AFRICAN DEVELOPMENT BANK GROUP

ACTION PLAN CONCERNING THE COMPLIANCE REVIEW REPORT ON THE SENDOU COAL-FIRED POWER PLANT PROJECT

BCRM DEPARTMENT

January 2019
ACKNOWLEDGMENTS

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Special thanks also go to the Bank officers who facilitated the IRM Compliance Review Mission to Senegal and to all those who provided answers to questions and information at various meetings.
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ACRONYMS AND ABBREVIATIONS

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<tr>
<td>AfDB</td>
<td>African Development Bank Group</td>
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<td>AFG</td>
<td>Advisory &amp; Finance Group Investment Bank</td>
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<td>BCRM</td>
<td>Compliance Review and Mediation Unit</td>
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<td>BOAD</td>
<td>Banque Ouest Africaine de Développement (West African Development Bank)</td>
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<td>BTOR</td>
<td>Back-to-Office Report</td>
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<td>CBAO</td>
<td>Compagnie Bancaire de l’Afrique de l’Ouest (Banking Company of West Africa)</td>
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<td>CES</td>
<td>Compagnie d'Electricité du Sénégal (Senegal Electricity Corporation)</td>
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<td>CTA</td>
<td>Common Terms Agreement</td>
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<td>Environmental and Social Management Plan</td>
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<td>FMO</td>
<td>Nederlandse Financierings-Maatschappij voor Ontwikkelingslanden N.V. (Netherlands Development Finance Company)</td>
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<td>GoS</td>
<td>Government of Senegal</td>
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<td>IRM</td>
<td>Independent Review Mechanism</td>
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<td>ISS</td>
<td>Integrated Safeguards System</td>
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<td>LTA</td>
<td>Lenders’ Technical Advisor</td>
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<td>Monkey Forest Consulting</td>
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<td>PAPs</td>
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<td>RAP</td>
<td>Resettlement Action Plan</td>
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<td>SENELEC</td>
<td>Société Nationale d’Électricité du Sénégal (National Electricity Company of Senegal)</td>
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<td>SOCOCIM</td>
<td>Société Commerciale du Ciment</td>
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EXECUTIVE SUMMARY

This Compliance Review Report is for consideration by the Boards of Directors of the Bank. I was prepared by the Panel of Experts of the Independent Review Mechanism (IRM). The report is in response to the complaint relating to the Sendou Coal-Fired Power Plant Project in Senegal. The complaint was registered by the Director of the Compliance Review and Mediation Unit (BCRM) in August 2016 for a compliance review. The Board of Directors approved the recommendation of the Director of the BCRM and the IRM Experts to conduct a compliance review of this project on 16 April 2017. The investigation was carried out by the Review Panel, comprising the IRM Experts in accordance with the IRM Operating Rules and Procedures (2015). A compliance review assesses whether there has been non-compliance with the policies and procedures of the African Development Bank Group (AfDB), which may have led to causing harm to people or the environment. If the IRM assessment finds instances of non-compliance, the Compliance Review Report presents recommendations to the Bank Management to consider remedial actions and changes to procedures and systems within the AfDB to address the harm caused, and to avoid a recurrence of similar violations by other projects to be financed by the AfDB.

The Sendou Plant Project involves the construction of a 125 MW coal-based power plant, located in the town of Bargny, about 35 km southeast of Dakar, Senegal. The Project is located about 600 m away from the Atlantic Ocean, next to a community which relies heavily on fishing for income generation. The plant will depend on imported coal, which will be shipped to the Port of Dakar’s harbor and then transported by truck to the project site. There are plans to construct a major harbor next to the plant site in order to unload the coal on a pier in the immediate vicinity of the plant. The Sendou Power Plant is Senegal’s first coal-based plant. On 25 November 2009, the Board of Directors of the AfDB approved a senior loan of EUR 55 million for Compagnie d’Electricité du Sénégal (CES) to develop and operate the Sendou Power Plant. A supplemental loan of EUR 5 million was approved in 2015. The Project is co-financed by the Banque Ouest Africaine de Développement (BOAD) and the Nederlandse Financierings-Maatschappij voor Ontwikkelingslanden N.V. (FMO). Several complaints relating to the Sendou Power Plant were also filed with the complaint mechanisms of the two co-financing institutions.

The BCRM received two complaints relating to the Sendou Power Plant in May 2016, which were submitted by a Senegalese civil society organization and nationals representing project-affected communities. Since both complaints raised similar issues, the Director of the BCRM reviewed both and registered them as one complaint. The key concerns raised by these complaints are: (i) increased vulnerabilities of the local population to air pollution, disruptions to livelihood due to the proximity of the Plant to the town of Bargny, and the fact that more than 1,000 women who dry fish to generate income in the buffer zone adjacent to the project site will be displaced; (ii) imminent health risks resulting from air pollution from the Plant; (iii) increased exposure to coastal erosion; (iv) a breach of the Bank’s policy as no Resettlement Action Plan (RAP) was prepared to compensate people who hold land rights within the project site and the adjacent buffer zone; (v) inadequate public consultations; (vi) adverse impact of the plant on a historic site where protected spirits of the village reside; (vii) adverse impact on marine resources; and (viii) non-compliance with Senegalese environmental legislation.

The project activities have had an exceptionally difficult trajectory. The Project started in August 2013 and experienced delays in implementation due to significant disagreement among its shareholders. This led to an interruption in the Project’s implementation in 2015, and ownership changes that took place in later in the same year. These disruptions emerged after the Bank made its first disbursement in August 2013. In

1 Project Reference No. P-SN-F00-004.
January 2014, the lenders’ technical advisor (LTA) issued a First Monitoring Report, which alerted, among other issues, grave non-compliance with the lenders’ safeguards policies. In 2014, the local community started to express vivid objections to the Project by staging protests, highlighting their major concerns of land rights issues and the negative environmental impact of the Project. The same year witnessed disagreement amongst shareholders, bringing the Project to a standstill. The Bank played an active role in facilitating the relaunch of the Sendou Plant Project in October 2015, when Quantum Power (QP) stepped in and became the majority shareholder on the condition that the second disbursement of the Project be effected immediately. At the time that the lenders disbursed the second tranche, in order to ensure the Project’s continuity, they agreed with the CES and the new owner, QP, on a corrective Environmental and Social Action Plan (ESAP). The implementation of the ESAP, which would address the Project’s existing non-compliance, was considered as an integral part of the credit agreement signed by the lenders and QP. In addition, in October 2015, the Bank’s Board of Directors approved a supplementary loan of EUR 5 million to fill the gaps caused by serious project cost overruns.

Subsequent LTA Monitoring Reports noted limited progress in implementing the ESAP until mid-2016. After QP became involved and construction activities resumed in January 2016, important progress in the implementation of the ESAP was made. However, the implementation of the ESAP only started in mid-2016 and coincided with the submission of two complaints to the IRM on the Sendou Plant Project. By May 2017, the Bank had made the third and last disbursement after securing the Board’s approval of a waiver requesting clearance for the third disbursement despite the delays in the implementation of several action measures of the ESAP. Thereafter, the LTA Report in October 2017 noted very significant progress made in the implementation of the ESAP.

The IRM recognizes the challenges the Sendou Plant Project faced as well as the progress in implementing the ESAP in 2017. However, the IRM also wishes to highlight that the project disbursements were made by the Bank while the Project was non-compliant with the Bank’s environmental and social safeguards policies, most especially when this non-compliance was very significant at the time of the first and second disbursements. Given the substantial environmental and social risks and the impact of coal-fired power plants of Sendou, the IRM is concerned about the Project’s full disbursement without the completed implementation of ESAP measures. These measures are meant to mitigate the negative impacts on public health, livelihoods of vulnerable communities and on the environment, as well as to ensure that the Project adheres to environmental and social standards embedded in the investment agreement. In particular, the full disbursement will pose a challenge since there are no specific remedies for the Bank, should the CES fail to fulfill these standards.

**Non-Compliance with AfDB Policies and Procedures**

As a result of the compliance review conducted, the Review Panel found that the Sendou Plant Project is not in compliance with the following Bank policies and procedures:

**Involuntary Resettlement Policy (2003)**

The most significant non-compliance of the Sendou Plant Project is with the Involuntary Resettlement Policy (2003). The issues of the people affected by the involuntary resettlement (physical and economical) as a result of the Project (PAPs) have never been addressed by the ESAP or the credit agreement signed between the lenders and QP when it took over as new major shareholder in 2015. According to the Review Panel’s findings, there are two separate issues relevant to project’s compliance with the Involuntary Resettlement Policy (2003) of the Bank:

(i) *People claiming land rights on parcels located on the project site and the buffer zone*
The Requestors allege that the residents of Bargny have land rights to plots on the Sendou Project site and on the adjacent 500 m buffer zone, the latter of which is required to remain uninhabited under Senegalese law. According to the complainants, a total of 1,433 parcels had been allocated by the Government of Senegal (GoS) to families who were affected by coastal erosion; hence, they have lost or are at risk of losing their land parcels of 150 m² each. During its site visit, the Review Panel noted disagreements relating to the acquisition of land parcels around the Sendou Plant Project. Some of the affected people showed the Review Panel maps and receipts of fee payments they made in order to obtain their titles, which had led them to believe that they own these land lots. However, the Société Nationale d’Électricité du Sénégal (SENELEC), the public electricity utility company which was initially assigned the land by the GoS, sold the land free of claims to CES. SENELEC argued that the residents had lost their rights to the land because they failed to develop it within the two-year period as required by the national law. SENELEC duly compensated 10 people who had started or finished construction on their land lots.

The Review Panel cannot take a position on these claims since they are governed by Senegalese law. Nonetheless, the Panel is of the view that the individuals claiming ownership over the plots should have been thoroughly investigated by AfDB staff prior to the project approval in order to assess whether the Involuntary Resettlement Policy (2003) should be invoked. The Review Panel noted that the Bank obtained a legal opinion of a Senegalese law firm, which stated that the claims by the villagers are not valid under Senegalese law. However, no records provided to the Review Panel showed that the Bank staff had met with these people claiming ownership of the plots to assess their concerns and to understand their position. As a result, the land title issue was not taken into account by the ESAP.

This “hands-off” approach is questionable as the land rights issue was raised prominently in the Project’s Environmental and Social Impact Assessment (ESIA, 2009), it was at the heart of public protests staged by local residents in 2014, and it was repeatedly raised in the LTA Monitoring Reports and the special report requested by the lenders on social safeguards issues. Under these circumstances, the Review Panel is of the view that the Bank staff should have carried out proper due diligence to assess whether the Involuntary Resettlement Policy (2003) is applicable. Thorough assessment of this issue was especially important because the individuals claiming to be owners of the land plots are poor and vulnerable. They had already lost or will be losing their homes due to coastal erosion. In addition, in the context of project development objectives, the Bank staff should have also assessed the poverty impact of the Sendou Plant Project under the guidance of AfDB Policy on Poverty Reduction (2004). The Review Panel would have expected the Bank staff to show a greater in-depth engagement, particularly when the project’s acquisition of land lots was strongly contested by these vulnerable people.

(ii) Displacement of women drying and sorting fish and other temporary workers

The Requestors mention that about 1,000 women earn their livelihood by drying and sorting fish (the so-called “femmes transformatrices” [women transformers]) in the project area. The number of affected women is disputed. The CES asserts that there is only a small number of women. The ESIA (2009) mentions about 200 women. During its site visit, the Review Panel met female representatives and visited several groups of women. The drying and sorting fish by these femmes transformatrices has been a traditional activity for many generations as a primary source of household income. In addition, there is a considerable number of seasonal workers who package the dry fish for export. It is the understanding of the Review Panel as well as the residents of Bargny that these women and workers are required to leave the buffer zone once the Sendou Plant becomes operational. Moreover, the need to address the economic resettlement impact for the fish-drying plant was already raised in the ESIA (2009), the subsequent LTA Monitoring Reports, and in the special report prepared for the lenders in 2014. For these reasons, the Bank staff should have been more vigilant and considered the Involuntary Resettlement Policy (2003). However, they did not
nor did they conduct a baseline social assessment. Also the Bank staff did not consult with the *femmes transformatrices* and seasonal workers and prepared a RAP prior to the approval of the Project by the Board. Therefore, the Review Panel does not understand why the Bank staff did not take into consideration these requirements of the Involuntary Resettlement Policy (2003), particularly when the plight of these women and had received greater attention of the public and by the lenders. In addition, these resettlement issues were not taken into consideration in the ESAP, which was prepared to strengthen the Project’s mitigation measures.

In line with the IRM Rules, Bank Management was given an opportunity to review the draft Compliance Review Report. In their comment, they indicated that these issues related to the involuntary resettlement policy have been addressed in the Environmental and Social Corrective Action Plan which they had updated in 2014. However, the IRM observed that these actions are yet to be fully implemented.


The ESIA (2009) of the Sendou Plant Project had significant shortcomings, such as the failure to adequately assess important environmental aspects of coal-fired power plants. The Review Panel did not receive internal Bank documents which were prepared prior to 2015 on environmental and social issues. As a result, the Panel cannot assess the full extent of efforts made by Bank staff to address these shortcomings, including the provision of technical guidance to CES on appropriate mitigation measures to be put into place. The inadequacies of the ESIA were outlined by the technical advisor of one of the lenders. The advisor confirmed significant non-compliance with the IFC Performance Standards, the lack of baseline data on the social impact and ambient air quality, inadequate cumulative impact assessments, insufficient assessments of the environmental impacts, and the limited nature of the proposed mitigation measures. In spite of these stark inadequacies, the ESIA Summary (2009) was circulated to the Bank’s Board of Directors on 19 August 2009. An ESAP was then prepared to address a number of these weaknesses of the ESIA, requiring additional technical studies. However, the Project made very little progress in implementing the ESAP measures until early 2016, under the leadership of QP the new owner of the CES and after complaints were filed with the respective complaint mechanisms of the lenders. The Review Panel recognizes that while inadequacies of the ESIA have now been addressed, the Project’s non-compliance continues to be observed in the following areas:

(a) **Marine Impact Assessment**: The Sendou Plant Project was designed as a coal-fired power plant based on an open discharge cooling system, due to which significant amounts of warmer water would be discharged into the sea. The Project was approved by the Board without a design of the open discharge system and without a marine impact assessment. Assurances were only provided that the technical design would ensure that the temperature of the discharged water would remain less than 3 degrees Celsius above the ambient temperature, as required by the World Bank guidelines which are also applicable to the project. However, a marine impact assessment is a standard requirement for an open discharge system if marine resources are affected, even if the temperature of the discharged water will remain within the norms. The Sendou Plant is located next to a community where the population is overwhelmingly dependent on fishing. Moreover, water from the Plant is to be discharged into an area where there is a fish spawning ground project. The Sendou Plant Project did not collect any data on marine biodiversity resources nor did it assess its impact. Subsequently, the CES informed the Review Panel that the Project will no longer rely on an open discharge system, but instead it will use a closed cooling system. If this will be the case, a marine impact assessment is now no longer needed, but an environmental assessment on the closed cooling system is still required.

(b) **Ash Management Plan**: The Sendou Plant Project was approved without an ash management plan. The plan that was developed later proposed several management options. However, no specific option was selected. There is no onsite ash storage facility. The project design assumed that all ash will be purchased by a nearby cement-producing plant. The Review Panel was informed that it is only very
recently that CES started negotiations to sign a contract with a local cement plant, Société Commerciale du Ciment (SOCOCIM), for it to purchase the ash over a period of 25 years. However, the Project does not have any ash storage facilities, which is critical regardless of regular ash pickups by a single company. The latter could prove to be a risky strategy, especially when the cement plant in question will not be in a position to absorb the ash. The handling of the ash produced must be revisited and a clear management option taken that ensures the ash is disposed of fully, with provision of an onsite security storage facility.

(c) **Impacts on the Water System:** The impacts of the Sendou Plant on the water system were not sufficiently assessed. The plant will use water from the public water supply system. Data was provided on the water requirements of the Plant and it is assumed that the public water supply system can satisfy this demand for water. No simulation was done to determine whether future demand, including water for other domestic and industrial usage, may or may not overstress the public system and result in severe undersupply for the communities. The Requestors echoed the concern of the residents that supplying water to the coal plant from the public system will cause serious water shortages to their town.

(d) **Coal Transport:** The Sendou Plant requires 386,000 tons of coal per year. The supply will be imported nine times per year and shipped from the Port of Dakar’s harbor to the Plant over a distance of 35 km. Each shipment will be transported by 287 one-way truck movements to the Sendou Plant. The coal transport will cause significant noise, dust pollution, and other negative environmental impacts on the urban roads used by these trucks. The ESIA (2009) did not include an assessment of the impact of coal transport. To address this shortcoming, a transport study was carried out as part of the ESAP. However, the Review Panel finds the measures proposed by this study inadequate to mitigate the negative impact on the urban population that will be significantly affected by the truck movements from Dakar to Sendou. There are very few other access roads from the Port of Dakar’s harbor to the Sendou plant site.

(e) **Noise Impact Assessment:** The ESIA (2009) did not include a noise impact assessment, but was later included in the ESAP. However, the measures proposed have so far not been carried out. With the construction of the Sendou Plant nearing completion, the Bank should ensure that the measures proposed in the noise impact assessment are consistent with the AfDB standards.

Management recognized the inadequacies of the ESIA 2009 and argued that they prepared the Environmental and Social Corrective Action Plan which requires time for implementation. They also mentioned that they have made progress in addressing the ash disposal, the coal transport, the marine and noise impact assessment, impacts on water system and air quality monitoring. The IRM is of the view that its observations and recommendations are still pertinent. On the handling of the ash, the IRM insists that a proper ash management plan should be put in place. Management also clarified that the project will install a close cooling system, instead the initial open discharge system. In view of these, the IRM believes that a baseline survey of marine resources is still required.


The Review Panel finds the Sendou Plant Project to be in non-compliance with the Environmental Review Procedures for Private Sector Operations of the AfDB (2000). This assessment is based on the fact that the Supervision Reports submitted to the Panel only indicated the Project’s social and environmental performance in July 2016, most likely due to the complaints submitted to the BCRM. The Review Panel notes that the Project has faced significant delays. However, this should not be a reason for the Bank staff not to regularly monitor the environmental and social aspects of the Project, considering the serious concerns raised by both the LTA Monitoring Reports and the affected community on these issues. Hence, the Panel determined that the Project has failed to comply with requirements of the Environmental Review Procedures.
Inadequacies of Public Consultations

The Review Panel noted significant failure by the Sendou Plant Project to carry out public consultations as required by AfDB’s Involuntary Resettlement Policy (2003), the Policy on Poverty Reduction (2004), the Policy on the Environment (2004), and the Gender Policy (2001). Public consultations were initially conducted during the preparation of the Project’s ESIA, and when concerns relating to land rights and the economic resettlement of the women drying fish were strongly voiced by the affected communities. The continued failure on public consultations was prominently highlighted in the six LTA Monitoring Reports and in the special report on social issues prepared for the lenders. In late 2016, CES started a much more engaged consultation process with the local population. The Review Panel recognizes the important progress made throughout late 2016 to the present date. But, the Panel is concerned about the Bank staff not meeting the requirements on public consultations during Project’s preparation, appraisal, and implementation. A proper consultations at that time would have spared the project from undue conflicts with the residents of Bargny and the costly exercise of handling the complaints submitted by the Requestors to the complaint mechanisms of the lenders.

Recommendations by the Review Panel

This Compliance Review Report presents a set of measures recommended by the Review Panel to redress the harm caused to the people and the environment, and to bring the Project into compliance with the applicable AfDB policies and procedures. To redress the harm caused to the people and the environment, the Review Panel recommends:

(i) Measures to bring the Project into compliance with the Involuntary Resettlement Policy (2003)

(a) Land rights disputes: The Bank Management should get involved and actively support the process underway with SENELEC, the Mayor of Bargny, and the PAPs to find an adequate solution to the land dispute. The Bank should strongly encourage the proposal to provide resettlement assistance to the displaced people or find them an another resettlement site.

(b) Femmes transformatrices and other related workers: The Bank should:

   i. Carry out a baseline study to establish the accurate number of active femmes transformatrices and other workers associated with fish-drying activities in the buffer zone.

   ii. Establish whether the “femmes transformatrices” and other workers associated with fish drying activities will have to leave this area or whether a special permission could be granted to them to continue with their activities on the site.

   iii. If this special permission cannot be granted, consult and conclude with the “femmes transformatrices” and the other workers on compensation options/measures and consider the adoption of a livelihood support program to compensate for the loss of income resulting from the displacement.


(a) Ash management: Fly ash and bottom ashes in coal-fired power plants contains toxic metals (arsenic, mercury, chromium, and cadmium) and regardless of how ashes are disposed of, there is a risk of toxic metals leaching into nearby surface and ground water. A full analysis is therefore
required on the type of coal used and heavy metals should be done. In addition, a contingency plan should be developed should the cement manufacturer, SOCCOM, agree to absorb all the ash produced on a regular basis or if the ash has to be stored in a fully lined landfill. Accordingly, an ash management system, including an environmentally sound ash disposal system and storage area or facility must be designed.

(b) **Coal transport from Dakar to Sendou**: The issues associated with truck transport have to do primarily with road maintenance, the generation of noise and dust pollution, and traffic safety. As part of a revised Environment and Social Assessment, additional mitigation measures should be specified to reduce noise and coal dust pollution and improve traffic safety for trucks transporting coal from Port of Dakar’s harbor to the Sendou Plant site.

(c) **Marine impact**: A baseline survey of marine resources in the sea area adjacent to the plant should be prepared if CES will install a closed cooling system. If CES installs an open cooling system, an assessment of the impact of warm water discharge on marine biodiversity resources should be conducted (the Review Panel was informed recently that a decision has finally been made to install a close cooling system). With the limited discharge, but water intake from the sea, the project should establish at the intake and discharge baseline data on marine resources and maintain a system of monitoring them over time.

(d) **Surface and groundwater**: A technical study should be undertaken to assess the presence of heavy metals and the long-term impact of the coal plant’s water supply requirement on the public water system and propose relevant mitigation measures.

(e) **Emission inventory and air quality monitoring**: Emissions inventory for the whole plant should be determined with key parameters including, particulate matters (PM$_{2.5}$, PM$_{10}$), sulfur dioxide (SO$_2$), nitrous oxide (NO$_x$), carbon monoxide (CO), carbon dioxide (CO$_2$), Mercury, volatile organic compounds (dioxins). In addition an appropriate air quality monitoring system should be established in the vicinity of the plant, in nearby villages and at a distance of 25-30 km from the plant to assess the impact of the Project on air quality as stipulated in the Lenders Technical advisor’s report (October 2017).

(f) **Noise impact assessment**: The noise impact assessment should be completed as specified in the ESAP and the LTA Reports.

(iii) *Environmental Review Procedures for Private Sector Operations (2000)*

Supervision missions should report on the project’s compliance with the environmental and social safeguards as specified in paragraphs 43 and 44 of the Environmental Review Procedures (2000). With respect to mitigating the recurrence of similar violations, the Review Panel recommends the following:

(a) Private sector projects must be subjected to adequate scrutiny to ascertain that they meet the social and environmental safeguards requirements. The Bank Management should make sure that specialized professional expertise assists the task teams to ensure quality at entry.

(b) Coal-fired power plants require particular attention because they have serious environmental and social impacts and local populations often raise objections to their installation. In the implementation of ongoing projects which were approved before the adoption of the Integrated Safeguards System (ISS), the AfDB staff needs to adhere to the Operational Guidelines for Coal-Fired Power Plants adopted by the Boards of Directors of the AfDB in December 2013. These
guidelines spell out particularly stringent consultation requirements and compensatory measures for the local population affected by the plant.

(c) The Bank staff should provide adequate support to the preparation of ESIAAs and should only circulate the ESIA Summary to the Boards of Directors after having assessed the ESIA to be satisfactory.

(d) Environmental and social baselines need to be established prior to project approval and implementation. Failures to establish such baselines make it impossible to assess the impact of the project and to design appropriate mitigation measures.

(e) The Bank staff needs to educate the borrower about the requirements spelled out in the Bank’s policies on adequate consultations with PAPs, and also ensure that issues raised in these consultations are followed up. In the case of the Sendou Plant, issues raised by the complainants were all highlighted during the ESIA consultation process; however, it was the failure to address them effectively that led to public protests, serious conflicts, and ultimately delays in project implementation. The Bank staff can play an important role in providing support to the client on how to conduct meaningful consultations.

(f) Credit agreements should include policy covenants on key environmental and social measures required to meet AfDB standards. Credit agreements should explicitly spell out the environmental and social policies that should be followed by the project. In addition this document should include clear reporting requirement on the project’s environmental and social performance. This is particularly important for coal-fired power plants and other projects that have significant environmental and often social impacts.

(g) The Review Panel could not obtain numerous internal documents from the Bank Management for the earlier years of the Project’s preparation, appraisal and implementation (up to 2014). The failure to access these records is an accountability and transparency risk for the Bank. It is therefore important that all Supervision Reports, Back-to-Office Reports (BTO), environmental review memoranda, comments on ESIA clearances, and comments on environmental and social safeguards implementation are archived in a filing system. The Review Panel was made aware of some of the causes of the current problem. The environmental and social experts are in small numbers and each is frequently assigned to different projects. When they leave, they do not always make proper handover and are not at liberty to share information without the consent of their managers. The Review Panel notes that the Bank has now established the ISs Tracking System that is accessible to both Task Managers and Environment and social Experts and as such is the appropriate mitigation measure that was required. However, The Review Panel is of the view that Bank Management should expand this system to include information on active projects approved prior to the adoption of the ISs.

Management explained in their comments on the draft compliance review report that they face serious challenges in supervising all Bank projects because of the limited number of environmental and social experts. They said that the project has been supervised on a regular basis by the LTA who interacted continuously with Bank staff. The IRM notes that, even in this arrangement, the recommendations made by the LTA have rarely been followed-up.
1. **INTRODUCTION**

1.1 **The Scope of the Compliance Review Report**

1. This Compliance Review Report presents the findings of the compliance review of the Sendou Coal-Fired Power Plant Project. The objectives and scope of compliance reviews are laid out in the IRM Operating Rules and Procedures (IRM Rules, 2015). According to the IRM Rules, compliance reviews are carried out by a Review Panel comprising the IRM Experts. A compliance review assesses whether non-compliance with the policies and procedures of the African Development Bank Group (AfDB) has caused harm to the people and/or the environment. The Compliance Review Report sets out the findings of the Review Panel, which unless otherwise provided in the Terms of Reference of the compliance review, are limited to determining whether or not any action or the failure to act by the AfDB with regards to AfDB-financed projects has involved one or more material violations of policies. If the compliance review finds non-compliance and related harm, the Compliance Review Report presents recommendations on changes to systems and procedures within the AfDB and remedial changes in the scope and implementation of the AfDB-financed project. Therefore, this Report includes the Review Panel’s suggestions on steps to be taken to monitor the implementation of the recommended changes. The Report was prepared in response to two Requests that were received by the Compliance Review and Mediation Unit (BCRM) on 9 May 2016 (Appendix 1) and 15 July 2016 (Appendix 2), wherein both Requests raised similar issues. Therefore, in his assessment, the Director of the BCRM combined and registered them as one Request on 10 August 2016.

2. The document is being submitted concurrently to the Boards of Directors and Bank Management. Upon receipt of this Compliance Review Report, Bank Management is required to provide a Response to the findings and an Action Plan based on the recommendations therein. The Response and Action Plan aimed at bringing the project into compliance with the applicable AfDB policies and procedures and to remedy adverse material impacts on the people and the environment will be submitted to the BCRM and the Boards of Directors, within 90 business days after the receipt of this Compliance Review Report. Thereafter, a session of the Boards will be scheduled to consider both the recommendations of this Compliance Review Report and the Management Action Plan. When it is approved by the Boards of Directors, the IRM will then monitor the implementation of the Action Plan.

1.2 **Regulatory Framework of the Compliance Review**

3. The Compliance Review Process is governed by Paragraph 59 of the IRM Rules, which states that the Review Panel shall:

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3 IRM Rules, January 2015, para. 59 (b) (ii).
4 Ibid., para. 59 (b) (iii a-c).
6 Ibid., para. 64 (a).
(a) Prepare a draft compliance review report containing the Panel’s findings and recommendations and circulate it to the Bank Management for review and comments on factual matters only. The Bank Management shall submit its comments to CRMU/IRM within twenty-one (21) business days from the date of receipt of the draft report from CRMU/IRM; and

(b) Upon receipt of comments from Bank Management, the Panel shall finalize its report... which shall:

(i) Include a summary discussion of the relevant facts, the respective positions of interested party in relation to the subject matter of the Request, areas of disagreement, if any, between the IRM Experts and Management and the steps taken to conduct the compliance review;

(ii) Set out the findings of the Panel which, unless otherwise provided in the Terms of Reference, shall be limited to determining whether or not any action by the Bank Group, or failure to act, in respect of a Bank Group-financed project has involved one or more material violations of policies...

(iii) If it concludes that any Bank Group action, or failure to act, in respect of any Bank Group-financed project has involved one or more material violations..., recommend:

a. Any remedial changes to systems or procedures within the Bank Group to avoid a recurrence of such or similar violations;

b. Any remedial changes in the scope or implementation of the Bank Group-financed project, subject to consideration of any restrictions or arrangements already committed to by the respective Bank Group institution or any other relevant party in existing project-related agreements; and/or

c. Any steps to be taken to monitor the implementation of the changes referred to in (i) and (ii) above.... 7

1.3 Methodology of the Compliance Review

4. The Compliance Review Report was prepared based on thorough reviews of the project documents (Appendix 3) which were made available to the Review Panel by the Bank Management and Compagnie d'Electricité du Sénégal (CES), as well as on findings of Panel’s visit to Senegal (28 May to 3 June 2017).

5. According to Paragraph 94 of the IRM rules, the IRM Panel has full access to relevant Bank Group staff and files, including electronic files, cabinets, and other storage facilities; and Bank staff is required to cooperate fully during the compliance review process. The IRM requested a set of documents from the Operations Department. Unfortunately, it could not obtain all of them, including the AfDB staff review points and comments recorded during the preparation of the ESIA for the Sendou Plant Project. The Review Panel also did not receive the Bank’s Supervision Mission Reports prepared prior to 2014, nor the comments made by the Bank’s staff on the Project’s environmental and social safeguards throughout the

7 IRM Rules, para. 59.
implementation phase and the debt restructuring process. The IRM considered that the problems of consistency and integrity of project documents are attributed to changes in the Project ownership and the Bank staff responsible for the project. The Panel also conducted some interviews with selected AfDB staff who were involved in the preparation and implementation of the Sendou Project.

6. An important source of information for the compliance review was the reports prepared by the Lenders’ Technical Advisor (LTA), which was engaged by the donors group and funded by the AfDB to monitor the project’s compliance with donors’ safeguards policies. The LTA Monitoring Reports provided detailed information and highlighted areas of non-compliance, as well as the progress made in the implementation of environmental and social safeguards policies of the lenders. The LTA Reports, however, focused primarily on compliance with IFC’s Performance Standards, which are followed by the Nederlandse Financierings-Maatschappij voor Ontwikkelingslanden N.V. (FMO), a co-finance of the Project while the applicable safeguards policies of the AfDB are rarely alluded to. The Review Panel was told that the reason for this almost-exclusive focus on IFC standards are that these standards are more comprehensive compared to those of AfDB, and as part of donors coordination were adopted by the Project. FMO was also designated as lead in monitoring the Projects environmental and social issues. It is worth noting, the IFC Standards are more detailed than those of the AfDB, which are applicable to the Project. It is the old AfDB standards that are applicable to the project. These were in place prior to the AfDB Integrated Safeguards System (ISS), which became effective in July 2014, (i.e., The ISS entered into force after the Sendou Project preparation and appraisal by the AfDB).

7. There are six LTA Monitoring Reports issued between January 2014 and October 2017. The Management Response to the Request stated that the role of the external LTA “encompasses among others (i) reviewing the environmental and social management plans; (ii) ensuring overall compliance of these plans, monitoring reports and other documents with national legislation and regulations; and (iii) assessing the social performance of the project and measures undertaken to minimize social risks and enhance social benefits for the surrounding communities.” The LTA Monitoring Reports are comprehensive and informative. Unfortunately, the Review Panel could not obtain any comments provided by the Bank staff on these Reports. As a result, the Review Panel cannot assess to what extent these Reports were read or followed up by AfDB staff and Management.

8. The donors also commissioned an additional important document which is the Assessment Report on Environmental, Social and Health & Safety (2014), to ensure that the Project is compliant with the donors’ safeguards policies. The Review Panel informally consulted with the FMO, which has been conducting a parallel compliance review of the Sendou Plant Project in response to a separate complaint but raising similar issues to those in the Request submitted to BCRM. The Review Panel is also aware that the Banque Ouest Africaine de Développement (BOAD) was undertaking a similar investigation of the Project, showing great attention by co-financers to Sendou Plant compliance with the lender’s safeguards standards.


9 Management Response to the Request, filed against the Sendou Coal-Fired Power Plant in Senegal, 8 September 2016, para. 16.

2. THE REQUEST

9. The Compliance Review and Mediation Unit (BCRM) received two Requests (Appendices 1 and 2) relating to the construction of the Sendou Coal-Fired Power Plant Project. The first Request was submitted on 9 May 2016 by two national Civil Society organizations in Senegal, Takkom Jerry, and Lumière Synergie pour le Développement/Lumiere Synergie pour le Development, on behalf of some of the people affected by the project (PAPs). The Requestors asked the BCRM to handle their complaint through both a problem-solving and a compliance review. On 15 July 2016, the BCRM received the second complaint Request from two national individuals, Mr. Cheikh Fadel Wade and Mr. Daouda Gueye, on behalf of some other members of the affected communities in Bargny. They challenged the representational authority of the First Requestors, whom they claimed cannot act on behalf of all the PAPs. Standing on their own right, they requested the BCRM to register their complaint for a compliance review. The two Requests raised similar issues with regard to the negative impacts of the Sendou Plant Project, which are as follows:

(i) Unviable government policy option to use coal-fired power plant in Senegal because the country does not produce coal and will be obliged to import it from international markets.

(ii) The selection of the project site is in violation of the applicable Article L13 of the National Code of the Environment. In particular, the Sendou Plant Project site is located less than 2 km from an existing cement factory and close to another coal-fired power plant with a larger capacity of 250 MW. The latter is scheduled to be built close to the same project site.

(iii) Increased vulnerability of communities to air pollution and potential disruption of livelihoods because of the proximity of the coal-fired power plant to the town’s water supply; public facilities—including an elementary school, a health center, a kindergarten and a cemetery; and a fish processing area where about 1,000 women and other seasonal and temporary workers carry out their subsistence activities.

(iv) Adverse impact of the coal-fired power plant on a historic site where the protected spirit of the village resides and on a nursery for regeneration of marine biodiversity.

(v) Breach of AfDB’s environmental, social and human rights standards since there was no agreement signed with the holders of land titles, and no compensation was paid to the majority of these holders. In addition, no Resettlement Action Plan (RAP) was prepared to mitigate the Project’s negative social impacts.

(vi) Imminent health risks associated with air pollution due to anticipated emissions from the cement factory and the other planned coal-fired power plant with a larger capacity of 250 MW, all within close proximity to each other and Sendou Plant. There was no cumulative impact assessment study prepared to measure the effects of the collective all three plants.

(vii) Increased vulnerability of the community to the consequences of coastal erosion.

(viii) Inadequate public consultations with the PAPs.

10. The Director of the BCRM carried out a preliminary assessment of the issues raised by the Requestors, and conducted a field mission to Senegal from 7 to 10 July 2016. He established that both Requestors
fulfilled the requirements of Paragraph 14 of the IRM Rules by providing the BCRM with a written and signed proof of their representational authority to act on behalf of the PAPs.

11. In keeping with Paragraph 23 of the IRM Rules, the Director of the BCRM registered the two complaints as a single Request on 10 August 2016 for a compliance review since they raised the same substantive issues.\(^{11}\) The two Requestors were kept engaged separately in the process. The FMO, which also co-finances the Project, received a complaint from the same Requestors in May 2016 and June 2016, respectively.\(^{12}\) The LTA reported that a complaint has also been filed with the Swedish National Contact Point.\(^{13}\)

12. The Sendou Coal-Fired Power Plant Project was approved on 25 November 2009 by the Board of Directors of the African Development Bank. The Board authorized a senior loan of EUR 55 million to CES to develop and operate a 125 MW coal-fired power plant, located 35 km from Dakar in Senegal. In addition, the Board approved a supplementary loan of EUR 5 million on 30 October 2015. The total cost of the Project is EUR 206 million, which is co-financed by the AfDB and other donors, including BOAD, the Compagnie Bancaire de l’Afrique de Occidentale (CBAO), and the FMO.\(^{14}\) The AfDB’s first disbursement of EUR 17 million was made on 31 August 2013. The second disbursement of EUR 38 million was effected on 29 October 2015, and the third and last payment of EUR 5 million was made on 17 May 2017. For the last disbursement, a waiver was obtained from the Board to proceed with the payment despite ongoing delays in the implementation of corrective measures highlighted in the Environmental and Social Action Plan (ESAP).

13. Among the lenders’ group, the AfDB is the mandated as the lead arranger for financing the Project. The Project is developed on a Build-Own-Operate basis and will supply up to 40 percent of Senegal’s electricity. Currently, 80 percent of national energy requirement is generated from a combined diesel-fueled power, conventional thermal base load, and renewable energy. The Sendou Plant Project comprises the first coal-fired plant in Senegal. The imported coal will be unloaded at the Port of Dakar’s harbor, and then transported by truck to the plant site. There are plans to build a major harbor in an area adjacent to the Sendou Plant, which will shorten the distance for coal transportation.

14. The Sendou Plant Project includes the development, design, procurement, construction, operation, and maintenance of a 125 MW coal-fired plant on a 22 hectare-site. The Project aims at producing at least 925 GWH of electricity per annum, which will be distributed through the national interconnected grid system of Société Nationale d’Électricité du Sénégal (SENELEC), Senegal’s national electricity company. The project includes the development, design, procurement, construction, operation and maintenance of a 125 MW coal-fired plant on a 22 hectare-site. The plant has been designed with a possibility of a second phase to achieve a 250 MW generation from Sendou. During its mission in June 2017, the IRM was informed by the Senegalese Ministry of Energy that the second-phase expansion of the Sendou Plant Project was

\(^{11}\) Notice of Registration, Request No: RQ 2016/2, Country: Senegal; Construction of a 125 MW Sendou Coal-Fired Power Plant in the Village of Bargny and Minam, Senegal, 10 August 2016, accessible at www.afdb.org/irm.


\(^{13}\) LTA, p. 16.

\(^{14}\) Project Appraisal Report, p. 2.
unlikely with the exploration of significant gas reserves in Senegal. On the contrary, the owner of CES expressed to the IRM that such an expansion is feasible since it was planned in the design of the Sendou Plant Project and deemed it economically justifiable.

15. The Sendou Plant Project is located about 600 m away from the Atlantic Ocean and in close proximity to two communities: the town of Bargny (2 km northwest) and the village of Minam (south) with 600 inhabitants relying on fishing activities. The Project is located 500 m from dwellings, a school, a watercourse, a lake, a water collection point, areas designated for residential development, as well as a nearby cement factory (SOCOCIM). Moreover, the site is located next to an area recently designated by the Government of Senegal (GoS) for further industrialization, such as the construction of a Bargny-Sendou mineral port. This port is designed to lighten the traffic congestion in the Port of Dakar. The new port will provide for cargo-handling equipment necessary for the facilitation of export and import of dry bulk commodities.

16. Moreover, a 500 m buffer zone has been established around the Sendou Plant site, as required by Senegalese law. Active on the grounds of the power plant are a group of women who are referred to as “femmes transformatrices” (women transformers), who regularly dry fish they receive from fishermen at the Bargny harbor. These activities require a spacious area. The exact number of women drying fish on the buffer zone of the project site was not available. These women are part of larger community of women estimated at 1,000 who dry fish along the coastline of the Bargny village. The dried fish is then sold to male workers who package it for transport to markets in Dakar and to the harbor for export to other countries in the West African region.

17. The project implementation was exceptionally difficult. The Board of Director approved the Project on 25 March 2009. The loan agreement was signed in May 2011 and amended in 2013. The project implementation started on 22 August 2013. It experienced numerous delays including two standstills and suspension of disbursements in 2012 and 2014 respectively. By 2012, disagreements among the shareholders of CES had escalated and the delays had caused major cost overruns. In 2012, the Advisory & Finance Group Investment Bank (AFG) of Morocco joined the original owner, Nycomb Synergetics of Sweden, as an investment partner. The lenders agreed with CES on an ESAP to address the gaps that were identified in the ESIA prepared for the Project in 2009. A first disbursement was made by the lenders in 2013. The LTA visited the Project in December 2013 and highlighted serious non-compliance with IFC Performance Standards in its First Monitoring Report issued in January 2014, and prominently rang the “alarm bells.”15 In 2014, the FMO and AfDB staff visited the Sendou Project and identified several areas of concern, such as land ownership, the community concerns, and other technical issues that may have negative environmental impacts, such as the height of the stack of the Sendou Plant. A corrective ESAP was agreed with CES, and a dedicated environmental and social manager was hired by CES to monitor the implementation of the ESAP. The LTA conducted two further visits and issued two additional Monitoring Reports in 2014,16 noting limited progress in the implementation of the agreed ESAP standards. Some ESAP actions were implemented, including the preparation of different air dispersion models to estimate

the impact of the Project on air quality,17 a model to assess the thermal impact of the open discharge system,18 and an ash management plan.19

18. In 2014, the local community started to express vivid objections against the Sendou Project and staged local protests. Major community concerns revolved around land rights issues and the negative environmental impact of the Project. Upon the request of the lenders, CES engaged Monkey Forest Consulting (MFC) Firm to assess the community social issues that had arisen. The MFC Report largely confirmed the positions articulated in the LTA Monitoring Reports, highlighting important consultation failures and lack of attention given to resettlement issues, which were of major concern to the local community.20 The Report proposed an action plan on how to proceed with handling these issues. However, in 2014, the Project was overwhelmed by the major dispute among the shareholders. The construction of the Project had not yet started and funds made available under the first disbursement of the lenders had been utilized. The Project was in arrears with a high likelihood that it would be discontinued. As a result, the Board of Directors of the Bank approved an additional loan facility of EUR 5 million. It should be noted that the Bank and CES signed the credit agreement on 11 May 2011.

19. In October 2015, Quantum Power (QP) stepped in and acquired the shares of AFG and became the majority shareholder. The lenders agreed to the restructuring of the project loan. A revised agreement was signed between the lenders and CES.21 On 30 October 2015, the Bank’s Board of Directors approved the debt restructuring of the Sendou Power Project through (i) an amendment to the existing loan terms, and (ii) a provision of a supplementary senior loan facility of EUR 5 million. Due to the critical status of the Sendou Plant Project and the conditions laid down by QP before becoming a shareholder of the Project, the second disbursement was made in spite of the Project’s non-compliance with a number of environmental and social safeguards policies. QP argued convincingly that it would not enter the Project unless the disbursement was made immediately after the signature. Mindful of this non-compliance, the lenders and QP stated that the implementation of measures listed in the ESAP is an integral part of the revised credit agreement with CES. Curiously, the Common Terms Agreement (CTA) signed between the lenders, QP, and CES also states that measures listed on the ESAP need to be implemented prior to the second disbursement (see Schedule 9, ESAP, attached to the CTA. The second disbursement was subsequently made without the implementation of these measures, since the Project was undergoing some changes and the lenders’ main interest was to ensure its financial viability.

20. Important progress in the implementation of the measures outlined in the ESAP was made once QP entered the Project. The construction of the Sendou Plant resumed in January 2016. The BTORs and supervision records of 2015, which were made available to the Review Panel, pointed to the active engagement of AfDB staff in concluding agreements between the new shareholders and solving the Project’s financial and management crisis. There is no doubt that these efforts were time-consuming and

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17 Dispersion Model of Pollutants from Coal-Fired Steam Generation, CES, 2016/06/13.
20 Monkey Forest, Assessment Report, Environmental, Social and Health & Safety, September 2014.
21 Amendment Agreement to the Common Terms Agreement (CTA, 19 December 2012, signed by Compagnie d’Electricité du Senegal African Development Bank (the Mandated Lead Arranger), and African Development Bank, Banque Ouest Africaine de Development (BOAD), Nederlandse Financierings-Maatschappij voor (FMO), CBAO Group, attijariwafa Bank, Citibank International OLC, and Citibank NA.
critical for the continuation of the Project. Unfortunately, no records were made available to the Review Panel to show similar engagement by the Bank staff in addressing the Project’s non-compliance with environmental and social safeguards standards.

21. In May 2016, AfDB, FMO, and BOAD received complaints through their respective independent complaints mechanisms. The complainants, who are representatives of the local population, stated that the Project was in non-compliance with the lenders’ environmental and social safeguards policies. In June 2016, the Director of the BCRM registered the complaint submitted to the AfDB. By April 2015, the Bank Management submitted a waiver request to the Board of Directors of the Bank to allow the third disbursement, despite a number of outstanding ESAP measures that had not yet been implemented. The waiver request was granted and the AfDB made the third and final disbursement. The Project was now fully disbursed. The Sendou Plant Project will become operational in the spring of 2018, instead of October 2017, due to certain delays. The LTA Monitoring Reports in 2016 and 2017 continued to point to important non-compliance areas with environmental and social safeguards standards, as well as the inadequate implementation of the corrective measures recommended by the ESAP.

10. THE MANAGEMENT RESPONSE TO THE REQUEST

22. In keeping with Paragraph 36 of the IRM Rules, the Management submitted its Management Response (Appendix 4) to the Request to BCRM on 26 September 2016. There were several key issues raised in the Management Response.

3.1 Unviable Government Coal-Fired Power Policy Option

23. The Requestors claimed that the government policy option to use coal-fired power plant is unviable since Senegal does not produce coal and will be obliged to import it from international markets. The Bank Management considers that the viability of the government’s coal power policy was adequately assessed during the project preparation. The Bank Management concludes that, compared to imported diesel, coal power generation will be cost effective and will help the country to secure a reliable supply of power to address the challenges of its growing utility demand. The Bank Management mentions that the inadequate power supply has led to the rationing of the daily supply of electricity. The additional energy supply provided by the Sendou Plant will allow the country to meet the high demand and, therefore, will contribute to the economic growth through employment and attracting businesses.

3.2. The Selection of the Project Site

24. The Requestors argued that the selection of the project site violates Article L13 of the National Code of the Environment. In particular, the Sendou Plant site will be constructed near an already existing cement factory (located less than 2 km away) and another forthcoming coal-fired power plant with a larger capacity of 250 MW to be built close to the same site. The Bank Management is of the view that the selection of the project site complies with the National Environmental Code, because the Project obtained proper permits. In addition, the Plant will be surrounded by a 500 m buffer zone, which will protect
residences and waterways. The Bank Management states that the plan to build an additional coal-fired power plant close to Bargny has been cancelled.\textsuperscript{22}

3.3. Health Risks and Disruption of Livelihoods

25. The Requestors stated that the Sendou Plant will increase the vulnerability of communities to air pollution, and potentially disrupt local livelihoods because of the proximity of the coal power plant to the town’s water supply; public facilities—including an elementary school, a health center, a kindergarten, and a cemetery; and a fish processing area on which over 1,000 women and other seasonal and temporary workers rely on for their subsistence activities. The Bank Management states that the health risks from the power plant are mitigated by the proximity of the plant to local water, the fishing processing site, and the project design which envisions a custom-built fish-drying facility to optimize the fishing activities—instead of current informal land use for artisanal fish-drying practices. In addition, the seawater cooling system will restrict the velocity flow of water intake to protect small fish and the ingress of larger species in line with World Bank standards.\textsuperscript{23} With regard to water discharge, a weir system will be constructed to minimize the differential between exit water velocity and tidal velocity

3.4 Adverse Impact on a Historic Site and Marine Biodiversity

26. The Requestors complained about the adverse impact of the Sendou Plant Project on an historic site where the protected spirits of the village reside and the existing nursery for regeneration for marine biodiversity. The Bank Management states that the issues pertaining to cultural heritage and the nursery for marine biodiversity were considered in the Environmental and Social Impact Assessment (ESIA) and the Environmental and Social Management Plan (ESIA/ESMP). In addition, further consultations with the local community during project implementation led CES to leave the Baobab tree within the project site, considering the community’s value of this tree as protecting the spirit of the village. The Bank Management mentions that this issue was unknown at the time of the Project’s appraisal and Board approval. With regard to the water discharge, environmental considerations are incorporated into cooling water intake and outfalls systems to minimize impact on the local marine environment, and in line with World Bank standards which are applicable to the project. In addition, the marine expert consultancy firms, Royal Haskoning DHV and Fluidyn, were commissioned to assess both the plant’s cooling system and thermal output respectively. The cooling system design will be tailored to ensure compliance with the analysis performed by the two firms, the World Bank, and the Senegalese legal requirements on thermal discharge. Finally, the impact of the plant on marine biodiversity will be monitored by the TA.

3.5. Project Breach of AfDB Environmental, Social, and Human Rights Standards

27. The Requestors claimed that the Sendou Plant Project breaches the AfDB environmental, social, and human rights standards since there was no agreement signed with the rightful holders of the land titles, and no compensation was paid to the majority of these holders. In addition, no RAP was prepared to mitigate

\textsuperscript{22} Management Response to the Request, 26 September 2016 p. 6.
\textsuperscript{23} Ibid, pp. 6-7.
the negative social impact of the Project. The Bank Management considers that the Project has not violated AfDB safeguards and human rights standards because, from the time the ESIA was conducted until its completion, the project site was free from any type of occupancy. Therefore, there was no need for the project company to prepare a RAP. In addition, the Bank Management mentions that the ESMP included measures to mitigate any potential negative impacts of the Plant on the local environment. The implementation of these measures is regularly assessed by the LTA.24 Moreover, the GoS acquired the project site and the surrounding areas in 1964, registered them in the name of the State as required by law, and issued the publication of the intended acquisition in the national Gazette for six months. In September 2009, the GoS transferred the land ownership to SENELEC through a Presidential Decree. Subsequently, SENELEC transferred the land to CES to build the plant.25

3.6 Lack of a Cumulative Impact Assessment and Coastal Erosion

28. The Requestors stated that there was no cumulative impact assessment study prepared to measure the effects of emissions from the existing industrial sites close to the Sendou Plant. In addition, the Plant will increase the vulnerability of the local community to the consequences of coastal erosion. The Management Response mentions that the plan to construct another larger power plant in Bargny has been cancelled. In addition, the ESIA included standards and limits for air quality, noise pollution, and disposal of waste water, and the compliance with these standards will be monitored and reported by the LTA during the construction and operational phases of the Project. Moreover, the Bank Management states that the LTA will review the updated dispersion model which should be completed in the last quarter of 2016. The LTA will assess the new technology that has been selected as more efficient and less polluting by using low-sulfur coal. Concerning the community’s vulnerability to the effects of coastal erosion, the Bank Management states that communities in the Minam and Bargny villages have already been affected by high levels of coastal erosion. As a result, the Minam community has been relocated several times. The Plant will only limit the movement of the local population upland from the eroded sites.26

3.7 Public Consultations

29. The Requestors stated that the Project’s public consultations with the PAPs were inadequate. The Bank Management considers that the consultations with the local communities, and most especially the PAPs, were adequate since the inception of the Project.

11. THE ELIGIBILITY REPORT

30. In accordance with Paragraph 50 of the IRM Rules, the Director of the BCRM and a member of the IRM Roster of Experts conducted an eligibility mission to Senegal from 24 to 30 November 2016, and

\[\text{\footnotesize 24} \text{ The Management Response, \textit{supra} note 8, pp. 7-8.}\]
\[\text{\footnotesize 25} \text{ Ibid., p. 8.}\]
\[\text{\footnotesize 26} \text{ Ibid., p. 9.}\]
issued an Eligibility Report in March 2017. The Report found *prima facie* evidence of non-compliance with the Involuntary Resettlement Policy (2003) and the Policy on the Environment (2004), and the resulting harm associated with the non-compliance.\(^{27}\) The Report recommended a compliance review of the Sendou Plant Project, which was approved by the Boards of Directors on 19 April 2017.\(^{28}\)

### 12. ASSESSMENT OF NON-COMPLIANCE WITH AfDB POLICIES AND PROCEDURES

31. The compliance review assesses whether or not by any actions or failure to act, the AfDB staff has materially violated any fDB policies and procedures. It is important to underscore that the compliance review assesses the actions or failure to act by the AfDB staff and the Bank Management in the application of AfDB policies and procedures. The IRM reviewed the Sendou Plant Project’s compliance with the following applicable AfDB policies and procedures:

(b) Gender Policy (2001)

32. All of the policies listed above, with the exception of the Policy on Poverty Reduction (2004), have been referred to in the Common Term Agreement (CTA (effective 19 December 2012, and amended and restated by a supplemental agreement dated 19 June 2013), and in the amended credit agreement signed in October 2015 after the Board approved the restructuring of the existing loan for the Sendou Plant Project.\(^{29}\) According to the loan agreement, CES is required to comply with all environment and social safeguards, including the AfDB policies listed above. Moreover, CES is required to implement all measures included in the ESAP within an agreed-upon timeline. The Integrated Safeguards System (ISS) is not applicable to this Project as the Sendou Plant Project was approved by the Board of Directors prior to the adoption of the ISS in December 2013. Moreover, in December 2013, the Bank issued operational guidelines for coal-fired power plants. These guidelines are also not applicable as they have been adopted after the approval of the Project.

### 5.1 Involuntary Resettlement Policy (2003)

33. The Review Panel assessed whether there is non-compliance with the Involuntary Resettlement Policy (2003). The Policy covers economic and social impacts associated with AfDB-financed projects,

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\(^{28}\) ADB/BD/SD/2017/1085/IIL– ADF/BD/SD/2017/998/IIL.
\(^{29}\) Restructuring of Existing Loan and Provisions of a Supplementary Senior Loan, ADB/BD/WP/2015/170/Approved, 30 October 2015.
more specifically those that involve involuntary acquisition of land or other assets, resulting in the loss of land and income sources or means of livelihood as a result of the project—regardless of whether or not the PAPs are required to move (see Paragraph 3.4.1(c)).

34. The Involuntary Resettlement Policy (2003) states:

Paragraph 1: “The Bank Group involuntary resettlement policy has been developed to cover involuntary displacement and resettlement of people caused by a Bank financed project and it applies when a project results in... assets being lost or livelihoods being affected.”

Paragraph 3.4.1 (b) and (c): “This policy covers economic and social impacts associated with Bank financed projects... which result in... (b) Loss of assets... or (c) Loss of income sources or means of livelihood as a result of the project....”

35. Paragraph 3.4.2 further states that displaced persons in the following two groups are entitled to compensation for loss of land or other assets taken for the purposes of the Project, even for those who may not have formal legal rights to land or other assets at the time of the census, but can prove that they have a claim to such land or assets that would be recognized under the customary laws of the country.

36. If a customary right cannot be established, then Paragraph 3.4.3 states that those who have no recognizable legal right or claim to the land they are occupying in the project area are entitled to resettlement assistance in lieu of compensation for land to improve their former living standards (such as compensation for loss of livelihood activities, and common property resources, structures, and crops). This compensation incumbent provided that the PAPs occupied the project area prior to a cut-off date established by the borrower and acceptable to the Bank.

37. Paragraph 4.1.3 lays out the need for participation: “The affected population and host communities should be involved in the design of the resettlement plan. Community participation helps to ensure that compensation measures, relocation site, development programs and service provision reflect the needs, priorities, and development aspirations of the affected people and their hosts. All stakeholders, particularly the affected population, host communities and their representatives, should be fully informed, consulted and effectively involved at all stages of the project cycle.”

38. The complainants claimed that the “land acquisition” and “involuntary resettlement process” linked to the Project has been inadequate, and thus has violated the AfDB Involuntary Resettlement Policy (2003). They argued that two types of groups of people are impacted by the involuntary resettlement process and thus should have been considered under the AfDB Involuntary Resettlement Policy (2003): (i) Those who claim that they have been allocated land rights to parcels located on the site where the Sendou Plant is being constructed and on the adjacent 500 m buffer zone; and (ii) Women whose business consists of drying fish as well as other people associated with associated activities located within the 500 m buffer zone.

5.1.1 People claiming land rights on parcels located on the project site and buffer zone

39. The complainants and residents of Bargny that the Review Panel met stated that some of them hold land rights to plots located on the project site and on the adjacent 500 m buffer zone. According to the complainants, a total of 1,433 parcels of land were given to families in the community which were affected by coastal erosion. These parcels were allocated to them by the town of Bargny and the village of Minam,
which are both under threat from the rapidly advancing sea and coastal erosion. They welcomed the relocation decision because they continued to lose their houses that were close to the shoreline. In the interviews conducted with the Ministry of Environment and the residents of Bargny, it was reported that the sea steadily advances inland up to one meter each year. During the site visit, the Review Panel observed the impact of coastal erosion, including collapsed houses as a result of the advancing sea level.

40. The former mayor of Bargny initiated the resettlement project primarily to help those residents whose houses were directly affected by coastal erosion. A total of 750 parcels were allocated in 1996 under what is called the “Minam 1 Project.” A further 683 parcels were allocated in 2007 under a “Minam 2 Project.” Each parcel comprises a 150 m² plot of land. During the site visit, the Review Panel was shown maps with plots and lists of entitled families under the resettlement program, which was fully coordinated with the Governor (“Prefet”). With regard to the project area, only 10 residents have started or completed the construction of structures on their plots. The remaining parcels have not been developed. Some families claiming to have been given these parcels informed the Review Panel that they have not started building houses due to the lack of financing. Therefore, they are still in the villages to be closer to their economic activities. All of them were required to pay administrative fees (“tax de bornage” or ‘boundary tax’). Several of those interviewed by the Review Panel showed proof of payment of the fees. They insisted to say that all of them believed strongly that these payments constituted their right to the parcels.

41. SENELEC disputes these claims to the land. The company argues that any rights to land which has been allocated from public land to private persons become void if usucract, the right to use and benefit from a property, has not been exercised within 24 months. As a result, the ownership of such unused allocated parcels returns automatically to the State. SENELEC takes the position that the land was reverted back into public ownership as a result of the individuals failing to develop the plots. They said that this does not apply to the small group of people who had started construction work or completed construction of houses on their allotted parcels, thereby acquiring land rights to the plots. Accordingly, SENELEC compensated these people for the reacquisition of their lands lots. In December 2009, on behalf of the GoS, SENELEC sold the land to CES. CES assumed that, as specified in the legal agreement, it acquired the land free of other ownership claims. The Review Panel was told that a legal opinion required by the lenders was provided by a Senegalese law firm, Mame Adama Gueye & Associés, confirming that the land was sold to the CES the project sponsor free of other claims. As a result, CES is of the view that it has no obligations towards any persons claiming rights to this land it has purchased.

42. Since the sale of the land, approximately 600 individuals have come forward claiming rights to the parcels of this land and demanded compensation for the loss of their rights. Many people claim to be in possession of documents which contain both the Mayor and the Prefet’s stamp of receipts for payment of administrative fees (XOF 30,000 for parcels under Minam 1 Project, and XOF 45,000 for parcels under Minam 2 Project). The Review Panel was shown some of these receipts but did not verify their validity nor did it assess how many people made the payment. The Review Panel cannot take a position on these land claims since the IRM has no mandate to look at legal claims under national laws. Rather, its primary role is to assess project’s compliance with AfDB policies and procedures. Accordingly, the Panel has assessed whether the AfDB’s Involuntary Resettlement Policy (2003) should have been invoked and whether AfDB staff and Management undertook proper due diligence in assessing whether this Policy should be applied, and if so, whether the appropriate actions required by this Policy have been carried out.

43. The Review Panel recognizes that a legal opinion was issued which confirmed that the land on which the Project stands was transferred to CES free of other claims. The Panel also recognizes that at the time of
the project approval by the Bank, the dispute over land rights was well in the public domain. These claims were repeatedly raised before the start of the Project. The Panel is of the view that AfDB staff should have insisted that these claims be investigated at that time. The disputed titles were already mentioned in ESIA (2009) as an issue of concern raised by the population during the consultation process of the ESIA. The ESIA (2009) noted that “compensation of affected property and property rights is absolutely necessary prior to commencing the work on the construction of the project,” and that an “exhaustive inventory of affected rights and properties should be made.” Subsequently, the land dispute was highlighted in a report issued in 2012 by the Civil Society Coalition on the African Development Bank. During a visit by the FMO and the AfDB in 2013, the issue of land disputes was also raised. In 2014, the local community launched a protest action to raise attention to their concerns on its land rights. The LTA Monitoring Reports in 2014 also prominently drew attention of the lenders to the pending land dispute and the unrest which had resulted from them. A special monitoring report, asked by the donors to assess environmental, social and health and safety issues also drew attention to the land conflict and recommended that a resettlement plan should be prepared. Based on the information available to the Review Panel, no follow-up actions were taken by the AfDB staff in response to these recommendations. The ESAP agreed upon by the lenders and the CES and the revised version agreed upon with QP in 2015 do not include any measures to assess the land claims of the local community. The Bank Supervision Reports, which are available to the Review Panel, start from November 2014.

44. It was only after the complaint was registered by the BCRM in 2016 that the subsequent Supervision Reports began to make references to the land rights issue. First, the issue was mentioned in the Supervision Report dated June 2016. The IRM was informed that the donors group stressed the need for an effective grievance mechanism as an avenue to find a satisfactory way to resolve the land claims. While recognizing the importance of an effective grievance mechanism, the Review Panel is of the view that the AfDB staff still needed to undertake proper due diligence to assess the situation, particularly in the context of the applicable AfDB Involuntary Resettlement Policy (2003). This expected action from the Bank staff was not carried out. The Review Panel believes that the Involuntary Resettlement Policy (2003) provides for compensation for people who have lost their formal legal rights to their lands once acquired by an AfDB-financed project. As the Review Panel cannot determine whether claims to the land are valid legal claims, the Bank’s due diligence could have been instrumental in determining whether the Involuntary Resettlement Policy (2003) was applicable. In addition, the Panel is of the view that the AfDB should have insisted that CES consults with the claimants of land titles and follow up further on this matter with SENELEC and other relevant government agencies.

30 ESIA, 2009, para. 4.4.4, p. 94.
32 WSP Parsons Brinckerhoff, supra note 14, ES001, January 2014; ES002, May 2014; and ES003, August 2014.
34 Risk-Based Supervision BTOR, 27-29 June 2016: “Impacts on the Affected Communities (land ownership, economic displacement, stakeholder consultation, livelihood restoration…) will be re-assessed by the lender E&S dedicated teams to ensure total compliance with the standards. SENELEC has emphasized that the GoS will assess and address this land ownership issue as appropriate.”
45. An appropriate due diligence process was particularly important, given that the people involved are not only poor and vulnerable, but also they are exposed to the real risk of losing their homes due to coastal erosion. The Poverty Reduction Policy (2004) makes poverty alleviation the overriding mandate of the AfDB. Paragraph 6.2.2.5 of this policy requires that, during the implementation phase, the Bank will take additional measures to enhance greater involvement of community-based organizations; and when monitoring projects, emphasis will be placed on outcomes and impact assessments, which will need to be conducted following participatory techniques. Thus, even if the Bank was convinced that the residents did not have legal rights to the land, and therefore the Involuntary Resettlement Policy (2003) should not be applied, its staff should have approached the affected community and ensured that CES took their concerns seriously early on as soon as they became aware of the land claims. The Review Panel concludes that AfDB staff has not done its due diligence in assessing whether the Involuntary Resettlement Policy (2003) should have been invoked.

46. The lack of engagement of the AfDB into the resettlement issue is all the more noteworthy, as the LTA Monitoring Report highlighted the compliance issue in their August 2014 report. It states: “...preliminary reviews indicate that this process was not completed in accordance with either the IFC Performance Standards or AfDB Policy requirements. This includes the production of a Resettlement Plan (either full or abbreviated).” The need for involvement in assessing the sensitive land claim issue has also been highlighted in the report commissioned by the donors to assess environmental, social, and health and safety issues. The report provided a list of actions to address the land dispute. According to the records made available to the Review Panel, AfDB staff and Management have not followed up on the recommendations made in these reports.

47. Notwithstanding its position that there are no legal claims to the land by the residents who obtained land allocations under Minam 1 and Minam 2 Projects, it is reported that in 2016, SENELEC offered compensation to the individuals claiming land use rights on the project site without acknowledging the legality of these claims. This compensation was being offered as a way to resolve the conflict. It is understood that SENELEC has proposed a compensation sum of EUR 685,976. Residents who claim to have land rights and the Mayor of Bargny argued that this amount is insufficient for payment of compensation of all the PAPs. In addition, the Mayor has drafted a drawing for a 4,045-capacity village, the Bargny Ville Vert, which he proposes for the relocation of the Minam Village and other households of Bargny affected by coastal erosion. The Mayor’s proposal is dated 2015 and is as yet unfunded. The Review Panel was briefed by the Mayor on this relocation site. Residents met by the Panel seemed to be mostly unaware about the Mayor’s relocation proposal. Thus, the proposal appears to be in an early design stage.

48. The Review Panel proposes that the AfDB should get involved and support this relocation proposal and ensure that adequate compensation is paid to the eligible residents as a way of resolving the land issue and to reconcile the different interests. This proposal can serve to mitigate the

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35 WSP Parsons Brinckerhoff, supra note 14, ES003, August 2014, p. 38. The Report noted that the review of the historic records on the resettlement were outside of their monitoring function.


37 WSP Parsons Brinckerhoff, supra note 14, ES006, October 2017, super note 34 p. 10.

38 Ibid.
consequences of staff “due diligence failure” during the project design, approval, and supervision. The effective resolution of the land issue is very important because an ongoing land dispute played out in public can lead to continued disturbances of the Sendou Plant Project. There have already been two instances during project construction where protests have resulted in the disruption of works.\textsuperscript{39} If no acceptable solution is found to the ongoing land conflict, it is likely that the Sendou Plant will continue to be affected by local unrest. Because it is financing the Project, this unresolved problem will certainly represent a reputational risk for the Bank.

5.1.2 Displacement of women engaged in fish-drying activities and associated workers

49. The complainants argue that more than 1,000 women who dry fish and men who sort and package them will be displaced as a result of the Sendou Plant Project. The impact will be a significant loss of livelihood. According to the ESIA (2009), several hundred women dry fish in the area between Bargny and Minam, of which 224 are around the site of the Sendou Plant.\textsuperscript{40} Fish-drying activities generates income for the artisanal fishing families living in the two villages. The bulk of the fish harvest is sold on local markets, a part is kept for local consumption, and the rest is exported to neighboring countries. Fish-drying activities are carried out by women, while men package the dry fish for local consumption and export. The fish is offloaded from the boats in front of Bargny and is taken by carriage via the road between Bargny and Minam to be processed by the femmes transformatrices, who dry the fish on the ground using peanut shells and pieces of carton for the smoking process. Once done, part of the dried fish is taken to another location where male workers package and ship the product to local markets and to the harbor for export. Drying fish is an artisanal activity that has been conducted for many generations. Women typically have assigned spaces where they dry their fish. They do not have legal but usufruct and traditional rights to this land, and they form a group of women who refer to themselves as femmes transformatrices. They have established a professional association that represents their interests within the community and at the national level. During its site visit, the Review Panel met the President and the representatives of this association.

50. The Review Panel could not find any official data about the number of women and men engaged in the fish-drying and processing activities in the buffer zone area. The Project has not established baseline information on these female and male workers, nor on the financial worth of their activities. The Review Panel visited the site multiple times and met people involved in fish-drying activities as well as the men packaging the fish for export. At the time of the visits, there would be between 30 and 50 women, and approximately 20 men packaging the fish. The people interviewed on site said that their numbers vary depending on the time of the day or the intensity of the fish catch. They estimated that the number can sometime peak at 1,000 workers. There is therefore ample evidence that (i) women who dry fish on the land within the buffer zone will have to be relocated and the space will remain unoccupied once the Plant becomes operational;\textsuperscript{41} (ii) women and men have been carrying out this traditional activity for a long time, even before the Project was approved by the Board of the AfDB; (iii) the fish-drying activity is a primary source of household income for these women and men; and (iv) the ESIA (2009) and consequent Project

\textsuperscript{39} Ibid. In January 2014, local unrest at the Minam Village resulted in damage to the site preparation works. In January 2017, geotechnical works on the land between the project site and the sea needed to be interrupted temporarily due to local unrest.

\textsuperscript{40} ESIA, (2009) p. 87.

\textsuperscript{41} The requirement for a buffer zone for any installation qualified as “class 1” is specified in Article L13 of the Senegalese Environmental Code.
Monitoring Reports confirmed that the drying of fish is carried out by the women in the buffer zone area around the Sendou Plant.

51. The Review Panel is of the view that the Involuntary Resettlement Policy (2003) should have been applied to assess the impact of the Project on the women and men involved in fish-drying activities inside the buffer zone. According to Paragraph 3.4.1 of the Involuntary Resettlement Policy (2003), “the policy covers economic and social impacts associated with Bank financed project involving involuntary acquisition of land or other assets which result in: ...(c) Loss of income sources or means of livelihood as a result of the project, whether or not the affected persons are required to move.” The Review Panel was informed that the femmes transformatrices will no longer have access to the land that serve as the fish-drying area once the Plant becomes operational. Moreover, they have no legal title to the land. However, they have land use customary rights because they have been carrying out their business for a considerable period of time and deriving its economic benefit. Paragraph 3.4.3 of the Involuntary Resettlement Policy (2003) recognizes the people who have no formal legal rights or customary rights but who have usufruct rights to the land or other resources taken by the project, and is therefore applicable to these women and men involved in fish-drying activities on site. This group of people should be entitled to resettlement assistance for the loss of a primary source of their income.

52. The Involuntary Resettlement Policy (2003) requires a full resettlement plan prepared by the borrower for any project that involves a “significant number” of people who would need to be displaced.42 The Policy defines any group of people of 200 or more as “significant.” The Policy further specifies that resettlement planning includes early screening, scoping of the issues, the choice of resettlement strategies, and the gathering of all necessary information required to evaluate and prepare the resettlement component or sub-component. Paragraph 3.4.9 of the Policy also provides for an abbreviated RAP if the number of PAPs is less than 200. In the absence of baseline data on the number of femmes transformatrices who regularly work in the area of the buffer zone, the IRM is not in a position to determine whether a full RAP is needed or whether an abbreviated RAP will suffice. In light of the site visit and the information gathered, one can reasonably assume that the total number of women active in fish-drying activities along the Bargny shoreline is significant, and at least an abridged RAP should have captured the terms for either relocating or allowing them to sustain their economic activities on site. Therefore, in line with Paragraph 3.4.9, at the very least an abbreviated RAP should have been attached to the Appraisal Report. Unfortunately, neither a full nor an abbreviated RAP has been prepared for the Sendou Plant Project. The ESIA Summary distributed to the Board on 19 August 2009 does not mention the fact that the femmes transformatrices will be impacted economically by the resettlement. The Summary states that the field visits undertaken by Bank staff confirmed the active role of women in fish trading and processing.43 and presents planned corporate social activities of the CES which would establish a fish-processing facility to support these women.44 However, the ESIA (2009) and the ESIA Summary do not indicate that the Project will cause economic resettlement of these women engaged in fish-drying activities.

53. The Review Panel is of the view that as part of the project preparation, the femmes transformatrices and the male workers packaging dried fish in the buffer zone should have been consulted, a baseline study

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42 Involuntary Resettlement Policy, 2003, para. 3.4.3.
44 Ibid, p. 23.
should have been carried out to establish how many women and men are active in the area of the buffer zone, and a RAP should have been prepared. Also, consultations should have been carried out to assess how the resettlement impact could have been minimized in line with Paragraph 3.2 of the Involuntary Resettlement Policy (2003). If resettlement was deemed unavoidable, then the RAP needed to lay out compensation and livelihood support measures. None of these have been done. The inaction is noteworthy, as the ESIA (2009) already highlighted the presence of the *femmes transformatrices*. Moreover, the LTA Monitoring Report in August 2014 presented the economic resettlement of these women as an instance of non-compliance with AfDB policy.\footnote{WSP Parsons Brinckerhoff, *supra* note 14, ES003, August 2014, p. 41.} The same issue was also raised in the Bank’s Monitoring Report of November 2016; albeit it was not identified as a non-compliance area\footnote{Ibid, ES00530 November 2016, p. 22.}. Inadequate consultations between the CES and the *femmes transformatrices* was also repeatedly raised as an issue of concern in all Monitoring Reports of the Project. The need for the consultation and participation of PAPs in the design of the RAP is explicitly spelled out in Paragraph 4.1.3 of the Involuntary Resettlement Policy (2003) and Paragraph 6.1.9 of the Bank’s Gender Policy (2001).

54. The first formal contact of the Bank staff with the *femmes transformatrices* happened in January 2016, shortly after the new majority shareholder, QP became engaged in the project. QP followed up quickly on these women’s outstanding issue. In its community relations plan, CES also provided for USD 250,000 for community programs, which include the establishment of a fish-drying facility. During its meeting with the Ministry of Fisheries and Maritime Affairs, the Review Panel was informed that the GoS planned to support the construction of a fish-drying facility, also emphasized in the the ESIA (2009).\footnote{ESIA, (2009) p. 87.} However, this facility has not yet been constructed to date. According to the latest LTA Monitoring Report, efforts are under way to find a solution that will enable the *femmes transformatrices* to remain in the buffer zone.\footnote{WSP Parsons Brinckerhoff, ES006, *supra* note 14, 19 October 2017, pp. 12-13.} CES is of the view that the women can continue working in the buffer zone and that the security regulations could be revised so that no displacement will be necessary. According to information received by the Review Panel, special permission to access the buffer zone is needed. The Review Panel raise the particular issue of the *femmes transformatrices* when it met with the Director General of SENELEC who reportedly met with them later. The Director General expressed sympathy and said that SENELEC was exploring the possibility of providing some financial support to the women.

55. The Review Panel finds that there has been non-compliance with the Involuntary Resettlement Policy (2003). The Panel recognizes that the new owner, QP, tried to address some of these issues. However, apart from efforts to conduct consultations, significant progress needs to be made. The resettlement of the *femmes transformatrices* should have been assessed prior to project approval and in accordance with the Involuntary Resettlement Policy (2003). In addition, when the Bank noted that the issue continued to be raised in LTA Monitoring Reports and by the local population during the project implementation phase, it should have been viewed against the provisions of the Involuntary Resettlement Policy (2003). \textbf{The Review Panel finds that AfDB staff and Management did not carry out proper due diligence to determine whether or not the conditions of these women and men were covered by the Involuntary Resettlement Policy (2003).}
56. In providing comments to factual statement made in the draft Compliance Review Report, Management stated that the issues related to the Involuntary Resettlement Policy have been addressed in the Environmental and Social Corrective Action Plan that they updated in 2014. However, the IRM was not provided with evidence that these actions have been implemented.


57. The Review Panel assessed whether there has been non-compliance with the AfDB Policy on Poverty Reduction (2004). The Panel noted that no social impact analysis has been conducted concerning the women drying fish, the men packaging them, and the people claiming to hold land rights. The AfDB Policy on Poverty Reduction (2004) affirms the AfDB’s commitment to alleviate poverty among its Regional Member Countries (RMCs). The overarching goal of the Policy is to integrate poverty reduction perspectives in all of the Bank’s activities and Bank-financed projects, and to develop appropriate operational mechanisms and institutional arrangements.\(^{49}\) For the project cycle, the Policy states:

Paragraph 6.2.2.4: “The subsequent stages of preparation and appraisal require social impact assessments. The Bank will assess the likely impacts of projects on the poor and vulnerable groups. As much as possible, participatory techniques of rural appraisal and beneficiary assessment will be used. If negative effects and high risks are anticipated, the Bank will consider specific mitigating measures.”

Paragraph 6.2.2.5: “At the implementation stage, the Bank will take additional measures to enhance greater involvement of community-based organizations and NGOs. When monitoring and evaluating projects, emphasis will be placed on outcomes and impact assessments will be conducted with greater frequency. Furthermore, participatory techniques of project monitoring and impact evaluation will be used extensively.”

58. The Review Panel is of the opinion that the Bank staff should have conducted a social impact assessment in accordance with the aforementioned Paragraph 6.2.2.4 of the Policy on Poverty Reduction, especially the project impacts on the women and men engaged in the fish-drying business and on the people who claim to have land rights. Such impact assessments were not carried out. The Panel recognizes that, if a RAP had been prepared and proper consultations held with the PAPs in line with the Involuntary Resettlement Policy (2003)), then a separate social impact analysis would not have been required, since a RAP is a more encompassing instrument than a social assessment. The Policy on Poverty Reduction (2004) is a complementary policy to the Involuntary Resettlement Policy (2003) which has more far-reaching, encompassing, and detailed measures than under the former Policy.


60. The Sendou Plant Project is characterized as a Category I project for its potential adverse environmental impacts. The ESIA was issued in July 2009 and the ESIA Summary was distributed to the Board on 19 August 2009.


“Category I projects will require a full Environmental and Social Impact Assessment (ESIA), including the preparation of an Environmental and Social Management Plan (ESMP). ...The ESIA examines the project’s potential beneficial and adverse impacts, compares them with those of feasible alternatives (including the “without project” scenario), and recommends any measures needed to prevent, minimize, mitigate or compensate for adverse impacts and to enhance environmental and social project benefits.”

62. The Review Panel finds that the ESIA (2009) has several shortcomings that were also recognized in 2010 by the LTA of one of the lenders who was initially involved in the Project but later withdrew as a financier. They reports inform to the Sendou Plant Project’s non-compliance with the IFC Performance Standards and notes the absence of baseline studies on its social impacts, ambient air, and water quality, inadequate cumulative impact assessments, and lack of appropriate recommended mitigation measures. In spite of these deficiencies, the Bank circulated the ESIA Summary to the Board of Directors on 19 August 2009. The Review Panel could not obtain any records from the AfDB Operations Department to show their review of the ESIA. The Panel therefore assumes that the safeguards experts of the Bank cleared the ESIA Summary prior to the document being circulated to the Board of Directors. The Panel is concerned that, for a coal-based power plant with a significant potential negative impacts on the environment, the efforts by Bank staff to review the ESIA appeared limited. There is no evidence of efforts made to have appropriate measures in place to ensure that the gaps in the ESIA are addressed prior to the construction phase.

63. The AfDB appointed WSP Parsons Brinckerhoff (WSP) as the LTA. The LTA provided a total of six environmental and social monitoring reports. The First Monitoring Report issued in January 2014 noted that the Project was non-compliant with the lenders’ environmental and social requirements. The Report considered that almost all environmental and social safeguards provisions were either critically or entirely non-compliant. Nonetheless, the second disbursement was issued in October 2015 as QP was willing to buy out the previous shareholder, AFG, and assume the majority shareholding, but only under the condition that the second disbursement was made without any conditions attached. The Project essentially remained unaltered in its non-compliance status in almost all areas of concern throughout 2016. However, substantial progress was noted in the LTA Monitoring Report towards the end of 2016 when communications with the community significantly improved and some progress on missing studies was made. The latest LTA Monitoring Report (October 2017) noted further progress. The AfDB made the third and last disbursement after obtaining agreement from the Board on a waiver despite the lack of full compliance of all ESAP measures.

51 WSP Parsons Brinckerhoff, supra note 14, ES001, January 2014; ES002, May 2014; ES003, August 2014; ES004, May 2016; ES005, November 2016; and ES006, October 2017.
64. Unfortunately, the IRM has not been able to obtain the Environmental Review Memorandum or any input provided by the Bank staff into the ESIA. The IRM thus cannot judge what effort and professional guidance were provided to the borrower in the preparation of the ESIA. The fact however is that a project with an incomplete and—in many dimensions—inadequate ESIA was presented to the Board and an ESIA Summary was circulated as is required for a Category I project. Moreover, LTA Monitoring Reports state that there were serious non-compliance issues throughout until late 2016. The IRM assesses some of the following specific issues, either raised by the Requestors, noted in the LTA Monitoring Reports, or observed by the IRM.

5.3.1 Consideration of Alternatives

65. The Requestors claimed that the government policy option to use a coal-fired power plant is unviable since Senegal does not produce coal and will be obliged to import it from international markets. The Management considers that the viability of government coal power policy was adequately assessed during project preparation. The Bank Management concludes that, compared to imported diesel, the coal power generation will be cost effective and will help the country to have secure a reliable supply of power to address challenges of its growing utility demands. The Bank Management mentions that the inadequate power supply has led to the rationing of the daily supply of electricity. The additional energy supply provided by the Sendou Plant would allow the country to meet the high demand and, therefore, will contribute to the economic growth through employment and attracting businesses.

66. The Review Panel is of the view that alternative options have been appropriately considered and that the choice for investment in a coal-based plant is plausible, even if coal needs to be imported. Senegal does not produce oil or coal and will need to import either fuel from the international market. The project team considered alternative fuels. At the point of the project appraisal, the only alternative available was diesel, which is also imported and reported to be more expensive than coal. The Review Panel consulted with the energy specialist of the GoS and the World Bank. The Panel was informed that at the time of the project appraisal, coal-based power was the least-cost option. Gas was discovered in Senegal in 2016, well after the Project was approved. The Panel concludes that there was no instance of non-compliance in this context.

5.3.2 Cumulative Impact Assessment

67. Environmental assessments conducted for financing by multilateral development banks require a cumulative environmental assessment. This assessment takes into account not only the impact of the specific investment to be financed, but also assesses the impact of the investment in the context of other forthcoming investments which are planned for with a sufficient degree of certainty. The Requestors stated that the ESIA (2009) did not conduct a cumulative impact assessment. The Review Panel agrees with this position. At the time that the ESIA was carried out, two units, the Sendou I Plant and the Sendou II Plant, were planned to be constructed. The Sendou Plant Project was designed so that the two units, each with a 125 MW capacity, would be installed, albeit the financing for the first unit only was sought. In addition, the Panel was informed that at the time when the ESIA was conducted, some additional industrial investments, such as another cement plant, had been firmly planned. A cumulative impact assessment should have been done to assess the impact of the Sendou Plant Project in the context of this industrial development. At the very minimum, the impacts of the Sendou I and Sendou II Plants should
have been assessed, which the ESIA failed to do.\footnote{AfDB seems to agree with this position. BTOR, 7 July 2016.} The lenders recognized early on that there was no cumulative impact assessment conducted and proposed revisions to the ESIA (2009). Due to the halting of the Project and subsequent ownership changes, adjustments to the ESIA were not made. Lenders instead agreed with CES, the new owner since 2015, that cumulative impact assessments should be considered as part of an air impact study, a marine impact study, a traffic impact study, a noise impact study and an ash impact study. Preparation of these studies has advanced to various stages. The air impact study was completed in January 2017. A transport management plan study was also completed in January 2017, but the Ash Management Plan prepared in November 2014 is yet to be updated. The noise and marine impact studies have also not been conducted as well as the cumulative impact assessment study. The CES argues that the cumulative impacts are is so negligible in comparison to the overall traffic, and therefore a cumulative impact assessment is not needed. In the meantime, the decision to build the Sendou II Plant has been suspended. Should this decision be reversed and an investment in the Sendou II Plant is considered, it will be essential that all cumulative impact assessments be completed prior to the approval of the Sendou II Plant.

\subsection*{5.3.3 Ash Disposal Facility}

68. The Sendou Plant Project is designed so that ash will be transported on a regular basis from the project site to a nearby cement plant. The Review Panel was provided with a draft letter that was exchanged between the cement factory, SICOCIM, and Nykomb Synergetics of Sweden—the main sponsor of CES—on 26 November 2008, in which the cement company expressed interest in purchasing ash generated by the Sendou Plant. In addition, it was planned that the original project sponsor would finance a small factory in the community of Bargny. The Bank country team’s review of the project in June 2009 questioned the ash utilization approach and asked that the ash uptake agreement with the cement company be finalized. The Bank Management gave assurances about addressing these issues, but there was no further progress until 2014 when an ash management plan was prepared. The plan described different options and requirements for ash management but did not specify which one will be pursued. The LTA Monitoring Report of October 2017 stated that the CES had informed the LTA about the agreement of SOCCOCIM to collect and absorb all the ash produced by the Sendou I Plant. The duration of the contract would be for a period of 25 years.\footnote{WSP Parsons Brinkerhoff, supra note 14, ES006, 19 October 2017, p. 14.} However, the contract is not yet signed.

69. A further concern for the Review Panel is that this arrangement could be risky since the ash disposal system exclusively relies on the regular pickup and use of ash by one cement company. Should the cement company experience difficulties or is not satisfied with the quality of the ash, alternative options will need to be found and there might be need to store the ash, even temporarily or to dispose of it through other means. Therefore, CES should still develop alternative options specifically for ash storage. At present, the Project has no such storage facility to ensure that ash stock will be well managed in case of any interruption in the arrangement with SOCCOCIM. The CES informed the Review Panel that an ash storage facility is available for CES use on the site of SOCCOCIM. The Panel did not see this site and cannot assess whether this storage facility is environmentally appropriate. \textbf{While pleased that finally a contractual agreement could be reached with SOCCOCIM, the Panel is of the view that a back-up system and adequate storage for ash need to be secured in addition to the arrangement with SOCCOCIM. The Panel is of}
the view that the entire approach to handling the ash should be revisited. A full ash management option must be taken that details how the ash produced is disposed of entirely, including a security reserve storage facility on site and a disposal site if necessary.

5.3.4 ESIA Summary, ADB/BD/2009/226, 19 August 2009. Air Pollution

70. The Requestors are concerned about the impact on health as a result of air pollution from the Sendou Plant. The Management Response states that World Bank pollution standards have been applied to the Project and disagrees with the assertion that there will be any health risks associated with air pollution. It states that the project company has commissioned a review of its air emissions model to comply with both the World Bank and Senegalese legislations applicable to the air quality of the Project.54

71. The air quality standards applicable to this Project are specified in the World Bank’s Environmental, Health and Safety (EHS) Guidelines for Thermal Power Plants (2008). Senegalese authorities chose to apply the standards of the World Bank to the Project, instead of those outlined by the GoS.55 However, the original air quality assessment provided in the ESIA (2009) is based on standards of the World Bank’s Pollution, Prevention and Abatement Handbook (1998). The ESIA Summary states that the plant will comply with the World Bank standards, but then referred to the 1998 standards which are significantly less stringent than the standards adopted in 2008 which are applicable to the Sendou Plant Project.

72. The First LTA Monitoring Report was highly critical of the Project’s air quality model and its analysis, arguing that many parameters had not been modelled. The annual average level of sulfur dioxide (SO₂) and the annual and daily average levels of nitrogen oxide (NOₓ) appeared to exceed the World Bank standards of a maximum 25 percent contribution to the applicable ambient air quality limit value. The LTA noted inconsistent results with the modeling of worst-case scenarios which were more favorable than the results when all meteorological cases were run. The LTA Monitoring Report stated: “... the project is considered to be critically non-compliant relating to a cumulative impact assessment.”56

73. Another limitation of the ESIA is that it referred to a Norwegian study which was based on data measured between 2005 and 2006, and the data collection took place at some distance from the project site.57 With such uncertainty, it is not clear what the ambient air quality level and the emissions from the smoke stack will be when the Plant is in operation. If the baseline ambient level is unknown, the World Bank’s EHS Guidelines provision cannot be applied. Before the project was developed, baseline air quality monitoring at and in the vicinity of the site should have been undertaken to assess background levels of key pollutants. This information would have helped to differentiate between existing ambient conditions and

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54 Management Response, supra note 21, para. 57.
56 WSP Parsons Brinkerhoff, supra note 14, ES001, January 2014, p. 29.

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project-related impacts. Moreover, according to the EHS Guidelines of the IFC,\textsuperscript{58} no project should increase the ambient air parameters by more than 25 percent in the same airshed.

74. In light of the inadequacies of the original air quality assessment, the project restructuring CTA that was signed on 28 June 2016 provided that a new stack emissions and ambient air quality study will be conducted and completed within two years after the signing of this agreement. A new air quality model was prepared incorporating the different technologies to be used by CES and the stack was heightened from 100 m to 150 m. The model showed results above the acceptable WHO standards of 2008.\textsuperscript{59}

75. In addition, the FMO instructed WSP in the latter’s role as the LTA to conduct an ambient air quality impact assessment of the Project with its revised technologies and increased stack height to ensure that the ambiguities were clarified. The assessment was duly conducted, as a result of which it was observed that the WSP model showed significantly lower impacts than the Fluidyn model (Table 1), and were in line with WHO standards that have been adopted by the World Bank’s EHS Guidelines. The LTA Monitoring Report thus finds that the Sendou I Plant is broadly compliant with the requirements of the lenders. The study also finds that, with the Sendou I Plant operating, there is limited headroom for further industries that will use sulfur fuels. If the Sendou II Plant were constructed, there would be no further headroom for both units to operate at acceptable standards. The LTA Monitoring Report of October 2017 emphasizes that air quality needs to be appropriately monitored and states that at least one automatic air quality monitoring station should be located in the Minam village and a second station should be installed to the north of the project site, where it would be upwind to emission sources due to prevailing northerly winds. In any case, the location of the air quality monitoring stations should be established based on the results of mathematical models that estimate potential impact to the receiving airshed from an emissions source, taking into consideration aspects such as the location of potentially affected communities and prevailing wind directions. The LTA also states that an air quality action plan should be developed to set out actions to be taken by the Sendou Plant Project if the monitored pollutant concentrations significantly exceed permissible concentrations.\textsuperscript{60} In addition to air quality, point sources and fugitive emissions associated with coal power plant activities should also be monitored. These include nitrogen oxides (NO\textsubscript{x}), sulfur dioxide (SO\textsubscript{2}), carbon monoxide (CO), Carbon dioxide (CO\textsubscript{2}), particulate matter (PM\textsubscript{2.5}, PM\textsubscript{10}), as well as certain volatile organic compounds (VOCs) and metals such as mercury and cadmium.

\textsuperscript{58} https://www.ifc.org/wps/wcm/connect/532f4804886583ab4d6f66a6515bb18/1-1%2BAir%2BEmissions%2Band%2BAmbient%2BAir%2BQuality.pdf?MOD=AJPERES

\textsuperscript{59} WSP Parsons Brinkerhoff, supra note 14, ES002, May 2014, p. 23.

\textsuperscript{60} Ibid, (ES006), 19 October 2017 pp. 3-4.
Table 1: Air Parameter Results of W

<table>
<thead>
<tr>
<th>Pollutant</th>
<th>Period</th>
<th>Ambient Air Quality Standard (µg/m³)</th>
<th>Project Contribution (PC) Concentrations (µg/m³)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nitrogen Dioxide (NOx)</td>
<td>Annual</td>
<td>40</td>
<td>4.40</td>
</tr>
<tr>
<td></td>
<td>Hourly</td>
<td>200</td>
<td>139.3</td>
</tr>
<tr>
<td></td>
<td>(1 Hour Max)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sulphur Dioxide (SOx)</td>
<td>Annual</td>
<td>50</td>
<td>12.50</td>
</tr>
<tr>
<td></td>
<td>24 Hours</td>
<td>125</td>
<td>≤ 388.8 (a)</td>
</tr>
<tr>
<td></td>
<td>10 Minute</td>
<td>-</td>
<td>≤ 544.32 (b)</td>
</tr>
<tr>
<td>Particulate Matter (PMx)</td>
<td>Annual</td>
<td>80</td>
<td>0.45</td>
</tr>
<tr>
<td></td>
<td>24 Hour</td>
<td>260</td>
<td>0.45</td>
</tr>
</tbody>
</table>

(a) It is difficult to infer a 24 hour concentration from the Fluidyn Report. WSP were informed by Fluidyn that the maximum hourly concentration is 388.8 µg/m³, which occurs 35 times per year. So potentially, a 24 hour average of 388.8 µg/m³ could occur if the maximum hourly concentrations occurred consecutively. Also, we have not been told the frequency of hourly concentrations between 125 µg/m³ and 388.8 µg/m³, which would potentially form additional 24 hour exceedances.

(b) WSP infer at least 210 exceedances at a concentration of 544.32 µg/m³ (against the threshold of 500 µg/m³). This is based on a conversion factor of 1.4, against the maximum hourly concentration that has been reported by Fluidyn as 388.8 µg/m³. But potentially, any hourly concentration of > 357 µg/m³ (500 µg/m³ / 1.4) would result in a 10 minute exceedance. WSP were not informed how many hourly average concentrations exist between the maximum 388.8 µg/m³ and 357 µg/m³.

SP and Fluidyn Models

Source: WSP Parsons Brinkerhoff; Sendou (Unit1) 125MW(th) Coal-fired Power Plant, Senegal: Environmental and Social Monitoring Report (ES006), 19 October 2017 page 3.

5.3.5 Assessment of the Impact on Marine Resources

76. The Sendou Plant Project was originally designed with an open discharge cooling system, where sea water was to be drawn from the sea to the Plant and then discharged back into the sea after the cooling of the Plant. The discharged water was to be at a higher temperature than that of the sea water. The World Bank’s Pollution, Prevention and Abatement Handbook (1998) states that thermal discharge cannot exceed 3 degrees Celsius above the ambient temperature unless justification for the deviation is provided. The ESIA (2009) presented the thermal dispersion model which was developed for the discharge of the water.61 It also noted the importance of fishing and fish resources along the Bargny coastline.62 However, it did not

62 ESIA, section 4.2 noted: “The coastal demersal resources generally consist of high market value elements: shellfish (shrimps, lobsters and crabs), cephalopods (octopus, cuttlefish and squid) and fish (grouper, bream, red mullet, sole, Nile perch, surmullet, barracudas). Mainly intended for export, these resources are fraught with social, economic and political challenges in view of the relatively high incomes they generate to the fishing communities and industry. Overfishing, degradation of their natural habitats and the attendant erosion of the marine biodiversity constitute a threat to the continuity and economic viability of fishing activities.”
assess the impact of the discharge of the warmer water and the construction of the discharge system on the marine environment. Of particular concern is that the area around the Plant has been designed as an area for fish breeding so that the fish stock which has been depleted due to overfishing can be replenished. An assessment of the impact on the fish-breeding area is of particular importance, since over time the fish stock has been diminishing due to overfishing from the high seas. A marine assessment is also required, as marine environments are differently affected by the warm water even below the 3 degree Celsius difference specified by the World Bank’s Handbook. The impact of discharged water on the biodiversity has never been done.

77. In 2014, another study was conducted which presented design options for the open discharge system. The study does not provide a baseline of biodiversity in the areas where the water will be drawn to and discharged from the Plant. With the characteristics of the marine resources in this area not fully established, it will be difficult to assess accurately the impact of the Project on fisheries. Phase 1 of a World Bank-funded fisheries project was concluded in September 2016, and Phase 2 of the project is presently under preparation. It appears that the existence of the World Bank funded-fisheries project close to the Sendou Plant Project was known to the authors of the ESIA and in the subsequent studies. This raises questions about the quality of the ESIA consultation process, as the World Bank-funded fisheries project was managed with very active engagement of the local community. A marine impact assessment would have established the impact of the discharge from the Sendou Plant on fish stock in the marine breeding ecosystem.

78. The LTA Monitoring Report of August 2014 noted that the absence of an assessment of the impact on marine resources is a critical non-compliance issue. The need for such a marine impact assessment is also underlined by the LTA in its Report of May 2016, which states: “It is noted that the surrounding villages of Minam and Bargny are highly dependent on fishing productivity for both sustenance and livelihood/income. It will be important that the construction of the seawater intake and thermal discharge pipework… these adopted methods are to avoid or minimize impacts to the marine habitat, which may in turn impact fishing productivity (e.g. through noise, vibration and disturbances of sediment). It would be prudent to ensure that a sound understanding of the local fishing practices, such as yields, is obtained in order to measure potential impacts. Furthermore, the adopted methods and mitigation (e.g. compensation for reduced yields) is integrated within the community consultations, engagement and grievance mechanism.”

79. The Review Panel notes that a marine impact assessment has never been carried out. Such an evaluation is required for an ESIA of a power plant with an open cooling system that discharges water into the sea, especially where there are significant marine resources and people living along the shoreline who depend heavily on fishing. The AfDB waiver letter of 20 April 2017 postponed this assessment until 15 June 2017. By April 2017, the construction of the Sendou Plant was well advanced and the operation of the plant was scheduled for the end of 2017. The Panel finds the failure to prepare a marine impact assessment as a major cause for non-compliance with the Bank’s Policy on the Environmental (2004), especially given that the power plant was designed to discharge its cooling water into the fish-

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62 WSP Parsons Brinckerhoff, supra note 14, ES003, August 2014, pp. 41-42.
63 Ibid., ES004, 9 May 2016, para. 2.10 and 2.11.
breeding marine environment that is a major source of livelihood for the people. It is noteworthy that the loan has been fully disbursed without such an assessment having being carried out. At a minimum, a baseline on the marine resources should have been established. The need for such a baseline survey is evident since the ESIA was completed in 2009. The Panel understands that the technological options for the discharge system were under review by QP, the new owner. However, such a marine impact assessment should have been conducted in the early stages of project implementation and prior to the first disbursement.

80. During its visit to Senegal in June 2017, the CES informed the Review Panel about its decision to install a closed cooling instead of an open discharge system. If a closed cooling system is the definitive option, an environmental impact assessment of this system should still be conducted as well as a baseline study on marine resources. The environmental impact of a closed cooling system differs substantially from that of an open discharge system. With regard to the impact on marine resources, the closed cooling system will have significantly less impact because the quantity of water to dispose of into the sea is a small fraction compared to the effluent of an open discharge system.

81. Nevertheless, whether the Plant decides to operate with a closed cooling system instead of an open discharge system, the preparation of a baseline of marine resources is still essential. The Review Panel concurs with the LTA Report of October 2017 which states:

“... without a robust assessment to demonstrate that the potential impacts have been identified and mitigated, the Project may be vulnerable to further allegations in the event that fishing productivity is perceived to decline. Whilst the Project may not cause significant adverse impacts, there may be a perception – should works coincide with reduced fishing productivity – that there has been a direct impact upon local resources and livelihoods. It is noted that fishing contributes approximately 84% of the economic activity of Bargny and involves 800 fishing boats and 2000 individuals in the downstream processing. The impacts of the Project – however minimal – will need to be carefully controlled and managed.”

5.3.6 Transport of Coal from Dakar Harbor to the Sendou Project Site.

82. The operation of the power plant requires 386,000 tons of coal which will be imported via 9 shipments, with each shipment of a 43,000 ton capacity. Coal will be unloaded at the Port of Dakar’s harbor and transported by truck to the Sendou project site. For each shipment of coal, 8,600 tons will be unloaded per day. Assuming that each truck will transport around 30 tons of coal, there will be 287 one-way truck movements daily for a period of about 5 days for each shipment. This means that during 45 days a year, 287 trucks will transport coal daily from the harbor to the project site and do the return trip empty to pick up another load of coal. This will cause heavy traffic of trucks movement through highly densely populated urban areas in Dakar. Also, the truck movements will increase the risk of accidents and be a source of significant noise and air pollution with related health impacts.

83. The ESIA (2009) did not assess the environmental impact of the transport of coal from the harbor to the project site. More recently, it has been decided that coal will be transported by truck while covered. However, this mitigation measure is hardly sufficient to protect the population from the impacts of coal and

66 WSP Parsons Brinkerhoff, supra note 14, ES006, 19 October 2017, p. 7.

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noise pollution and risks associated with heavy truck traffic. The LTA Monitoring Reports have highlighted the need to design mitigation measures on the transportation of coal to the site as a high priority.

84. The lenders required that a cumulative impact assessment for coal transport be conducted. CES argues that the incremental impact of this transport will be minimal as there are already very large quantities of coal and cement transported from the harbor throughout Senegal. However, even if the incremental impact on the national level is negligible given the overall scale of transport in Senegal, the impacts during the days when coal is transported from the harbor to the project site requires specific mitigation measures. The movement of 287 one-way truck movements daily for a period of 45 days a year might be a negligible on the aggregate, but not for the residents who live on the sides of the roads, which the trucks will use. The noise and coal dust pollution impacts need to be mitigated. The present mitigation measures for coal dust pollution resulting from transport appear insufficient.

5.3.7 Surface Water and Groundwater Impact

85. The Requestors are concerned that the plant will potentially disrupt the livelihoods of the residents because of the proximity of the Plant to the town's water supply, public facilities -including an elementary school, a health center, a kindergarten, and a cemetery, and to the site where over 1,000 women and other seasonal and temporary workers operate who processing fish. The stakeholders met by the Review Panel voiced deep concerns about water availability and the risk of ground water contamination in the area when the Plant enters into operation. Many wondered what would be the real long-term impact of the discharge from the Plant on the marine environment and their livelihoods.

86. The Requestors' concern over the impact of the Plant on their water supply is a question not sufficiently addressed by the ESIA (2009). The ESIA mentioned that water for the Sendou Plant Project will be supplied by the water distribution network of the Société des Eaux (SDE) in Senegal. Only a mention is made of the water needed for the various processes in the Plant and that water will be supplied from the city water supply system to a 5,000 m³ reservoir. The water will be used for cooling, washing, and cleaning purposes. Sea water will be used for the cooling of the condenser. However, there is no indication as to whether the extra water needed by the Plant can be fully met with the current water scheme that also provides water for the city and the industries in the area. The ESIA is silent on how the competing demands of water for the city and the power plant will be met.

87. In addition, the risk of groundwater pollution has not been fully assessed. The ash pond, the coal storage facility, as well as the wastewater produced on the facility will be the main sources of potential groundwater pollution. However, the ESIA (2009), while analyzing the risks of groundwater pollution resulting from the Sendou Plant, gave a lengthy general description of the hydrology, the hydrogeology, as well as the physicochemical characteristics of the groundwater on site. However, the ESIA does not provide information specific to the plant site, especially the assessment of the impact of the Project on the local population. Although the general description is useful, it does not inform on how groundwater will be monitored once the Plant becomes operational. The information provided does not satisfactorily fulfill the requirement of the Bank’s Policy for Integrated Water Resources Management (2000), which requires the Bank Management to ensure that adequate attention is paid to the protection of aquatic ecosystems.
5.3.8 Assessment of the Impact of Noise Pollution

88. No noise impact assessment was conducted under the ESIA (2009). The ESAP has listed the preparation of a noise impact assessment of the Plant, which until September 2017 had not been completed. It is thus not known whether the Plant will remain within the noise standards which should be followed by AfDB-financed projects.

5.3.9 Cultural Heritage Issues

89. The Requestors stated that the Sendou Plant site limits their access to ‘Banoukhba,’ a baobab tree, which is considered as a sacred place located on the Project site where the protective spirit of the village resides. The Review Panel visited the tree which is located within the perimeters of the project site. The Project Management Team assured the Panel that all villagers would have unrestricted access to the tree and would be allowed to worship their spirits there if they wish to do so. A community member, who informed the Panel that she holds regular rites at the tree, stated that she could not access the tree during the night when the construction site would be closed. The Review Panel is of the view that CES is prepared to find a suitable solution to ensure community access to the tree. It is important that adequate consultations are conducted with the community to agree on a process on how such access can be made regularly possible.

5.3.10 Lack of Covenants in Credit Agreement

90. Paragraph 6.30 of the Policy on the Environment (2004) specifies that, based on the outcomes of the ESIA studies, operations will prepare loan conditions and covenants to cover any outstanding environmental concerns that need follow-up during the project implementation. For Category 1 projects, the inclusion of conditions and/or covenants in loan documents ensures an effective compliance with the Bank’s environmental policies (e.g. submission of resettlement plans, creation of monitoring units, consultations with stakeholders etc.). The Credit Agreement of May 2011 and the its amendment signed on 28 June 2016 do not include any policy covenants, in spite of the fact that the ESIA (2009) was seriously deficient, numerous follow-up measures were needed, and in particular the LTA Monitoring Reports signaled very serious non-compliance issues with environmental and social safeguards prior to the signing of the amendment of the aforesaid Credit Agreement. The Review Panel is of the view that the Bank should have introduced loan policy covenants into the Credit Agreement, which would have spelled out key environmental and social safeguards measures to be implemented. A simple referencing to AfDB Policies in the Common Terms Agreement (CTA) does not suffice.

91. In the comment they provided to the IRM on the Draft Compliance Review Report, Management recognized the inadequacies of the ESIA 2009 and argued that they prepared the Environmental and Social Corrective Action Plan which requires time for implementation. They also mentioned that they have made progress in addressing the ash disposal, the coal transport, the marine and noise impact assessment, impacts on water system and air quality monitoring. The IRM continues to maintain its observation and recommendations. On the handling of the ash, the IRM recommends that a proper ash management plan should be put in place. Management also clarified that the project will install a close cooling system, instead of the initial open discharge system. In view of these, the IRM is of the view that a baseline survey of marine resources is still required.

92. The Review Panel assesses whether the supervision of the project has been properly conducted with regard to the implementation of environmental and social policies. The Environmental Review Procedures for Private Sector Operations (2000) make the following provisions for monitoring and supervision:

Paragraph 42: “The Bank monitors the environmental and social performance of projects in its investment portfolio. Project monitoring may require a review of annual monitoring reports prepared by the project company in a format agreed with the Bank, as well as supervision missions, including site visits by OPSD [Private Sector Department]/OESU [Environment and Sustainable Development Unit] staff.”

Paragraph 43: “The Investment Officer, after consultation with OESU, is responsible for ensuring that supervision reports include information on the implementation of social and environmental conditions of the project by the project company. In case of non-compliance to these conditions, OESU will advise appropriate action to the Investment Officer. The Investment Officer notifies the project company what actions to take, as well as the monitoring conditions.”

Paragraph 44: “The Bank’s Supervision Reports must include a section on environmental and social compliance contained in the Investment Agreement.”

93. The Review Panel received Supervision Reports commencing only in May 2015 and two previous BTORs from missions to lenders’ meetings in November 2014 and March 2015. The Panel does not know whether the Project was ever supervised by the Bank prior to 2015 or whether records were archived so that they could not be retrieved. All Supervision Reports provided until June 2016 focus only on the restructuring efforts to put the Project back on track after shareholder disputes halted the project implementation. No references were made in the Supervision Reports on environmental and social safeguards performance. Since the Project was under serious threat throughout 2014 and 2015, the Panel understands the lack of attention to these safeguards issues. However, Supervision Reports continued not to mention any environmental and social safeguards implementation issues until June 2016, when a complaint was received by the BCRM. The Supervision Report of June 2016 notes the receipt of the complaint in May 2016 and for the first time makes references to environmental and social safeguards concerns. As the objective of the mission, it was stated that: “There is a need to engage with both the sponsors and SENELEC on Environment and Social issues around the Sendou project, in relation to the complaints from the NGOS, with the objective to bring the project closer to compliance with IFC Performance Standards and close gaps that were identified in these areas.” As part of the mission outcome, it is stated that: “Impacts on the Affected Communities (Land ownership, economic displacement, stakeholder consultation, livelihood restoration...) will be reassessed by the lenders’ E&S dedicated teams to ensure total compliance with the standards. SENELEC has emphasized that the GoS will assess and address this land ownership issue as appropriate.”

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94. In addition, a BTOR of July 2016 of a mission sent to Senegal to review concerns related to environmental and social safeguards expressed that the complaint addresses only a small subset of issues raised by the affected communities. The Supervision Report of February 2017 then addresses the pending environmental and social safeguards issues as they relate to the ESAP in more detail. The Review Panel is surprised that only after the complaint was received by the BCRM in May 2016 was the Bank’s attention drawn to environmental and social safeguards issues. The Panel understands that, during 2014 and until mid-2015, AfDB needed to focus its attention on relaunching and restructuring the Project. At the same time, QP was fully responsible for the Project by end of 2015 and construction had started in January 2016. The LTA had made it amply clear in its Monitoring Reports throughout 2014 that the Project had a critical non-compliance status with regard to environmental and social safeguards. Support and supervision efforts with regard to environmental and social safeguards implementation should have started immediately when the restructuring agreement with QP was finalized in mid-2015. Instead, attention was only given to these issues after the receipt of the complaint in May 2016. The LTA Monitoring Report of November 2016 sheds some light on this issue. It provides that, during the restructuring of the Project owner, QP negotiated to enter into the Project with no conditions attached: “A Waiver Agreement was made between the lenders and the Project Sponsor... which effectively waived the pre-existing requirements upon entry of the new Project Sponsor—Quantum Power (QP). From QP’s perspective, they entered a project which was “environmentally compliant” as a pre-requisite to its (QP) disbursement of Eur.134M. However, the lenders—in line with their initial loan agreement and general Environmental and Social Policies—seek to achieve compliance.”69 The detailed attention in February 2017 can be explained by the then-upcoming third disbursement for which a waiver request for incomplete ESAP measures implementation was prepared.

95. As the Review Panel did not receive any Supervision Reports for the period prior to 2015, the Panel does not know whether any supervision missions were conducted from the time the project implementation started in August 2013 until May 2015. The Panel finds that there is non-compliance with the Environmental Review Procedures for Private Sector Operations (2000) as supervision efforts with regard to environmental and social safeguards implementation were inadequate.

96. Management justified the irregularity of the supervision missions in their comments on factual statements made by the Compliance Review Report by the limited number of environmental and social experts to supervise all Bank projects. They pointed out that the project has been supervised on a regular basis by the LTA who interacted continuously with Bank staff. The IRM noted however that the recommendations of the LTA concerning the safeguards issues have seldom been implemented.

5.5 Public Consultations

97. The Requestors stated that the project consultations with the PAPs were inadequate, while the Management Response to the Request says that the consultation process has been adequate. The applicable Bank policies, such as the Involuntary Resettlement Policy (2003), the Policy on the Environment (2004), and the Gender Policy (2001), all require consultation processes. Paragraphs 29-31 of the Environmental Review Procedures for Private Sector Operations of the AfDB (2000) obliges the project sponsor to conduct

69 WSP Parsons Brinkerhoff, supra note 14, ES005, 30 November 2016, p. 5.
detailed consultations on the ESIA and requires that concerns raised during the consultations should be recorded and corresponding measures should be undertaken. Paragraph 31 requires that the project sponsor continues with consultations throughout the project cycle through construction and operation, as necessary, to address ESIA-related and other issues. Moreover, the Co-operation with Civil Society Organizations: Policy and Guidelines (2000) cites stakeholder participation as a key strategy to achieve its overarching objectives of poverty reduction and good governance. The Policy on Poverty Reduction (2004) calls for a participatory process in establishing the impacts of a project on poverty. Consultation requirements feature prominently in the Operational Guidelines for Coal-Fired Power Plants (2013). As these Guidelines were adopted after the approval of this Project, they are not directly applicable, but the Review Panel assumes that such operational guidelines also provide directions for projects under implementation.

98. Paragraph 4.3.8 of the Operational Guidelines for Coal-Fired Power Plants (2013) states:

“Stakeholder consultation and participation will be carried out to ensure a broad consensus among the stakeholders for a genuine acceptance of the project. Particular efforts will be taken to ensuring that environment, social and gender issues are mainstreamed fully and in a participatory manner. The consultations will be carried out at local and national levels, firstly, during the early stage of the project preparation and secondly, when the draft EIA documents are ready, ensuring full participation of all affected people and other relevant stakeholders. Consultation will be a continued process during the implementation and post-completion stages as well, as per the requirements of the Integrated Safeguards System.”

99. Consultations were conducted as part of the ESIA (2009) and recorded in the document. It is noteworthy that many of the outstanding issues were already identified during these consultations. While local authorities were generally in favor of the Project, the local population was more reserved, primarily because of the experience with the local cement plant, SOCOCIM, which is already polluting the air. The local population would have preferred the Project to be located at the site of La Société des Mines de Fer du Sénégal Oriental (The Eastern Senegal Iron Company; MIFERSO), a plot of land reserved for industrial development bordering the project site. Records state that a location of the plant on the MIFERSO site was not possible. People of Bargny also stated that the parcels of land allocated to them are within the area acquired for the Project. Questions were also raised whether women involved in fish-drying activities could continue to access the fish-processing site after the Sendou Plant becomes operational. Questions were raised regarding compensation of people who will be resettled, as well as concerning the transport of coal, and the impact of warm water discharged from the Sendou Plant into the sea on artisanal fishing activities. Finally, records available do not provide responses to the concerns of the residents, except a response on the location of the plant.

100. It is not clear to the Review Panel whether or not any consultations took place between 2009 and 2013. The CES states that some consultations took place but records of consultations with the local administration referred to few meetings held in 2013. The LTA Monitoring Report of January 2014 noted significant consultation failures representing critical non-compliance with IFC Performance Standards 1, 4 and 5. Regular meetings between CES and the community started taking place in 2014 when a group of people demonstrated against the Project and expressed concerns about land acquisition by the Project and

70 ESIA (2009), p. 94-96.
its negative environmental impact. Lenders involved in the restructuring of the Project became concerned about the public tensions and apparent lack of consultations, and asked CES to undertake a study on the implementation of social safeguards. A report prepared by Monkeyforest (2014) noted that CES did not want to engage in community consultations until the financing for the Project was secure.\textsuperscript{72}

101. The updated ESAP (2016) specified that a community stakeholder engagement plan should have been finalized with the Mayor of Bargny and the local community. Records available to the Review Panel do not show the engagement of Bank staff in supporting the proposed community consultation process either with the “femmes transformatrices, the seasonal workers associated with the fish-processing activities, nor those individuals claiming to have land rights. The issue of land rights was referred to by the lenders to SENELEC and to the LTA to manage. The Bank’s reference to the assessment of land rights by the LTA does not seem consistent with the Terms of Reference (TORs) of the LTA. The LTA Monitoring Reports consistently stress that the assessment of the land rights issue is outside the scope of its TORs. The last Supervision Report available to the Review Panel (January 2017) does not include any assessment on the status of community consultation and does not indicate whether a consultation process has started with the local community on the land rights and displacement issues.

102. However, an important step has been taken by CES regarding liaison with the community. They have recruited a community relations officer and regular contacts with the community have been established. In addition, a Community Committee has been created to handle project-related grievances. Moreover, in March 2017, a tripartite agreement was signed between SENELEC, CES, and the community (represented by the Mayor of Bargny) that outlines the principles of interaction on issues of concern to the community.\textsuperscript{73} Unfortunately, a representative of the complainants expressed to the Director of the BCRM later their dissatisfaction about how the Agreement is being implemented. They blame the Mayor of acting without their consent. In addition, CES and the Mayor prepared a social action plan to be supported by CES as part of its corporate social responsibility activities.

103. The gaps observed in consultations between 2009 and 2014 may be explained by the fact that the project financing was at a standstill. They were late to resume only in 2014. However, significant damage to the community’s trust in the Project has been done by the insufficient follow-up on concerns expressed by the people already during the ESIA preparation, where almost all issues which have been raised by the Requestors had already been discussed. Of particular note is the very late interaction with the \textit{femmes transformatrices} who were consulted for the first time in January 2016. The delay in communicating with this particular group is surprising because the concern about whether these women and their associated workers can continue to perform their activities was already raised much earlier in the project process and the women can easily be observed carrying out their tasks on a regular basis.

104. Based on the records reviewed and the information it gathered, the Review Panel is of the view that the AfDB staff did not pay enough attention to the implementation of the consultation requirements under

\textsuperscript{72} Monkeyforest, Assessment Report; Environmental, Social and Health & Safety, Sendou Project, Senegal, September 2014.

\textsuperscript{73} \textit{Protocole D’accord Tripartite, Commune de Bargny, Compagnie d’Electricité du Sénégal, SENELEC, 2 Mars 2017} (Tripartite Memorandum of Understanding, Municipality of Bargny, Senegal Electricity Company [SEC], National Electricity Company of Senegal [SENELC], 2 March 2017).
the Bank policies. For example, the almost complete lack of consultations between 2009 and 2013 left the community unclear of what was happening with the Project and with their concerns raised during the ESIA process. The CES was late in fully engaging with the population after it resumed responsibility for the Project. However, since 2015, the company has put significant effort into its outreach and consultation efforts and demonstrated commitment for community engagement. The Review Panel concludes that public consultations that were held did not fully comply with the requirements of the AfDB Policy on the Environment (2004), the Involuntary Resettlement Policy (2003), the Policy on Poverty Reduction (2004) and the Gender Policy (2001).

5.6 Conclusions on Compliance with Bank Policies and Procedures

105. The Review Panel finds that:

(i) There has been non-compliance with (i) the Involuntary Resettlement Policy (2003); (ii) the Policy on the Environment (2004); (iii) the Environmental Review Procedures for Private Sector Operations (2000); and (iv) the Policy on Poverty Reduction (2004); and

(ii) The consultation requirements under these respective policies as well as under the Gender Policy and the Cooperation with Civil Society Organizations: Policy and Guidelines (2000) have not been met.

106. The Review Panel is aware that the circumstances surrounding the Sendou Plant Project, including its interruptions on two occasions due to ownership disputes and subsequent shareholding changes, had some bearing on compliance failures. The Panel recognizes that in 2014–2015, the Project was at a high risk of being discontinued and that the Bank played a leadership role in convincing QP to become the majority shareholder, thereby guaranteeing the subsequently pursued successful implementation of the Project. The Review Panel observes that because of these developments and uncertainty of the continuance of the Project, the application of environmental and social safeguards may have been of lesser concern for the Bank staff and Management.

107. However, the Review Panel noted many shortcomings of the ESIA (2009). Despite these, the Bank staff cleared the ESIA Summary for distribution to the Board of Directors. The Panel cannot judge on what basis the ESIA and ESIA Summary were cleared by the Bank in the first place, and the clearance of the social and environmental records presented later to support the first disbursement of the Project by the Bank in 2013. Furthermore, the Bank staff did not follow up to ensure that the agreed-upon ESAP—which presumably includes updated social and environmental measures—is implemented. The LTA Monitoring Report of January 2014 found the Project in critical non-compliance with a long list of IFC Performance Standards. The Review Panel questions why the Bank accepted this continued non-compliance status of crucial environmental and social policies and made the first disbursement in 2013.

108. The Review Panel notes that the Bank staff started to look at the environmental and social issues after changes in the Project’s shareholding in 2015. In the same vein, the Panel is aware that the new owner, QP, whose engagement was crucial for the Project’s continuity, insisted that the second disbursement be effected without prior conditions for implementing social and environmental safeguards. However, the Bank did not move immediately to monitor the implementation of the ESAP once QP became fully engaged in the Project, particularly given that the Bank staff was aware of the serious social contentions on the
Project since 2014. The Panel also notes that, even when in 2015 it was clear that QP will enter the Project and when agreement was reached that the implementation of the ESAP measures required more time, the documents that it reviewed did not show an engagement of the Bank in supporting and insisting on the implementation of environmental and social safeguards. Furthermore, the opposition of the community against the Project was well-known and community actions were already organized in 2014.

109. It is only after the complaint was sent to the BCRM in May 2016 that the documents provided to the IRM showed Bank staff focusing on ensuring the implementation of the Bank’s environmental and social safeguards policies. It was in anticipation of the third and final disbursement that the Supervision Report of January 2017 dwelt extensively on the implementation of the actions under the ESAP. The sequence of the events gives the Review Panel the impression that the Bank gave more attention to resolving obstacles to the disbursement than to ensuring compliance with the Bank’s environmental and social policies. The Panel is surprised to see such a narrow focus on the implementation of the ESAP for a coal-fired power plant that is located in the vicinity of a major city with serious environmental and social risks. The negative impacts of coal-fired power plants are widely recognized and their development attentively watched by the international community. It is for this reason that the President of the Bank approved the Operational Guidelines for Coal-Fired Power Plants which entered into force on 18 December 2013. The existence of these Operational Guidelines was communicated to the Boards of Directors on 21 January 2014.\(^4\) These Operational Guidelines draw particular attention on the need to consult with the local population and to ensure that the benefits of the project are shared with them. They also emphasize the need for regular monitoring and reporting. While the Operational Guidelines are not directly applicable to the Sendou Plant Project, as they were adopted after the project approval, the Review Panel expected the Bank staff to be guided by their main principles as well as the applicable Bank policies in dealing with the contentious environmental and social issues associated with the Sendou Plant Project.

110. The Review Panel notes that significant progress was made in implementing many of the agreed upon ESAP actions in 2017. The LTA Monitoring Report of October 2017 makes detailed reference to the effort as well as QP’s leadership role. A few ESAP-related environmental actions are still pending. However, immediate actions should be taken to address the resettlement issues which are at the heart of the concerns of the community and the lenders. The repeated and prominent concerns voiced by the community and highlighted in the LTA Monitoring Reports must now receive proper attention either in the ESAP program or in the Bank staff supervision missions.

6. THE MATERIAL CONSEQUENCES OF NON-COMPLIANCE WITH APPLICABLE BANK GROUP POLICIES AND PROCEDURES

111. Paragraph 1 and Paragraph 59 (ii) of the IRM Rules require that when Requestors are subject to an actual or threatened material adverse effect and that this adverse effect results directly from an act or omission of the Bank Group to follow its own policies and procedures during the design, appraisal and/or

implementation of Bank-Group-financed projects, the IRM Compliance Review Report shall include the findings on the project’s material adverse effect.

112. The Review Panel assessed whether there is a threat of material adverse effect on the Requestors and the other PAPs resulting from non-compliance with the Bank’s Involuntary Resettlement Policy (2003), the Policy on the Environment (2004), and the Policy on Poverty Reduction (2004). The Review Panel visited the site of the Sendou Plant Project, the Requestors, and the PAPs during both the eligibility assessment and the compliance review missions to Senegal. The Review Panel found that harm is likely to be caused to the women engaged in the fish-drying business and the men who package the products within the Project’s buffer zone. The Panel also finds that harm is likely to be caused by the Project to the people who claim rights to some of the land within the project site and the buffer zone. The Panel cannot verify these land rights claims and is not in a position to conclude whether harm will be suffered by these people should they be denied the right to use the claimed lands. However, the Review Panel finds that there has been significant communication failures by the Project. The right to be heard and to be consulted is well affirmed under the Bank’s Involuntary Resettlement Policy (2003), the Policy on the Environment (2004), and the Policy on Poverty Reduction (2004). The violation of these rights constitutes harm to these people because they will be dispossessed of their social and economic entitlements.

7. CONCLUSIONS

113. The Review Panel finds that:

(i) The Sendou Plant Project is non-compliant with the Involuntary Resettlement Policy (2003) on several accounts:

- Inadequate due diligence by AfDB in assessing whether the Involuntary Resettlement Policy (2003) is applicable, particularly in the case of people who claim that they hold rights to the land, as well as women (*femmes transformatrices*) and men engaged in the fish-drying businesses within the buffer zone of the plant site;

- Inadequate consultations with the PAPs;

- No baseline study done to determine the number of PAPs and the income they derive from their fish-drying and packaging business in the buffer zone; and

- No RAP prepared containing compensation measures and livelihood support prior to the project approval.

(ii) There is non-compliance with the Policy on Environment (2004) as follows:

- The ESIA (2009) is inconsistent with the AfDB Policy on Environment (2004), because:
  - No marine impact assessment has been conducted even though the Project was designed with an open discharge system, where warm water was to be disposed of into the sea;
  - No adequate ash management plan was prepared;
o The impact study of the Sendou Plant on the water supply system was inadequate because the impact of satisfying future competing demands, including the Sendou Plant, through the public water system was not satisfactorily investigated;

o The environmental impacts resulting from the transportation of coal from the Port of Dakar’s harbor to the project site was inadequately assessed and mitigation measures proposed were also inadequate.

- Key policy covenants are not included in the Credit Agreement on environmental and social measures as specified in Paragraph 6.30 of the Policy on the Environment (2004).

(iii) There is non-compliance with the Environmental Review Procedures for Private Sector Operations (2000). Only the last two supervision missions conducted in June 2016 and February 2017 consider the Project’s compliance with the environmental and social safeguards requirements as mentioned in Paragraph 44 of the Review Procedures.


8. RECOMMENDATIONS

114. According to Paragraph 59 b (iii a-c) of the IRM Rules, a compliance review report should lay out three sets of policy recommendations:

(i) How to bring the project into compliance if the Review Panel finds instances of non-compliance with AfDB policies and procedures;

(ii) Any remedial changes to systems or procedures within the AfDB to avoid a recurrence of such or similar violations; and

(iii) Any steps to be taken to monitor the implementation of the remedial actions to bring the project back into compliance.

8.1 Recommendations to bring the Sendou Plant Project into compliance with Bank policies and procedures and to remedy material adverse impacts

115. With regard to recommendations on how to bring the Project into compliance with AfDB policies and procedures and to remedy adverse material impacts, it should be noted that the recommendations presented below will be further detailed through an Action Plan to be prepared by the Bank Management. Such an Action Plan will be submitted by the Bank Management to the Boards of Directors, the BCRM, and the Requestors within 90 business days after the submission of the IRM Compliance Review Report to the President and the Board of Directors of the Bank. Thereafter, the IRM Report, the Management

75 See IRM Rules, para. 64 (a).
Response, and the Action Plan will be jointly presented to the Board of Directors for discussion and consideration in the same session.\footnote{See IRM Rules, para. 64 (b).}


116. The Bank Management should:

(i) With regard to issues of dispute on land rights: Get involved and actively support the process underway with SENELEC, the Mayor of Bargny, and the PAPs to find an adequate solution to the land dispute. The Bank should strongly encourage the proposal to allocate to them parcels on another site.

(ii) With regard to the women whose income-generating activities are impacted by the Project (femmes transformatrices) and other related workers active in the buffer zone:

- Carry out a baseline study to establish precisely the number of femmes transformatrices and other workers associated with fish-drying activities in the buffer zone.

- Establish whether the femmes transformatrices and other workers associated with fish-drying activities will have to leave the area or whether special permission could be granted to them to continue with their activities on the project site.

- If this special permission cannot be granted, consult and conclude with the femmes transformatrices and related workers on compensation measures and consider the adoption of a livelihoods support program to compensate for loss of income resulting from the displacement.


117. The Bank Management should plan the following measures:

(i) \textbf{Ash disposal:} Develop a contingency plan if the cement manufacturer, SOCOCIM, does absorb all the ash produced on a regular basis. An environmentally sound ash storage area must be designed;

(ii) \textbf{Transport of coal from the harbor to the plant site:} Specify additional mitigation measures to reduce noise and coal dust pollution and improve traffic safety for trucks transporting coal from the harbor to the plant site.

(iii) \textbf{Impact on marine resources:} Prepare a baseline survey of marine resources in the sea area adjacent to the plant if CES will install a closed cooling system. If CES installs an open cooling
system, conduct an assessment of the impact of warm water discharge on marine biodiversity resources.

(iv) **Surface and groundwater**: Undertake a technical study that establishes the long-term impact of the water demand of the Sendou Plant on the public water system and propose relevant mitigation measures.

(v) **Air quality monitoring**: Establish appropriate an air quality monitoring system to assess the Project’s impact on air quality as specified in the LTA Monitoring Report of October 2017.

(vi) **Noise impact assessment**: Complete the assessment as specified in the ESAP and the LTA Monitoring Reports.

8.1.3 Compliance with the Environmental Review Procedures for Private Sector Operations (2000).

118. The supervision missions should report on the implementation of environmental and social safeguards compliances as specified in Paragraphs 43 and 44 of the Review Procedures.

8.2 Recommendations on changes in the Bank’s systems to avoid a recurrence of violations

119. The Review Panel recommends the following measures:

(i) **Application of safeguards policies**: Private-sector projects need to strengthen the application of safeguards policies from project preparation to the formulation of loan conditions based on these policies, with greater emphasis on the need for clients to undertake detailed reporting on the project’s environmental and social performance.

(ii) **Due diligence on PAPs**: Appropriate attention needs to be given to exercising due diligence in the assessment of the potential application of the Involuntary Resettlement Policy (2003). Involuntary resettlement issues typically have welfare implications and often lead to social unrest and ongoing conflict, which can endanger the project’s implementation, social cohesion, and the welfare of the people. In addition, the lack of due diligence in the assessment of the Involuntary Resettlement Policy (2003) can create reputational risks for the AfDB.

(iii) **Comprehensive data collection prior to project approval**: Adequate environmental and social baseline data need to be established. In the Sendou Plant Project, environmental and social baseline data are inadequate. In the absence of adequate baseline data, environmental and social impacts cannot be established, and the actions taken to mitigate such impacts at a delayed stage are always contentious as the extent of impacts cannot be measured. As a matter of principle, it is essential that AfDB-financed projects adequately measure the baseline situation prior to the project. The collection of ex ante project baseline data is not expensive. Estimating such baseline measures ex post is a contentious undertaking which often leads to conflict as the parties that are engaged tend to disagree.
(iv) **Special focus on consultation requirements:** The Review Panel found important consultation failures in this Project. Consultation requirements are clearly mentioned in the Involuntary Resettlement Policy (2003), the Policy on the Environment (2004), and the Policy on Poverty Reduction (2004). The attention of the Bank Management needs to be drawn to the fact that consultation failures can lead to serious delays in project implementation and lead to non-compliance with AfDB policies. Special training should be given to the Bank staff on what constitutes “meaningful consultations” and what due diligence efforts are expected of the staff in ensuring that the client/borrower carries out meaningful consultations with both identified and potential PAPs.

(v) **Adequate review of ESIA:** The AfDB needs to provide adequate expertise to ensure that ESIA are appropriately reviewed by its staff. Prior to circulating an ESIA Summary to the Boards for project approval, the Bank Management and staff need to ensure that the appropriate adjustments are made to the ESIA to ensure their compliance with the applicable standards and guidelines. A project should not be approved by the Board if its ESIA does not meet adequate standards or have no definite time-bound actions to update any identified pending environmental and social mitigation measures.

(vi) **Structure of private-sector credit loan agreement:** Corporate loan or credit agreements for private-sector projects should include covenants on AfDB environmental and social safeguards measures as a policy requirement, as specified in Paragraph 6.30 of the Policy on the Environment (2004). Simply listing relevant policies in the CTA is not enough and could compromise the borrowers’ fulfillment of policy requirements on reporting a project’s environmental and social performance and compensation/resettlement issues.

(vii) **Document filing system:** The Review Panel could not obtain relevant documents for this Project. Apparently, these documents have not been filed in a place where information is accessible even after the previous task manager(s) are transferred or leave the Bank. The Bank should ensure continuity of institutional memory by maintaining a filing system which archives and provides access to: (i) all supervision records and BTORs; (ii) all supplementary records, such as Environmental Review Memorandums, comments on ESIA clearances, and comments on the progress of the implementation of E&S safeguards, etc; and (iii) environmental and social safeguards monitoring reports. The Bank Management should maximize the use of the new ISS tracking system to archive the records of projects which were under implementation prior to when the ISS was brought into effect on 1 July 2014. Failure to access important project records constitutes an accountability and transparency risk for the AfDB.

9. **APPENDICES**
Bargny May 9 2016

Mr. S. Touré
Director of Compliance Review and Mediation Unit (CRMU)
African Development Bank
2nd Floor, CCIA Building, Abidjan Plateau
Avenue Jean-Paul II
Cote d’Ivoire
crmiinfo@afrdb.org

Mr. S. Priem,
Complaints Office Nederlandse Financierings-Maatschappij voor Ontwikkelingslanden NV
P.O. Box 95060
2509 AB The Hague
The Netherlands
complaintsoffice@fino.nl

Responsable de la Conformité
Banque Ouest-Africaine pour le Développement (BOAD)
68, Avenue de la Libération, Lomé, Togo
plaintes-conformite@boad.org

Re: Complaint Sendou coal fired power plant, Senegal

Dear Mr. Priem and Mr. Touré,

First of all, Takkom Jerry\(^1\) would like to express our satisfaction to present to you our complaint in relation to the Sendou coal fired power plant (hereinafter: Sendou project) in Senegal, financed by AfDB, BOAD and FMO. The project implementation started in 2013 without addressing the issues described in this complaint. These same issues were already raised during the public consultation on the Sendou project, which we therefore consider inadequate.

\(^1\) Takkom Jerry is a member of the “Collective of affected communities”, about 36 000 persons directly affected by the Sendou Project in Bargny and their associations, the (Kholoom fisherwomen association, landowners association, Federation of small scale local fisheries CLP, SOS Bargny, and FH Tabulalaha).
Background and context:
For the past 10 years, the State of Senegal has placed the reduction of the country's energy gap high on the agenda. While we appreciate the importance of this initiative for the country's development, the option of a coal-fired power plant and the location of the Sendou project are problematic.

In the first place, the project’s site is in the heart of our community.

Thus, the site itself includes:
- 1,433 parcels of land, which in 1995, 1996 and 2007 were given to families in the community affected by coastal erosion as part of the Minam 1 and Minam 2 relocation projects;
- A river called Khouloup; a stream that comes from the only retention basin of the community and which runs through all the farming lands before flowing into the Atlantic Ocean at the South of the village, at a distance of 100 meters from the plant via its mouth locally called Banoukhba; an historic heritage site (a baobab tree) where the protective spirit of our village resides;
- The fishery product processing site locally named ‘Khelkom’ where about 1000 women work and other seasonal and temporary workers, who all derive their livelihoods from those activities;
- A sewage collection site.

The site is also close to:
- Some trenches used for livestock watering by the whole community;
- A reef reconstruction project financed by the World Bank to build a nursery for the regeneration of marine biodiversity;
- Public facilities including the populous village of Minam which houses an elementary school, a health center, a kindergarten and a cemetery;

So firstly, the close proximity of the Sendou project site to the village of Minam is a reason to believe that the project violates the Code of the environment, in particular Article L13 which states that ‘installations classified 1 should be built at least 500 meters from housing’.

Furthermore, without other land reserves available in the area, our community will be more exposed to the consequences of coastal erosion as the advancing sea will oblige us to move further away from our homes with the risk of dislocation of our families as a result.
Moreover, the lack of any agreement with the right-holders of these land titles, the absence of any compensation for the large majority and the lack of an agreed Resettlement Plan are a breach of AfDB, BOAD and FMO’s environmental and human rights standards.

Secondly we are worried about air pollution and our health. Sendou is not the only polluting industry in the proximity of our village: the SOCOCIM cement factory, located at less than 2 kilometers from the Sendou project, is already affecting us. Next to Sendou, another even bigger coal-fired power plant providing 250 MW is being planned. There is no clear study establishing whether the cumulative impacts of these three plants poses any health risks.

We have raised these issues, and many more which are described in full detail in annex 1, with AfDB and FMO but these negative impacts are still not adequately addressed at this moment and there has not been any adequate consultation with the communities until this day. Therefore we believe that this project is not in line with the AfDB, BOAD and FMO’s environmental, social and human rights standards.

We would like to ask the Independent Complaints Mechanism of AfDB and FMO to undertake a compliance review and a problem-solving exercise. At the same time we would like to request BOAD’s ICM to undertake a compliance review.

This complaint is technically supported by SOMO, Both ENDS, and Lumiere Synergie Développement. We would like to request that any communication regarding this complaint is shared with our advisors Aly Sagne at Lumiere Synergie Développement (alagne@aim.com), Anna Floor van Oijk at Both ENDS (A.vanOijk@bothends.org) and Joseph Wilde Ramsing (j.wilde@somol.nl) at SOMO.

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3 We refer to annex 2 for a complete list of our interactions with both development banks.
Bargny, le 8 juillet 2016

**Objet :**

Représentation des communautés affectées par le projet N° P-SN – F00-004 (centrale à charbon – Sondou/Sénégal)

**Monsieur le Directeur du CRMU,**

Par la présente, nous membres des personnes affectées par le projet de la Banque Africaine de Développement (BAD) cité en objet, attestons avoir donné mandat à M. Ibrahima Diagne, Président de Tukkom Jerry sise à son siège de la rue Namory X Ndaak au quartier Finkone de Bargny du Sénégal pour nous représenter dans le processus de plainte engagé à l’encontre de la Banque Africaine de Développement (BAD).

Fait à Bargny le vendredi 8 juillet 2016.

Arame Ndour (Femme transformatrice produits halieutiques), Tél. +221778099387

Pape Seck (Habitant Voisin direct), Tél. +221774909576

Ibrahima Sow (Berger), Tél. +221773837986

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**AU REPRESENTANTS DU CRMU S/C DE LA BANQUE AFRICAINE DE DEVELOPPEMENT**

« Plaider pour un monde plus ouvert »
APPENDIX 2: REQUEST 2 WITH REPRESENTATIONAL AUTHORITY OF THE SECOND REQUESTORS

COLLECTIF DES COMMUNAUTES AFFECTEES DE BARGNY

Bargny, 12 July 2016

Mr. S. TOURE
Head of the Compliance Review Unit (CRMU)

African Development Bank (AfDB)
2nd Floor CCIA Building, Abidjan Plateau
Avenue Jean Paul II Côte d’Ivoire, ermuinfo@afdb.org

Mr. S. PRIEM
Complaints Office Nederlandse Financiering-Maatschappij
VoorOntwikkelingslanden NV - POB 93060 - 2509 AB the Hague
The Netherlands, complaintsoffice@fmo.nl

Compliance Officer
West African Development Bank (BOAD)
68, Avenue de la libération Lomé, TOGO, plaintes-conformite@boad.org

Subject: Complaint against the Sindou Coal Power Plant, Senegal

Dear Messrs. Touré and Priem,

Mr. Daouda GUEYE; Tel.: 221776342667, daoudalarry@hotmail.fr

Mr. CheikhFadel WADE; Tel.: 221776501372, cheikh.fadel01@gmail.com
Mandated by the Group of Affected Communities in Bargny, hereby submit a complaint concerning the Sindou Coal Power Plant Project in Senegal.

The project is financed by AfDB, BOAD and FMO, and the works started in 2013 without taking into account the problems described in this complaint.

In 2008, SENELEC applied for a 120 ha piece of land situated in Bargny for the implementation of a 125 MW coal power plant project, known as Sindou Power Plant 1. A BOO2 contract was signed on 24 January 2008 between the Government of Senegal and Nycombsynergeticsdevelopment AB, a Swedish lead company of a group of companies ("Compagnie sénégalaise d’électricité S.A." - CES).

The Government of Senegal declared the project of public utility by Decree No. 2009-849 of 3 September 2009, and allotted the 120 ha land to SENELEC for the construction of a power plant. The 120 ha land includes:

- A 10 ha 30a 90 ca piece of land given on lease to HOLDING KEUR KHADIM company;
- A 85 ha piece of land with two land certificates belonging to SCI LES COTTAGES DU CAP-VERT;
- A 54 ha 43 a 77 ca piece of land with two plots (MINAM 1 and MINAM 2) allotted by Municipal Order No. 001/CB/SGM of 28 March 2006 and approved by Prefectural Order No. 056/DR of 5 April 2006 for the resettlement of Bargny and Minam people affected by the advancing sea and climate change, comprising 1,633 plots.

It was established that a portion of the land declared to be of public utility was allotted to CES for the construction of the coal power plant.

Curiously, CES bought 29 ha from the 120 ha land for CFAF 1.45 billion. The sale deed was approved on 14 October 2009 by the then Minister Delegate to the Minister of the Economy and Finance in charge of the Budget, Mr. Abdoulaye Diop, and co-signed by the Lands and Stamp Duty Registrar, Mr. Max Bidi Vincent, and the Manager of CES, Mr. Jean Claude Norland Suzor. Paradoxically, the deed specifies that the plot should be taken from TF 475F, whereas this land certificate is not mentioned in the report that motivated President Abdoulaye Wade to issue a decree on the allocation of 120 hectares land to SENELEC. The land also includes an area for the processing of fishery products, known as Khelcom, which employs 1,000 women. On 28 February 2009, a public hearing was held in Bargny Town Hall, as part of the environmental impact assessment of the project to build a coal power plant in Bargny municipality. The objective of the interim report produced by Quartz Afrique consulting firm recruited for the assessment was to gather the views and concerns of the population in the town.

It was while waiting for the report that the Mayor of the town found out that the project implementation had started on the site several weeks earlier. Consequently, on 28 March 2011, the Mayor sent a correspondence (No. 060/CB/SGM) to the Prefect of Rufisque Department, with copies to the Director-General of SENELEC and the project developers to draw their attention to the fact that the site chosen for the project had been divided into two administrative layouts.
However, for several reasons, the Bargny communities and the then Mayor strongly objected to the implementation of the project. Indeed, the power plant is dangerous for the health of the population and ecosystems, and a poor decision had been taken to establish this dangerous and unhygienic power plant in the centre of Bargny in total disregard for the rules of the Environmental Code, which in its Article L.13 states: "First class facilities (such as thermal power plants) should, before their construction or commissioning, obtain an operating permit ..., the permit shall ensure that the facility is at least 500 m away from homes, buildings usually occupied by third parties, institutions receiving the public, and dwelling areas, a stream, a lake, a means of communication, a water catchment ....". It is clear from this provision of the Environmental Code that the distance of 500 m from homes (Miname 1 and Miname 2 plots), institutions receiving the public (Minam health centre, the day care centre, the primary school, and the fish processing site) has not been respected.

The developers disregarded these provisions by establishing the coal power plant on a layout of 1,433 plots; the following are within 500 m radius from the power plant:

- The first houses on 206.51 m each;
- A health centre on 395.29 m;
- A primary school on 520.52 m;
- Secondary houses on the Sindou road on 266 m each;
- The Ngadjé-NdiagaSamb neighbourhood to the South-West on 494 m.

The project directly affects the human and economic rights of 1,000 women processing fishery products, who risk losing their jobs since the power plant is very close to the processing site; indeed, according to the regulations, a food processing unit should not be close to a property classified as dangerous and unhealthy.

The power plant significantly increases the air pollution levels already generated by the over 50 years presence of the cement factory (SOCOCIM) which pollutes the town environment with dust and gas, and through the mines.

Consequently, non-compliance with environmental, health, cultural and social standards through the establishment of a coal power plant close to the population and work places has become a serious threat to public health due to chronic inhalation of several toxic substances that in the long term often cause fatal lung diseases, risks of cancer, premature deaths, and birth defects, as well as constitute a major threat to the lives of the population of Bargny.

Considering the negative environmental and social impacts of the project;

Considering the inadequate public consultations;

Considering the high risks of the project to the population’s health due to gas emissions, as well as air, water and soil pollution;
Considering the impacts on land use such as access to cemeteries, the primary school, the daycare centre, the health post, and the fish processing site, which are sensitive irreversible impacts that can lead to the loss of economic and social rights;

Considering that the project site is not appropriate due to non-compliance with the requirement to ensure a 500 m distance from:

A layout of 1,433 plots or houses already built, but not taken into account in the impact assessment;

A fishery products processing site, which is an important economic area for the town and its suburbs, and is very close to the coal power plant;

Homes that are very close to the coal power plant;

Expropriations have been conducted without fair and equitable compensation.

Considering the non-compliance with community rights to a healthy environment, as well as non-respect for cultural heritage (the Baobab tree where ancestors’ rites are conducted is on the site of the power plant);

Considering that the Government’s responsibility is fully committed by the Ministry of Environment which authorized, by Order dated 7 May 2010, the opening and operation of a dangerous, unhealthy or inconvenient establishment, classified in Category 1 class, without taking into account the fact that the Senegal Electricity Company (CES) did not comply with Article 13 of the Environmental Code;

Considering that the local climate change adaptation measures are now compromised because the site was expected to resettle over 300 families affected by coastal erosion, with 2-3 m coastal erosion per year;

Considering the threats to small-scale fishing and related activities that account for over 60% of the community's economic sector, which if no mitigation measures are taken, hot water from the power plant with toxic substances will be discharged directly into the sea in a protected biological area for marine species;

Considering the serious danger for the population created by the establishment of the coal power plant in an unsuitable and improper place;

We call on the independent inspection mechanisms of the AfDB, BOAD and FMO to undertake a compliance review on the site.

Yours sincerely,

Daouda GUEYE Cheikh Fadel WADE
## POUVOIR DE REPRESENTATION

Nous, soussignés en tant que faisant partie de personnes lésées par le projet de centrale au charbon de SINDOU autorisons messieurs Cheikh Fadel WADE et Daoeude GUYE à nous représenter et agir à notre nom pour déposer une plainte et d’en assurer le suivi pour la régulation de nos griefs au sein du Mécanisme indépendant d’inspection (MII) du groupe de la banque africaine de développement (ABAD).

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<td>Cheikh FAYE</td>
<td>Président association SUTOU MAMMMTDIOGU des propriétaires de terrain des lotissements Minam 1 et 2</td>
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<td>Bargny NDIANDIA, Tél. : 2217746650067</td>
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<td>Daoeude GUYE</td>
<td>Responsable technique du collectif des communautés affectées</td>
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<td>Assane NDIAYE</td>
<td>Président du comité local de pêche (CLP)</td>
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<td>Bargny GÓUE DIOUCARC, Tél. : 7735376930</td>
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<td>Ousse SSOX</td>
<td>Chargé de la communication du collectif des communautés affectées de Bargny</td>
<td>Bargny NGOUR NDIAYE, Tél. : 774347578, Mail : <a href="mailto:caciissouc@gmail.com">caciissouc@gmail.com</a></td>
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<td>El Hadji Mousa NDIAYE</td>
<td>Président des Autores du littoral</td>
<td>Bargny NDIANDIA, Tél. : 776317582</td>
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APPENDIX 3: LIST OF SOME OF THE SUPPORTING DOCUMENTS RELIED UPON BY THE REVIEW PANEL DURING THE COMPLIANCE REVIEW OF THE SENDOU COAL-FIRED POWER PLANT, SENEGAL

African Development Bank

(i) Operations Departments


2. Back-to-Office-Reports (BTORs) (June 2014 to November 2016) prepared following supervision missions of the Sendou Coal-Fired Power Plant:

   ▪ BTOR Sendou – November 2016
   ▪ BTOR Sendou – June 2016
   ▪ BTOR Sendou – April 2016
   ▪ BTOR Sendou – February 2016
   ▪ BTOR Sendou – December 2015
   ▪ BTOR Sendou – 28-30 September 2015
   ▪ BTOR Sendou – 3-5 September 2015
   ▪ BTOR Sendou – June 2015
   ▪ BTOR Sendou – April 2015
   ▪ BTOR Sendou – Meeting Minutes – Lenders and Government of Senegal – March 2015
   ▪ BTOR Sendou – Compte Rendu Réunion Preteurs – 20 January 2015
   ▪ BTOR Sendou – 25-26 November 2014
   ▪ BTOR Sendou – June 2014

- WSP Parsons Brinkerhoff; Sendou Power Plant, Senegal: Environmental and Social Monitoring Report (ES001), January 2014.
- WSP Parsons Brinkerhoff; Sendou Power Plant, Senegal: Environmental and Social Monitoring Report (ES002), May 2014.
- WSP Parsons Brinkerhoff; Sendou Power Plant, Senegal: Environmental and Social Monitoring Report (ES003), August 2014.
- WSP Parsons Brinkerhoff; Sendou (Unit 1)125 MW(th) Coal-Fired Power Plant, Senegal: Environmental and Social Monitoring Report (ES004), 9 May 2016.
- WSP Parsons Brinkerhoff; Sendou (Unit 1)125 MW(th) Coal-Fired Power Plant, Senegal: Environmental and Social Monitoring Report (ES005), 30 November 2016.
- WSP Parsons Brinkerhoff; Sendou (Unit 1)125 MW(th) Coal-Fired Power Plant, Senegal: Environmental and Social Monitoring Report (ES006), 19 October 2017 – with AfDB comments.

4. Management Response to the Request Filed Against the Sendou Coal-Fired Power Plant in Senegal, 8 September 2016.


(ii) Independent Review Mechanism (IRM)


(iii) Compagnie d'Electricité du Sénégal (CES)

1. Ash Management Plan


4. Letter from SOCOCIM on Intention to Buy Ash from the Sendou Power Plant.


(iv) Nederlandse Financierings-Maatschappij voor Ontwikkelingslandern N.V. (FMO)


(v) Port Autonome De Dakar


(vi) Documents from Other Sources

APPENDIX 4: MANAGEMENT RESPONSE TO THE REQUEST

AFRICAN DEVELOPMENT BANK GROUP

MANAGEMENT RESPONSE ON THE REQUEST FILED AGAINST
THE SENDOU COAL-FIRED POWER PLANT PROJECT IN SENEGAL

8 September 2016

ACRONYMS
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INTRODUCTION
1. This note was prepared in response to CRMU’s Notification of Registration of application No: RQ2016/2 dated 10th of August 2016 (the "Request"), following two referrals to verification of compliance on May 9, 2016 and July 15, 2016 respectively. The first request was initiated by two Civil Society Organizations (CSOs): Takkom Jerry and Lumière Synergie pour le Développement (referred to as the “First Requesters”) on behalf of some Project Affected People (PAPs) and the second request was introduced by two individuals Mr. Cheikh Fadel Wade and Daouda Gueye (referred to as the “Second Requesters”) on behalf of other members of the Bargny community.

2. Together the First and Second Requests contain eight separate charges, for which, CRMU, following a compliance verification mission, concluded that “the assessment of the Request shows that it fulfills the requirement for registration under Paragraph 23 of the IRM Operating Rules and Procedures and has therefore registered it for compliance verification, in line with the preference of the Requesters, pursuant to Paragraph 22 of the IRM Operating Rules and Procedures.” (Item 10 of the Request). Therefore, CRMU has asked Management to “submit any evidence indicating how it has complied or intends to comply with the Bank’s relevant policies and procedures applicable to this project” (Item 12 of the Request). The Management Response Section addresses each of these charges.

BACKGROUND AND CURRENT STATUS OF THE PROJECT

3. The Sendou Coal-fired Power Plant Project was approved on 25 November 2009 by the Board of Directors as a senior loan of 55 million euros in favor of Compagnie d’Electricité du Sénégal (CES) to develop and maintain a 125 MW coal-fired power plant located 35 km from Dakar in Sendou, Senegal. The total Project cost stood at EUR 206 million. The Bank co-finances this, alongside BOAD, CBAO and FMO. The Project is being developed on a “build, own, and operate” basis and targets to supply up to 40% of Senegal’s electricity, which currently derives 80% of its electricity from diesel-fueled power generation. The Government of Senegal (GoS) has outlined a strategy for diversifying and increasing domestic power generation capacity with a combination of conventional thermal base load and renewable energy.

4. The project implementation was only initiated following the first disbursement at the end of August 2013. The Sendou Power Plant project has subsequently experienced further implementation delays due to shareholder issues resulting in cost overruns. On 30 October 2015, the Board of Directors subsequently approved the new debt restructuring of the Sendou Power Project, to address the increased risk profile through: (i) an amendment to the existing loan terms; and, (ii) a provision of a supplementary senior loan facility of EUR 5 million.

5. The Project Company is Compagnie d’Electricité du Sénégal SA (CES), whose original sponsor is Nykomb Synergetics of Sweden. Late in 2012, AFG, an Investment Bank of Morocco joined as equity partner. In October 2015, Quantum Power acquired the equity interest of AFG and became joint equity sponsor with Nykomb. The construction of the power plant has been contracted out to two Indian companies: Bharat Heavy Electricals Limited (BHEL) and Promac Engineering Industries Ltd (Promac).

6. The new Project Sponsor, Quantum Power, took necessary measures to relaunch the construction of the power plant, and to secure additional equity needed to complete the Project and start commercial operation. Construction resumed in January 2016 and the Project is now back on track, with a commercial operation date scheduled for the last quarter of 2017.

7. Senegal faces the dual challenges of growing demand for electricity and a desire to reduce diesel-based power generation. Accordingly, the GoS has emphasized that Coal-fired electricity
generation is strategically important to the country, as efficient and affordable baseload to address these challenges.

PROJECT DESCRIPTION

8. The project aims at developing an Independent Power Producer (IPP) producing at least 925GWh of electricity per year. The power will be delivered to the national interconnected grid system of SENELEC, Senegal’s only public electricity utility company.

9. The scope of the project includes the development, design, procurement, construction, operation and maintenance of a 125MW coal-fired power plant on a 22 ha site located 35 km south of Dakar, in Sendou (Bargny). In addition, the Project Company will develop the required infrastructure to handle, store, treat and transport the coal from Dakar port to the site.

ENVIRONMENTAL AND SOCIAL SUSTAINABILITY

10. The Project has been rated as Category 1 in accordance with the Bank’s 2001 Environmental and Social Assessment Procedures (ESAP). Potential environmental impacts for this coal-fired power plant include air emission impacts (SO2, NOx, CO, PM10) on sensitive receptors (e.g. people, domestic animals, birds, wildlife, etc.), impacts of water usage and water cooling on the recipient water body (the ocean) and fisheries, marine organisms, etc., ash disposal (both fly and bottom) etc.

11. The Sendou Power Plant is required to comply with the World Bank’s guidelines for all air emissions, associated with this project. It also met AfDB air emissions requirements in effect at the time of approval. This is justified by the fact that the tariff rate for the sale of electricity agreed between SENELEC and the World Bank is based on the standards of the World Bank. Consequently, the Government of Senegal, by a letter signed by the Minister of the environment, exceptionally, allows SENELEC to implement the guidelines of the World Bank on air pollution standards for strategic reasons, as this will be the first coal-fired power plant constructed in Senegal.

12. The physical, biological and human environment impacts of the Project have been thoroughly assessed. Potential physical impacts include contamination of surface and underground water, alteration of local air quality due to dust and exhaust gas emissions, noise pollution produced by site equipment and disturbance of natural ecosystems and deforestation. Mitigation measures include recovery of used equipment oil and reduction of spillage to a strict minimum, construction of site sanitary facilities, regular maintenance of machinery and vehicles to minimize exhaust gas emissions, raising works contractors’ awareness of the need to limit noise and promotion of practices notably to prevent equipment failures and ensure machinery conformity with required standards. Regarding biological impacts, the possible impacts consist of, among others, water pollution due to evacuation of sanitary wastewater from the plant, thermal pollution of the sea through circulation of hot water from the power plant, alteration of the air quality due to pollutants (NOx, SO2, CO2), and contribution to climate change through GHG emissions.

13. To address specific environmental and social impacts, mitigation measures adopted include collection and treatment of the sanitary wastewater in order to restore its physical and chemical characteristics in line with the Senegalese wastewater standards, construction of an underground discharge pipeline to ensure adequate dispersal of the thermal plume, establishment of a station for the continuous measuring of SO2 emissions and concentrations in the area, monitoring the wind direction and proximity of inhabited areas. The ash is intended to be used by the cement factory
and the local brick manufacturing plant. In view of the proximity to densely urbanized areas (village of Bargny Minam), a health risk assessment was carried out through simulations of the dispersion of air emissions from the chimney of the power plant.

14. The objective of this study was to determine the concentrations averaged over the entire wind rose to determine the health impact on residents.

15. Because the plant is not yet in operation, it was possible in this study to vary certain parameters of the source term in order to maximize the impact of the installation on the air quality. The health risk assessment then carried out on the basis of the source term (chimney height of 100 m) indicates that toxicological reference values (TRV) are not exceeded either independently or when summed up by target organs.

16. Concerning the monitoring of project’s environmental and social aspects, support is provided by an external technical adviser, Parson Brickenhoff, who has been contracted to ensure quality construction of the various components of the project. With regard to the Environment and social aspects of the project, the lenders technical advisor role encompasses among others (i) reviewing the environmental & social management plans produced by the Engineering and Procurement Contractor (EPC) to ensure their adequacy and appropriateness, (ii) ensuring overall compliance of these plans, monitoring reports and other documentation with the environmental and social policies guidelines and standards of the Bank as well as national legislation and regulations, and (iii) assessing the social performance of the project and measures undertaken to minimize social risks and enhance social benefits for the surrounding communities.

17. Details of the Requesters’ complaints and Management’s response and action plan to address the complaints are discussed in the next section.

MANAGEMENT’S RESPONSE TO ISSUES RAISED BY THE REQUESTERS

18. Following the reception of the CRMU’s notice of registration of Request No.: RQ2016/2 against the Sendou Coal-fired Power Project, ORQR, as the Lead Management’s Response Coordinator, organized an internal review of the complaints, in conjunction with OPSD.4 and ONEC.3, in charge of project’s implementation and provision of environmental and social safeguards support, respectively. Together, ORQR, ONEC and OPSD constitute the Management Response Team (MRT), in this case. The Team agreed on the following management’s response to the issues raised and a plan of action on the way forward.

Unviability of Government’s Coal-Power Policy Option

ISSUE STATEMENT #1 — Unviable government policy option to use coal-fired power plant for Senegal as the country does not produce coal and will be obliged to import it from the international market.

19. Management disagrees with the Requesters’ claim of the unviability of government’s policy option to use coal-fired power plant for Senegal, because the country does not produce coal and will be obliged to import it from the international market. During the preparation of the project, the viability of the coal-based power generation has been assessed and was judged to be more practical compared to diesel-based power generation, on several grounds:

20. Firstly, it is worth noting that Senegal, whose power supply for many years has mainly been diesel-based, neither produces oil nor coal. In either case, the country will be obliged to import the power source from the international market, should it choose to do so. The only difference is that coal is
cheaper than diesel and by implication coal-based power generation would be cheaper and deemed more sustainable to meet the growing national energy demand than diesel-based power generation.

21. Secondly, Senegal’s power sector has been facing formidable challenges for a number of years, which has led to the inability of the Société Nationale d’Electricité du Sénégal (SENELEC) to meet peak demand since 2004. This translates into frequent load-shedding with blackouts or brown-outs experienced on a large proportion of days in the year (176 days in 2008). A number of industrial customers generate their own power using more costly diesel generators since they need reliable power supply and their demand has not been estimated. Thus, owing to its affordability, coal-based power generation is perceived to be an appropriate response to overcoming these challenges more effectively than that of diesel-based.

22. Lastly, the operation is expected to enhance long-term economic growth by increasing Senegalese infrastructure capacity and thus support foreign direct investment, job creation, service delivery, and reduced costs of doing business and trade. The main development outcomes are expected to stem from infrastructure development and specifically from the reduction in service interruption and additional capacity to satisfy the demand growth of 7 to 8% per year.

Violation of the National Environmental Code

ISSUE STATEMENT #2: The selection of the project site violates Article L13 of the National Environmental Code, which regulates sites’ selection for similar projects. Of concern, is the fact that the Sendou Power Plant is sited close to an already existing cement factory, located at less than 2 kilometers away and another coal-fired power plant, with larger capacity, is envisioned close to the same site.

23. Management is not in agreement with the Requesters’ claim that the National Environmental Code has been violated in the context of this operation for the following reasons:

24. Article L13 of the National Environmental Code states that facilities classified in environmental Category 1, High-risk operation, should be issued an environmental/operating permit by the Ministry of the Environment under the conditions set out by Decree 2001-282 of 12 April 2001, before construction or commissioning. This authorization is subject to observance of a 500 m buffer zone from dwellings, buildings usually occupied by third parties, habitations, watercourse, water catchment etc.

25. The operating permit was delivered to Compagnie d’Electricité du Sénégal (CES) on May 7, 2010 (see Appendix 1 - Permis d’exploitation). Accordingly, the 22 ha site is surrounded by a 500 meter security zone of about 81 ha protecting the habitations and establishments accessible to the public, in conformity with the environmental code of Senegal. The operating permit was delivered taking into account the existing Cement factory.

26. The construction of the larger capacity coal-fired power plant of 250 MW in Bargny has been called off. Both the GoS & the Korean company, KEPCO, have decided not to go ahead with its construction, contrary to initial plans.

Local Community’s Health at Risk

ISSUE STATEMENT #3 Increased vulnerability of communities to air pollution and potential disruption of livelihoods because of the proximity of the coal power plant to the town’s water supply, public facilities including the elementary school, a health center, a kindergarten, cemetery, and the only fishery product processing site that employs about 1000 women and other seasonal workers.
27. Management differs on the Requesters’ accusation increased local communities’ vulnerability to air pollution and disruption of livelihoods because of the proximity of the power plant to local water supply, public facilities and the fishery processing site. The power plant’s perimeter is located at a distance of at least 500 m from human settlements and other public dwellings. In addition, the project has been designed not to interfere with local fishing activities. To fulfill this obligation, the Project is set out to engage in the following actions:

- **Fishery products processing site**—The area is used for artisanal fish drying, with removable structures in proximity to the power plant’s site. This is done without formal land rights. However, in consultation with the local community, including the mayor of Bargny, the Project Company is providing a custom-built fish drying facility as part of its Corporate Environmental and Social Responsibility (CESR). The new facility will offer the local population much better economic, health and environmental benefits. It will be located outside of the plant exclusion zone, to ensure the safety of the users. The Project Company (CES) is currently launching a feasibility study for the facility and has budgeted approximately USD 50,000 to support its implementation, which will be completed prior to commencing the operation of the Plant.

- **Water intake**—The sea-water cooling system has been designed to avoid carrying small fish by restricting the maximum flow velocity of water intake in conformity with World Bank guidelines. It avoids the ingress of larger species by means of screening and all pipes will be buried to avoid disturbing the sea-floor.

- **Water Discharge**—Environmental considerations are incorporated into the cooling water intake and outfall systems, so as to minimize the impact of the plant on the local marine environment and fishing activities. On the outflow, a weir system will be constructed to minimize the differential between exit water velocity and tidal velocity. The outfall system has been designed to meet World Bank guidelines for the temperature of water discharged (a maximum of 3°C warmer than adjacent ocean temperature at a distance of 100 meters from the discharge point), considerably less than seasonal natural variations in water temperature (17-28°C).

Potential Adverse Impacts on Cultural Heritage and the Nursery for Marine Biodiversity

**ISSUE STATEMENT #4**—Adverse impact of the coal power plant on an historic heritage site where the protected spirit of the village resides and a nursery for the regeneration of marine biodiversity

28. Management disagrees with this claim. On the contrary, the preparation of the ESIA/ESMP report has taken on board cultural heritage issues of concern to the local community and mitigation measures were provided in the report. Further consultations with the same community during implementation revealed the cultural significance for the locals of a baobab tree growing within the project’s site, as it represents the protected spirit of the village. This issue was unknown at the time of project appraisal and Board approval. The project Company is sensitive and values local cultural heritage. It has decided to keep it undisturbed and safe in accordance with the wishes of the local community. Locals do not require access to the baobab tree, they just want it protected, according to discussions held between them and the developer.

29. Regarding the nursery for the regeneration of marine biodiversity, it is important to note that the sea water cooling system has intentionally been designed to avoid entraining small fish. By design, the temperature of the discharged water is expected not to exceed the +3°C norm from the adjacent ocean temperature at a distance of 100 meters from the discharge point, which is considerably less than seasonal natural variations in water temperature (17-28°C).
30. Furthermore, water discharge from the Project cooling system is being assessed, to ensure compliance with the World Bank’s requirements. An expert marine engineering consultancy, Royal Haskoning, has been contracted by the Project Company to design the marine-side of the plant’s cooling system, which includes a requirement to consider environmental parameters in system design, and an expert environmental agency, Fluidyn, has been contracted to review the thermal output in relation to environmental norms. The cooling system design will be tailored to ensure compliance with the analysis performed by Royal Haskoning, Fluidyn, World Bank and Senegalese requirements on thermal water discharge. This is being closely monitored by the Lenders Technical Adviser.

Breach of African Development Bank’s environmental, social and human rights standards

ISSUE STATEMENT #5 — Breach of African Development Bank’s environmental, social and human rights standards since there was no agreement signed with the right-holders of land titles, and no compensation was paid to the large majority of these holders. In addition, no Resettlement Action Plan was prepared to mitigate the project’s negative social impacts.

31. Management disagrees with this claim and would like to assert that from the time the ESIA was conducted until its completion, the project’s site was free of any type of occupancy, therefore no resettlement action plan was prepared by the project, since no PAPs existed that needed to be displaced or compensated. The land belonged to SENELEC, who acquired it through a regular transaction.

32. Building on the results of the 2009 ESIA and on feedback from an independent consultant contracted to highlight significant issues raised in the ESIA, an Environmental and Social Management Plan (“ESMP”) was prepared to mitigate any potential negative effect of the Project on the local environment. The ESMP provides a framework for the implementation and monitoring of the environmental and social management plan of the Project and is being regularly assessed by the Lenders Technical Adviser. (See Appendix 7: ESMP). The following provides a historical perspective on the land transfer of the project’s site from the early days of the country independence to date:

- The Government acquired the Site and the surrounding area in 1964. Around the year 2000, the Government designated about 5,800 ha of land including the Sendou Site as an industrial zone. On 26 November 2008, the Government of Senegal dedicated the Project Site to the activities of SENELEC (See Appendix 2: Attestation d’enregistrement délivrée par la Direction Générale des impôts et des domaines).
- Information disclosure: The process of registering the land in the name of the state was launched and as required by Senegalese law, the prospective land transfer was advertised in French, an official and widely spoken language in Senegal, in the official journal “Journal Officiel de la Republique du Sénégal”, for six months.
- On September 3, 2009, the President of the Republic of Senegal signed Decree no 2009-849 of 3 September 2009, declaring the ownership of the land be transferred to SENELEC. 54 ha were assigned to SENELEC, a DUP was issued (Déclaration d’utilité Publique) (See Appendix 3: Decree 2009/849- the article 4). The Site was subsequently sold to Compagnie d’Electricité du Sénégal (“CES” - the Project Company). The land purchase deed, approved on 14 October 2009, specifies that the sole use of the Site will be for constructing a power plant (See Appendix 4: Land purchase).
Imminent health risks from air pollution due to the lack of cumulative impacts assessment of the combined effects of emissions from three plants in the same location

ISSUE STATEMENT #6 — Imminent health risks from air pollution due to emissions from Sendou Power Plant, the cement factory and another coal-fired power plant with larger capacity of 250 MW which is scheduled to be built close to the same site. There was no cumulative impact assessment study prepared to measure the effects of emissions from these three plants.

33. Management believes that the above claims are factually incorrect. As mentioned in point 2 above, both GoS and KEPCO, have renounced plans for the construction of a larger coal-fired power plant of 250MW close to the Sendou power station.

Air Pollution:

34. The ESIA specifies clear environmental standards and threshold limits as regards (i) air quality, (ii) noise and (iii) rejection of wastewater. Accordingly, prevention against the risks of air or water pollution is subject to a framework that regulates the discharge of wastewater and air emissions. The Senegalese standard NS 05-062 on the quality of air emissions sets limits for emissions as well as concentration limits of pollutants in ambient air. These limits are defined in the ESIA (See Appendix 8 : Lettre N°00053/MEPNBRLA/CT.CM adressée au Ministre d’état, Ministre en charge de l’énergie). Accordingly, the Project is designed to minimize air pollution using the following procedures:
   1. Coal with very low Sulphur content
   2. A more efficient burner
   3. A NOx re-burner
   4. An electrostatic precipitator to remove small particles from emissions
   5. A smokestack over 150 meters high to ensure the wide diffusion (rather than local concentration) of any remaining particulates.

35. Compliance with these environmental standards is being assessed by the Lenders’ Technical Adviser during the construction phase. Compliance will also be rigorously assessed and reported on regularly during the operational phase of the Project.

Cumulative impact assessment study:

36. The Environmental Social Impact Assessment (ESIA) includes a Cumulative Impact assessment, which takes into account the cement factory (SOCOCIM) located about 2 km from the power plant. To bring the Project analysis fully up-to-date, the project company has commissioned a review and subsequent revision of the air emissions model to demonstrate compliance with the World Bank and Senegalese legislation applicable to the Project. Management recognizes that, the original model did not consider the final technology selection for the plant, which promises to be more efficient and less polluting than that which was initially envisaged; nor did it take into consideration the low-Sulphur coal content now preferred under the project. The updated model scope has been reviewed by the Lenders’ Technical Adviser, and will consider the impact of the Project in isolation as well as in its local setting. The results will be available by the last quarter of 2016.

Increased Vulnerability of the local Community
ISSUE STATEMENT #7: Increased vulnerability of the community to the consequences of coastal erosion.

37. It has come to Management’s attention that the coastal villages of Minam and Bargny experience high levels of coastal erosion, which in the case of Minam, has required relocation of the village on a number of occasions historically. Although the construction and operational phases of the power plant would not cause nor have direct effects on the natural coastal erosion. Relating the project to the issue at hand may arise in part from the possibility that local populations that have settled close to the seashore would, because of the project’s siting, no longer have latitude to move upland from the eroded sides.

38. Allegedly, prior to transferring the ownership title of the project’s site to CES, relocation plans had been initiated for villagers who lived close to the seashore, by the former mayor, due to concerns over encroachment of the seawater into occupied land. It is also alleged that 600 – 1,000 plots of land were committed, some of which are located within the project’s site and many more are located within the 500m buffer zone. No evidence is available to date to support this statement. Moreover, it appears that there is no documented agreement between the current Mayor, Bargny and Minam Villages, CES, SENELEC and other government officials on the validity of the allocated parcels of land.

39. Following the resumption of the Project in January 2016, the New Project Management team initiated a dialogue with SENELEC and reiterated its support for SENELEC and the Government of Senegal to effectively address local issues in relation to the Land use. Although CES owns the land, it is the responsibility of the GoS to formally deal with the population regarding the Site. CES has committed to providing such indirect assistance as appropriate.

40. The Environmental and Social Impact Assessment states that in the event that a resettlement of populations is required, a resettlement action plan would be prepared and cleared by the relevant authorities. Furthermore, in the event that the project would cause the displacement of some populations, the GoS undertakes to compensate such populations at the level of the injury suffered by the latter in accordance with the provisions of the comfort letter N° 005517/MEF provided to the lenders on 24 May 2013 (see Appendix 9: letter of comfort).

41. Management recognizes that there is an issue of vulnerability of members of the local community, with regards to encroachment of coastal erosion into their settlements. It takes strong interest in the issue and feels it has the moral obligation to endeavor seeking, appropriate and timely solutions, to resolve this problem, in conjunction with GoS, SENELEC, CES and other relevant stakeholders. Management is of the view that it is in the interest of the project to establish and maintain a good rapport with its surrounding communities throughout implementation and beyond.

Project-Affected People

ISSUE STATEMENT #8: Inadequate Consultation with Project-Affected People (PAPs)

42. Management strongly disagrees with the Requesters’ assertion that the project inadequately engaged with the PAPs. From inception to date, public consultation with and disclosure of information to the project’s stakeholder groups, including the PAPs followed a broad-based approach. From a socioeconomic point of view, public participation during the preparation of the ESIA constituted an important element of the Project development and has been a key foundation of the Project development from the outset.

43. An interactive method was adopted for conducting the ESIA, whose primary objective was to solicit and include the views, expectations and concerns of the different stakeholder and interest groups.
in the decision making process, particularly those residing in the project intervention areas. For the purposes of the ESIA, group interviews were carried out and discussions were held with all the stakeholders in the project. By undertaking a public hearing, the project developers also allowed the airing of the views of local authorities together with those of the local population. The process also benefitted from a series of meetings with local authorities, the PAPs of the municipality of Bargny, Yène, Sendou and Minam. Annex 10 provides a list of participants (Listes de Présence Bargny 1&2) to these meetings.

44. In August 2009, an environmental summary report was posted on the Bank’s website, as well as in-country for a period of 60 days, as per the requirements of Bank’s policies and procedures for category 1 projects. Until the filing of this Request, no objections were ever reported.

CONCLUSIONS

45. Management disagrees with the Requesters’ claim of the unviability of government’s policy option to use coal-fired power plant for Senegal, because the country does not produce coal and will be obliged to import it from the international market. During the preparation of the project, the viability of the coal-based power generation has been assessed and was judged to be more practical compared to diesel-based power generation, on several grounds:

46. Firstly, Senegal, whose power supply for many years has mainly been diesel-based, neither produces oil nor coal. In either case, the country will be obliged to import the power source from the international market, should it choose to do so. The only difference is that coal is cheaper than diesel and by implication coal-based power generation would be cheaper and deemed more sustainable to meet the growing national energy demand than diesel-based power generation.

47. Secondly, Senegal’s power sector has been facing formidable challenges for a number of years, which has led to the inability of the Société Nationale d’Electricité du Sénégal (SENELEC) to meet peak demand since 2004. This translates into frequent load-shedding with blackouts or brown-outs experienced on a large proportion of days in the year (176 days in 2008). Thus, owing to its affordability, coal-based power generation is perceived to be a more appropriate and effective response to overcoming these challenges than that of diesel-based.

48. Lastly, the operation is expected to enhance long-term economic growth by increasing Senegalese infrastructure capacity and thus support foreign direct investment, job creation, service delivery, and reduced costs of doing business and trade. The main development outcomes are expected to stem from infrastructure development and specifically from the reduction in service interruption and additional capacity to satisfy the demand growth of 7 to 8% per year.

49. Management disagrees with the Requesters’ claim that the National Environmental Code has been violated in the context of this operation. Indeed, Article L13 of the National Environmental Code states that facilities classified in environmental Category 1, High-risk operation, should be issued an environmental/operating permit by the Ministry of the Environment under the conditions set out by Decree 2001-282 of 12 April 2001, before construction or commissioning. In addition, this authorization is subject to observance of a 500 m buffer zone from dwellings, buildings usually occupied by third parties, habitations, watercourse, water catchment etc. The operating permit was delivered to Compagnie d’Electricité du Sénégal (CES) on May 7, 2010 (see Appendix 1 - Permis d’exploitation). Accordingly, the 29 ha site is surrounded by a 500 meter security zone of about 81 ha protecting the habitations and establishments accessible to the public, in conformity with the environmental code of Senegal. The operating permit was delivered taking into account the existing Cement factory.
50. The construction of the larger capacity coal-fired power plant of 250 MW in Bargny has been called off. Both the GoS & the Korean company, KEPCO, have decided not to go ahead with its construction, contrary to initial plans.

51. Management differs on the Requesters’ accusation increased local communities’ vulnerability to air pollution and disruption of livelihoods because of the proximity of the power plant to local water supply, public facilities and the fishery processing site. The power plant’s perimeter is located at a distance of at least 500 m from human settlements and other public dwellings. In addition, the project has been designed not to interfere with local fishing activities. To fulfill this obligation, the Project is set out to engage in the following:

52. Concerning the fishery products processing site, it should be noted that the area is used for artisanal fish drying, with removable structures in proximity to the power plant’s site. This is done without formal land rights. However, in consultation with the local community, including the mayor of Bargny, the Project Company is providing a custom-built fish drying facility, as part of its Corporate Environmental and Social Responsibility (CESR). The Project Company (CESR) is currently launching a feasibility study for the facility and has budgeted approximately USD 50,000 to support its implementation, which will be completed prior to commencing the operation of the Plant.

53. With regards to the water intake, it is important to note that the sea-water cooling system has been designed to avoid carrying small fish by restricting the maximum flow velocity in conformity with World Bank guidelines. It avoids the ingress of larger species by means of screening, and all pipes will be buried to avoid disturbing the sea-floor. Regarding the water discharge, it should be noted that environmental considerations are incorporated into the cooling water intake and outfall systems, so as to minimize the impact of the plant on the local marine environment and fishing activities. On the outflow, a weir system will be constructed to minimize the differential between exit water velocity and tidal velocity. The outfall system has been designed to meet World Bank guidelines for the temperature of water discharged (a maximum of 3°C warmer than adjacent ocean temperature at a distance of 100 meters from the discharge point), considerably less than seasonal natural variations in water temperature (17-28°C).

54. Management disagrees with the claim of potential adverse impacts on cultural heritage and the nursery for marine biodiversity. On the contrary, the preparation of the ESIA/ESMP report has taken on board cultural heritage issues of concern to the local community and mitigation measures were provided in the report. Further consultations with the same community during implementation revealed the cultural significance for the locals of a baobab tree growing within the project’s site, as it represents the protected spirit of the village. This issue was unknown at the time of project appraisal and Board approval. The project Company has decided to keep it undisturbed and safe in accordance with the wishes of the local community. Locals do not require access to the baobab tree, they just want it protected, according to discussions held between them and the developer.

55. Regarding the nursery for the regeneration of marine biodiversity, it is important to note that the sea water cooling system has intentionally been designed to avoid entraining small fish. By design, the temperature of the discharged water is expected not to exceed the +3°C norm from the adjacent ocean temperature at a distance of 100 meters from the discharge point, which is considerably less than seasonal natural variations in water temperature (17-28°C). Furthermore, water discharge from the Project cooling system is being assessed, to ensure compliance with the World Bank’s requirements. An expert marine engineering consultancy, Royal Haskoning, has been contracted by the Project Company to design the marine-side of the plant’s cooling system, which includes a requirement to consider environmental parameters in system design, and an expert environmental agency, Fluidyn, has been contracted to review the thermal output in relation to environmental
norms. The cooling system design will be tailored to ensure compliance with the analysis performed by Royal Haskoning, Fluidyn, World Bank and Senegalese requirements on thermal water discharge. This is being closely monitored by the Lenders Technical Adviser.

56. Management refutes the claim that the project has breached Bank’s environmental, social and human rights standards and asserts that, from the time the ESIA was conducted until its completion, the project’s site was free of any type of occupancy. Therefore, no resettlement action plan was prepared by the project, since no PAPs existed that needed to be displaced or compensated. The land belonged to SENELEC, who acquired it through a regular transaction. Moreover, building on the results of the 2009 ESIA and on feedback from an independent consultant contracted to highlight significant issues raised in the ESIA, an Environmental and Social Management Plan (“ESMP”) was prepared to mitigate any potential negative effect of the Project on the local environment. The ESMP provides a framework for the implementation and monitoring of the environmental and social management plan of the Project and is being regularly assessed by the Lenders Technical Adviser. (See Appendix 7: ESMP).

57. Management rejects the claims of imminent health risks from air pollution to local communities for lack of cumulative impacts assessment of the combined effects of emissions from three plants in the same location to be factually incorrect. As mentioned above, both GoS and KEPCO, have renounced plans for the construction of a larger coal-fired power plant of 250MW close to the Sendou power station.

58. The ESIA specifies clear environmental standards and threshold limits as regards (i) air quality, (ii) noise and (iii) rejection of wastewater. Accordingly, prevention against the risks of air or water pollution is subject to a framework that regulates the discharge of wastewater and air emissions. The Senegalese standard NS 05-062 on the quality of air emissions sets limits for emissions as well as concentration limits of pollutants in ambient air. These limits are defined in the ESIA (See Appendix 8 : Lettre N°00053/MEPNBRLA/CT.CM adressée au Ministre d’état, Ministre en charge de l’énergie). Accordingly, compliance with new environmental standards (i.e., Coal with very low Sulphur content; a more efficient burner; A smokestack over 150 meters high to ensure the wide diffusion (rather than local concentration) of any remaining particulates etc.), to minimize air pollution, is being assessed by the Lenders’ Technical Adviser during the construction phase. Compliance will also be rigorously assessed and reported on regularly during the operational phase of the Project.

59. The ESIA does include a Cumulative Impact assessment, which takes into account the cement factory (SOCOCIM) located about 2 km from the power plant. To bring the Project analysis fully up-to-date, the project company has commissioned a review and subsequent revision of the air emissions model to demonstrate compliance with the World Bank and Senegalese legislation applicable to the Project. Management acknowledges that, the original model did not consider the final technology selection for the plant, which promises to be more efficient and less polluting than that which was initially envisaged; nor did it take into consideration the low-Sulphur coal content now preferred under the project. The updated model scope has been reviewed by the Lenders’ Technical Adviser, and will consider the impact of the Project in isolation as well as in its local setting. The results will be available by the last quarter of 2016.

60. Although the construction and operational phases of the power plant would not cause nor have direct effects on the natural coastal erosion, it has come to Management’s attention that the coastal villages of Minam and Bargny experience high levels of coastal erosion, which in the case of Minam, has required relocation of the village on a number of occasions historically. Relating the project to the issue at hand may arise in part from the possibility that local populations that have settled close to the seashore would, because of the project’s siting, no longer have latitude to move
upland from the eroded sides. Allegedly, prior to transferring the ownership title of the project’s site to CES, relocation plans had been initiated for villagers who lived close to the seashore, by the former mayor, due to concerns over encroachment of the seawater into occupied land. It is also alleged that 600 – 1,000 plots of land were committed, some of which are located within the project’s site and many more are located within the 500m buffer zone. No evidence is available to date to support this statement. Moreover, it appears that there is no documented agreement between the current Mayor, Bargny and Minam Villages, CES, SENELEC and other government officials on the validity of the allocated parcels of land.

61. Following the resumption of the Project in January 2016, the New Project Management team initiated a dialogue with SENELEC and reiterated its support for SENELEC and the Government of Senegal to effectively address local issues in relation to the Land use. Although CES owns the land, it is the responsibility of the GoS to formally deal with the population regarding the Site. CES has committed to providing such indirect assistance as appropriate.

62. Management recognizes that there is an issue of vulnerability of members of the local community, with regards to encroachment of coastal erosion into their settlements. It takes strong interest in the issue and feels it has the moral obligation to endeavor seeking, appropriate and timely solutions, to resolve this problem, in conjunction with GoS, SENELEC, CES and other relevant stakeholders. Management is of the view that it is in the interest of the project to establish and maintain a good rapport with its surrounding communities throughout implementation and beyond.

63. Management strongly disagrees with the Requesters’ assertion that the project inadequately engaged with the PAPs. On the contrary, from inception to date, public consultation with and disclosure of information to the project’s stakeholder groups, including the PAPs, followed a broad-based approach. From a socioeconomic point of view, public participation during the preparation of the EIA constituted an important element of the Project development and has been a key foundation of the project development from the outset.

64. An interactive method was adopted for conducting the ESIA, whose primary objective was to solicit and include the views, expectations and concerns of the different stakeholder and interest groups in the decision making process, particularly those residing in the project intervention areas. For the purposes of the ESIA, group interviews were carried out and discussions were held with all the stakeholders in the project. By undertaking a public hearing, the project developers also allowed the airing of the views of local authorities together with those of the local population. The process also benefitted from a series of meetings with local authorities, the PAPs of the municipality of Bargny, Yène, Sendou and Minam. Annex 10 provides a list of participants (Listes de Présence Bargny 1&2) to these meetings.

65. In August 2009, an environmental summary report was posted on the Bank’s website, as well as in-country for a period of 60 days, as per the requirements of Bank’s policies and procedures for category 1 projects. Until the filing of this Request, no objections were ever reported on the project.

FURTHER ACTION

66. Management recognizes that there is an issue of vulnerability of members of the local community, with regards to encroachment of coastal erosion into their settlements. It takes strong interest in the issue and feels it has the moral obligation to endeavor seeking, appropriate and timely solutions, to resolve this problem, in conjunction with GoS, SENELEC, CES and other relevant stakeholders. Management is of the view that it is in the interest of the project to establish and maintain a good rapport with its surrounding communities throughout implementation and beyond.
Conclusion

67. A press release was issued on 21 September 2016 after a two-day meeting attended by representatives of CES/ Badara, SENELEC, GoS and communities concerned, to discuss land issues. In this press release, the Mayor of Bargny has asserted that the authorities had undertaken to compensate all those affected by the project, including the landowners. According to his statement, "the decision is already made, and these people will be compensated."