understood by the communities.
- The grievance and accountability mechanism should allow for community voices to be heard, especially when experiencing negative impacts from co-financed projects. As such, the NDB must inform its stakeholders on how it can be held accountable for such projects where there is co-financing and or the use of policies and frameworks other than the NDB's so that the projects do not leave communities in worse of situations as a result of the projects it finances.

Information Disclosure

Article 15 of the Articles of Agreement - the founding document of the New Development Bank (NDB) - stipulates that, the NDB "shall ensure that its proceedings are transparent and shall elaborate in its own Rules of Procedure specific provisions regarding access to its documents". As it is stipulated in the IDP, the NDB and ARC should ensure that project documents are availed as per requests made by the public and ensure transparency in the requisition process. As such, the NDB must align its practices of ensuring that stakeholders are acknowledged within the stipulated 5 working days and adequately responded to with requested information in the 30 days as stipulated by the IDP.

Recommendations to the Government of Lesotho and South Africa

- This briefing paper recommends that there must be a review of the Lesotho Highlands Water Project Treaty and its associated policies. This is to ensure that community needs, concerns and aspirations are incorporated within the Treaty revision to ensure the comprehensive sustainability of the development programs that would positively change the lives of the affected communities as the current only focus on water and electricity production.

Recommendations to Parliaments of Lesotho and South Africa

- The oversight function of relevant parliamentary caucuses of both countries should be strengthened to ensure that affected communities' rights are respected and upheld by law.

Recommendations to Civil Society, Communities, Trade Unions and the Fourth Estate

- Civil Society Actors remain a key bridge between communities and governments and development finance institutions. They must provide support to affected communities to ensure that policy and practices are aligned and community voices are heard and concerns addressed.

REFERENCES

- AFDB (2019), AFDB Project: Lesotho Highlands Water Project Phase (LHWP II),” Environment and Social Impact Assessment Summary for Polihali Reservoir & Associated Infrastructure”.
- Compliance Division (2016), New Development Bank Anti-Corruption, Anti-Fraud and Anti-Money Laundering Policy
- Fortaleza (2015), Agreement on the New Development Bank
- Lesotho Environment Act 2008.
- Lesotho Highlands Water Project Compensation Policy 2016.
- LHDA (1987), 1986-10 Treaty on LHWP between Lesotho and RSA, vol 1.
- LHDA- LHWC (2016), Lesotho Highlands Water Project (LHWP): LHWP Phase II Compensation Policy, Vol 8.1.
- LHDA (2012/2013), Annual Report
- The New Development Bank (2019), “Policy Processing of Sovereign Loans and Loans with Sovereign Guarantee.” vi: 1-5.
- The New Development Bank, Policy on Loans to International Organizations, page 3.
- <https://www.afdb.org/en/documents/spn-lesotho-construction-polihali-transfer-tunnel-lhwp2>.
- New Development Bank (2020), “Host Country Agreement with South-Africa” [https://www.ndb.int/wp-content/uploads/2017/01/Host-Country-Agreement](https://www.ndb.int/wp-content/uploads/2017/01/Host-Country-Agreement%20with-South-Africa.pdf) with-South-Africa.pdf
- <http://www.ndb.int/>
- <https://www.afdb.org/en/documents/spn-lesotho-construction-polihali-transfer-tunnel-lhwp2>
- Nieuwenhuis, J. 2010. Qualitative research designs and data gathering techniques. In Maree, K, Creswell, J.W, Ebersohn, L., Eloff, I, Ferreira, R., Ivankova, N.V., Jansen, J.D., Nieuwenhuis, J. Pietersen, J, Plano Clark, V.L., Vander Westhuizen, C. eds. **First Steps in Research**. Pretoria: Van Schaik Publisher.

APPENDIX A

QUESTIONNAIRE A

Lesotho Highlands Water Project – Phase II Questionnaire

This questionnaire has been prepared for household members affected by Polihali Dam. This questionnaire will be translated into Sesotho for community understanding. The interview is intended to ask for your views regarding financing guidelines for Polihali Project by New Development Bank. It is about Compensation Policy of LHDA and benefits from Polihali Project. The ultimate purpose of your views is to influence and to change government policy and other financiers towards dam development and towards policy of LHDA in particular.

Name				
Surname				
Place of Residence				
Age				
Male		Female		
Level of Education	Primary Level	Secondary Level	High school Level	Tertiary Level
YES				
NO				
What is your position at work?				
What are your responsibilities?				
Have you been guaranteed water and sanitation by LHDA?				
How do you make a living/ what is your source of Income?				
Do you know of the cost of Polihali Project?				
Have you heard of New Development Bank (NDB)?				

Has LHDA told you about NDB and its financing guidelines?

What benefits have been promised by LHDA?

Which other funding agencies have put money into Polihali Project

Do you know about the compensation policy of LHDA?

Were you consulted when the compensation policy was developed?

If yes, what did you say the policy should be composed of?

What kind of skills do you possess?

Have the LHDA Cooperatives been useful to you?

YES NO

If yes please explain?

Have you ever been affected by such a development before?

YES NO

If yes please tell us how and when

Were you compensated for the loss of your property?

What was your means of livelihood before the project?

What was your expectation when you heard about such a project as an individual?

What was your expectation when you heard about such a project as an individual?

If you were to choose any method of compensation, which one would you have chosen between the following?

Money Arable Land Both

What positive impacts did you hope the project would have in your community?

Did LHDA promise you a share of royalties

Did LHDA tell you of the financing sources for Polihali Project

APPENDIX B

QUESTIONNAIRE B

This questionnaire has been prepared for former/present government officials who participated in the Polihali negotiations and LHDA/NGO/Media representatives who had interest in the financing of this project. The interview is intended to ask for your views regarding the financing of Polihali Project. The ultimate purpose of your views is to instil transparency and accountability in the funding of Polihali Project.

Lesotho Highlands Water Project-policy decision and management Questionnaire

Name				
Surname				
Place of Residence				
Age				
Male		Female		
Level of Education	Primary Level	Secondary Level	High school Level	Tertiary Level
YES				
NO				
What is your position at work?				
What are your responsibilities?				
For how long have been in this capacity				
Were you involved during the negotiations for Construction of Polihali Project?				
What role did you play in those negotiations?				
What was introduced as a major intention of this Project?				
What are benefits of Polihali Project to the affected communities?				
What was the nature of agreement with the South African government?				

From which sources is Polihali Project financed?

Do you know about the New Development Bank (NDB)?

How much has NDB contributed in the financing of Polihali Project?

Are you aware of the NDB financial guidelines?

Are you aware of the NDB environmental and social guidelines?

Which are the key NDB environmental and social requirements?

Do you know if the LHDA complied with NDB environmental and social requirements for Polihali Project?

Do you know how LHDA conducted Public participation?

YES NO

If yes please explain?

If the LHDA has not complied with NDB environmental and social requirements do you think Polihali Project should be halted?

Do you know how much is a total cost of Polihali Project?

How easy is it to access information and documentation about Polihali Project from LHDA?

What are your views about financing of dam development in Lesotho?

ANNEX

Following the Validation of this paper, the Lesotho Highlands Development Authority (LDHA) CEO Mr Tente Tente raised concerns of factualities of statistics regarding relocation of communities and the impacts of the Lesotho Highlands Water Project which AFRODAD together with SOLD indicated they would further research on and clarify with the LHDA CEO and his team. AFRODAD requested a fact verification meeting with the LHDA to no responses after atleast three follow ups AFRODAD decided to proceed and publish this study.

This non response to Information Disclosure requests depicts the very challenges that civil society faces in seeking project information from the NDB and undermines the ethos of transparency and accountability that ought to be standard in monitoring projects financed through public funds.



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