

COMMENTS ON THE ENVIRONMENTAL IMPACT ASSESSMENT FOR THE PROPOSED EARLY PRODUCTION SYSTEM (EPS EIA) – KAISO-TONYA AREA, BLOCK 2, LAKE ALBERT, UGANDA

Preamble

These comments have been prepared in response to the above Environmental Impact Assessment Report published by Tullow Oil dated March 2008 and the invitation for public comments by the National Environment Management Authority (NEMA). The comments constitute a joint submission by civil society organizations interested in monitoring the execution of oil exploration and exploitation projects in Uganda. The full list of organizations jointly making this submission is provided in the forwarding letter to the National Environment Management Authority or can be obtained by contacting the Advocates Coalition for Development and Environment (ACODE), P. O. Box 29836 Kampala, Uganda ; Tel:+256-414-530798; email: acode@acode-u.org; library@acode-u.org.

The civil society organizations (CSO) making this submission reiterate their support to the ongoing efforts to exploit fossil fuels in Uganda. The CSO acknowledge and applaud Government for expeditiously coming up with a national oil and gas policy in spite of its inherent weaknesses. They are also aware that the revenue accruing from the exploitation of oil and gas resources provide an opportunity for confronting the current levels of underdevelopment and poverty prevalent in the country. However, they believe that such petroleum exploitation must be undertaken in an accountable, equitable, and socially, economically and environmentally responsible manner. They are also conscious of the fact that the ongoing development projects are taking place in a serious legal and institutional vacuum which needs to be addressed as a matter of urgency.

The CSOs contest the location of the Early Production Scheme (EPS), particularly in its present form. Based on the scanty information available to us concerning petroleum development in Uganda, we make the following observations and comments regarding the ongoing oil exploitation activities in general and the EPS EIA in particular.

Strategic Environmental Impact Assessment

1. A number of oil drilling sites have been identified in the country, but there is no Strategic Environmental Impact Assessment to form a basis for national planning and decision making concerning the petroleum sector. Also, the EIA recommends for a SEA to be conducted to cater for the uncertainties and conflicts associated with the potential medium to long-term indirect and cumulative impacts that may result from further oil exploration and production throughout the Albertine Rift. It is therefore critical now for government to commit itself to undertake a Strategic Environmental Assessment (SEA) to provide the basis for planning and decision making in the sector, as proposed in the EIA recommendations (Ref: section 1.8.5).

2. The EPS is the first oil production of its kind in Uganda and the establishment of oil activities within a gazetted wildlife area will set the precedent for further oil developments in the Albertine rift and elsewhere in Uganda, especially Murchison Falls and Queen Elizabeth National Parks that are among Uganda's major tourist destinations. Similar view is expressed by the EIA (Ref: Section 1.8.4.).

Ownership and Tenure of Oil and Gas Resources

3. The EIA attempts a comprehensive review of the legal and policy framework for oil

exploitation and governance in the country. However, the review is only a description of the laws and policies and falls short of the required analysis or conclusions on the adequacy or inadequacy of the framework. In particular, while the Report appropriately cites article 237(2) of the 1995 Constitution, it fails to recognize or analyze the implications of the 2005 Constitutional amendment which altered the tenure status of oil and petroleum resources in the country. Article 43 of the Constitution (Amendment) Act, 2005 vests the ownership of minerals and petroleum in the Government. The interpretation and application of the constitutional provisions under this article have significant implications for the governance of oil resources in the country. The EIA should provide a deeper analysis of these provisions and their practical implications rather than providing a general description of the laws and policies.

Selection of Early Production System (EPS) Location

4. The selection of the EPS location is essentially based on Tullow's narrow perspective and desire to cut down on the construction and operational costs, apparently ignoring key factors of economic, social and environmental importance. The selection of the site fails to take into account the stakeholder opinion expressed in the environmental impact assessment process, impacts on biodiversity that are articulated in the EIS and the economic value of maintaining the ecological integrity of the Kabwoya Wildlife Reserve. The location of the EPS inside a protected wildlife area sets an unacceptable precedence, in particular as petroleum development activities are ongoing or planned in other protected areas. This location of the EPS is also contrary to several international recommendations on such developments. Importantly, the selection of the EPS location fails to take into account development of other petroleum sites in western Uganda, which may require a majorly different size or location of such facilities, possibly making the currently proposed location neither economically, socially or environmentally good for the country within a short time.

Based on the EIA Report, civil society organizations are opposed to the citing of the EPS within the Kabwoya Wildlife Reserve.

Biodiversity

5 The EIA Report does not explicitly demonstrate neither the full impacts nor how the sanctity and health of biodiversity will be preserved. What exist in the EIA reports are only proposals and recommendations for Tullow to develop the necessary mitigation measures and monitoring for the identified impacts. It, therefore, lacks a comprehensive environmental management plan to deal with biodiversity, air quality, water, fisheries, wastes, oil spills and pollution, affected communities, tourism, etc. In the absence of explicit mitigation measures and monitoring, the National Environment Management Authority (NEMA) may want to approve the EPS EIS subject to the following:-

- All proposed mitigation and monitoring plans be put in place in a specific and time bound manner with clear responsibilities for implementation and covering the costs of implementation before final approval and production commences;
- Mitigation measures and monitoring should be stated as commitments on the part of the developer rather than general statements of potential activities and intentions;
- Detailed decommissioning plans be put in place as part and parcel of the Environmental Management Plan;
- Tullow and Government put in place long-term monitoring plan for the flora and fauna in the Kaiso-Tonya valley;

Opinionated Impact Assessment

6. The EIA report is characterised by statements on impacts that are opinionated. In many ways, the report lacks empirical data, analytical rigor and information to back up the findings in the Report. Such statements as *“the impact will be negligibly-low, low and medium negative”* are largely qualitative and brings the Report findings and conclusions into question.

Access to Information

7. The Public is being requested to contribute to designing of the project in an information vacuum. For example, the public did not have access to the Production and Revenue Sharing Agreements; Memorandum of Understanding between government and Tullow; Environmental Management Plans and how the revenues accruing from the sector will be managed. This lack of public access to information, especially among civil society, was evident at the Public Hearing in Hoima on 29th July 2008.

Comprehensive Economic Analysis

8. The EIA does not explicitly provide cost-benefit and opportunity-cost analysis of having the EPS in the area *vis-a-vis* other economic activities such as tourism, fisheries and wildlife conservation. The failure to provide cost-benefit and opportunity-cost analysis is a major deficiency in the Report which denies the public, more specially the local communities, the opportunity to make informed decisions on the appropriate citing of the EPS.

Abuse of the EIA Process

9. There is evidence of abuse of the EIA process. Even before a decision is made, there are already survey mark stones on one of the proposed locations i.e. 1C. In addition, press statement attributed to Mr. Peter Jarvis, senior manager of Tullow Uganda, states *“One square kilometre oil refinery will be built in Kaiso-Tonya Wildlife reserve, Hoima district before the end of the year despite concerns by environmentalists” said Mr. Peter Jarvis, Senior Manager Tullow Uganda* (New Vision, Thursday, July 31, 2008). These kinds of actions do not only affect public confidence in the proposed development, but also undermines the essence of the EIA process as a process to inform sound decision making in the interest of society as a whole. NEMA should require Tullow Oil to provide written clarification of this statement and an assurance that it has not yet obtained a permit for the site.

Air Pollution

10. Crude oil refining does not only release the pollutants mentioned in the EIA report i.e. sulphur dioxide, nitrogen dioxide & particulate matter (PM10). Other more alarming chemicals are also generated that include volatile organic compounds (VOC), benzene and persistent organic pollutants (POPs) such as dioxin and furan, which were not captured in the EIA report. The EIA also suggests that although these chemicals may currently be low or non-existent in accordance to the WHO guidelines, they are likely to pose a significant threat once the EPS and associated industries become operational in the area.

11. The EIA does not explicitly specify the kind of air pollution abatement technology that will be used. There is a vague reference in the EMP about the introduction of gas cleaning equipment to reduce air pollution without mentioning the type of equipment that will be used. It is important to specify the types of abatement technologies that will be deployed. Also, it is important to effectively model the kinds of emissions and fugitive emissions that are likely to

occur in relation the above mentioned pollutants.

12. The type of monitoring system that will be deployed to assess pollution resulting from the EPS needs to be discussed and agreed upon before the EIA is approved and the agreement must be reflected in the operating permit conditions that government (NEMA) will issue for the EPS facility. It is important that there is a continuous monitoring of the critical pollutants which must both be ambient and in the stacks in order to fully assess what is being emitted by the main pollution pathway. The protocols of the monitoring must be agreed upon before the development take place, instead of the proposed monthly and quarterly approaches in the EIA.

Health Impacts

13. Health impacts of oil facilities are well documented globally, but it is strange that the EIA does not capture this. Benzene, trichloroethylene, vinyl chloride are all well known carcinogens that are a challenge at all oil production facilities globally. Trichloroethylene is known to cause vertigo, tremor, anorexia, fatigue, difficulty in concentrating; memory impairment and liver damage that are reported to be chronic occupational hazards (Baselt & Cravey, 1995)¹. Vinyl is associated with increased incidence of angiosarcoma of the liver and other malignant tumors, acroosteolysis, Reynauds syndrome, scleroderma and impaired liver function². Other harmful chemical include Toluene and Xylene.

Waste Management

14. The EIA proposes incineration of wastes generated in the oil exploitation schemes, but these is renown to produce dioxins and furan, which are persistent organic chemicals that are restricted under the Stockholm Convention. It is important that whatever treatment for waste is proposed, it be subjected to an independent EIA and not be “smuggled in through the back door”

Weak Monitoring and Evaluation of Project Activities

15. Refining of crude oil is a complex system that is well documented globally for any government or Tullow official to sufficiently develop proper and detailed environmental management and monitoring and evaluation plans. It is surprising that Tullow with a wide and long experience dealing with petroleum could not come up with a detailed environmental management, monitoring and evaluation plan that would be subjected to proper scrutiny.

16. Although it is assumed that environmental monitoring and evaluation will be carried out by NEMA, NEMA is limited in financial and human capacity to effectively monitor and evaluate activities of Tullow. In addition, vesting significant responsibility to Tullow and its associated contractors to undertake the monitoring and evaluation is a recipe for conflict of interest, corruption and manipulation. Such an approach is self defeating, limiting, centralist and open to being abused by the corporations who will hold knowledge and the right to technology and will be able to hold government at ransom whenever government does not agree with the future interests and proposals of the corporations. In such a case, Tullow

¹ . Baselt, R.C. and Cravey, R.H. Disposition of toxic Drugs and Chemicals in Man. 4th edition. Chemical Toxicology Institute, California, 1995.

International Programme on Chemical Safety. Environmental Health Criteria 150: Benzene. WHO, Geneva, 1993

Clayton, GD and Clayon, FE (ed). Patty's Industrial Hygiene and Toxicology, 4th ed. John Wiley & Sons, Inc. New York, 1994.

² . Hathaway GJ, Protor NH & Huges JP .Chemical Hazards of Workplace. 4th ed. Van Nostrand Reinhold, New york.

becomes “the explorer”, “the Producer and supplier”, “the Judge”, “the Jury” and “Counsel”.

17. While CSOs appreciate partnerships between the oil industry and government to enhance environmental governance, we are concerned that Tullow will direct the governance in a way that is suitable for its own development needs. Government will be reliant on Tullow’s technical expertise to give them the knowledge to manage environmental enforcement at the facility. This self management is evident in the proposed Environmental Management protocols in the EIA, which can be found in statements like a) “*Audits of the environmental management plan are to be undertaken by Tullow oil rather than an independent auditing group*” b) “*monitoring will be undertaken by the project and is contractors, rather than independent groups*” and c) “*The project will have internal reporting on environmental and socio-economic issues, but will only have public reporting of the implementation of the Corporate Social Responsibility (CSR) policy as it relates to local communities*”. So, with these kinds of arrangements, the public will never know what environmental impacts there is. Thus, government must develop a) its own capacity to undertake the above; b) systems to critically assess independent parties undertaking the above; c) effective enforcement of operational permits, according to their own knowledge-base and not a knowledge-base that is provided by Tullow, which must not be done in partnership with the industry, but rather with independent institutions like UNEP and other local and international civil society organisations, including local community and cultural institution representatives.

The Proposed National Oil Company

18. The proposed National Oil Company to manage affairs of oil production, marketing and national oil revenues does not create confidence or provide an appropriate mechanism for accountability. Therefore, there is need to establish a statutory body that will manage the affairs of petroleum production, marketing and petroleum revenue management.

Recommendations

19. Civil society organizations and the Government of Uganda have a shared interest in ensuring that oil exploitation activities are undertaken in a manner that is consistent with national policy and legislation and promotes sustainable and equitable development in Uganda. In the pursuit of this interest and without prejudice to the specific proposals already made on the various issues raised, the following recommendations are made to ensure that the final decision on the EPS EIA results into an economically, socially and environmentally sustainable development of petroleum resources for the benefit of Uganda:

- The EPS location to be shifted outside the Kabwoya Wildlife Reserve and the location of such facilities be studied in a wider perspective of the development of petroleum resources in Western Uganda to arrive at location and size of such facilities that are wise investments for the country.
- The EPS EIS be approved subject to the following: (i) outstanding impacts and uncertainties be clarified and mitigation measures put in place; (ii) specific and time bound commitments for the mitigation and monitoring measures and responsibilities for their implementation be clearly set out in the approval certificate; (iii) the EIA certificate require a deposit of a performance bond on the part of Tullow Oil.
- A geographically and thematically wide ranging Strategic Environmental Impact Assessment be implemented urgently and provide the basis for the development of the petroleum sector, paying due consideration to the numerous other interests in society currently not considered.
- The Production Sharing Agreements to be made public

- The necessary legal and institutional frameworks be put in place as basis for developing the petroleum sector.
- Access to information be improved and capacity to understand and make use of such information enhanced, in a manner that makes wider and meaningful participation in such important processes for Uganda possible for a much wider audience.
- Improve the EIA and subject it to additional scrutiny, before NEMA approve the EPS
- The current law does not include production and marketing. There is need to put this in place, before the EPS commences.

Finally and in addition to the above comments relating primarily to the EPS, the Civil Society Organisations believe the development of petroleum resources in Uganda requires much more efforts from all relevant parties to ensure a higher level of transparency and accountability in order for the petroleum resources to benefit Uganda and its people as a whole.