
Action Plan

A. Ensure that Minister of DWS comply with SA Legislation.

The Minister of Water and Sanitation is the public trustee of the nation's water resources (in terms of article 3(1) of the National Water Act (Act 36 of 1998) (RSA, 1998) she *"must ensure that water is protected, used, developed, conserved, managed and controlled in a sustainable and equitable manner, for the benefit of all persons and in accordance with its constitutional mandate"*. (RSA, 1998)

The Minister must ensure that augmentation projects like LHWP II are implemented on time, effectively and to the benefit of all the people of Gauteng. She should be challenged to prove this as her actions shows the contrary e.g. by delaying the implementation of LHWP II.

This is in line with what Professor Mike Muller said earlier this year at the SAICE conference (Muller, 2016) *"I venture to say, because we keep changing Ministers, I don't think the Ministers actually even understand what needs to be done."* He urged that Ministers be challenged to explain why they were taking so long. *"Ask them to explain why the Lesotho government has asked South African parliamentarians to come and discuss the delays, which I believe has just happened,"* Muller said, adding that he found it interesting that Lesotho should have to *"very politely"* call the South African government to account for the delays.

Action: OUTA challenged the Minister of DWS. The Minister must now prove that her actions over the last few months was not delaying LHWPII and not disadvantaging to all the people of Gauteng.

B. All Representatives must honour the Treaty, Protocol VI and Agreement for LHWP II

The Treaty as amended with Protocols I to VI are well thought through and sound documents based on international best practice for projects of this size and complexity. All the hard lessons learned during Phase I has been incorporated in these binding bi-national agreements. The respective governments and the Ministers and their delegated officials now have the responsibility to honour the detail of these agreements. Based on the items raised in sections 5.1.4, 5.1.5 and 5.1.11 there are at least three direct contraventions of these agreements.

i. Re-instate the Board of the LHDA to replace the current interim Board

Protocol VI of 1999 is very clear on the composition and functioning of the Board of the LHDA. Due to the importance of the Board the particular article will be quoted here: (Protocol VI, 1999)

"Article 7 of the Treaty is hereby amended by deleting paragraphs (37) and (40) and by substituting the following paragraphs for the corresponding paragraphs in the Treaty and adding paragraphs (41) to (44):

The Board shall be accountable to the Lesotho Highlands Water Commission, shall give it its full co-operation and give full effect to the applicable provisions of Article 9.

(33) (a) *The Lesotho Highlands Development Authority shall be managed and controlled by a Board which shall be appointed by the Lesotho Highlands Water Commission and **shall comprise executive and non-executive members appointed on merit and for such skills as may from time to time be determined by the Lesotho Highlands Water Commission** provided that at least one non-executive board member shall be appointed from the public at large by virtue of his or her prominence or stature.*

(b) *The non-executive members shall be appointed from nominations submitted by Lesotho and the executive members from nominations submitted by the Chairman of the Board.*

(c) *The Chairman and Vice-Chairman of the Board shall be appointed by the Lesotho Highlands Water Commission from among the non-executive members of the Board.*

(34) (a) *The Board shall in accordance with the provisions of the Treaty establish the operational policies of the Lesotho Highlands Development Authority on all matters with which it is entrusted.”(Protocol VI, 1999)*

When Minister Mokonyane was questioned on the removal of key people in the delegation on the LHWP (City Press, 2016) her spokesperson at DWS responded that “*it is all about transformation*” and “*the halting of procurement was prompted by the need to incorporate transformation objectives ensuring that black people, women and the disabled and poor communities benefitted*”. This statement may be applicable to government policy in South Africa but does not tally with the specific requirements of the highly technical skills and expertise needed for a major international project as clearly stipulated in the Protocols and Agreement.

Action: OUTA expressed its concern about the LHDA six month’s gap without a Board in 2016. OUTA demanded an urgent appointment of a new board representing the necessary technical skills and expertise needed for a major international project as clearly stipulated in the Protocols and Agreement.

ii. Ensure that the Technical Sub-Committee is reinstated and fully functional

The proper functioning of the TSC is not only essential to the technical integrity of LHWP II but also a legal requirement in terms of Article 6 (1) (a) of the Agreement of 2011:

“The Board of the Lesotho Highlands Development Authority shall establish a Technical Sub-Committee to advise and assist the Board with regard to technical, engineering, environmental and social matters relating to the implementation of Phase II. The Technical Sub-Committee shall be chaired by a member of the Board and comprise members of the Board and external specialist members appointed by the Board in consultation with the Lesotho Highlands Water Commission.”

If the Technical Sub-Committee indeed stopped functioning after end of March 2016 and no new external technical experts were appointed to this committee as provided for in the Agreement (LHDA, 2011) then it must be rectified with urgency.

Action: OUTA expressed its concern to the Minister about the delays aggravated by the non-functioning TSC in 2016. OUTA demanded the urgent appointment of a new TSC with members appointed in accordance with Article 6 (1)(a) of the Agreement of 2011.

iii. Utilise the expertise and skills based in the Project Management Unit

The Project Management Unit (PMU) is another institution specified by the Agreement (LHDA, 2011) and as was discussed in section 5.1.6 above there is a PMU in place that is staffed by professionals “*with experience in the construction and implementation of large water resource and hydropower projects*” and the PMU was “*competitively procured through an open tendering process*”.

In conclusion it can be stated that the LHDA is in the fortunate position to have a powerful resource available in the form of a PMU. The PMU must therefore be used and acknowledged as stipulated in the Agreement. Article 2 (a) rules that the PMU has the task to: “*oversee and manage the implementation of phase II and (the LHDA) shall delegate to it the powers necessary for this purpose*”(LHDA, 2011)

A capable PMU will however be of no real value if the PMU is underutilized or even worse totally bypassed through political or corrupt efforts.

Action: OUTA insisted that the PMU is used as prescribed. If not, then such action should be viewed as another direct violation of the Agreement.

iv. Ensure that the LHDA anti-corruption policy is enforced

The LHDA anti-corruption policy has built on the lessons learned from the corruption trials following LHWP I and it rests upon all involved to ensure that this policy is followed in all dealings of the LHDA. This is clearly stipulated as “*all persons or entities involved in the project must observe the highest standards of ethics* (Article 6 of the Anti-Corruption Policy) (LHDA, Oct 2011).

Specific attention should be drawn to the definitions of corruption including a “corrupt practice, a fraudulent practice, a collusive practice, a coercive practice” as well as an “obstructive” practice. (LHDA, Oct 2011)

Action: OUTA demanded an undertaking from the DWS Minister that she and her representatives on the different LHWP structures are fully committed to keep to the stipulations contained in Protocol VI and the Anti-Corruption Policy.

v. Check that all fines from the LHWP1 corruption trials were paid.

As outlined in section 2.2 above several individuals and companies were found guilty during the corruption trials following the implementation of Phase I of the LHWP. Heavy fines were imposed on Mr Sole , Acres, Lahmeyer and other companies. The LHWP has demanded that the bribes be paid back to the project as they are a cost to the project. Interesting to note that in an article in 2004 it was reported that Acres had not yet paid by that time. (*Khuzwayo, 2004*)

Action: OUTA demanded acknowledgement from the Minister to check that all these fines were indeed paid to the project. These fines can reduce the total cost to the taxpayers in SA as the fines may cover some of the cost incurred in the projects.

vi. Check position of Mr Sole as contravention of anti-corruption policy.

The mere fact that Mr Sole was found guilty in corruption trials following LHWP I should have been ample reason for the parties not to bring him close to anyone involved in the project. The LHWC should answer if allegations as raised in City Press are correct that Mr Sole is now an advisor to the Minister of Energy, Meteorology and Water Affairs who represent the Kingdom of Lesotho in dealings on the LHWP.(City Press, 2016) It can be legally challenged if his case was formally discussed at the LHDC as required by the anti- corruption policy and secondly if this is indeed a contravention of the anti-corruption policy (see articles 6 and 14):

“6. All persons or entities involved in the project must observe the highest standards of ethics. (LHDA, 2011)

14. Where...any individual was previously involved or implicated in corruption....such individual may be excluded from any involvement of the Project. (LHDA, Oct 2011)

Action: OUTA demanded that the Minister provide comprehensive feedback whether the position of Mr Sole was formally discussed at the LHDC as required by the anti- corruption policy and secondly if this was not viewed as a contravention of the anti-corruption policy. If this decision was flawed, the Minister must indicate to the citizens of South Africa what she and her team will do to address the issue.