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For Immediate Release

31st October, 2019, Kampala

Outstanding Legal, Environmental and Social Issues in the Impact Assessments for the East African Crude Oil Pipeline

We take this opportunity to congratulate the National Environment Management Authority (NEMA) and the Petroleum Authority of Uganda upon successfully organizing public hearings for the Environmental and Social Impact Assessment Report of the East African Crude Oil Pipeline (EACOP). The EACOP is one of the major oil and gas infrastructure envisaged in petroleum development in Uganda. This pipeline will transport oil from the Delivery Point in Hoima District in Uganda, to a storage tank facility in Tanga District in Tanzania. The Uganda National Oil Company (UNOC) and the Tanzania Petroleum Development Corporation (TPDC) Total E&P, Uganda B.V., Tullow Uganda Operations Pty Ltd and CNOOC Uganda Limited are participants in a pipeline project and are anticipated to become actual developers. In the interim, Total East Africa Midstream (TEAM) BV is the developer of the project.

In line with the National Environment Act of Uganda, projects of this nature are mandated to undertake an Environmental and Social Impact Assessment (ESIA). This is a process for predicting and assessing the potential environmental and social impacts of a proposed project, evaluating alternatives and designing appropriate mitigation, management and monitoring measures. The EACOP project ESIA is currently being reviewed by NEMA, and for most of last week, public hearings were held across districts in the pipeline route to ensure that views of the host communities are considered prior to approving the project. CSCCO not only reviewed the entire ESIA for the project and submitted written comments to NEMA and the Petroleum Authority of Uganda, but also attended these public hearings and made oral submissions to the presiding officer.

We appreciate efforts of the interim developer, Total East Africa Midstream (TEAM) BV in complying with the legal requirements on ESIA, and PAU and NEMA for the inclusive and consultative process of reviewing the ESIA Report. However, there are a number of outstanding issues that need to be addressed prior to the approving the projects, which include:

1. **Inadequate analysis of the likely impact:** Whereas the EACOP ESIA Report identifies a numbers of risks or threats posed by the project, these are rated as insignificant irrespective of the magnitude of the threat. For example the report identifies in the Right of Way for the pipeline critically endangered and endemic plant species which are on the IUCN Red List, but yet rates such impact as ‘not significant’ and as a result the mitigation measures proposed are inadequate.

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2. **Use of an unregistered environment practitioner to conduct the ESIA:** RSK limited which conducted the ESIA is not a recognized entity for the undertaking of environmental Impact Assessments in Uganda. This is contrary to section 111 of the National Environment Act and Regulation 16 of the National Environment (Conduct and Certification of Environmental Practitioners) Regulations, 2003.

3. **Absence of a legally responsible and accountable developer for the project:** The report indicates that Total East Africa Midstream BV is an interim developer of the EACOP project and not the actual developer. The law applicable only recognizes a developer who must fully bear the responsibilities and liabilities; and not an interim developer. Legally, when the actually developer is eventually incorporated, they will not be bound by commitments made before their incorporation, unless expressly provided and assigned in future agreements.

As stakeholders in the sector, we believe that the concerns stated above go to the root of the process and we therefore recommend that NEMA should not approve the EACOP ESIA report until:

- (a) The issue eligibility of RSK limited to undertake environmental impact assessment in Uganda is resolved.
- (b) The issue of an interim developer undertaking the ESIA instead of the actual developer is resolved and appropriate guarantees are made that when the actual developer is incorporated such developer will inherit all the commitments and obligations.
- (c) The impacts of the project are re-assessed and appropriate mitigation measures of the negative impacts are provided for.

Until, these legal issues are addressed, the whole process may be rendered null and void for being inconsistent with the laws of Uganda.

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