

OUR REF: NJ/LAMU-GARISSA EIA/NEMA/16/1  
YOUR REF: NEMA/EIA/5/2/1272

13<sup>th</sup> November 2016

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Dear Prof Wahungu,

**RE: SUBMISSION OF COMMENTS FOR THE ESIA STUDY FOR THE  
LAMU-GARISSA ROAD SECTION OF THE LAMU PORT SOUTHERN  
SUDAN-ETHIOPIA TRANSPORT (LAPSSET) PROJECT**

The above matter refers.

The project road, (Lamu – Garissa road), forms the initial part of the Lamu Port Southern Sudan Ethiopia (Lapsset) transport corridor. Lapsset aims to improve access and connectivity between Kenya, South Sudan and Ethiopia and also intends to promote dynamic regional socio-economic development along the transport corridor especially in the Northern, Eastern, North-Eastern and Coastal parts of Kenya. Key towns in the project are Lamu, Garissa, Isiolo and Lodwar in Kenya, Juba in Southern Sudan and Addis Ababa in Ethiopia.

The project road is a 250 kilometre road constructed from gravel to bitumen standard, and includes the installation of culverts, provision of side drains and mitre drains, upgrading of the bridges, and route deviations. In line with Section 58 of the Environment Management and Co-ordination Act (EMCA), Kenya National Highways Authority (KeNHA) (the project proponent) engaged the services of a Consultant, SAI Consulting Engineers, to conduct an Environmental & Social Impact Assessment (ESIA) study for the project road. The completed study report has now been submitted to NEMA. Roads are major catalysts for ecological and socioeconomic change no matter where they are sited, and this project is no exception. Below we offer our comments about some issues we feel have not been given adequate attention in the ESIA.

**Comment 1: Siting the road: wildlife, human populations, and flood risk**

The ESIA offers three different routes. There is a clear preference by the proponents for Alternative I-1 but it is worth carefully examining the arguments behind that preference. Alternative I-1 is shorter and runs through fewer existing villages. However, it runs alongside the National Arawale Wildlife reserve and it runs in places through the flood plain of the Tana River. In contrast, Alternative I-2 is longer and runs through several existing villages, as it largely makes use of the existing road between Lamu and Garissa. However, it is away from the wildlife areas and farther from the river, although still in the flood zone for one section. The formal comparison is summed up by this table in Chapter 7 of the ESIA:

**Table 7.1 : Comparison of Alternative Alignments for Lamu – Garissa Road**

Corridor Parameter	Description	Alternative I-1	Alternative I-2	Alternative I-3
<b>Total length</b>	-	250 km	330 km	260 km
<b>Objectives</b>	Accessibility	Good	Fair but longer	Poor
	Service to highway users	Will provide safe, efficient and speedy movement	Lower speed due to substandard geometry and longer travel time	Lower speed due to sub-standard geometry
	Network connectivity	2 major roads A3 & C81	4 major roads A3, C81, B8 & C112 and other village roads	2 major roads A3 & C81 and other village roads
	Traffic demand	Will attract future port cargo traffic and tourist traffic	Will be less attractive to port and tourist traffic	Will attract existing and future port cargo and tourist traffic
<b>Engineering features</b>	Horizontal alignment	Almost straight, minor improvements require in existing stretches	Some moderate curve involved, many improvements require for development	Many sharp curves involved, major improvements require for development
	Vertical alignment	No major issue as the terrain is flat		
	Soil Condition (Swampy area)	60 km	40 km	60 km
	Likely rocky area	0 %	0 %	0 %
	Existing Travel speed	N.A.	40 to 60 kmph	20 to 50 kmph
	No of Junctions	Least no of junctions	Maximum junctions on this alignment	Moderate no. of junctions
	Nos. of Bridges	4	10	2
	Effect of Flood zone area of Tana River	Minimum	Maximum	Moderate
<b>Environment</b>	Impact on environment	Minor	Major	Major
	Rehabilitation and resettlement	Minimum impact as most portion of alignment passes through Greenfield area	Moderate impact as alignment passes through existing trunk route B8 and built-up sections	Maximum impact as it passes through many built-up sections
	Water and air quality	Minor impact	Moderate impact	Moderate impact
	Noise pollution	Minor as less no. of villages are traverse	Major as alignments passes through many villages	Major as alignments passes through many villages

Corridor Parameter	Description	Alternative I-1	Alternative I-2	Alternative I-3
	Preservation of culture	Minor impact on properties	Minor impact on cultural properties	Minor on cultural properties
	Protection of flora and fauna	Maximum	Minimum	Moderate
Land use	Impact on agricultural activities	Major	Minor	Minor
	Impact on existing commercial activities	No current commercial activities noted along the proposed alternatives, hence no effect		
	Consideration on future land use pattern	May change with the availability of a better transportation facility	May change with the availability of a better transportation facility	May change with the availability of a better transportation facility
Financial	Cost of construction	Minimum	Moderate	Maximum
	Logistic for construction operation	Being a new alignment, construction is easy with access from the existing alignment I-2.	Existing road to be maintained during construction.	Better due to easy access from existing road.
Special Issues		Land acquisition is difficult due to community land in some stretches.		Land acquisition is difficult due to community land in some stretches.

Given the descriptions in the text, which are likely more useful than the summaries in the table, it is worth recognizing the following points:

#### a) Impacts on Human Populations and Wildlife

Much of Alternative I-1 would be a new roadway, although it would be NEAR D568:

*“As this alignment option is a new alternative alignment to existing route, there is no existing road except at some sections where disjointed tracks exist using the existing D568. Based on the engineering factors, segment length and considering railway and pipeline design along with highway, most of the section of road is expected to be totally on new alignment where very few, small, sparsely spaced settlements are developed. This alignment will provide free flow movement to the road users due to limited number of villages/settlements along the proposed road” (Ch. 6-4).*

It is as much a value judgment as anything else whether or not a new road should run through fewer villages and more wilderness or through more populated areas and already developed land. New roads fragment landscapes,<sup>12</sup> harm species from

<sup>1</sup> Laurance, W. F., S. Sloan, L. Weng, and J. A. Sayer. 2015. Estimating the Environmental Costs of Africa’s Massive “Development Corridors.” *Current Biology* 25: 1-7. <http://dx.doi.org/10.1016/j.cub.2015.10.046>.

<sup>2</sup> Forman, R. T. T. & L. E. Alexander. 1998. Roads and their major ecological effects. *Annual Review Ecological Systems* 29: 207-231.

insects to birds to amphibians to mammals,<sup>3</sup> encourage sprawl, poaching, and inefficient use of resources,<sup>4</sup> result in higher wildlife mortality<sup>56</sup> and dangerous motorist collisions, increase polluting runoff into nearby streams and aquifers,<sup>78</sup> and heighten development pressure.<sup>9</sup> There may be less accountability on the part of the proponents to follow through on their monitoring and management promises because there are fewer community stakeholders to hold them accountable. However, old roads that are expanded may fragment existing human communities and—as the ESIA mentions—are likely to increase the prevalence of drugs, prostitution, STDs, and other kinds of socioeconomic challenges. All of these details must be weighed in the balance as this important decision about the road goes forward.

Alternative I-1 runs next to a major nature reserve for 40km.

*“From km 102 to km 142 alignments is bypassing National Arawale Wild life reserve. The alignment is approximately 1 km away from the National Arawale reserve boundary and going parallel to the eastern side of Reserved Forest boundary area. Wild animals are also observed in this section of project road. Pug marks of bigger animals like elephants were observed in this zone” (Ch 6-6).*

Under its National Biodiversity Strategy and Action Plan, the Government of Kenya has an obligation to protect all of the species in this reserve. But one of the species of concern that stands out specifically is the IUCN red list species *Hirola (Beatragus hunteri)*. The ESIA states:

*“Arawale National Reserve forms the western border of the road project between Ijara and Masabubu (see Fig. 4-1, Chapter 4). The Arawale National Reserve is a designated conservation area managed by the Garissa County in assistance with the Kenya Wildlife Service. It lies 77 km south of the town of Garissa. The reserve covers an area of about 533 km<sup>2</sup>. Arawale was gazetted in 1973 with*

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<sup>3</sup> Senzaki, M., Y. Yamaura, C. D. Francis, and F. Nakamura. 2016. Traffic noise reduces foraging efficiency in wild owls. *Scientific Reports* 6: 30602. DOI: 10.1038/srep30602.

<sup>4</sup> Trombulak, S. C. & C. Frissell. 2000. Review of ecological effects of roads on terrestrial and aquatic communities. *Conservation Biology* 14: 19-29.

<sup>5</sup> Fensome, A. G. & F. Mathews. 2016. Roads and bats: A meta-analysis and review of the evidence on vehicle collisions and barrier effects. *Mammal Review* 46: 311–323.

<sup>6</sup> Langen, T. A., K. M. Ogden, and L. L. Schwarting. 2009. Predicting Hot Spots of Herpetofauna Road Mortality Along Highway Networks. *Journal of Wildlife Management* 73(1): 104-114.

<sup>7</sup> Holland, A. F., D. M. Sanger, C. P. Gawle, S. B. Lerber, M. S. Santiago, G. H. M. Riekerk, L. E. Zimmerman, and G. I. Scott. 2004. Linkages between tidal creek ecosystems and the landscape and demographic attributes of their watersheds. *Journal of Experimental Marine Biology and Ecology* 298: 151-178.

<sup>8</sup> Shuster, W. D., J. Bonta, H. Thurston, E. Warnemuende and D. R. Smith. 2005. Impacts of impervious surface on watershed hydrology: A review, *Urban Water Journal* 2(4): 263-275. DOI: 10.1080/15730620500386529.

<sup>9</sup> National Cooperative Highway Research Program (NCHRP). 2002. Interaction Between Roadways and Wildlife Ecology: A Synthesis of Highway Practice. NCHRP Synthesis 305. Transportation Research Board of the National Academies. 78 pp.

*the primary purpose of protecting the Hirola or Hunter's hartebeest (Beatragus hunteri) an extremely rare antelope species which is found only in this region. The landscape in this area is mostly a dry thornbush savannah. The Hirola is critically endangered according to the IUCN red list of threatened species. Arawale is also a refuge for some species like elephant, giraffe, Grevy's zebra, African wild dog, cheetah, lesser kudu, buffalo, hippo and crocodile (at the Tana River area)” (Ch. 5-12).*

It is a shame that the ESIA does not include any specific data or management plans to ensure the protection of any of these species. It is also concerning that the road through these animals' habitat is the preferred alternative.

In contrast, no mention of wild animals is made for the Alternative I-2 alternative. They may still be in the area but at least the route already exists and is not explicitly passing through a high-density transit zone for wildlife.

The plans for Alternative I-1 suggest 8 overpasses/underpasses at random points along the highway (average of 1 per distance > 30 kilometers):

*“4.7.4 Design of Animal Crossings:*

*Some portion of the project road is passing by the side of the Reserve Forest /Wild Life Sanctuaries where movements of animals have been observed. Apart from this, animal movements were also observed along a few sections of the corridor. To ensure safe passage of animals, Animal crossings has been proposed at 8 locations along the 5 major wildlife/Forest corridors. This will prevent the animals straying to the main road. Animal Crossings has been proposed at locations listed in Table 4.4.*

*Safety fences have been proposed over certain lengths before and after the crossing points to prevent animals straying to the road. It is also recommended to provide safety fence at these five corridors all along the road length passing by the side of the sanctuary or forests areas with openings only at animal cross-over locations. No authenticated data on exact location of movement of animal across the highway could be available. Thus the locations of animal crossing underpasses have been proposed based on Environmental Impact Assessment Report. Exact locations to be finalised during construction stage in consultation with NEMA's Environmental Expert and the Environmentalist of the supervision team” (Ch. 4-11).*

This failure to assess the Hirola's movements, or to gather any data about any of the species at risk and their habitat use, is a failing of this EIA. Likewise, the fact that there is no information about the details of the “cross-overs” is worrisome. Over and underpasses for animals must be species-specific: too small or far apart or

made from the wrong material and the overpasses—which are expensive to build—will go unused.<sup>10</sup>

Finally, Table 13.1, “The Proposed Environmental and Social Management Plan,” (ESMP) which includes estimated costs for each item, does not mention these overpasses. Nor does it mention building fences to protect wildlife from entering the road. In fact, the ESMP does not mention the word “wildlife” at all. There is a mention of wildlife in the Environmental Monitoring Plan (monitoring “Wildlife/Livestock/Human Accidents”). However, “estimated costs of these activities are included in the ESMP” (Ch. 11-2). Since the ESMP does not mention the word wildlife, it appears that although the proponents claim to recognize their obligation to protect wildlife, no resources have been allocated to meet that obligation.

## **b) Flood Risk**

Alternative I-1 is as much in the flood zone as the B8 road (the main road for Alternative I-2) and in fact, the description of Alternative I-1 mentions both swamps (but not Alternative I-2) and two stream/river crossings (again, not for Alternative I-2):

*“Presently, there is no definite drainage arrangement exists as such. Water from west to east flows to Tana river over the road. At many places the road shifts away from the river due to flooding. To avoid the drainage issues and excessive flooding due to Tana River flooding plain, the alignment passes away from Tana River at many places.*

*Swampy areas scattered over length of about two kilometres were observed around km 12 and km 70. It is felt that the drainage of these areas would be a challenging task and require to be taken care by proper stabilization technique. At km 12, large swamp of almost 200m length was observed during site investigation. Also, near km 70, the proposed alignment is passing through the swampy section from km 70+000 up to km 72+200, which also requires attention while constructing the road” (Ch. 6-8).*

Flooding, water pollution, and erosion are likely to be serious issues in this region (9 meters of rain fall in Lamu each year, Ch. 1-4). This ESIA does not include adequate analyses of where the culverts and bridges should be built to prevent flooding and water pollution, nor does it include sufficient description of the mitigation measures to be taken to prevent negative hydrological impacts. It also does not address monitoring in sufficient detail. The ESIA says:

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<sup>10</sup> Wildlife and Roads: A resource for mitigating the effects of roads on wildlife using wildlife crossings such as overpasses, underpasses, and crosswalks. <http://www.wildlifeandroads.org>

### *“Hydrology and Water Quality Degradation*

*The proponent should put in place several measures that will mitigate water pollution arising during the construction phase by adhering to the provisions of NEMA Water Quality Regulations, 2006 (Legal notice No. 121). Measures aimed at minimizing run-off and spillover effects to neighbouring land during rainy season or when wet activities are being conducted on the site.*

*These measures will include clearing the project site of excavated materials or protect excavated sections from storm water, avoid excavation through flood plains or into stream banks, creating proper channels for waste water and solid waste disposal, develop emergency measures and procedures for protection of soils and streams downstream, design adequate culverts to accommodate peak flows; stabilize cut-surfaces with gabions, concrete walls, vegetation etc.; identify locations with sub-surface water streams before cutting, direct all surface runoff into existing natural drains and stabilize the drains downstream, culverts and drains to accommodate peak runoff from the catchments, excavations should not encroach onto streams, flood plains, stream banks or springs” (Ch. 9-7).*

It would be reassuring to see the studies that should have been carried out to assess how and where culverts will be constructed, and in general to be able to read considerably more detail in this section.

The International Finance Corporation of the World Bank Group has developed Environmental, Health, and Safety Guidelines for toll roads that include specific stormwater management practices that should be adopted:

#### *“Stormwater*

Construction or widening of sealed roads increases the amount of impermeable surface area, which increases the rate of surface water runoff. High stormwater flow rates can lead to stream erosion and flooding. Stormwater may be contaminated with oil and grease, metals (e.g. lead, zinc, copper, cadmium, chromium, and nickel), particulate matter and other pollutants released by vehicles on the roadway, in addition to deicing salts (e.g. sodium chloride and magnesium chloride) and their substitutes (e.g. calcium magnesium acetate and potassium acetate) from road maintenance facilities in colder climates. Stormwater may also contain nutrients and herbicides used for management of vegetation in the rights-of-way.

In addition to the management practices for stormwater during construction and operations presented in the General EHS Guidelines, practices applicable to roadways include the following:

### General Stormwater Management

1. Use of stormwater management practices that slow peak runoff flow, reduce sediment load, and increase infiltration, including vegetated swales (planted with salt-resistant vegetation); filter strips; terracing; check dams; detention ponds or basins; infiltration trenches; infiltration basins; and constructed wetlands;
2. Where significant oil and grease is expected, using oil / water separators in the treatment activities;
3. Regular inspection and maintenance of permanent erosion and runoff control features;

### Road Paving

1. Paving in dry weather to prevent runoff of asphalt or cement materials;
2. Use of proper staging techniques to reduce the spillage of paving materials during the repair of potholes and worn pavement. This may include covering storm drain inlets and manholes during paving operations; using erosion and sediment control measures to decrease runoff from repair sites; and utilizing pollution prevention materials (e.g. drip pans and absorbent material on paving machines) to limit leaks and spills of paving materials and fluids;
3. Reducing the amount of water used to control dust, and using sweeping practices rather than washing. Collecting and returning swept material to aggregate base or disposing as solid waste, as described in the General EHS Guidelines;
4. Avoiding the generation of contaminated runoff from cleaning of asphalt equipment by substituting diesel with vegetable oil as a release and cleaning agent; containing cleaning products and contaminated asphalt residues; scraping before cleaning; and conducting cleaning activities away from surface water features or drainage structures” (pp 4-5).<sup>11</sup>
5. The ESIA should have had as much if not more detail describing efforts to prevent water pollution and erosion, especially given the importance of the Tana River as a local resource:

“Tana River runs along the project road and is the only permanent natural source of water for Garissa town and the surrounding areas. Seasonal streams (laghas) provide water during the wet season for both human and livestock. National Parks (N.P.), National Reserves (N.R.) and Sanctuaries that are designated by the Wildlife (Conservation and Management) Act Cap. 376 to the west of the proposed alignment area are Tana River Primate N.R. and Arawale N.R. and the Rahole N.R. To the east of the

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<sup>11</sup> International Finance Corporation World Bank Group (IFC). 2007. Environmental, Health, and Safety Guidelines: Toll Roads.

<http://www.ifc.org/wps/wcm/connect/7e4c7f80488554d5b45cf66a6515bb18/Final%2B-%2BToll%2BRoads.pdf?MOD=AJPERES&id=1323162564158>



alignment area are the Dodori and Boni national reserves” (Ch 1-5).

If the road is not constructed or operated well along the Alternative I-1 route, and increased runoff results in increased water pollution, it will have negative consequences for both the local communities reliant on the streams and shallow aquifers for their drinking water, as well as for the aquatic species sensitive to contaminants.

### **Comment 2: Air Pollution and Climate Change**

Air pollution is mentioned during the construction phase of the project but it is not addressed during the operational phase. Under Section 8.6, (“Positive Environmental and Social Impacts during Operation Phase”), “climate change” is listed:

*“It is commonly known that as traffic congestion increases, CO2 emissions (and in parallel, fuel consumption) also increase. In general, CO2 emissions and fuel consumption are very sensitive to the type of driving that occurs. Traveling at a steady-state speed results in much lower emissions and fuel consumption compared to a stop-and-go driving pattern. By developing this new road, this will decongest the exist Mombasa to Uganda Northern Corridor route and help reduce CO2 emissions” (Ch. 8-14).*

This prediction that a new road and increased traffic will somehow reduce CO<sub>2</sub> emissions begs further explanation before it can be believed.

### **Comment 3: No information about impacts associated with the extraction of construction materials at the source**

Any major road project, such as the Lamu-Garissa road project, should be considered as much as mineral materials extraction project as a road construction project. The Lamu-Garissa Road Project would be at least 250 kilometers long and 11 meters wide, per specifications in Table 4.3 on page 4-10 of the ESIA. Therefore, if the depth of mineral materials needed for construction of the road is only one-half meter, then the total amount material needed for the project is 1.375 million cubic meters of aggregate (for example, gravel), all of which must be sourced locally.

According to IFC/World bank guidelines that apply to the construction, operation and maintenance of large, sealed road projects including associated bridges and overpasses:<sup>12</sup>

“Issues associated with sourcing of construction materials are presented in the EHS Guidelines for Construction Materials Extraction,”

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<sup>12</sup> IFC. 2007. Environmental, Health, and Safety Guidelines for Toll Roads.

In turn, the IFC/World bank guidelines that apply to construction materials extraction activities<sup>13</sup> state:

“Environmental issues during the operational, construction, and decommissioning phases of construction materials extraction primarily include the following:

- b) Air Emissions
- c) Noise and Vibrations
- d) Water
- e) Waste
- f) Land Conversion

Such environmental issues include the following impacts to air quality, water availability, and loss of natural terrain:

“Particulate matter (PM) is generated during all phases of exploitation and processing from fugitive sources (e.g. shoveling, ripping, drilling, blasting, transport, crushing, grinding, screening, and stockpiling). The main sources of PM emissions include crushing–grinding, drilling, blasting, and transport. Impacts from PM emissions are related to its size (e.g. whether it is less than 2.5 microns in diameter), its main components (e.g. silica, silicates, carbonates), as well as to rock impurities and trace components (e.g. asbestos). ...

Surface water regimes may be altered because of flow diversions, water intake, and changes to the drainage pattern. ....

Excavation activities at construction materials extraction sites often involve major topographical and land-cover changes to allow extraction activities, often including clearing of preexisting vegetation.”

Despite these serious potential environmental impacts, the ESIA for the proposed Lamu-Garissa Road Project contains no information about impacts associated with the extraction of construction materials needed for the project.

Page 4-6 of the ESIA states:

*“An investigation was carried out to determine the availability of naturally occurring materials, including gravel, sand, hard stone and construction water. The objective was to locate sufficient materials that meet specification requirements of the various pavement layers and concrete works in their natural state.*

*Investigations on possible gravel sites entailed excavation of trial pits at a grid of 60m and representative samples taken for laboratory testing. A visual inspection and*

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<sup>13</sup> IFC 2007. Environmental, Health, and Safety Guidelines for Construction Materials Extraction.

*description of each type of material found was done as well as logging of the different strata of each trial pit. The expense of the site was also determined, in a bid to determine the yield that can be obtained.*

*Eighteen (18) No. potential sources of gravel material were investigated, and the summary is shown in the Table 4.1 below and the schematic presentation is given in Figure 4.5.”*



The ESIA contains no further information at all about what impacts may occur if up to 1.375 million cubic meters of materials were extracted from one of more of the 18 identified potential sources of gravel for the project.

**Comment 4: Inadequate dust control measures**

The ESIA does not mention dust as one of the negative impacts during the construction phase. It however provides inadequate measures to address dust in page 9-6. It provides that:

*“9.5.4 Air Quality ...The following mitigation measures should be adopted to minimize the air pollution:*

*Water sprinkling to reduce the dust at construction site and near settlements. Sprinkle water twice a day or more when the visual inspection indicated excessive dust and during heavy traffic...”*

The project area is known to be a water stress area and therefore this mitigation measure is inadequate and not capable of being implemented during extremely dry seasons. The project proponent needs to consider additional measures.

**Comment 5: Inadequate Public and Stakeholders Consultations**

The project road starts at Mokowe and traverses on the eastern side of River Tana and travels through the trading centres of Hindi, Bargoni, Bodhei, Ijara, Roka, Bura East, Nanighi, and Korakora before terminating at Junction (A3/C81), 13kms from Garissa town known as Modika. The Study Report states that Socio-economic impact assessment forums were held at the county and sub-county levels and sets out lists of names of project affected persons and stakeholders who attended public meetings in the different villages through which the road passes, as well as the dates of these consultations.

These consultations were done with intent to collect baseline information, for better understanding of the potential impacts and appreciate the perspectives/concerns of the stakeholders. Information gathered was used for integration in project design and formulating mitigation measures and environmental management plan. However the project study report is as a result of the public consultations carried out in September 2014 to April 2015. The EIA Study Report is dated April 2016 and the invitation for public comments was made in October 2016. These consultations were therefore carried out over a year and in some cases over two years before the filing of the EIA Study. The EIA fails to indicate whether any project changes that occurred over this time were provided to affected groups. Further, it also does not indicate whether the affected groups have themselves changed over this period. Usually, such important matters would be evidenced through the minutes of the consultative meetings, as is required under Regulation 17(2)(d) of the EIA Regulations. Without this information it is impossible for NEMA to assess the quality of the public consultations.

This ESIA Study Report goes against the tenets of effective public participation as given the time lag between public consultations and submission of the Study Report, the information and public affected may have changed, yet this is not catered for in the Study Report. This error in Study Report warrants the project proponent's submission of additional information for the purposes of ensuring that the environmental impact assessment study, review or evaluation report is as accurate and exhaustive as possible, in line with Section 62 of EMCA.

Further, it is unclear from the EIA what levels of discussion took place regarding compensation and relocation. This is an issue that must be finalized prior to construction taking place.

#### **Comment 6: Non-Compliance with Environmental Laws and Regulations**

According to Regulation 21 (2) of the EIA Regulations, NEMA shall, at the expense of the proponent, publish for two successive weeks in the Gazette and in a newspaper with a nation-wide circulation and in particular with a wide circulation in the area of the proposed project, a public notice once a week inviting the public to submit oral or written comments on the environmental impact assessment study report.

From our review, the invitation for public comments for this project was not carried out as per the law as the advertisement was placed in the newspaper for one week (Daily Nation Newspaper of October 13<sup>th</sup> 2016), and further, no gazette notice inviting public comments was issued. This not only violates the EIA Regulations, but also EMCA which in Section 59 details out the requirements for the publication of an EIA Report, setting out a Gazette Notice as a mandatory requirement.

The process has been inadequate for failing to provide reasonable opportunity to the public and in particular residents of the communities affected to submit oral or written comments on the ESIA study report. This failure to comply with procedural requirements violates the principle of public participation both in spirit and in law, and is in particular a gross violation of the Constitutional requirement for public participation, such as Article 10, which sets out participation as a national value and Article 69 which goes further to provide that there must be participation in the management and protection of the environment.

## **Conclusion**

The above comments are submitted to assist the authority accurately assess the potential impacts of the project. Unfortunately, there are clear gaps in the environmental impact assessment that must be clarified by the project proponent prior to construction. Whilst a road can be of great benefit to the citizens of Kenya, its construction must also comply with the standards set out in EMCA and its Regulations or avoidable negative impacts will occur.

We therefore respectfully suggest that the project proponent carry out additional studies on the abovementioned issues and submit to NEMA for consideration prior to construction.

Regards,

**Natural Justice and Environmental Law Alliance Worldwide (ELAW)**

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