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Via electronic mail

Re: Concerns Regarding World Bank Support of the Development of Coal Power Generation Plant in Lamu County, Kenya

Dear Messrs. Diop and Ghanem, Ms. Shukla and Safavian:

Since 2012, the World Bank has supported public private partnerships (PPPs) in Kenya through the Infrastructure Finance/Public Private Partnership Project (IFPPP),¹ and its additional financing (IFPPP AF).² These projects are designed to strengthen the enabling environment for PPPs in Kenya and to generate a pipeline of “bankable” projects.³ As discussed in detail below, one of the PPPs supported by the World Bank through these facilities is the proposed 1,050-megawatt coal-fired power plant in Lamu County.

Save Lamu and the Kwasasi Mvunjeni Farmers Self-Help Group jointly oppose the Lamu coal plant due to grave concerns about serious risks posed by the coal plant to our communities’ health, livelihoods, food security, environment and valuable cultural heritage. Save Lamu is a community-based umbrella organisation made up of over 40 other organisations from Lamu, Kenya. The Kwasasi Mvunjeni Farmers Self-Help Group is a collective of farmers who have been displaced without compensation by infrastructure associated with the coal plant.

On behalf of those organizations and the communities they represent, we write to express concerns about the involvement of the World Bank in the development of this disastrous coal

¹ “Kenya Infrastructure Finance/PPP project Overview” available at <http://projects.worldbank.org/P121019/kenya-infrastructure-financeppp-project?lang=en&tab=overview>.

² “Kenya Infrastructure Finance Public Private Partnership Additional Financing Project Overview” available at <http://projects.worldbank.org/P162182/?lang=en&tab=overview>.

³ See e.g. “Integrated Safeguards Data Sheet (Concept Stage)” (May 8, 2012) available at <http://documents.worldbank.org/curated/en/853661468752729275/pdf/ISDS0Print0P12008201201336528716007.pdf>.

plant.⁴ The coal plant has been designed without meaningful community consultation and participation and without due consideration of its immense environmental, social and cultural risks. We believe that the World Bank's direct and indirect support for the coal plant, provided by the IFPPP and IFPPP AF, has taken place in violation of the Bank's environmental and social safeguards. As discussed below, we seek further information and engagement from the World Bank, together with a commitment that it will provide no further support, directly or indirectly, to the Lamu coal plant, and that it will take steps to remedy harm already caused.

The proposed coal power plant poses grave environmental and social risks

Amu Power Company Limited plans to construct and operate a 1,050MW coal power generation plant on Manda Bay, in Lamu County, Kenya, approximately 20 kilometers from Lamu Old Town, a World Heritage Site with Outstanding Universal Value.⁵ Construction of the project has been stalled by litigation challenging the environmental license for the coal plant.⁶ As of June 2019, the Kenyan National Environmental Tribunal (NET) cancelled the environmental license given to Amu Power by the National Environmental Management Authority, finding that the July 2016 Environmental and Social Impact Assessment (ESIA) for the project was prepared without proper public consultation or participation⁷ and was incomplete in its analysis of serious environmental risks.⁸

Our concerns, which are supported in significant part by the Tribunal's recent decision,⁹ include:

- The ESIA and other assessments to date omit critical aspects of the project, including: coal mining and transportation including a planned 15-kilometre (km) coal conveyor belt; a 2,000-acre limestone mining concession and associated mining operations; the approximately 9km site access road; the displacement of hundreds of farmers, fisherpeople and other land users by project infrastructure; and major reported changes to coal plant technology;
- Affected people were not adequately identified or consulted in project planning, including in the development of the ESIA or since its release. Some affected

⁴ This letter was prepared with the support of our advisors, Accountability Counsel and Natural Justice.

⁵ Lamu Old Town is the oldest and best preserved example of Swahili settlement in East Africa. See "Lamu Old Town - UNESCO World Heritage Centre", available at <http://whc.unesco.org/en/list/1055>.

⁶ See e.g. Herbling, David "Kenya Cancels Environment License of \$2 Billion Coal-Power Plant" (June 26, 2019) available at <https://www.bloomberg.com/news/articles/2019-06-26/kenya-cancels-environment-license-of-2-billion-coal-power-plant>.

⁷ See e.g. "We have no hesitation in holding that there was a lack of proper and effective public participation as required by law." "Save Lamu et al. v. National Environmental Management Authority and Amu Power Co. Ltd." Tribunal Appeal No. Net 196 of 2016 pg. 24, available at http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2019/20190626_Tribunal-Appeal-No.-Net-196-of-2016_decision.pdf.

⁸ "It is also clear ...that he failed to consider certain factors such as the impact of climate change in relation to the Climate Change Act to determine compliance." (Save Lamu et al. v. National Environmental Management Authority and Amu Power Co. Ltd." Tribunal Appeal No. Net 196 of 2016 pg. 48), available at http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2019/20190626_Tribunal-Appeal-No.-Net-196-of-2016_decision.pdf.

⁹ See "Save Lamu et al. v. National Environmental Management Authority and Amu Power Co. Ltd." Tribunal Appeal No. Net 196 of 2016," available at http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2019/20190626_Tribunal-Appeal-No.-Net-196-of-2016_decision.pdf.

communities, including indigenous communities and those that will be impacted by planned limestone mining in Witu, were not consulted at all. Others were given superficial, incomplete, and unbalanced information. Community-based organizations, including Save Lamu, have faced intimidation when they have tried to attend, or organize their own, meetings about the project;

- Hundreds of farmers, pastoralists and other land users, including indigenous and other vulnerable communities, are expected to be displaced from the project site and by other project infrastructure, yet no Resettlement Action Plan (RAP) has been publicly released in full for public consultation. While a Summary RAP is available, it is not readily accessible and it lacks sufficient detail to fully understand the displacement impacts and how they will be mitigated and compensated. It also appears to significantly underestimate the scale of displacement, especially of fisherpeople who will no longer have access to productive fishing grounds. There is no Indigenous Peoples' Plan, no Free, Prior and Informed Consent, and no culturally-appropriate compensation for affected indigenous peoples;
- Pollution and biodiversity impacts have not been properly assessed and patently lack adequate mitigation measures. The extraction and return of water from and to Manda Bay poses serious risks to biodiversity through entrainment and thermal pollution. Dredging and other disturbances during construction and operation will cause significant and serious damage to critical mangrove, sea grass and coral reef habitats. Air pollution, including acid rain, threatens the health of our communities and our environment, as well as the delicate architecture of Lamu Old Town;
- The risks posed by this project to our unique cultural heritage have been grossly underestimated. Lamu Old Town, only 20 km from the project, is an internationally recognized World Heritage Site. Neighboring islands also have numerous archaeological remnants dating as far back as the 14th century. As confirmed by UNESCO, this cultural heritage is threatened by air pollution, population influx and unmanaged development, as well as the loss of traditional livelihoods caused by the coal plant;¹⁰
- No real consideration has been given to other, less-polluting, energy sources or to alternative project sites. The alternatives assessment contained in the ESIA is based on false assumptions and flawed reasoning regarding the viability of renewable energy sources;
- There has been no genuine assessment of cumulative impacts, despite the fact that Lamu is a central node along the planned Lamu Port-South Sudan-Ethiopia Transport (LAPSSET) Corridor, an infrastructure mega-project with various major developments planned specifically for Lamu, including a 32- berth deep-sea port, a resort city, and an oil refinery and pipeline. The Lamu coal plant – whether a formal component of LAPSSET or not – clearly relies on LAPSSET infrastructure, including the port. Yet the ESIA makes no mention of the cumulative impacts on our communities associated with these other major, planned developments;
- There have been insufficient efforts to ensure that affected people will share in project benefits; and
- As a result, there is no broad community support for this project.

¹⁰ See “SOC REPORT FOR 42 COM 7B.45 LAMU OLD TOWN WORLD HERITAGE SITE (KENYA) (1055)” (January 31, 2019) available at <file:///C:/Users/Nicole/Downloads/7B%20-%20Kenya%20-%20Lamu%20Old%20Town%2020190201%20public.pdf>.

Given that the risks of this project are so profound and the proposed mitigation measures are patently inadequate, the World Bank cannot support the Lamu coal plant in any capacity, directly or indirectly, without gross violations of the World Bank's Safeguard Policies.

World Bank Involvement

The primary objectives of the IFPPP and IFPPP AF are to strengthen the Kenya's overall PPP framework and to create a pipeline of "bankable" PPPs. The IFPPP consists of a US \$40 million credit to be applied through four distinct project components.¹¹ Most notably, US\$20 million was allocated to Component 2: support for preparation of individual PPPs. Funds were made available to finance safeguard assessments and engage feasibility consultants, transaction advisors, lawyers and other consultants as necessary to properly prepare specific projects for tender as PPPs.¹² The program's other components are designed to improve the government's overall capacity to attract private investment to infrastructure projects. Additional financing of US\$50 million, approved in 2017, continues these strengthening objectives and is designed to help finance the costs associated with scaled-up activity.¹³

Numerous IFPPP and IFPPP AF documents make clear that the Lamu coal plant was one of the Component 2 IFPPP-supported PPPs, as well as evidence of the success of these facilities. Beginning in 2015, auditing documents list the issuance of Expressions of Interest (EOIs) for the Lamu Plant under "Achievement of Strategic Goals" for the IFPPP.¹⁴ Obtaining EOIs for targeted projects was developed as a Project Development Objective Indicator for both the IFPPP¹⁵ and IFPPP AF.¹⁶ Such EIOs are vital to the for a project's ability to receive funding and therefore its ability to be developed.

The January 2018 Implementation Report then describes the signing of Power Purchase Agreements (PPAs) for the Lamu Plant as part of the "Transaction Advisory Services" provided

¹¹ See e.g. "Project Appraisal Document (October 2, 2012) *available at* <http://documents.worldbank.org/curated/en/686471468041382043/pdf/691870PAD0P1210OFFICIAL0USE0ONLY090.pdf>.

¹² See e.g. "IFPPP Environmental and Social Management Environmental and Social Management Framework – Executive Summary" (April 1, 2012), *available at* <http://documents.worldbank.org/curated/en/295311468041382326/pdf/E30220EA0P12100ESMF0Final0April2012.pdf>.

¹³ See e.g. IFPPP AF "Project Paper (June 13, 2017), *available at* <http://documents.worldbank.org/curated/en/675531499479333771/pdf/Kenya-PP-06152017.pdf>.

¹⁴ See "IDA 51570-KE-FY2015 AUDITS : Infrastructure Finance/PPP Project Audited FS 2015" (June 30, 2015) *available at* <http://documents.worldbank.org/curated/en/858931468043510937/pdf/IDA-51570-KE-FY2015-AUDITS.pdf>.

¹⁵ See e.g. "Project Appraisal Document (October 2, 2012) *available at* <http://documents.worldbank.org/curated/en/686471468041382043/pdf/691870PAD0P1210OFFICIAL0USE0ONLY090.pdf>.

¹⁶ See e.g. "Kenya - Infrastructure Finance Public and Private Partnership Project : additional financing and restructuring Project Paper" (June 13, 2017) *available at* <http://documents.worldbank.org/curated/en/675531499479333771/pdf/Kenya-PP-06152017.pdf>.

under Component 2 of the IFPPP.¹⁷ Without a buyer for the electricity generated by the plant, the company who obtained the permit to build it would be unlikely to proceed with development.

Further, the completion and approval of the feasibility study – a document that should have addressed the likely impacts of the project as well as its benefits – for the Lamu coal plant is also listed as Component 2 results indicator in a 2018 IFPPP auditing document.¹⁸

Finally, the Lamu coal plant is described as part of “the larger Kenya PPP program,”¹⁹ a program which is supported by the Public – Private Infrastructure Advisory Facility (PPIAF).²⁰ The PPIAF, in turn, receives support from the IFPPP. For example, the January 2017 Implementation Status and Report for the IFPPP explains that, “an analyst and advisor are to be provided under the request sent to PPIAF for Kenya PPP Program support.”²¹ The PPIAF “PPP Support Program – Phase 1” project helps “leverage ... World Bank support, through the PPP programs mentioned above and other credits that may in the future support PPP ...”²² Under the IFPPP AF, “parallel” projects, such as the PPP Support Program, and general close coordination with the PPIAF are expected to continue.²³

Each of these measures of support, although early in the development of the plant, were nonetheless critical to the progress and the ultimate “bankability” of the Lamu coal plant. It is because of this support that communities are now facing extensive environmental and social threats from the proposed construction of the plant. Even though the Kenyan NET recently rejected the coal plant’s ESIA, an appeal has since been filed, and the Kenyan Government has indicated that the project will continue,²⁴ no doubt in large part because of the “bankability” of the project supported by the World Bank. This contribution is not only contrary to the objectives

¹⁷ See “Implementation Status & Results Report” (January 2, 2018) *available at* <http://documents.worldbank.org/curated/en/485711514922420354/pdf/Disclosable-Version-of-the-ISR-Kenya-Infrastructure-Finance-PPP-project-P121019-Sequence-No-10.pdf>.

¹⁸ See “IDA 51570-KE-FY2015 AUDITS : Infrastructure Finance/PPP Project Audited FS 2018” (June 30, 2018) *available at* (<http://documents.worldbank.org/curated/en/393841548404545188/pdf/IFPPP.pdf>).

¹⁹ See “IDA 51570-KE-FY2015 AUDITS : Infrastructure Finance/PPP Project Audited FS 2016” (June 30, 2016) *available at* (<http://documents.worldbank.org/curated/en/442351487267840848/pdf/Audit-Report.pdf>).

²⁰ See “Kenya - Infrastructure Finance Public and Private Partnership Project : additional financing and restructuring Project Paper” (June 13, 2017) *available at* <https://ppiaf.org/activity/kenya-ppp-support-program-%E2%80%93-phase-1>.

²¹ See “Implementation and Status Report” (January 4, 2017) *available at* <http://documents.worldbank.org/curated/en/583251483546129987/pdf/ISR-Disclosable-P121019-01-04-2017-1483546121546.pdf>.

²² See “KENYA: PPP Support Program – Phase 1” *available at* <https://ppiaf.org/activity/kenya-ppp-support-program-%E2%80%93-phase-1>.

²³ See “Kenya - Infrastructure Finance Public and Private Partnership Project : additional financing and restructuring Project Paper” (June 13, 2017) *available at* <http://documents.worldbank.org/curated/en/675531499479333771/pdf/Kenya-PP-06152017.pdf>.

²⁴ “Oguna said that the government will be undertaking public sensitization campaigns on the coal power plant to demystify the myths around it and make Kenyans understand its importance in helping the country grow its manufacturing sector.” Kenya News Agency “Let Us Be Realistic On The Coal Power Issue, Government Spokesperson Oguna Says” (Jul. 4, 2019) *available at* <http://www.kenyanews.go.ke/let-us-be-realistic-on-the-coal-power-issue-government-spokesperson-oguna-says/>.

of the World Bank policy against support for new coal fired power plants,²⁵ but the project documents give no indication of what environmental and social due diligence was conducted before supporting this PPP. Given the patent inadequacies in the environmental and social due diligence, risk management and community consultation, it appears clear that the World Bank took inadequate steps to ensure that the projects supported by the IFPPP and IFPPP AF are not contributing to serious environmental and social impacts on project-affected communities.

Request for further information and engagement by World Bank

Given the high environmental and social risks posed by the proposed coal plant, we request that the World Bank:

1. Provide more information regarding any support given to the development of the Lamu coal plant through the IFPPP/IFPPP AF funding or through PPIAF support that may have originated from the IFPPP/IFPPP AF;
2. Explain what steps it took in the course of the IFPPP/IFPPP AF to ensure that PPP projects supported by its activities complied with the World Bank environmental and social safeguards and did not contribute to serious environmental and social impacts on project-affected communities;
3. Commit to raising the concerns expressed in this letter with its client and developing a plan to remedy those concerns; and
4. Carefully monitor all further World Bank activities under the IFPPP/IFPPP AF and any other relevant projects in Kenya to ensure that no additional support is provided to the development of the Lamu coal plant.

We look forward to engaging with you further on this matter.

Sincerely,

Signed on behalf of Save Lamu



Abubakar Mohamed Ali
Chairman
Save Lamu



Khadija Shekuwe
Coordinator
Save Lamu

²⁵ “Toward a Sustainable Energy Future for All: Directions for the World Bank Group’s Energy Sector” (2013) <http://documents.worldbank.org/curated/en/745601468160524040/pdf/795970SST0SecM00box377380B00PUBLIC0.pdf>.

Kwa riaba ya: Kwasasi Mvunjeni Farmers Self Help Group

1. Suhfi Bakari mohammed ~~Go~~ Jina:
2. Sombwang mohamad ~~su~~ Jina:
3. Aboud ISSA ~~Abou~~ Jina:
4. ALI SALIM ~~Aliy~~ Jina:
5. Ali Shigara ~~Ali~~ Jina:
6. Hassan Mbugwe ~~Hassan~~ Jina:
7. Ali Ahmed Mohamed ~~XXX~~ Jina:
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9. Bwanankun Sombwang ~~B~~ Jina:
10. Samuel . agrany ~~Samuel~~ Jina:
11. Godwin Chakwe ~~Sol~~ Jina:
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13. mohamed Amiri ~~Amiri~~ Jina:
14. Muhtasim mohammed ~~Muhtasim~~ Jina:
15. Abdala AZI ~~A.A.~~ Jina:
16. George King keng ~~George~~ Jina:
17. Hassan Ali ~~Chakwe~~ Jina:
18. Abun Ahmed ~~Abun~~ Jina:
19. Kragat Abd. Ahmed ~~Kragat~~ Jina:
20. Khalife Lali ~~Khalife~~ Jina:
21. Shea Ahmed moham ~~Shea~~ Jina:
22. Favis Ibrahim ~~Favis~~ Jina:
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