



# HEINRICH BÖLL STIFTUNG

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## Notes of the HBS Breakfast Meeting on the

# Lesotho Corruption Case

<b>Venue</b>	Lancer's Inn, Maseru, Lesotho
<b>Date</b>	November 28, 2002
<b>Time</b>	08h45 – 11h30

**Attendance:** Lesotho Government, represented by the Anti-Corruption Directorate, NGOs, Members of Parliament (MPs) from both the opposition and the ruling parties, the Lesotho Highlands Water Commission (LHWC) with representatives from both Lesotho and South Africa, media practitioners, representatives of the affected communities from the Lesotho Highlands Water Project (LHWP) areas, the Lesotho Law Society, the Institute of Southern African Studies and the HBS team.

*Please find the full contact list attached to this document.*

**Facilitator:** Makume Tlaleane, Environment Programme Officer, Heinrich Böll Stiftung Southern Africa, Johannesburg, South Africa.

## 1. Purpose

**The aim of the meeting was "to bring together a wide-ranging group of people interested in looking at good governance in Lesotho"<sup>1</sup> Of particular interest was the corruption issues surrounding the Lesotho Highlands Water Project (LHWP), both nationally and internationally. The intention was to reflect on the level of awareness of Lesotho civil society on the issue. The meeting further aimed at facilitating for a meaningful participation by all stakeholders in the struggle for good governance in Lesotho.**

This document is a summary of the main points raised and discussed during the meeting. Annexed to it is a contact list of the participants, which is aimed at enabling them to contact each other for further networking.

## 2. Introduction by HBS Regional Director

Dr Stefan Cramer briefly gave a background on the work of the HBS in the region (for details see [www.boell.org.za](http://www.boell.org.za)). While introducing the issues for the meeting he cited a recent article (Business Day 27/11/02) which reported that US President George W. Bush announced US\$5 billion for a new

<sup>1</sup> letter of invitation to the meeting, November 18, 2002.

corporation named the Millennium Challenge Corporation, whose aim among others is to tackle corruption and bribery internationally.

In addition, it was generally agreed that at the heart of any effort to improve the lives of people in Africa, lay the principle of good governance: "Good governance is the cornerstone of good development."

In this context, Lesotho has to be commended for its commitment to good governance, most notably exemplified by its government's pursuit of the court cases against Mr Masupha Sole and the contractor corporations (MNCs) alleged to be involved in corruption in the LHWP.

Dr. Cramer mentioned that there are a number of ways in which Lesotho could be assisted. These are strengthening civil society awareness and government's commitment to the eradication of corruption in Lesotho. He said that HBS could provide an opportunity for lobbying at the European level. This would ensure that Lesotho is not victimised for having taken this stance. It would also maximise the global benefits of this process, how large corporations are dealing with weaker nations. HBS could support partnerships with various organisations or institutions involved in anti-corruption education.

After introducing each other and the range of activities regarding anti-corruption in Lesotho, participants reflected on the following issues:

### **3. Identified issues**

- a) There was recognition that the **struggle for good governance and against corruption** at all levels has to be intensified. Participants welcomed the opportunity to share knowledge, information and experience and deplored the fact that it took an "outsider" to convene such a meeting. The need to continue the collaboration was identified. The nature and form of a possible local co-ordinating structure was discussed. However, it was decided that this initial meeting would be limited to the identification of issues of concern among the participants. Attendance at subsequent meetings would better indicate commitment to the anti-corruption drive, and only then would it be appropriate to float the possibility of establishing a formal structure to drive the process forward.
- b) **Media & Communication:** Advocacy campaigns need to be initiated and followed up so that Lesotho is not made a victim of having done the right thing. The successes of the Lesotho case need to be communicated far and wide. This would also strengthen the global fight against corruption.
- c) **The Extend of Corruption within the LHWP:** There was a strong perception that corruption has filtered down to individual and household level in Lesotho. Ironically, poor people in the most marginalised communities are most vulnerable to the effects of corruption. Therefore, corruption is a clear problem that all Basotho have to fight.
- d) **The hidden cost of corruption:** It was argued that corruption has substantially increased the costs of the LHWP. The World Bank (WB) has so far refused to blacklist the companies on the grounds that these companies were not involved in Bank-funded components of the project.
- e) **The Duality Of Corruption:** Much of the corruption seen in developing countries stems from the "West", the home of most MNCs. Germany, for example, needs to work on its own corruption problems. An example was cited of a German company allegedly involved in the LHDA case, which has a string of allegations in other developing countries. Through its Green Party MPs, it was suggested that the HBS could lobby for good corporate governance with regards to this company in Germany, so that it makes it difficult for it to benefit from development projects such as the LHDA one. Corruption was recognised as a two-way process, involving those who **offer** bribes as well as

those who **accept** them . It is also in the developing countries' own interest, to fight corruption, as this to compromises their image. Mr Sole is one among a multitude of wrongdoers in the Highlands corruption case. In deciding who to target for prosecution and other appropriate action, it ought to be remembered – and pursued – that there are possibly more people involved. Those who offer bribes should be pursued and punished with the same vigour as those who accept them.

- f) Handling of Corruption Cases: The use of a foreign, reportedly expensive judge to sit on the case – was this not corruption, it was asked? Was it the feeling that Lesotho judges were not credible? By whose standards were they thus judged? Independence is difficult to establish when you're dependent on others for funding. How was it ensured that, in the Sole case, there was judicial independence?
- g) **Cultural Issues:** In the Basotho culture, to tell on others is unacceptable. We are socialised into keeping secrets. This may encourage inappropriate behaviour because those who are aware of wrong-doing are socially discouraged to disclose information. This creates security for those who perpetrate the acts. Processes need to be put in place **outside** government, which can assist the government t in fighting corruption effectively. The Sole case needs to illustrate to others that corruption does and will not pay.
- h) **Access To Information And Other Media/Communication Issues:** Access to information is still very limited in this country, even for members of the media. Major problems identified were a 'slim' (under-resourced, under-capacitated) and sometimes timid local media, a non-curious population, lack of follow up on cases of public importance. This has resulted in an uninformed public. The timidity of the media in Lesotho was thought to be legislative and perhaps even constitutional. The constitution protects freedom of expression, but the right to personal privacy, which is also protected in the constitution, limits this. The dichotomy has been used by some powerful individuals and companies, to limit and sometimes prevent news from coming out in public that would put them in a bad light.

It was mentioned that the courts, more often than not, interpret the law conservatively to the advantage of the individual whose privacy appears violated, seemingly without a careful balancing of the rights of the individual concerned and the right of the public to know. In addition, media houses that lost these cases are persecuted, with writs of execution being sought (and often awarded) against the personal property of the editor. This makes it more difficult for independence of the media and their right to free expression to be protected, and limits the access that Basotho have to information that directly affects them as a nation.

On the positive side, it was reported that there was a project called the Media Law Review. This will look at all the legislation that prevents the media from effectively reporting on corruption and other cases of public concern. This effort, it was felt, combined with a soon-to-be-enacted freedom of information bill (currently being debated in Parliament), would help to assist in establishing part of the necessary groundwork for good governance.

- i) Lack of Clear Government Policy: In addition, it was felt that the government had to announce clearly what would be done to fight corruption and maintain good governance, and to provide the resources for an independent body to be set up that fights against corruption. The recent and much awaited establishment of a directorate set up to combat corruption and other illegal acts, was lauded by the participants.
- j) **The Personal Cost of Actively Fighting Corruption:** Those who choose to fight corruption can easily become an "enemies of the system". They are targeted for telling the truth. In this small society, everyone is aware of what others are doing. It is relatively easy to be persecuted. Whistle-blowers are not protected by any particular laws. Control in all its forms is used as a tool by those in

power to victimise those who expose the corrupt and powerful. Pressure groups and lobbyists in all their guises in society have to be present and active, in order to give voice to and strengthen the war against corruption.

- k) **Framework For Good Governance:** Developing countries' finance agencies (such as the local Lesotho National Development Corporation, or LNDC) do not usually have an appropriate (socio-economic) framework to which foreign direct investment is pegged on. Good governance and transparency is the key to the success of the New Partnership for Africa's Development (NePAD). In order for good governance to exist and be maintained, people and organisations in Lesotho need to form partnerships and network with organisations and individuals whose work supports this struggle. Some corruption, is not so much by commission as by omission. For example, it was asked, why was the LHDA not implementing the (already-existing) new governance model, since it was recognised that the existing one was found wanting?

#### **4) International Activities around the "Lesotho Bribery Case"?**

- ❑ WB-NGO meeting in Washington: HBS will ensure that the Lesotho case is on the agenda.
- ❑ The EIB (European Investment Bank) is one of the main LHWP funders. It has asked the European Commission for more money for the project, so national governments now have to vote for how much will be set aside for the project's upcoming phases. There is currently a campaign in the European parliament to ensure that there are proper safeguards against corruption in place for the next round of funds for the EIB (see [www.eib.org/news/news.asp?news=48](http://www.eib.org/news/news.asp?news=48)).
- ❑ The European parliament ([www3.europarl.eu.int](http://www3.europarl.eu.int)) is being lobbied to support Lesotho and ensure it is protected against the more powerful MNCs, so that it is not victimised for having taken this stance on corruption.
- ❑ HBS committed itself to continuing these efforts, and plans to organise more discussions and other supplementary activities as suggested by civil society in Lesotho in the future.

#### **5) Sources of further information**

- ❑ **International Rivers Network** – one of the best sources of information about this Lesotho case - [www.irn.org](http://www.irn.org).
- ❑ **Odious Debt Campaign:** [www.odiousdebts.org/odiousdebts/index.cfm?DSP=titles&SubID=177](http://www.odiousdebts.org/odiousdebts/index.cfm?DSP=titles&SubID=177) with probably the best international press clippings.
- ❑ **World Commission on Dams** ([www.dams.org/commission](http://www.dams.org/commission)) and its successor organisation, the **Dams and Development Project** (see: [www.unep-dams.org](http://www.unep-dams.org)) based in Cape Town.
- ❑ **NGO coalitions in Europe and the US** (contact via [info@boell.org.za](mailto:info@boell.org.za))
- ❑ **Probe International** <http://www.probeinternational.org>
- ❑ Campaign to Reform the EU **Export Credit Agencies** (ECAs) (at: <http://www.fern.org>)