

*Letter from Royal Society for the Protection of  
Birds / BirdLife International commenting on EIA  
for Tana River Delta Sugar Project – Jan 2008*

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The Director General  
National Environment Management Authority (NEMA)  
P O Box 67839, 00200  
Nairobi, Kenya

5 January 2008

Dear Dr Mwinzi,

**EIA Study Report - Proposed Tana Integrated Sugar Project in Tana River and Lamu Districts, Coast Province, Kenya.  
Comments on behalf of the Royal Society for the Protection of Birds and BirdLife International**

RSPB and BirdLife International have assessed the EIA study report for the proposed Tana Integrated Sugar Project and have discussed this proposal with a number of colleagues within Kenya. It is not our normal practice to comment on specific proposals in other countries, these will be matters for our partner organisations, in this instance Nature Kenya (the East Africa Natural History Society). However in view of the potential significance of this proposal on biodiversity and natural resources of recognised international importance, we feel it appropriate to object to this proposal. Kenyan organisations naturally know the situation on the ground better than we do. Our comments in the main are therefore relating to the quality of the EIA and to the potential ramifications for international conventions of which Kenya is a signatory. The Tana River Delta is a critical site for biodiversity conservation and we urge that no major development be permitted before a more adequate assessment has been done and an overall conservation focused strategy for the Delta put in place.

BirdLife International is a global Partnership of conservation NGOs in over 100 countries, with around 10 million members and supporters worldwide. The BirdLife Africa Partnership comprises NGOs in 20 African countries with a Secretariat based in Nairobi. Our work is built on a strong scientific foundation: we provide authoritative information on the status and conservation of bird species, and are the IUCN Red List Authority for birds. The Royal Society for the Protection of Birds (RSPB) is the UK partner in BirdLife International and has over one million members. We have provided assistance to conservation in East Africa for the past 15 years, primarily through our BirdLife International partner organisations. This has included collaboration with NEMA and other Government institutions through for example training for officers involved in site and species monitoring programmes.

### Summary of our objection

The RSPB and BirdLife International believe that this proposal if implemented would have an extremely significant and detrimental impact upon the biodiversity and conservation status of the Tana River Delta. It would remove some 20,000 hectares of semi natural habitat within a recognised Important Bird Area, which demonstrably qualifies for listing under the Ramsar Convention on Wetlands of International Importance. Furthermore it is likely to be severely detrimental to areas of the Delta downstream, which are vital for biodiversity, fisheries and tourism, as a result of reduced river flows and increased pollution, particularly in the dry season. Finally this wholesale industrialisation of the Delta, besides removing immediate economic opportunities for pastoralists and other local land users, will preclude future exploitation of its rich potential for eco-tourism.

The EIA does not contain much data or analysis that would be needed to make a credible assessment of the impacts of this proposal. Much of the narrative is a supportive justification rather than an assessment and the consideration of alternatives follow the same approach. Part of the problem may relate to the scanty detail available concerning what exactly the project would involve and which natural features would be protected and which would be lost.

The EIA notes cumulative impacts as a result of other proposals also currently mooted, although these are not quantified or their effects assessed. Of particular concern is the fact that the EIA fails to demonstrate that the impacts on biodiversity and on local communities are capable of mitigation. Mitigation measures where proposed are in the form of suggestions by the consultants – nowhere is there evidence of commitment to these measures by the applicants.

### International Conventions and the Tana River Delta

The proposals have implications for the implementation of at least three international conventions to which Kenya is a signatory. These are the Convention on Biological Diversity, which sets out a general framework through which the sustainable use of natural resources and their equitable sharing should be achieved, the Ramsar Convention and the Bonn Convention on Migratory Species.

#### *Ramsar Convention*

The Ramsar Convention requires signatories to make all decisions concerning wetland management on the basis of wise use. The EIA claims on Page 319 (Para 5.6.1) that the 'proposed project is expected to strictly observe the Ramsar Convention's principles of wise use of the wetlands in the project area'. We would contend that on the basis of the EIA, and other material available to us, this will not be achieved.

Ramsar define 'Wise use' of wetlands as '*the maintenance of their ecological character, achieved through the implementation of ecosystem approaches, within the context of sustainable development*'. A series of guidelines on implementing this concept have been produced and focus on three specific responsibilities of contracting parties

- Adopt national wetland policies

- Develop programmes of wetland inventory, monitoring, research, training, education and public awareness
- *Take action at wetland sites, involving the integrated management plans covering every aspect of the wetlands and their relationships with their catchments*

In respect of the third of these, despite the earlier appointment of a steering committee to develop a Delta management plan, there has been little progress. We would argue that, under the principles of wise use, any economic development in the delta should only take place in the context of *inter alia*:

- a proper management plan committing to the establishment of conservation zones,
- the sustainable and equitable use of shared water resources,
- an efficient information management system,
- structured and efficient overall management, and
- mitigation of any detrimental impacts identified.

The current proposal unfortunately fails to offer progress towards achievement of any of these pre-requisites. At the same time it risks exacerbating environmental degradation, resource stresses and potential user conflicts over resources.

In 2002 BirdLife International published '*Important Bird Areas and potential Ramsar sites in Africa*' which highlighted sites in Africa, including 18 in Kenya, which qualify as wetlands of international importance and for listing as Ramsar Sites. This document was approved by the Kenyan Government. The Tana River Delta qualified under all four Ramsar criteria considered – relating to globally threatened species, important congregations of species and critical ecosystems.

In conclusion we believe that the listing of the Tana River Delta under the Ramsar Convention should be a priority and should be put in place before any development proposals are considered, so that their design can be properly consistent with the Ramsar principles.

#### *The Convention on Migratory Species*

The Convention on Migratory Species (Bonn, 1979) is concerned with the management and protection of animal species that cross national boundaries during their migrations, and are therefore dependent on more than one country for survival. The Convention operates through the implementation of conservation measures for species listed in its Appendices. One of these is the Basra Reed-warbler, an Endangered species that was added to Appendix I of the Convention on the specific initiative of the Government of Kenya, at the Eighth Conference of the Parties, held in Nairobi in November 2005. The Delta is thought to hold significant non-breeding numbers of this species, which may have a global population of only 2,500-3,000 pairs. For Appendix I species, Parties to the CMS shall endeavour:

- a) to conserve and, where feasible and appropriate, restore those habitats of the species which are of importance in removing the species from danger of extinction;

- b) to prevent, remove, compensate for or minimize, as appropriate, the adverse effects of activities or obstacles that seriously impede or prevent the migration of the species; and
- c) to the extent feasible and appropriate, to prevent, reduce or control factors that are endangering or are likely to further endanger the species.

A daughter Agreement of the CMS is the African-Eurasian Waterbird Agreement (AEWA). Under this agreement, State Parties, which again include Kenya, undertake to implement initiatives for the protection of waterbird species listed on Annex II of the Agreement. Of the waterbird species on Annex II, no fewer than 22 are known to occur in internationally important numbers in the Tana Delta. Among other responsibilities, Parties undertake to:

- identify sites and habitats for migratory waterbirds occurring within their territory and encourage the protection, management, rehabilitation and restoration of these sites
- coordinate their efforts to ensure that a network of suitable habitats is maintained or, where appropriate, re-established throughout the entire range of each migratory waterbird species concerned
- investigate problems that are posed or are likely to be posed by human activities and endeavour to implement remedial measures, including habitat rehabilitation and restoration, and compensatory measures for loss of habitat

All of these species are shared with other range countries, such that impacts in the Tana Delta will have significant consequences well beyond Kenya's boundaries.

In conclusion, provisions for the globally threatened Basra Reed-warbler and for the 22 species occurring in internationally important numbers should be integral to any future land use proposals in the delta.

#### EIA principles

As noted above, the Environmental Impact Assessment report is poor on many counts. The following comments are by no means comprehensive.

- The EIA gives many signs of being produced in a very tight timescale of 2-3 months (work schedule Page 431). This is inadequate for any EIA - more so for one dealing with an inherently seasonal environment which varies hugely across the year.
- Poor information on many aspects, especially on biodiversity – brief and very selective surveys of plants, birds and mammals. No surveys of taxa such as reptiles, amphibians or invertebrates
- No analysis of the impact of the proposal on globally threatened bird species such as Malindi Pipit, Basra Reed-warbler or Tana River Cisticola, or how any such impacts might be mitigated
- The EIA conveys a poor appreciation of the nature of the Delta environment and the inherent seasonality referred to above. Section 4.6.1 (Page 113) describes the project area as a highly disturbed semi natural ecosystem in a

dryland environment. A visit in the wet season would presumably have conveyed a very different impression.

- Poor integration of the EIA. The sections are effectively independent of each other and have numerous gaps, overlaps and contradictions
- The maps are poor or non-existent and make understanding and assessment of what development is proposed, and what features will be retained and lost, very difficult
- Cumulative impacts. These are extremely worrying, and while other development proposals are referred to in Section 4.2.6, they are nowhere assessed. Their accumulated impacts on both natural resource management and the operation of the proposed sugar scheme are not assessed.
- Mitigation, especially for the cumulative proposals and to achieve ecologically acceptable regulation of river flows, lies effectively outside of the control of the project proponents. More direct ecological mitigation is nowhere clearly stated or committed to. Thus, for example, the summary refers to the fact that areas of woodland within the development area will be kept; but which areas are not stated, nor is how the retained forest fragments will be managed if they are to now be in a sea of sugar cane rather than part of a habitat matrix. Some key recommendations are made on Pages 167 and 168 (Para 4.8.7) based on an earlier study by Luke et al in 2005<sup>1</sup>. While we support many of these recommendations, they were not developed as mitigation for this proposal and are focused only on the forest habitat. It is not stated whether there is any commitment to them by the project proponents.
- The data collected from existing sources also seems very inadequate and a lot of key reference documents appear to be missing.

Chapter 2 of the EIA refers to the study being guided by reference to World Bank Operational Policy 4.04 '*Natural Habitats*' and other World Bank Policies. A key element of Policy 4.04 is the presumption against projects involving the significant conversion or degradation of critical natural habitats. In our view, the proposed project falls within this category - given that it is proposed within an IBA which is critical for various rare, vulnerable, migratory and threatened species including the Southern Banded Snake Eagle, Malindi Pipit, Basra Reed-warbler and Tana River Cisticola and will involve the conversion of at least 20,000 ha of natural habitat. Therefore, it is not clear how the guidance in this policy has been taken into account.

Two of the international Conventions noted above have produced guidance on EIA methods that, if implemented, would help to effectively implement the word and the spirit of the Convention concerned. For the reasons cited above, we believe the current EIA fails to achieve the rigour demanded by these guidelines, or indeed those

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<sup>1</sup> Luke Q., Hatfield R. & Cunneyworth P. 2005. Rehabilitation of the Tana Delta Irrigation Project, Kenya: An Environmental Assessment, CEPF Report, July 2005. Available at: [http://www.cepf.net/ImageCache/cepf/content/pdfs/final\\_2etdip\\_5fenvironmental\\_5fassessment\\_nt\\_2epdf/v1/final.tdip\\_5fenvironmental\\_5fassessment.pdf](http://www.cepf.net/ImageCache/cepf/content/pdfs/final_2etdip_5fenvironmental_5fassessment_nt_2epdf/v1/final.tdip_5fenvironmental_5fassessment.pdf)

of your own NEMA guidelines, or the World Bank Operation Policy 4.04 on Natural Habitats. **We strongly believe that further impact assessment should be carried out to strengthen the EIA before an informed decision can be taken on the proposed project.** The two sets of Convention guidelines as well as your own should provide valuable guidance for this further work.

CBD (2006) *Voluntary guidelines on biodiversity-inclusive impact assessment* (Decision VIII/28 adopted at COP 8, available from <http://www.cbd.int/decisions/default.aspx?m=COP-08&id=11042&lg=0>)

Ramsar Convention Secretariat (2007) *Ramsar handbooks for the wise use of wetlands, Volume 13: Impact assessment*, available from [http://www.ramsar.org/lib/lib\\_handbooks2006\\_e13.pdf](http://www.ramsar.org/lib/lib_handbooks2006_e13.pdf)

See the Annex to this letter for aspects of the guidelines which we believe particularly merit further attention

World Bank Operation Policy 4.04 on Natural Habitats, available from: <http://wbln0018.worldbank.org/Institutional/Manuals/OpManual.nsf/toc2/71432937FA0B753F8525672C007D07AA?OpenDocument>

### Conclusions

We have not attempted in this objection letter to cover the full range of conservation impacts arising from the proposal, still less the socio-economic and livelihood concerns and the increased conflict between natural resource management and human use which this proposal risks incurring. The Delta is an enormously important economic and environmental resource, under-utilised and under-managed until now, but with the potential to contribute much more to future sustainable development of this region of Kenya. The EIA does not contain the proper assessment of impacts or put in place the environmental safeguards which would be expected before a well-planned development went ahead. **We urge that this EIA be rejected and a new, more strategic, comprehensive and credible EIA be undertaken for any project that may be pursued. No development of a significant scale should be considered before proper planning for the future management of the Tana Delta's invaluable resources has been put in place.**

Thank you for considering our comments.

Yours sincerely

Paul Buckley  
Country Programme Manager

cc Mr Paul Matiku, Executive Director Nature Kenya  
Dr Hazell S Thompson, BirdLife International

**Annex: Aspects of Conventions' Impact Assessment guidance requiring further consideration (not exhaustive)**

**CBD guidelines**

Section of guidelines	Issue addressed	Further work required to comply with guidelines
<i>Scoping</i>		
Para 22	Mitigation and enhancement of impacts should strive to ensure the public/individuals do not bear costs greater than the benefits which accrue to them	Better analysis/quantification of the costs/benefits
Para 25	Level of information requested in TOR for EIA reports, particularly subparagraphs: <ul style="list-style-type: none"> <li>• f) detailed information on predicted biodiversity impacts including level of certainty</li> <li>• i) detailed information on predicted impacts on ecosystem services including level of certainty</li> <li>• j) details of measures to avoid, minimize and compensate for impacts on biodiversity/ecosystem services and enhancement possibilities</li> <li>• k) details of residual impacts including geographical importance</li> </ul>	More detailed information needed in EIA report > further studies needed
Para 27	Practical recommendations for defining TOR for EIA reports, particularly: <ul style="list-style-type: none"> <li>• c) need to define, understand and where possible quantify baseline conditions</li> <li>• d) need for better assessment of indirect and cumulative impacts</li> <li>• e) need for detailed information about alternatives/mitigation measures including their likely success</li> </ul>	More detailed information needed in EIA report > further studies needed

<i>Assessment and evaluation of impacts</i>		
Para 29	Assessing impacts usually involves a detailed analysis of their nature, magnitude, extent and duration, and a judgement of their significance	At present the EIA report only describes impacts in general terms > further analysis is needed
Para 31	Practical lessons, particularly: <ul style="list-style-type: none"> <li>• a) allow enough survey time to take seasonal features into account</li> <li>• f) take account of cumulative threats/impacts</li> <li>• i) if possible quantify changes in biodiversity composition, structure and key processes, as well as ecosystem services. Explain expected consequences of loss of biodiversity including costs of replacing ecosystem services</li> </ul>	At present the EIA report only describes impacts in general terms > further analysis is needed
<i>Reporting: the EIS</i>		
Para 33	Provide sufficient information to enable the public to understand the proposal and its impacts	At present the EIA does not provide clear information about the proposed project, e.g. detailed maps, or readily understandable information about overall impacts
<i>Decision-making</i>		
Para 43	Seek to strike a balance between conservation and sustainable use for economically viable, and socially and ecologically sustainable solutions	Further emphasis is needed on sustainable alternatives that balance conservation and development goals. At present the EIA concentrates on a very limited range of alternatives.

### **Ramsar guidelines**

<b>Section of guidelines</b>	<b>Issue addressed</b>	<b>Further work required to comply with guidelines</b>
<i>Impact analysis and assessment</i>		
Section c) on page 17	Need to assess impacts within the context of 'ecological character' – refer to Ramsar guidance on ecological character and risk assessment	Need to assess impacts within the context of ecological character

The advice provided in the IAIA (International Association for Impact Assessment) Principles on 'Biodiversity in Impact Assessment' (see <http://www.iaia.org/modx/assets/files/SP3.pdf>) is also likely to be useful. So are the outputs of IAIA's CBBIA (Capacity Building for Biodiversity in Impact Assessment) programme, in which the CBD and Ramsar Conventions were closely involved. The CBBIA outputs can be accessed from the link on IAIA's web page at <http://www.iaia.org/modx/index.php?id=155> or direct from the CBBIA Toolkit website at <http://www3.webng.com/jerbarker/home/eia-toolkit/overall/home.html>.