

Water For Justice And Environment

Report on participation in Ombudsman's Mohale Inspection, Sep. 2009

Overall goal

The rights of communities affected by water, dams, environment and mines are safeguarded through active sensitization and mobilization.

Result 3

To advocate for adequate and fair compensation for communities affected by large dams in Lesotho

Plan Activity

3.3 Participate in Ombudsman public hearings

Date: 21 – 25 Sep, 2009

Venue: Mohale Dam Areas

Target group: 18 villages affected by LHWP Mohale Dam project

Background

From about 2002, the office of the Ombudsman was continually swamped with complaints from both individuals and groups of people affected by the construction of the Mohale Dam and related activities by LHDA. The complaints were invariably about problems on compensation, resettlement and lack of services promised by LHDA. In response, the Ombudsman undertook two inspections of the affected areas in 2003 and 2004 and then produced a master report in 2006 in which, among other things, he made various compliance recommendations to LHDA for adequate and fair compensation for the affected communities.

However, around **mid-2009** when responding to LHDA's compliance report, the Ombudsman highlighted gross negligence and lack of expediency on LHDA's part to effect the recommendations. In addition, when TRC held a number of *pitsos* in May 2009 aimed at following up on the Ombudsman recommendations regarding compensation and advocating for compensation on assets of the affected communities in the Mohale areas, it found that many communities were angry against LHDA alleging that it was dragging its feet and ignoring its duty to compensate them since the start of the project in 1995; several written complaints additional to those availed to the Ombudsman were also submitted by these communities. Therefore, it was imperative for the Ombudsman to re-visit the areas affected by Mohale Dam in September 2009.

Objective

The participation in Ombudsman's inspection was two-fold:

- To verify the communities' allegations and
- To undertake fact-finding on the compliances to Ombudsman's recommendations since 2006.

Activity description

The Ombudsman carried out the inspection in the form of *pitsos* for 18 affected villages in 10 meeting areas on the dates as shown in **Table 1**. The LHWC Chief Delegate and the LHDA Chief Executive attended some of the meetings respectively (see **Fig. 1**). The process involved the Ombudsman asking LHDA to present from their written report how they had complied with his recommendations per complaint in a visited village; then the affected person(s) would respond testifying for or against and/or questioning LHDA personnel who was obliged to respond. TRC as the observer captured the entire Ombudsman's proceedings,

the presentations and responses of LHDA and the testimonies of the affected people on video, photographic pictures and written notes.

It had been anticipated that additional complaints from the affected communities would be submitted to the Ombudsman but he only dealt with the recommendations already made; therefore, it was not known what they were about and how many they would be.

Table 1: Schedule of Ombudsman’s inspections at Mohale dam area

Date	Villages	Meeting Area
Sep. 21	Mafotholeng, Ha Motloang	Mafotholeng
	Boitšireletso, Ha Teri, Sekokoaneng, & Ha Letapata	Ha Teri
Sep. 22	Ha Ramohope	Ha Ramohope
	Ha Mohale	Ha Mohale
Sep. 23	Ha Tšiu,	Ha Tšiu,
	Ha Koporala Moreneng, Ha Koporala Letsatseng, Khamolane	Ha Koporala Moreneng
Sep. 24	Ha Lebiletsa, Ha Seotsa	Ha Lebiletsa
	Jorodane Ha Makhobalo	Makhobalo
Sep. 25	Jorodane Ha Letsie, Ha Likomisi	Ha Likomisi
	Thoteng Ha Sankong	Thoteng Ha Sankong



Fig.1: Left to right – Ombudsman (far left in white cap), Mr. S. Mafisa; LHDA Mohale Operations Manager, Mr. Ramoelisi; LHWC Chief Delegate, Mr. Tohlang at Mafotholeng meeting

Outcome

During the inspection process, it was abundantly clear that virtually all affected communities considered LHDA as untrustworthy and uncommitted. The LHWC Chief Delegate was forced to speak strongly to LHDA team to serve the communities well by addressing their compensation issues properly. The climax of his firmness was shown when the LHDA was obliged to settle the long standing complaint of Mrs. 'Mampiti Mafela in Sekokoaneng by replacing her three blankets damaged during road construction with new ones.

The Ombudsman also time and again voiced his concern that LHDA was dragging its feet in complying with his recommendations; he constantly forced LHDA to put time frames on the outstanding recommendations. This forced LHDA to set compliances between October 2009 and January 2010.

Table 2 below summarizes the compliance condition per affected village according to LHDA's Mohale Update On Ombudsman's Compliance Inspection Status Report of September 2009.

Table 2: Ombudsman recommendations compliance status by LHDA per affected village in Mohale, September 2009

Village	Ombudsman Issues/ Recommendations	LHDA attended Issues		Unattended Issues		LHDA Completed Issues		In progress Issues		LHDA Disputed Issues	
		No.	%	No.	%	No.	%	No.	%	No.	%
Sekokoaneng	2	2	100.0	0	0.0	2	100.0	0	0.0	0	0.0
Seotsa	1	1	100.0	0	0.0	0	0.0	1	100.0	0	0.0
Khamolane	4	4	100.0	0	0.0	4	100.0	0	0.0	0	0.0
Lebiletsa	31	22	71.0	9	29.0	13	41.9	7	22.6	2	6.5
Tšiu	7	6	85.7	1	14.3	2	28.6	3	42.8	1	14.3
Letapata	1	1	100.0	0	0.0	1	100.0	0	0.0	0	0.0
Koporala Moreneng	2	2	100.0	0	0.0	1	50.0	1	50.0	0	0.0
Koporala Letsatseng	1	0	0.0	1	100.0	0	0.0	0	0.0	0	0.0
Thoteng Ha Sankong	1	1	100.0	0	0.0	0	0.0	1	100.0	0	0.0
Teri	1	1	100.0	0	0.0	1	100.0	0	0.0	0	0.0
Boitšireletso Ha Mohale	10	10	100.0	0	0.0	2	20.0	2	20.0	6	60.0
Ramohope	16	10	62.5	6	37.5	5	31.2	5	31.3	0	0.0
Mohale	14	7	50.0	7	50.0	2	14.3	5	35.7	0	0.0
Mafotholeng											
Jorodane Ha Letsie	2	1	50.0	1	50.0	0	0.0	1	50.0	0	0.0
Likomisi	4	3	75.0	1	25.0	2	50.0	1	25.0	1	25.0
Motloang	3	3	100.0	0	0.0	2	66.7	1	33.3	0	0.0
Molikaliko*	1	1	100.0	0	0.0	0	0.0	0	0.0	0	0.0
Piti*	3	2	66.7	1	33.3	1	33.3	0	0.0	1	33.3
Montši*	12	11	91.7	1	8.3	6	50.0	5	41.7	0	0.0
Pontšeng Ha Makhobalo*	9	9	100.0	0	0.0	7	77.8	2	22.2	0	0.0
Total	125	97	77.6	28	22.4	51	40.8	35	28.0	11	8.8

* Not included in the inspection activity but in LHDA report

Though LHDA seemed to have attended many recommendations (77.6%), given the period from 2006 to 2009, attendance rate was too low; **LHDA has generally attempted compliance outside the periods stipulated by**

the Ombudsman in the 2006 Report; notably, only 40.8% recommendations have been complied with in the period. The circumstances of slow and/or non-compliance by LHDA were not convincing to the Ombudsman and the general public; LHDA was just dragging its feet and inconsiderate to the affected people.

The above was echoed in practically all the affected communities. It was most dramatic in Ha Koporala Moreneng where the angry resettled community lambasted LHDA officers in the presence of LHDA Chief Executive and the Ombudsman (**Figs. 2a & 2b**).

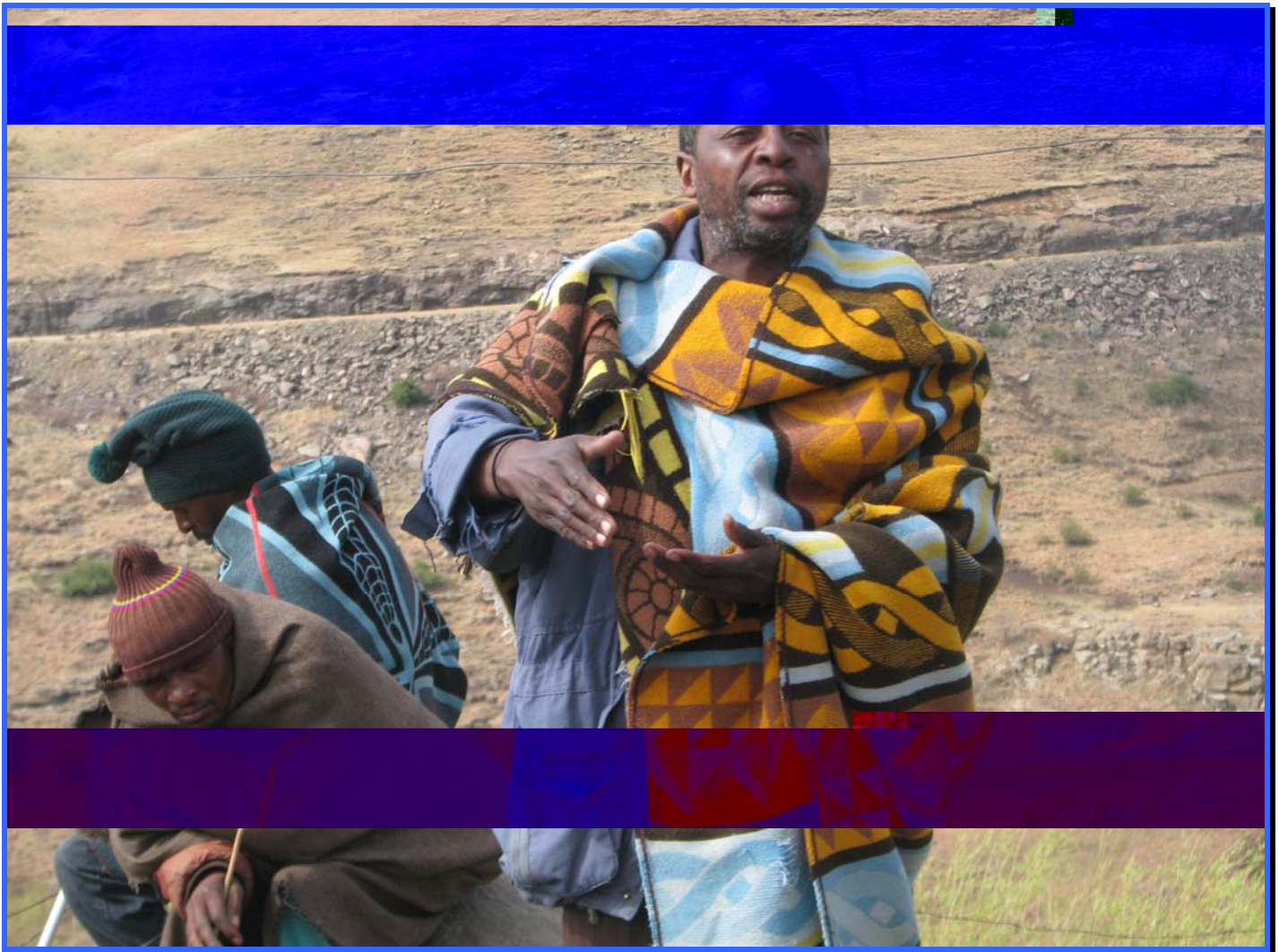


Fig. 2a: Ha Koporale Moreneng resettlee speaking his mind and venting his wrath before the Ombudsman and LHDA Chief Executive – his comrades are attentive



Fig. 2b: LHDA Chief Executive Mr. Masilo Phakoe (3rd from left) amazed at the wreath of the resettleses; Ombudsman (far right) head down and pondering while TRC Officer, Mr. Lenka (far left) meditates on appropriate intervention strategy

Their anger was that LHDA in the past 11 years had not really cared to provide them with the promised home gardens despite their constant appeals to it; some even doubted the effectiveness and allegiance of the Ombudsman. They even refused to take the field (**Fig. 3**) which LHDA had bought to replace their gardens in that it was too far from their houses, too barren and too little too late. It was the most embarrassing *pitso* of all those held. Truly at this place, LHDA and the Ombudsman *ba tlohile tšiba li lla ka mahafing*.

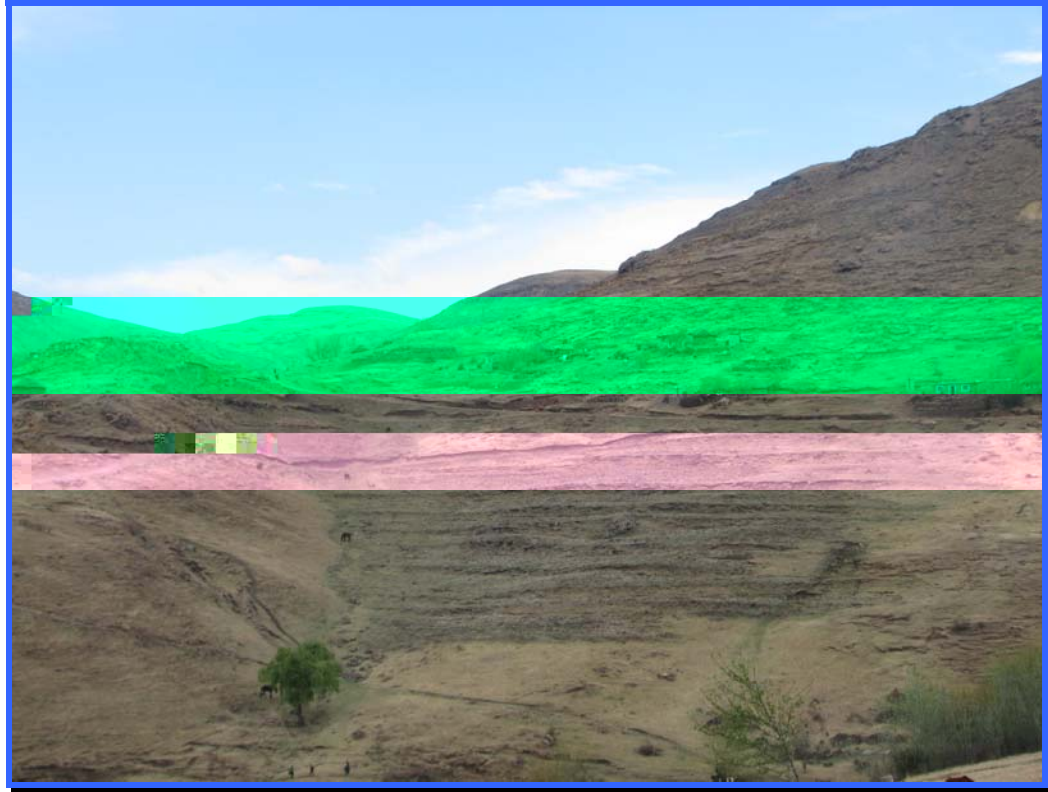


Fig. 3: LHDA compensation field refused by Ha Koporala Moreneng resettled communities

The anger of this community together with other comments or utterances against LHDA from other affected communities have surely sent a stronger message to LHDA, the Ombudsman and LHWC that their patience had run out and more serious efforts must be made within a short time to have their compensations and related services implemented. This could have a positive effect to accelerate compliance to the recommendations because about two weeks thereafter, LHDA Operations Manager said that he was working hard with determination to finish all the recommendation issues by December 2009.

On the Ha Koporala Moreneng incident, TRC had to intercede by holding a separate and well attended *pitso* on the following day to address the gardens issue and loss of trust in the Ombudsman. The community became very cooperative and the majority agreed to have compensation in money form for the past 11 years and then take up field land they had told LHDA and Ombudsman that they did not want. At this *pitso*, TRC also restored the trustworthiness on the Ombudsman.

Some suggestions from the communities on the necessary measures beyond the Ombudsman to counteract LHDA's non-compliance pending the compliance time frames it had set itself were:

- To petition to Parliament to force LHDA to comply with the Ombudsman recommendations and/or
- To take LHDA to court over its non-compliance with the Ombudsman recommendations.

TRC had all the above captured on video as data to be referred to in dealing with compliance on the Ombudsman recommendation by LHDA. It is also vital information to document in the TRC publications aimed at promoting evidence-based research for proper policy development, change and implementation (Strategic Result 5).

