



Saving Lamu: How a Campaign for Environmental Justice Was Fought

By Rasna Warah



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In a country where justice is often denied, delayed or distorted, the landmark ruling of the National Environment Tribunal (NET) to cancel the licence for a proposed electricity-generating coal-fired plant in Lamu has restored many Kenyans' faith in state institutions. The significance of the ruling, which was a victory for environmental justice advocates at home and abroad, cannot be underestimated (though going by the local media coverage of the judgement, it might appear that nothing remarkable has happened).

For the people of Lamu, who will be the most negatively affected if the plant is built, the decision was nothing short of a miracle, especially given that this is a country where major infrastructure projects are often carried out at the expense of local communities and the environment - and where such projects often involve kickbacks and corruption at the highest levels of government. Ochiel Dudley, a lawyer with Katiba Institute, which litigated the precedent-setting case, said that the ruling was a major victory for the people of Lamu and Kenya. "It has stamped the authority of tribunals in courts to ensure compliance with the rule of law," he stated shortly after the ruling on 26 June.

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NET was established under Section 125 of the Environment Management and Coordination Act (1999). Its mandate is to hear disputes arising from decisions of the National Environment Management Authority (NEMA) on the issuance, denial or revocation of licences. In its 26 June 2019 judgement, NET ordered Amu Power, the key player in the proposed Lamu project, to halt construction of the plant and to undertake a fresh environmental and social impact assessment (ESIA) for the project. It noted that the ESIA carried out for Amu Power by a company called Kurrent Technologies was flawed in one key aspect: it did not involve public participation, a constitutional requirement that NET chairman Mohamed Balala described as "the oxygen that gives life to an ESIA report". In its ruling, NET stated that the lack of public participation was "contemptuous of the people of Lamu".

Other important points in the ruling included the project's lack of a strategic environmental assessment and insufficient and unclear plans for toxic coal ash handling and storage, as well as the project's failure to take into consideration Kenya's Climate Change Act.

The wrong choice for Kenya

There were many environmental, social and health concerns raised by those against the construction of the coal-fired plant. Environmentalists pointed out that the burning of coal releases toxic particles into the air that can cause asthma, bronchitis, cardiovascular disease and cancer. These particles can also affect fish, crops and wildlife.

In addition, burning coal requires millions of gallons of water to keep the plant cool. Releasing this water into the ocean around Lamu would increase the temperature of the water and kill the fish and other marine life. It would also impact the livelihoods of fishermen in the area.

There are also cultural concerns. Lamu Town has been designated a World Heritage site by the United Nations, which means that the Kenyan government is obligated to protect and preserve it. The proposed plant's location on 865 acres of land in Kwasasi, just 20 kilometres from this historical town, is especially worrisome. Lamu Town is world-renowned for being one of oldest settlements along the East African coast, and is a much-loved tourist destination. Its pristine beaches have attracted the rich and famous and its Swahili culture has been the subject of countless studies. The toxic particles emitted from the plant could corrode the centuries-old buildings in the town and increase air pollution levels, which will make this unique island town an unhealthy environment for the residents and a less attractive destination for tourists.

The government insists that the economic benefits of the plant outweigh any environmental concerns. It says that the plant will bring much-needed development to the area. Critics argue that if the national and county governments were really keen on improving the living standards of the people of Lamu, they might have built more essential infrastructure, such as sewerage and sanitation systems, which are woefully inadequate, or a first-class hospital, which is much needed in this neglected part of the country.

Proponents of the project say that the plant will significantly reduce the cost of electricity. Those advocating against the plant disagree. They say that the 1,050-megawatt plant will actually cause the price of electricity to increase because the price of electricity will be directly related to the price of coal, which fluctuates. Moreover, the cost of building transmission lines to get the electricity to

people in Nairobi and elsewhere and a train to get coal from Kitui will increase the cost of the electricity generated. And if the original intention was to export surplus electricity generated in Kenya to neighbouring countries, that plan is no longer viable: Ethiopia is currently quadrupling its energy-generating capacity and Tanzania is doubling it.

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David Schlissel from the Institute for Energy Economics and Financial Analysis (IEEFA), in an assessment he conducted on the project, says that the Lamu coal plant is “the wrong choice for Kenya” for several reasons. First, Amu Power, the single-purpose joint venture between Gulf Energy and Centum Investment, calculated the price of electricity on the following erroneous assumptions: i) that coal would cost \$50 per metric tonne (in 2017 the price of coal was \$85 per tonne); ii) that Kenya’s demand for electricity would go up by 13 per cent annually (demand has actually grown by only 6 per cent a year, partly due to the slowing down of the economy); iii) that the plant would be utilised at 85 per cent capacity (if built, the plant will be grossly underutilised, running at a capacity of between 5 and 34 per cent and producing far less electricity than Amu claims it will); and iv) that electricity would cost \$0.072 per kilowatt hour (IEEFA calculated that electricity from the plant would cost three to ten times as much, from between \$0.22 and \$0.75 per kilowatt hour).

The most shocking part of the deal is that Kenyans will have to pay about \$360 million per year in capacity charges (that’s over \$1 million per day!) whether or not the plant generates any electricity and even if it is not operational. This makes one wonder how the government entered into the deal with Amu Power and whether any legal advice was sought before the agreement was signed. It also raises the question of whether people in government knew about the non-viability of the project beforehand but proceeded to go ahead with the project because there was \$1 million to be made per day without any sweat or investment.

How this project was allowed in a world where countries including China (the biggest emitter of greenhouse gases and whose citizens are paying for this with their health) are weaning themselves away from coal is also disturbing, given that in 2018 President Uhuru Kenyatta pledged to move Kenya to 100 per cent renewable energy by 2020. But then in Kenya, it is not reason, common sense or environmental and social justice considerations that determine public policy but individual greed, myopic self-interest and lack of a long-term vision for the country and its future.

How it all started

In September 2013, five months after Uhuru Kenyatta was sworn in as president, the Kenyan government invited bids for the Lamu coal-fired plant. Twenty-six submissions were received. Gulf Energy was awarded the tender.

Amu Power, which did not even exist as an entity when the invitation for the bids went out, was only established after Gulf Energy, the developer and co-sponsor of the plant, started a joint venture with Centum, a Kenyan-owned investment company whose major shareholder is the Kenyan magnate Chris Kirubi and whose CEO is James Mworia. (Though there is suspicion that Amu Power is a front for powerful or influential people who wish to remain unknown.) The main potential funder of this \$2 billion project is the Industrial and Commercial Bank of China. The African Development Bank

initially showed interest in partially funding the project but pulled out after campaigners opposed the project. The Bank's president stated that it was the lending institution's policy not to fund coal projects.

The campaign against the project started in earnest in October 2016 when two civil society organisations - Save Lamu and Natural Justice - lodged an objection with the Energy Regulatory Commission (ERC) to Amu Power's application for a coal plant in Lamu. This was the beginning of a successful campaign that culminated in the NET ruling last month.

So how did the people and organisations who campaigned against the construction of the coal-fired plant in Lamu succeed in their efforts? Well, two things stand out which other environmental campaigners might want to take note of as they provide a good case study on how to obtain environmental justice in the face of stiff opposition from government and corporate interests.

One, the campaign was fought not just by the affected communities in Lamu but by a coalition of local and foreign environmental and human rights organisations, namely, Save Lamu, Heinrich-Böll-Stiftung, 350 Africa, Centre for Human Rights and Civic Education, Sauti Ya Wanjiku, Muhuri - Muslims for Human Rights, National Resources Alliance of Kenya, American Jewish World Service and the Center for Justice Governance and Environmental Action. This coalition provided the campaign with the legal and financial resources and the moral strength and support that would not have been available if the campaign had been led only by members of the affected community in Lamu - though it is important to note that the residents of Lamu were both vocal and visible throughout the campaign.

Two, these organisations and their supporters designed a highly successful media campaign under the banner deCOALonize.org, which published regular updates online and on social media and organised street demonstrations both in Lamu and in Nairobi. By the time the case went to NET, opposition was so strong that a ruling in support of the plant in Lamu would have appeared to be totally misguided, or worse, highly compromised. Public pressure was thus key to the success of the campaign.

Organisers of the campaign say that the battle is not yet over. A spokesperson for the campaign said that while last month's NET ruling will delay the Lamu coal project, there is no guarantee that the project will be halted indefinitely. "Amu Power can conduct a fresh environmental and social impact assessment and apply for a new licence, or can choose to appeal the decision, seeking to overturn the ruling and have the licence restored," he said.

Amu Power has until 26 July to file a notice of appeal. However, the deCOALonize campaigners believe that Amu is not likely to appeal the ruling because it wouldn't want to stall the project any longer with a court case it might very well lose. They believe that Amu will most probably go for a fresh ESIA that will deal with the issues raised by the tribunal. If a licence to build the plant is then granted, the struggle to save Lamu will continue.

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