Notice of Registration

Request No.: RQ2017/1

Country: Senegal

BLAISE DIAGNE INTERNATIONAL AIRPORT PROJECT

1. On 22 September 2017, the Compliance Review and Mediation Unit (BCRM) received the Complaint in Annex 1 relating to the Blaise Diagne International Airport project (AIBD), in Senegal from three nationals of Senegal. The BCRM did a preliminary assessment of the Request based on information gathered during a fact-finding mission to Senegal in October 2017 and further discussions with the Requestors, Management and the project sponsor in November 2017.

2. The complainants allege that they have been adversely affected by the construction of the AIBD. They believe that the compensation they received from the Government for their lands which were acquired by the project was not commensurable with what they should have received under the national laws and the Involuntary Resettlement Policies (2003) of the African Development Bank Group, (AfDB) and that of the World Bank (OP4.12), which are both applicable to the project.

3. They expressed the view that under these policies, the Government should have provided all the people affected by the project (PAPs) land lots in the new resettlement site developed for that purpose. They claimed that there are other PAPs who have been compensated in line with the policies of the AfDB and the World Bank. However, to date they have not received any land lot and expressed concern that they might never, given that the airport will become operational in December 2017.

4. The complainants stated that they have exhausted all the means for resolving their complaint through both the project grievance redress mechanisms. Also, the national court has dismissed their case for lack of jurisdiction. They have therefore asked the Compliance Review and Mediation Unit (BCRM) to handle their complaint through problem solving. They wish to receive fair compensation and want the terms of this compensation to be similar to that of the other PAPs who were compensated in line with the policies of the AfDB and the World Bank.
5. According to the appraisal report\(^1\) of the project, the AIBD is being developed on a site located 45 km east of the city center in the greater Dakar region. The AIBD will have a capacity of 3 million passengers and 80,000 aircraft movements per year. It will have different facilities including, among others, a 42,000-square-metre terminal, 3,500-metre-long runway with taxiways, control tower and 30-stand apron with six contact stands, a car park for 700 vehicles, a 7,850-square-metre cargo terminal, a presidential pavilion and hajj terminal.

6. The Government fully owns the Airport International Blaise Diagne SA (AIBD-SA) that is the project sponsor company, which was established in June 2006. The Government and AIBD-SA signed a Concession Agreement for 30 years for AIBD-SA to develop and operate the airport. The total cost of the airport is estimated at EUR 524.81 million, that is financed by AfDB (senior loan for EUR 70 million), and a credit facility of EUR 150 million co-financed by l’Agence Française de Développement, Banque Ouest Africaine de Développement, Industrial Development Corporation, Islamic Development Bank, OPEC Fund and Saudi Fund.\(^2\) The project was to open officially in December 2017.

7. Due to its negative social and environmental impact, the airport project is classified as Category 1 high risk, for which AIBD has prepared a full Environmental and Social Impact Assessment, an Environmental Management Action Plan and a Resettlement Action Plan (RAP) in 2005. The RAP was then revised in 2010 to meet the requirements of the AfDB and the World Bank.

8. The Appraisal Report mentioned that, the construction of the AIBD requires acquisition of land including for the safety buffer zone and the right of way. The acquisition will affect 343 households (approximately 2,661 people) in Kessoukhate and Diass villages; besides, it will cause various losses of residential and agricultural lands, fruits trees, structures, sacred sites, graves, community public facilities and income. The implementation of the revised RAP will cost FCFA 9,222,464,000.\(^3\)

9. The revised RAP (RRP)\(^4\) highlighted the PAPs’ disagreement with the compensation amount and the delays in payment in addition to the selection of the resettlement site. In reviewing this Plan for the purpose of registering the Request, the BCRM has observed the followings:\(^5\)

   a) The original resettlement plan was prepared in line with the national laws in 2005 and thereafter updated in 2009 by AECOM Tecsult to meet the requirements of the AfDB and the World Bank. The RRP was applied to the construction phase of project that began in 2008. The RRP offers both cash and in kind compensation (resettlement site for PAPs), in addition to allowances;

   b) The RRP described the grievance management process for PAPs calling for compensation for loss of assets which was not covered by both the census of 2002 and its update of 2010. It mentioned that the updated census only covered 58% of households because of the resistance from the population of Kathialite and Mbadate localities. As a result, the census was completed only in September 2010. According to this census, approximately 343 households (about 2,661 people) will be affected.

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\(^1\) Appraisal Report ADB/BD/WP/2010/208 3 December 2010
\(^2\) Appraisal Report, supra note one page iii.
\(^3\) Ibid. page 15-16.
\(^5\) Ibid. pages 3 to 14 inclusive.
by the project. In accordance with the AfDB and the World Bank policies, the RRP grouped the eligible PAPs into: (i) individuals who will be materially and economically affected; (ii) households who will suffer the same; and (iii) communities who will lose lands that are collectively used. In addition, the RRP divided ownership of traditional land into: (i) ancestral rights recognized by the national law; and (ii) legal ownership acquired through land purchase. The cut-off date for considering the eligible people for compensation was 15 September 2010. In accordance with the AfDB Involuntary Resettlement Policy, people who have no formal titles but who have a proof of customary land use right were eligible. Moreover, the compensation for loss of crops was estimated in line with the old census of 2002. Under the RRP, no cash compensation was paid for loss of houses and agricultural lands since the affected owners would be relocated to the resettlement site. To avoid double compensation, the RRP also assessed the adequacy of compensation already paid to PAPs in 2005. The RRP described that PAPs grievances will be handled through AIBD’s two-level dispute resolution structure, i.e., an internal committee and a local conciliation committee. In the event that no amicable agreement is reached through these committees, the PAPs could resort to the Regional Court of Thiès, which is presided by a designated judge;

c) The legal framework for the project resettlement plan is based on national laws and regulations on land tenure and expropriation and the Involuntary Resettlement Policies of both the AfDB and the World Bank. The key requirements of these policies is that the preparation of RAP should be based on public consultations with the PAPs and full compensation of any losses caused by the project.

10. For purposes of assessing whether the complaint meets the requirements for registration, the BCRM conducted a fact-finding mission to Senegal from 10-17 October 2017 which confirmed the followings:

a) The Requestors have no related pending case before the national courts;

b) The Requestors have not been offered land lots in the resettlement site since the lots were only allocated to the villagers from Kessoukhate while the villagers in Diass were compensated in cash;

c) The Requestors’ assets (lands and structures) are located in areas covered by the updated census in 2010. Unlike other PAPs who own similar assets and were compensated in accordance with the policies of the AfDB and the World Bank, the requestors were only compensated under the national laws, at lower rates, hence their complaint;

d) The Requestors and the AIBD SA are willing to engage in BCRM problem solving exercise;

e) It appears that the AIBD project has not systematically followed the requirements of AfDB policy.

11. On the basis on my assessment of the Request, I have determined that the complaint meets the requirements for registration of request as outlined in the IRM Operating Rules and Procedures (IRM Rules; 2015). Therefore, in accordance with Paragraph 23 of these Rules, I have registered on 14 December 2017, the Request relating to the Blaise Diagne
International Airport Project, in Senegal in the IRM Register of Requests. This Notice of Registration is accessible on: www.afdb.org/irm.

12. For any further correspondences relating to this complaint, the Requestors, the Bank Management and any other interested parties shall refer to the Request number RQ2017/I as posted on the IRM Register.

13. The BCRM will communicate with the Requestors through their mailing address provided in the Request Letter, unless they give a different contact information.

14. In accordance with Paragraph 36 of the IRM Operating Rules and procedures, 2015, the AfDB Management shall submit to the BCRM a written Response with an evidence showing how the Bank has, or intends to comply with the Bank Group’s policies and procedures applicable to this project. In view of the willingness of the Requestors and the client to resolve the complaint through problem solving, Management shall also indicate in this Response its interest to engage in this exercise. Management shall submit this Response to BCRM within the statutory twenty one (21) working days from the date of receipt of this Notice of Registration of the Request, i.e., by no later than 16 January 2018.

15. Upon receipt of the Management Response, I will keep the Boards of Directors duly informed about the handling of this complaint.

Sekou Toure
Director
Compliance Review and Mediation Unit

Ce:
1. The Boards of Directors of the African Development Bank Group
2. The President of the African Development Bank Group
3. The Requestors
Annex 1
The Request

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70 332 75 16

Monsieur Assane Makha DIOUF
Tel.: 77 369 48 86

Mrs. Khadidiatou KANE
Spouse of late Mansour DIOP
Tel.: 77 630 90 05

Dakar, 20 September 2017

To: The Director of the
Compliance Review and
Mediation Unit (BCRM) AfDB

From: Expropriated of the Ndiass New Blaise DIAGNE Airport Site

Subject: Complaint against AIBD for non-payment of compensatory allowances calculated according to the revised Resettlement Plan and the allocation of resettlement plots.

Dear Mr. Director,

Following our telephone conversation today and as agreed, I am sending you this letter to confirm that our complaint is based mainly on the existing difference between the provisions of the Senegalese law n° 76.67 of 2 July 1976 on expropriation in the public interest and the relevant provisions of OP4.12 of the World Bank which are also applicable by the AfDB.

We received our first compensation payments in 2007 on the basis of the Decree No. 2004-33 and in spite its commitment, AIBD refuses to apply the provisions for the revised Resettlement Plan in our case.

The application of this plan should enable us to receive compensation so that we can continue our agricultural activities and be compensated for loss of profit from anticipated crops.

Our lands have been acquired since 2002 and we have not yet received our rightful compensation.

Unlike the applied rate of 1986, the revised Resettlement Plan will enable us benefit from the actual rate, which is used for the compensation of loss of land’s plants, fruit trees, fences, etc...

You will find attached all the information concerning the revised resettlement Plan and the documents relating to this litigation:
- Copy of the judgment of 1 June 2017
- Revised Resettlement Plan
- Order in Council 2004-33
- Minutes of Proceedings No. 0157 of 21/02/2003
- 3 Expert reports
- Individual tabular counts
- Letter from Mrs. Aminata Niane of 20/02/2006
- Letter of 10/09/2014
- Letter of 27/04/2015
- Letter of 11/05/2015
- Letter of 15/05/2015

Mr. Djibril CAMARA

Mr. Alassane Makha DIOUF