

ACTION MATTERS

SIX SUCCESS STORIES OF STRUGGLES FOR COMMONS IN AFRICA

COMPLAINT FILING AT INTERNATIONAL FINANCIAL INSTITUTIONS BY ALY SAGNE

SUCSESSES AND WEAKNESSES IN THE CASE OF THE SENDOU COAL POWER PLANT

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On 25 November 2009, the Board of Governors of the African Development Bank (AfDB) approved a EUR 55 million loan to Nykomb Synergetics Development AB, a Swedish company, for the construction of a 125-megawatt coal-fired power plant named Sendou in the municipality of Bargny, overlooking the Atlantic Ocean and 30 kilometers outside of Dakar, the Senegalese capital. It consists of a Public Private Partnership (PPP) under the “build, own, operate” (BOO) model, lasting for 25 years and with the coal to be sourced from South Africa. Based on our research on the AfDB’s operations, *Lumière Synergie Développement* (LSD), a founding member of the Coalition of African Civil Society Organizations and a locally-based environmental association, found in 2010 that the project did not comply with the bank’s social and environmental safe- guards policies.¹ In fact, the project started without adequate consultation with the local community. It was planned to use an area for the power plant which had been promised to the victims of coastal erosion, however the 1,433 plots of land were expropriated without compensation. In addition, more than 1,000 people, mostly women working in fish processing plants and seasonal workers, were put at risk of losing their workplace and means of livelihood. This was because a safe distance between the power plant and the ovens used to smoke fish could not be maintained as the power plant was too close by. The project would also entail enormous risks to the environment and the health of communities, and it was not in compliance with the Senegalese environmental code (Article L13).²

Yet, like the AfDB, the other two development banks, The West African Development Bank (BOAD) and the Dutch Development Bank *Nederlandse Financierings-Maatschappij voor Ontwikkelingslanden* (FMO) have environ- mental and social safeguards policies, whose ultimate goal is to avoid as much as possible any adverse effects, or to minimize social and environmental impacts. Therefore, in partnership with Takkom Jerry, LSD decided to engage with international financial institutions (IFIs), using their expertise on Independent Accountability Mechanisms (IAM).

On 9 May 2016, LSD and Takkom Jerry filed a joint complaint at the Independent Review Mechanisms (IRM) of the African Development Bank, the Dutch Public Development Bank, and the West African Development Bank’s Independent Complaint Mechanisms, for the non-compliance³ of the Sendou project with their respective environmental and social safeguards policies. Safeguards policies are a set of standards established by multilateral development banks to prevent and/or avoid that their investments and operations harm the environment or human rights. On the other hand, complaint mechanisms such as the AfDB’s IRM are intended to “make avail- able to all those who have suffered damage as a result of a project financed by the Bank Group, an independent mechanism through which they can request the Bank Group to act in accordance with its rules and procedures.”⁴

Grievances Brought to the Attention of Banks

In the complaint, LSD raised the shortcomings of the project in violation of the banks’ social and environmental safeguards which these three banks should address, in particular:

- Inadequate community consultation;
- Lack of compensation for land;
- No resettlement of women working in fish drying facilities;
- Violation of Article L13 of the Environmental Code (as this included a buffer zone of 500 meters to the next residential area, which has not been kept);
- Risk of air pollution, marine ecosystem pollution, and threats to fishing;
- Threat to cultural heritage (one sacred Baobab tree is situated in the power plant enclosure and is thus not accessible for the population, while other sacred trees were felled);

- Failure to address the cumulative impacts of the planned coal power plant and the cement factory SOCO CIM that is close by in the Environmental Impact Assessment.

Three Years of Advocacy and Lobbying

A complaint cannot solve everything. Thus LSD combined it with other national and international advocacy and lobbying strategies, supported by an unprecedented media campaign with various tools, as well as the use of social media.⁵ The LSD complaint reached the AfDB 15 days before its Annual Meetings where the main theme was “Energy and Climate Change”, so the timing was a great opportunity for advocacy.⁶ Besides, LSD seized every opportunity to put pressure on the banks involved, through bilateral meetings with Sendou project managers, expert panels and/or influential members of the AfDB Board of Directors. The most decisive lobbying meetings were held at the US Treasury Department in Washington D.C., which represents the United States at the AfDB. LSD also went to the respective headquarters of the AfDB and FMO in Abidjan and the Hague. Here, the support of LSD partners Both Ends and the Centre for Research on Multinational Corporations (SOMO), two Dutch NGOs based in Amsterdam, was very decisive for our pressure on FMO. Since the banks care about their image, the naming and shaming strategy obviously succeeded.

On 20 September 2016, four months after the complaint, a big meeting was convened in Bargny by the Prefecture of Rufisque, the department in which the community is located. It was attended by the Mayor of Bargny, the Director of the Environment and Classified Establishments Department (DEEC), the Head of Major Projects at Senegal’s electricity company SENELEC, the Administrator (and his staff) of the other big electricity company in Senegal (CES), all the municipality councillors of Minam

and Bargny, the imams and resource persons of the village, and finally representatives of NGOs and associations (including fisherwomen groups, Takkom Jerry, and the Collective of the Affected Community). The Mayor stated that

the objective of this meeting was twofold: to provide a space for dialogue between the representatives of the community and the project developers, and to adopt a community position that would allow the Municipal Council to take the right decision on the project.⁷ Therefore, the promoters (CES/SENELEC) recognized for the first time the legitimacy of the community’s struggle since the start of the campaign against Sendou, and proposed the following mitigation measures which the Mayor presented the same day:

- An investment of 400 million West African CFA Francs (XOF) (around EUR 600,000) by CES during the construction phase, including 30 million for social initiatives, 12 million for education, 11 million for the youth, compensation for land amounting to XOF 450,000 per plot, 50 million for the modernization of the fish processing site, organization of exchange trips to Morocco or South Africa, etc.
- Finally, the setting-up of a local monitoring committee with the participation of all community representatives.

Investigations

Between 23 and 26 November 2016, expert panels of all the banks—FMO, AfDB, and BOAD—investigated the case in Bargny.⁸ The trip, taking place six months after the complaint had been filed, was a first visit to the community. This field visit mission was accelerated thanks to LSD’s lobbying of the FMO expert panel in Amsterdam and the US Treasury Department (through the US representative on the AfDB Board) in Washington D.C., both in October 2016.

All three financial institutions, BOAD, FMO, and AfDB, issued corrective action plans as recommendations to the banks’ managements.

The support and advisory role of NGOs have been extremely important in the process: the identification of requesters or community representatives, the clarification of their complaints, the

planning and facilitation of field visits, the preparation of a list of stakeholders to be met in Senegal, etc.⁹ As a consequence of the investigations, the bank experts took advantage to improve their understanding of the community's grievances which were raised in the complaints, including the impacts on the environment, on fisheries, on women working in fish processing sites, and finally the land disputes. In addition to meeting with all project stakeholders in Senegal, the panel experts also met with the project's technical advisor, as well as Quantum Power, the major shareholder in London.

The Tripartite Protocol

On the national level, the pressure was such that the promoters (CES and SENELEC) were in a rush to sign a tripartite memorandum of understanding with the Bargny Municipality¹⁰ to address the issues raised in the complaint, which were no more than a synthesis of the mitigation measures set by CES in its new 2017 January action plan laid out as follows:

- Community engagement: CES hired a community officer alongside a new community engagement plan;
 - Land: SENELEC increased the compensation package up to XOF 1 billion (around EUR 1.5 million);
 - Tax revenue: CES committed to paying approximately EUR 80 million in property tax to the municipality of Bargny for a period of 25 years, representing the project's duration;
- Khelcom fish processing site: CES proposed to modernize the site for about EUR 45,000, and to provide a revolving loan of XOF 30 million for women (around EUR 46,000);
 - Hot water discharge: environmental considerations were integrated into the cooling water intake and outlet systems (closed cycle rather than direct discharge into the sea) so as to minimize the plant's impact on the local marine environment and fishing activities. The outlet system was revised to meet the World Bank guidelines for the temperature of the water discharged;
 - Air pollution: the project was redefined to minimize air pollution by implementing some technical mechanisms such as a more efficient burner;
 - Implementation of the protocol: finally, a local committee was created to follow up on the implementation of the protocol.

Second Victory for the Community over Donors

After the Tripartite Protocol in March, a second victory was achieved when the board of governors of the AfDB authorized a thorough investigation of the project.¹¹ In April 2017, the AfDB board of governors authorized experts of the Independent Review Mechanism (IRM) to conduct additional investigations to clarify the issues raised in the complaints filed by local communities affected by the project. Thus, the AfDB stated that the problems should be addressed before the plant could start operating at the end of 2017. In June 2017, as a consequence, the Collective of the Affected Community filed a second complaint.

An outcome not only of this decision was that all three financial institutions, BOAD, FMO, and AfDB, closed the Sendou case on 16 November 2017, 12 June 2018, and 31 January 2019 respectively, and issued corrective action plans as recommendations to the banks' managements.

In its final report of 2017,¹² the FMO Independent Complaints Mechanism concluded that the Environmental and Social Impact Assessment (ESIA) conducted in 2009 was not fully compliant with the requirements of several performance standards (PS) of the International Financial Corporation (IFC). These are international benchmarks for identifying and managing environmental and social risk and have been adopted by many organizations.

as a key component of their environmental and social risk management. However, PS 1 (2006)—Environmental Assessment and Management Systems—was not fulfilled. The panel acknowledged the real risk of cumulative effects for Sendou II, the community next to Bargny where, according to

plans, a new bulk port should be built, which would result in the “thermal pollution” of the sea by the release of hot water.

The panel came to the further conclusion that problems related to possible damage to the community, such as the availability of drinking water, were never considered in the various ESIA, and as a result the project did not comply with this element of the IFC PS 4 (2012) on Community Health, Safety and Security.

The panel believes that as a lender, FMO should have taken steps to ensure that the project had established procedures and actions to minimize economic displacement, mitigate negative impacts, and provide compensation to any person whose economic rights were affected by the project, regardless of the number of people affected. Also, it confirmed insufficient consultation and communication had taken place with affected communities regarding cultural heritage, and that the threshold requirement for adequate consultation under the IFC PS 8 was not met. FMO thus suggested an action plan which included an independent advisor to ensure transparent management of SENELEC’s compensation funds. Furthermore, the Senegalese government should issue a decree to safeguard the continued presence of women at the Khelcom site and CES was called to formulate a community engagement action plan in accordance with IFC standards. Finally, FMO committed to participating directly in monitoring Sendou’s environmental performance and ensuring the project’s compliance with IFC standards.

The BOAD has a nascent accountability mechanism, and as such, it aligned its procedure with that of the AfDB. It undertook an environmental and social audit of the coal-fired power plant, which resulted in an action plan summarized as follows:¹³ It was recommended that the Senegalese government formulate a resettlement plan in collaboration with SENELEC and CES for the relocation of persons affected by coastal erosion whose plots of land have been lost because of the plant.

Independent complaint mechanisms of development banks, backed by a good strategy, provide access to decision-makers and influence national/public institutions and investors.

The complaint was an eye opener for local authorities and investors. It was also an important source of knowledge and learning for local communities.

Anyone whose economic rights have been affected by the project, for example the fisherwomen, should be provided compensation by the promoters. Furthermore, the promoters are called to produce annual air and water quality monitoring reports. Also, the new mineral port of Bargny and SOCOCIM should be included in the analysis of the cumulative impacts of Sendou I and the data in the project’s ESIA should be updated, particularly when related to the environmental aspects of the project, the demographic data of the host area (including the Khelcom fish processing site), and the donors’ recommendations.

The AfDB is the leading player in this project. Its report came rather late and recommended the following: CES should resettle the 115 households and affected persons to Bargny Ville Verte, and that this be financed jointly by SENELEC, the municipality, and CES.

CES was asked to take up again the periodic monitoring committee meetings in order to speed up the process of reaching consensus. A wastewater management system in the Minam and Bargny municipalities, and the construction of a school in Bargny Ville Verte were further recommended. The AfDB supported CES’s project to build a modern fish drying and smoking platform. Additionally, the AfDB recommended the removal of the ash deposit and requested CES to seek a permit for temporary storage of ash at DEEC and supported its project to create a factory to manufacture bricks made out of ash. It also recommended an update of the Environmental and Social

Management Plan during the operating period: an inventory of air quality and air emissions monitoring, a sampling of all 11 receptors for 12 months, and the setting up of a permanent monitoring station in Minam. To address marine impacts, the AfDB requested that CES conduct a baseline study of marine resources as part of project monitoring, and to take samples of marine, surface and groundwater for the monitoring of physical and biological factors. Finally, to avoid the risks of inadequate water supply on the public network, it recommended the construction of a desalination plant worth EUR 3 million.

Lessons Learned from Engagement with International Financial Institutions

In our view, it is always beneficial for a community to use the independent complaint mechanisms of development banks. If the process is backed by a good strategy, it provides access to decision-makers and influences national/ public institutions and investors. It is also an important source of knowledge and learning for local communities.

In the case of Sendou, the complaint was an eye opener for local authorities and investors: there were several fact-finding missions undertaken by the banks to the project site, and many interactions and discussions took place at the highest level of the three banks (i.e. the boards of directors) and within the Government of Senegal.¹⁴

In addition, the project promoters drafted a new Corrective Action Plan with the implementation of actions oriented towards women (EUR 27 million to support women’s activities, budget support to conduct consultation with local community and budget support for the municipality, etc.), while SENELEC offered EUR 1.5 million to settle the land conflict. However, these kinds of processes can be complicated, time-consuming, and costly. It took us four years to complete the case and produce mitigation measures and action plans.

Moreover, the community’s demands might not be fully addressed, especially if their expectations are higher or outside of the mandates of the independent complaint mechanisms. This could then lead to a loss of trust in IFIs’ accountability mechanisms.

This is exactly what happened on 10 March 2019, when during a workshop meant to evaluate the banks’ compliance review reports, Bargny’s representatives rejected all the banks’ action plans and asked for the project to be stopped.

As of February 2020, Sendou is in its 3rd suspension. Because of technical and financial problems, the plant has ceased operations since July 2019 and a dispute is in process between the two major shareholders, Nykomb Synergetics AB and Quantum Power in London. In any case, from the perspectives of the banks, Sendou is classified as a “high risk project” which is actually handled by a focal point whose mission is to advise the banks on how to make a decision going forward.¹⁵ However, from our experience, no investor who cares about its image would like to invest in Sendou, which is facing such a bad reputation both nationally and internationally. So, for us—activists, NGOs, and the local community—Sendou is over!

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1 Lumière Synergie Développement (LSD) (2014): *Empiéter sur les droits des communautés, polluer demain*, September 2014. A summary can be found in: Aly Sagne (2014): *Sénégal-BAD. Bargny face à 2 Centrales Électriques à charbon*, *The Voice of Communities Affected by business activities*, 25 October 2014, available at <https://alysagne.wordpress.com/2014/10/25/bargny-face-a-2-centrales-electriques-a-charbon/>. Last accessed: 06 April 2020.

2 Government of Senegal (2001): *Loi no. 2001-01 du 15 Janvier 2001 portant code de l’environnement*, available at <https://www.sec.gouv.sn/sites/default/files/loisetdecrets/Loi%20n%C2%B0%202001-01%20du%2012%20avril%202001%20portant%20code%20de%20l%27environnement.pdf>. Last accessed: 27 March 2020.

3 The objective of the compliance audit is to verify whether bank policies or procedures have been violated and whether, as a result, harm has been caused to the affected parties.

4 African Development Bank Group (AfDB) (2015): *The Independent Review Mechanism (IRM). Operating Rules and Procedures revised 16 April 2015*, available at <https://www.afdb.org/en/documents/document/revised-irm-operating-rules-and-procedures-2015-52239>. Last accessed: 27 March 2020.

5 See for example this Lumière Synergie Développement post on Facebook: <https://tinyurl.com/yx2gcbnt>. Last accessed: 12 March 2020. **6** In 2016, the Annual Meetings were held in Lusaka, Zambia. Every year, they are attended by over 2500 delegations from the AfDB and all stakeholders from around the world, including CSOs.

7 Letter of invitation received from the Mayor, see Aly Sagne (2016): Centrale à charbon. La CES reliance les pourparlers avec la communauté – Bargny dit toujours NIET, The Voice of Communities Affected by business activities, 20 September 2016, available at <https://alysagne.wordpress.com/2016/09/20/centrale-a-charbon-la-ces-reliance-les-pourparlers-avec-la-communaute-Bargny-dit-toujours-niet/>. Last accessed: 6 April 2020.

8 The independent mechanisms are made up of the banks' internal staff and independent experts (usually academics). They are independent of the banks' management and report directly to the Board of Governors, hence their "independent" status vis-à-vis the bank. **9** During their stay in Senegal, the panels met with all relevant stakeholders: affected communities, local authorities, the Prefect of Rufisque, the Director General of SENELEC, the project promoter, former politicians, the Ministry of Environment and Sustainable Development, the Mayor of Bargny, the Ministry of Energy, the World Bank, the Dutch Embassy, and local consultants.

10 The Minister of Energy and the Director General of SENELEC personally attended the signing of this protocol at the Bargny Municipal Council.

11 Jennifer Patterson (2017): Sénégal: La BAD va réétudier les doléances que soulève la central au charbon de Sendou, AfDB, 20 April 2017, available at <https://www.afdb.org/fr/news-and-events/african-development-bank-to-further-examine-social-and-environmental-concerns-on-sendou-coal-fired-power-plant-in-senegal-16990>. Last accessed: 12 March 2020.

12 Maartje van Putten, Michael Windfuhr, and Stephen Gibbons (2017): FMO Independent Complaints Mechanism. Panel Report No. 2. Sendou I Coal Power Plant. Bargny, Senegal, 12 October 2017, available at https://www.fmo.nl/1/library/download/urn:uuid:90559906-40f1-4178-83a5-75e4d1a5e8b3/compliance+review+report+sendou_english.pdf. Last accessed: 12 March 2020.

13 AfDB (2019): Plan d'action concernant le rapport de revue de conformité du projet de la centrale à charbon de Sendou réponse de la Direction, January 2019, available at https://www.afdb.org/fileadmin/uploads/afdb/Documents/Compliance-Review/Sendou-Coal_Fired_Power_Plant_Compliance_Review_Report_FR.pdf. Last accessed: 12 March 2020.

14 The Prime Minister of Senegal even made a public statement on the project on 25 May 2018: Energie. Transition au gaz annoncé pour 2021 par le Pm. Bargny refuse des années de pollution au charbon, Le Quotidien, 28 May 2018, available at <https://www.lequotidien.sn/energie-transition-au-gaz-annoncee-pour-2021-par-le-pm-bargny-re-fuse-des-annees-de-pollution-au-charbon/>. Last accessed: 12 March 2020.

15 All options are considered by the banks (including the banks' withdrawal from the project). But the AfDB and FMO are looking for a new investor to restart the project, while saying that in that case, they will ensure the full compliance of the project with social and environment safeguards.