

EXPLORING COLLABORATION BETWEEN MDBs AND NATIONAL ENTITIES ON ENVIRONMENTAL AND SOCIAL SAFEGUARDS: THE CASE OF SOUTH AFRICA AND ETHIOPIA

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ABSTRACT

This paper explores the way in which various actors cooperate in effectively implementing environmental and social safeguards measures on infrastructure projects financed by multilateral development banks (MDBs). It first sets the policy context, which has moved towards fostering partnerships between MDBs and states on environmental and social safeguards. It then highlights some of the reasons for the hesitancy on the part of MDBs, as well as implementation challenges that have arisen because of this shift. The paper examines specific case studies from South Africa and Ethiopia. South Africa has some of the most advanced environmental and social legislation worldwide, while Ethiopia is a rapidly growing economy where the government is prioritising mega-infrastructure projects (road, rail and electricity) as the path to economic development. Lastly, it unpacks some of the most pressing issues in improving MDB–state coordination, such as the increasing need for country specificity in environmental and social requirements, a bigger role for civil society and MDB accountability mechanisms in ensuring compliance with environmental and social policies and procedures, and renewed efforts towards meaningful capacity building. The paper concludes with policy recommendations for improved environmental and social safeguards for MDBs and recipient countries alike.

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ABBREVIATIONS AND ACRONYMS

AADFI	African Association of Development Financial Institutions
ADB	Asian Development Bank
AfDB	African Development Bank
APL4	Adaptable Program Loan Project
CRGE	Climate Resilient Green Economic Strategy
CSO	civil society organisation
DBSA	Development Bank of Southern Africa
DFI	development finance institution
ECA	Environmental Conservation Act
EIA	environmental impact assessment
EISP	Eskom Investment Support Project
EMP	environmental management plan
EPE	Environmental Policy of Ethiopia
EPRDF	Ethiopian People's Revolutionary Democratic Front
ERA	Ethiopian Roads Authority
E&S	environmental and social
ESF	Environmental and Social Framework
ESIA	Environmental and Social Impact Assessment
GDP	gross domestic product
GTP II	Growth and Transformation Plan II
IBRD	International Bank for Reconstruction and Development
MDGs	Millennium Development Goals
MoEFCC	Ministry of Environment, Forestry and Climate Change
NEMA	National Environmental Management Act
NGO	non-governmental organisation
RoD	record of decision
SDGs	Sustainable Development Goals
SDR	Standard Diagnostic Review
UCS	use of country systems

INTRODUCTION

Africa faces a significant infrastructure gap, which has placed the mobilisation of infrastructure finance at the heart of this century's global development challenges. Hard infrastructure underpins socio-economic development, enables investment, and ultimately furthers industrialisation and enhances the competitiveness of economies. Thus establishing adequate and sustainable infrastructure is critical to alleviating poverty and achieving sustainable development. Traditional multilateral development banks (MDBs) have been crucial in helping to bridge the infrastructure financing deficit on the continent, given their willingness to take on higher-risk projects, their ability to extend concessional loans and offer technical assistance, and their vast and deep experience in working in developing countries.

Almost half a century of MDB engagement in developing countries has led to an understanding that infrastructure financing must extend beyond perfecting the most efficient way to build physical infrastructure. MDBs must also consider and support cross-cutting developmental issues, such as capacity building and infrastructure sustainability, environmental and social safeguards¹ and the contribution of infrastructure to national development objectives. MDBs' own priorities, as well as their relationships with governments, national implementing agencies and civil society on specific projects, affect the way in which these development objectives are valued and weighted.

In light of this, several policy processes, such as the [Millennium Development Goals](#) (MDGs), the [Paris Declaration on Aid Effectiveness](#) and the [Addis Ababa Action Agenda](#), have all prioritised the building of better partnerships to increase sustainable development investment while stimulating global growth and advancing global achievement of the Sustainable Development Goals (SDGs).² Emphasis is placed on the need for MDBs and borrowing countries to prioritise the development of environmentally and socially sustainable infrastructure, as well as to increase capacity-building efforts and greater country ownership. While MDBs have become champions of environmental and social sustainability, they have been slow to foster capacity and relinquish control over development issues to borrowing countries, resulting in highly conditional loans. In turn, borrowing countries are increasingly shifting to less stringent but also less developmentally beneficial emerging sources of finance (such as Chinese bilateral loans and private finance).

The World Bank's 2016 release of its new, more flexible and less prescriptive [Environmental and Social Framework](#) (ESF) to govern E&S safeguards is a positive step towards increasing flexibility and country ownership. In light of preparations for the rollout of this

While MDBs have become champions of environmental and social sustainability, they have been slow to foster capacity and relinquish control over development issues to borrowing countries, resulting in highly conditional loans

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- 1 In this context, environmental and social (E&S) safeguards refer to the legislation and policies that are applied to infrastructure projects by multilateral development banks (MDBs) and/or borrowing countries to protect the environment and affected communities from project-related impacts
 - 2 UN, 'Financing For Development: Progress and Prospects', Inter-agency Task Force on Financing for Development Report, 2017, p. vii, https://developmentfinance.un.org/sites/developmentfinance.un.org/files/Report_IATF-2017.pdf, accessed 27 July 2017.

new ESF, and the precedent it will set for other MDBs, there is a pressing need to further interrogate the process of building better relationships among MDBs, civil society, national governments and their implementing agencies as country ownership increases. The primary research question of this paper is: how can MDBs and national entities improve cooperation in the application of E&S safeguards for infrastructure?

Case studies on South Africa and Ethiopia will shed greater light on some of the more practical challenges and opportunities in the implementation of E&S requirements from a country perspective. The case study findings are derived from both secondary literature and interviews with representatives of MDBs, government, state-owned enterprises and civil society in both countries. South Africa has some of the most advanced E&S legislation worldwide, while Ethiopia is a rapidly growing economy where the government is prioritising mega-infrastructure projects (road, rail and electricity) as the path to economic development. The World Bank, as one of the key MDBs operating in Africa, provides the primary MDB lens for this research, specifically in terms of its funding support to power generation in South Africa and road development in Ethiopia.

This paper will first outline key global development cooperation policy frameworks and their application to E&S policies. It will then briefly highlight the remaining debates and challenges, particularly in terms of the shift to country ownership in E&S safeguards. The case studies will shed greater light on the E&S safeguards policy landscape in South Africa and Ethiopia, including these countries' relationship with MDBs. The remaining sections will delve into key issues around this topic, such as the challenges and opportunities for better MDB–country coordination, the role of civil society and the need for MDB accountability mechanisms as country ownership of E&S safeguards increases, as well as the key role of capacity building in this shifting policy landscape.

FRAMING THE DEBATE AROUND DEVELOPMENT COOPERATION

INTERNATIONAL DEVELOPMENT COOPERATION POLICY FRAMEWORKS

The 21st century has witnessed increasingly dramatic commitments by the international community to international objectives and action plans for development finance. These commitments are more comprehensive with each formulation. The MDGs, formulated by the UN in 2000, set out a concrete framework for international development built around 18 key targets to achieve social and economic development. The MDGs primarily focused on eradicating poverty through targeting social sectors, with only one MDG focusing specifically on environmental sustainability.³ In 2002 the [International Conference on Financing for Development in Monterrey, Mexico](#) examined the challenges of financing

3 UN, 'Millennium Development Goals', <http://www.un.org/millenniumgoals/>, accessed 25 March 2017.

the MDGs' desired outcomes.⁴ Central to this narrative was the partnership between developed countries and developing countries to transform the nature of development assistance. A fundamental tenet was that traditional donor–recipient relations would gradually give way to shared partnerships. Funding for development was seen as many different flows, and domestic finance, private international capital flows, international trade and official development assistance⁵ (of which MDB finance is a large component) were identified as key avenues for mobilising such finance.

Following the Monterrey Conference, four High-Level Forums on Aid Effectiveness have been held.⁶ The [Second High-Level Forum on Aid Effectiveness in Paris in 2005](#) was perhaps the most influential. Here donors, MDBs and recipient countries agreed to five fundamental principles on development effectiveness:⁷

- 1 Ownership: Developing countries set their own strategies for poverty reduction, improve their institutions and tackle corruption.
- 2 Alignment: Donor countries align behind these objectives and use local systems.
- 3 Harmonisation: Donor countries coordinate and simplify procedures and share information to avoid duplication.
- 4 Results: Developing countries and donors shift focus to development results and results get measured.
- 5 Mutual accountability: Donors and partners are accountable for development results.

Importantly, principles 1 and 2 highlight the dual importance of countries' improving their own institutions (in this context, their E&S policies) and MDBs' giving more ownership

4 UN, International Convention on Financing for Development, Monterrey, 18–22 March 2002, <http://www.un.org/esa/ffd/monterrey/MonterreyConsensus.pdf>, accessed 25 March 2017.

5 According to the Organisation for Economic Co-operation and Development (OECD), [official development assistance \(ODA\)](#) is defined as: 'Flows of official financing administered with the promotion of the economic development and welfare of developing countries as the main objective, and which are concessional in character with a grant element of at least 25 percent (using a fixed 10 percent rate of discount). By convention, ODA flows comprise contributions of donor government agencies, at all levels, to developing countries ("bilateral ODA") and to multilateral institutions. ODA receipts comprise disbursements by bilateral donors and multilateral institutions.' See OECD, 'Glossary of statistical terms', <http://stats.oecd.org/glossary/detail.asp?ID=6043>, accessed 4 September 2017.

6 The First High-Level Forum on Aid Effectiveness was held in Rome in 2002 and outlined principles for aid effectiveness and increasing country ownership, while the second forum in Paris in 2005 resulted in an agreement from donors and recipient countries to hold each other accountable to the commitments in the Paris Declaration. The third forum in Accra in 2008 focused on broadening the scope of partners to include civil society and emerging economy donors, and began to take stock of the Paris Declaration targets. The fourth forum, held in Busan in 2011, further broadened its reach by including additional stakeholders such as the private sector and BRICS.

7 OECD, 'The Paris Declaration on Aid Effectiveness and the Accra Agenda for Action', 2008, <http://www.oecd.org/dac/effectiveness/34428351.pdf>, accessed 25 March 2017.

to countries. Also important is the emphasis in principle 4 on accountability to project results, in which civil society is expected to play a large (and sometimes contested) role, as will be elaborated upon in subsequent sections. Lastly, the emphasis on ‘developmental results’ references the argument that the focus on standards should shift to a focus on results (this will also be unpacked).

The World Bank took steps to increase country ownership in the administration of E&S requirements by instituting a ‘use of country systems’ (UCS) policy in 2005. This has resulted in ongoing pilot projects that utilise borrowers’ own E&S frameworks in full. The pilots measure both the equivalence of country standards to MDB standards and the acceptability of their capacity and experiences in implementation. These pilots have generally been carried out in countries with more developed national E&S standards, as they are easier entry points. There are two such projects in South Africa – the [Medupi Power Station](#) and the [Development, Empowerment and Conservation in the iSimangaliso Wetland Park and Surrounding Region Project](#). Although these pilots have met key policy considerations such as national ownership, there has been little buy-in from the countries involved as well as complaints that the bureaucracy surrounding MDB finance has not decreased as expected.⁸ It seems the capacity-building and technical assistance element has been specifically project-based, which may not be as helpful in supporting overall country E&S capacity building.

Other World Bank strategies have attempted to increase country control in E&S safeguards. Development policy lending, initiated in 2004, gives general budget support to countries rather than project-specific support, thus offering countries significant flexibility in their use of the funds. Most recently, the Program for Results, which was initiated in 2012, releases funding based on measurable project impacts and gives countries much more freedom in their application of E&S requirements. This is a valuable shift in focus from standards to results. These programmes, however, have been applied primarily to social sectors and less often to large infrastructure projects. Given the lower levels of oversight in these projects, their impact is also much more limited.

The most recent development in the E&S safeguards space has been the release of the World Bank’s ESF, which will govern its future E&S safeguards for borrowing countries. The new framework is less prescriptive in its requirements and allows countries greater flexibility on environmental and social issues. It also endorses increasing the full use of country frameworks more often. This new framework has met with much criticism from primarily international but also domestic civil society organisations (CSOs), and from shareholding countries. They are concerned that it dilutes the World Bank’s standards,

8 Humphrey C, ‘Time for a New Approach to Environmental and Social Protection at Multilateral Development Banks’, ODI (Overseas Development Institute) Briefing Paper, April 2016, <https://www.odi.org/publications/10380-time-new-approach-environmental-and-social-protection-multilateral-development-banks>, accessed 4 September 2017; IEG (Independent Evaluation Group), ‘Safeguards and Sustainability Policies in a Changing World: An Independent Evaluation of World Bank Group Experience’, World Bank, 2010, <https://ieg.worldbankgroup.org/mar/safeguards-and-sustainability-policies-changing-world-independent-evaluation-world-bank-group>, accessed 20 July 2017.

allowing for the use of weaker country-based policies and implementation capacities.⁹ With the rollout of this framework mooted to begin in 2018, its impact is still uncertain. This paper will relate its analysis back to this new framework in terms of its potential effects on cooperation around E&S issues, and the ability to find a middle ground between the relaxation of MDB requirements and the strengthening of country standards.

THE EVOLUTION OF DEBATES AROUND E&S REQUIREMENTS

Despite clear policy commitments towards increased partnership building and country ownership in E&S safeguards, the reality on the ground is complex and challenging.

Ever since the adoption of E&S requirements by MDBs in the 1980s,¹⁰ there has been a debate around their need to retain oversight and safeguards to ensure that lending follows international principles and is environmentally and socially sustainable. This imperative has to be weighed against the right of borrowing countries to have more decision-making power on the implementation of MDB-funded projects, in line with their own development priorities.¹¹ These priorities are shaped by many factors, such as history, demographics, governance, economic status and strategy, and resource endowments. Ideally, environmentally and socially sustainable infrastructure can also be economically viable and enjoy country ownership; however, ensuring this balance has posed a significant challenge in practice.

To date, MDBs largely use their own E&S frameworks on the African continent instead of often-weaker country frameworks. This allows MDBs to manage the reputational risk of projects, which can cause significant damage to local communities or the environment. Borrowing countries, in collaboration with MDB staff, are required to complete an MDB Environmental and Social Impact Assessment template covering all

9 Bretton Woods Project, 'Conflicting views on direction of World Bank's safeguards review', 28 September 2015, <http://www.brettonwoodsproject.org/2015/09/conflicting-views-on-direction-of-world-banks-safeguards-review/>, accessed 10 April 2017; World Bank, 'World Bank meets African caucus in advance of fresh round of talks on safeguards amidst record lending for the continent', Press Release, 10 September 2015, <http://www.worldbank.org/en/news/press-release/2015/09/10/world-bank-african-caucus-safeguards-record-lending-continent>, accessed 10 April 2017; BiC (Bank Information Center), 'World Bank's updated safeguards a missed opportunity to raise the bar for development policy', Press Release, 21 July 2016, <http://www.bankinformationcenter.org/world-banks-updated-safeguards-a-missed-opportunity-to-raise-the-bar-for-development-policy/>, accessed 10 April 2017; Human Rights Watch, 'World Bank: Dangerous rollback in environmental, social protections', 4 August 2015, <https://www.hrw.org/news/2015/08/04/world-bank-dangerous-rollback-environmental-social-protections>, accessed 10 April 2017.

10 DEAT (Department of Environmental Affairs and Tourism), 'Overview of Integrated Environmental Management', Integrated Environmental Management Information Series 0. Pretoria: DEAT, 2004.

11 Bradlow D, Southern African governments, multilateral development banks, non-state actors, and sustainable infrastructure: Managing changing relationships', *South African Journal of International Affairs*, 22:3, 2015, pp. 289–305; Humphrey C, *op. cit.*

MDB ‘safeguards’ triggered by the project, spanning issues such as daily project impacts (air, water, noise, etc.), influences on natural habitats, cultural resources, forests and resettlement of affected communities. They devise a management plan to address these impacts and an environmental monitoring framework to ensure compliance and enforcement. In most cases, the comprehensiveness of MDB processes goes over and above the requirements of domestic legislation.¹² MDBs employ significant numbers of international staff to assist with these tasks, but their presence gradually decreases through the project lifecycle. The MDB invests heavily in the pre-launch phase to both anticipate potential damage from the project and to mitigate such issues at much lower cost before implementation, as opposed to being forced to fix problems later in the life of the project. This also allows the borrowing country to take greater control over actual implementation, based on a mutually agreed and thorough design and planning process.

Criticism often centres on the ideological issues of country ownership and sovereignty, where MDBs should not dictate development priorities to and impinge on the sovereignty of developing countries. Each country has its own unique history and development challenges, and applying an inflexible template for E&S requirements can be counterproductive. Examples of contentious issues include the treatment of indigenous peoples,¹³ expensive conditionalities to offset environmental impacts, the structure of consultation, the treatment of informal residents, and the timing of various E&S requirements. Often these differences relate back to the fact that many borrowing countries loosely follow a ‘developmental state’ model, which prioritises economic development and sometimes overrides environmental and social considerations. Such states’ perceived failure to adequately address the concerns of civil society, particularly those of marginalised affected communities, has also come under much criticism. MDBs often seek to give these groups a voice, but these participatory spaces are often captured by other domestic or international civil society groups with their own agendas. It is also difficult to balance the need to provide a forum for these voices with the need for recipient governments to retain accountability.

Practically speaking, MDBs’ technical requirements in terms of E&S safeguards are frequently cited as bureaucratic, time consuming and expensive. The fact that they must be administered in addition to a country’s own legally required processes adds another layer of burden.¹⁴ This is increasingly at odds with the growing shift away from strict adherence to complicated standards and technical details towards a greater focus on implementation and results. Additionally, MDBs only finance a small percentage of countries’ infrastructure projects. Hence, the partial abandonment of a country’s own frameworks would not necessarily encourage national capacity building and the development of environmental

12 World Bank, ‘Environmental and Social Framework: Setting Environmental and Social Standards for Investment Project Financing’, 4 August 2016, https://consultations.worldbank.org/Data/hub/files/consultation-template/review-and-update-world-bank-safeguard-policies/en/materials/the_esf_clean_final_for_public_disclosure_post_board_august_4.pdf, accessed 4 September 2017.

13 There is often controversy around the definition and scope of ‘indigenous people’ in African countries, and policies protecting certain ethnic groups are contested.

14 Humphrey C, *op. cit.*; IEG, *op. cit.*

and social responsibility outside of MDB projects. This is especially true given the many tasks completed by external staff, which takes away valuable opportunities from local staff to learn by doing and strengthen their own processes.¹⁵

Among projects that MDBs do finance, funding is often not structured to support heavy MDB participation in the later stages of implementation and monitoring. This can lead to an abrupt transfer of ownership, putting the economic sustainability and longevity of these projects at risk. In other cases there may barely be any transfer of ownership at all. Ideally, there should be a gradual and intensive transfer of ownership with attendant capacity building, to ensure the likelihood of sustained project success.

It is also important to keep in mind that MDBs have international obligations related to E&S issues. They are bound by the interests of their shareholding countries, with significant pressure from these member countries' own populations and international civil society to comply with certain standards. If they finance projects that have drastic impacts that are not properly mitigated, this could affect their reputation and ability to extend finance on highly concessional terms.

Importantly, borrowing countries should not be absolved of the responsibility to continually improve their capacity to address the E&S impacts of their infrastructure, in line with their development objectives.¹⁶ MDBs should be an important vehicle to help countries improve the E&S sustainability of their projects, in line with the SDGs. However, especially in least developed countries, which are starting from a low base in terms of their E&S impact, their mitigation capacity and their will for improvement amid other more pressing developmental concerns, increasing country ownership in MDB projects becomes a much greater challenge. Finding the most sustainable way for MDBs and developing countries to work together to implement E&S requirements is imperative.

SOUTH AFRICAN CASE STUDY

The Medupi Power Station, the most prominent MDB-financed infrastructure project in the country in recent years, represents a unique case study, as it was part of the World Bank's UCS pilot project. This saw South Africa's own E&S frameworks being used, in line with the objectives of the Paris Declaration.

SOUTH AFRICA'S LEGISLATIVE FRAMEWORK: A MODEL FOR EFFECTIVE MDB COORDINATION

During the Medupi project the World Bank Inspection Panel (the bank's accountability mechanism) noted that 'South Africa arguably has one of the most advanced legal environmental regimes in the world'.¹⁷ This is a key factor that has led to a smoother

15 Humphrey C, *op. cit.*

16 *Ibid.*

17 *Ibid.*

working relationship with MDBs on pursuing sustainable infrastructure projects, as there is greater overall alignment between MDB and country systems.

BOX 1 THE MEDUPI POWER STATION AND THE WORLD BANK

After almost two decades of sustained economic growth in South Africa following the end of apartheid in 1994, the country's electricity supply faced considerable capacity constraints, raising fears of adverse knock-on effects on the overall economy. Amid growing pressure from civil society and the private sector, government and the national power utility Eskom responded with the \$50 billion 'New Build Programme', estimated to deliver an additional 12 000MW to the South African power grid over a 10-year period. The project comprises a 100MW wind power project, a 100MW solar power project, a road and rail component, a technical assistance programme to reduce carbon emissions, the revival of decommissioned power stations, and the completion and expansion of the Eskom-designed 4 800MW Medupi coal-fired power plant. Initially, Eskom hoped to raise these funds through a combination of domestic resources and international capital markets, but this plan proved unsuccessful in the context of the 2008 global financial crisis.

Under increasing pressure to find a solution to the energy crisis of 2007, when electricity demand outstripped available generation capacity, the government and Eskom approached the World Bank for support, as the New Build Programme had already begun construction. The World Bank approved the 'Republic of South Africa – Eskom Investment Support Project (EISP)', a loan from the International Bank for Reconstruction and Development (the World Bank's concessional wing) of \$3.75 billion with the aim of enhancing South Africa's electricity security through sustainable and efficient electricity generation projects. The project also received funding from the African Development Bank (AfDB, \$2 billion), the European Investment Bank and South Africa's domestic development finance institution (DFI) the Development Bank of Southern Africa (DBSA). China Development Bank signed a \$1.5 billion loan agreement for the project in June 2017.

The inclusion of Medupi in the EISP complicated the agreement, as the World Bank had begun to move away from providing financial support for 'greenfield' coal-fired power stations in order to reduce global warming. In fact, in its 2013 *Directions for the World Bank Group's Energy Sector* document^a it stated that it would 'only in rare circumstances' provide support to coal power generation projects, ie, when borrower countries had no feasible sustainable alternatives and where the project would utilise state-of-the-art 'clean coal' technologies. The Medupi project had been under construction since 2007 without MDB involvement, putting it at odds with the World Bank's policy of lessening support for coal power projects. The one major conditionality that the World Bank did require was that Eskom retrofit the power station, once complete, with advanced flue-gas desulphurisation (FGD) technology, which removes harmful sulphur dioxide from the exhaust gasses of coal-fired power plants. However, this agreement has since been called

into question, since Eskom currently only has enough water to retrofit three of Medupi's six units. The others depend on the Mokolo Crocodile Water Augmentation Project, which has experienced multiple delays.

Also significant was the World Bank's decision to use South Africa's own country systems for the project, ie, South Africa's own E&S legislation and implementing capacity, given the perceived strength of the country's E&S environmental and social frameworks.

The project has experienced significant delays, as it was projected to be completed within four years from the beginning of construction. This is owing to a number of issues, ranging from initial funding constraints to disputes with international turbine suppliers and irregular contractor strikes. Although still under construction 10 years on, Medupi provides a total of 1 600MW to the national power grid with the completion of Unit 6 in August 2015 and Unit 5 in April 2017. While this has helped to alleviate the national energy crisis, it is only a third of the project's total generating capacity and 1.8% of Eskom's total generating capacity. Medupi is currently projected to reach completion in December 2019.^b

- a World Bank, 'World Bank Group sets direction for energy sector investments', 16 July 2013, <http://www.worldbank.org/en/news/feature/2013/07/16/world-bank-group-direction-for-energy-sector>, accessed 25 August 2017.
- b World Bank Inspection Panel, 'South Africa: Eskom Investment Support Project (IBRD Loan No. 78620-ZA)', Investigation Report 64977-ZA, 21 November 2011, http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/Eskom_IPN_Investigation_Report_11.21.11.pdf, accessed 21 July 2017.



Construction of the Medupi Power Plant in Lephalale, Limpopo Province, South Africa

The South African Environmental Conservation Act 1989 (ECA) first codified the need to protect the natural environment from human activity, and made provision for environmental impact reporting¹⁸ to assess the potential impacts of large infrastructure development projects. However, it was only with South Africa's adoption of the new constitution in 1996 that a link was established between the protection of the environment and the social development of the country's citizens. Section 24 of the 1996 constitution states:¹⁹

Everyone has the right – (a) to an environment that is not harmful to their health or wellbeing; and (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that – (i) prevent pollution and ecological degradation; (ii) promote conservation; and (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

The constitution is thus the foundation for the progressiveness of South Africa's subsequent environmental legislations. The National Environmental Management Act 1998 (NEMA) replaced the ECA and is the cornerstone of South Africa's current E&S framework. NEMA departs from previous environmental legislation in South Africa in that it has institutionalised the term 'integrated environmental management' (IEM). IEM outlines an environmental governance framework and highlights the need for E&S assessments not only in the stages prior to project implementation but also throughout the full lifespan of the project and after. NEMA reinforces the importance of ensuring the environmental and social sustainability of projects through public participation. This allows these projects to act as vehicles of empowerment and education for previously disadvantaged persons and communities that may have to deal with adverse social and environmental effects from large infrastructure projects. This act has been supplemented with multiple specific acts and regulations to round out South Africa's environmental legislation regime.

In the Medupi project, four of the World Bank's six possible E&S safeguards were triggered: environmental assessment, natural habitats, physical and cultural resources, and involuntary resettlement. After a full Standard Diagnostic Review (SDR) by the World Bank, South Africa's legislation was found to be generally satisfactory in all of these categories, when considering the country's environmental impact assessment (EIA) regulations, Biodiversity Act, Protected Areas Act, Air Quality Act and Waste Act, as well as a number of laws that regulate human resettlement. Important to the World Bank's acceptance of South Africa's legislative framework is its alignment with international standards, such as thresholds for pollution levels, compensation for expropriation, the requirement for EIAs and environmental management plans (EMPs), etc.²⁰

18 *Ibid.*

19 South Africa, Constitution of the Republic of South Africa. Pretoria: Government Printer, 1996.

20 World Bank, 'Safeguards Diagnostic Review for South Africa Eskom Investment Support Project', 2010, <http://siteresources.worldbank.org/INTSOUTHAFRICA/Resources/Final-SDR-EISP.pdf>, accessed 21 July 2017.

The following lessons can be drawn from the South African case study:

- A key takeaway from South Africa's success in working with MDBs is **the harmonisation of sustainability objectives** across different legislation and agencies. South Africa's constitution balances the three aspects of sustainable development: physical, social and economic environment. This balance is also respected in environmental legislation and the objectives of implementing agencies. South Africa's past environmental regime focused more strictly on numeric targets for environmental impacts but has become more dynamic under NEMA. NEMA leaves more space to analyse the best mitigation procedures and technologies in the context of South Africa's development priorities and objectives, providing a more practically implementable framework.²¹ This ensures both that there is buy-in to existing legislation and that it is implemented thoroughly.
- The South African case shows that **high E&S standards and balanced sustainable development are not mutually exclusive**. Often in developing countries environmental legislation can be disjointed, adopting unreachable international standards that are not necessarily feasible or aligned with developmental priorities or industrial policies. As a result these standards tend to be bypassed in practice.²² It is important for different sectors of government to consult and seek general alignment in their policies on sustainability.
- It is important that the **requisite capacity is in place** to meet legislative requirements. South Africa has a strong and independent Department of Environmental Affairs that is able to administer the pertinent licences, as well as project implementing agencies (in the case of Medupi, the state-owned enterprise Eskom) with the capacity to carry out E&S impact mitigation and commission appropriate consultants. Eskom also has its own E&S safeguards policies that comply with international private sector E&S standards, including the Equator Principles and the World Bank IFC standards, and is a member of the [UN Global Compact](#).²³ All MDBs consulted for this paper highlighted the strength of Eskom's E&S management capacity, as well as South Africa's technical capacity to fill required positions. For example, before the World Bank became involved in the Medupi project, Eskom had already conducted a comprehensive EIA, administered by an independent consultant. Eskom also drafted an EMP to map out the fulfilment of Record of Decision (RoD) requirements, contracted an environmental control officer to ensure these will be met, and established an Environmental Monitoring Committee for community dialogue throughout implementation. Compliance and enforcement are also crucial to ensure that processes are followed through.²⁴ An important development under NEMA was the authorisation of centralised, national environmental management inspectors who are empowered to inspect, investigate and take administrative and enforcement actions. They also have police powers such as acting on search warrants,

A key takeaway from South Africa's success in working with MDBs is the harmonisation of sustainability objectives across different legislation and agencies

21 Personal interview, former South African government official A, Johannesburg, 10 April 2017; Personal interview, South African government official B, Pretoria, 24 April 2017.

22 Fieldwork findings, Ethiopian academic, Addis Ababa, 19 May 2017.

23 World Bank, 'Safeguards Diagnostic Review for South Africa Eskom Investment Support Project', 11 March 2010, <http://documents.worldbank.org/curated/en/931191468334806134/pdf/SR230REVISED001BLIC10Final0SDR0EISP.pdf>, accessed 4 October 2017.

24 *Ibid.*

entering premises, and carrying out the seizure, forfeiture and disposal of property connected with offences, as well as powers relating to arrest, the issuing of written notices to appear in court, and the issuing of admission-of-guilt fines.²⁵

Of course, South Africa's E&S impact management regime has its weaknesses. The mismatch between provincial and national capacities is a challenge. For example, even a nationally managed project must rely on provinces for some monitoring and compliance duties such as air quality management.²⁶ This highlighted a weakness in Medupi, as MDBs' SDR broadly assessed South Africa's national systems, when in practice national authorities cannot be present for every project matter. In the Medupi case, local residents filed complaints about contractors' illegal sand mining from the Mokolo River in Lephalale. Years passed before provincial and national authorities could agree on their respective responsibilities, and undertake the inspection/enforcement measures to prevent further environmental damage. Also, in spite of the theoretical coherence among different departments in E&S safeguard application, dissonance can exist in practice based on differing incentives and insufficient opportunities for dialogue. This can cause complications for MDBs, which make decisions in reviewing South Africa's systems broadly based on assessing the standards of the Department of Environmental Affairs, but without full knowledge of tensions or divisions between government departments or between various levels of government.²⁷ Additionally, civil society questions the rigour with which monitoring and compliance measures such as the environmental monitoring inspections are applied, which is especially important when MDB oversight lessens in these stages.²⁸ Overall, however, South Africa can be seen as a best practice model on the continent and even internationally.

EXPERIENCES WITH USE OF COUNTRY SYSTEMS: DO THEY MAKE A DIFFERENCE?

The World Bank piloted the use of South Africa's own E&S safeguards systems in full on the Medupi project. This was the first UCS pilot with significant scale and impact. South Africa's legislative processes as well as its staffing capacity were utilised, with small exceptions where gaps identified by the World Bank were filled through a combination of MDB and country efforts.²⁹ It is important to assess whether this mechanism has been effective in improving MDB–country coordination and ultimately benefitting project sustainability, as the World Bank shifts towards greater country ownership with its new ESE

25 *Ibid.*

26 *Ibid.*; Personal interview, South African government official C, Pretoria, 6 April 2017.

27 Personal interview, South African state-owned enterprise (SOE) representative A, Pretoria, 17 May 2017; Personal interview, South African government official C, *op. cit.*

28 Personal interview, South African civil society representative A, Johannesburg, 6 April 2017; Personal interview, civil society representative B, Johannesburg, 2 May 2017.

29 The one significant gap-filling measure on the Medupi project was the requirement for a formal, publicly disclosed Resettlement Action Plan (RAP) for any residents on the project site, which is not required by South African legislation. However, the groundwork for social impact assessments, consultations and resettlement is required by Eskom and the national government, which made the packaging of these components into a formal RAP a fairly easy addition for Eskom to satisfy World Bank policies.

When analysing UCS impacts in South Africa, it is important to note that the ideological issues surrounding the concept of UCS are as if not more significant than the technical issues. South Africa holds strong views on its own self-determination and sovereignty and has traditionally steered away from MDB funding, owing to the perceived MDB conditionalities. The same is true for various African countries, and MDBs have to acknowledge this perspective if they are to address the lending challenges they face and the need to make their lending more attractive. From an ideological perspective, UCS has yielded quite positive results in South Africa. South African stakeholders said that processes were implemented as usual according to South African standards, and thus perceptions of a lack of sovereignty or ‘imposed’ development were minimal. Multiple government stakeholders confirmed that government stakeholder meetings held by the MBDs on the project were generally agreeable and not contentious. This is a notable achievement given South Africa’s reluctant approach to MDBs. However, it is also important to note that the later-stage entry of MDBs in the project lifecycle contributed to this effect.³⁰

A specific project example of the handling of grave relocations also demonstrates the benefits of country ownership. South Africa’s [National Heritage and Cultural Resources Act](#) requires a Heritage Impact Assessment if infrastructure is to be built on any sites of cultural importance. South Africa has various ethnic groups, each with different traditional religious practices, which makes this a crucial element. When local consultants first completed a Heritage Impact Assessment the public participation component failed to ensure that all community members with potentially affected gravesites were notified. In the community this could have been done effectively through passing on the information by word of mouth rather than by holding public meetings advertised only in English and Afrikaans. As a result of this communication failure, the power station was built on top of 10 identified gravesites.³¹

While this posed a challenge, using South Africa’s systems allowed consultants familiar with these dynamics and practices to lead the process and rectify the situation through a traditional ceremony followed by the construction of a permanent visitation site on the property. Traditional leaders play a major role in dealing with sites of cultural heritage, and although this is not formally included in legislation, it is well known in South Africa and local social specialists are experienced in the relevant process. More so than the actual specificities of the Heritage Act (which is in need of updating), it is these experiential nuances that make UCS so important.³² Eskom, in particular, noted the learning process in terms of how it could have better reached all potentially affected parties, which is an important validation of allowing country systems to be strengthened through use. If the

30 Personal interview, South African government official A, *op. cit.*; Personal interview, South African government official C, *op. cit.*

31 Personal interview, South African SOE representative B, Johannesburg, 28 April 2017; Skype interview, MDB representative A, Johannesburg, 22 March 2017.

32 *Ibid.*

responsibility had primarily been shouldered by MDB staff, the opportunities to build up experiential knowledge and learning would undoubtedly be fewer.³³

Also important is the fact that the relationship between Eskom and the community will continue beyond the project to handle enduring impacts, as well as through community development initiatives. Continuity of staff is necessary to ensure a consistency in vision and practices, as well as the strong relationships necessary for trust building and follow-through on initiatives. Often when MDBs have a significant presence in terms of staff and authority over processes during implementation, monitoring safeguards suffers in later stages.³⁴ In this case, increasing country ownership was shown to be crucial both in the soft issues of maintaining a good relationship between South Africa and MDBs and in increasing the likelihood of future borrowing. Technical aspects that benefited were the contextual relevance and increased capacity building and sustainability of E&S safeguards practices.

Yet the Medupi project still highlighted challenges that need to be addressed. A major area of contention on this project was the lack of coherence between stakeholders on the level of standards that UCS requires from borrowing countries. In 2010 two CSOs based in South Africa, [groundWork](#) and [Earthlife Africa](#), submitted a request to the World Bank and AfDB accountability mechanisms (independent bodies that can investigate civil society complaints) to investigate a wide range of potential adverse impacts that could stem from the project. The CSOs considered the South African legal framework to be inadequate to deal with a project of this scale, particularly in terms of monitoring cumulative impacts that cannot be attributed directly and immediately to the project. The World Bank Inspection Panel validated many of these claims in its recommendations to World Bank management. However, bank management did not take up the recommendations, as it believed them to be based more on procedural issues of standards not being identical to those of the World Bank than actual deficiencies in South Africa's ability to manage impacts sufficiently. This indicates a need for the World Bank to first unpack and then create more specific guidelines on how stringently or flexibly the 'equivalence to World Bank standards' principle will be applied in future. Erring on the side of flexible interpretation would allow the World Bank and borrowing countries to uphold the principles of the Paris Agreement and introduce an element of learning by doing, which has thus far been progressing slowly. Such an approach will become even more important once the new World Bank ESF is implemented, in which the safeguards also leave significant room for interpretation and UCS.

ETHIOPIAN CASE STUDY

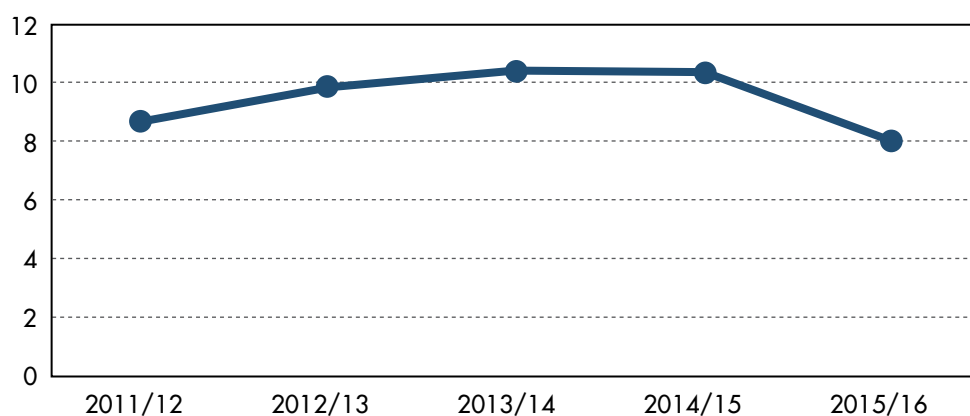
Ethiopia has experienced rapid and stable economic growth and improvements in various other socio-economic indicators over the past decade. Over the last five years alone, real gross domestic product (GDP) has grown on average by 9.5% (Figure 1) compared to

33 Personal interview, South African SOE representative B, *op. cit.*

34 *Ibid.*

the regional average of 5.4%.³⁵ This rapid growth can be attributed to a variety of factors, from a sound macroeconomic policy to the expansion of the service and agricultural sectors and, more recently, the development of a domestic manufacturing sector. This rapid economic growth has had significant knock-on effects in terms of poverty reduction – according to the World Bank, 53.3% of Ethiopians lived in extreme poverty (on less than \$1.90 per day) in 2000 – by 2011 this figure was reduced to 33.5%.³⁶

FIGURE 1 TRENDS IN REAL GDP GROWTH (%)



Source: National Bank of Ethiopia, *Annual Report 2015/16*, <https://www.nbe.gov.et/publications/annualreport.html>, accessed 4 September 2017

In order to maintain this growth momentum and further reduce poverty in Ethiopia, the Ethiopian People's Revolutionary Democratic Front's (EPRDF) growth strategy, the 2015/16–2019/20 Growth and Transformation Plan, aims to improve and develop physical infrastructure that will allow better regional integration, poverty reduction and the continued development of Ethiopia's nascent manufacturing sector. Under this framework the EPRDF has prioritised 'poverty-reducing expenditure', which is defined to include total government expenditure on health, education, agriculture, roads and food security.³⁷ According to the International Monetary Fund, Ethiopia's total poverty-reducing

35 World Bank, 'Country Economic Overview: Ethiopia', <http://www.worldbank.org/en/country/ethiopia/overview>, accessed 14 June 2017.

36 World Bank, 'Poverty headcount ratio at \$1.90 a day (2011 PPP) (% of population)', <https://data.worldbank.org/indicator/SI.POV.DDAY?locations=ET>, accessed 4 October 2017.

37 IMF (International Monetary Fund), *The Federal Democratic Republic of Ethiopia: 2016 Article IV Consultation – Press Release; Staff Report; and Statement by the Executive Director for the Federal Democratic Republic of Ethiopia*, IMF Country Report No. 16/322, October 2016, <https://www.imf.org/external/pubs/ft/scr/2016/cr16322.pdf>, accessed 2 October 2017.

expenditures rose from ETB³⁸ 38.14 billion (\$1.6 billion) in the 2013/14 financial year (17.8% of total government expenditure and net lending) to ETB 74.14 billion (\$3.1 billion) in 2015/16 (25.12% of total government expenditure and net lending). These expenditures are expected to increase to ETB 119.29 billion (\$5 billion) by the 2019/20 financial year (20% of total government expenditure and net lending).³⁹

Roads in Ethiopia make for an interesting case study, as the sector has been the biggest recipient of MDB funding in the country over the past decade. Despite numerous challenges that stem from governance issues in the implementation of the country's own E&S safeguards legislation, traditional financiers such as the World Bank, the AfDB and the EU have emerged as major funders in the Ethiopian roads sector.

BOX 2 ROADS IN ETHIOPIA

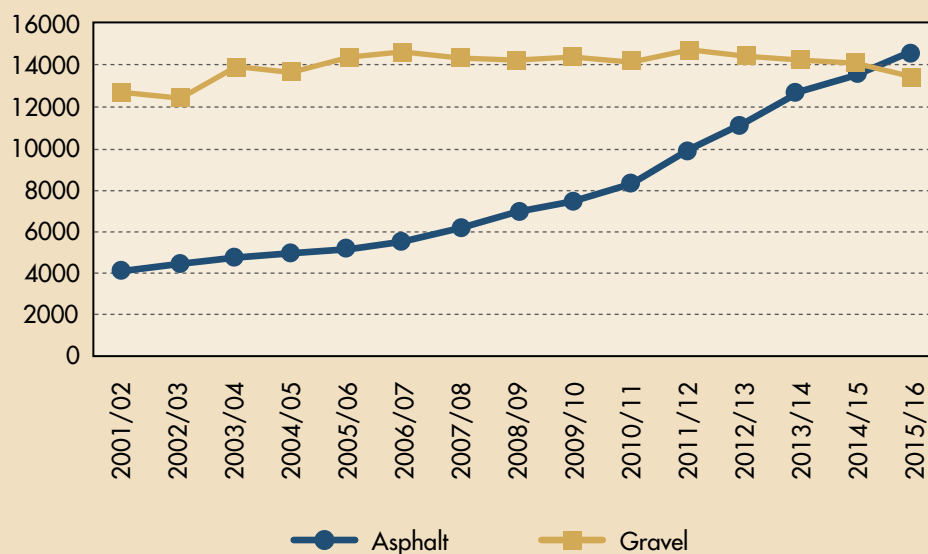
The roads sector takes up a significant share of the country's budget, as it is the dominant mode of transport in Ethiopia. Road development is considered a precursor to the development of other sectors such as extractives, agriculture, manufacturing, education and healthcare. Currently, over 95% of goods are transported by road in Ethiopia.^a The budget for road sector development in 2015/16, for instance, was ETB 33.2 billion (\$155.3 million), of which treasury funds, external loans and external grants contributed approximately ETB 24 billion (\$1.4 billion), ETB 9 billion (\$426.1 million) and ETB 0.2 billion (\$9.5 million) respectively.^b This prioritisation of road infrastructure development has resulted in a significant expansion of Ethiopia's road networks: in 2015/16, Ethiopia's total road network was approximately 113 066km. During the review period, from 2001/02 to 2015/16, rural road networks, administered by regional authorities, increased by 3.2% and reached a total length of 31 620km.

Traditional MDBs view road projects as viable avenues for funding in Ethiopia for two major reasons. Firstly, Ethiopia's road development projects are in line with both domestic poverty reduction strategies and the World Bank's core goal of global poverty reduction.^c Secondly, the World Bank considers road development as less controversial and risky than other mega-infrastructure projects such as electricity or rail, as these projects often upgrade and resurface existing roads. Although the relationship between the World Bank and Ethiopia is good and Ethiopia has accepted World Bank E&S safeguards in principle, the implementation of these frameworks is not always consistent.

The World Bank and the AfDB, together with the EU, Japan and China, have been the largest foreign funders of Ethiopia's road development projects for over two decades. Between 1997 and 2011 the World Bank was the largest foreign funder of Ethiopian roads – accounting for 9.2% of Ethiopia's total road development – followed by the EU (6.2%), China (3.9%) and the AfDB (2%).^d

38 Currency code for the Ethiopian birr.

39 *Ibid.*

FIGURE 2 TRENDS IN REAL GDP GROWTH (%)


Source: Based on data from National Bank of Ethiopia, *Annual Report 2015/16*, <https://www.nbe.gov.et/publications/annualreport.html>, accessed 4 September 2017

The World Bank has supported the development of Ethiopia's roads under two major projects: the \$308 million-Ethiopia Road Sector Development Program and Fourth Adaptable Program Loan Project (APL4),^e from 2009 to 2017; and the \$385 million-Road Sector Support Project,^f projected to run from 2014 to 2024. These projects both emphasise physical road asset development (391km of roads were upgraded and/or resurfaced under the APL4 programme) and include comprehensive sector capacity-building measures such as establishing road research centres, and modernising the Ethiopian Roads Authority (ERA) and maintenance need assessments. The Road Sector Support Project will focus on upgrading critical linking roads; ensuring maintenance and maintenance capacity building; and implementing road safety and institutional capacity-building measures.

- a Wolde Giorgis A, 'Ethiopia: Roads reinforcing socio-economic development', *AllAfrica*, 16 August 2017, <http://allafrica.com/stories/201608161129.html>, accessed 10 October 2017.
- b National Bank of Ethiopia, *Annual Report 2015/16*, 2016 exchange rate (20.61 birr/dollar) and 2015 exchange rate (21.62 birr/dollar) were averaged and 21.12 birr/USD was used for these calculations. <https://www.nbe.gov.et/publications/annualreport.html>, accessed 4 September 2017.
- c World Bank, 'Topic overview: Poverty', <http://www.worldbank.org/en/topic/poverty/overview>, accessed 16 May 2017.
- d Ethiopian Roads Authority, 'Ethiopia: On-Going Efforts in Roads Development and Future Plans', February 2013.
- e World Bank, 'Ethiopia: Road Sector Development Program APL4', <http://projects.worldbank.org/P106872/fourth-roads-sector-development?lang=en>, accessed 16 May 2017.
- f *Ibid.*

ETHIOPIA'S LEGISLATIVE FRAMEWORK AND IMPLEMENTATION ORGANS

In Ethiopia, environmental management and sustainable development policies are formulated and guided at different levels of government. These include the constitution of 1997, which provides the foundation for all policies and legislation, and the Environmental Policy of Ethiopia (EPE), which provides the framework for environmental legislation and sectoral policies and legislation that deal with specific sectoral environmental issues. Ethiopia is a federal state with nine regional states and two city administrations. Government roles at the federal, regional and local level are defined by the constitution and Proclamation No. 4/1995.⁴⁰ Accordingly, it is the responsibility of regional states to plan, direct and develop their own social and economic programmes, as well as to ensure the administration, development and protection of the natural resources of their respective regions. To this end, each regional state issues its own proclamation regulating environmental issues. The Ethiopian constitution raises environmental concerns to the level of fundamental human rights and incorporates a number of provisions relevant to the protection, sustainable use and improvement of the country's environmental resources. The country's sustainable development and environmental rights are entrenched in the 'Rights of Peoples in Ethiopia' through articles 43 (Right to Development); 44 (Environment Rights); and 92 (Environmental Objectives).

The EPE's overarching aim is to⁴¹

improve and enhance the health and quality of life of all Ethiopians and to promote sustainable social and economic development through the sound management and use of natural, human-made and cultural resources and the environment as a whole.

This must be achieved through both sectoral and cross-sectoral policies. Some of the issues mentioned in the EPE relevant to this paper are addressing climate change; promoting a climate monitoring programme; encouraging re-vegetation; monitoring grazing; rehabilitating degraded land to compensate for high biomass-fuel consumption; sustainably using energy resources; and preserving the cultural and natural heritage.

The Ethiopian Environment Authority was established in 1997 in response to the requirements of the constitution (Proclamation No. 9/1995). With the inclusion of the forestry sector in 2014 it became the Ministry of Environment and Forestry. Its most recent recasting is as the Ministry of Environment, Forestry and Climate Change (MoEFCC).

The MoEFCC is mandated to carry out the following main duties:

- Coordinate measures to ensure that the environment objectives provided under the constitution and the basic principles set out in the environmental policy of Ethiopia are realised.

40 FDRE (Federal Democratic Republic of Ethiopia), 'Proclamation for the Establishment of Environmental Protection Authority, Proclamation No. 09/1995'.

41 the REDD desk, 'Environmental Policy of Ethiopia', http://theredddesk.org/sites/default/files/environment_policy_of_ethiopia_1.pdf, accessed 4 October 2017.

- Establish a system for the EIA of public and private projects, as well as social and economic development policies, strategies, laws and programmes.
- Prepare a mechanism that promotes social, economic and environmental justice and channel the major part of any benefit derived thereof to the affected communities to reduce emissions of greenhouse gases that would otherwise have resulted from deforestation and forest degradation.
- Coordinate actions on soliciting the resources required for building a climate-resilient green economy in all sectors and at all governance levels, and provide capacity-building support and advisory services.
- Establish a system for the evaluation of the EIA of investment projects submitted by their respective proponents, the concerned sectorial licensing organ or the concerned regional organ prior to granting permission, in accordance with the Environmental Impact Assessment Proclamation.
- Take part in the negotiations of international environmental agreements and, as appropriate, initiate a process for their ratification.
- Establish an environmental information system that promotes efficiency in environmental data collection, management and use.
- Promote and provide non-formal environmental education programmes and cooperate with competent organs with a view to integrating environmental concerns in the regular educational curricula.

Ethiopia's environmental protection organs are:

- the MoEFCC;
- regional environmental agencies; and
- sectoral environmental units.

This proclamation establishes the Environmental Protection Authority (EPA) as an autonomous federal agency that formulates environmental policies, strategies, legislation, standards and directives. It also provides for the establishment of the Environmental Council to ensure the integration of environmental concerns into development policies, strategies and plans, as well as coordination among sectors. The proclamation requires every competent agency to establish or designate its own environmental unit, which shall ensure collaboration with the EPA and be responsible for coordinating and following up on the activities of the agency in harmony with this proclamation and other environmental requirements.

Within the roads sector, following the issuance of environmental policies and guidelines, the ERA established an Environmental Unit, which deals with environmental issues surrounding road infrastructure.⁴² Since the establishment of the unit in 1998, EIAs have become a mandatory planning tool and environmental concerns are mainstreamed in all road construction activities, while stronger environmental clauses are included in the ERA's contractual agreements.

42 FDRE, 'Environmental Impact Assessment Proclamation, Proclamation No. 299/2002'.

EIAs are an integral part of Ethiopia's E&S safeguards framework. The federal government has issued a Proclamation on Environmental Impact Assessment (Proclamation No. 299/2002). As part of the ongoing effort to develop environmental legislation and guidelines in Ethiopia, the EPA formulated the EIA Guideline. The EIA Guideline outlines the categories and relevant requirements for an EIA, and lists project types under each category. In accordance with this guideline, projects are categorised into three schedules based on the significance of their impacts. Rural road programmes fall into Schedule 1, which requires a full EIA, and major rural road upgrade/rehabilitation projects fall into Schedule 2, which may not warrant a full EIA. Projects located in environmentally sensitive areas such as land prone to erosion, land prone to desertification, areas of historic or archaeological interest, important landscapes, religiously significant areas, etc. must be treated as equivalent to Schedule 1 activities irrespective of the nature of the project.

On the basis of the EPA's Environmental Impact Considerations for Transport Sector Projects (January 1998),⁴³ the ERA issued environmental guidelines for the road sub-sector to instruct and guide the various parties involved on environmental concerns. The main objective of the document is to provide specific guidelines on how to integrate environmental concerns associated with roadworks into the planning, design and implementation of the various phases of road development. However, this is not a legal document but rather an official guideline to serve the activities of the ERA and its relations with other organisations in coordinating efforts on environmental issues.

REALITIES OF IMPLEMENTING E&S SAFEGUARDS IN ETHIOPIA'S ROAD SECTOR

Ethiopia's E&S impact requirements generally match MDB standards in principle, but challenges in implementation are still significant. According to respondents, there is no significant disagreement between the government and financiers regarding the importance of strong environmental and social legislation. According to government respondents, all stakeholders, in principle, are aware of the potential for adverse environmental and social impacts brought about by investments in infrastructure projects. However, some respondents have indicated that, owing to the government's prioritisation of economic growth over environmental and social issues, the EIA is often considered a 'tick-box exercise' and rushed through the approval process without proper review. Although the gap between the domestic E&S safeguards legislation and the World Bank's E&S safeguard policy has narrowed significantly, challenges remain in the implementation of the abovementioned legal frameworks. These are mostly owing to issues stemming from i) weak civil society and government accountability; ii) disparate E&S safeguards considerations by emerging funders; and iii) domestic capacity shortfalls.

43 *Ibid.*

Limited civil society participation

In February 2009 the Ethiopian government adopted the Proclamation to Provide for the Registration and Regulation of Charities and Societies,⁴⁴ which governs the regulation and registration of CSOs. This legislation has placed severe constraints on Ethiopia's civil society, with the result that complaints about large-scale infrastructure projects often fall on deaf ears. Legal restrictions on non-governmental organisations (NGOs) and civil society have also meant that strict constraints are placed on individuals wishing to form and operate associations effectively. Within this legislation, NGOs and CSOs are restricted to no more than 10% foreign funding, which hampers their ability to mobilise effectively for environmental and social causes as these relate to infrastructure development.⁴⁵ Thus the voice of local civil society is severely restricted.

According to interviewees,⁴⁶ public participation in the conception and implementation stages of infrastructure projects, even in MDB-funded projects, is limited to a small number of government-approved community organisations. This raises questions around the effectiveness of mechanisms to address the environmental and social concerns of the public. While it is important for national/local authorities to take the lead in this process rather than MDBs, which have a limited contextual understanding, in countries such as Ethiopia where governance is not democratic, this can make the participation process much more challenging. Increasing country control in E&S safeguards is thus country specific, and MDBs must consider countries individually. In this particular instance it could lead to important voices being left out of the conversation, and might warrant heavier MDB involvement in designing and monitoring participation processes. In controversial cases where such a step might lead to significant conflict with the government, MDBs might not be best suited for involvement in the public participation process. In some cases this has seen the government withdraw its application for funding. However, on less controversial issues respondents have noted that MDBs could play an instrumental role in bringing issues to the fore that the government normally might be reluctant to address, such as fair compensation. In sum, the government and its agencies ultimately decide to what extent a road project is subject to proper EIA.

Emergence of non-traditional funders

Another challenge to the implementation of environmental legislation in Ethiopia is the emergence of non-traditional financiers in the roads sector. Over the past decade Ethiopia has started accessing loans from Chinese and South Korean export–import banks. Although it is difficult to get data on the total Chinese investment loans extended to Ethiopia, available evidence shows that Chinese loans for road infrastructure in the

44 FDRE, 'Proclamation to Provide for the Registration and Regulation of Charities and Societies, Proclamation 621/2009', *Federa Negarit Gazeta*, 13 February 2009.

45 International Centre for Non-Profit Law, 'Civic freedom monitor: Ethiopia', 7 May 2017, <http://www.icnl.org/research/monitor/ethiopia.html>, accessed 12 June 2017.

46 Skype interview, Ethiopian academic, Addis Ababa, 9 June 2017.

country have become the second largest after the World Bank's.⁴⁷ The diversification of the funding landscape has meant that Ethiopia now has the option of accessing funding that comes with fewer E&S conditionalities (as in the case of the controversial China-funded 1 870MW [Gibe III Hydroelectric Project](#), which will potentially impact hundreds of thousands of farmers who rely on the Gibe River for crop irrigation).⁴⁸

Unlike traditional lenders, emerging funders seem to be less influenced by the campaigns of international or national NGOs. These financiers also fund more controversial projects, such as dams, while their contract agreements are relatively less complex, as they do not have their own safeguard policies and instead use established country systems – even when these systems are inadequate to implement domestic environmental legislation. The presence of these funders has also arguably had a significant impact on traditional MDBs operating in Ethiopia, as it gives more leverage to the Ethiopian government to push through its demands in terms of how infrastructure is developed. While this is a positive development in helping to change the often-skewed balance of power between MDBs and countries, it can also be detrimental if used to distort MDB policies to fall below basic standards of E&S ethics. Another negative effect is that this gives countries such as Ethiopia fewer opportunities to leverage MDB strengths in providing knowledge and expertise in growing their E&S safeguards.

Capacity constraints

Given the large number of ongoing road projects in Ethiopia, the environmental and social units within implementing bodies delegated by the MoEFCC are seriously understaffed in terms of experts with the requisite skills and level of education. Furthermore, implementing bodies are not well organised and have no established structure with enough experienced staff to properly review EIA documents and monitor the implementation thereof. Currently, the different implementing agencies and ministries are staffed with junior personnel with little experience and diverse educational levels.

Due to capacity constraints within Ethiopia's state institutions, almost all environmental and social impact assessments are undertaken by national and international consulting firms. According to respondents, a major challenge is the huge capacity gaps between the consultants who prepare EIA documents and the in-house government experts who review these documents. Given that the in-house experts lack the necessary capacity to review the documents prepared by consultants, they cannot undertake effective supervisory missions to project sites. For example, in order to check whether a particular project is meeting E&S standards, the MoEFCC must be able to test and measure the exact effects that the project will have on the environment and the community. However, since the MoEFCC does not have the tools (such as GPS remote sensing tools) or staff to undertake these

47 National Bank of Ethiopia, *Annual Report 2015/16*, <https://www.nbe.gov.et/publications/annualreport.html>, accessed 4 September 2017.

48 *The Economist*, 'Ethiopia opens Africa's tallest and most controversial dam', 21 December 2016, <http://www.economist.com/news/21712281-gibe-iii-dam-has-capacity-double-countrys-electricity-output>, accessed 10 June 2017.

tasks, it cannot cross-check the data supplied by consultants. This, in turn, calls into question the impartiality and depth of the work undertaken by the MoEFCC with regard to EIA and post-project monitoring and evaluation.

Furthermore, although consulting firms have relatively more expertise than the staff of project-implementing institutions and have improved over the years owing to domestic competition, most do not have the requisite expertise and capacity to undertake EIAs. EIAs conducted by consulting firms often fall short in terms of providing the disaggregated data required for detailed analysis, and lack depth and nuance on the impacts that projects may have on different subgroups, such as women or specifically affected households. Moreover, consultant reports sometimes include data from plagiarised EIAs. These shortcomings are often exacerbated by the assumption that the implementing bodies do not have the capacity to check the quality of these reports. Corners are cut and sub-standard reporting is submitted, even by experienced private consulting firms.

It is clear that capacity building is a major challenge in Ethiopia that deserves more attention from both the government and MDBs. It is important that MDBs retain an oversight role where government oversight of environmental concerns is lacking. There are also opportunities for capacity-building interventions that will enable MDBs to relinquish more control of E&S processes in the long term. Training can ensure that the MoEFCC and the E&S units within its implementing agencies are better able to undertake their core functions, such as EIA review and environmental cost/benefit analysis. Such training should include more options for shadowing, by pairing junior staff members with senior experts located inside these government agencies or, more likely, in external companies. Another option would be offering courses and interventions in data aggregation and analysis, which could assist the government across a range of issues other than E&S impact mitigation. MDBs, with their experience in technical assistance, could drive and facilitate these efforts. Especially in countries such as Ethiopia, where environmental and social concerns are often perceived as ‘reserved for the future’, increased MDB dialogue is crucial in driving demand for these types of assistance. Holding informational forums and workshops that convey the immediacy of environmental issues such as climate change, and demonstrating that more comprehensive E&S safeguards are not in conflict with efficient infrastructure development, have proven to be instrumental in driving buy-in in other parts of the world. Given the greater reputational risks that MDBs face in countries such as Ethiopia, the benefits should be self-evident to MDBs.

However, interviewees noted one key challenge in capacity-building initiatives: government officials who have received capacity-building interventions often leave for higher paid private or even MDB positions. This is another area where MDBs could play a role; ie, in facilitating the design of better incentives and salary packages to both retain recipients of capacity-building interventions and, more importantly, attract already-capacitated citizens (potentially even from the diaspora) to government positions.⁴⁹ In order to ensure the attractiveness of government positions, such interventions should not be geared towards E&S positions only (which the government sometimes views as

In countries such as Ethiopia, where environmental and social concerns are often perceived as ‘reserved for the future’, increased MDB dialogue is crucial in driving demand for assistance

49 Fieldwork findings, Ethiopian academic, Addis Ababa, 19 May 2017..

obstructive) but take place across a wider range of positions and departments. As capacity increases within these institutions, there will be a greater ability to propose and exert pressure for effective impact mitigation. A gradualist perspective must be taken, where over time these smaller efforts will reinforce shifts in ideology as economic development continues.

ETHIOPIA'S GREEN ECONOMY INITIATIVES

The Ethiopian government is becoming more aware of environmental issues, as climate change is increasingly affecting the country's rainfall patterns. In response to these concerns the prime minister released the 2011 [Climate Resilient Green Economic \(CRGE\) Strategy](#).⁵⁰ This policy aims to protect the country from the adverse effects of climate change and to develop a green economy that will move Ethiopia towards its vision of achieving middle-income status by 2025. The CRGE plan is based on four pillars:

- improving crop and livestock production practices for increased food security and farmer incomes while reducing emissions;
- protecting and re-establishing forests for their economic and ecosystem services, including for use as carbon stocks;
- expanding electricity generation from renewable energy sources for domestic and regional markets; and
- leapfrogging to modern and energy-efficient technologies in the transport and industrial sectors, and the built environment.

Greater involvement in green technology will allow the World Bank to promote sustainability and capacity building by facilitating the roll-out of cutting-edge technologies where emerging funders' capacities may fall short

Despite these commitments, little has been achieved in the country in terms of climate-resilient infrastructure. Within this strategy is an opportunity where traditional MDBs such as the World Bank can gain increased relevance in Ethiopia while promoting sustainability. As discussed above, there is significant pressure on the World Bank to remain engaged in Ethiopia because of its regional political and economic strengths. However, Ethiopia's governance track record often places traditional MDBs in the awkward position of funding projects that fall short of World Bank sustainability frameworks – even more relaxed safeguarding policies. Possible avenues for increased collaboration can therefore include greater involvement in smaller green energy projects that promote the use of emerging sustainable technologies such as geothermal energy and wind turbines – fields where major World Bank shareholders such as the US and Germany are industry leaders. By becoming more involved in the green energy sector, the World Bank can leverage its comparative consulting and capacity-building experience and advantages in these areas. Doing so will allow it to remain engaged through its involvement in projects less prone to controversy, and to feed into emerging green economy strategies such as the CRGE Strategy, which aims to diversify Ethiopia's energy mix as climate change threatens the sustainability of its dams. Greater involvement in green technology will allow the World

50 UNDP (UN Development Programme), 'Ethiopia's Climate-Resilient Green Economy: Green Economy Strategy', <http://www.undp.org/content/dam/ethiopia/docs/Ethiopia%20CRGE.pdf>, accessed 11 June 2017.

Bank to promote sustainability and capacity building by facilitating the roll-out of cutting-edge technologies where emerging funders' capacities may fall short. This is a longer-term strategy (given issues of buy-in at this stage) that will become increasingly relevant with the combination of cheaper green technologies' greater availability and changing rainfall patterns' threats to the sustainability of hydropower.⁵¹

PERSPECTIVES ON MDB–GOVERNMENT COORDINATION: FINDING COMMON GROUND

Beyond the specific contexts of the case studies, stakeholder consultations generally revealed significantly contrasting views on cooperation between MDBs and national entities. It is important to unpack these views, as they are integral to informing more constructive collaboration between these stakeholders.

Both South Africa and Ethiopia view cooperation with MDBs from a strongly ideological perspective, which is the case in many African countries. South African government stakeholders regard developed country priorities (ie, the priorities of non-borrowing shareholders with a greater share of votes, and therefore more policy influence on MDBs) as differing quite substantially from South African priorities. South Africa must be able to frame infrastructure projects within its own national agenda in order to drive growth.⁵² South African stakeholders therefore want assurance that everyone involved in infrastructure financing has an understanding of the country's history and developmental agendas. They are particularly sensitive to consultants from external financiers who do not understand the importance of enforcing social development and local employment initiatives to redress the structural inequalities of apartheid.⁵³ Socio-economic development is the foremost priority in South Africa, which can often cause tension when it competes with issues such as environmental protection (a top priority for MDBs).

In Ethiopia, there is little real commitment to E&S issues among officials at different levels. According to respondents, there is a tendency to undermine E&S concerns and a reluctance among higher-level decision makers to accept relevant expert opinions. This is because of a lack of first-hand knowledge about and prioritisation of the consequences of irreparable damage to the environment and the social impacts of these projects. Furthermore, respondents say that since Ethiopia is a poor country, it needs rapid economic growth and thus cannot afford 'environmental luxuries' that look to the future while present generations suffer. Like South Africa, the Ethiopian government

South African stakeholders want assurance that everyone involved in infrastructure financing has an understanding of the country's history and developmental agendas

51 This recommendation is posed to Ethiopia in particular and not South Africa, because South Africa is already advanced in devising and funding climate-resilient infrastructure initiatives, particularly the Renewable Energy Independent Power Producer Procurement Programme.

52 Personal interview, South African government official B, *op. cit.*; Personal interview, former South African government official, *op. cit.*

53 Personal interview, South African government official B, *op. cit.*; Personal interview, South African DFI representative, Pretoria, 23 February 2017.

often considers World Bank safeguards as Western formulations and out of step with the realities faced by developing countries.⁵⁴

MDBs have a much more technocratic view of cooperation around E&S safeguards. For example, from their perspective, South Africa has reached a stage of convergence with MDB standards where the distinction of whose E&S safeguards policies are used is no longer relevant, and both the South African government's implementing agencies and MDBs officials can learn from each other. This technocratic perspective also applies to borrowing countries such as Ethiopia, where MDBs have significant additional E&S safeguards requirements. MDBs indicated that they used the appropriate national legislation to the fullest extent possible to satisfy their frameworks, and only used a completely separate protocol if there was a gap in local legislation (often the case in the treatment of indigenous people, for example).⁵⁵ Although this necessitated major judgement calls by banks over and above borrower-country perspectives, MDBs stressed that it did not impose a completely disparate system on borrowing countries, and that the perceived tensions were exaggerated.⁵⁶ Given this dynamic, the MDBs consulted felt that the most important challenge in cooperation was not the imposition of standards and their threat to development objectives, but rather working together harmoniously on the ground. Overall, the MDB representatives interviewed downplayed the role of politics and shareholder interests in governing standards. They instead emphasised the importance of a sustained dialogue throughout implementation and noted that many challenges impeding cooperation boiled down to inadequate relationship building.⁵⁷

Given these dynamics, an important takeaway is the need for both MDB and government stakeholders to make concessions in their approach, so that project relationships can become partnerships. MDBs must recognise that differing standards are important to borrowing countries, as projects cannot be removed from national contexts and developmental objectives. Each country is unique. It is therefore important that more resources are allocated to building consensus between the various stakeholders involved in large-scale infrastructure projects. This can take the form of annual/bi-annual 'trust-building' workshops for various stakeholders in the countries where MDBs plan to become involved – even prior to the conceptualisation of bankable projects. It is also important that more time is allocated before financing agreements are finalised to understand country dynamics and iron out whether MDBs have the flexibility to meet country objectives. On the other hand, it is important for countries to show flexibility as well. In countries such as South Africa and Ethiopia, where MDBs are often viewed with immediate scepticism and any conditionality as an 'imposition', government stakeholders must be open to greater consideration of MDB advice at face value. Ultimately, it is then up to government

It is important that more time is allocated before financing agreements are finalised to understand country dynamics and iron out whether MDBs have the flexibility to meet country objectives

54 Fieldwork findings, Ethiopian academic, Addis Ababa, 19 May 2017.

55 Skype interview, MDB representative D, Johannesburg, 1 March 2017.

56 Skype interview, MDB representative B, Johannesburg, 3 February 2017.

57 Skype interview, MDB representative B, *op. cit.*; Skype interview, MDB representative A, *op. cit.*; Skype interview, MDB representative D, *op. cit.*; Personal interview, South African DFI representative, *op. cit.*

stakeholders to determine objectively when the cost of MDB requirements is too great to justify their involvement.

It might be more cost- and time-effective for MDBs to extend E&S safeguards-specific planning in certain countries beyond project level, to a general component of their country and sector strategies. This would make the most financial sense in countries that are between low and middle income and borrow significantly from MDBs for their infrastructure needs, or in countries whose development strategies have a particular focus on E&S issues (for example Rwanda, which has shown clear commitment to sustainability efforts such as green energy and cities). MDBs and countries could discuss MDB requirements in line with borrower-country objectives and constraints, and outline a country-specific 'E&S safeguards plan' for certain infrastructure sectors such as transport or energy. Based on the context of the borrower country, as well as on the ultimate baseline standards that MDBs cannot dip below,⁵⁸ such a plan would define areas where greater MDB flexibility could or could not be exercised.⁵⁹ An E&S safeguards plan would allow MDBs to consider each country's unique context in terms of applying MDB standards. It would also address criticism that the World Bank's new ESF is vague by adding more clarity through individual country/sector negotiations. It is hoped that other MDBs will follow suit. This undoubtedly requires more effort (time and money) from MDBs, and should only be considered for certain countries. However, MDBs need to devote more time to differentiating between individual countries in order to remain a preferred source of funding and a financially viable option for borrowing countries. The approach will ultimately simplify procedures and tensions when used over multiple projects. As noted in the UN [Inter-Agency Task Force \(IATF\) on Financing Sustainable Development's](#) review of the Addis Ababa Action Agenda, countries can better facilitate these efforts and show that they are committed by developing strong strategies for cooperation with MDBs and other development partners. Such strategies should outline a clear vision for country-led development, and form a link to both a country's national development strategy and the sustainable development objectives.⁶⁰

If coherence cannot be attained, both parties should be willing to end the partnership, as may often be the case for megaprojects in lower-income, less developed countries. In these cases or countries, MDBs could refocus on smaller, less controversial and more forward-looking projects, such as green energy infrastructure in Ethiopia.

58 The World Bank's new ESF is a good measure for this ultimate baseline, given that it is more flexible. However, this could also be determined through international laws to which MDBs are party.

59 Importantly, this also requires consultations with and recognition of different stakeholders within government that may have differing incentives and perspectives. For example, in South Africa, MDBs used the Department of Environmental Affairs as a benchmark for espousing harmony between South African and MDB objectives and standards. However, this neglected the differing ideologies of relevant departments such as those dealing with infrastructure and the Treasury. Personal interview, South African academic, Johannesburg, 23 January 2017.

60 UN, 2017, *op. cit.*

A relatively positive example of mutual recognition and concessions from the South African case study is the future retrofitting of FGD technology in the Medupi project, included by the World Bank as a conditionality to reduce sulphur emissions. Although at the time of the project RoD South African air quality regulations did not require the installation of FGD, the government accepted the conditionality.⁶¹ This is because it was weighed against the need for funding for additional electricity generation while also taking into consideration South Africa's adherence to its global climate change commitments and future legislative measures to enable compliance (in fact, the subsequent updated national air quality regulations issued in 2009 would require FGD installation for this purpose).⁶² The World Bank also recognised South Africa's water constraints and allowed the FGD technology to be retrofitted at a future date, first allowing time for a national water project to be completed. This represents a case where flexibility and respect for interests yielded successful partnership.

However, there is still room for improvement. Eskom shoulders the cost of implementing the FGD for Medupi, and it might be useful for MDBs that require expensive gap-filling measures to contribute to their financing. South African government stakeholders also mentioned that there are other coal-rich areas that are much more populated, where coal is being burned for household use and the human health impacts are much greater. Eskom recognises the pressing need to implement more sustainable technology in these locations.⁶³ A possible recommendation to the World Bank would be to implement a support programme for such household coal issues as well, in recognition of the local context. This reinforces the need for broader, sector-wide approaches to E&S safeguards partnerships. Some stakeholders also raised concerns over South Africa's real commitment to ensure FGD is retrofitted and that the relevant water projects are prioritised. This is compounded by the continuing obstinacy by government respondents regarding FGD, based more on principle than on contextual reality. It is imperative that South Africa prioritises the on-schedule implementation of FGD, in the context of both its domestic and its international commitments to the environment.

The impact of spending time on upfront dialogue between parties before project initiation – to recognise interests, objectives and constraints – cannot be underestimated. While MDBs can sometimes view broader political economy issues narrowly, their emphasis on relationship building and dialogue is based on many years of experience.⁶⁴ Stakeholders emphasised that when reflecting on projects after closure, there is always recognition of the need for more structured pre-project dialogue, which must be sustained throughout

The impact of spending time on upfront dialogue between parties before project initiation – to recognise interests, objectives and constraints – cannot be underestimated

61 Standard Diagnostic Review, *op. cit.*

62 South Africa, 'National Environmental Management: Air Quality Act 2004 (Act 39 of 2004): National Ambient Air Quality Standards'. Pretoria: Government Printer, 2009; Personal interview, South African government official A, *op. cit.*; Personal interview, South African SOE representative B, *op. cit.*

63 Personal interview, South African SOE representative B, *op. cit.*; Personal interview, former South African government official, *op. cit.*

64 Skype interview, MDB representative C, Johannesburg, 22 February 2017; Skype interview, MDB representative B, *op. cit.*; Personal interview, South African SOE representative B, *op. cit.*

implementation. While this suggestion may initially be viewed with scepticism, especially given MDBs' reputation for excessively lengthy project lifecycles, the time spent will inevitably be recouped through significant time savings in project implementation.

ISSUES OF ACCOUNTABILITY: CIVIL SOCIETY AND ACCOUNTABILITY MECHANISMS

Civil society is an important component in the nexus of stakeholder cooperation, as it demands accountability from both governments and MDBs to ensure socially and environmentally responsible infrastructure and that affected communities are not neglected. With the increasing shift towards greater flexibility and country management of sustainable infrastructure, it is important to ensure that the civil society still has a role, and that accountability mechanisms enforce this role. In order to do this, one must encourage more constructive dialogues among MDBs, the state and civil society, as these relationships often can become hostile. At the same time, the state must retain the primary role in accountability, in order to strengthen emergent democracies.

Every borrowing country has a different relationship with civil society. In the fullest expression of the 'developmental state' model referenced above, the role of civil society is minimal as the state is very strong. In this model, concerns such as social and environmental safeguards, which are often championed by civil society, are valued as secondary in the interim to allow for broad socio-economic growth. Ethiopia is an example of this model, which can become dangerous when there is no check on government power, and poses huge social and environmental risks when the government is undertaking infrastructure projects (eg, dams) with a life span of 40–50 years. South Africa's civil society enjoys a more prominent role in legislation and practice, but is often undervalued. In the context of infrastructure financing, local or international lobby groups/watchdogs often take up the causes of affected communities, which helps to increase their visibility. MDBs can play an important role in acting on the concerns of these groups. However, government stakeholders are often sceptical as affected communities can be used as a channel by CSOs to push through interests unrelated to the project at hand, and are viewed as obstructive to the broad economic public interest.⁶⁵ The problem grows when MDBs make decisions based upon these groups' interests. Often MDBs also lack a contextual understanding of different civil society groups and concerns in terms of national interests. When MDBs become the preferred channel for grievance redress this not only threatens to dilute the interests of truly affected communities but can also undermine the accountability of governments in addressing the concerns of their people.

This raises the question of how to guarantee the optimal representation of affected communities when borrowing-country governments retain greater control over project development. In the case of Medupi, the involvement of capacitated CSOs helped to bring the concerns of the most marginalised to the forefront, as they were able to publicise

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65 Personal interview, South African government official C, *op. cit.*; Personal interview, former South African government official, *op. cit.*; Personal interview, South African SOE representative A, *op. cit.*

these concerns in the media and to present them in a way that would be accepted by accountability mechanisms.⁶⁶ However, the concerns of community members were overshadowed by the representing organisations' broader objectives of promoting green infrastructure and opposing mega-infrastructure, which likely undermined the validity of the community's concerns in the eyes of MDB and government authorities.

How to best represent and involve marginalised impacted groups remains unclear. The problem is complicated by the reality that no representative can be completely devoid of bias. However, this issue consistently receives less attention than it should, which leads to complications in public participation and the management of impacts. When communities do not have an organic empowered representative, it should be the responsibility of project and municipal authorities to seek out an effective, neutral champion, even involving outside public participation consultants to ensure the independence of the decision. This should then be vetted by the involved MDBs. It is also important that both impacted communities and broader civil society are involved, notified and consulted before a project is set in stone.⁶⁷ This can go a long way to reduce misunderstandings, which often arise when a fully planned project is suddenly launched without consultation with technical experts.⁶⁸ In the case of Medupi, the ability of the accountability mechanism process to separate the concerns of local community members (eg, gravesites) and CSO interest groups does represent progress in this regard.

When project processes fail, MDB accountability mechanisms can be invaluable in giving community grievances a voice. Arguably, accountability mechanisms should become even more important, with all necessary checks and balances in place, as MDBs begin to allow countries more flexibility. For example, thoroughly addressing the issue of proper representation will assist in the capacitated utilisation of panels. However, the future role of the World Bank Inspection Panel has come under much scrutiny given the less prescriptive standards of the World Bank's new safeguards, and its shift towards using countries' own E&S safeguards systems.⁶⁹ The mandate of the World Bank Inspection Panel is to make recommendations specifically with reference to whether World Bank standards have been applied. Its role will become more convoluted and subject to interpretation when standards are much broader, or it may even not be used at all with increased UCS. Literature on this issue has suggested various solutions, such as using past Inspection Panel decisions – concluded before the current shift in methodology – to inform

66 Groundwork & Earthlife Africa, 'Re: Request for Inspection on Eskom Investment Support Project (Project ID: P116410)', http://www.amisdelaterre.org/IMG/pdf/final_ipn_complaint.pdf, 21 July 2017.

67 Personal interview, South African SOE representative A, *op. cit.*

68 *Ibid.*

69 NYU School of Law, International Organizations Clinic, 'The Changing Role of the World Bank Inspection Panel: Responding to Contemporary Challenges at the World Bank', 2014, http://chrgj.org/wp-content/uploads/2014/10/ChangingRoleoftheWorldBankIP_IOClinic.pdf, accessed 4 September 2017; Passoni C, Rosenbaum A & E Vermunt, 'Empowering the Inspection Panel: The Impact of the World Bank's Safeguards Review', NYU school of Law, International Organizations Clinic, 2016, http://www.iilj.org/wp-content/uploads/2016/08/Empowering_the_Inspection_Panel_Web.pdf, accessed 4 September 2017.

future Inspection Panel decisions (an informal jurisprudence), or generally allowing the Inspection Panel greater discretion and scope of interpretation within the World Bank's new standards and/or country standards.⁷⁰ However, this potentially compromises the fundamental purpose of allowing countries more flexibility and growth opportunities through using their own legislation and capacity, as it re-introduces more prescriptiveness. The Medupi case exemplifies this dilemma and, as indicated in preceding sections, saw distinct disagreement between the panel, which took a more strictly interpretive approach, and bank management, which leaned towards country flexibility.

This case again illustrates the need for MDBs to devise non-project-specific E&S safeguards plans with those countries that are frequent borrowers, as a component of their general country and sector strategy papers. This would provide a more specific guide to accountability mechanisms that considered a country's individuality and flexibility but did not dip below the baseline standards and principles of MDBs. Inevitably there would still be aspects that required accountability mechanism interpretation, as was the case when utilising the previous World Bank safeguards, but overall this would allow the Inspection Panel to remain an independent and necessary check while still increasing borrower freedom and growth opportunities.

In summary, civil society can play an important role in ensuring that E&S safeguards are not compromised when borrowing countries gain more control over their infrastructure projects. If countries can demonstrate more constructive attitudes and mechanisms to engage civil society, particularly marginalised communities, then MDBs (through both management and accountability mechanisms) should be able to play an important if limited oversight role.

CAPACITY BUILDING: ENHANCED ROLES FOR MDBS

Considering the shifts to country ownership in the infrastructure finance landscape, capacity-building efforts must become more prominent. Without this component, the result will simply be loosened standards, leading to projects with grave E&S consequences and little growth in countries' capacity, as well as pushback against important country ownership initiatives. Given the loss of traditional MDBs' monopolistic position in infrastructure finance, this arena can represent an especially reinvigorated role. The current World Bank UCS pilots in African countries have shown that capacity building is a major shortcoming. Gap-filling measures to address weaknesses in country legislation have not only seen a lack of extension beyond individual projects to an institutional level but have also been weakly enforced even within individual projects.

First, the capacity building offered under the World Bank's new ESF should ensure rigorous gap filling in cases where there are significant weaknesses that go below MDB and country minimum standards. Second, an approach should be adopted that encourages this gap-filling capacity building to be taken beyond the individual project level. Importantly, such gap-filling measures should not neglect often under-capacitated

Considering the shifts to country ownership in the infrastructure finance landscape, capacity-building efforts must become more prominent

70 *Ibid.*

provincial authorities.⁷¹ Third, there is a need for significant technical training/support to oversee implementation of E&S safeguards processes, which in many cases may only have existed on paper previously. An example would be support to ensure that local staff can measure and record air pollution levels correctly and with the required frequency. These institutional efforts can also look at technical policy assistance to better align E&S safeguards strategy with departmental and national plans so that they are not bypassed in practice. The difference between this and the current approach is that the focus shifts from an emphasis on comparing precise elements of MDB and country standards to one of implementation support and outcome measurement. There should also be commitment to take gap-filling seriously through a focus on solidifying measures at a broader level.

In 2014 the New York University School of Law's International Organizations Clinic Team noted an important change in the World Bank's investment lending policy. Operational Policy 10.00, which supports this shift, has a change from the word 'supervision', which implies a narrow procedural focus, to 'implementation support', which is more aligned with a borrowing country-led strategy with significant technical assistance.⁷² However, the new World Bank ESF does not seem to prioritise this objective strongly enough, only suggesting that 'the borrower may request technical assistance'.⁷³ As a potential alternative model, the Asian Development Bank (ADB) has done a commendable job in rigorously promoting technical assistance to borrowing countries. It would be worthwhile for MDBs to promote this example among African borrowers. The ADB strategy has adopted a regional capacity-building approach with much success, and includes regional workshops, handbooks and in-person training to foster mutual learning, disseminate best practice and encourage country uptake of specific programmes.⁷⁴ Given the large E&S safeguards disparities between South Africa and other countries in the region, this highlights the potential role that South Africa could play as a regional leader in facilitating a similar approach. It would be especially useful in gradually driving interest towards such a strategy in countries that are not currently prioritising E&S issues.

As with any regional grouping in Southern Africa and even the broader continent, existing power relations and a general prioritisation of national over regional ambitions make cooperation a challenge.⁷⁵ However, multiple stakeholder interviews confirmed that South Africa is willing to serve as a regional leader on E&S safeguards and sees it as an approach

71 CIEL (Center for International Environmental Law), 'The Use of Country Systems in World Bank Lending: A Summary of Lessons from the Pilot Projects and Recommendations for a Better Approach', January 2008, http://www.ciel.org/Publications/WorldBank_Country_Systems_Jan08.pdf, accessed 21 July 2017.

72 Passoni C, Rosenbaum A & E Vermunt, *op. cit.*

73 World Bank, 2016, *op. cit.*

74 ADB (Asian Development Bank) & Government of Australia, Department of Foreign Affairs and Trade, 'Joint Community of Practitioners Meeting on Environmentally and Socially Sustainable Infrastructure', Hanoi, 10–14 June 2013, <https://www.adb.org/sites/default/files/project-document/150347/44140-012-dpta-03.pdf>, accessed 4 October 2017; ADB, 'Country Safeguard Systems: Second Regional Workshop Proceedings Towards Common Approaches and Better Results', Manila, 7–9 October 2014.

75 Skype interview, MDB representative A, *op. cit.*; Skype interview, MDB representative B, *op. cit.*

that would be mutually beneficial. The World Bank should partner with the AfDB, which has a prominent role in championing regionally based issues, in this regard.⁷⁶ Regional infrastructure is crucial to facilitate growth, trade and investment on the continent, and is difficult to execute when dealing with countries with such disparate E&S safeguards procedures and standards.⁷⁷ The ADB model offers a ready-made guide on both the successes of its approach and the issues to avoid.

Although capacity building is an area where MDBs can lead, the role of governments cannot be underestimated. There are measures that countries can explore to support capacity building, such as creating opportunities to build E&S impact management capabilities through offering related courses in tertiary education, and making available national grants for E&S research.⁷⁸ This, for example, would ensure that positions crucial in driving MDB confidence in South Africa's E&S safeguards capacity, such as public participation consultants, environmental control officers and air and water quality managers, could be filled in-country. Additionally, funding must be made available to help design competitive government salary packages and incentives in countries such as Ethiopia, to avoid the brain drain that is all too common following capacity-building initiatives.⁷⁹ MDBs thus need to devote more capacity-building resources to countries that show a serious interest in improving their systems, rather than spreading meagre resources across a greater number of countries.

Capacity building and technical assistance can also come from national DFIs, which have the advantage of greater contextual knowledge and understanding of public interest than external financiers. DFIs could drive national buy-in for E&S standards, given that they are more locally embedded and often more trusted than MDBs. South Africa's primary infrastructure DFI, the DBSA, is highly involved in providing technical assistance, primarily through its programmatic assistance to subnational governments and the project preparation focus in its regional infrastructure financing. However, most African national DFIs are under-capacitated and under-resourced. In these cases it is important for MDBs operating in these countries to build strong partnerships with international and regional DFIs, collaborating and sharing best practice to help DFIs support national projects in the longer term. The African Association of Development Financial Institutions (AADFI) represents national DFIs across the continent and receives support from MDBs. A primary focus of the AADFI is training and capacity building. In 2017 one of the 21 training programmes on offer was up-skilling on E&S impact management.⁸⁰ However, these issues are still of comparatively little importance to most African DFIs. A 2014 analysis of major DFIs on the continent concluded that of the 27 DFIs surveyed (excluding South Africa's more developed DFIs, namely the DBSA and the Industrial Development

DFIs could drive national buy-in for E&S standards, given that they are more locally embedded and often more trusted than MDBs

76 Skype interview, MDB representative A, *op. cit.*; Personal interview, South African government official A, *op. cit.*

77 Personal interview, South African academic, *op. cit.*

78 Personal interview, former MDB representative, Johannesburg, 10 February 2017.

79 Fieldwork findings, Ethiopian academic, Addis Ababa, 19 May 2017.

80 AADFI (Association of African Development Finance Institutions), 'Trainings', <http://www.adfi-ci.org/trainings.php>, accessed 4 September 2017.

Coordination), only nine referenced environmental considerations in project selection and implementation criteria.⁸¹ Thus MDB efforts to create awareness and build capacity in DFIs should be scaled up in order to make the domestication of higher E&S standards more likely. According to an MDB representative, the AfDB is considering extending technical assistance lines of credit to DFIs in these areas.⁸² Additionally, regional capacity-building workshops should ensure the inclusion of African DFIs. Building capacity in DFIs would also help to address the brain drain in recipients of technical assistance, as they would be able to offer higher salaries than government. As African DFIs continue to grow in capacity and capital, their involvement in infrastructure will likely increase, which is an opportunity for DFIs to build expertise and depth in E&S safeguards.

It is important that such capacity building extends to project preparation phases, to ensure that the drive to bring in new financiers (such as the private sector) early in the project life cycle is helped along by the existence of well-prepared environmentally and socially sustainable projects. The UN IATF's recommendation to further incentivise and hold the private sector more accountable to sustainability objectives is important.⁸³ MDBs, in collaboration with national governments, can also play their part through project preparation facilities such as the World Bank's [Global Infrastructure Facility](#),⁸⁴ to ensure that projects advertised to the private sector are not only financially and technically well prepared but also have E&S considerations built into their design.

Driving capacity-building buy-in from both MDBs and borrowing countries can be challenging, as the outcomes are much more long term. However, with the long-overdue shift to increasing country ownership, bypassing such efforts will lead to more risky and problematic projects for both countries and MDBs.

RECOMMENDATIONS

The following recommendations are aimed at ensuring a sustained role for MDBs in infrastructure financing, underpinned by productive relationships between MDBs, national entities and civil society. This will ideally lead to increased country capacity and ownership of infrastructure projects, while also increasing the environmentally and socially sustainable outcomes of infrastructure projects.

81 Bradlow D & C Humphrey, 'Sustainability and Infrastructure Investment: National Development Banks in Africa', Global Economic Governance Initiative Working Paper, 4, 2016.

82 Skype interview, MDB representative A, *op. cit.*

83 UN IATF, *op. cit.*

84 The Global Infrastructure Facility is a collaboration among governments, MDBs, private sector investors and financiers. It is governed by a combination of funding partners (consisting of donors and the World Bank), beneficiary partners and technical partners (consisting of MDBs).

- **Flexibility and specificity in E&S safeguards:** Both countries and MDBs must be willing to compromise in their E&S safeguards objectives. Determining mutually agreed-upon E&S safeguards principles in consultation with individual countries (an ‘ESF plan’) at a broader sector-specific level will build on the flexibility that the World Bank’s new safeguards provide, and add the necessary country-specific component. This will also guard against the feared dilution of safeguards through too much flexibility. Countries can facilitate this process through clear development partner cooperation strategies linked to both their own national development plans and their sustainable development targets.
- **Trust building:** The above recommendation will only be possible with more opportunities for MDB–country dialogue to discuss E&S issues. This should include broader stakeholder meetings (before financing agreements are concluded) where issues and incentives can be raised. Within this dialogue, a special forum should be created for relevant government departments to work towards finding common ground. However, increased opportunities for dialogue should not only be project-specific but also focus on general MDB–country lending relations in trust-building workshops, in line with the increased need for country specificity. These dialogues will assist in building trust, which is often lacking at the start of projects.
- **Capacity building:** Enhanced and focused capacity building will ensure that greater flexibility does not translate into inadequate environmental and social policies. Capacity building should be widely promoted by MDBs such as the World Bank and AfDB rather than simply suggested, and models should explore the ADB’s regional capacity-building initiatives. Regional forums will provide opportunities for countries to benefit as well, even if they are unwilling or unable to make significant domestic capacity-building commitments. These capacity-building efforts must be underpinned by a shift in resources from implementing separate standards towards greater technical assistance initiatives focused on local staff. Borrowing countries should also seek to expand their engagement with ongoing project preparation and capacity-building initiatives by MDBs such as the Global Infrastructure Facility, which will help to ensure that projects marketed for private sector investment are also sustainable.
- **Role of national DFIs:** Established MDBs should place greater emphasis on assisting national entities such as DFIs to grow their internal capacities so that they can finance national projects in a more sustainable manner. As DFI infrastructure funding portfolios grow, national DFIs can be instrumental in driving buy-in for international standards.
- **More targeted lending:** As MDBs have largely recognised, funding large and controversial infrastructure projects often leads to more risks and conflicts than benefits. In countries with less drive to improve E&S safeguards, such as Ethiopia, MDBs can focus on smaller-scale projects, promoting sustainability and capacity building by facilitating the roll-out of cutting-edge technologies (eg, wind and geothermal) where emerging funders’ capacities may fall short. This represents a longer-term strategy (given issues of buy-in at this stage), which will become increasingly relevant as cheaper green technologies become available and changing rainfall patterns threaten the sustainability of hydropower.

- **Civil society and accountability:** It is vital to ensure strong accountability mechanisms with greater flexibility and country ownership in E&S safeguards. Countries, MDBs and independent consultants should seek out adequate and unbiased representation for marginalised communities. In countries with a weak civil society, MDBs should retain significant oversight. The important role of accountability mechanisms that ensure adequate and effective civil society participation should be upheld, and the addition of E&S safeguards plans for heavily borrowing countries will give them a clearer direction in dealing with requests under the new World Bank safeguards.

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