



October 1, 2015

Via Electronic Mail

Mr. Gabriel Negatu
African Development Bank Group
East Africa Regional Resource Center
12th Floor, Landmark Plaza
Argwings Kodhek Road, Upper Hill
Nairobi, Kenya
g.negatu@afdb.org

Re: Concerns Regarding the Amu Power Coal Power Generation Plant in Lamu County, Kenya

Dear Mr Negatu:

We are a community-based umbrella organization, working with Lamu-based communities and representing over 35 organizations from Lamu, Kenya. We write to express concerns about the involvement of the African Development Bank (“AfDB”) in activities associated with the Amu Power Company coal power generation plant (“the Project”) in Lamu County. We understand that the Bank is in the process of preparing a proposal and Project Concept Note (“PCN”) for a partial risk guarantee for Kenya Power and Lighting Company’s obligations under a 25-year Power Purchase Agreement: a key component of the Project.¹ We are concerned that the Project is being developed without meaningful community consultation and participation and without due consideration of its high environmental, social and cultural risks.

While we appreciate that Kenya faces electrification challenges, the potentially profound negative impacts of coal power generation – especially in a location as culturally and ecologically sensitive as Lamu County – require the AfDB to proceed with heightened caution and diligence.² As we explain in more detail below, we request that the AfDB project team defer completing its proposal and PCN for the Project until the following community concerns have been adequately addressed.

¹ See “About Amu Power” available at <http://www.amupower.co.ke/about.html> (last visited 18 Sept. 2015).

² We note that the United States Treasury, as well as other donor countries and several Multilateral Development Banks, will only support coal power generation projects in very limited circumstances. The AfDB’s own Energy Sector Policy specifies that coal power plants should satisfy a stringent justification standard. See Energy Sector Policy of the AfDB Group at ¶ 2.3.4, available at http://www.afdb.org/fileadmin/uploads/afdb/Documents/Policy-Documents/Energy_Sector_Policy_of_the_AfDB_Group.pdf. The Policy also states that the Bank will give careful consideration to pre-project phases to ensure that appropriate mechanisms and safeguards are developed to deal with potential negative environmental, social and financial impacts on the long-term effectiveness of its energy-related projects. See *id.* at ¶ 2.2.6.

Save Lamu

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Environmental and Community Health Impacts

Lamu County is endowed with rich biodiversity and has some of the richest marine ecology in Kenya. Lamu's mangrove forests are particularly valuable. They ring the Lamu archipelago and coastline, forming natural protection for the coastline and for an abundance of marine life that in turn sustains the Lamu community. Unfortunately, the power plant is to be constructed among these mangrove forests at the mouth of an inlet rich in prawns, crabs and fish.

The potential impacts of constructing a coal power generation plant in this environment are great. Among other concerns, the coal plant is likely to result in: extensive dredging and mangrove loss; discharge of cooling water into Manda Bay leading to a decline in marine populations and diversity; and chemical and particulate pollution of air, land and water.³ This environmental degradation not only carries risks for Lamu's valuable biodiversity;⁴ it also potentially harms community health, through increased respiratory and other illness and reduced food security.⁵

The ESIA for the project, which should identify environmental impacts and propose detailed avoidance, minimization, mitigation and compensation procedures, was originally due in Spring 2015, but has not yet been released. Concerned community members therefore lack information about such critical project components including plant waste and water management. The delayed ESIA and consequent lack of detailed information about the Project is particularly concerning following reports that construction is to begin before the end of the year.⁶

³ These concerns have been raised not only by local communities, but also by international institutions such as the United Nations Educational, Scientific and Cultural Organization ("UNESCO"), which monitors Lamu Old Town as a World Heritage Site. See UNESCO, Report on the Reactive Monitoring Mission to Lamu Old Town (Kenya) at p. 20 (9-11 Feb. 2015), available at <http://whc.unesco.org/document/135436> (last visited 16 Sept. 2015). See also "In Kenya, Proposed Coal-Fired Power Plant Threatens World Heritage Site" THE HUFFINGTON POST (28 Aug. 2015), available at: http://www.huffingtonpost.com/nicole-ghio/in-kenya-proposed-coal-fi_b_8056608.html (last visited 23 Sept. 2015). Communities have received mixed information regarding the likelihood of dredging. The UNESCO Report, based on information received in February 2015, states that dredging is likely.

⁴ Operational Safeguard 3 (Biodiversity) requires that the project not cause significant modification of natural habitats except when there are no cost-effective alternatives, appropriate mitigation measures have been designed, and the opinions and concerns of affected communities have been addressed. Depending on the findings of the ESIA, more onerous "critical habitat" requirements may also be engaged. See AfDB Group's Integrated Safeguards System Policy Statement and Operational Safeguards at pp. 39-43 (Vol 1 Issue 1, Dec. 2013).

⁵ Rachel Kyte, World Bank Vice President and Special Envoy for Climate Change, has acknowledged the adverse health and environmental impacts of coal. "If they all had access to coal-fired power tomorrow their respiratory illness rates would go up ... We need to extend access to energy to the poor and we need to do it the cleanest way possible because the social costs of coal are uncoupled and damaging." See "World Bank rejects energy industry notion that coal can cure poverty" THE GUARDIAN, 29 July 2015, available at <http://www.theguardian.com/environment/2015/jul/29/world-bank-coal-cure-poverty-rejects> (last visited 23 Sept., 2015). See also Operational Safeguard 4 (Pollution Prevention and Control) requires that a project manage and reduce pollutants in a way that does not threaten human health or the environment. The first obligation is to prevent discharge of pollutants into the air, surface water and groundwater, land and soil. If prevention is not feasible, the Safeguard requires specific actions to reduce or minimize the effluents or volume of discharges. See AfDB Integrated Safeguards System at pp. 44-48.

⁶ See "Amu Power to Get Lamu Title in October" CAPITAL BUSINESS, CAPITAL FM KENYA (18 Sept. 2015), available at <http://www.capitalfm.co.ke/business/2015/09/amu-power-to-get-lamu-title-in-october/> (last visited 18 Sept. 2015).

Social, Cultural and Livelihood Impacts

The Project also poses significant social and cultural risks. Lamu Old Town is a World Heritage Site with Outstanding Universal Value, being the oldest and best preserved example of Swahili settlement in East Africa.⁷ According to United Nations Educational, Scientific and Cultural Organization (“UNESCO”), the environmental degradation, population intensification and visual pollution associated with major developments in the area (including the proposed coal plant) place negative pressure on Lamu Old Town and on its Swahili culture.⁸ UNESCO also reports that the coal plant “may have specific impact on the coral stone buildings of the Lamu Old Town as the rather fragile limestone can be impacted by air pollution.”⁹

The coal plant is also likely to adversely impact livelihoods, land and food security for a number of communities. Land will be leased from the Kenya Ports Authority, and while the government is launching a population resettlement process, initial reports suggest that it may focus on formal landowners, leading to fears that it will not adequately account for economic displacement or for customary interests in land.¹⁰ For example, the proposed location for the coal plant is on land traditionally used by communities from the neighbouring Pate Island for seasonal farming of fruit, nuts, legumes, maize and other grains. While these communities may lack formal title, they have strong customary ties to the land that have been established over multiple generations of customary use.

The coal plant is also near a traditional fishing ground used by more than 3,000 artisanal and indigenous fisherfolk from Pate Island, Lamu Island and the mainland portion of Lamu County. Environmental pollution and stress, together with increased maritime traffic in Manda Bay, are likely to reduce the productivity of, and access to, this fishing ground.¹¹ It is understood that planned compensation for these fisherfolk may be limited to fishing nets already distributed. This is plainly inadequate compensation for the loss of their traditional fishing grounds.

Finally, a number of indigenous communities will be affected by this Project.¹² A number of the fisherfolk are from indigenous communities, and the Boni (Aweer) people, who rely on traditional hunting and gathering to sustain themselves, live near the coal plant and face impacts on their traditional resources and livelihoods due to that proximity. The Operational Safeguards impose

⁷ See “Lamu Old Town - UNESCO World Heritage Centre”, available at <http://whc.unesco.org/en/list/1055> (last visited 18 Sept. 2015).

⁸ Report on the Reactive Monitoring Mission to Lamu Old Town at pp. 2, 10, 30.

⁹ *Id.* at pp. 18-19. Operational Safeguard 1 (Environmental and Social Assessment) requires that the project avoid significant damage to cultural heritage. See AfDB Integrated Safeguards System at pp. 26-27. Operational Safeguard 2 (Involuntary Resettlement) requires that the project attempt to avoid destruction of cultural, religious and archaeological sites. See *id.* at p. 36.

¹⁰ See “Interview With Environmental Specialist Sanjay Gandhi on AMU Coal Power Project,” Potentash (29 July 2015), available at: <http://www.potentash.com/2015/07/29/interview-with-environmental-specialist-sanjay-gandhi-on-amu-coal-power-project/> (last visited 22 Sept. 2015). Operational Safeguard 2 (Involuntary Resettlement) protects against physical and economic displacement. Its protections may extend to people with no formal legal rights but who can prove ancestral or spiritual ties with the land, including tenant farmers and seasonal migrant workers. See AfDB Integrated Safeguards System at p. 32.

¹¹ See generally Report on the Reactive Monitoring Mission to Lamu Old Town at pp. 19 (discussing the impacts of the planned Lamu Port on artisanal fisherfolk).

¹² Lamu has four main indigenous communities: the Bajuni, Sanye, Boni (Aweer), and Orma.

enhanced consultation and participation obligations for projects involving such vulnerable and indigenous groups, including requiring broad community support for the project.¹³

Without the ESIA or any meaningful consultation on these issues, it is not known what specific avoidance, minimization, mitigation and compensation procedures are proposed for these communities. The Project is far from satisfying the AfDB's objective of broad community support.

Lack of Community Information, Consultation and Participation

Our concerns about potential adverse environmental and social impacts are exacerbated by the lack of public information, consultation and participation in relation to the Project. While Amu Power and its consultants have carried out community information sessions within Lamu County, these sessions do not satisfy the AfDB's community consultation and participation obligations.¹⁴ Communities did not receive detailed information about the Project and its impacts before those sessions, preventing meaningful, informed consultation.¹⁵ The sessions also failed to address significant community concerns. For example, at one session that we attended, the presenter was unable to answer many community questions about the cooling system and other plant waste management. Communities are not aware of any upcoming opportunities to genuinely participate in the design of avoidance, minimization, mitigation and compensation procedures for the ESMP.¹⁶ The AfDB must ensure that its client complies with these disclosure, consultation and participation requirements during project preparation.¹⁷

The AfDB Should Defer Completing Its Proposal and PCN Until Concerns Are Addressed

Given the significant risks posed by the Project and the lack of effective community consultation and participation to date, we request that the AfDB project team defer completing its proposal and PCN until:

1. A full feasibility study and analysis of alternatives to coal power generation is conducted, in accordance with international best practice,¹⁸ the AfDB's Operational Safeguards,¹⁹ and

¹³ Indigenous communities are likely to be considered "vulnerable groups" under the AfDB's Operational Safeguards. *See* AfDB Integrated Safeguards System at pp. 27 and 33, *note* 15. The Operational Safeguards require enhanced consultation and participation obligations where vulnerable communities would potentially be affected by the project, beginning as early as possible in the project cycle before the project is submitted for Board consideration, and with the objective of achieving broad community support. *See id.* at 9, 27-28, 33, 37.

¹⁴ *See* AfDB Integrated Safeguards System at pp. 27-28. Specific findings of the ESIA, including identification of potentially affected indigenous communities and the extent of economic or population displacement, may also trigger more onerous consultation and participation obligations.

¹⁵ *See id.* (Requiring that consultation be preceded by disclosure of adequate project information and environmental and social information to ensure that participants are fully informed).

¹⁶ In addition to general requirements for a participatory approach, Operational Safeguard 1 requires that communities be given the opportunity to participate in key stages of project design for Category 1 projects and projects involving vulnerable communities. *See id.* at pp. 27-28, 37.

¹⁷ *Id.* at p. 2.

¹⁸ *See* World Bank Guidance on Criteria for Screening Coal Projects under the World Bank Strategic Framework for Development and Climate Change, criteria 2 and 4, *available at*: http://siteresources.worldbank.org/EXTENERGY2/Resources/CGN_20100331.pdf (last accessed 21 Sept. 2015).

¹⁹ AfDB Integrated Safeguards System at pp. 22, 31-32.

the AfDB's commitment to a low-carbon, environmentally-sustainable energy strategy for the African region.²⁰

2. A comprehensive, independent ESIA, as well as the ESMP and the resettlement action plan, are finalized and adequately address all of the concerns raised in this letter and in community consultations; and
3. Communities have been meaningfully consulted on the ESIA and have had genuine opportunities to participate in the preparation of the ESMP, so as to ensure their free, prior and informed consent prior to the Project moving forward. We request that AfDB facilitates this process by engaging an independent consultant to design and implement a robust community consultation and participation plan.²¹

In addition, we would appreciate clarification regarding the AfDB's involvement in this Project, including an explanation of steps taken to date and a timeline for any future activities. We would also appreciate being provided copies of any relevant documents about the Project, including, if they exist, the Project Appraisal Report and background environmental and social studies.²²

Please do not hesitate to contact us if you require more information. We look forward to your prompt response.

Sincerely,



Abubakar Mohamed Ali
Chairman
Save Lamu

With the support of the following organizations: Shungwaya Welfare Association; Sauti ya Wanawake; Lamu Youth Alliance; Kenya Marine Forum; Wanaharakati Okoa Lamu; Imams of Lamu; Baraza la Wazee; Lamu Beach Management Unit; Lamu Preservation Network; Lamu Marine Conservation Trust; Lamu Youth Alliance; Faza Youth Group; Huduma Self-Help Group; Lamu Tourism Association; and Voice of Justice.

²⁰ The AfDB's Energy Sector Policy affirms its long term strategy objective to help Africa transition to a cleaner energy path and requires the Bank to collaborate with member countries to ensure that any coal power plant to be financed by the Bank will form part of a technologically and commercially feasible low-carbon and cost-effective strategy for energy resources. Energy Sector Policy at pp. 14-15, 17, 21-22.

²¹ The AfDB's Handbook on Stakeholder Consultation and Participation encourages such measures in appropriate cases. See AfDB, Handbook on Stakeholder Consultation and Participation in AfDB Operations at ¶¶ 3.17-3.19. This is an appropriate case because: 1) a participatory approach is vital due to the potentially grave environmental, social and cultural impacts of the Project; and 2) the borrower/client has failed to facilitate meaningful community consultation and participation to date, at what appears to be a late stage in project preparation and design, leading to growing community concerns. The AfDB's Energy Sector Policy also supports enhanced due diligence in this case. See note 2.

²² We note that the AfDB Group has recently amended its "Bank Group Policy on Disclosure and Access to Information" emphasizing a "presumption of disclosure" for information unless information falls within a list of exceptions. The information requested does not appear to fall within the list of exceptions.

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