



Promoting Participatory and Sustainable Development

12 December 2017

Industrial and Commercial Bank of China
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C/O: Corporate Strategy and Investor Relations Department, Credit and Investment Management Department, Internal Control and Compliance Department, Risk Management Committee, Chief Risk Officer, African Representative Office

Dear Mr. Chairman Yi Huiman,

Re: ICBC financing of the Lamu Coal Plant in Kenya

We write further to our letter dated 21 December 2016, herein attached, where we raised concerns regarding your financing of the construction of the proposed Lamu coal plant in Kenya, near the UNESCO World Heritage site, Lamu Old Town, and the project's violations of the Green Credit Guidelines. Because of these serious concerns, we recommend that ICBC withdraw its financing of the project.

We hope your lack of response to our first letter (sent via fax and email in December 2016) is due to an oversight, and we look forward to your prompt response to this letter. We kindly request an opportunity to explain our concerns to relevant ICBC representatives in a telephone call or meeting.

First, we applaud ICBC's commitment to the Green Credit Guidelines as promulgated by the China Banking Regulatory Commission. We are aware that they obligate Chinese banks to ensure that "appropriate international practices or international norms will be followed" (Article 21), such as the application of Free, Prior, Informed Consent principles and the protection of UNESCO World Heritage sites¹. Second, the Guidelines for Environmental Protection in Foreign Investment and Cooperation, published by the Ministry of Commerce and Ministry of Environmental Protection, strongly encourages Chinese companies to "develop low-carbon technologies" (Article 4), to "observe provisions of laws and regulations of the host country concerning environmental protection" (Article 5), and "to take full into account of the impacts of their development" (Article 9).

We also applaud your recent decision not to engage in the controversial Carmichael coal mine project in Australia. We warmly welcome your statement that you place 'great importance to its

¹ According to the UNESCO 2015 report on Lamu Old Town, "There can be no doubt that a project [Lamu Port – South Sudan – Ethiopia Transport (LAPSSSET), which includes the construction of the coal plant in Manda Bay] of this scale and scope, in an area as remote and protected as Lamu, cannot help but have profound negative impacts on the heritage". See Joint World Heritage/ICOMOS/ICCROM reactive monitoring mission, 'Report on the reactive monitoring mission to Lamu Old Town, (Kenya) from 9 to 11 February 2015' (UNESCO World Heritage Centre, 10 April 2015) < <http://whc.unesco.org/document/135436> > accessed 30 November 2017



Promoting Participatory and Sustainable Development

social responsibilities and keenly promotes 'green financing'², and we encourage you to showcase this in regards to the Lamu project.

We believe that providing USD 900 million in financing to the proposed Lamu coal plant is in violation of these agreements. The plans for the Lamu coal plant clearly indicate that its developers have failed to adequately outline and mitigate the environmental and social impacts of the project. In fact, the project is mired in court cases since 2016, to continue through 2018. The cases were filed by community groups with significant concerns of the project's utility, economics, and environmental social, health, and livelihood ramifications.³

Notably, these environmental and social concerns aside, all circumstances indicate that the Lamu coal plant is not economically viable or sound, but rather a risky financial investment. The processing plant would require source coal to be imported from other countries, or alternately the development of a new coal mining industry and railway extension, leading to a delay of at least six years.⁴ In estimating the costs of the plant and of energy produced, Lamu coal plant project plans cite prices of source coal significantly below market rates and exclude the costs of significant additional infrastructure needed for the plant to operate. Accurate real estimates of these costs would push the price of Lamu coal plant electricity much higher – and above existing alternative energy sources.

We draw your attention to a number of facts about the proposed Lamu coal plant project:

1. The project is incompatible with the Equator Principles and has not met the majority of the International Finance Corporation's Performance Standards on the management of environmental and social risks, identification of project alternatives, land acquisition and involuntary resettlement, biodiversity conservation, indigenous peoples, or cultural heritage.
2. The project has been unable to meet Kenya's own compliance requirements.⁵ First, the project is missing a complete economic analysis, in contravention of Kenyan law. As noted, the project is at its outset based on inaccurate and inflated predictions of energy demand for the country. The required feasibility study has not been conducted, and existing affordable alternatives were not considered. Instead, the Environmental and Social Impact Assessment contains significant inaccuracies regarding the prices and reliability of alternative renewable sources.

² Carmichael Mine Project Customer Service Announcement < <http://www.icbc.com.au/icbc/%E6%B5%B7%E5%A4%96%E5%88%86%E8%A1%8C/%E6%82%89%E5%B0%BC%E7%BD%91%E7%AB%99/en/customerservice/announcement/CarmichaelMineProject.htm> > accessed 30 November 2017

³ These cases include National Environment Tribunal (NET) case 196/2016 *Save Lamu & Others Vs National Environment Management Authority (NEMA) and Amu Power Co. Ltd*; and, Environment and Land Court (ELC) Petition No. 14 of 2017, at the Malindi High Court *Okiya Omtatah Okoiti Vs Kenya Power and Lighting Company, Amu Power Company Ltd and Others*.

⁴ "Environment and Social Impact Assessment (ESIA) of the proposed 1050 MW Fired Coal Power plant in Lamu County, Kenya." Available from the National Environmental Management Authority, Amu Power, and at < <http://www.decolonize.org/environment-and-social-impact-assessment-esia-of-the-proposed-1050-mw-fired-coal-power-plant-in-lamu-county-kenya/> >.

⁵ See fact sheet and Notice of Appeal and Detailed Statement on Grounds of Appeal filed in the NET case 196/2016 *Save Lamu & Others Vs National Environment Management Authority (NEMA) and Amu Power Co. Ltd*. See also Certificate of Urgency and Petition in the case of ELC Petition No. 14 of 2017, at the Malindi High Court *Okiya Omtatah Okoiti Vs Kenya Power and Lighting Company, Amu Power Company Ltd and Others*. www.decolonize.org, accessed 30 November 2017



Promoting Participatory and Sustainable Development

3. The project has also failed to analyse the potential environmental and social harms from the Lamu coal plant, including the project's negative impact on Kenya's air quality and adverse impacts on human health and biodiversity. The Lamu coal plant plans to use air pollutant control technologies far inferior to those required in new coal-fired power plants in China, India and the European Union, resulting in SO₂, NO_x and particle emission rates 5-10 times as high as those allowed in China. Notably, the plant would not utilize more efficient ultrasupercritical technology, and it would rely on a once-through cooling system, which would severely impact the marine environment. The project plans also contain flawed assessments in impacts on air quality, which seeks to hide the fact that the plant will result in premature deaths and illnesses due to air pollution.⁶ Proposed mitigation measures remain severely inadequate.
4. The affected communities – many of whom we represent – have not been engaged, consulted, or adequately planned for, including in the basic provisions for public participation required by law. Despite standard Kenyan practice for a project the size of the proposed Lamu coal plant, the procedure outlined by law to ensure meaningful public participation at both the scoping (project report stage) and final study stage was not followed. The report is also missing a social analysis of its potential impact.
5. Due to these regulatory violations, community coalitions in opposition to the Lamu coal plant have filed multiple court cases and launched active public campaigns to stop the project. These include legal complaints filed against the granting of the environmental impact assessment licence and the energy generation licence, and a legal petition drawing attention to multiple procedural violations by the Kenyan government in its consideration of the plant. These cases are actively being considered by multiple Kenyan courts, including the National Environmental Tribunal and the High Court. They are expected to continue at least through 2018, delaying the project indefinitely. This opposition includes over 30 community-based members and local partner organisations. At the moment, the project is subject to a Stop Order from the National Environmental Tribunal dated 14 November 2016, which in effect imposes an injunction on Amu Power Company Ltd, the project developer, prohibiting the project from advancing until the appeal lodged against the grant of the environmental impact assessment licence is heard and determined.
6. The project financing remains unclear and incomplete. Project proponents cited Standard Bank as providing a substantial portion (estimated USD \$307 million) of the remaining financing, as well as serving as a financial advisor. Standard Bank was listed in the Lamu coal plant application for the project's energy generation licence to Kenya's Energy Regulatory Commission. However, Standard Bank has expressly denied any financing of the Lamu coal plant project.⁷ This is an error or a change of financial circumstances that the project developers should legally disclose, according to Kenya's Energy Act of 2006 (Sections 27, 30, 31, 36, 113) and Schedule 2 of the Energy (Electricity Licensing) Regulations of 2012, which affects their ability to finance its activities as required by law.

⁶ See Lauri Myllyvirta and Clifford Chuwah, *Assessing the Air Quality, Toxic and Health impacts of the Lamu coal-fired power plant* (Greenpeace, 2017) < <https://medium.com/@deCOAL/lamu-coal-plant-will-lead-to-deaths-d2a7cfa07c81> > accessed 30 November 2017

⁷ See Greenpeace Africa, 'Standard Bank Sets The Record Straight on Financing Lamu' (Greenpeace, 19 October 2017) < <http://www.greenpeace.org/africa/en/Press-Centre-Hub/Standard-Bank-Sets-The-Record-Straight-on-Financing-Lamu/> > accessed 20 November 2017



Promoting Participatory and Sustainable Development

7. Also, the project proponents cited the African Development Bank (AfDB) in applying for these required licences. However, contrary to widespread reporting, AfDB has not agreed to offer a Partial Risk Guarantee to the project. Rather, AfDB has deferred its consideration of the project for all consecutive board meetings in 2017. Its East Africa representative has recently acknowledged that project proponents have also filed for direct investment from the AfDB. None of these proposals have yet been considered by the AfDB.
8. In pursuing the Lamu coal plant, its proponents in government are prioritising their own immediate financial interests, rather than the country's best interests, despite the fact that the project is not an economically sound or necessary investment for Kenya, and despite community opposition for these as well as environmental and social reasons.

Furthermore, ICBC has described the project as one that will “solve the power shortage for millions in the region” and said that it will “significantly improve the power supply capacity and reliability of Kenya's grid”.

However, Kenyan electricity demand through 2030 does not necessitate the Lamu coal plant, as external and independent reviews of the project have concluded, including prominent economists and energy experts from Kenya and abroad.⁸ In fact, lack of energy demand has forced the Kenyan government to halt the development of other large energy projects, which were part of Kenya's additional 5,000 megawatt “mega power plan”, within the past two years.

In addition, while China is taking such bold steps towards reducing its own climate impacts as one of the world's leaders in the fight against climate change, the construction of the Lamu coal plant would impinge upon Kenya's ability to meet its international climate commitments, including compliance to the Paris Agreement.

The Lamu Coal plant will also have serious adverse effects for the people of Kenya, contradicting the government's mandate to provide a clean and healthy environment for its citizens, as guaranteed by the Kenya Constitution.

Also, because it is not an economically sound investment, the Lamu coal plant will be a financial and legal disaster for all parties involved.

Given these circumstances, and given ICBC's reputation as a responsible leader in sustainable energy, we hope that you would not be the enabler and financier of East Africa's first venture into coal energy.

We would encourage ICBC to direct its investments into cleaner, greener, and more beneficial infrastructure projects for our country and region. We see great potential for partnership in the Belt and Road Initiative in Kenya, and we welcome investments in this regard.

We would be happy to schedule a meeting or phone call to discuss these concerns in more detail. Please let us know if you are available to discuss the matters herewith discussed.

⁸ See Lahmeyer International, 'Development of a Power Generation and Transmission Master Plan, Kenya, 2015-2035' (Lahmeyer International GmbH, October 2016) <<http://www.lahmeyer.de/en/item/article/masterplan-for-power-generation-and-transmission-in-kenya-lahmeyer-advises-the-government.html>> or <http://www.erc.go.ke/index.php?option=com_content&view=article&id=167&Itemid=680> accessed 30 November 2017. Lahmeyer International, an independent engineering consultancy, projects that demand will grow at 9% as opposed to 15% and peak demand will be around 4700MW as opposed to 15,000MW by 2030.



Promoting Participatory and Sustainable Development

In light of the above issues discussed, we respectfully ask ICBC to terminate the financing of the Lamu coal plant and, if loans have been disbursed, that these payments are paid back forthwith.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Abubakar', written over a thin horizontal line.

Abubakar Mohamed Almudy
Chairman, Save Lamu

Save Lamu Coalition is a community-based organisation representing over 30 groups across Lamu County, Kenya.

*Save Lamu also submits this letter on behalf of the deCOALonize coalition.
deCOALonize members include:*

*350 Africa
American Jewish World Service
Centre for Human Rights and Civic Education
Center for Justice Governance & Environmental Action
Friends of Lake Turkana
Heinrich Boll Stiftung
Inter-Religious Council of Kenya
Natural Resources Alliance of Kenya
Muslim for Human Rights
Natural Justice
Protection International
Save Lamu
Sauti Ya Wanjiku*