

Lesotho Highlands Water Project / Jacob Michael du Plooy

Case ID:

ARW-116

Jurisdiction of Origin of Public Official or Entity Allegedly Involved:

South Africa

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 Letiafuo 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:

2003

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:

Cooperation in investigation but mechanism unknown

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

Stage in Asset Recovery Chain:

Final Judgment (No Appeal)

Agreement for Returned Assets:

No

Agreement for Returned Assets - Description:

N/A

Case Summary:

According to the decision by the Lesotho High Court, Mr. Du Plooy pleaded guilty to bribery and in September 2003, was sentenced to pay a fine of US\$67,114. (Source: R v Du Plooy (CRI/T/111/1999), 2003 LSHC 122). 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 also were convicted or pleaded guilty in the case. (Please see other 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. According to the decision by the Lesotho High Court, Mr. Du Plooy pleaded guilty to bribery and in September 2003, was sentenced to pay a fine of US\$67,114. (Source: R v Du Plooy (CRI/T/111/1999), 2003 LSHC 122).

Jurisdiction of Asset Recovery: Investigative Agency:

European Anti-Fraud Office (OLAF)

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

Director of Public Prosecutions of Lesotho

Jurisdiction of Asset Recovery: Courts Involved:

High Court of Lesotho; Court of Appeal of Lesotho

Other Sources:

R v Du Plooy (CRI/T/111/1999), 2003 LSHC 122, accessed at <http://www.lesotholii.org/ls/judgment/high-court/2003/122>; 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, April 2, 3, and 14, 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~pagePK:64257043~pi>; 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.