

Executive Summary of Briefing paper on the Information Disclosure and Grievance Mechanisms of the New Development Bank (NDB)

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BACKGROUND/CONTEXT

The purpose of the New Development Bank (NDB) is to “mobilize resources for infrastructure and sustainable development projects in BRICS and other emerging economies and developing countries, complementing the existing efforts of multilateral and regional financial institutions for global growth and development”. Since the NDB Africa Regional Center (ARC) was launched in August 2017, the NDB has approved 9 projects for South Africaⁱ (8 projects in South Africa and 1 project in Lesotho) valued at an estimate USD 3.2 billion.

The NDB as a development finance institution operating for and in the global South, presents stakeholders with a number of challenges and opportunities in relation to the financing of infrastructure and sustainable development projects. Opportunities include socio-economic and other social benefits which accrue from appropriate, well-considered and environmentally sustainable projects in harmony with nature. However, development finance projects are known to have the potential to create unintended environmental, social and governance impacts and to negatively affect the marginalised and the poor in a disproportionate manner.

In order to properly engage with both the risks and opportunities which arise in relation to NDB financed projects, relevant information about such projects are required, such as environmental and social impact assessments, information on consultations which have or have not occurred, roles of intermediaries, as well as information on grievance mechanisms which are available to those who are affected

by projects financed by the NDB. It is clear then, that in order for the NDB to be held accountable for impacts of its financing, including potential failures to consult with vulnerable and marginalised stakeholders and properly addressing environmental and social impacts, information on both the projects and policies of the NDB are centrally important.

COUNTRY SYSTEMS

The NDB promotes the transparent and rigorous use of country systems. In its application of country system usage, the NDB makes a clear distinction between itself and its client. For purposes of South African projects, NDB clients would include Eskom, the Industrial Development Corporation, the Development Bank of South Africa, the Trans-Caledon Tunnel Authority, SANRAL and Transnet. While NDB's Environmental and Social Framework (ESF) explains that it is the responsibility of the client to meet the key requirements for environment and social assessment, involuntary resettlement and indigenous peoples standards in the preparation and implementation of NDB projects, the ESF also states that the NDB plays an active role in these processes and may support clients during project processing, monitoring and supervision. Both the preparation and implementation of projects should be made available in terms of country systems. Currently project applications are not publicly available.

For the screening of projects, the NDB applies a risk-based framework on a project-by-project basis, which is based on NDB experience and international good practices. Although a brief description of the screening

ⁱ For the list of NDB projects in South Africa, see NDB website: <https://www.ndb.int/projects/list-of-all-projects/>. The exchange rate applied is USD 1 to ZAR 17 for the total 9 projects listed.



Durban Container Terminal

Photo by Chris Bloom

process guidelines is set out in the ESF, the detailed risk assessment process, screening process deliberations, classification decision and reasons for the classification decision are not publicly available. Such information is critical to review in order to understand decision making considerations and criteria in more detail.

Once categorised, the client is responsible for assessments, consultations, plans, implementation of plans, grievance redressal, dispute resolution, and disclosure and monitoring. The classification of a project and the decisions for such classification is an important step in the project lifecycle. The following example demonstrates how information related to the detailed risk assessment is critical for the success of a project, including appropriate management plans to address environmental and social impacts.

The Case of the Durban Container Terminal Berth Reconstruction Project

In relation to Transnet's project application concerning the Durban port, the NDB categorized the project as "A" in accordance with the NDB Environment and Social Framework.¹ The NDB Environment and Social Framework indicates that "a proposed project is classified as Category A if it is likely to have significant adverse environmental and social impacts that are irreversible, diverse, or unprecedented. These impacts may affect an area larger than the sites or facilities subjected to physical works."² For any environmental and social impacts identified, the NDB requires the client to develop management plans as appropriate (e.g. environmental and social management plan, resettlement action plan, indigenous peoples plan, or equivalent) to avoid, minimize or otherwise compensate the adverse impacts. These plans are not publicly available.

NDB Access to Information Guided by the Environmental and Social Framework (ESF) and the Information Disclosure Policy (IDP)

This **briefing paper** makes reference to the various processes related to the approval of NDB project loans that require clarity, including the need to make available project documentation to the public. Two primary documents which guide access to information on NDB financed projects are the NDB's ESF and the Information Disclosure Policy (IDP). The NDB's ESF states that the implementation of the ESF is the responsibility of the client, including all assessments, consultations, plans, implementation of plans, grievance redressal, dispute resolution, disclosure and monitoring. It is unclear how the NDB monitors the implementation of a fair grievance mechanism, which is the responsibility of the client.

On access to information, Section 23 of the ESF states that the "NDB is committed to working with the client to ensure that social and environmental documents are made available in a timely manner, in an accessible place, and in a form and language(s) understandable to affected people and to other stakeholders, including the general public, so they can provide meaningful inputs into *project design and implementation*".³ Centre for Environmental Rights's view is that all project *assessment* information can be requested directly from the NDB in terms of the IDP of the NDB, however, further clarity is required on a clear process as there is room for dispute in relation to this.

Similarly, it is unknown as to whether ongoing information about the project, including monitoring and evaluation assessments, due diligence, gap analysis and monitoring and oversight reports in respect of the client's compliance with environmental and regulatory requirements, are subject to the same form of disclosure. While information can be sought in discussions with the NDB, one can also seek clarity for these processes in terms of the NDB's IDP and/or the Promotion of Access to Information Act, 2 of 2000 (PAIA) as set out in **Annexure A**.

Other project documentation that is not publicly made available by the NDB include records of decision making; due diligence outcomes; Financial and Economic Analysis of Projects (FEA); and the Country Partnership Plan (CPP). The FEA is important to assess sustainability. As for the CPP, CER has not been able to locate the CPP and relevant studies used to prepare such plans for South Africa. It is also clear that the development of the CPP is not subject to any public participation process. Such documents can be requested both in terms of the IDP and PAIA, directly from the NDB, alternatively from the South African government such as from the National Treasury as set out in **Annexure A**.

It is important to note for the briefing paper that the insight gleaned has been as a result of CER's interpretation of policies and processes, vague as they are, as well as engagement with the NDB. In order for the NDB to achieve high levels of transparency, a key recommendation of this paper is that information related to its policies and processes as set out in this paper, should be provided for, in detail, on its website and made accessible to the public.