

Swedish National Contact Point final statement – Takkom Jerry and Lumiere Synergie Developpement’s complaint against Nykomb Synergetics Development AB

The complaint

On 7 May 2015, Takkom Jerry and Lumiere Synergie Developpement filed a complaint against Nykomb Synergetics Development with the Swedish National Contact Point.

Nykomb Synergetics Development AB (Nykomb) is an investment company based in Stockholm that develops electrical power plant projects. In 2006 Nykomb led a consortium of companies which responded to a request for a proposal for 2 x 125 MW coal-fired electrical power plants on the basis of BOO (“Build, Own & Operate”), launched internationally by the tender board of Senegal on behalf of the state-owned electricity company Senelec. In 2007 the tender board declared Nykomb’s consortium the winning bidder of this tender process. Partly due to lack of additional funds the project was delayed until November 2013.

Compagnie d’ Electricite de Senegal, CES, was formed in order to develop and operate the so-called Sendou power plant located in the village of Bargny, 32 km from the city of Dakar.

According to the NGO:s the project has human and environmental impacts. They claim that Nykomb has not engaged meaningfully with local communities and that community members that have been impacted by the project and resettled have not been compensated.

In the complaint, the two NGO:s claim that Nykomb has not complied with the following provisions of the OECD Guidelines:

- Chapter II General Policies, §10, §11, §14, which state that enterprises should carry out risk-based due diligence, avoid causing or contributing to adverse impacts on matters covered by the guidelines and engage with relevant stakeholders

- Chapter IV Human rights, §2, §5, which state that enterprises should avoid causing or contributing to adverse human rights impacts and address such impacts when they occur and carry out human rights due diligence

- Chapter VI, Environment §1, §2 and §3 which state that enterprises should establish and maintain a system of environmental management in order to protect the environment, public health and safety as well as engage in consultation with communities affected by the policies of the enterprise

The complainants ask that the Swedish NCP use its good offices to facilitate a dialogue between the parties. The complainants also suggest that Nykomb relocates its power plant.

The company's response

According to the company the 29 hectares site for the power plant project is located in an industrial zone of 5020 hectares and part of it was earmarked by the Government of Senegal for electricity production. In April 2010 Compagnie d'Electricite du Senegal (CES) purchased the site from the Government after the public had been informed in the press about the sale. The site is surrounded by a 500 meters wide security zone in which no activity is allowed in conformity with the environmental norms.

The project is financed at 70 % by loans provided by African Development Bank (AfDB), the lead arranger and senior lender, West African Development Bank and the Dutch Development Bank (FMO).

An impact assessment was made by the African Development Bank in 2009.

The assessment of the National Contact Point (NCP)

The banks themselves made an assessment before financing the project in order to assess whether the project was in line with their sustainability criteria.

The OECD guidelines for multinational enterprises are also applicable for the financial sector as well as the due diligence requirements requested by the guidelines.

The NCP has held several consultations with the parties and consultations have also taken place between the parties themselves in Senegal. There have been some progress and some efforts from the company to improve the situation.

The NGOs have also filed complaints to the African Development Bank and the Dutch Development Bank according to their complaint procedures. Before issuing its final statement, the NCP chose to await the results of the banks complaint procedure, which are now available.

The assessment of the African Development Bank

The Board of Directors of the African Development Bank Group has approved the recommendations of the Independent Review Mechanism of the bank to bring the Sendou coal-fired power plant project in Senegal into compliance with Bank policies and procedures. The compliance review report was approved with a mitigation action plan prepared by the Bank's management.

The Board's decision will trigger the process of resolving the main concerns raised by the complainants that the Sendou power plant will have negative impacts and consequences on their environments and their lives.

The IRM will monitor the implementation of the Action Plan and report progress to the Board annually.

The Sendou Coal Power Plant project was approved by the Boards of Director of the African Development Bank on 25 November 2009. The senior loan was for Euro 49, 392,473, with a total project cost of Euro 164,610,732. The project is a public private partnership initiative, which is also co-financed by Banque Ouest Africaine de Developpement

(BOAD), CBAO Senegal (a subsidiary of Attijariwafa Bank - Morocco) and the Netherlands Development Bank (Nederlandse Financierings-Maatschappij voor Ontwikkelingslanden N.V. (FMO).

<https://www.afdb.org/en/news-and-events/senegal-board-approves-recommendations-and-mitigation-action-plan-for-coal-fired-power-plant-project>

The assessment of FMO

In 2012 FMO invested in Senegal's Sendou project. This project was designed to improve access to electricity for the country and increase supply by 30%, while enabling economic growth and improving livelihoods. In May 2016, a complaint was logged with FMO's Independent Complaint Mechanism (ICM). The Independent Expert Panel (IEP) that further assessed the complaint, published its Compliance Review Report) in 2017. FMO published its Management Response soon after.

The Compliance Review Report noted six non-compliances with FMO environmental and social safeguard policies. These are: (i) impacts on drinking water; (ii) marine impact assessment; (iii) coal transport impacts; (iv) air quality; (v) economic displacement impacts on fish-drying women; (vi) land title issues. FMO acknowledged that, during the due diligence phase (2009), several key Environmental & Social (E&S) items, especially community engagement, should have been considered more carefully and contextual risk should have been better analyzed.

On 27 January 2020 the IEP published its first monitoring report in which it shared its concerns regarding limited progress made. To successfully address the six issues raised, engagement with Senegalese authorities regarding the issues related to the economic displacement impacts on fish-drying women and the compensation to communities regarding disputed land titles are necessary.

But most importantly, together with the other lenders and the client, a solution is needed to tackle the technical issues of getting the plant up and running, so the drinking water impacts, marine impacts, coal transport and ambient air quality monitoring can be addressed. Shareholder and management changes have been a challenge in

addressing the issues. The objective is to get the plant up and running, and to resolve all of the non-compliances

<https://www.fmo.nl/news-detail>

Background National Contact Point

All countries adhering to the OECD Guidelines for Multinational Enterprises undertake to support and promote the Guidelines by setting up National Contact Points. The Swedish NCP is a three-party cooperation between the State, the business sector and employee organisations. The State is represented by several ministries at the Government Offices. The Ministry for Foreign Affairs is the chair. The business sector is represented by the Confederation of Swedish Enterprise, Swedish Trade Federation, the Swedish Federation of Business Owners and employee organisations by the Swedish Trade Union Confederation, the Swedish Confederation of Professional Associations, the Confederation of Professional Employees, Unionen and IF Metall.

The NCP cannot reconsider court decisions, has no legal authority and cannot impose sanctions. The main task of the Contact Point is to promote company compliance with the Guidelines and to contribute to solving problems in individual cases through dialogue and discussion.