Of Cartels, Collusion and Captive Consumers:
On the State of Kenya's Energy Sector

Jerotich Seii

Interview

Since January 2018, the Kenya Power and Lighting Company (KPLC), the entity responsible for the country's electricity distribution, has found itself under siege by an organically mobilised and extremely angry battalion of Kenyans from all walks of life in their quest for energy justice.

The #SwitchOffKPLC campaign that started on Twitter has since spread through the wider media space and unleashed an unprecedented outcry against KPLC following several months of erroneous billing of customers. The campaign has been fuelled by KPLC's "pay-first-ask-questions-later" approach, which left many consumers with inflated bills that they were forced to pay to avoid being disconnected.

Perspectives spoke to one of the campaign's leaders to shed light on the dark side of Kenya's power sector, which is said to be one of the most developed in sub-Saharan Africa, having undergone structural reforms and liberalisation since the 1990s.

Perspectives: What is the state of capture in Kenya's energy sector?

Seii: The capture of the energy sector in Kenya is almost complete. Here I particularly refer to the electricity sector, which is in the hands of mafia-like cartels who control both the policy and procurement sides of electricity generation, transmission, regulation, distribution and sale. These actors are embedded within the ministry of energy and all its related state corporations, and private energy companies, which ensures that they are always part of the feeding frenzy that ensues when lucrative contracts are in the pipeline. This means that, whether we are talking about geothermal, hydro, solar, diesel, wind or even the dirty coal in Lamu, cartels are fully present and influencing all the elements of procurement and implementation processes.

This capture has been systematically perfected over the last forty years and resulted in a seemingly inextricable linkage between the captors (cartels) and captives (energy sector). What is important to note is that, very often, the cartel kingpins are themselves employees of the national energy sector or the wider government.

Jerotich Seii has worked for 22 years in East, West and Southern Africa with a focus on both development programming and humanitarian response. On the social and political front, Jerotich is committed to consumer justice and the fight to end theft, mismanagement and exploitation in the public sector, in Kenya and beyond.

How is this situation different from other forms of corruption?

The cartel influence over policy-making means that their corrupt activities do not revolve around individual transactions where, for example, a private company would pay a kickback to one individual who can influence the issuing of a contract. It is rather more systematic and includes everyone from cabinet secretaries, principal secretaries, CEOs and board members, to senior and junior officials across the industry.

The cartels utilise their knowledge of policy, financing, procurement and operational processes to either exploit loopholes or collude with state corporations and private sector power-producers to rig contracts in their favour. When faced with uncooperative private-sector actors, pressure is applied in the form of extortion and even exclusion from the business opportunity.

So, the very same individuals who pretend to be interested in cost-effective energy access for all in actual fact increase the price of electricity for consumers in Kenya by developing and implementing plans and visions that suit their own pockets.

Energy acts and related policies are supposedly in place to guide the sector but what they do is more akin to undermining public participation and transparency. Resultant plans, such as the Least Cost Power Development Plan (LCPDP), are skewed in favour of cartels and preferred independent power producers (IPPs). When you analyse no fewer than 20 IPPs listed in the LCPDP, you will find that contracts are *not* signed based on least cost, which should be one of the criteria, but rather on which firms are politically connected.

What makes the energy sector so vulnerable?

The energy sector is vulnerable because electricity is an essential service and people will pay whatever it takes to avoid being disconnected. They are the real captives.

Without electricity, most households cannot function effectively, commercial enterprises are paralysed, and public utilities grind to a halt. Think about it. How many times a day do you encounter technology that requires electricity to power it? Be it traffic lights, hospital equipment, fuel pumps, commercial equipment, building elevators, household appliances and night-time lighting, electricity is running through all of it.

Those who have captured the sector know that. Electricity is not a luxury. It is a necessity. This is what is being exploited.

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In addition, the fact that the sector turns over billions of Kenyan shillings (KES) in local and foreign direct investment makes it a lucrative target. It is also a sector that has flung open its doors to investors from all over the world, some of whom come with bilateral conditions (if, for example, the Spanish government provides a loan, a Spanish firm is also expected to implement a part of or the whole project) and others who are straight-up criminal enterprises in collusion with the national-level operators.

What are the implications of energy capture for Kenyan electricity consumers?

For ordinary Kenyans – be they domestic or commercial consumers – electricity has increasingly become unaffordable. I, for one, spent close to KES300 000 (USD 3 000) on electricity bills during the course of one year for a three-bedroom apartment with average consumption. If I did not pay up, I would simply be disconnected.

Countless households have been financially ruined because of high and fraudulent electricity bills. Many have had to either live in darkness for months on end or dip into their savings in order to pay

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for their electricity. Elderly people have been hit with bills as high as KES80 000 (USD 800) for one month and ended up living in darkness. Mothers have suffered the pain of spoiled breast milk due to frequent power cuts by Kenya Power.

Dangerously dangling wires, exploding transformers, overloaded grids and extortionate installation prices are but the tip of the iceberg of the challenges faced by electricity consumers today. Never mind the Kenya Power meter-readers who often collude with compound managers to tamper with meter readings and extract hefty bribes from consumers who wish to avoid disconnection.

Many small- and medium-sized businesses had to shut down due to inconsistent power supply and unaffordable bills. A business owner received an electricity bill of KES570 000 (USD 5 700) for the period of one month. Kenya Power did not rectify the bill but rather arranged a payment plan with the business owner that would be paid alongside subsequent monthly bills. Unsurprisingly, this business folded.

This is how energy capture in Kenya continues to destroy the hopes and dreams of millions of Kenyans.

The aggregate sums are eye-wateringly high. If we look at the 2017–2018 illegal billing of consumers by Kenya Power, we are talking about a minimum of KES10 billion (USD 100 million). If we look at the power purchase agreements (PPAs) of *just* 20 politically connected IPPs, we are talking about KES100 billion (USD 1 billion) every year for the next 25 years.

The main challenge is that most of these figures do not compute in the minds of the average Kenyan. I struggle with the numbers of zeros as well. Therefore, what computes is the steady bleeding of household and commercial finances into fraudulent bills in order to ensure the servicing of multi-trillion shilling commitments that ultimately enrich the cartels.

What changes are needed to "un-capture" the sector and prevent similar situations in future?

The un-capturing of the energy sector requires nothing less than a complete and forensic audit of the systems and finances of the ministry of energy and its related agencies, corporations, and, of course, the private companies such as Kenya Power. This should date back at least twenty years, and with the commitment to investigate and prosecute all those found to have been involved in corrupt practices.

At the moment, audit reports are ignored or court cases compromised when individuals or corporations seek justice. Hence impunity is entrenched and cartels are ever more emboldened to exploit and steal from Kenyans.

Constitutionally, counties should be able to manage their utilities, including electricity, and this should be allowed to flourish according to their needs.

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Restitution through compensation is a critical part of cleaning up the energy sector, where pre- and post-paid electricity consumers will finally receive refunds for monies stolen from them through fraudulent bills, illegal tariffs and third-party vendor services.

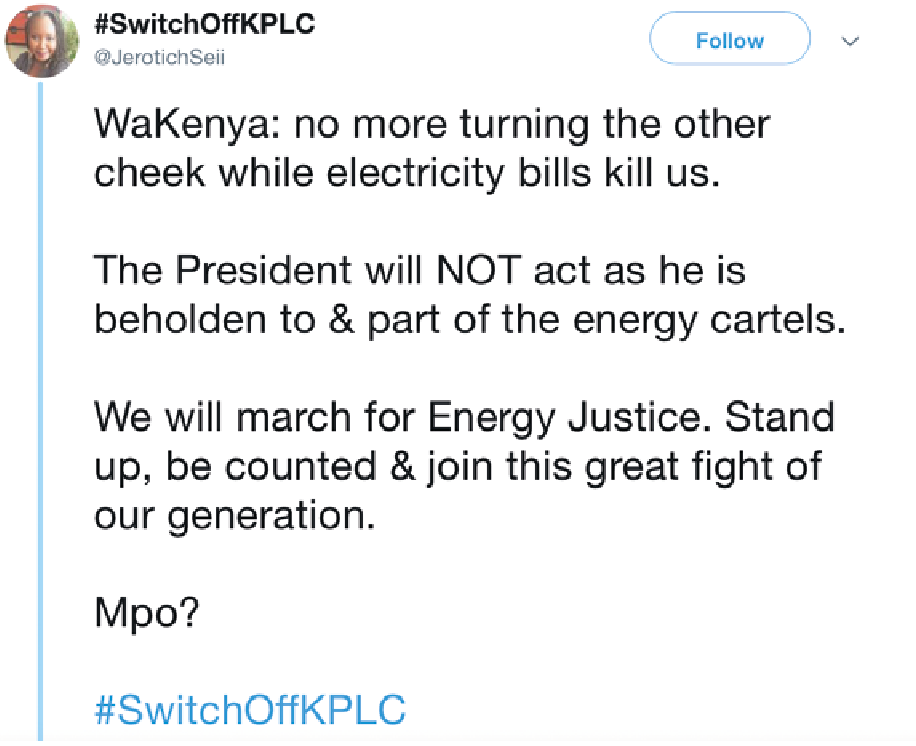
In terms of energy production, we need to see: 1) capacity charges cut by 50 percent; 2) energy costs cut by 10 percent; 3) more players in open-tender systems (this is crucial in the context of, for example, oil importation, because diesel thermal IPPs are frequently used as the reason for increasing oil prices); 4) development of private modular refineries; and 5) more power distributors.

We are talking about opening up the playing field, ensuring the impeccability of regulatory bodies, and de-monopolising the generation, distribution and sale of energy so that the consumer is able to benefit from competitive prices and good service.

What measures and tactics has the #SwitchOffKPLC pursued to achieve these?

Thus far, strategic litigation has played a central role in our efforts. Although there have been some setbacks along the way, two petitions to the High Courts are in the process of examination for re-opening in the Constitutional and Human Rights Division. The one petition (Petition 6 of 2018) focuses on consumer justice with a view to end fraudulent billing, third-party vendor cartels, dangerous and shoddy service, and to obtain orders for the refund of said bills and the demonopolisation of Kenya Power. The second petition (Petition 59 of 2018) looks at the nature of IPPs and the illegalities surrounding their contracting – and how this impacts on consumer bills and taxpayer's monies – with a view to cancelling all irregularly allocated PPAs.

Another key area of the #SwitchOffKPLC movement is public education: using social and other media to ensure that we demystify a sector that has always hidden behind its own complexities to steal from consumers. This is an exhilarating part of our work when we see – pun intended – the lights go on in the hearts and minds of the public. Cru-



cially, this is a movement that is non-partisan, non-ethnic, but indeed very political.

Finally, with the exception of basic legal and visibility costs, we have galvanised a peaceful army of volunteer and active citizens who have begun to understand that the healing and restoration of Kenya will take place when we restore respect for honesty and integrity across all public-service sectors, even those that are meant to be profitable. Aluta continua.