

Agreement between the Norwegian Ministry of Foreign Affairs and the Nile Basin Initiative regarding development cooperation concerning Kenya – Tanzania Power Interconnection Study

WHEREAS The Nile Basin Initiative (hereinafter referred to as "NBI") is an inter-governmental organization formed in 1999 by the Governments of Burundi, Democratic Republic of Congo, Egypt, Ethiopia, Kenya, Rwanda, Sudan, Tanzania and Uganda and formally established by an instrument dated February 14, 2002;

WHEREAS NBI member states have agreed on a Subsidiary Action Program for the Nile Equatorial Lakes region, referred to as NELSAP;

WHEREAS Tanzania and Kenya in letter dated March 2009 have requested the Norwegian Ministry of Foreign Affairs (MFA) for support to the Kenya – Tanzania Power Interconnection, Feasibility Study, Environmental and Social Impact Assessment, Resettlement Action Plan, and Detailed Design (hereinafter referred to as the "Project"), and

WHEREAS MFA has decided to comply with the request.

NOW THEREFORE MFA and NBI (the Parties) have reached the following understanding which shall constitute an Agreement between the Parties:

Article I Scope and objectives

1. This Agreement sets forth the terms and procedures for MFA's support to the project as outlined in the Agreed Project Summary in Annex I and further described in the Project document including Terms of References for "Kenya – Tanzania Power Interconnection, the Feasibility study and Detailed Design" and "Kenya – Tanzania Power Interconnection, Environmental and Social Impact Assessment and Resettlement Action Plan" (revised version), dated 31 October 2009 (the Project).
2. The Goal of the Project is to improve the living conditions of the peoples as well as the rate of the socioeconomic development of NBI Member countries through increased availability of affordable electric energy.
3. The Purpose of the Project is to improve access to electricity in NBI countries through increased cross-border sharing of power.
4. The Parties may agree on extending existing or including new Project elements within the Project, as well as on re-allocating funds within the Project. Any such agreement shall be in writing, e.g. recorded in the Agreed Minutes from the consultations mentioned in Article VI.

Article II Cooperation – Representation

1. The Parties shall communicate and cooperate fully with the aim to ensure that the Goal and Purpose are successfully achieved. The Parties further agree to cooperate on preventing corruption within and through the Project, and undertake to take rapid legal action to stop, investigate and prosecute in accordance with applicable law any person suspected of misuse of resources or corruption. The Parties shall immediately inform each other of any indication of corruption or misuse of resources related to the Project.
2. In matters pertaining to the implementation of the Project the Norwegian Embassy in Dar es Salaam (the Embassy) shall be competent to represent MFA. All communication regarding the Agreement shall be directed to the Embassy.

The Project will be executed by NELSAP Co-ordination Unit (hereinafter referred to as the "NELSAP-CU") located in Kigali, Rwanda, in coordination with the concerned states. A Project Management Committee (hereinafter referred to as the "PMC") will be established under the NELSAP-CU. NELSAP-CU will act as the Secretariat of PMC.

Article III Contribution of MFA

1. MFA shall, subject to Parliamentary appropriations, make available to NBI a financial grant not exceeding NOK 24 million (Norwegian kroner twenty four million) (the Grant) to be used exclusively to finance the Project in the planned period 2009-2011.
2. Any accrued interests on the Grant may be used for the benefit of the Project if agreed on by the Parties in writing.
3. Any unspent disbursed funds and accrued interests shall be returned to MFA upon completion of the Project.

Article IV Contributions and obligations of NBI

NBI shall be responsible for co-ordination between the various subsidiary NBI organs, the concerned states, other donors and any other authority or institution involved in the implementation of the Project, and shall hereunder:

1. Have the overall responsibility for the planning, implementation, reporting and monitoring of the Project.
2. Provide resources including management and personnel set out in the TOR required in addition to the Grant.
3. Ensure that the Grant is used according to approved work plans and budgets.
4. Ensure that Project funds, which shall include any accrued interests, are properly accounted for, and that the Grant is reflected in the plans, budgets and accounting of NBI.
5. Promptly inform MFA of any circumstances that interfere or threaten to interfere with the successful implementation of the Project.
6. Ensure that all permits, import licenses and foreign exchange permissions that may be required are granted.
7. Ensure that representatives of Norway are permitted to visit any part of Rwanda, Kenya and Tanzania for purposes related to the Agreement and examine any relevant records, goods and documents.

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8. NBI shall furthermore ensure, through the execution of written agreements between NBI/NELSAP, Kenya and Tanzania before the entry into force of this Agreement, that such states:
- Commit themselves to providing the resources specified in respect of each state in the Project;
 - Commit themselves to share all the information available to them, or emanating from the Project, which is required for the implementation of the Project in order to achieve the Project objectives;
 - Confirm that no taxes will be charged on consultancy services rendered within the framework of the Project;
 - Confirm that the use of funds provided under this Agreement by Norway for agreed purposes shall not be impeded or delayed by currency or foreign exchange controls or charges; and
 - Confirm that they will facilitate and implement the conditions and requirements of this Agreement to the extent this is incumbent on such states.
- A copy of the agreement(s) shall be submitted to MFA for approval before entering into force.

9. Enter into the contract with the consultant (the Consultant) for the execution of the study in accordance with the procedure in Article VIII.

Article V Disbursements

- The Grant will be disbursed upon semi-annual written requests from NBI based on the financial needs of the Project and, except the first request, on approved work plans and budgets. The first disbursement, amounting to USD 669,000, will be made upon signing of this Agreement and approval by MFA of a disbursement request from NBI.
- When determining the amount to request, NBI shall take into account unspent disbursed amounts and income from all sources as well as any accrued interests which the Parties have agreed on using for the benefit of the Project according to Article III, Clause 2. Along with the requests, except the first request, NBI shall state the cash balance of the Project and submit a statement of bank balances for the Project from the bank.
- Funds will be transferred upon MFA's approval of the requests to a separate bank account with NBI, and shall be made available to the Project immediately. NBI shall immediately, in writing, acknowledge receipt of the funds. The date of receipt shall be stated as well as the exchange rate applied.
- All disbursements to suppliers of goods or services shall be made by NBI.

Article VI Annual Meeting

Representatives of the Parties shall have an Annual Meeting within 4th quarter each year in order to:

- Discuss the progress of the Project, including results and fulfillment of agreed obligations;
- Discuss and, if feasible, approve work plans and budgets for the following six months;
- Discuss issues of special concern for the implementation of the Project, such as the major risk factors set out in the Agreed Project Summary in Annex I, and how to manage such risks/issues.

Each of the Parties may include others to participate as observers or as advisors to their delegations.

- The documentation specified in Articles VII and IX shall form the basis for the consultations.
- The Annual Meeting shall be called and chaired by NBI.
- Main issues discussed and points of view expressed as well as any decisions shall be recorded in Agreed Minutes. The Agreed Minutes shall be drafted by NBI and be submitted to MFA for comments no later than two weeks after the Annual Meeting.
- The Parties may agree on forms and frequency of Intermediate Review Meetings.

MFA, and representatives of Norway, shall be invited to participate as observers at PMC meetings. The Embassy shall receive notice on behalf of Norway of such meetings in sufficient time to be able to plan its participation.

Article VII Reports

- NBI shall submit to MFA the reports and documentation specified below. MFA shall respond within two weeks upon reception of the reports and documentation.
- Progress reports shall be submitted annually within 28 February, and semiannual within three weeks before the Annual Meeting.

The progress reports shall include the following information:

- A description of actual outputs compared to planned outputs (as defined in the work plans);
- A brief summary of the use of funds compared to budget;
- An assessment of the efficiency of the Project (how efficiently resources/ inputs are converted into outputs);
- An explanation of major deviations from plans;
- An assessment of problems and risks (internal or external to the Project) that may affect the success of the Project;
- An assessment of the need for adjustments to activity plans and/or inputs and outputs, including actions for risk mitigation;
- A brief assessment of achievements in relation to Purpose.

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3. A work plan shall be submitted semi-annually within 2nd quarter and within 3 weeks before the annual meeting. The work plan shall specify planned outputs and time schedules for the next six months.
4. The following semi-annual financial statements and budget shall be submitted within 2nd quarter, and within 3-weeks before the Annual Meeting each year:
 - a. Financial statements for the Project consisting of:
 - i) A statement showing cash receipts, income and expenditures for the previous period structured as and compared to approved budgets for such previous period as well as accumulated for the Agreement period. The statement shall capture all sources of funding, with sufficient segregation of data to permit identification of individual sources of funds and disbursements on major Project activities or types of expenditure;
 - ii) a statement of cash and bank balances;
 - iii) relevant notes to the above mentioned statements including a description of the accounting policies used and any other explanatory material necessary for transparent financial reporting of the Project;
 - b. Budget for the Project for the coming six-month period showing estimated income from all sources and planned expenditures.
5. The financial statements and budget(s) shall give complete and detailed information on the financing of the Project.
6. A final report shall be submitted within 4 months after the completion of the Project. If the Project is not completed by 1st January 2012, a status report shall be submitted to MFA by the said date. The final report shall include:
 - The topics listed in Clause 2 above for the whole Agreement period;
 - An assessment of the effectiveness of the Project, i.e. the extent to which the Purpose has been achieved;
 - An assessment of impact (if possible), i.e. the changes and effects positive or negative, planned and unforeseen of the Project seen in relation to target groups and others who are affected;
 - A summary of main "lessons learned".

Study reports. NBI shall ensure that the Embassy gets all study reports that will be produced by the Consultants in conformity to the TORs. The reports will be defined in the Contract between NBI and the Consultants to be recruited.

Article VIII Procurement

1. NBI undertakes to effect all procurements of goods and services necessary for the implementation of the Project.
2. The procurements shall be performed in accordance with generally accepted procurement principles, good procurement practices and the procurement regulations of World Bank. Norwegian suppliers shall be given the same opportunities as other suppliers to compete for deliveries.

NBI shall observe the highest ethical standards during the procurement and execution of contracts.

No offer, gift, payment or benefit of any kind, which would or could, either directly or indirectly, be construed as an illegal or corrupt practice, e.g. as an inducement or reward

for the award or execution of procurement contracts, shall be accepted. Invitations to make offers as well as the procurement contracts shall, respectively, include a clause stating that the offer will be rejected and/or the contract cancelled in case any illegal or corrupt practices have taken place in connection with the award or the execution of the contract.

3. MFA shall give "no objection" at the following stages

- Expression of Interest (EOI)
- Request for proposal including shortlist, TOR and draft contract
- On combined evaluation report
- On the negotiated contract including minutes of negotiations

It is agreed that the World Bank shall review and give "no objection" to the TOR.

NBI shall confirm in writing that the procurement regulations agreed on have been adhered to.

4. NBI shall provide MFA with copies of the signed contracts entered into with the Consultants for information within 30 days after the signing.

5. NBI shall upon request furnish MFA with all relevant information on its procurement practices and actions taken, and provide access to all related records and documents. MFA may require access to information even during the stage in the procurement procedure when it is restricted to the officers performing the procurement. Restrictions on such information shall be respected until the information can be made public without any risk of detriment to the result of the procurement.

Article IX Audit

1. The audit shall be performed by an independent professional accountant/accountancy firm in public practice (external auditor/ audit firm) acceptable to MFA in accordance with principles for governmental sector auditing.

The cost of the audit shall be covered by the Grant.

2. The audit shall be carried out in accordance with international auditing standards. The auditor shall state in the report which auditing standards that have been applied.

3. The audit report shall state the auditor's opinion/findings as to:
 - Express an opinion whether the submitted Annual Financial Report is correct and gives a true and fair view of the activities of the Project and whether the execution has complied with the rules and conditions governing the use of funds as expressed or referred to in this agreement;

The Audit Report shall submit a Management Letter, which reviews the management and the internal control system of the Project. The letter shall state which measures have been taken as a result of previous audit reports/management letters and whether measures taken have been adequate to deal with reported shortcomings.

4. NBI shall submit to MFA the audit report and any other report from the auditor significant to the implementation of the Project as soon as it has been received from the auditor, and no later than six months after the year is finished. NBI shall comment upon the auditor's findings. MFA shall respond within three weeks upon reception of the report.

Article X Reviews – Evaluation

1. An In-Depth Review or Evaluation may be made after the end of the Project period. The Parties shall agree on the terms of reference and the procedures for its implementation during the preceding annual review meeting.
2. The cost of the Review / Evaluation shall be covered by MFA over and above the grant. MFA reserves the right to carry out independent reviews or evaluations of the Project as and when MFA deems it necessary. The cost for such reviews will be covered by funds over and above the Grant.

Article XI Reservations

1. MFA reserves the right to withhold disbursements at any time in case e.g.:
 - The Project deviates unfavorably in relation to the Goal and Purpose,
 - Substantial deviations from agreed plans or budgets occur,
 - Resources to be allocated by NBI or Kenya and Tanzania are not provided as agreed,
 - The documentation specified in Articles VII and IX has not been submitted as agreed,
 - The financial management of the Project has not been satisfactory,
 - The agreement(s) referred to in Article IV, Clause 8 is breached or terminated before all obligations therein are fulfilled.
2. MFA reserves the right to reclaim all or parts of the Grant and cancel the Agreement if Project funds are found not to have been used in accordance with the Agreement or are found not to be satisfactorily accounted for.
3. MFA has the right to cancel the Agreement or portion of the Agreement, and has the right to demand the cancellation of any contract financed under the Agreement, with immediate effect if it determines that corrupt or fraudulent practices were engaged in by representatives of NBI or by a beneficiary of Project funds during procurement or execution of the contract without NBI having taken timely and appropriate action satisfactory to Norway to remedy the situation.
5. Before MFA withholds disbursements, reclaims funds or cancels the Agreement, the Parties shall consult with a view to reaching a solution in the matter.

Annex XII Distribution of the Agreement

The Parties shall distribute copies of the Agreement to the respective ministries, authorities and other institutions involved in the Project or otherwise in need of information on its content.

Article XIII Entry into force – Termination – Disputes

1. The Agreement shall enter into force on the date of its signature, and shall remain in force until the Parties have fulfilled all obligations arising from it. Whether the obligations are fulfilled, shall be determined in consultations by the Parties.
2. Notwithstanding the previous clause each Party may terminate the Agreement upon three months written notice.
3. If any dispute arises relating to the implementation or interpretation of the Agreement, the Parties shall consult with a view to reaching a solution.

IN WITNESS WHEREOF the undersigned, acting on behalf of their respective Governments, have signed the Agreement in two originals in the English language.

Done in Dor es Solva the 24 day of December of 2009

For the Norwegian Ministry
of Foreign Affairs



Jon Lomøy,
Ambassador

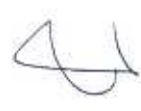
For the Nile Basin Initiative



Henriette Ndombé
Executive Director

Annexes:

1. Agreed Project Summary



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Annex I Agreed Project Summary

1. Identification of the Project

- Project Title/Name: Kenya - Tanzania Power Interconnection, Feasibility Study, Environmental and Social Impact Assessment, Resettlement Action Plan, and Detailed Design.
- Implementing institution: The Project will be executed by the Nile Basin Initiative represented by the NELSAP Co-ordinating Unit (hereinafter referred to as the "NELSAP-CU") located in Kigali, Rwanda, in coordination with the concerned states. A Project Management Committee (hereinafter referred to as the "PMC") will be established under the NELSAP-CU. NELSAP-CU will act as the Secretariat of PMC.
- Norwegian and/or other Partner institution: Norwegian Embassy in Dar es Salaam (the Embassy) shall be competent to represent MFA.

2. Description of the Project

2.1 Goal

The Goal of the Project is to improve the living conditions of the peoples as well as the rate of the socioeconomic development of NBI Member countries through increased availability of affordable electric energy.

2.2 Purpose

The Purpose of the Project is to improve access to electricity in NBI countries through increased cross-border sharing of power.

2.3 Outputs

Projects components and outputs:

- i) The Feasibility study will deliver an initial data collection, Load forecast, Generation and Transmission Expansion Plan (GTEP), Supply Demand Analysis, Network Analysis, Optimum Route Selection, Project Viability Organizational and Institutional analysis, Risk Analysis
- ii) The Detailed Design and preparation of Tender Documents will elaborate on Geological surveys and Complementary Topographical Works, Detailed Engineering of Structures and Preparation of Tender Documents
- iii) Undertaking of Project Meetings
- iv) Implementation arrangements (roles of Executing Agency and Steering Committee)
- v) Reports and implementation schedule
- vi) Training and Technology Transfer

2.4 Inputs

Funds

MFA shall, subject to Parliamentary appropriations, make available to NBI a financial grant not exceeding NOK 24 million (Norwegian kroner twenty four million) (the Grant) to be used exclusively to finance the Project in the planned period 2009-2011.

Support and/or facilities

The Nile Basin and the Countries including power utilities will facilitate access to reports and documentation relevant for the project, ensure management of the project and provide personnel set out in the TOR.

KPLC and TANESCO will each provide a transmission/substation engineer, a power system engineer, an economist and an environment specialist. Other experts will be provided from time to time when it will be needed. The counterpart staff will work closely with the consultant in coordination of data collection and analysis, site visits, and liaising with other national stakeholders. The consultant shall provide on the job-training to enhance capacity and skills.

2.5 Main indicators with estimated timeframes

- (i) Feasibility Study and Detailed Design:
 - Inception Report: 1.5 month after commencement of the study
 - Preliminary Design Report for technical Feasibility study: 5.5 months after commencement of the study
 - Final Feasibility Report: 11.5 months after commencement of the study
 - Final Detailed Design and Tender Documents: 114.5 months after commencement of the study
- (ii) Environmental and Social Impact Assessment, Resettlement Action Plan study
 - Final Preliminary ESIA/RAP Reports: 6 months after commencement of the study
 - Final ESIA and RAP Reports: 10.5 months after commencement of the study
 - Synopsis Reports: 10.5 months after commencement of the study

2.6 Major risk factors (internal and external)

Political risk could include lack of stability and peace in the concerned countries as well as risk involved with future agreements not being signed for the interconnection's construction and operation. In relation to the Project, there is a sufficient political commitment to the Study. Still inconsistencies or delays in the future intergovernmental agreements can delay the Study. On the other hand, Kenya and Tanzania are usually stable states.

Technical risks are involved with the project in terms of uncertainty in load and supply forecast information. This is specifically valid for projecting the size and timing of planned generation capacity. The experience shows that these large investments will be difficult to put in place, thus making the time line uncertain. Also the network analysis will be a challenge considering that the size of the interconnection's capacity is almost doubling the existing systems and will impact greatly on system stability and control. New generation capacities are being implemented and/or prepared in the two countries and in the region. It is expected that in future generation capacity and transmission capacity in the region, will likely grow. In this case the interconnection will also improve stability, security and sustainability of regional power system.

Environmental risks are related to running into environmental barriers and delaying the study. The Project puts large emphasis and efforts in the ESIA and there are good possibilities to mitigate this risk.

The financial risk is not significant for the Project since there are already some donors interested in financing power projects in the region and particular regional transmission lines but delays and difficulties in the field work could cause increasing costs.

3. Overall budget

3.1 Overall budget with annual breakdown of MFA's contribution

Description of item	2010	2011	Total (USD)
Consulting Services	1221000	999 000	2 220 000
ESJA, RAP	550000	450 000	1 000 000
Project Management	89 150	89 150	178 300
Sub-Total	1 860 150	1 538 150	3 398 300