

Monitoring Report

of the
Independent Complaints Mechanism of FMO

for the
Sendou I Coal Power Plant
Bargny, Senegal

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ABBREVIATIONS

AfDB	African Development Bank
BOAD	West African Development Bank
CBAO	Compagnie Bancaire de l'Afrique de Occidentale
CES	Compagnie d'Electrite de Senegal
ESIA	Environmental and Social Impact Assessment
FMO	De Nederlandse Financierings-maatschappij voor Ontwikkelingslanden
ICM	Independent Complaints Mechanism
IEP	Independent Expert Panel
IFC PS	International Finance Corperation Performance Standards
OESMP	Operational Environmental And Social Management Plan
SENELEC	Societe Nationale d'Electricite du Senegal
WSP	WSP Parsons Brinkhoff (Lenders Technical Advisor)

I. INTRODUCTION

The Sendou Coal-Fired Power Plant Projects is a 125 MW coal power plant located 35 km from Dakar in Sendou, Senegal. The project is co-financed by the FMO, the African Development Bank (AfDB), the West-African Development Bank (BOAD), and the Banking Company of West Africa (CBAO). Two complaints were received by the Independent Complaint Mechanism (ICM) on the project, both of which were declared admissible on 18 August 2016. The ICM issued a Compliance Review Report on 12 October 2017, which is posted on the ICM website.¹ A Management Response to the report was issued in November 2017 and is also posted on the ICM website.² This is the first monitoring report of the ICM Panel. According to para. 3.2.22 of the FMO ICM policy *“in cases where material non-compliances are identified, the ICM will monitor the situation until actions taken by FMO assure the ICM that FMO is addressing the material non-compliance(s).”* This monitoring report is based on document review, interviews with FMO staff involved in project supervision, and interviews with selected representatives of complainants.

Project Situation. Based on information received from FMO, construction of the Sendou Power Plant was largely completed in July 2018. However, technical deficiencies were identified which had a negative impact on the operational efficiency of the plant. CES has commenced several technical reviews to identify the extent of the corrective works needed and to assess the costs. FMO informed the Panel that additional significant investments are needed to fund technical corrective works at the plant. Lenders, CES and other relevant partners are in discussions on how to structure the funding of these additional investments. The plant has not been operational since end of July 2019, when some remedial work has been carried out. At present, it is not clear if and when the plant will re-start, as this is dependent on reaching agreement on the financial restructuring. The complainants reported two severe spills of water into the area where fish drying women are active. Supposedly, these spills were extensive and prohibited the fish drying activities until water was adequately removed. CES acknowledged that the spills resulted from an overflow of water in the seawater basin which is used for cooling of the plant.

II. Non-compliance Issues and Status of Remedial Actions

The ICM compliance review report noted several non-compliances with FMO environmental and social safeguard policies. These are: (i) impacts on drinking water; (ii) marine impact assessment; (iii) coal transport impacts; (iv) air quality; (v) economic displacement impacts on fish-drying women; (vi) land title issues. The sections below review the status of these issues and assess whether remedial actions taken have brought the project into compliance with FMO policies. This monitoring report strictly focuses on non-compliance issues identified in the ICM Compliance Review Report. Complainants have also filed complaints with the Internal Review Mechanism of the African Development Bank. This monitoring report does not address issues which have been identified in the compliance investigation report of the AfDB. This monitoring report also does not address additional issues identified by the Lenders External Technical Advisors as non-compliance areas, such as ash and coal dust pollution.

¹ <https://www.fmo.nl/independent-complaints-mechanism>

² dito

(i) Impacts on Drinking Water

The complaint argued that the project will cause overburdening of the local water network and contamination of the community's drinking water supply. As part of the Environmental and Social Impact Assessment (ESIA) conducted prior to the approval of the project investment, there was no assessment of the impact of the Sendou plant on the drinking water supply. There was also no assessment whether the plant could possibly lead to contamination of ground water.³ The ESIA relied on the fact that the "Societes des Eaux du Senegal" had issued a licence to the owners which gives permission to withdraw the required amount of water from the water supply network. But the existence of such a license is not a substitute for a water impact assessment which should be routinely conducted for investments in industrial facilities as part of an ESIA. The Compliance Review Report found non-compliance with IFC PS4 as no water impact assessment was conducted.⁴

FMO informed the IEP that a drinking water impact assessment has not been conducted and in their view is not necessary. FMO is of the view that the power plant is not in competition with domestic users in Bargny for drinking water as – according to FMO information - the drinking water is supplied from a Lake called 'Lac de Gulers' which is at a distance of 300 km from Dakar. Furthermore, FMO stated that CES has constructed a 7km long and 300 mm diameter water pipeline from the main artery of Diamiado. Given this independent source of drinking water, FMO is of the view that competition with the drinking water supply of Bargny does not exist. FMO further states that freshwater consumption of the plant is limited (about 1.500 m³/per day, hence 500000 m³ per annum) and that CES has received no complaint from community members in regards to decreasing drinking water availability. During interviews, FMO further noted, that in the event of water shortages, the water authority would prioritize allocation of drinking water to domestic users over industrial users.

Complainants disagree with the position of FMO. They argue that the water provided to CES is not independent from the water supply system of Bargny and water supply to CES is in competition with drinking water supplied to Bargny.

FMO also is of the view that monitoring of ground water contamination is not needed, as groundwater resources are not utilized in the region. According to information provided by FMO, given the ground formation, there are no mobilizable water resources. Complainants argue that groundwater resources are utilized for drinking water of animals and some gardening and that a limited analysis on one site pointed to groundwater contamination. Groundwater contamination monitoring is required by CES for compliance with regulatory requirements. The Monitoring Report of the External Technical Advisor stated, that due to budgetary constraints, boreholes have not been drilled and groundwater monitoring has not been undertaken. While groundwater is not used as drinking water, groundwater might be contaminated as a result of, especially, bottom ash contamination. Bottom ash contains heavy metals and other toxic constituents which pose a risk to human health. The power plant at present does experience difficulties with ash disposal with ash droppings on the ground. Ground water can also be contaminated by storm water discharge from the site and storage of chemicals on site. Even if this water is not used as drinking water, contaminated water might cause damages.

³ Para. 184 of the ICM Final Report, Sendou I Coal Power Plant, Bargny, Senegal, 2017, states: „Although the ESIA 2009 mentioned that the power plant will use the network of the Societe des Eaux du Senegal', the Senegalese authorities did not assess whether current capacity of the network can also cope with the added water usage of Sendou. Furthermore, the ESIA 2009 failed to address the issue of potential ground water contamination. None of the ESAPs refer to the mitigation of the potential impact of the Project on local water supplies.“

⁴ See para. 187 Final Report, Sendou I, Coal Power Plant, Bargny Senegal, 2017

Representatives of the complainants informed the ICM that communities are experiencing increasingly shortages of drinking water, which the complainants attribute – among others – to the CES power plant. FMO does not attribute these shortages to the CES plant as drinking water supply of CES is from other sources than drinking water supply of nearby communities. FMO attributes shortages to the general drinking water shortages experienced in the Dakar region.

Compliance Status. This monitoring report cannot determine the status of the drinking water non-compliance finding. The ICM notes that an impact assessment on water resources used by the plant, has not been carried out as required under an ESIA assessment. The IEP obtained the information that CES allegedly has built a 7 km 300 mm diameter water pipeline only very late in this monitoring phase. The ICM cannot verify the status and relevance of this water pipeline at this late monitoring stage. If the pipeline does, in fact, satisfy all drinking water needs to the plant, a separate drinking water impact assessment might not be needed. However, if CES withdraws drinking water resources from a common pipeline to Bargny and other adjacent villages, a drinking water impact assessment will be needed and appropriate mitigation measures might need to be taken. The IEP will report on the findings in its next monitoring report.

As to groundwater impact monitoring, such monitoring is required under Senegalese regulations. The Monitoring reports of the External Technical Advisors note that such monitoring has not, yet, commenced.

(ii) Marine Impacts

The complaint argued that there will be thermal pollution in an area of influence in front of the coastline of Bargny through the intake and release of seawater from the plant. Since the filing of the complaint, the design of the project had been altered, and a semi-closed cooling system rather than an open cooling system has been installed. A semi-closed cooling system has less damaging impacts on the environment and biodiversity, as a significant smaller quantity of warm water will be released into the open sea than with an open cooling system. Nonetheless, also closed cooling systems release water, often with high salinity, and at temperature significantly above ambient levels. An impact assessment on marine biodiversity thus needs to be conducted. The investigation reports finds non-compliances with IFC PS1 and PS6 as environmental and biodiversity impacts have not been assessed.

A study has been issued in October 2017 to assess the impact of the closed cooling system on the marine system. The water discharged will be at 3 degree C above ambient at the discharge point and at 1 degree C above ambient at a distance of 30 meters from the discharge point. These temperatures remain within the parameters of the E&S guidelines applicable for FMO projects. The study finds that impacts on marine resources would be very limited. The study recommends that during the operation of the plant, at regular interval, chemical parameters of the water at the discharge point should be monitored. On a quarterly basis the following parameters should be measured: temperature, salinity, nitrates, phosphates, dissolved oxygen, and swell. Moreover, annually experimental fishing, in consultation with fishermen should be conducted as soon as the plan has been commissioned. The study also stated, that prior to commissioning of the plant, the baseline of marine conditions should be updated which would provide the reference point for future monitoring. The Operational Environmental and Social Management Plan (OESMP), includes monitoring of (i) effluent discharge quality; (ii) marine water quality; and (iii) marine biodiversity. However, due to budgetary constraints such monitoring has not been undertaken. The Monitoring Report of the External Technical Advisors

noted that as of March 2019 no plans for marine monitoring have been made. FMO informed the IEP and provided evidence that a marine monitoring plan now has been prepared and that implementation of the monitoring has been identified as an urgent action item. The ICM notes that the monitoring program does not provide for the preparation of a baseline study of marine biodiversity resources which might be impacted. The IEP also would like to emphasize the need to carry out regular experimental fishing, as recommended in the marine impact study, to assess impacts on fish yields. The IEP also recommends that marine monitoring data be made publicly available and that communities have easy access to these monitoring data. Complainants are of the view, that there is an impact on biodiversity as small marine species are destroyed at the entry point of the cooling water.

Compliance Status. The IEP notes that a marine impact assessment has been conducted and that a marine impact monitoring plan is being prepared but that marine impact monitoring has not commenced. The IEP would like to emphasize the need to update the marine baseline prior to plant commissioning to make monitoring meaningful. The rather broad based baseline which is reflected in the ESIA (2009) might well be substantively out of line with today's conditions. The issue on marine impacts is in partial non-compliance status.

(iii) Coal Transport

Imported coal is used for the Sendou power plant. When the plant will be fully operational, large quantity of coal (400000 tons of coal annually) need to be transported from Dakar harbor to the plant. The Compliance Review Report noted that the impact assessment of the coal transport to the plant has been insufficient and that there is no management plan on transport impacts for the operational phase. FMO informed the IEP that an Operational Traffic Management is now in place, which includes standard measures such as the use of tarpaulins to mitigate dust emissions, implementation of speed limits, etc. However, the External Monitoring Report raises concerns. It states: *"The transport of coal from the port is likely to pose a health and safety risk for other road users and pedestrians along the route. Dust from the coal trucks will also pose a health and nuisance risk. There do not appear to be any procedures in place to check if the coal trucks delivering coal to the site have the necessary measures in place to address coal dust, such as being fitted with tarpaulins. It is unclear what procedures are in place at the port to ensure that all trucks leaving the port are checked before they leave."* FMO states that procedures laid out are appropriately applied.

The IEP notes that an Operational Traffic Management Plan has been adopted. It is not clear to the IEP to what extent mitigation measures laid out in this Plan, are based on an impact assessment. The Monitoring Report of the External Technical Advisors expressed concern whether provisions laid out in the Operational Traffic Management Plan are being implemented. FMO is of the view that procedures are appropriately implemented. Complainants argue that environmental and health impacts of coal transport are not properly controlled. They state that trucks are not owned by CES and that *'the transport is informal and there is a risk that coal will pour into the street from the port on the way to the factory.....the use of tarpaulins is not systematic on the roads.'* **Compliance Status.** The IEP cannot verify these contradictory statements and thus does not rate the compliance status of this issue. The issue will be revisited at next monitoring mission.

(iv) Air Quality

The complaints raised concerns about deterioration of air quality due to hazardous pollutants (NO_x and Sox) and dust pollution. The investigation report found significant failures in assessing cumulative impacts, including especially air quality impacts. The investigation report noted the absence of baseline data on ambient air quality which would form the basis of an impact assessment. The compliance investigation report found non-compliance with IFC PS1 and PS3 due to lack of ambient air quality baseline data and inadequate impact assessment of the power plant on ambient air quality.

FMO informed the IEP that continuous stack emission monitoring has been carried out and that no exceedance of approved limits have been reported to the regulatory authorities. The IEP was further informed that ambient air quality monitoring is part of the OESMP, but that monitoring has not been carried out to date due to budgetary constraints. The lack of ambient air quality monitoring was also highlighted in the last monitoring report of the External Technical Advisors which was made available to the IEP. The report states: *"the proposed ambient air monitoring is not appropriate and does not fully comply with World Bank Group Guidelines ... Specifically, WBG guidelines require continuous monitoring where a Project exceeds 25% of the applicable ambient air quality standard. Unit1 alone exceeds 25% of the short term ambient air quality standard. WSP's recommendation remain unchanged – a continuous analyser for a minimum period of 12 months, located in Minam Village, should be installed."* This position is repeated in a subsequent report of the External Technical Advisors dated March 2019. It noted that studies conducted on ambient air impacts indicate that the power plant will not result in exceedances of Senegaleses Ambient Air Quality Standards for Sox, NO₂, and CO, and that Senegalese PM₁₀ standards are already exceeded without the power plant. The study further notes that the more stringent WBG standards will be exceeded. The External Monitoring report thus states: *"Since the facility will contribute more than 25% of relevant air quality standards, ambient air quality monitoring should be undertaken during the operation of the Power Plant, using a combination of passive and automatic methods. It is recommended that at least one automatic monitoring station is located in Minam. The air quality monitoring plan should be developed immediately and implemented at least 6 months prior to the operation of the plant. The purpose of this will be to obtain some high-resolution background/baseline data at the point of monitoring, to enable a meaningful analysis of the operational phase concentrations."* The Monitoring Report of the External Technical Advisors further includes a recommendation that an Air Quality Action Plan should be developed which will set out actions to be taken by the power plant if monitored pollutant concentrations significantly exceed the modelled concentrations to prevent harm to health or the environment.

FMO provided evidence that an Air Monitoring Plan has been prepared. This plan provides for an automatic monitoring station be installed at Minam school and for monthly air quality monitoring PM₁₀ and PM_{2.5} by mobile sensors. FMO informed the IEP that implementation of the air quality measures, including ambient air quality, has been identified as an urgent action item. Complainants communicated to the IEP that as of today a cumulative air impact assessment has not been conducted and no monitoring station has been installed at Minam.

Compliance Status. The IEP notes that preparations for ambient air quality monitoring have been made but that implementation has not commenced. The IEP, at this stage, cannot take a position to what extent the Air Monitoring Plan – as designed - is appropriate to monitor ambient air conditions and lays out actions to be taken in cases of exceedances of parameters. The IEP wishes to emphasize that an appropriate air quality monitoring program needs to be implemented prior to operation of the plant. The IEP also recommends that monitoring data for

stack emissions and for ambient air quality data is made publicly available in an easily accessible fashion. It is established practice to make such monitoring data publicly available in many coal based power plants financed by Multilateral Development Finance so that affected communities have knowledge of measured air quality impacts. As ambient air quality monitoring, so far, has not been implemented prior to plant operations, the issue remains in non-compliance status.

(v) Economic Displacement Impacts on Fish Drying Women

The complaint argues that more than 1000 women who dry fish will be displaced as a result of the Sendou Power Plant. According to Senegalese law, economic activities are not permitted on a 500 meter buffer zone around a power plant. The exact number of fish drying women is not known. Estimations vary between 1000 and 224 women (Environmental and Social Impact Assessment 2009). The compliance review report notes numerous non-compliances with IFC PS5 as a likely displacement of fish-drying women has not been taken into consideration. Such relocation would constitute economic displacement, as the fish-drying women – while not having formal rights to land – have been regularly and actively involved in fish drying activities on customary allocated sites over very lengthy periods of time and regularly derive income from this activity. The Compliance Review Report notes inadequate assessments of impacts on fish drying women, the lack of a baseline study and the lack of design of mitigation or compensation measures. This constitutes non-compliance with IFC PS5.

As of today fish drying women have not been removed from the area because of the Sendou power plant. However, the status of the fish drying women remains uncertain as under Senegalese law a buffer zone of about 500 meters would need to be established on which no regular economic activities could take place. Complainants argue that there is also non-compliance with Article L13 of the Senegalese Environmental Code which - in their view - has more far reaching protection provisions. The Compliance Review Report recommended that FMO supports the relevant authorities to issue a safeguard decree to assure fish drying women to continue their activities on the area where they customarily have dried fish. FMO informed the IEP that they held a meeting in early 2018 with relevant authorities which expressed refusal to issue such a safeguard decree as it would not comply with security zone regulations, which provides that the area around the plant cannot be used for economic activities. Moreover, issuing such a decree would set a precedent which relevant authorities prefer are not prepared to support. In light of the declining response FMO decided not to pursue the matter further. The present situation of fish drying women therefore remains unaltered. They are legally not allowed to conduct their activities in the established spaces and Senegalese authorities do not wish to provide a certificate that they can remain on the land, but fish drying women have so far not been asked to leave the land as a result of the power plant. According to information provided by representatives of the complainants, fish drying women have recently been asked to leave the land as other investors intend to acquire the land but that fish drying women have staged civil actions against this threat of eviction. In the view of the IEP, the status of fish drying women remains precarious.

In the absence of a safeguard decree which would provide assurances that fish drying women can remain on the land even if the plant becomes operative, fish drying women could be removed from the buffer zone around the plant. Once the removal takes place, IFC PS 5 will be invoked. This requires the preparation of several actions, especially the knowledge on (i) how many women dry fish in the area; (ii) who are these women; (iii) what is the income each woman gains from the activities; (iv) what are alternative livelihood support measures which could be provided in case the women do get economically evicted; (v) an assessment whether

the planned fish drying platform which CES was prepared to support to be constructed, would constitute an appropriate livelihood support program suitable to compensate for income foregone. According to information received by FMO, such a baseline study has not been conducted. Without such a baseline study no resettlement plan can be prepared, which would be required to be implemented as soon as fish drying women were evicted. As the population of fish drying women changes, the longer the delay for conducting such a baseline survey, the more difficult it becomes to reconstruct the population at the time when the Sendou Power Plant has commenced. This baseline survey now is already many years overdue as IFC PS5 requires that such baseline data need to be collected early in the ESIA assessment process. The longer the preparation of such a baseline study is delayed the more difficult it is to reconstruct the pre-plant situation and results will become increasingly contested. The IEP finds it hard to understand, why preparation of a baseline survey with the indicators enumerated above, is continuously delayed. The IEP also considers it essential that a dialogue between CES and fish drying women will be reestablished to provide for transparency of information and to agree on common approaches. A study recently issued states that fish drying women are negatively impacted in numerous ways by the adjacent power plant.⁵

CES originally proposed to support a fish drying platform so that fish drying could continue to take place at another location with better hygienic decisions. According to information received by the complainants, a fish drying platform is not being constructed and no preparation efforts are underway. No information about design parameters (size, location, timing of implementation) of the platform could be obtained.

Representatives of the complainants informed the IEP that there were two incidents of severe spills of what they perceive contaminated water into the area where fish drying takes place. Visual evidence of the two spills were provided. FMO confirmed that such leakages occurred and were the result of leakages in the level of the cooling seawater basin. According to information provided by FMO the leaked water was untreated seawater. Representatives of the complainant group argue that the water was waste water and chemically treated. FMO stated that the overflows can in future be avoided by proper regulation of the seawater basin. According to FMO, corrective actions were taken. According to the complainants, compensation was paid to the fish drying women for loss of merchandise but not for earnings caused by several days during which fish drying women could not conduct their economic activities.

Compliance Status: As long as fish drying women have not been evicted from the area, an economic displacement plan does not need to be implemented. But as eviction could be executed at any point in time, preparation for such a resettlement plan required under IFC PS5 is essential and would need to have been prepared once resettlement takes place. Such a resettlement plan should have been prepared long ago, during project preparation. At a minimum, preparation of a resettlement plan requires that a baseline survey on the components enumerated above be conducted without any further delays. Such a baseline survey is by now many years overdue. Without such a baseline survey, which determines who at the time when the project was approved for financing, was economically active in the area and what is the level of income from the economic activities, a resettlement plan cannot be prepared if fish drying women were to be evicted. Moreover, negative impacts on fish drying women resulting from the plant operation need to be mitigated. The issue of economic displacement for fish drying women remains in non-compliance status. The IEP takes note of the fact that FMO disagrees with this

⁵ Ndiaye, Bassirou, et Lymeiere Synergie de Developpement, Etude qualitative sur les impacts lies a la centrale a charbon sur la site de transformations fossiles, Khelom de Bargny Guedj, Rapport Final, 2019

conclusion. FMO argues that eviction of fish drying women might occur but that such an eviction would then not be linked to the power plant but to the fact that the area where the plant is located has been earmarked as an 'industrial area'. Complainants consider the continuous non-compliance status of fish drying women an issue of most critical concern. They state: *"the presence of women at the processing site, as it stands, is not in line with NP4: Health, Safety and Security of Communities ... They bear the brunt of the coal dust and ash stored out in the open or relaxed during handling activities."* Complainants ask that an audit be performed in accordance with Senegal's Environment Code accompanied by a complete resettlement plan. They also argue that a hazard study needs to be conducted to assess the health impacts of fish drying in the immediate vicinity of the power plant.

(vi) Land Right Issues

The complaint argued that the 'land acquisition' and 'involuntary resettlement process' linked to the Project had been inadequate and is a violation of IFC PS1 and 5. According to the complainants, the project site includes 1433 parcels of land which were given to families of the community affected by coastal erosion. This high number of parcels stated by the complainants is questioned by FMO as also other numbers are stated. On only 10 plots structures were built. Families who held land where structures were built were compensated. The remaining plot holders received no compensation. Senegalese authorities argue that those who had not used the land, had lost their right to the land. In addition, there are concerns whether the land rights were originally allocated in accordance with Senegalese law. Complainants argue that they should receive compensation for land transferred to CES.

The Compliance Review Report found full compliance with IFC PS5 in regard to the ten households which received compensation for land where structures had been built, but the report found non-compliance in regard to the many households which had originally been allocated land and lost this land once the land was transferred to CES to build the power plant. The compliance review report does not take a position whether households which had not used their land maintain a land right or not. This is a question ruled by Senegalese law which is not subject to interpretation by an ICM compliance review report. But the report found non-compliance with IFC PS5 and FMO's Sustainability Policy as the land dispute was well known at the time when the land was transferred to CES and it was well known that there are disputed issues in regard to land ownership rights. However, FMO relied solely on one legal opinion provided by a Senegalese lawyer to exclude that there are land claims to the land. No consultations were conducted with affected households before the project was started and no baseline study was conducted to determine the potentially affected households. All consultation processes started significantly later, after project commencement and when conflicts regarding land claims had already escalated. The Compliance Review Report thus found inadequate due diligence in assessing the land rights issues prior to commencing the project and thus inadequate due diligence in assessing whether PS5 was invoked.

Recognising the concerns of complainants, SENELEC, CES, the local authorities of Bargny and the communities affected by the project have engaged in a dialogue to find solutions to the issues raised. A tripartite agreement was signed in March 2017. The agreement has set up a Project Monitoring and Control Committee, composed of representatives of the local communities, Bargny Municipality, and CES to discuss and find solutions. The agreement also is accompanied by a Social Action Plan including the resettlement of people which originally had been allocated plots on the area where the power plant is located and who have now lost their plots. As part of the tripartite action plan to resolve the social issues, SENELEC mobilized an

initial amount of CFAF 600 million which was subsequently increased to CFAF 1 billion. This amount is intended for the relocation of households affected by coastal erosion, including those who were supposedly beneficiaries of plots affected by the project. This sum is held in a special account in the Treasury and the committee that will monitor its use will define the terms of the implementation of the protocol. As for CES it disbursed CFAF 7,644 million (US\$13000) to Bargny Municipality to support the relocation process, particularly the identification of affected person, the identification and estimation of land needs for resettlement, as well as consultation and communication activities required during the process. The Municipality has indicated that it intends to offer plots to people suffering from coastal erosion within the 'Bargny Vill Verte Project which, supposedly, has received authorization to divide a 182 ha land into plots on behalf of Bargny Municipality.

In preparation of the relocation process, the Municipality has conducted a census of people affected by coastal erosion in Bargny, Guedj and Minam in July 2018. As part of the census 120 households were identified in Bargny and 350 households in Minam. Complainants argue that the census conducted is not reliable and that the number of people impacted are understated. The Municipality adopted a phased-out approach to relocation based on actual availability of funds. On the basis of the Municipality's estimates, 115 households will be relocated in the first phase. On the basis of the Municipality's estimates, 115 households will be relocated in a first phase according to the following priority criteria: (a) priority 1: households with plots on the power plant site and affected by coastal erosion; (b) priority 2: households affected by coastal erosion and not allocated plots on the power plant site; (c) households with plots on the power plant site but not affected by coastal erosion. Given limited plot availability on the new site, vulnerable households will be given priority. The Municipality is of the view that eventually all people affected by coastal erosion will be resettled and are seeking additional funding in the order of CFAF 2 billion.

Representatives of the complainants consulted by the IEP as part of this monitoring report, stated that they reject this plan as it is focused on households impacted by coastal erosion and is not a compensation plan for households who lost rights to their plots as a result of land transfer to the Sendou Power Plant. They are of the view that a compensation needs to be paid to all households who lost their land rights as a result of land transfer to the Sendou Power plant, regardless whether they are affected by coastal erosion or not. Moreover, they consider the program vastly insufficient to compensate the affected people, which according to their view amounts to about 1400 households. As the program is only directed to 470 households, which according to the census are affected by coastal erosion, complainants do not consider this program an appropriate approach to compensate the 1400 households who in their view have lost rights to previously allocated plots. The complainants also are of the view, that the Monitoring and Control Committee is not operative and as long as it was operative, did not perform in accordance with transparency and accountability rules. Based on information received by representatives of the complainants, no progress has so far been made in the implementation of the land resettlement program.

The Compliance Review Report presents a recommendation that FMO actively supports the appointment of an independent facilitator in order to allocate the Funds provided by SENELEC between the different parties (see para. 34 of Final report, October 2017). FMO committed itself to support this process in its Management Response. FMO provided the IEP a detailed written update about efforts made to agree on a mediation process and had identified an experienced dispute mediation facilitator. According to information received by FMO discussions were held with SENELEC on the mediation process but agreement could not be reached with the Mayor of Bargny (who, as elected representative of the Bargny population, owns the process of funds

allocation and associated resettlement). The update of FMO states: *“FMO will continue trying to engage with SENELEC, aiming to achieve further buy-in on our offer to cover the costs of an independent facilitator. In view of FMO’s limited leverage on SENELEC and Bargny local authorities, the outcome of these efforts remains uncertain.”*

Compliance Status: The IEP recognizes that efforts have been made by FMO to support a mediation process. The IEP also recognizes that funds have been allocated by SENELEC and to a much more limited extent by CES to support a resettlement program. But the IEP also recognizes the concerns of the complainants which consider this program not adequately responsive to compensate households. The IEP does not take a position on the legality on the land claims, but bases its position on the fact that the Compliance Review Report found non-compliances with PS5 and the FMO Sustainability Policy as insufficient due diligence has been done at the time when the project was approved to establish the extent of the land claims. A satisfactory solution to the continuing land disputes should thus be found. This has not, yet, been achieved. As the IEP recognizes that FMO made efforts to encourage a mediation effort, and thus rates this issue in partial non-compliance status with IFC PS5 and FMO Sustainability Policy. But the IEP also wishes to emphasize that additional efforts need to be made to reach a satisfactory solution.

III. Conclusion

The IEP is concerned about the limited progress made. Recognizing that the technical difficulties of the power plant, which do not allow the plant to become operational, poses a tremendous financial burden and makes it difficult for CES to engage in financial commitments, it is nonetheless difficult to understand why such standard processes such as ambient air quality monitoring, ground water monitoring and marine water monitoring has not taken place. Such monitoring are standard features of a coal based power plant and is also required under national legislation. While the plant at present is not operational, the plant has been operational in the past. Not conducting such monitoring is in breach of FMO Environmental and Social Safeguard provisions.

The IEP recognizes that efforts have been made to find a solution to land related conflicts resulting from the withdrawal of plots from households which had been allocated plots on the area where the Sendou Plant is located. The program proposed appears as a genuine effort but is only directed towards households impacted by coastal erosion and not towards households who lost their plots because of the Sendou plant construction. While some of the households displaced might also be affected by coastal erosion, the numbers presented as people displaced is significantly larger than the number determined in a survey as households affected by coastal erosion. The IEP finds it regrettable that the parties were not prepared to engage in a dispute resolution process as recommended in the ICM Compliance Review Report. The IEP also understands that no progress has so far been made in the implementation of the program. The IEP considers it essential that FMO remains further engaged in helping to find a consensus based solution.

The IEP notes that no progress has been made in securing the rights or for providing of alternative options for fish drying women and that no efforts have been made to at least establish a baseline study which would determine key parameters for fish drying women. The IEP notes that FMO made adequate efforts to engage with relevant counterparts to respond to

the two recommendations presented in the compliance review report. These are (i) FMO to support the relevant authorities to issue a safeguard degree so that fish drying women can stay in the buffer zone area; and (ii) to support the appointment of an independent facilitator to mediate between households who are of the view that they lost their plots on the Sendou site and local authorities which allocated funds obtained from SENELEC. The IEP is of the view as no agreement was reached on either of the two recommendations expressed in the Compliance Review Report, alternative approaches to find a consensus based solution for people involved in the land conflict and fish drying women need to be pursued and supported by FMO.

The IEP wishes to emphasize that should the power plant return to operations, all non-compliance areas identified in the ICM report, need to be addressed as a matter of urgency. Monitoring activities have to be operative prior to operations. As part of the financial restructuring agreement, the remaining compliance obligations should be clearly specified and subsequently supervised. Even if the coal based power plant would not return to operations, efforts to support a mediation process between the parties involved in the land dispute should be continued.

Summary Table of Compliance Status

Non-Compliance Issue identified by Compliance Review Report	Status
Drinking Water Impacts	Status cannot be assessed
Marine Impacts	Partial compliant
Coal Transport	Status cannot be assessed
Ambient Air quality Monitoring	Noncompliant
Fish Drying Women Economic Resettlement	Noncompliant
Land Right Issues	Partial compliant