



March 13, 2016

Via Electronic Mail

Francis Njogu
Chief Executive Officer
Amu Power Company Limited
Geminia Insurance Plaza, Kilimanjaro Avenue
Nairobi, Kenya
fnjogu@gulfenergy.co.ke

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

Dear Mr. Njogu:

We are a community-based organization, working with Lamu-based communities and representing over 30 organizations from Lamu, Kenya. On behalf of those organizations and the communities they represent, we write to express concerns about the planned construction and operation of a coal power generation plant by Amu Power Company in Lamu County, Kenya. We are concerned that the coal plant has been designed without meaningful community consultation and participation and without due consideration of its high environmental, social and cultural risks. Although we have previously expressed these concerns in a number of letters and submissions (copied to your office),¹ and orally in meetings hosted by your representatives,² we now take the opportunity to address you directly. As we explain in more detail below, we request that the design of the coal plant is not finalized and that construction does not begin until the following community concerns have been addressed.

Environmental and health impacts

Lamu County is endowed with rich biodiversity and has some of the richest marine ecology in Kenya. The potential impacts of constructing a coal power generation plant in this environment are great. Lamu is at risk of air, water and land pollution, a decline in marine populations and diversity, and destruction of critical natural habitats.³ This environmental degradation not only carries risks for

¹ Including: our letter to Mr. Gabriel Negatu, African Development Bank (“AfDB”), dated 25 Nov. 2015; our letter and submission to the Lamu County Land Management Board, dated 17 Nov. 2015; and our letter and submission to the Kenyan National Environment and Management Authority, dated 12 Nov. 2015.

² Including meetings: in Nov. 2014; on 24 Jan. 2015 (two, with Save Lamu representatives and Lamu Youth Alliance representatives respectively); on 27 Jan. 2015 (with Kwasasi residents); on 13 Oct. 2015 (with AfDB representatives). We requested, but did not receive, invitations to another community meeting on 14 Oct. 2015.

³ These concerns have also been raised 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)* (9-11 Feb. 2015), p. 20, available at <http://whc.unesco.org/document/135436>. See generally “World Bank rejects energy industry notion that coal can cure

Save Lamu

P.O. Box 314, Lamu 80500, Kenya

Tel: 0723-205-998

Email: info@savelamu.org

Website: www.savelamu.org

Lamu's valuable biodiversity; it also threatens community health, through increased risk of illness and reduced food and water security. Our principal concerns include:

- **The extraction and discharge of massive quantities of cooling-water at the conjunction of Manda Bay and Siyu Channel is likely to adversely affect marine life.** According to the Environmental Project Report ("EPR"), water totaling approximately 42,000m³/hour will be extracted from the channel for cooling purposes and then returned to the sea as treated, desalinated water at an elevated temperature. Although the EPR acknowledges that elevated water temperatures may adversely affect marine life, it does not explain how this risk will be managed and it fails to address the impacts of drawing massive quantities of seawater from a narrow water body and of discharging desalinated wastewater back into the ocean.⁴
- **Chemicals and particulate matter generated by the coal plant will degrade air, soil and water quality, with associated environmental and public health risks.** The EPR acknowledges that environmental effects of this pollution may include: acute or chronic illnesses for humans; direct mortality of fish, animals and plants and loss of their habitats; and contamination of water sources, including potable groundwater and surface water. Yet the EPR states, inadequately and unjustifiably, that the plant will utilize less efficient, higher polluting, coal technology than is currently available. Dust, sediment, ash and run-off generated by the coal plant's construction and operation may also contaminate water bodies and destroy plant life on which animals and people depend.⁵
- **The construction and operation of the coal plant will destroy vegetation, habitats, feeding grounds and range areas for a number of animal species.** The preferred site for the coal plant is adjacent to mangrove forests, mud flats and some sandy beaches used regularly by shorebirds, including a number of endangered and threatened species. The mangrove forests are also a cradle for fish species and crustaceans that are fished by the local community. By the EPR's own admission, these beaches and mud flats are likely to be destroyed and/or polluted by activities of the coal plant.⁶ The preferred site is also known to be a ranging site for a number of large and small mammal species, including the endemic Kenyan Wattled Bat, which occurs only at the north Kenya coast.⁷ The EPR fails to adequately justify the preferred site location, over alternatives identified by that report, taking into account potential environmental and social impacts.⁸
- **The construction and operation of a jetty for the unloading of coal in Manda Bay is likely to result in dredging and mangrove loss.** The EPR does not address these impacts in any detail, potentially on the basis that the location and length of the jetty is not yet known and will be determined during the detailed engineering design phase of the project.⁹ In the meantime, communities are left without any information about these potentially significant environmental impacts.
- **The coal plant will exacerbate water scarcity.** The EPR states that the coal plant will require substantial amounts of water: "a scarce commodity in Lamu County and specifically the

poverty" THE GUARDIAN, 29 July 2015, available at <http://www.theguardian.com/environment/2015/jul/29/world-bank-coal-cure-poverty-rejects>.

⁴ EPR, pp. 96-97, 99.

⁵ EPR, pp. 75, 85-86, 97-99, 105-106. The EPR also fails to assess the potential risks of wet storage of fly ash in close proximity to important water bodies: EPR, pp. 27, 99.

⁶ EPR, pp. 56, 58, 61, 91-96.

⁷ EPR, pp. 59 and 88. See also the impacts on amphibians and reptiles: EPR, pp. 89-90.

⁸ EPR, pp. 68-69.

⁹ EPR, p. 27.

Kwasasi area where the proposed power plant is to be built”. It proposes that additional bore holes be established until a desalination plant can be built, but it fails to address the environmental and socio-economic impacts of either form of extraction.¹⁰

- **The emissions of greenhouse gases during construction and operation of the coal plant may contribute to climate change**, including the micro-climate in the vicinity of the coal plant.¹¹ Yet the EPR improperly excludes from further consideration project alternatives based on less carbon-intensive, renewable energy sources (e.g. wind, solar and natural gas). There is increasing evidence that renewable sources can cost-effectively meet baseload energy requirements¹² and Lamu and its environs have been assessed as favorable locations for wind and solar energy projects.¹³ Assessment of renewable energy systems is therefore necessary.¹⁴

To date, publicly available documents do not properly assess and propose adequate avoidance, minimization, mitigation and compensation measures for these potentially grave environmental impacts. The lengthy delay of the project’s Environmental and Social Impact Assessment (“ESIA”) raises significant doubts about whether the project will ultimately comply with domestic and international standards.¹⁵ In order to comply with those standards, the ESIA process will need to include, and allow adequate time prior to construction for, robust baseline assessments of all potential environmental impacts and proper consideration of alternative site locations and energy sources.

Social and livelihood impacts

Beyond the health implications of the project’s environmental impacts, the coal plant also poses significant social and cultural risks to local communities, including risks to cultural heritage and physical and economic displacement. Our principal concerns include:

- **Population changes and environmental degradation associated with the coal plant are likely to damage tangible and intangible cultural heritage and may contribute to social conflict and insecurity.** Pollution and development pressures associated with the coal plant may result in physical damage to Lamu Old Town, a World Heritage Site with Outstanding Universal Value, as well as the buffer zones of Pate and Manda Islands, maintained to protect that Heritage Site.¹⁶ Population changes and in-migration may also cause a reduction in the

¹⁰ EPR, pp. 30-31, 65, 98.

¹¹ EPR, pp. 105-106.

¹² See Pfenninger, S., et al, “Potential for concentrating solar power to provide baseload and dispatchable power” (2014) *Nature Climate Change* 4(8), 689-692; Mason, J. E., & Archer, C. L. “Baseload electricity from wind via compressed air energy storage (CAES)” (2012) *Renewable and Sustainable Energy Reviews* 16(2), 1099-1109; U.S. Energy Information Administration, *Levelized Cost and Levelized Avoided Cost of New Generation Resources in the Annual Energy Outlook 2015*; and further citations at note 26 of our 12 Nov. 2015 submission to NEMA.

¹³ See Kenya County Report: Solar and Wind Energy Resource Assessment (Nairobi, 23 May 2008), figures 7 and 17 available at <http://kerea.org/wp-content/uploads/2012/12/Kenya-Solar-Wind-Energy-Resource%20Assessment.pdf>.

¹⁴ See further note 41 below.

¹⁵ See, for example *AfDB Group’s Integrated Safeguards System Policy Statement and Operational Safeguards* (Dec. 2013) [“AfDB OS”], Operational Safeguard 3, pp. 39-43 and Operational Safeguard 4, pp. 44-48; and International Finance Corporation, *Performance Standards on Environmental and Social Sustainability* [“IFC PS”], Performance Standard 3. As discussed further below, Chinese investors and contractors are obliged to comply with policies regulating the performance of Chinese enterprises and banks overseas, including the Guidelines for Environmental Protection in Foreign Investment and Cooperation and the Green Credit Guidelines.

¹⁶ While Kenyan authorities have not formally declared Pate Island part of the buffer zone, UNESCO reports that Kenyan authorities pledged not to construct any LAPSET developments on the islands of the archipelago, to reduce

job and income opportunities available to Lamu County residents and degrade their health, safety, social and cultural well-being.¹⁷

- **The preferred location of the coal plant is on land traditionally and communally utilized by local farmers and their families.** Those families will be physically and economically displaced,¹⁸ suffering serious impacts on their livelihoods, food security and well-being. As discussed above, project site alternatives, to minimize those impacts, have not been adequately considered. Given the lack of detailed assessment and consultation to date, we are particularly alarmed by Amu Power’s decision to pursue allocation of public land at Kwasasi for the coal plant. If it is granted, the allocation will result in the displacement of traditional tenure-holders, yet a comprehensive Resettlement Action Plan (“RAP”) has not been disclosed and those affected know little about the conditions under which the land will be taken from them.¹⁹
- **Fisher-folk and their families will suffer economic displacement.** The preferred location of the coal plant is near a traditional fishing ground used by more than 3,000 artisanal and indigenous fisher-folk 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. The EPR briefly acknowledges potential impacts of the coal plant on fish population, yet fails to recognize the associated impacts on the livelihoods of fisher-folk and their families.²⁰ It is not yet known whether this displacement will be addressed by the RAP.
- **The coal plant is likely to have significant impacts on potentially vulnerable and indigenous communities, who require enhanced attention and protection during project development.**²¹ A number of potentially affected people are from indigenous communities, some of whom rely on traditional hunting and gathering in and around the preferred site of the coal plant to sustain themselves. The EPR fails to demonstrate any differentiated consideration of the impacts on vulnerable and indigenous groups.

Like the environmental impacts discussed above, there is a severe lack of publicly available information about the coal plant’s potential social and cultural impacts and about proposed mitigation and compensation measures. Until all potential social impacts are properly assessed and detailed mitigation and compensation measures are designed following meaningful, informed community consultation and participation, Amu Power cannot satisfy the domestic and international standards applicable to this project.²²

Lack of community information, consultation and participation

Our concerns about future adverse impacts of the proposed coal plant are exacerbated by Amu Power’s failure to fully inform affected communities about those impacts and to foster their

the negative impacts on the Heritage Site: Report on the Reactive Monitoring Mission to Lamu Old Town, p. 2. Both Kenya and China are parties to the World Heritage Convention.

¹⁷ EPR, pp. 65, 107, 128-131; Report on the Reactive Monitoring Mission to Lamu Old Town, pp. 2, 10, 18-19, 30.

¹⁸ EPR, pp. 101 and 129.

¹⁹ See AfDB OS 2, pp. 31-37, 40, 42; IFC PS 5. The intended transfer also fails to recognize the ecological sensitivity of the land, which should prevent transfer under Kenyan law and international safeguards.

²⁰ EPR, pp. 99, 106. Compare Report on the Reactive Monitoring Mission to Lamu Old Town, p. 19 (acknowledging the potential impacts of the planned Lamu Port on artisanal fisherfolk).

²¹ The EPR acknowledges such communities, but does not assess the impacts on them. EPR, pp. 65, 107.

²² See, for example, the obligations to assess, avoid, mitigate and compensate social impacts, including impacts on community health, cultural heritage, indigenous peoples and resettlement: AfDB OS 1, 2; IFC PS 1, 4, 5, 7, 8.

meaningful participation in the design of the coal plant and its proposed impact avoidance, mitigation and compensation measures.

Meaningful, informed consultation and participation, as required by AfDB Operational Safeguards and IFC Performance Standards, involves an in-depth exchange of views and information, through an organized and iterative process, leading to project officials incorporating into their decision-making process the views of the affected communities. Such consultations must be based on the prior disclosure and dissemination of relevant, transparent, objective, meaningful and easily accessible information that is in a culturally appropriate language and format and is understandable to affected communities. It is of the utmost importance that the consultation process be “free of external manipulation, interference, coercion, or intimidation” and be conducted in such a way as to “enable meaningful participation.”²³ Projects involving vulnerable and indigenous groups must satisfy enhanced obligations, including proof of broad community support for the project and/or free, prior and informed consent (“FPIC”).²⁴

To date, information and consultation meetings have not satisfied these standards. First, they have not been preceded by adequate disclosure and dissemination of detailed, meaningful information about the project and its impacts. The ESIA is long delayed. The EPR lacks essential details and analysis. In addition to specific gaps already mentioned, the EPR indicates that critical aspects of the plant design remain uncertain,²⁵ preventing any detailed analysis of potential impacts and proposed mitigation measures. The EPR also admits that a number of critical engineering, geotechnical and environmental and social baseline studies have not yet been undertaken.²⁶ At two meetings attended by representatives of our organization, attendees received only a brief brochure that lacked necessary details about project components and only briefly referred to negative impacts. This high-level treatment of project impacts is inadequate to allow communities to develop an informed opinion of the proposed project. At other meetings, not even this brochure was available.²⁷

Second, the information and consultation meetings themselves similarly failed to adequately address the potential negative impacts of the project, providing an unbalanced presentation of the project, and failed to adequately facilitate community feedback. For example:

- The list of “public engagement” meetings in the EPR is inflated by a number of introductory meetings.²⁸ At a similar introductory meeting attended by representatives of our organization, presenters provided a brief overview of the project and of Amu Power’s role in it. No potential negative impacts were discussed.²⁹

²³ IFC PS 1, ¶¶30-31; AfDB OS 1 and 2, pp. 16 (including *note* 1), 27-28, 37.

²⁴ See IFC PS 1, ¶32 and PS 7; and AfDB OS 1 and 2, pp. 9, 27-28, 33 (including *note* 15), 37.

²⁵ Including: all detailed engineering designs, the location of the jetty, and the location of the borrow pit(s).

²⁶ Including: bathymetric survey and geotechnical investigation of sea bed floor; size of barges able to off-loading coal at the jetty; geotechnical, topographical, and site surveys; baseline geological studies which will determine the final size and shape of plant; air dispersion modeling study; noise model; Cultural Heritage Impact Assessment; thermal plume modeling studies; visual impacts studies; and Ecological Impact Assessment.

²⁷ The brochure was available at two meetings on 24 Jan. 2015, with Save Lamu representatives and Lamu Youth Alliance representatives in attendance, and at a meeting on 28 Jan. 2015 with Pate Island residents. The brochure was not available at a meeting we attended on 27 Jan. 2015 with Kwasasi residents, nor at meetings in November 2014, October 2015 or January 2016.

²⁸ EPR, pp. 48-49.

²⁹ This introductory meeting was held in November 2014.

- Meetings have not provided a real opportunity for community members to learn about the project’s negative impacts and requests to receive copies of materials used at these meetings have been repeatedly ignored. At meetings that that members of our organization attended, only minimal time was allowed for questions (approximately 30 minutes) and during that time the presenter was unable to answer technical questions about the plant, including questions about the cooling system, other plant waste management processes and about the potential impacts of waste on the marine and terrestrial environment. Impacts on the marine ecosystem were not discussed at all and pollution by heavy metals was only briefly mentioned. When a PowerPoint presentation was shown, our request for a copy of this presentation was denied.³⁰
- Instead, meetings have appeared to be an opportunity for the presenters to market the coal plant and to laud its potential benefits, including possible compensation (in exchange for physical displacement) and employment opportunities. Those potential project benefits have also been overstated, with references to 3,000 new jobs³¹ when the EPR clearly states that: of the 2,000 job opportunities available on average during the construction phase, it is “probable” that skilled labour will be “imported” and employment of local people will be limited to a smaller number of semi-skilled and unskilled roles; and the coal plant will only employ 350-500 people (in total) during the operational phase.³² By failing to fully address potential negative impacts, and by inaccurately conveying potential positive impacts, the meetings have given a misleading presentation of the project.
- Meetings have not been accessible or inclusive. Many have been by invitation only.³³ When we requested an invitation to an ostensibly community-wide information meeting about the RAP process on 14 October 2015, no invitation was issued. We also understand that our organization was publicly criticized by presenters during this meeting due to its opposition to the project. Such criticism discourages dissent and is antithetical to genuine community consultation and participation.
- There are potentially affected communities who have not been consulted at all about the potential impacts of this project. For example, we understand that Amu Power has requested a 2,000 acre mine concession in Witu for the purpose of obtaining limestone to desulfurize flue gas from the coal plant.³⁴ Communities in Witu were not aware of this requested concession when we raised it with them in September 2015.
- We are particularly disturbed by recent reports that people have been paid to attend meetings.³⁵ Payment of attendees raises grave concerns about manipulation and that purported consultations were not genuine.

Finally, we note that communities are not currently aware of any upcoming opportunities to genuinely participate in the design of avoidance, minimization, mitigation and compensation procedures for the coal plant’s anticipated environmental and social impacts.³⁶

³⁰ At meetings held on 24 and 27 January 2015.

³¹ In particular, at the 14 Oct. 2015 meeting on Manda Island.

³² EPR, pp. 27, 34, 78-80, 130. We received similar feedback about other meetings, including those held on 9 Jan. 2015 at Lamu Museum, on 28 Jan. 2015 with Pate Island residents and on 14 Oct. 2015 on Manda Island.

³³ Including the meetings on 9 Jan. 2015, 24 Jan. 2015, 14 Oct. 2015 and two meetings in Jan. 2016.

³⁴ According to a concept paper submitted to the Lamu County Assembly on 23 Jun. 2015.

³⁵ In particular, at the meeting on 14 Oct. 2015 on Manda Island and in Jan. 2016 in Lamu town and in Hindi.

³⁶ *See*, in particular, AfDB OS 1 and 2, pp. 27-28, 37.

Ensuring compliance with Chinese policies regarding overseas investments

As discussed above, this project risks failing to satisfy a range of domestic and international standards. However, while the EPR at least acknowledges the AfDB Operational Safeguards and the IFC Performance Standards, it fails to acknowledge the need for the project to comply with Chinese policies designed to prevent or reduce environmental and social impacts in overseas investments.

First, Chinese contractors involved in this project³⁷ are obliged to avoid projects which are out of compliance with the Guidelines for Environmental Protection in Foreign Investment and Cooperation, including its requirement that enterprises shall develop low carbon strategies in realizing a “win-win situation of corporate self-interests and environmental protection”.³⁸

Second, in receiving financing from the Industrial and Commercial Bank of China (“ICBC”), this project is subject to the Green Credit Guidelines.³⁹ This policy requires Chinese banks to ensure that their clients abide by international norms and best practices in overseas investments, and to terminate or suspend funds where “major risks or hazards are identified”.⁴⁰

Given the high environmental and social risks posed by the coal plant (including adverse impacts on a World Heritage site), the failure to adequately consider less-harmful alternatives, the lack of detailed mitigation and compensation plans and the lack of meaningful community consultation and participation, we do not believe that the project creates a “win-win” situation for local communities, nor that it complies with international norms and best practices, in contravention of these Chinese policies.

The coal plant design cannot be finalized and construction cannot begin until community concerns are addressed

In order to comply with domestic and international standards, Amu Power must defer finalizing the coal plant design and any construction activities until it has:

1. Conducted a full feasibility study and publicly-available analysis of alternatives to coal power generation in accordance with international best practice.⁴¹ If coal is proven to be the only viable option, the plant design must incorporate highest standard technology and risk mitigation features;

³⁷ We understand that the Sichuan Electric Power and Design and Consulting Company, Sichuan Number 3 Power Construction Company and CHD Power Plant Operation are contractors for this project. We will be notifying the contractors of these concerns, but felt you should also be made aware of these obligations.

³⁸ Ministry of Commerce and Ministry of Environmental Protection, *Ministry of Environmental Protection on Issuing the Guidelines for Environmental Protection in Foreign Investment and Cooperation* (Mar. 1, 2013) available at <http://english.mofcom.gov.cn/article/policyrelease/bbb/201303/20130300043226.shtml>.

³⁹ China Banking Regulatory Commission, *Green Credit Guidelines* (Feb. 2012) available at <http://www.cbrc.gov.cn/EngdocView.do?docID=3CE646AB629B46B9B533B1D8D9FF8C4A>.

⁴⁰ *Id.* at art 19.

⁴¹ See IFC PS 3, ¶7; and 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. See also obligations to assess alternatives contained in AfDB OS 1-4, pp. 22, 31-32, 41, 46; IFC PS 3, 5-7; and the requirement on Chinese enterprises to develop low carbon strategies in realizing a “win-win situation of corporate self-interests and environmental protection”, in Guidelines for Environmental Protection in Foreign Investment and Cooperation, art 4.


2. Meaningfully consulted with all affected communities on a draft ESIA and provided genuine opportunities for affected communities to participate in the preparation of the environmental and social management plan and the RAP. In order to comply with this obligation, the ESIA and RAP processes must include:
 - a. Adequate time for robust baseline assessments of potential impacts;
 - b. Communication of appropriately detailed information about the potential impacts of the coal plant and proposed mitigation and compensation measures to potentially-affected communities, including through disclosure of the draft ESIA, management plan, and RAP; and
 - c. Meaningful opportunities for community members to convey their concerns and to participate in the design of mitigation and compensation measures;
3. Ensured that the final ESIA, management plan and RAP adequately address all of the concerns raised in this letter and in community consultations; and
4. Obtained proof of broad community support and FPIC for the coal plant, given that it will impact vulnerable and indigenous communities (among other local groups).

In addition, we would appreciate clarification regarding the process for ensuring compliance with international environmental and social standards. In particular:

1. Please clarify the process for the development of the RAP and ESIA, including listing any consultations that have been carried out to date, a list of the participants of those consultations and the schedule for any planned consultations that are being held as part of either process.
2. Please provide copies of the terms of reference for the RAP and ESIA and, if available, copies of any draft RAP or ESIA. If those are not yet available, please provide timeframes for their disclosure.
3. We have been informed by the AfDB and Amu Power's Community Liaison Officers that a number of technical and community-representative committees have been assembled to discuss resettlement and related issues. Please clarify the role, responsibilities, mandate and membership of those committees.
4. Please clarify how ICBC is working with your company to ensure that this project will comply with international norms and best practices, including the AfDB Operational Safeguards, the IFC Performance Standards, and FPIC as required by Article 21 of the Green Credit Guidelines.

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

Cc: James Mworira, Centum Investment Company Limited, j.mworira@centum.co.ke
Joe Mutugu, Amu Power, joe.mutugu@amupower.co.ke
Gabriel Negatu, African Development Bank, g.negatu@afdb.org

Monojeet Pal, African Development Bank, m.pal@afdb.org

Agnes Nabaloga, Consultant, anabaloga@yahoo.com

Richard Muiro, Ministry of Energy and Petroleum, muiru@energy.go.ke

John Omenge, Ministry of Energy and Petroleum, john.omenge@energy.go.ke

Geoffrey Wahungu, National Environment Management Authority, gwahungu@nema.go.ke