

# **DAMS IN LESOTHO- A DEVELOPMENTAL CHALLENGE!**

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## **1. INTRODUCTION**

Lesotho Highlands waters have been a long time dream that was only realized in 1986 in a Treaty concluded between the governments of Lesotho and the Republic of South Africa. The objective of the Treaty among others is to transfer water from the mountains of Lesotho to the thirsty Gauteng industrial area. Article 4 of the LHWP Treaty stipulates thus about the purpose of the Lesotho Highlands Water Project.

4(1) the purpose of the Project shall be 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 effect 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.

4(2) Without prejudice to the provisions of paragraph (1) each Party shall be allowed the opportunity to undertake ancillary developments in its territory, including:

- (i) the provision of water for irrigation, portable water supply and other uses;
- (ii) the development of other projects to generate hydro-electric power; and
- (iii) the development of tourism, fisheries and other projects for social and economic development.

The purpose of this article is to discuss two main topics:

- Whether the LHDA compensation policy and Treaty have facilitated development for communities affected by the Lesotho Highlands Water Project (LHWP)
- Participation has become an important leg of a democratic culture, LHWP experience, prepaid meters and a right to water and general politics of water
- Conclusion and recommendations

## **2. WHETHER LHDA COMPENSATION POLICY AND TREATY HAVE FACILITATED DEVELOPMENT FOR COMMUNITIES AFFECTED BY LHWP**

### **INTRODUCTION**

Many writers have written much on development as a concept; and how development has been seen in both the North and the South. For the writer of this article development is simply a critical awareness of peoples' situation, empowerment of the people to cope

with the stresses of life. The article therefore examines whether the LHDA facilitated development has helped communities affected by the activities of the LHWP.

### **LHDA COMPENSATION POLICY, LHWP TREATY, LHWP Order of 1986, LESOTHO CONSTITUTION**

The above are legal frameworks of Compensation for communities affected by the LHWP activities. Articles 7(18), and 15 are relevant to the compensation issues. Article 7 (18) reads thus:

The Lesotho Highlands Development Authority shall effect all measures to ensure that members of local communities in the Kingdom of Lesotho, who will be affected by flooding, construction works, or other similar Project related causes, will be enabled to maintain a standard of living not inferior to that obtaining at the time of first disturbance: Provided that such Authority shall effect compensation for any loss to such member as a result of such Project related causes, not adequately met by such measures.

#### **Article 15 adds:**

The parties agree to take all reasonable measures to ensure that the implementation, operation and maintenance of the Project are compatible with the protection of the existing quality of the environment and, in particular, shall pay due regard to the maintenance of the welfare of persons and communities immediately affected by the Project.

Section 44 (2) of the LHDA Order of 1986 provides that LHDA shall ensure that as far as is reasonably possible the standard of living and the income of persons displaced by construction of an approved scheme shall not be reduced from the standard of living and the income existing prior to the displacement of such persons.

#### **The Lesotho Constitution**

Article 17 of the Constitution requires the prompt payment of full compensation for compulsory acquisition.

The article argues that despite the provisions above LHDA has not only failed to deliver on the promises, but has failed on the participatory sustainable development too. I am also not aware that LHDA has acted on article 7 (31) of the Lesotho Highlands Water Project Treaty provided for LHDA to take out insurance against risks and public liabilities. LHDA has not taken out insurance at all or if it has done so it has kept it a secret, and has not allowed members of the public to claim directly from the insurance company. Many grievances from communities have been rejected by the LHDA. Had insurance options been followed, communities could have been assisted. LHDA has reneged on the promise that they would give communal compensation to Matala

community; they have failed to pay on time compensation for communities along the Mountain road, who were affected by the construction.

The LHDA Rural development scheme died at the beginning and the panel of experts advised that it be abandoned as it was being used for political patronage; the MPs were taking public money in suit cases; the money “ultimately got lost or was visited by rats”.

A number of studies, including those commissioned by TRC reveal that the standard of living for communities affected by LHWP has deteriorated. One cause of this is the **loss of land** for these communities. Before resettlement communities had access to land, but after resettlement they have none, or where it is little they have to cropshare. Speaking for themselves in the **Irony of the White Gold booklet**, communities have a feeling that their standard of living is indeed lower than before resettlement; they say their life before resettlement was better than their life after resettlement because they were getting free access to clean running water; they were getting fresh produce all year round. From pieces of land they had they produced pumpkins, peas, beans, potatoes, etc. after resettlement they are no longer getting this produce. They were also sharing fields with those who did not have them, **an African social bond**. With the fields they had, they were able to send their children to school; after resettlement this is no longer possible. The say cash economy is impoverishing everyone. They suddenly have to buy everything **even water, the basic natural and social good**. They also complain that there is no brotherly love anymore; everyone is for himself. Describing their condition after resettlement communities say they are worse off. Even training that is normally provided by LHDA is often said to be inadequate. Above 77 percent of communities affected by LHWP have this feeling.

Showing the downtrend in the lives of communities affected by LHWP, the Country’s Ombudsman 2003 and 2006 reports reveal that LHDA has done none or very little to restore the livelihoods of the communities. The two reports have a total of about 363 complaints, which LHDA has barely touched. The 2006 reports revealed that the community complaints ranged from:

- Unexplained delay in the payment of compensation moneys
- Failure or refusal by LHDA to pay interest at the statutory rate on delayed compensation moneys
- Delay by LHDA to process proposals for the investment of lump sum payment
- Outright rejection of complaints on the ground that the complainants had not followed set procedures in making claims for compensation

The plight of the two communities of Ha Matala and Thetsane is brought to the attention of the Conference. The LHDA refuses to pay communal compensation to the Matala community on agreed terms. The Thetsane community is half compensated as the LHDA claims that they had been compensated under “**special**” compensation policy. Article 7(18) of the Treaty is being flouted here. This is clear discrimination for people who have been affected the same way, but who are separately treated. The LHDA has shown the same discrimination to the phase 2 of resettlement whose gardens have not been

compensated; instead LHDA is talking about compensating only 300sq, and the rest will be compensated by cash. It is the contention of this article that the 300sq that is talked about is illegal; it is against the Treaty and the same LHDA Compensation Policy (300sq does not appear in the LHDA Compensation Policy).

The following tables show life before resettlement and life after resettlement.

**Table 1. access to arable land**

Access to arable land	Before Resettlement		After Resettlement		Net percentage Change
	Number of households	Percentage of households	Number of households	Percentage of households	
Yes	143	66.8	10	4.7	-62.1
No	71	33.2	204	95.3	62.1
Totals	214	100	214	100.0	

Source: Sets’abi Report-TRC study.

## CONCLUSION

A number of studies have revealed that in certain aspects LHDA did not honour the obligations of the Treaty and compensation policy. They have not even honoured recommendations from the country’s Ombudsman. The article has shown that there are many policy guidelines that could have assisted LHDA to make sure that the standard of living for communities affected by LHWP did not deteriorate.

## 3. PUBLIC PARTICIPATION

In recent years participation has become an important aspect of our democratic culture. If communities are to benefit fully in projects of the nature of LHWP, they must be part of their own solution or liberation. We have found out that many of the grievances from the communities are a result of not having been included in the project design and compensation packages.

Public participation in our experience means communities should describe their own situation, identifying problems, analyzing them, deciding on the mitigation measures and implementing the plans. This process instills within the community a sense of confidence and which empowers them to own their own development. Participation is also empowerment, which the LHDA miserably lacked. According to World Bank empowerment “is the expansion of assets and capabilities of the poor people to participate in, negotiate with, influence, control, and hold accountable institutions that affect their lives.”

As regards the design of the Lesotho Highlands Water Project communities or even the entire people of Lesotho were left out. They were not empowered to participate in a project that would ultimately change their lives for ever. It is no surprise that there are chronic grievances from the communities affected by the Lesotho Highlands Water Project.

Tsikoane as cited by Lenka(2006:88) says this about the Lesotho Highlands Water Project and public participation:

“The period immediately before and after the signing of the Treaty was, especially with regards to Lesotho, characterized by information blackout and lack of grassroots’ participation. From 1986 throughout 1987, the debate (if any), on the Treaty was conducted behind closed doors as though the Treaty was top secret, the .... The situation in which lack of information and denial of democratic participation were the order of the day....”

Through the lessons from the monitoring of the Lesotho Highlands Water Project I have the following suggestions, and this is what communities have been demanding:

- Access to the water in the dam
- A right to electricity
- A right to development
- A right to get a certain percentage from the royalties
- A review of the LHWP Treaty
- A review of LHDA compensation policy

## **CONCLUSION AND RECOMMENDATIONS.**

In the light of lessons from the Lesotho Highlands Water Project I submit that water should be a right enshrined in the Nation’s constitution, and it must not be left in the private hands. In every development that a country undertakes, communities to be affected must have a right to be consulted and to have a right of participation. Affected communities must be direct beneficiaries of these great projects; they must get a certain percentage of money accruing from such a development.

## **REFERENCES**

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