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Coal: Development, energy and employment

BY HANNAH WADDILOVE

From left to right: Kiringu Mwachitu, Edward Omito and Mohamed Mohamed.

Key points

- Revised mining legislation includes improved and updated environmental and royalty provisions, but this is a long way from implementation.
- Plans for the Lamu coal-fired power plant reveal gaps in community engagement in conducting Environmental Impact Assessments (EIAs).
- Without a proper commitment to civic education, public participation exercises will continue to lack effective impact.
- Constitutional ambiguity, along with communication and trust deficits, cause confusion and disputes over mining projects between the national and county governments.
- The disjuncture between electricity demand projections and economic realities calls into question the viability of the Lamu coal-fired power plant.

Panelists

Edward Omito (Ministry of Mines, National Government)

Kiringu Mwachitu (Ministry of Environment & Mining, Kilifi County)

Mohamed Mohamed (Ministry of Environment & Mining, Lamu County)

Moderator

Mohamed Jaafar (KNHRC)

Introduction

The mining of Kenya's coal deposits has started in earnest in line with Kenya's aspiration to become a middle-income industrialized country by the year 2030. A key element in reaching this goal is the generation of energy to power industries and making electricity more widely accessible to the population in Kenya.

While the government is making key investments in renewable energy, coal is part of the increased energy generation strategy. The construction of the country's first coal-fired power plant was approved by the National government in 2013. Although the plant will initially use imported coal from South Africa and Mozambique, the plant will subsequently use locally sourced coal, mainly from the Mui Basin in Kitui County. Other attempts to locate coal resources are underway, including in the coastal Counties, namely, Kilifi, Kwale and Tana River.

On 5 December 2016, the Rift Valley Forum and Mombasa-based Human Rights Agenda (HURIA), hosted a public forum to discuss the dynamics of this development and the role of the county governments in addressing the social, environmental and economic impacts of coal-related activities on the Coast.

Background

Discoveries in recent years of significant solid mineral endowments, particularly of coal, iron ore and rare earth elements, have dramatically reversed the historic neglect of Kenya's minerals sector, long considered to be of minimal potential. Possible development of the deposits, many of which are located in the coastal counties of Kilifi, Kwale and Taita Taveta, come at a complex time for local governance structures, given the infancy of constitutional devolution.

Since the 2013 elections, the national government has been proactive. The standalone Ministry of Mining, carved out from the Ministry of Environment and Natural Resources, reflects this focus. As Edward Omito, the Ministry of Mining representative, explained, the new Mining Act that came into effect on 27 May 2016 can be seen as a significant step forward for legal and fiscal regulation. The Act's focus on environmental safeguards, royalty sharing formulas and community engagement is in contrast to the colonial-era 1940 Mining Act that was replaced.

Subsidiary regulations, however, are required to put the Act into practice and these remain locked in the negotiation stage with stakeholders. Partly due to the lack of such implementation, the forum revealed concerns from coastal county governments and civil society representatives, on the gap between legal provisions and what happens in practice. These range from environmental standards and the nature of public participation, to poor communication between national and county governments, and questions over the economics of coal mining.

Environmental safeguards

Existing environmental laws require that the mining investor commission an Environmental Impact Assesment (EIA). The National Environment Management Agency (NEMA) oversees this process. Edward Omito argued that while environmental impacts from mining are inevitable, the EIA provides a necessary process and framework for ensuring that environmental damage is mitigated before a license for any mining-related project can be issued.

However, taking the example of the KES 200 billion (USD 1.9 billion) Lamu coal-fired power plant, the Lamu County Government representative, Mohamed Mohamed, noted the major failings of the EIA conducted by Amu Power, the consortium sponsoring the building and operation of the plant. Poor environmental analysis concerning damage to the ocean has fuelled major local resistance to the project, led by the civil society organization Save Lamu. The limited formal role of the county government in the EIA process, he argued, also undermined the chance to harness local knowledge on livelihoods and health concerns.

Audience members used the Lamu example to raise wider concerns that there may be bias in the final EIA report, given the role of the investor as commissioner and financer of the process. NEMA representatives in the audience were confident in the professionalism of the employed EIA experts, but also noted their own capacity and authority deficits at the field office level. An audience member spoke of a 'serious compliance' issue with NEMA, insofar as licenses, EIAs and other information were not available for the public at NEMA field offices.

Where engagement with local communities exists, Mohamed Mohamed raised the problems of the value-led focus on monetary compensation, whether for land or displacement. This focus can obscure community understanding of the longer-term livelihood impacts. These include the disposal of waste materials into the ocean from the coal plant, rising sea temperatures harmful to marine life and the potential death of the fishing industry that is the lifeline of many Lamu residents. This highlighted the wider problem of whether public participation exercises, if they take place at all, are meaningful.

Public participation

The democratic concept of public participation is anchored in the 2010 Constitution of Kenya. It is designed to enable public input into policy and investment matters directly affecting the lives of citizens. Legislation for public participation is the responsibility of individual county governments, however, many counties at the coast are yet to pass these bills. The mechanism for such engagement is therefore legally and practically ambiguous. Members of the audience from civil society organizations gave examples demonstrating that public participation exercises over extractive industry activities are poorly organized and often inaccessible in terms of location and content of the documents.

Mohamed Jaafar, from the KNHRC, noted that the 1,895-page EIA for the Lamu coal-fired power plant report was highly technical in nature and inaccessible to the majority of people. Kiringi Mwachitu, the county executive member for Water, Environment, Minerals and Natural Resources in Kilifi County, spoke of similar examples where the public are given English-language documents as they enter consultation events and expected to provide immediate feedback. An audience member from Kwale explained that one such exercise involved orders from a local chief to stop fishing for several days to allow an oil and gas company to conduct some work in a river, and to provide evidence of ownership of their *shambas* (farmland or plots).

The EIA process is important, but there is also a need to conduct public participation exercises at the earlier scoping stage of mining projects, where the terms of reference are agreed upon between the investor and NEMA. The forum called for a greater role for county governments to be involved from the beginning of the EIA process.

Government coordination: Miscommunication and mistrust

Mining is not a devolved function and the constitution entrusts the national government with the custodianship of all natural resources. Nonetheless, there is a constitutional provision designating the counties as responsible for implementing specific, but unnamed, natural resource policies from the national government. Such constitutional ambiguity, along with communication and trust deficits, cause confusion and disputes between the two levels of government.

There was agreement among coastal county representatives that NEMA and the Ministry of Mining license and conduct activities without their knowledge. There is no clear mechanism through which the two levels of government can communicate, leading to the charge that the new Act does not recognize devolution. The ministry's lack of physical representation, beyond its Mombasa office, impedes information sharing. The County representative from Kilifi suggested strengthening the role played by the County Environmental Committees, which are revamped structures, but currently without the power to influence NEMA's decision-making.

Edward Owino, however, stressed the importance of mining as a national government function. He argued that with the national government as the trustee of natural resources, benefits can be ensured to communities beyond those within the endowed county. In response to the assertion that devolution is not recognized, he stated the clarity of the beneficiary formula: of the royalties paid to the state by mining companies, 70 per cent goes to the national government, 20 per cent to county governments and 10 per cent to communities where the mining is taking place.

However, delayed negotiations over the Act's implementation, along with mistrust and poor communication, have given rise to cases of county officers frustrating investors, if and when they are not shown issued export permits, despite likely existing approvals from the national level.

Economic viability

Edward Omito emphasized the economic potential from mining, particularly for coal-fired power generation, as justification for the inevitability of environmental damage. An audience member, however, called into question the economic viability of the coal-fired power plant altogether, citing the disjuncture between the developmental projections in Kenya's Vision 2030 and current economic realities.

Specifically, the economic potential for Lamu's coal-fired power project is based on highly inflated GDP projection figures of up to 10 per cent growth per year. Kenya's current average growth is 4.5 per cent. Despite the government's progress on rural electrification, coal plant projections are also based on a 15 per cent growth in electricity demand, compared to an actual increase of 6 per cent over the past three years. There are already three geothermal power plants sitting idle due to inadequate electricity demand, which are still costing the taxpayer in capacity charges and consumers in rising electricity tariffs. The coal plant is estimated to attract idle capacity charges of KES 36 billion (USD 350 million) annually and is expected to increase electricity tariffs.

The prospect of missed economic gains heightened concerns aired by several members of the audience on the destruction of livelihoods such as fishing, particularly in Lamu. There was a general consensus on the need to shift the narrative away from a value-led focus on how much compensation communities may get from major mining or electricity projects, towards the longer-term environmental and economic impacts.

Credits

'Coal: Development, Energy and Employment' is the record of an event held on 5 December 2016 by the Rift Valley Forum in partnership with Mombasa-based Human Rights Agenda. It is available for free download from www.riftvalley.net. Cover image © Amina Abdulkadir.

The Rift Valley Institute works in Eastern and Central Africa to bring local knowledge to bear on social, political and economic development.