



# Centre for Environmental Rights

## Advancing Environmental Rights in South Africa

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Dear Mr Dlamini, Mr Currie and Mr Dietrich

### THE DEVELOPMENT BANK OF SOUTHERN AFRICA'S ROLE IN THE FINANCING OF THE PROPOSED THABAMETSI COAL-FIRED POWER PLANT

1. The Centre for Environmental Rights (CER) is a non-profit company and law clinic. Our mission is to advance the realisation of environmental rights as guaranteed in the South African Constitution, by providing support and legal representation to civil society organisations and communities who wish to protect their environmental rights, and by engaging in legal research, advocacy and litigation to achieve strategic change.
2. We are writing to you in relation to the DBSA's role in the financing of the proposed Thabametsi privately owned coal-fired power station.
3. The Paris Agreement on Climate Change commits international governments to make finance flows consistent with low-carbon and climate resilient development. Financial institutions have a critical role to play in this transition. **The DBSA has expressly acknowledged this role in its 2015/2016 Integrated Annual Report and Sustainability Review, in which it has stated that the DBSA plays a "direct role" in supporting the National Development Plan objective of South Africa's "transition to a low-carbon economy", and a direct role in the United Nations Sustainable Development Goal 13, namely to "take urgent action to combat climate change and its impacts".<sup>1</sup>**
4. Given these statements, as well as other DBSA objects and commitments described below, we are alarmed by the DBSA's role in this project, in an era where the urgent transition to a low-carbon economy is essential if we are to avoid the worst effects of catastrophic climate change. We have also written to the four private banks listed as contributing to the financing of the Thabametsi project.

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<sup>1</sup> Development Bank of Southern Africa Integrated Annual Report 2015/16 at p3 and 4; Development Bank of Southern Africa Sustainability Review 2015/16 at p4.

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## Judgment in South Africa's first climate change litigation

5. You may be aware that on 8 March 2017, the North Gauteng High Court handed down a landmark ruling in the case of Earthlife Africa Johannesburg (ELA) against the Minister of Environmental Affairs (Minister), the Department of Environmental Affairs (DEA), and Thabametsi Power Company (Pty) Ltd. The CER represents ELA in this litigation.
6. The DEA gave Thabametsi its environmental authorisation (i.e. environmental permission to build the power station) without adequately considering any of the climate change impacts that this project will have. This is the decision that ELA challenged in court. The court's key finding was that ELA was correct in asserting that the Minister and the DEA should have considered the power station's climate change impacts before deciding whether to authorise it.
7. The court found that "*permission has been granted to build a coal-fired power station which will emit substantial greenhouse gases in an ecologically vulnerable area for 40 years without properly researching the climate change impacts for the area and the country as a whole before granting the authorisation*". The court issued an order which suspends the environmental authorisation pending the Minister's reconsideration of ELA's internal appeal against the environmental authorisation.
8. The judgment has broad implications for South Africa, and for the future of the Thabametsi project and all other proposed independent coal power producer projects under the Coal Baseload Independent Power Producer Procurement Programme (CBIPPPP). The court confirmed that neither the Department of Energy's determination calling for new coal-fired power, nor the Integrated Resource Plan for Electricity – which also envisages additional coal-fired power - trumps environmental legislation.
9. The judgment makes it clear that coal-fired power stations are significant contributors to climate change, and that climate change poses a substantial risk to sustainable development in South Africa. It remains necessary to assess such potential impacts in the environmental impact assessment (EIA) process, irrespective of Ministerial determinations or government plans.

## Thabametsi's climate change impact assessment confirms significant risks

10. Thabametsi's climate change impact assessment, which was compiled by Thabametsi on instruction from the Minister of Environmental Affairs subsequent to the grant of its environmental authorisation, demonstrates that the Thabametsi project will irreversibly contribute to climate change and that its own lifespan will be threatened as a result of climate change. The assessment shows that:
  - a. Thabametsi will be significantly worse in terms of greenhouse gas (GHG) emissions than existing and older coal plants, and only about the same as the oldest sub-critical Eskom units;
  - b. Thabametsi will be one of the highest GHG emitters in South Africa, with an emission intensity of approximately 60% higher than Eskom's new Medupi and Kusile coal plants; and
  - c. water availability for the Thabametsi power station is a high risk, given that climate change is likely to affect precipitation levels, thereby resulting in water shortages and negatively impacting water quality.<sup>2</sup> It is well documented that water is a serious concern in the Mokolo catchment, and climate

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<sup>2</sup> PXI, Climate Resilience Assessment Report (which forms part of the Climate Change Impact Assessment Report).

change will negatively impact this further, making future water availability uncertain, and presenting risks to the long-term feasibility of the project.

### What this means for the DBSA

11. The burning of fossil fuels is the chief cause of anthropogenic climate change.<sup>3</sup> Coal-fired power stations are the single largest national source of GHGs in South Africa and the country's most significant contributor to climate change. They also have devastating air quality and health impacts on the communities in which they are based, quite apart from their harmful impacts on soil and water. Recent studies by international development and poverty organisations highlight that, on average, the negative impacts related to building more coal-fired power plants in developing countries exceed their positive effects, while renewable energy is better for energy security, health, and job creation.<sup>4</sup>
12. Even in the event that Thabametsi were to succeed in obtaining all of the necessary environmental consents to go ahead, the risk that it will ultimately become a stranded asset would remain. The Paris Agreement on Climate Change commits South Africa to pursue global efforts to limit temperature increases to well below 2°C. This commitment requires South Africa to make a rapid shift away from the burning of coal and the building of any new coal-fired power plants. South Africa's Nationally Determined Contribution records that our GHG emissions will peak from 2020-2025, and thereafter plateau and decline from 2035. Thabametsi is only scheduled to be commissioned in 2021 and has a proposed lifespan of 40 years. There is therefore a very real risk that Thabametsi will not be able to operate for its full expected lifespan.
13. According to the Development Bank of Southern Africa Act, the DBSA's "*primary purpose [is] to promote economic development and growth, human resource development and institutional capacity building by mobilising financial and other resources from the national and international private and public sectors for **sustainable development projects** and programmes in South Africa and the wider African continent*" [emphasis added].<sup>5</sup> The Act also lists one of the main objects of the DBSA as promoting growth by "*funding or mobilizing wholesale funding... for initiatives to minimize or mitigate the environmental impact of development projects or programmes*".<sup>6</sup>
14. The DBSA is also accredited as a United Nations Green Climate Fund entity. The Green Climate Fund (GCF) was established with a "*mission to advance the goal of keeping the temperature increase on our home planet below 2 degrees Celsius*" and to "*respond to climate change by investing into low-emission and climate-resilient development*".<sup>7</sup> As an accredited GCF entity, the DBSA states that the bank manages sustainability risk at a project investment level, by applying the DBSA Environmental and Social Safeguards (ESSs) to conduct due diligence for investment purposes.<sup>8</sup> The ESSs recognise that:

*"Climate change, drought, pollution, biodiversity loss and water shortages and unequal access to resources are just a few of many challenges. There is a great deal of urgency... Africa is well positioned to develop a model for renewable energy and for creating a new socially and environmentally responsible development paradigm - a green economy at scale."*<sup>9</sup>

<sup>3</sup> NASA (2017). *Facts*. Available online at <http://climate.nasa.gov/causes/>, [last accessed 29 August 2017].

<sup>4</sup> Overseas Development Institute et al (2016). *Beyond coal: Scaling up clean energy to fight global poverty*. Available online at: <https://www.odi.org/sites/odi.org.uk/files/resource-documents/10964.pdf>, [accessed 3 May 2017].

<sup>5</sup> Development Bank of Southern Africa Act 13 of 1997, Long Title, available at: [http://saflii.org/za/legis/num\\_act/dbosaa1997328/](http://saflii.org/za/legis/num_act/dbosaa1997328/).

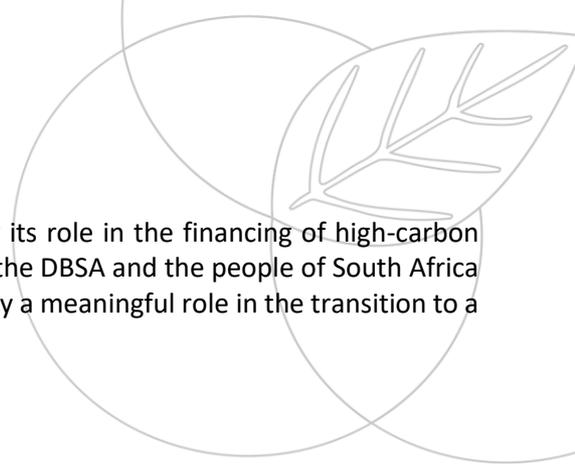
<sup>6</sup> Development Bank of South Africa Act, s3(1)(e).

<sup>7</sup> <http://www.greenclimate.fund/home>

<sup>8</sup> Development Bank of Southern Africa, 2015/16 Sustainability Review, at p6.

<sup>9</sup> Development Bank of Southern Africa, Environmental and Social Safeguards, available at:

<http://www.dbsa.org/EN/InvestorRelations/Environmental%20Appraisal%20Documents/Environmental%20and%20Social%20Safeguard%20Standards.pdf>

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15. The DBSA's objectives and commitments are severely undermined by its role in the financing of high-carbon activities such as new coal-fired power plants. Such financing exposes the DBSA and the people of South Africa to high-risk projects, and severely hinders the ability of the DBSA to play a meaningful role in the transition to a low-carbon economy, and a sustainable future for South Africa.

## Conclusion

16. Investing in new proposed coal projects is both high-risk and severely prejudicial to the health and well-being of the people of South Africa. Globally, proposed coal projects are being met with increased public opposition, as evidenced by the growing number of climate justice lawsuits being instituted around the world – many of which have been successful and others of which have good prospects of success.<sup>10</sup> The Thabametsi judgment, and the further steps being taken in relation to the other CBIPPPP projects, demonstrate that South Africa is no exception to this trend, and that opposition to these projects will continue to increase to ensure that the rights of South Africans are protected from infringement by harmful coal-related developments.
17. We would welcome your views on the issues raised in this letter. We would also welcome an opportunity to meet with you to discuss the DBSA's plans and policies for supporting and facilitating the transition to a low-carbon future. South Africa must prioritise this transition as a matter of extreme urgency, if we are to have any chance of ensuring that the well-being of future generations is not compromised by short-sighted decisions made in the present.
18. We look forward to hearing from you.

Yours faithfully

## CENTRE FOR ENVIRONMENTAL RIGHTS

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<sup>10</sup> See 'Climate Justice: The International Momentum Toward Climate Litigation', Boom, Richards and Leonard. Available at <https://www.boell.de/sites/default/files/report-climate-justice-2016.pdf>. See also <https://www.csmonitor.com/Environment/Inhabit/2017/0329/Courts-now-at-front-line-in-battles-over-climate-change>.