

PROTOCOL VI
TO
THE TREATY ON THE
LESOTHO HIGHLANDS WATER PROJECT

SUPPLEMENTARY ARRANGEMENTS
REGARDING THE SYSTEM OF GOVERNANCE FOR THE
PROJECT

PREAMBLE

WHEREAS in accordance with the Treaty entered into on 24 October 1986 the governments of the Republic of South Africa and the Kingdom of Lesotho ("the Parties") agreed the creation of the Lesotho Highlands Development Authority, the Trans-Caledon Tunnel Authority and the Joint Permanent Technical Commission to perform certain functions and duties defined therein for the carrying out of the Project;

AND WHEREAS, in order to improve the management efficiency of the Project, the Parties have agreed to redefine the functions and responsibilities of the Board of Directors of the Lesotho Highlands Development Authority, the Board of Directors of the Trans-Caledon Tunnel Authority and of the Joint Permanent Technical Commission;

AND WHEREAS the Parties have further agreed to redefine the hierarchical relationship between the Lesotho Highlands Developments Authority, the TransCaledon Tunnel Authority and the Joint

Permanent Technical Commission and between the Joint Permanent Technical Commission and the Parties;

AND WHEREAS the Treaty will need to be amended to reflect the new functions, responsibilities and relationship of the Lesotho Highlands Development Authority, the Trans-Caledon Tunnel Authority and the Joint Permanent Technical Commission.

NOW THEREFORE IT IS AGREED AS FOLLOWS:

ARTICLE 1

DEFINITIONS

In this Protocol, unless inconsistent with the context -

"Lesotho Highlands Water Commission" means the body referred to in Article 2.

"Board" means-

(i) the Board of Directors of the Lesotho Highlands Development Authority;

or

(ii) the Board of Directors of the Implementing Authority or of the TransCaledon Tunnel Authority (when Article 8B applies),

as the context requires.

"Government" means -

the government of the Kingdom of Lesotho or of the Republic of South Africa, as the case may be.

Except as otherwise specifically stated herein, the definitions in the Treaty shall apply to this Protocol.

ARTICLE 2

CHANGE OF NAME OF THE JOINT PERMANENT TECHNICAL COMMISSION

- (1) The Joint Permanent Technical Commission shall be renamed the Lesotho Highlands Water Commission.
- (2) Any reference to the Joint Permanent Technical Commission in the Treaty, in any Protocol thereto or in any other agreement with regard to the Project, shall be construed as a reference to the Lesotho Highlands Water Commission.

ARTICLE 3

RESTRUCTURING OF THE FUNCTIONS, POWERS AND OBLIGATIONS OF THE LESOTHO HIGHLANDS DEVELOPMENT AUTHORITY

Article 7 of the Treaty is hereby amended by deleting paragraphs (37) and (40) and by substituting the following paragraphs for the corresponding paragraphs in the Treaty and adding paragraphs (41) to (44):

- The Board shall be accountable to the Lesotho Highlands Water Commission, shall give it its full co-operation and give full effect to the applicable provisions of Article 9.
- (33) (a) The Lesotho Highlands Development Authority shall be managed and controlled by a Board which shall be appointed by the Lesotho Highlands Water Commission and shall comprise executive and non-executive members appointed on merit and for such skills as may from time to time be determined by the Lesotho Highlands Water Commission provided that at least one non-executive board member shall be appointed from the public at large by virtue of his or her prominence or stature.
 - (b) The non-executive members shall be appointed from nominations submitted by Lesotho and the executive members from nominations submitted by the Chairman of the Board.
 - (c) The Chairman and Vice-Chairman of the Board shall be appointed by the Lesotho Highlands Water Commission from among the non-executive members of the Board.
 - (34) (a) The Board shall in accordance with the provisions of the Treaty establish the operational policies of the Lesotho Highlands Development Authority on all matters with which it is entrusted.

- (b) The Board may from time to time, and for improving effectiveness and efficiency, delegate any of its powers to the Chief Executive or any staff member of the Lesotho Highlands Development Authority.
- (35)(a) The Board shall, in consultation with the Lesotho Highlands Water Commission, appoint the Chief Executive who shall have appropriate qualifications and managerial experience with a proven track record for such appointment. The power to remove the Chief Executive from office shall vest in the Board, acting in consultation with the Lesotho Highlands Water Commission. The Chief Executive shall be an ex officio executive director.
- (b) The Board shall, with the approval of the Lesotho Highlands Water Commission, determine the terms and conditions of service of the Chief Executive.
- (37) This paragraph is deleted.
- (38) In carrying out his or her duties and in implementing the policies established by the Board, the Chief Executive shall, inter alia, be responsible for:
 - (a) presenting proposals concerning the implementation, operation and maintenance of that part of the Project entrusted to the Lesotho Highlands Development Authority and the internal administration and procedures of such Authority to the Board for approval;
 - (b) preparing and presenting to the Board for approval the annual budget and proposals for borrowings of the Lesotho Highlands Development Authority;
 - (c) controlling the expenditure and borrowings of the Lesotho Highlands Development Authority within limits set by the Board and ensuring that the costs incurred are accurately recorded and allocated;
 - (d) providing the Board with any information it may require or request for the discharge of its duties;
 - (e) issuing all tender documents and signing all agreements, undertakings and contracts on behalf of the Lesotho Highlands Development Authority;
 - (f) appointing and terminating the appointment of all managerial, professional and administrative staff; and
 - (g) carrying out such other duties as the Board may from time to time assign to such Chief Executive.

- (39) The office of the Chairman of the Board of the Lesotho Highlands Development Authority shall act as the channel of communication between the Board and the Lesotho Highlands Water Commission.
- (40) This paragraph is deleted.
- (41) The Board shall report to the Lesotho Highlands Water Commission on a quarterly basis on matters covering:
- (i) general Project overview
 - (ii) progress against strategic plans
 - (iii) main operational activities
 - (iv) actual expenditure against budget
 - (v) any issues and/or challenges facing the Project
 - (vi) summary of Board resolutions
 - (vii) summary of delegations, and
 - (viii) such contracts as the Lesotho Highlands Water Commission may from time to time identify.
- (42) The Board shall provide the Lesotho Highlands Water Commission with information it may reasonably request in order to take appropriate action in terms of paragraph (8) of Article 9.
- (43) In addition to paragraph (42) above, the Board shall be responsible for ensuring that such additional information as is necessary to enable the Lesotho Highlands Water Commission to perform its functions is continuously passed on to it in a timely and effective manner.
- (44) In case of emergency, and in particular in the event that the safety and security of the Project are threatened, the Chief Executive shall, after consultation with the Board Chairman, take such appropriate steps as are

necessary to deal with the emergency. The Chief Executive shall as soon as practicable submit a report to the Board on such action taken.

ARTICLE 4

INSTITUTIONAL ARRANGEMENTS IN THE REPUBLIC OF SOUTH AFRICA

- (1) The Parties record that the implementation function of the Trans-Caledon Tunnel Authority in respect of Phase I of the Project in terms of Article 8 of the Treaty has been completed. The only remaining Treaty function of the Trans-Caledon Tunnel Authority is the operation and maintenance of that part of the Project situated in the Republic of South Africa. This limited function does not justify a comprehensive institutional arrangement stipulated in Article 8 of the Treaty, nor an arrangement similar to the new organisational structure for the Lesotho Highlands Development Authority as set out in the amended Articles 7 and 9.
- (2) The Parties further acknowledge that the Trans-Caledon Tunnel Authority has been entrusted by South Africa with other functions on its behalf in terms of South African legislation, which are not subject to the control of the Lesotho Highlands Water Commission.
- (3) Article 8 of the Treaty is hereby deleted and the following substituted therefor:

ARTICLE 8: INSTITUTIONAL ARRANGEMENTS REGARDING IMPLEMENTATION, OPERATION AND MAINTENANCE OF THE PROJECT IN THE REPUBLIC OF SOUTH AFRICA.

- (1) From the date of signature of this Protocol, Article 8A shall apply to the Trans-Caledon Tunnel Authority.
- (2) Should the Parties at a future date agree to the implementation of a further phase of the Project involving construction activities in the Republic of South Africa, South Africa may decide to either:
 - (a) keep the Trans-Caledon Tunnel Authority in its present form with its present responsibilities and functions and in addition establish a new body, provisionally called the Implementing Authority, to undertake the implementation of that additional part of the Project to be constructed in the Republic of South Africa, in which case Article 8B shall apply to the Implementing Authority and the operation and maintenance functions of the Trans-Caledon Tunnel Authority shall be transferred to the Implementing Authority until implementation is completed, after which the Trans-Caledon Tunnel

Authority, or another body which South Africa may designate, shall be responsible for all operation and maintenance functions of that part of the Project situated in the Republic of South Africa.

(b) entrust all Treaty functions, including the implementation of the additional part of the Project to be constructed in the Republic of South Africa, to the Trans-Caledon Tunnel Authority, in which case Article 8B and not Article 8A shall apply to the Trans-Caledon Tunnel Authority.

(3) South Africa shall decide on the actual name of the Implementing Authority when the new body is established. South Africa shall also have the option to change the name of the Trans-Caledon Tunnel Authority should it wish to do so.

ARTICLE 8A : TRANS-CALEDON TUNNEL AUTHORITY

(1) The Trans-Caledon Tunnel Authority shall have the responsibility for the operation and maintenance of that part of the Project situated in the Republic of South Africa, in accordance with the provisions of this Treaty, and shall be vested with all powers necessary for the discharge of such responsibilities.

(2) The Trans-Caledon Tunnel Authority shall monitor the quantity of water delivered to South Africa and, jointly with the Lesotho Highlands Development Authority, shall at the end of each calendar month take the measure of the quantity of water so delivered during the month, at the measuring point in the conveyance system connecting Muela Dam with the Designated Outlet Point: Provided that if the Lesotho Highlands Development Authority or the Trans-Caledon Tunnel Authority should dispute such measurement the Lesotho Highlands Water Commission shall resolve such dispute by determining the quantity of water which shall be deemed to have been delivered to South Africa.

(3) The Trans-Caledon Tunnel Authority shall carry out its functions in accordance with Internationally Recognized Standards of managerial competence, expertise and practice and to this end shall appoint, whenever appropriate, project management, design, financial or other consultants.

(4) The Trans-Caledon Tunnel Authority shall, as provided for in paragraph (6) of Article 10, establish comprehensive accounting and costing systems in accordance with the recommendations of financial management consultants. Such systems shall be subject to periodical review. The Lesotho Highlands Water Commission shall have the right to request such a review.

(5) The Trans-Caledon Tunnel Authority shall establish effective and comprehensive management information systems including performance indicators, which shall be used to provide the information required for

management decision making during the design, implementation, operation and maintenance of that part of the Project entrusted to such Authority.

- (6) The Trans-Caledon Tunnel Authority shall, on the basis of the accounting and costing systems and procedures referred to in paragraph (4), apportion all costs incurred by such Authority as costs attributable to the delivery of water to South Africa and costs attributable to the generation of hydro-electric power in the Kingdom of Lesotho as well as for developments envisaged by the provisions of paragraph (2) of Article 4.
- (7) The Trans-Caledon Tunnel Authority shall effect all necessary catchment conservation measures as well as measures necessary to prevent pollution of the water to be delivered to South Africa and pollution caused by the adverse effects of the implementation of the Project.
- (8) The Trans-Caledon Tunnel Authority shall at least four months prior to the commencement of each Financial Year, separately, in respect of that part of the Project relating to the delivery of water to South Africa and in respect of that part of the Project relating to the generation of hydro-electric power in the Kingdom of Lesotho, compile:
 - (a) a long term cost plan. Such plan shall differentiate between capital and operating costs and shall identify the total estimated expenditure and contain an analysis of such expenditure on an annual basis. Such plan shall further include an estimate of contingency costs on an annual basis covering the period of the long term cost plan;
 - (b) a detailed cost plan covering the ensuing Financial Year. Such plan shall differentiate between capital and operating costs and shall identify the total estimated expenditure for such year and contain an analysis of such expenditure on a monthly basis. Such plan shall further include an estimate of contingency costs with regard to such Financial Year as well as each month covered;
 - (c) a long term funding plan identifying the total funding by way of loans, credit facilities or other borrowings and shall provide an analysis thereof on an annual basis;
 - (d) a short term funding plan for the ensuing Financial Year identifying the total funding for such year by way of loans, credit facilities or other borrowings and shall provide an analysis thereof on a monthly basis;
 - (e) a schedule of the repayment of all loans, credit facilities and other borrowings, covering the repayment of capital, interest and financing charges;
 - (f) a long term cash flow forecast and shall provide an analysis of such cash flow on an annual basis. Such forecast shall inter alia identify any foreign exchange requirements; and

- (g) a detailed cash flow forecast for the ensuing Financial Year, and shall provide an analysis of such cash flow on a monthly basis. Such forecast shall inter alia identify any foreign exchange requirements.
- (9) The Trans-Caledon Tunnel Authority shall compile, at regular intervals, reconciliation statements with regard to all long term plans, forecasts and schedules referred to in paragraph (8) and shall update them to the extent necessitated by such reconciliation: Provided that such plans, forecasts or schedules shall further be reconciled and updated whenever an event or occurrence results in a significant variation thereof.
- (10) The Trans-Caledon Tunnel Authority shall compile on a monthly basis reconciliation statements with regard to all short term plans and forecasts referred to in paragraph (8) and shall account for any significant difference regarding any such plans or forecasts. Such plans and forecasts shall be updated on a monthly basis to the extent necessitated by such reconciliation.
- (11) The books and accounts of the Trans-Caledon Tunnel Authority shall be subject to annual and independent external auditing by chartered accountants.
- (12) The Trans-Caledon Tunnel Authority shall establish a banking account with the South African Reserve Bank or other banking institution as approved by the Lesotho Highlands Water Commission.
- (13) The Trans-Caledon Tunnel Authority shall, if necessary to meet foreign expenditure and subject to the approval of the appropriate authorities in the Republic of South Africa, establish with banking institutions outside the territory of either Party a banking account or banking accounts for all monies drawn down on loans and other borrowings obtained from outside such territories entrusted to such Authority.
- (14) All monies held by the Trans-Caledon Tunnel Authority in any banking account and not immediately required to effect any payment, shall be placed on deposit at market related interest rates.
- (15) All interest accruing on monies in the accounts referred to in paragraphs (1 2) and (1 3) shall be utilized exclusively for the operation and maintenance of that part of the Project for which the monies bearing such interest shall have been obtained.

- (16) The Trans-Caledon Tunnel Authority shall take out insurance against all loss or damage from whatsoever cause and against all risks and public liabilities, which may arise in the course of operating and maintaining that part of the Project entrusted to such Authority, on the basis of normal commercial considerations.
- (17) All managerial and professional staff positions of the Trans-Caledon Tunnel Authority shall be filled by personnel in possession of appropriate qualifications and experience for such appointments.
- (18) The Trans-Caledon Tunnel Authority shall in consultation with the Lesotho Highlands Water Commission appoint a Head of Operation and Maintenance.
- (19) The Head of Operation and Maintenance shall establish the operational policies of the Trans-Caledon Tunnel Authority in accordance with the provisions of this Treaty.
- (20) The Head of Operation and Maintenance shall be accountable to the Lesotho Highlands Water Commission in respect of the operation and maintenance functions, shall give his or her full co-operation and give full effect to the applicable provisions of Article 9.
- (21) The Head of Operation and Maintenance shall report to the Lesotho Highlands Water Commission on a quarterly basis on matters covering:
 - (i) general Project overview
 - (ii), progress against strategic plans
 - (iii) main operational activities actual expenditure against budget
 - (v) any issues and/or challenges facing the Project
 - (vi) such contracts as the Lesotho Highlands Water Commission may from time to time identify
- (22) The Head of Operation and Maintenance shall in respect of the operation and maintenance function provide the Lesotho Highlands Water Commission with information it may reasonably request in order to take appropriate action in terms of paragraph (8) of Article 9.

- (23) In addition the Head of Operation and Maintenance shall be responsible for ensuring that such additional information as is necessary to enable the Lesotho Highlands Water Commission to perform its functions is continuously passed on to it in a timely and effective manner.
- (24) In case of emergency, and in particular in the event that the safety and security of the Project are threatened, the Head of Operation and Maintenance shall take such appropriate steps as are necessary to deal with the emergency and shall as soon as practicable submit a report to the Lesotho Highlands Water Commission on such action taken.

ARTICLE 8B: IMPLEMENTING AUTHORITY

- (1) The Implementing Authority shall have the responsibility for the implementation of any part of the Project in the Republic of South Africa implemented in addition to Phase 1, in accordance with the provisions of this Treaty, and shall be vested with all powers necessary for the discharge of such responsibilities. During the implementation of such part the Implementing Authority shall also have the responsibility for the operation and maintenance of the existing part of the Project in the Republic of South Africa.
- (2) Notwithstanding the provisions of paragraph (1) of Article 7, the Implementing Authority may be entrusted by the Parties, furthermore, with the responsibility for the implementation, operation and maintenance of part of the water conveyance system situated in the Kingdom of Lesotho and implemented in addition to Phase 1; for this purpose, the Implementing Authority shall be vested by Lesotho with all powers, authorizations and exemptions necessary for the discharge of such responsibilities and shall furthermore maintain close liaison with the Lesotho Highlands Development Authority in relation to the implementation of the water conveyance system without prejudice, however, to the title or any other rights in respect of the said water conveyance system and related land.
- (3) The Implementing Authority shall carry out its functions in accordance with Internationally Recognized Standards of managerial and technical competence, expertise and practice and to this end shall appoint, whenever appropriate, project management, design, financial or other consultants.
- (4) The Implementing Authority shall as provided for in paragraph (6) of Article 10, establish comprehensive accounting and costing systems in accordance with the recommendations of financial management system consultants. Such systems shall be subject to periodical review. The Lesotho Highlands Water Commission shall have the right to request such review.

- (5) The Implementing Authority shall establish effective and comprehensive management information systems including performance indicators, which shall be used to provide the information required for management decision making during the design, implementation, operation and maintenance of that part of the Project entrusted to such Authority.
- (6) The Implementing Authority shall, on the basis of the accounting and costing systems and procedures referred to in paragraph (4), apportion all costs incurred by such Authority as costs attributable to the delivery of water to South Africa and costs attributable to the generation of hydro- electric power in the Kingdom of Lesotho as well as for developments envisaged by the provisions of paragraph (2) of Article 4.
- (7) The Implementing Authority shall effect all necessary catchment conservation measures as well as measures necessary to prevent pollution of the water to be delivered to South Africa and pollution caused by the adverse effects of the implementation of the Project.
- (8) The Implementing Authority shall, at least six months prior to the commencement of each phase of the Project and thereafter during the course of the operation and maintenance of such phase at least four months prior to the commencement of each Financial Year, separately, in respect of that part of the Project relating to the delivery of water to South Africa and in respect of that part of the Project relating to the generation of hydroelectric power in the Kingdom of Lesotho, compile:
 - (a) a long term cost plan. Such plan shall differentiate between capital and operating costs and shall identify the total estimated expenditure for such phase and contain an analysis of such expenditure on an annual basis. Such plan shall further include an estimate of contingency costs on an annual basis covering the period of the long term cost plan;
 - (b) a detailed cost plan covering the ensuing Financial Year. Such plan shall differentiate between capital and operating costs and shall identify the total estimated expenditure for such year and contain an analysis of such expenditure on a monthly basis. Such plan shall further include an estimate of contingency costs with regard to such Financial Year as well as each month covered;
 - (c) a long term funding plan identifying the total funding for such phase by way of loans, credit facilities or other borrowings and shall provide an analysis thereof on an annual basis;

- (d) a short term funding plan for the ensuing Financial Year identifying the total funding for such year by way of loans, credit facilities or other borrowings and shall provide an analysis thereof on a monthly basis;
 - (e) a schedule of the repayment of all loans, credit facilities and other borrowings, covering the repayment of capital, interest and financing charges;
 - (f) a long term cash flow forecast for such phase and shall provide an analysis of such cash flow on an annual basis. Such forecast shall inter alia identify any foreign exchange requirements; and
 - (g) a detailed cash flow forecast for the ensuing Financial Year, and shall provide an analysis of such cash flow on a monthly basis. Such forecast shall inter alia identify any foreign exchange requirements.
- (9) The Implementing Authority shall compile, at regular intervals, reconciliation statements with regard to all long term plans, forecasts and schedules referred to in paragraph (8) and shall update them to the extent necessitated by such reconciliation: Provided that such plans, forecasts or schedules shall further be reconciled and updated whenever an event or occurrence results in a significant variation thereof.
- (10) The Implementing Authority shall compile on a monthly basis reconciliation statements with regard to all short term plans and forecasts referred to in paragraph (8) and shall account for any significant difference regarding any such plans or forecasts. Such plans and forecasts shall be updated on a monthly basis to the extent necessitated by such reconciliation.
- (11) The books and accounts of the Implementing Authority shall be subject to annual and independent external auditing by chartered accountants.
- (12) The Implementing Authority shall establish a banking account or accounts with the South African Reserve Bank or such other banking institution as approved by the Lesotho Highlands Water Commission.
- (13) The Implementing Authority shall, if necessary to meet foreign expenditure and subject to the approval of the necessary authorities in the Republic of South Africa, establish with banking institutions outside the territory of either Party a banking account or accounts for all monies drawn down on loans and other borrowings obtained from outside such territories

and procured for the implementation, operation and maintenance of that part of the Project entrusted to such Authority.

- (14) All monies held by the Implementing Authority in any banking account and not immediately required to effect any payment, shall be placed on deposit at market related interest rates.
- (15) All interest accruing on monies in the accounts referred to in paragraphs (1 2) and (1 3) shall be utilized exclusively for the implementation, operation and maintenance of that part of the Project for which the monies bearing such interest shall have been obtained.
- (16) The Implementing Authority shall take out insurance against all loss or damage from whatever cause and against all risks and public liabilities, which may arise in the course of implementing, operating and maintaining that part of the Project entrusted to such Authority, on the basis of normal commercial considerations.
- (17) All managerial and professional staff positions of the Implementing Authority shall be filled by personnel in possession of appropriate qualifications and experience for such appointments.
- (18) (a) The Implementing Authority shall be managed and controlled by a Board of Directors which shall be appointed by the Lesotho Highlands Water Commission and shall comprise executive and non-executive members appointed on merit and for such skills as may from time to time be determined by the Lesotho Highlands Water Commission provided that at least one non-executive member shall be appointed from the public at large by virtue of his or her prominence or stature.

(b) The non-executive members shall be appointed from nominations submitted by South Africa and the executive members from nominations submitted by the Chairman of the Board.
- (19) The Chairman and Vice-Chairman of the Board shall be appointed by the Lesotho Highlands Water Commission from the non-executive members of the Board.
- (20) The Board shall be accountable to the Lesotho Highlands Water Commission, shall give it its full co-operation and give full effect to the applicable provisions of Article 9.

- (21) The Board shall in accordance with the provisions of the Treaty establish the operational policies of the Implementing Authority on all matters with which it is entrusted.
- (22) The Board may from time to time and for improving effectiveness and efficiency delegate any of its powers to the Chief Executive or any staff member of the Implementing Authority.
- (23) The Board shall, in consultation with the Lesotho Highlands Water Commission, appoint the Chief Executive who shall have appropriate qualifications and managerial experience with a proven track record for such appointment. The power to remove the Chief Executive from office shall vest in the Board in consultation with the Lesotho Highlands Water Commission. The Chief Executive shall be an ex officio executive director.
- (24) The Board shall with the approval of the Lesotho Highlands Water Commission determine the terms and conditions of service of the Chief Executive.
- (25) In carrying out his or her duties and in implementing the policies established by the Board, the Chief Executive shall, inter alia, be responsible for:
 - (a) presenting proposals concerning the implementation, operation and maintenance of that part of the Project entrusted to the Implementing Authority and the internal administration and procedures of such Authority to the Board for approval;
 - (b) preparing and presenting to the Board for approval the annual budget and proposals for borrowings of the Implementing Authority;
 - (c) controlling the expenditure and borrowings of the Implementing Authority within limits set by the Board and ensuring that the costs incurred are accurately recorded and allocated;
 - (d) providing the Board with any information it may require or request for the discharge of its duties;
 - (e) issuing of all tender documents and signing all agreements, undertakings and contracts on behalf of the Implementing Authority;
 - (f) appointing and terminating the appointment of all managerial, professional and administrative staff; and
 - (g) such other duties as the Board may from time to time assign to such Chief Executive.

- (26) The office of the Chairman of the Board of the Implementing Authority shall act as the channel of communication between the Board and the Lesotho Highlands Water Commission.
- (27) The Board shall report to the Lesotho Highlands Water Commission on a quarterly basis on matters covering:
- (i) general Project overview
 - (ii) progress against strategic plans
 - (iii) main operational activities
 - (iv) actual expenditure against budget
 - (v) any issues and/or challenges facing the Project
 - (vi) summary of Board resolutions
 - (vii) summary of delegations, and such contracts as the Lesotho Highlands Water Commission may from time to time identify.
- (28) The Board shall provide the Lesotho Highlands Water Commission with information it may reasonably request in order to take appropriate action in terms of paragraph (8) of Article 9.
- (29) In addition to paragraph (28) above, the Board shall be responsible for ensuring that such information as is necessary to enable the Lesotho Highlands Water Commission to perform its functions is continuously passed on to it in a timely and effective manner.
- (30) In case of emergency, and in particular in the event that the safety and security of the Project are threatened, the Chief Executive shall after consultation with the chairman of the Board take such appropriate steps as are necessary to deal with the emergency.
- The Chief Executive shall as soon as practicable submit a report to the Board on such action taken.

ARTICLE 5

RESTRUCTURING OF THE FUNCTIONS, POWERS AND OBLIGATIONS OF THE

LESOTHO HIGHLANDS WATER COMMISSION

Article 9 of the Treaty is hereby amended by deleting paragraphs (14) and (21) and substituting the following paragraphs for the corresponding paragraphs in the Treaty and by adding paragraphs (29) to (33):

- (1) The Lesotho Highlands Water Commission is composed of two delegations, one from each Party. Each Party shall nominate three representatives constituting its delegation as well as an alternate for each of the nominated representatives. Each delegation shall alternately nominate a chairman for meetings of the Lesotho Highlands Water Commission. The Parties shall ensure that there is a delegate in Maseru with authority to take decisions.

- (8) The Lesotho Highlands Water Commission shall be responsible and accountable for the Project, shall act on behalf of and advise the governments and be the channel of all government inputs relating to the Project.

- (9) The Lesotho Highlands Water Commission shall monitor the activities of the Lesotho Highlands Development Authority and the Trans-Caledon Tunnel Authority or Implementing Authority (against milestones and performance indicators agree with the Board or Head of Operation and Maintenance, as applicable) and have advisory powers in respect of the activities of the Lesotho Highlands Development Authority and the TransCaledon Tunnel Authority or Implementing Authority.

- (10) The Lesotho Highlands Water Commission shall have the right to subject to management audit, all aspects of the management, Organisation and accounts of the Lesotho Highlands Development Authority and of the Trans-Caledon Tunnel Authority or Implementing Authority.

- (11)(a) The demarcation of the respective roles and responsibilities of the Lesotho Highlands Water Commission and the Board or Head of Operation and Maintenance, as applicable, shall be guided by the following principles:
 - (i) The Lesotho Highlands Water Commission shall have the responsibility for strategic overall policies.

- (ii) The Board or Head of Operation and Maintenance, as applicable, shall have the responsibility for operational policies and for implementing the Project in the respective area of responsibility.
 - (iii) The Board or Head of Operation and Maintenance, as applicable, shall be accountable to the Lesotho Highlands Water Commission.
 - (iv) Policies, procedures and expenditure limits shall aim to achieve effectiveness and efficiency.
 - (b) The Lesotho Highlands Water Commission may in respect of any matter determine appropriate policies, procedures and expenditure limits, guided by the principles outlined in paragraph (11)(a). Such policies, procedures and expenditure limits shall be determined after consultation with the Board or Head of Operation and Maintenance, as applicable, and may be amended from time to time.
 - (c) The policies, procedures and expenditure limits shall be recorded in a document called the Governance Manual.
 - (d) The Lesotho Highlands Water Commission shall have approval powers on any matter for which no appropriate policy, procedure or expenditure limit is laid down in the Governance Manual.
- (14) This paragraph is deleted.
- (21) This paragraph is deleted.
- (29) The Lesotho Highlands Water Commission shall establish such nonexecutive sub-committees it may find necessary for its operations including finance, environment and legal sub-committees to:
- (i) facilitate relations with relevant government departments and
 - (ii) advise on and assist with specific specialist areas.
- (30) The Lesotho Highlands Water Commission shall have full responsibility and shall be accountable for the sub-committees' actions which shall be advisory only.
- (31) The delegations to the Lesotho Highlands Water Commission shall take turns in chairing meetings of the sub-committees.

- (32) The Lesotho Highlands Water Commission shall determine the remuneration of the Board and remuneration policies of the Lesotho Highlands Development Authority and Implementing Authority or TransCaledon Tunnel Authority, and annual adjustments thereto.
- (33) The Lesotho Highlands Water Commission shall be responsible for ensuring that such information as is necessary to enable the Board or Head of Operation and Maintenance, as applicable, to perform their respective duties is passed on in a timely and effective manner.

ARTICLE 6

THE PREVENTION AND SETTLEMENT OF DISPUTES

- (1) Paragraph (3) of Article 16 of the Treaty is amended by the substitution therefor of the following paragraph:
- (3) The Board of the Lesotho Highlands Development Authority or of the Implementing Authority or Trans-Caledon Tunnel Authority, as the case may be, shall have the power to institute, each within its own sphere of responsibility and after prior notification to the Lesotho Highlands Water Commission, the minimum action required to safeguard the safety and integrity of the Project during the period in which the dispute procedure provided for in this Article is in operation.
- (2) Any dispute concerning the interpretation or application of this Protocol shall be resolved in accordance with the provisions of Article 16 of the Treaty.

ARTICLE 7

PRIVILEGES AND IMMUNITIES

Paragraph (8) of Annexure III is hereby amended by the substitution therefor of the following:

- (8) Taxes levied on the salaries, emoluments and pension fund benefits of the Secretary and other personnel (other than personnel who are citizens of Lesotho) of the Lesotho Highlands Water Commission by the one Party shall constitute part of the contribution by the other Party towards the expenses of such Commission, proportional to the liability of each Party for the costs of such Commission apportioned in accordance with the provisions of Article 9.

ARTICLE 8

ENTRY INTO FORCE

This Protocol shall enter into force on the date of signature hereof

IN WITNESS WHEREOF, the Parties acting through their duly authorised representatives, have caused this Protocol in the English language to be signed in duplicate in their respective names at on the ... day of in this Year Nineteen Hundred and Ninety Nine.

**FOR AND ON BEHALF OF THE
GOVERNMENT OF THE
REPUBLIC OF SOUTH AFRICA**

**FOR A N BEHALF OF THE
GOVERNMENT OF THE
KINGDOM OF LESOTHO**