

Lesotho Highlands Water Project (Canada)

Case ID:

ARW-112

Jurisdiction of Origin of Public Official or Entity Allegedly Involved:

Canada

Position of Public Official(s) (yrs in office):

Chief executive of the Lesotho Highlands Development Agency (Masupha Ephraim Sole, 1986-1995) and former delegates of Lesotho on the Highlands Water Commission (Reatile Mochebelele and Letiafua Molapo); Acres International Limited (Canada); Lahmeyer International GmbH (Germany); Impregilo SpA (Italy); Jacobus Michiel Du Plooy (Impregilo intermediary); Spie Batignolles (France)

Jurisdiction of Asset Recovery:

Lesotho

Jurisdiction of Asset Recovery ? Description:

Undertaking Recovery Effort, Location of Recovery Effort

Asset Recovery Start:

1999

Asset Recovery End:

Unknown

UNCAC Offenses Implicated:

Art.16

Money laundering Implicated:

No

Legal Basis for Asset Recovery:

Criminal Prosecution; Criminal Fine

Intl.Cooperation: MLAT/Letter of Request?:

Unknown

Basis for Intl Cooperation:

N/A

Contributing Factors in Asset Recovery:

Successful collaboration of OLAF [European Anti-Fraud Office] in prosecuting the European companies involved; mutual legal assistance from Switzerland in the prosecutions (Source: LL Thetsane and GH Penzhorn SC, "Case Study: The Lesotho bribery prosecutions," presented at Conference on the Protection and Optimization of Public Funds - the Cooperation between National and International Authorities, Rabat, May 14-16, 2007); World Bank investigation and debarment of involved companies, Acres International and Lahmeyer International GmbH (Source: World Bank, "World Bank Sanctions Lahmeyer International for Corrupt Activities in Bank-Financed Projects," Press Release No: 129/2007/INT, November 6, 2006, which noted "Once the indictments [in the case] were announced in mid-1999, the World Bank provided extensive evidentiary support to the Lesotho prosecutors and made bank staff available for interviews.")

Status of Asset Recovery :

Completed

Agreement for Returned Assets:

No

Agreement for Returned Assets - Description:

N/A

Case Summary:

On August 15, 2003, the Lesotho Court of Appeal upheld the bribery conviction of Acres International Limited (Canada) and increased the company's fine to R15 million. (Source: Acres International Limited v The Crown, Lesotho Court of Appeal, case number C of A (CRI) 8 of 2002, Judgment of August 15, 2003.) The case arose out of the Lesotho Highlands Water Project, which the Lesotho Court of Appeal as "[0]ne of the biggest and most ambitious dam projects in the world, which entailed inter alia the construction of the Katse Dam in a remote and inaccessible part of the highlands of Lesotho." (Source: In the matter between: Ephraim Masupha Sole and The Crown, Lesotho Court of Appeals, Case (CRI) 5 OF 2002, Judgment dated April 13, 2003). According to the 2003 Lesotho Court of Appeal judgment, the High Court of Lesotho had found Masupha Ephraim Sole, chief executive of the Lesotho Highlands Development Agency, guilty of accepting bribes from various multinational companies that were attempting to secure contracts related to the project. In an earlier dispute involving Mr. Sole, the government hired Ernst and Young, whose audit discovered that Mr. Sole had Swiss bank accounts into which the project contractors and consultants had placed large sums of money. Four multinational companies were convicted or pleaded guilty in the case, including Acres International Limited. (Please see Lesotho Highlands Water Project entries.)

Disposition of Criminal Case(s):

According to the Lesotho Court of Appeal, Mr. Masupha Ephraim Sole, chief executive of the Lesotho Highlands Development Agency, was found guilty of accepting bribes from various multinational companies in connection with the Lesotho Highlands Water Project. (Source: In the matter between: Ephraim Masupha Sole and The Crown, Lesotho Court of Appeals, Case (CRI) 5 OF 2002, Judgment dated April 13, 2003). According to the Lesotho Court of Appeal, two other Lesotho officials, Reatile Mochebelele and Letiafua Molano, were also found guilty of accepting bribes. (Source: R v Mochebelele and Another (C of A (CRI) 02/08) [2008] LSCA 30 (17 October 2008)). Four foreign companies were convicted or pleaded guilty in Lesotho to corruption related charges: Acres International Limited (Canada); Lahmeyer International GmbH (Germany); Spie Batignolles (now Schneider Electric SA, France), and Impregilo SpA (Italy) (and Jacobus Michiel Du Plooy (Impregilo intermediary). (Sources: In the matter between: Schneider Electric S.A. (formally Spie Batignolles) (Applicant) and Director of Public Prosecutions (Respondent), High Court of Lesotho, CRI/APN/751/2003; In the Matter between Lahmeyer International GmbH (Appellant) and The Crown (Respondent), C of A (CRI) 6 OF 2002 (April 7, 2004); Crown v Impregilo Spa (Registration Number 104217) Tribunal of Milan (CRI/T/174/2004 CIV/APN/437/05) [2006] LSHC 48 (3 February 2006); and Acres International Limited v The Crown, Lesotho Court of Appeal, case number C of A (CRI) 8 of 2002. Judgment of August 15, 2003.)

Jurisdiction of Origin: Investigative Agency:

European Anti-Fraud Office (OLAF)

Jurisdiction of Origin: Prosecuting Authority/Civil Attorney(s):

Director of Public Prosecutions (Lesotho)

Jurisdiction of Origin: Courts Involved:

High Court of Lesotho; Court of Appeal of Lesotho

Jurisdiction of Asset Recovery: Investigative Agency:

European Anti-Fraud Office (OLAF)

Jurisdiction of Asset Recovery: Prosecuting Authority/Civil Attorney(s):

Director of Public Prosecutions (Lesotho)

Jurisdiction of Asset Recovery: Courts Involved:

High Court of Lesotho; Court of Appeal of Lesotho

Documents:

Lesotho_Highlands_Acres_Intl_Appeals_Ct_Aug_15_2003.pdf

Lesotho_Highlands_EU_Anti_Fraud_Case_Study_Thetsane_Penzhorn_May_2007.pdf

Lesotho_Highlands_Ipocafrika.org_Docs_List_Oct_2010.pdf

Lesotho_Highlands_OLAF_Press_Release_Oct_3_2006.pdf

Lesotho_Highlands_Sole_Appeals_Ct_Apr_14_2003.pdf

Lesotho_Highlands_UNODC_Handbook_2004.pdf

Documents Links:

http://www1.worldbank.org/finance/star_site/documents/arw/Lesotho_Highla...

http://www1.worldbank.org/finance/star_site/documents/arw/Lesotho_Highla...

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http://www1.worldbank.org/finance/star_site/documents/arw/Lesotho_Highla...

Other Sources:

Acres International Limited v The Crown, Lesotho Court of Appeal, case number C of A (CRI) 8 of 2002 delivered on 15 August 2003, accessed at

<http://www.saflii.org/ls/cases/LSHC/2003/88.pdf>; In the Matter between Ephraim Masupha Sole and the Crown, in the Appeal Court of Lesotho, C. of A. (CRI) 5 of 2002, CRI/T/111/91, Judgment dated April 13, 2003; "Case Study: The Lesotho bribery prosecutions," Paper presented by LL Thetsane and GH Penzhorn SC, at the Conference on the Protection and Optimization of Public Funds - the Cooperation between National and International Authorities," Rabat, May 14-16, 2007. World Bank, "World Bank Sanctions Lahmeyer International for Corrupt Activities in Bank-Financed Projects," Press Release No: 129/2007/INT, November 6, 2006, accessed at

<http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:21116129~pag...>

European Anti-Fraud Office Press Release, "Three European Companies Guilty in African Aid Fraud Case," October 3, 2006, accessed at http://ec.europa.eu/anti_fraud/cases/aid_en.html.

Lesotho Highlands Water Project, at <http://ipocafrika.org> which also provides a list and links to relevant documents. United Nations Office on Drugs and Crime, United Nations Handbook on Practical Anti-Corruption Measures for Prosecutors and Investigators (Vienna, 2004), Annex: Lesotho Case Study, at 137ff.