



29 April 2015

Bargny, Senegal

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Swedish Partnership for Global Responsibility
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Dear Sir/Madam,

It is with great concern that **Takkom Jerry** and **Lumiere Synergie Developpement (LSD)** (Annex 1) are writing to you about the **Sendou coal power plant project** that is currently being built by the Swedish company **Nykomb Synergetics AB in Senegal**.

As we will detail below, we believe that Nykomb has not complied with Chapters I (Concepts and Principles), II (General Policies), IV (Human Rights), and VI (Environment) of the **OECD Guidelines for Multinational Enterprises** (hereinafter “the Guidelines”). We thus request the good offices of the Swedish NCP to help resolve our dispute with Nykomb by facilitating a dialogue aimed at bringing Nykomb into compliance with the Guidelines. To supplement the allegations and requests outlined below, the following annexes are enclosed along with our complaint:

1. Annex 1: Annex1-Details of the parties involved in the specific instance
2. Annex 2: Letter from Takkom Jerry to CES (15/12/2103) and response from CES (6/2/2014)
3. Annex 3: LSD report on Sendou Coal power plant
4. Annex 4: Sendou ESIA -French-Full report
5. Annex 5: Sendou ESIA-English-Executive summary report

Background and context

As you may know, Nykomb Synergetics AB Group¹ (hereinafter “Nykomb”) is a Swedish company based in Stockholm that offers process and power systems, engineering consultancy, and project development services. The company has special expertise in the conversion of fossil, biomass, and waste fuels into power and chemicals, using gas and steam turbine configurations.

In 2008², Nykomb won a bid on behalf of a consortium of companies³ to develop a 125 MW coal-fired power plant commissioned by the National Electricity Board (SENELEC).

¹ <http://www.managenergy.net/actors/481>

² <http://www.pfie.com/nykomb-a-foot-in-the-door/21108244.fullarticle>

³ Nykomb Synergetics led a bid in the tender launched by Senegalese government in 2005/2008 for the Sendou coal power plant project on behalf of Compagnie d'Electricite du Senegal SA (CES). CES is a consortium that was incorporated to develop and operate the Sendou power station. The consortium was led by Nykomb Synergetics

The project entails an investment of CFAF 118 billion and using coal as the basic fuel, through a "Build, Own, Operate (BOO)" arrangement. SENELEC has committed to purchase 925 GWh per year from the power plant for a period of 25 years.

The so-called '*Sendou*' power plant is located in Bargny village, 32 km from the city of Dakar. This site of 29 ha is between the traditional villages of Bargny and Minam, near a fishing zone, a workplace of about more than 1,000 women and some residential houses. But in 1995⁴, this exact site was given by the Municipality of Bargny to approximately 1,600 people from communities affected by costal erosion to relocate their families (Annex3 LSD report on Sendou coal power plant, and see 'annexes 4 and 5).

Against this background, the Sendou power plant **Environmental and Social Impact Assessment** ("ESIA", Annex 4 and 5) was done in March 2009, and in November 2009, the **African Development Bank (AFDB)** approved a senior loan of up to Euros 55 million for Nykomb to build the Sendou Power Project, a debt with a maturity of 14 years.

However, due to a lack of additional funds, the project was delayed for four years. In November 2013⁵, full funding was finally secured, and implementation of the project officially began in January 2014 amid severe opposition of local communities⁶.

Since the **public consultation** held on Saturday 28th February 2009 in Bargny, we as local communities have clearly expressed our opposition to the project, with our former Mayor in the frontline (Annex3: LSD report on Sendou coal power plant, and see 'annexe' 4). Because we care about our health, our environment and livelihood, we asked to the promoters to relocate it in another place, namely the MIFERSO site.

Non-compliance with the OECD Guidelines

Within this context, we as affected communities believe that Nykomb has not complied with OECD Guidelines provisions related to both environmental as well as social/human rights issues.

With regard to environmental issues:

First of all, the Senegalese environmental law (loi n°2001-01 du 15 Janvier 2001 portant Code de l'environnement⁷, article 13) requires that projects such as Sendou respect a minimum distance of 500 meters between a classified installation of category 1 and housing. We observe that the Sendou power plant terrain is located at very close

Development AB and it consists of Vatten Power Consult, Maytas, BHEL, BMCE Bank, Standard Bank of South Africa and Comptoir Balland-Brugneaux.

⁴ The Municipality carried out 2 housing estates: **Minam 1** first in 1994 and the secondly, **Minam 2** in 2007.

⁵ http://www.aps.sn/articles.php?id_article=120721

⁶ <http://www.echos2rues.com/bargny-manifestation-des-populations-contre-la-centrale-charbon/>

⁷ <http://www.gouv.sn/Code-de-l-Environnement.html>

proximity to several inhabited structures. We are unable to verify if the exact distance between the power plant terrain and the inhabited structures is greater than 500 meters. We therefore request that Nykomb provide evidence that the distance is greater than 500 meters and that it is therefore in compliance with this provision of Senegalese environmental law. If Nykomb cannot provide evidence to this effect, it would represent non-compliance¹ with the OECD Guidelines Chapter I, § 2, which clarifies that, “Obeying domestic laws is the first obligation of enterprises.”

Beyond this, the **ESIA** (Annex 5 and Annex 4, p.12-14) described a range of **potential** negative impacts the developers were to have addressed prior to or during implementation of the project:

1. *Thermal pollution of the sea (See Annex 4, p. 119) through release of hot water and water pollution due to evacuation of wastewater from the plant/ sweep up of small fish and mollusk resulting from the operation of the sea-water intake for the cooling system:* The fishing zone is located in front of the project site and local communities depend on sea resources for their livelihood. We are not aware of any measures Nykomb has taken to prevent this impact;
2. *Alteration of the air quality due to hazardous pollutants (NO_x, SO₂, CO) and dust emissions during the generation of electric energy and impacts on health (See Annex 4, pp.142-143, 165-169 and 185):* Communities have the right to a clean, safe and healthy environment. But they are not aware of health impact mitigation measures that the project will implement to prevent adverse impacts on the respiratory health of the communities neighboring the coal power plant;
3. *Contribution to climate change through greenhouse gas emissions (CO₂ in particular):* The plant’s annual consumption of an average of 400,000 tonnes of coal will entail a drastic increase in GHG emissions. The area is already vulnerable to coastal erosion from climate change, but this issue is not well analyzed or addressed in the ESIA (See Annex 4 pp.150-151).

Furthermore, with regards to the delay in implementing the project (five years passed between the publication of the ESIA and the implementation of the project), we think that the ESIA’s data should be updated to include new developments - including an assessment of the cumulative impacts of the Sendou plant, the cement factory **SOCOCIM**, and an additional 250 MW coal power plant now being planned by the Korean company Kepco in the same area. We regard the 2009 ESIA as outdated and no longer relevant unless it is updated.

Lastly, **Nykomb** has failed to demonstrate that it has developed and implemented an **Environmental Management Plan** which is called for by the **ESIA** (Annex 5, pp.15-21 and Annex 4, pp. 243-255) and is expected under the OECD Guidelines.

We believe that all of this taken together reveals that Nykomb has not complied with the following provision of the OECD Guidelines:

- Chapter II, §10, which states that enterprises should, “Carry out risk-based due diligence, for example by incorporating it into their enterprise risk management systems, to identify, prevent and mitigate actual and potential adverse impacts as described in paragraphs 11 and 12, and account for how these impacts are addressed.”
- Chapter II, §11, which states that enterprises should, “Avoid causing or contributing to adverse impacts on matters covered by the Guidelines, through their own activities, and address such impacts when they occur.”
- Chapter VI, §1a, §1b, and §1c. These provisions clarify that enterprises should “Establish and maintain a system of environmental management appropriate to the enterprise, including: a) collection and evaluation of adequate and timely information regarding the environmental, health, and safety impacts of their activities; b) establishment of measurable objectives and, where appropriate, targets for improved environmental performance and resource utilisation, including periodically reviewing the continuing relevance of these objectives; where appropriate, targets should be consistent with relevant national policies and international environmental commitments; and c) regular monitoring and verification of progress toward environmental, health, and safety objectives or targets.”
- Chapter VI, §2a, which states that enterprises should “provide the public and workers with adequate, measureable and verifiable (where applicable) and timely information on the potential environment, health and safety impacts of the activities of the enterprise.”
- Chapter VI, §2b, which states that enterprises should “engage in adequate and timely communication and consultation with the communities directly affected by the environmental, health and safety policies of the enterprise and by their implementation.”
- Chapter VI, §3, which states that enterprises should, “Assess, and address in decision-making, the foreseeable environmental, health, and safety-related impacts associated with the processes, goods and services of the enterprise over their full life cycle with a view to avoiding or, when unavoidable, mitigating them. Where these proposed activities may have significant environmental, health, or safety impacts, and where they are subject to a decision of a competent authority, prepare an appropriate environmental impact assessment.”

With regard to social and human rights issues:

To begin with, Nykomb has not engaged meaningfully with local communities to allow opportunities for their views and interests to be taken into account in decision making. Adequate and timely information with regard to the negative impacts and mitigation measures has not been provided to affected communities. This represents a failure to comply with OECD Guidelines Chapter II, §14, which states that enterprises should “Engage with relevant stakeholders in order to provide meaningful opportunities for

their views to be taken into account in relation to planning and decision making for projects or other activities that may significantly impact local communities.”

Second, the project will directly affect the human rights of more than 1,000 fisherwomen (Khlecom), who will lose their means of livelihood because the site where they fish will be made off limits to them. The ESIA identified this impact (*See Annex 4, pp. 177-179*), but Nykomb has not taken measures to avoid the impact.

Third, community members who have already been impacted by the project and resettled have not been compensated. The ESIA clearly identified the resettlement as an impact (*See Annex 4, pp. 177 -179*), which is specifically related to the requisition of 1,433 parcels of land belonging to local communities. That land was given to families affected by coastal erosion in 1995 (Annex 3 LSD report on Sendou coal power plant, and see ‘Annexes’ 3 and 5), which progresses at about one to three meters per year in Bargny. To date, however, only 10 individuals have been compensated for the loss of buildings (Annex 3: LSD report on Sendou coal power plant and see ‘annexe’6) and no compensation at all has been provided for the loss of land.

Fourth, the project will block access to an elementary school and a number of sites that are sacred to the community (namely, a cemetery and two cultural heritage sites) (*See Annex 4, p. 185*).

We believe that the second, third, and fourth points explained above demonstrate Nykom’s failure to comply with OECD Guidelines Chapter IV, §2, which states that enterprises should “avoid causing or contributing to adverse human rights impacts and address such impacts when they occur,” as well as Chapter IV, §5, which clarifies that enterprises should “Carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts.”

Previous contact between the complainants and the company

Takkom Jerry has contacted CES whose acting on behalf of Nykomb on the 15, December 2013 (*See Annex 2*)⁸ raising community concerns about failure to conduct appropriate human rights and environmental due diligence, and the social and environmental impacts of the project, particularly the impacts on the fisherwomen working in the vicinity of the site. CES did not provide a meaningful reply, but instead simply insisted that the project complies with the standards of the World Bank and the site has been bought legally by them (*See Annex 2*)⁹.

⁸ Takkom Jerry has contacted CES (Mohamed Seguire, Badara Diop) several times by mail and phone. Takkom Jerry also reached out by phone to Mr. Louis Claude Norland SUZOR, CES General Manager, and Nykomb in Sweden.

⁹ Mohamed Seguire replied on behalf of CES in a letter to Takkom Jerry on the 6 February 2014.

Following this and absent any real attempt by Nykomb or the other project developers to address our concerns, Takkom Jerry got in touch with its local partners LSD¹⁰, an OECD Watch member, who conducted participatory research on the Sendou project in September / October 2014 (See Annex 3). The report was sent to all stakeholders, including the project developers, in October 2014. To date there has not been any formal reaction or response from any of the project developers. With no office in Senegal, it has been difficult to get in touch with Nykomb.

Requests to the Swedish NCP and to Nykomb

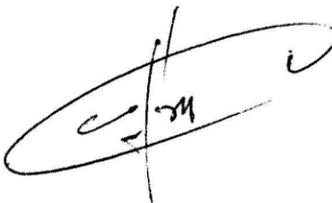
Given that our repeated attempts to constructively engage the project developers have proven unsuccessful, we are now turning to you as the Swedish NCP and requesting that you use your good offices to bring our concerns to Nykomb and facilitate a dialogue aimed at bringing Nykomb's behavior into line with the OECD Guidelines. We are fully committed to engaging in this process in good faith with the aim of reaching a mutually acceptable solution. However, should a mediated solution prove not to be possible, we expect that the NCP will thoroughly examine the facts of the case and make a determination as to whether Nykom's behaviour has or has not been in line with the abovementioned provisions of the OECD Guidelines. We then expect the NCP to issue a public statement stating the facts of the case, its determination as to whether Nykomb has complied with the Guidelines, and its recommendations to Nykomb as to how the company can improve its implementation of and compliance with the Guidelines.

Our ultimate request to Nykomb is that it conduct its activities in Senegal in line with the OECD Guidelines. Given the scale and severity of the potential adverse impacts of the project as currently planned, we believe that abiding by the OECD Guidelines provisions to avoid adverse impacts will in this case imply that Nykomb relocate the power plant.

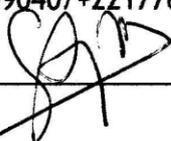
Please be assured that we stand ready to do whatever we can to assist the NCP in its attempt to facilitate a resolution to this case and ensure that Nykomb abide by the OECD Guidelines and respect our rights.

Yours sincerely,

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¹⁰ Lumiere Synergie Développement (LSD) has worked on issues of corporate accountability for the past 10 years and is a partner of Takkom Jerry. As an OECD Watch member, LSD provides advice to local communities of Barènv