

Conciliation procedure in the Specific instance submitted to the Italian NCP by Egbema Voice of Freedom, Chima Williams and Associates (CWA), Advocates for Community Alternatives (ACA) v. ENI s.p.a.

TERMS OF SETTLEMENT

The Conciliator

Having examined the allegations of the parties;
Having examined the reports of the failed joint visit in situ of 18 October 2018;
Having examined the joint and separate reports on the successful joint visit in situ of 27 February 2019;
Having examined comments and proposals conveyed by the parties;
Having heard the parties in direct separate conversations;
Taking note of the fact that the duration of his mandate has been extended by the Italian NCP up to 26 July 2019;
Taking note of the fact that this extension is non-renewable;

Considering opportune that measures for limiting or controlling the flooding in the area object of the present procedure be taken before the rainy season starts in the summer of 2019.

Considering that both parties have indicated the construction of new culverts/drainages and maintenance and management of the existing ones as measures that could be taken in the immediate future.

Considering that the implementation of these measures could be undertaken before the Conciliator's mandate is concluded.

Considering that a verification of the impact of those measures, in particular as to whether they are sufficient to limit or reasonably control the flooding in the area object of the present procedure can be effected only during the rainy season thus at a time beyond the duration of the Conciliator's mandate.

Considering that only after such verification is effected it will be possible to determine whether further measures need to be taken.

Considering that a decision on the construction of new culverts/drainages, the verification of their functionality and the proposing and execution of other measures may require the contribution of a technical expert.

Considering that while the Conciliator considers it that its task includes proposing to the parties to accept commitments for a time beyond the end of his mandate only when these commitments are directly connected to those suggested for the period preceding the end of the mandate.

Considering that the objective of the conciliation procedure is that the Conciliator propose to the parties terms of settlement which the parties are free to accept or to refuse.

Considering that the procedure shall be concluded once the terms of settlement are accepted by the parties, or, in case of non-acceptance by one or both of them, by the submission to the NCP of a Report in which the Conciliator indicates the steps of the procedure, the proposed Terms of Settlement and the fact, and reasons if any, that these terms have been refused by one or both parties.

PROPOSES THAT THE PARTIES ACCEPT AS TERMS OF SETTLEMENT THE FOLLOWING UNDERTAKINGS:

1. ENI-NAOC (hereinafter: the Company) immediately study, in any case no later than within 15 days after the date the present Terms of Settlement are accepted by the parties, in consultation with the Complainants and, if it considers it necessary or if Complainants consider it necessary, with the help of a Technical Expert, the positioning and dimension of new culverts/drainages to be built in the area object of these proceedings.
2. The Company designate a person (with an alternate) responsible for the determination, according to paragraph 1, of the positioning and dimension of the new culverts/drainages as well as for representing the Company in the further phases of the implementation of the Terms of Settlement.
3. The Complainants designate a person (with an alternate) responsible for the determination, according to paragraph 1, of the positioning and dimension of the new culverts as well as for representing the Complainants in the further phases of the implementation of the Terms of Settlement.
4. The Technical Expert shall be designated jointly by the Parties and the funding for his or her activity shall be agreed between them on the assumption that the Parties commit to shoulder equally the financial burden. The Terms of Reference of the Technical Expert are set out in the Annex to the present Terms of Settlement of which they are an integral part. The Parties may modify, by written agreement, such Terms of Reference.
5. The Company builds the new culverts/drainages as soon as their usefulness and location has been determined according to paragraph 1, before the beginning of the rainy season or as soon as reasonably practicable in the opinion of the parties within the year 2019 taking into account seasonable weather conditions.
6. If the persons designated at paragraphs 2 and 3 were to agree to a proposal by the Technical Expert that measures different from the building of new culverts/drainages would be useful and feasible before the beginning of the rainy season they are encouraged to propose them to the Company
7. If either the Company or the Complainants consider, no sooner than one month (31 August 2019) and no later than 45 days into the rainy season (15 September), that the measures taken have not reached their objective, both parties shall meet and jointly proceed, with the help of the Technical Expert, to determine which measures must be taken to remediate or limit the flooding in the area object of the present proceedings.
8. The Parties commit to abide by the suggestions of the Expert within his mandate under the present Terms of Settlement and its Terms of Reference, unless they agree in writing to do otherwise.
9. The measures referred to in paragraph 7 will be undertaken by the Company within the limits of the area object of the present proceedings. The Company will deploy its best efforts for removing any legal obstacles to the implementation of the measures.
10. The Company verifies regularly the functionality of the culverts/drainages and provides for the elimination of any obstacle to such functionality organizing periodic inspections and maintenance activities.
11. The Complainants play an active role in ensuring the functionality of the culverts/drainages. They promptly signal any malfunctioning to the person designated by the Company under paragraph 2 and cooperate with the activities mentioned in paragraph 10.
12. After the end of the Conciliation, the parties will keep the NCP informed of steps taken in implementation of the Terms of Settlement.

13. The Conciliator RECOMMENDS to the Company and Complainants the highest consideration for the safety of all the individuals involved and/or incidentally affected by the Conciliation Procedure and its implementation.
14. The Conciliator RECOMMENDS that the cooperative pattern established by the Conciliation procedure and its implementation be considered as a basis for a suspicion-free cooperation between the Parties permitting them to deal, within each other's role and competences, with personal and socio-economic consequences of the flooding, in particular in the fields of health care and employment opportunities.

ANNEX

Terms of reference for the Technical Expert

1. Assist the representatives of the Parties in determining the necessity and positioning of new culverts/drainages to be built before the rainy season starts and, if he or she considers it useful and feasible, propose, under paragraph 6 of the Terms of Settlement, other measures to be taken before the rainy season.
2. Design the suitable additional culverts/drainage to be constructed, under paragraph 1 of the Terms of settlement, across the Company's access roads/location in order to enhance the flow of seasonal flood waters across the facilities. Plan, and make suggestions for the implementation of the other measures mentioned in paragraph 7 of the Terms of Settlement.
3. Assist the parties in verifying the functionality of the culverts/drainages constructed under paragraph 5 of the Terms of Settlement as well as of the existing ones and in ascertaining whether they have the effect of remediate or limit the flooding in the area object of the present proceedings.
4. Assist the parties, under paragraph 7 of the Terms of Settlement, to determine which measures must be taken to remediate or limit the flooding in the area object of the present proceedings.
5. For this purpose:
 - A) Study the patterns of flow of seasonal floods in the areas within the immediate vicinity of the facilities of NAOC that are the subject of the Specific Instance Complaint (i.e. Mbede 11, Mbede 20 and Mbede 18 access road and location)
 - B) Take into consideration the development and usage of nearby lands on either side of the facilities to avoid any adverse impact on the lands
 - C) Provide a detailed report of all activities carried out and submit all maps, topographic survey result, hydrologic data and engineering drawings of all items recommended, including information on assumptions made (if any).

The Conciliator Professor Tullio Treves¹

For acceptance

The Complainants	The Company
Johnathan Kaufman (ACA) Pastor Evaristus Nicholas (EVF) Prince Chima Williams (CWA)	ENI SPA Legal Affairs Senior Executive Vice President Stefano Speroni

¹ The Conciliator proposed the ToS on June 26, 2019. The Parties accepted by July 8, 2019.