



Date: 7th October, 2010

Notice of Registration

Re: Request for compliance review
Request No.: RQ2010/2
Country: Republic of South Africa
Project: Medupi Power Project

The Compliance Review and Mediation Unit (CRMU) received on 28th September, 2010, a Request to investigate possible violation of the Bank's policies and procedures with regard to the Medupi Power Project of the Republic of South Africa. The Request was submitted by two individuals, South African nationals, who have requested that their identity be kept confidential throughout the investigations and outcomes thereof in accordance with paragraph 8 of the IRM Operating Rules and Procedures (hereafter the "IRM Rules"). The Director of CRMU has granted such confidentiality and agreed with the Requestors on how to handle their confidentiality in the processing of their Request.

In order to maintain the Requestors' demand for confidentiality the requirement of prior consultations with the Bank's staff to try to resolve the problems has been waived in accordance with paragraph 5(e) of the IRM Rules. According to the preliminary assessment of the Director of CRMU, the Request fulfills the requirements for registration under the IRM Rules.

Pursuant to paragraph 19 and 20 of the IRM Rules, I am notifying you that **the Request has been registered in the IRM Register of Requests, on 7th October, 2010, for compliance review.** The Register of Requests is accessible on the Bank's website: www.afdb.org/irm.

The Bank Group's Boards of Directors approved on 25th November, 2009, the funding of the Medupi Power Project with a loan not exceeding the aggregate sum of EUR 930 million and ZAR 10.63 billion. According to the Project Appraisal Report (PAR), the total cost of the project is estimated at EUR 11.19 billion (UA 10.18 billion). The AfDB funding will be applied to contracts for the supply and installation of six boilers and turbo-generators¹ for which major contracts have been awarded. The construction of the power plant commenced in May 2008, and the first unit will be commissioned by February 2012, and each subsequent unit will be commissioned at an interval of six months².

¹ AfDB Project Appraisal Report (PAR), paragraph 2.5.4

² PAR, Project Summary – Project overview, page iv

The coal-fired power plant (4765MW) is situated in Lephalale Local Municipality (LLM) in the Limpopo Province. The LLM has a population in the order of 100,000.³ The PAR informs that the Medupi power plant is designed with an advanced coal utilization technology which has environmental benefits compared to conventional sub-critical power plant⁴. Due to limited availability of water in the Lephalale area, dry cooling has been preferred to wet cooling. Dry cooling consumes less than 0.12 L/kWh compared to 1.9 L/kWh for wet cooling technology.⁵

Furthermore, the PAR says that a coal supply agreement was concluded with Exxaro Coal Company for the supply of 14.6 million tones per annum of power grade coal and that the Exxaro Coal Company is planning to expand its production capacity to meet the additional coal requirement for the Medupi project.⁶

With regard to the **environmental impact, the Project has been assigned Category 1**. According to the PAR, Eskom carried out comprehensive and independent Environmental Impacts Assessment (EIA) in 2007. It states that in addition to meeting the requirements of the South Africa's Department of Environmental Affairs (DEA), all the ESIA's also conform to the Bank's Environmental & Social Assessment Procedures (ESAP, 2001).⁷

With regard to climate change the PAR *inter alia* says that while recognizing South Africa's development needs, the mitigation strategy the Government has adopted envisages an increase in emissions over the short term, stabilized emissions by 2020-2025 followed by a decline in absolute terms by mid-century.⁸ Furthermore, the PAR mentions that Eskom is committed to reducing greenhouse gas (GHG) emissions through a strategy that *inter alia* includes: diversification of the generation mix to lower-carbon emitted technologies; energy efficiency and demand side management measures to reduce electricity demand and GHG and other emissions.

With regard to **procurement**, the PAR states that Eskom has concluded about 95% of procurement with the Medupi power plant, using its procurement procedures. Procurement of boilers and turbines were based on international competitive bidding and contracts awarded to Hitachi Power Africa and Alstom S&E respectively.⁹ Furthermore, the PAR says that in order to ensure Eskom's compliance with the above provisions and the Bank's basic principles of economy, efficiency, transparency and equal opportunity to eligible bidders, the Bank commissioned an independent review of the Eskom procurement process.¹⁰ The PAR concludes that the Bank was satisfied with the conclusion of the review.¹¹ Nevertheless, the Bank requested Eskom to undertake

³ PAR, paragraph 2.6.1

⁴ PAR, paragraph 2.3.3

⁵ PAR, paragraph 2.3.5

⁶ PAR, Paragraph 2.3.4

⁷ PAR, paragraph 3.2.2

⁸ PAR, paragraph 3.2.8

⁹ PAR, paragraph 4.1.4.1

¹⁰ PAR, paragraph 4.1.4.2

¹¹ PAR, paragraph 4.1.4.3

additional fiduciary safeguards, *inter alia* including a presentation of an analysis of the application ASGISA (Accelerated Share Growth Initiative of South Africa), NIPP (National Industrial Participation Programme) and BEE (Black Economic Empowerment) within the framework of the boiler and turbine contracts for Medupi, in order to comply with the basic principles of national procurement policies. The PAR states that “This process appears comparable to the domestic preference system provided under the Bank’s procurement rules.”¹²

The Requestors raise several concerns of likely harm and possible violation of the Bank Group policies and procedures. Their allegations *inter alia* include the impact the loan from the Bank will have on South Africa’s carbon reduction commitments, scaling up of investments into renewable energy technologies, and efforts to deal effectively with the threats of climate change. Furthermore, the Requestors claim that the project would largely benefit major industries that consume electricity below cost, while the communities living near the Medupi plant would be the ones to bear the burden of hidden costs in terms of health impact from air pollution, elevated SO₂ levels, and mercury residues in their water, air and land, constrained access to water, and the livelihood impacts from degradation of land and water in the largely agrarian area.

The Requestors also allege that the ruling party, African National Congress, is set to reap major profits from the loan through its investments in Hitachi Power Africa.

The Requestors question the fundamentals of the project stating that it is to secure uninterrupted electricity for large corporations, such as smelters and mining houses under secretive special pricing agreements, and that it is not for the millions of poor people who cannot afford or do not have access to electricity. They believe that the AfDB failed to consider communities consultations and participation in its assessment of the project, claiming that local communities, who live close to the power plant were subjected to removals and the destruction of ancestral graves.

On the basis of the preliminary review of the Request, the Director of CRMU has decided to register the complaint for a compliance review. In accordance with paragraph 31 of the IRM Rules, **the Bank’s Management must provide CRMU with written evidence** that the Bank has, or intends to comply with the Bank Group’s relevant policies and procedures of this project within 21 working days, which shall be by no later than 5th November, 2010.

The Request is assigned number **RQ2010/2** in the IRM Register of Request. The Requestors, the Bank’s Management and other interested parties shall refer to this number in future communication with CRMU with regard to this Request.

All information and decisions relating to the Request will, until further notice, be communicated to the Requestors only through the Director of CRMU.

¹² PAR, paragraph 4.1.4.4

After reviewing the Management's response, and, if warranted, additional information from the Requestors, the Director of CRMU and the IRM Experts will determine the eligibility of the Request in accordance with paragraph 44 of the IRM Rules. If the Director of CRMU and the IRM Experts determine that there is *prima facie* evidence that the Requestors have been harmed or threatened with harm by the Bank Group-financed project and that the harm or threat was caused by the failure of the Bank Group's staff and Management to comply with any of the Bank Group's relevant policies and procedures, they shall within thirty (30) days of such determination submit a report recommending a compliance review of the project to the Boards of Directors.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'Per Eldar Sovik', with a stylized flourish at the end.

Per Eldar Sovik
Director

Compliance Review and Mediation Unit