

# AFIEGO AND OTHER CSOS COMMENTS TO NEMA ON THE 2019 DRAFT ESIA REGULATIONS

## AFIEGO AND OTHER CSOS COMMENTS TO NEMA ON THE 2019 DRAFT ESIA REGULATIONS

October 7, 2019

To

The Executive Director,  
National Environmental Management Authority (NEMA),  
Kampala-Uganda



### RE: AFIEGO AND PARTNERS' COMMENTS ON THE 2019 DRAFT ESIA REGULATIONS

#### a. Introduction

The above refers

Africa Institute for Energy Governance (AFIEGO) and other 13 Civil Society Organisations (CSOs), wish to thank you for sharing with us the 2019 draft Environmental and Social Impact Assessment (ESIA) Regulations. These proposed legal reform efforts are critical for the promotion of good environmental governance in Uganda. The reforms are in line with Section 179(2) (c) of the National Environmental Act 2019. Clause 58 (1) of the proposed 2019 draft ESIA regulations intends to revoke and replace the National Environment (Environmental Impact Assessment) Regulations S.I. No. 153-1 of 1998.

The main objective of our comments is to provide an input in completion of the above draft ESIA regulations 2019 as a means to avoid or mitigate environmental degradation in Uganda. We therefore recommend that NEMA adopts some of the provisions from the 1998 EIA regulations including regulations 12, 17, 18, 19, 20, 21, 22, 23, 24 and 29 as presented below. Our comments under section A should be read together with section B. Section A should take precedence over section B.

No.	Adopt the following provisions from the 1998 EIA regulations	Justification and slight modification
1	<p><b>Regulation 12. Public participation in making the study.</b></p> <p>(1) The developer shall take all measures necessary to seek the views of the people in the communities which may be affected by the project during the process of conducting the study under these regulations.</p>	<p>Retain Regulation 12 of the 1998 EIA regulations.</p> <p>We propose a slight improvement: where the</p>

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	<p>communities which may be affected by the project during the process of conducting the study under these regulations.</p> <p>(2) In seeking the views of the people under sub-regulation (1), the developer shall -</p> <p>(a) publicise the intended project, its anticipated effects and benefits through the mass media in a language understood by the affected communities for a period of not less than fourteen days;</p> <p>(b) after the expiration of the period of fourteen days, hold meetings with the affected communities to explain the project and its effects; and</p> <p>(c) ensure that the venues and times of the meetings shall be convenient to the affected persons and shall be agreed with the leaders of local councils.</p>	<p>We propose a slight improvement: where the developer must consult all the leaders and key stakeholders of all the villages located in the project area.</p>
2	<p><b>Regulation 17. Submission of the Environmental Impact Statement.</b></p> <p>(1) The developer shall submit <b>twenty copies</b> of the environmental impact statement to the Executive Director.</p> <p>(2) The Executive Director shall maintain a register of environmental impact statements submitted under sub-regulation (1) of this regulation.</p>	<p>We propose a slight adjustment of reducing the copies from Twenty to only Two (2) plus an electronic copy.</p>
3	<p><b>Regulation 18. Comments of the lead agency.</b></p> <p>(1) The Executive Director shall transmit the environmental impact statement to the lead agency and request the lead agency to make comments on the statement.</p> <p>(2) The lead agency shall make comments on the environmental impact statement and transmit them back to the Executive Director within <b>thirty working</b> days of receiving the environmental impact statement.</p> <p><b>(3) Where the lead agency fails to make comments within the period specified in sub-regulation (2), the Executive Director may make the decision under regulation 21.</b></p> <p>4(4) The lead agency in considering the environmental impact statement under this regulation, may carry out any other procedures that the Technical Committee may consider necessary.</p> <p>(5) The lead agency shall not be required to make comments under sub-regulation (2) where the lead agency is the developer.</p>	<p>-We propose a slight adjustment as follows; the lead agency should make comments on the ESIA report within 10 days, down from 30 days.</p> <p>-We also propose that it should be compulsory for every lead agency of a project to make comments on the ESIA, received from NEMA.</p> <p>NB. There is no reason why a lead agency should be allowed not to make comments. Where the lead agency fails to send</p>

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	<p>(6) Where the lead agency is the developer, it shall be required to submit its environmental impact statement to the Executive Director who shall make comments or invite other lead agencies to make comments.</p>	<p>comments to NEMA, NEMA should not proceed with the approval of the ESIA process.</p>
<p>4</p>	<p><b>Regulation 19. Invitation of general public comments.</b></p> <p>(1) The Executive Director shall within ten days of receiving the comments of the lead agency, and if he is satisfied that the environmental impact statement is complete, invite the general public to make written comments on the environmental impact statement.</p> <p>(2) The invitation of the general public to make written comments shall be made in a newspaper having national or local circulation and shall be exhibited in the newspaper for such period as the Executive Director considers necessary.</p> <p>(3) The invitation under sub-regulation (2) shall state -</p> <p>(a) the nature of the project;</p> <p>(b) the location of the project;</p> <p>(c) the anticipated negative and positive impacts of the project; and</p> <p>(d) the proposed mitigation measures to respond to the negative impacts.</p> <p>(4) The comments under sub-regulation (1), shall be received by the Executive Director within a period of twenty-eight days from the date of the invitation issued under sub-regulation (2).</p>	<p>We propose that this Regulation 19 of the 1998 EIA Regulation be retained in the draft and final 2019 Regulations.</p> <p>It guarantees the public's right to participate in the ESIA processes, with a clear time frame of 28 days.</p> <p>For purposes of faster development, the days can be reduced from 28 to 14 days for the public to make on the complete ESIA report and submit comments to NEMA.</p>
<p>5</p>	<p><b>Regulation 20. Invitation for comments from persons specifically affected by project.</b></p> <p>(1) The Executive Director shall on receiving the comments of the lead agency under sub-regulation (2) of regulation 18 invite the comments of those persons who are most likely to be affected by the proposed project.</p> <p>(2) The invitation of the persons who are most likely to be affected by the project shall be made in a newspaper having local circulation in the area where the project shall be located and on other mass media and through the distribution of the necessary information through lower governments established under the Local Government Act, Cap 243 and shall be in languages understood by the majority of the affected persons.</p> <p>(3) The invitation under sub-regulation (2) shall state -</p> <p>(a) the nature of the project;</p>	<p>The 1998 Regulation is key to the extent that it provides for a right of specifically affected people to participate in the ESIA processes. It states the time frame that NEMA must respect.</p> <p>This is key for enforcement and compliance. This regulation 20 should be retained in the final 2019 ESIA Regulations.</p>

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	<p>(b) the location of the project;</p> <p>(c) the benefits of the project to the local community;</p> <p>(d) the anticipated positive and negative Environmental Impacts of the project; and</p> <p>(e) the proposed mitigation measures to respond to the negative impacts.</p> <p>(4) The individual or collective written comments of the persons likely to be affected by the project shall be received by the Executive Director within a period of twenty-one days from the date of the invitation issued under sub-regulation (2).</p>	
6	<p><b>Regulation 21. Determination to make a decision or hold a public hearing.</b></p> <p>(1) The Executive Director shall consider the environmental impact statement and all the comments received under regulations 18, 19, and 20 and make the decision under regulation 25 or determine whether a public hearing be held under regulation 22.</p> <p>(2) The Executive Director shall call for a public hearing under these regulations where there is a controversy or where the project may have transboundary impacts.</p>	<p>We propose that Regulation 21 of the 1998 EIA Regulations be retained in the 2019 Regulations because it gives NEMA a discretion to organize a public hearing in some cases while in others, a public hearing is compulsory. This is good for enforcement and compliance with the demands of public participation. It ensures accountability that NEMA cannot unilaterally ignore the need to organize a public hearing where there is public demand.</p>
7	<p><b>22. The public hearing.</b></p> <p>(1) On the written request of the Executive Director, the lead agency shall hold a public hearing on the environmental impact statement if -</p> <p>(a) as a result of the comments made under regulations 18, 19 and 20, the Executive Director is of the opinion that a public hearing will enable him to make a fair and just decision;</p> <p>(b) the Executive Director considers it necessary for the protection of the environment and the promotion of good governance.</p>	<p>We propose that the 1998 EIA Regulation 22 be retained under the 2019 Regulations with a slight modification where the days for a public hearing after NEMA receiving comments from the, lead agency, general public and the specifically affected communities, the days be reduced from 30 to 45 days down to 15 to</p>

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	<p>(2) The public hearing shall be held within such period as the Executive Director in consultation with the lead agency may determine but which period shall not be less than thirty days nor more than forty five days of receiving comments under regulations 18, 19 and 20.</p> <p>(3) The public hearing shall be presided over by a suitably qualified person known as a presiding officer appointed by lead agency in consultation with the Executive Director.</p> <p>(4) The person appointed under sub-regulation (3) shall serve on such terms and conditions as the lead agency and the person so appointed may agree.</p> <p>(5) Notwithstanding sub-regulation (3), the scope of the public hearing determined in the terms and conditions under sub-regulation (4) shall be commensurate with the nature and size of the project.</p> <p>(6) The public hearing shall be conducted at a venue which shall be convenient and accessible to those persons who are likely to be specifically affected by the project.</p> <p>(7) The date and venue of the public hearing shall be advertised through the mass media, so as to bring it to the attention of persons most likely to be affected by the project and those persons making comments under regulation 20.</p> <p>(8) On the conclusion of the public hearing, the presiding officer shall make a report of the views presented at the public hearing and make factual findings to the lead agency and the Executive Director within thirty days from the day on which the public hearing was concluded.</p> <p>(9) The lead agency shall make a report to the Executive Director containing the findings and recommendations from the public hearing within twenty one days from the day the public hearing was concluded.</p>	<p>20 days.</p> <p>The rest of the text should stay as per the 1998 regulation 22.</p>
8	<p><b>23. Persons eligible to make presentations at public hearings.</b></p> <p>(1) Any person may attend either in person or through a representative and make presentations at a public hearing provided that the presiding officer shall have the right to disallow frivolous and vexatious presentations which lead to the abuse of the hearing.</p> <p>(2) The developer shall be given an opportunity to answer to any presentation made at the public hearing and to provide further information relating to the project.</p>	<p>We recommend that any person should have a right to apply before or during the public hearing to make a formal or informal presentation at the public hearing.</p> <p>To make a formal presentation,</p>

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	(3) The Technical Committee shall advice on the procedure for the making of presentations at public hearings under these regulations.	the person should apply to the Authority and PAU 3 days to the hearing.
9	<p><b>24. Basis of decision.</b></p> <p>(1) In making a decision regarding an environmental impact assessment under these regulations, the Executive Director shall take into account -</p> <p>(a) the validity of the predictions made in the environmental impact statement under Part V of these regulations;</p> <p>(b) the comments made under these regulations;</p> <p>(c) the report of the presiding officer at a public hearing under regulation 22, where applicable;</p> <p>(d) analysis of the economic and social cultural impacts of the project; and</p> <p>(e) other factors which the Executive Director considers crucial in the particular circumstances of the project.</p> <p>(2) The Executive Director shall make a decision under this regulation within less than one hundred and eighty days from the date on which the environmental impact statement was submitted under regulation 17.</p>	We propose that the days for NEMA to make a decision should be reduced from 180 days down to to 60 days.
10	<p><b>29. Documents deemed to be public documents.</b></p> <p>(1) Subject to article 41 of the Constitution and subsection (3) of section 85 of the Act, any project brief, environmental impact review report, environmental impact evaluation report, environmental impact statement, terms of reference, public comments, report of the presiding officer at a public hearing or any other information submitted to the Executive Director or the Technical Committee under these regulations shall be public documents.</p> <p>(2) Any person who desires to consult the documents described in sub-regulation (1) of this regulation shall, subject to section 85 of the Act, be granted access by the Authority on such terms and conditions as the Authority considers necessary.</p>	This Regulation should be retained as it promotes a right of access to information in line with the 1995 Constitution of Uganda.

### **b. Specific comments on proposed 2019 ESIA draft Regulations**

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The proposals below are direct to the text of the 2019 draft ESIA Regulations and the two columns in blue indicate the weaknesses of the proposed clauses and our recommendation of how the clause/s should be adjusted.

No	Draft ESIA 2019 Regulations by NEMA	Identified weaknesses in the draft regulations	AFIEGO/CSOs recommendations to improve the draft regulations
10	1. Title. These Regulations may be cited as the National Environment (Environmental and Social.... Assessment) Regulations, 2019.	The word “impacts” is missing in the title.	We recommend to add the word “impact” immediately before assessment.
11	2. Definition of terms “developer” means a person or a body corporate or government agency who proposes to undertake a new project or to rehabilitate, repair, extend, maintain or operate an existing project with potential effects on the environment;	The current draft is too restrictive as it attempts to define a developer to mean a mere person.	We recommend that a developer should be defined to include a person or body corporate or a government agency that proposes or undertakes a project.
12	<b>11. Decision of project brief submitted by a developer to the lead agency.</b> (1) Where a project brief is submitted to a lead agency under regulation 6(3) as prescribed in regulation 10, the lead agency shall consider the complete project brief, taking into consideration the requirements in regulation 6(5).  (2) Where the lead agency is satisfied that the project brief conforms to the requirements of regulation 6(5) and discloses sufficient mitigation measures to address the anticipated impacts or that the project will have no significant impacts on human health or the environment and interrelated socio-economic and cultural impacts, it may approve the project or part of the project.  (4) Where the lead agency approves the project under sub regulation (2), it shall approve the project in writing, on such terms and conditions as the lead agency may deem necessary.	This Regulation is unfortunate to the extent that the lead agency is being made a judge in its own case.  A lead agency’s interest is business and not necessarily conservation.  Considering the challenges of oil development where you have projects of billions of dollars, to allow a developer of	We recommend that the lead agency in this draft be replaced with the word “authority”.  It should be only the authority/NEMA to determine the completeness of any project brief and make decision.

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	<p>(5) Where the lead agency finds that the project will have significant impacts on human health or the environment and interrelated socio-economic and cultural impacts, or that the project brief does not disclose sufficient mitigation measures to address the anticipated impacts, it shall refer the developer to the Authority.</p> <p>(6) The lead agency shall consider the project brief, make a decision and communicate to the developer within twenty-one days of receipt of the complete project brief.</p>	<p>such projects to assess environmental and social impacts, is simply absurd.</p>	
13	<p><b>19. Consultation with the lead agency.</b></p> <p>(1) The Authority shall, within seven days of receipt of the complete environmental and social impact statement, transmit the environmental and social impact statement to the relevant lead agency for review.</p> <p>(2) Where the lead agency is the developer, the lead agency shall not be part of the review process under sub regulation (1).</p> <p>(3) The Authority shall, on receipt of the environmental and social impact statement of the lead agency under sub regulation (2), submit it to the relevant lead agency for comment.</p>	<p>The draft proposal is confusing when it talks of relevant lead agency. You are either a lead agency or not. The word relevant here is irrelevant and should be deleted. It presupposes that there will be cases when there will be many lead agencies. This should not happen otherwise, it will worsen environmental and social abuse by developers.</p> <p>Where the lead agency is the developer, NEMA shall proceed to</p>	<p>We recommend that the Regulation above on how to consult lead agencies be retained. The word relevant should be deleted.</p> <p>Sub regulation (4): we recommend that the lead agency shall comment on the ESIA report and send its comments to the authority. The law should not prescribe the kind of comments to be made by the lead agency.</p> <p>We recommend that you delete clauses (4)(i)-(iv) and (b).</p>

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	<p>(4) The lead agency consulted under sub-regulation (1) shall—  review the environmental and social impact statement to—  (i) ensure that it complies with the approved terms of reference;  (ii) ensure that all possible impacts and risks have been identified and evaluated;  (iii) ensure that feasible and adequate mitigation measures to address the impacts and risks identified have been proposed; and  (iv) verify the findings and recommendations contained in the environmental and social impact statement;  (b) take into account any other factors the lead agency considers necessary.</p> <p>(5) The lead agency shall submit comments to the Authority within twenty-one days of receipt of the environmental and social impact statement or such lesser period the <b>Authority may specify in writing....excuses of discretion</b></p>	<p>invite other public comments.</p> <p>Sub-regulation (3), this is very confusing as it talks of receiving from lead agency and then submit to the relevant lead agency for comment.</p> <p>Sub regulation (4) this is weak. There is no need to prescribe the comments to be made by the lead agency. Allow the lead agency to decide its own comments. It's in its best interest to make the right comments that would enable authority make the right decision.</p>	<p>We recommend that under Sub regulation (5): the lead agency should submit its comments to the authority within 14 days from the date of receipt of the ESIA report. The words “or such lesser period the authority may specify should be deleted.</p> <p>Discretion regarding days within which NEMA should take to act may fail the implementation of the law. 14 days are enough, no more and no less.</p> <p>Retain the 1998 text. Its better and clear compared to the current proposal.</p>
14	<p><b>20. Consultations.</b>  (1) The Authority <b>may</b>, within ten days of receipt of the complete environmental and social impact statement, invite the public in the area the project is proposed to be located and communities likely to</p>	<p>The word “may” renders this regulation very weak and leaves it at the</p>	<p>We recommend that the word <b>MAY</b> wherever it appears in this regulation be replaced with <b>SHALL</b>. This will make it</p>

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<p>be affected by the project, to make oral or written comments on the environmental and social impact statement.</p> <p>(3) The invitation for comments under sub regulation (1) <b>may</b> be published—</p> <p>(a) in a newspaper having nation-wide circulation or a newspaper having local circulation in the area the project is proposed to be located;</p> <p>(b) through announcements on radio, television or other relevant multimedia channels with local coverage;</p> <p>(c) on the website of the Authority and other relevant websites; or</p> <p>(d) by distributing the necessary information about the proposed project through local authorities.</p> <p>(4) The public and communities likely to be affected by the project shall provide comments to the Authority within the period indicated in the invitation.</p>	<p>discretion of the authority. If the authority is weak and or affected by politics, the public will never get invited to make comments.</p> <p>To leave the need to publish the invitation for public comments at the discretion of NEMA is unfortunate. It may never happen.</p> <p>Regulation 20(4) clause is weak to the extent that it does not guarantee the specific days within which the public and communities should submit their comments to the authority. It's a mistake to leave such</p>	<p>certain regarding the time frame and mandatory to guard against political influence but most importantly promote public participation.</p> <p>We recommend that the word may be replaced with the word "SHALL" to make the publication for public comments mandatory. This will ensure public participation.</p> <p>Regarding (d), it should also be part of the channels for publication but not to isolate the rest or be used independent of other channels.</p> <p>We recommend that the regulation should provide that the public and communities shall provide comments on the ESIA to the authority as per the public invitation for comment but that period shall not less than 14 days from the date of invitation and not more than 30 days.</p> <p>Retain the 1998 EIA regulation</p>
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		major decisions at the discretion of NEMA.	20.
15	<p>21. Consideration of the environmental and social impact statement by the Authority.</p> <p>(1) The Authority shall consider the complete environmental and social impact statement submitted by the developer under regulation 18(1), taking into account—</p> <p>(a) the approved terms of reference of the environmental and social impact study;</p> <p>(b) comments of stakeholders consulted by the developer under regulation 16 and integrated into the environmental and social impact study;</p> <p>(4) The Authority shall, during consideration of the environmental and social impact statement under this regulation, determine whether a public hearing is necessary. In determining whether a public hearing is necessary under sub regulation (4), the Authority shall take into account the complete ESIA report including comments received under regulations 18, 19 and 20 of these regulations—</p> <p>(a) the accuracy and validity of the predictions made in the environmental and social impact statement;</p> <p>(b) the comments made to the Authority under regulation 19(5)</p>	<p>The title to regulation 21 is missing the aspect of public hearings.</p> <p>Clause (1) should also be reworded and shortened. There is no need to mention complete and again go ahead to include (a) and (b). A complete report is a complete report. Otherwise, express mention of few details under (a) and (b) excludes the rest not mentioned.</p> <p>Regulation 21(4), is weak as it leaves the whole issue of deciding on public hearing to the discretion of the</p>	<p>-We recommend that you retain the 1998 EIA regulation 21 as proposed above.</p> <p>-The provision gives NEMA a discretion on one hand and makes it mandatory on the other hand especially for cross border projects.</p> <p>-We recommend that the title to regulation 21 be revised and worded as follows: “Consideration of the environmental and social impact statement and determination for a public hearing by the Authority.</p> <p>-We recommend to re-word Regulation 21(1) as follows: “The Authority shall consider the complete ESIA statement submitted by the developer under regulation 18(1) and decide whether or not a public hearing is required.</p> <p>Clauses (a) and (b) be deleted.</p>

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	<p style="color: red;">or 20(4);</p> <p style="color: red;">(c) any public interest in the project;</p> <p style="color: red;">(d) any identified controversy associated with the proposed project, including on social and cultural values;</p> <p style="color: red;">(e) the gravity and significance of potential impacts of the project;</p> <p style="color: red;">(f) inter-district or transboundary impacts of the proposed project; or</p> <p style="color: red;">(g) any other factors the Authority may consider necessary.</p> <p>(5) Without limiting the general effect of (4), The Authority shall call for a public hearing under these regulations where there is a controversy or where the project may have transboundary impacts.</p>	<p>Authority irrespective of the nature and size of the project.</p> <p>This is worse than the 1998 regulations and it will further weaken the enforcement.</p> <p>5) mandatory public hearing for certain projects is necessary to empower the citizens to demand where NEMA may not be willing to organize one.</p>	<p>- We recommend that clause (5) be combined with clause (4) and immediately after clause (4), you add a new clause (5) for a mandatory public hearing for certain projects.</p> <p>We recommend that clause (5) be adopted:</p>
16	<p><b>22. Conduct of a public hearing.</b></p> <p>(1) The Authority shall, where it determines under regulation 21(4) that a public hearing is necessary, or its required under clause (5), in collaboration with the lead agency, conduct the public hearing at the expense of the developer.</p>	<p>The clause here should be re-worded.</p>	<p>We recommend to re-word clause (1) as follows:</p> <p>The Authority shall, where it determines under regulation 21(4) that a public hearing is necessary, or a public hearing is required under clause (5), in collaboration with the lead agency, conduct the public hearing at the expense of the developer.</p>

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	<p>(2) The Authority shall, in consultation with the lead agency, appoint a suitably qualified and independent person to preside over the public hearing on such terms and conditions as the Authority considers necessary.</p> <p>(3) The person appointed under sub regulation (2) shall be a person of high moral character and proven integrity and shall—</p> <ul style="list-style-type: none"> <li>(a) be a citizen of Uganda;</li> <li>(b) be a fit and proper person of recognised professional standing;</li> <li>(c) have an university degree and at least ten years’ experience at senior management level in the field of environmental science, environmental management or any other related discipline;</li> <li>(d) have competence and experience related to the nature of the project; and</li> <li>(e) have no relationship with the developer or personal interest in the proposed project or activity.</li> </ul>	<p>Clause (2), the word relevant it appears that shows that there will be cases when they are many lead agencies which is funny. Every project must be specific and under a certain department of government.</p> <p>Clause (3) (e), should be improved.</p>	<p>Clause (2) We recommend to delete the word “relevant”. A lead agency is a lead agency. No need for qualifying it.</p> <p>-We recommend that clause (3)(e) be worded as follows: : Not an employee of the developer or direct interest in the activities of the developer, the lead agency or the authority.</p>
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<p>(4) The Authority shall communicate the date and venue of the public hearing at least five days prior to the meeting.</p> <p>(5) The venue for the public hearing under this regulation shall be convenient and accessible to communities likely to be affected by the project.</p> <p>(6) The Authority and the presiding officer shall structure the public hearing in a non-judicial, informal and non-adversarial manner that permits a fair and comprehensive discussion of the information presented.</p> <p>(7) The presiding officer shall give the developer an opportunity to make a presentation, to respond to any comments made at the public hearing and to provide further information relating to the project.</p>	<p>It's sad that these regulations want to reduce the dates for informing the public and preparing for public hearings from 30-45 days to five days.</p> <p>Clause (7) misses the need to give interested parties a right to speak at the public hearings.</p>	<p>Clause (4): The public hearing shall be held within such period as the Authority in consultation with the lead agency may determine but which period shall not be less than Fifteen days nor more than Thirty days of receiving a complete ESIA report from the developer and comments from the lead agency, the general public and the project affected people.</p> <p>Clause (7), we recommend that two paragraphs (a) and (b) be added on clause (7) to read as follows:</p> <p>(a) Any interested part may apply two days to the public hearing to the lead agency to make a presentation at the public hearing.</p>
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	<p>(8) The Authority may issue guidelines for public hearings under these Regulations.</p>	<p>Clause (8), the word may should be deleted and replaced with Shall and specify the timeframe within which to issue the guidelines.</p>	<p>(b) Every interested person at the public hearing shall have a right to speak and the presiding officer shall accord everyone equal opportunity.</p> <p>We recommend that clause (8) be re-worded as follows: The Authority shall within 3 months of coming into force of these ESIA Regulations, formulate guidelines for public hearings.</p>
17	<p><b>29. Cancellation of certificate of approval of environmental and social impact assessment.</b></p> <p>(1) The Authority <b>may</b>, after issuing a certificate of approval of environmental and social impact assessment for a project, cancel the certificate of approval of environmental and social impact assessment where—</p> <p>(a) information or data given by the developer in a project brief or an environmental and social impact statement or during public consultations or public hearings was false, substantially incorrect or intended to mislead;</p> <p>(b) information is brought to the attention of the Authority which could have precluded the approval of the environmental and social impact assessment, had it been made available prior to the issuance of the certificate;</p> <p>(c) there is non-compliance with the Act, regulations made under the Act or conditions set out in the certificate of approval of the environmental and social impact assessment;</p> <p>(d) it is necessary to protect human health or to prevent harm or</p>	<p>The word may makes it difficult for citizens to enforce the law including compelling NEMA to act where NEMA may be under political pressure.</p>	<p>We propose that the word may be deleted and replaced with Shall.</p>

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	<p>further harm to the environment, cultural resources or affected communities, due to a situation that was not foreseen during the environmental and social impact assessment approval process;</p> <p>(e) there is a substantial change or modification in project implementation or operation which may lead to adverse environmental and social impacts or may endanger human health or safety; or</p> <p>(f) there is any other substantive undesirable social, health or environmental effect not contemplated at the time of approval.</p> <p>(2) Where the Authority decides to cancel a certificate of approval of environmental and social impact assessment, it shall halt project activities and require the developer to show cause, within seven days, why the certificate should not be cancelled.</p> <p>(3) The Authority shall, where it is not satisfied with the reasons given by the developer or where the developer does not respond within the time prescribed in sub regulation (2), cancel the certificate of approval of environmental and social impact assessment.</p> <p>(4) Where a certificate of approval of environmental and social impact assessment is cancelled under sub regulation (3), the developer shall stop project activities and undertake remediation, decommissioning and restoration activities within a period specified by the Authority.</p>		
18	<p><b>43. Mitigation hierarchy.</b></p> <p>(1) A developer of a project referred to in regulation 3 shall apply the mitigation hierarchy of avoidance, minimization and mitigation of environmental and social impacts.</p> <p>(2) Subject to sub regulation (1), where the developer, during the environmental and social impact study conducted under regulation</p>	<p>What about on private land</p>	<p>We recommend that this provision be revised to include no investors whose activities may affect the environment.</p>

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	<p>15, considers that a biodiversity offset, other offset or compensation mechanism may be necessary, the developer may propose the offset or compensation mechanism only as the last measure in the mitigation hierarchy to address remaining residual adverse impacts.</p> <p>(3) Notwithstanding sub regulation (2), a developer or other person may, in accordance with section 115 of the Act, consider a biodiversity offset, other offset or compensation mechanism as a distinct arrangement with the provider of an ecosystem or environmental service.</p> <p>(4) In designing a biodiversity offset, other offset or compensation mechanism under this regulation, the developer or person referred to in sub regulation (3) shall—</p> <p>(a) provide a justification for the proposed offset or compensation mechanism;</p> <p>(b) propose an offset or compensation mechanism which restores the original ecological functions of the project area or other suitable area or location with similar ecological functions; and</p> <p>(c) ensure achievement of measurable conservation outcomes that can reasonably be expected to result in no net loss and preferably a net gain of biodiversity or other benefits, provided that a net gain is mandatory for projects in critical habitats or projects with impacts on endemic species.</p>		
19	<p><b>44. Consideration of an offset or compensation mechanism by the Authority.</b></p> <p>(1) The Authority may consider the proposal of a biodiversity offset, other offset or compensation mechanism made by the developer under regulation 43(2) or (3), taking into account—</p> <p>(a) in relation to biodiversity or other offset, whether the offset—</p> <p>(i) covers the full range of biological, socio-economic and cultural functions and values relating to biodiversity use;</p>	<p>The word may weakens the provision</p>	<p>We recommend that may be replaced with SHALL.</p>

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	<p>(ii) is appropriate for the supporting ecosystems;          (iii) will achieve the expected measurable conservation outcomes; and          (iv) adequately responds to the risks or hazards identified.</p> <p>(b) in relation to compensation mechanisms, whether—          (i) the identified ecosystem or land is able to perform the ecosystem service or to provide the environmental service desired;          (ii) the proposed compensation is agreed to by the recipient; and          (iii) a payment for ecosystem services scheme is concluded in accordance with regulation 45(3).</p> <p>(2) Where residual impacts may not be fully compensated for by a biodiversity offset because of the irreplaceability or vulnerability of the biodiversity affected, the developer shall re-assess and put in place measures as soon as possible to address the identified risks.</p>		
20	<p><b>46. Environmental management and monitoring plan.</b>          (1) The developer of a project referred to in regulation 12 shall develop an environmental management and monitoring plan in respect of the operations of the project.</p> <p>(2) Notwithstanding sub regulation (1), the Authority may require a developer of any other project to develop an environmental management and monitoring plan.</p> <p>(3) The environmental management and monitoring plan shall, at a minimum contain—          (a) the name, qualification and experience of the person who prepared it;          (b) a detailed description of the aspects of the project or activity that are covered by the plan;          (c) a description of the impact management objectives, including management statements, identifying the impacts that need to be avoided, managed or mitigated as identified through the</p>	<p>Under this regulation, a monitoring plan should be part of the ESIA study.</p>	<p>We recommend that this provision be revised to require a developer to ensure that monitoring plan/s are part of ESIA study report.</p>

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<p>environmental and social impact assessment process for all phases of the project;</p> <p>(d) an emergency response plan and an action plan to ensure the health and safety of workers and neighbouring communities;</p> <p>(e) a description of impact management outcomes, identifying the standard of impact management required for the aspects contemplated in paragraph (c);</p> <p>(f) a description of impact management actions, identifying the manner in which the impact management objectives and outcomes contemplated in paragraphs (c) and (d) will be achieved;</p> <p>(g) a climate adaptation and mitigation plan, identifying the manner in which adaptation and mitigation measures should be incorporated in the projects and the planned outcomes to be achieved;</p> <p>(h) measures for compliance with any prescribed environmental and social management standards or practices;</p> <p>(i) measures for compliance with the Act, these Regulations, any other applicable law and international agreements;</p> <p>(j) an indication of the persons who will be responsible for the implementation of the impact management actions;</p> <p>(k) the time period within which the impact management actions contemplated shall be implemented;</p> <p>(l) the mechanism for monitoring compliance with the impact management actions contemplated;</p> <p>(m) budget estimates for the implementation of the environmental management and monitoring plan, where applicable;</p> <p>(n) a programme for reporting on compliance, taking into account the requirements of the Act and these Regulations; and</p> <p>(o) an environmental awareness plan describing the manner in which the developer intends to inform employees and the public of any environmental and health risk or hazard which may result from project work.</p>		
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	<p>(4) The developer shall submit the environmental management and monitoring plan developed under sub regulation (1) to the Authority as an integral part of the project brief or environmental and social impact statement.</p> <p>(5) The developer shall maintain and implement the environmental management and monitoring plan during the life-cycle of the project or activity.</p> <p>(6) The developer shall audit and update the environmental management and monitoring plan developed under sub regulation (1) as an integral part of the environment management system provided for in section 48 of the Act and the National Environment (Audit) Regulations, 2019.</p>		
21	<p><b>TRANSBOUNDARY ENVIRONMENTAL AND SOCIAL ASSESSMENTS</b></p> <p><b>47. Projects or activities with transboundary impacts.</b></p> <p>(1) A developer of a project likely to have transboundary impacts shall, in the environmental and social assessment, take into account the likely environmental and social impacts.</p> <p>(2) The developer referred to under sub regulation (1) shall, in consultation with the Authority, ensure that appropriate measures are taken to assess and mitigate any adverse transboundary environmental and social impacts, taking into account any existing treaties between Uganda and the country likely to be impacted by the project or activity.</p> <p>(3)</p>	<p>The current draft does not include consultation with directly affected cross-border communities.</p>	<p>We recommend that the following is added:</p> <p>(47(3) the developer referred to in regulation (2) shall, in consultation with the authority and the lead agency, consult cross—border communities who are directly affected by the project or activities.</p>
22	<p><b>48. Notification to country likely to be affected by a project or</b></p>	<p>It's better to notify</p>	<p>We recommend that the cross-</p>

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<p><b>activity.</b></p> <p>(1) The Authority shall, on receipt of the environmental and social impact statement under regulation 18(1) or the environmental risk assessment under regulation 39(1), notify the relevant authority of a country likely to be impacted by a proposed project or activity as early as possible and in any case not later than when informing its own public, in order to ensure adequate and effective transboundary consultations.</p> <p>(2) The notification under sub regulation (1) shall be made through the ministry responsible for foreign affairs and shall include—</p> <ul style="list-style-type: none"> <li>(a) the nature and scope of the proposed project or activity;</li> <li>(b) the environmental and social impact statement;</li> <li>(c) the environmental risk assessment, where applicable;</li> <li>(d) a summary of the transboundary aspects of the proposed project or activity, including negative transboundary impacts and risks and associated mitigation measures;</li> <li>(e) information regarding the decision-making procedure, including an indication of a reasonable time period within which the notified authority in the country to be impacted should respond; and</li> <li>(f) any other information the Authority may consider necessary.</li> </ul> <p>(3) The notification shall be based on the principles of prior assessment of transboundary impacts, prevention of harm and sustainable development, in accordance with international law.</p> <p>(4) Where the country notified under sub regulation (1) indicates that it wishes to enter into consultations before a decision is made under these Regulations, it shall submit its comments or observations through the ministry responsible for foreign affairs.</p> <p>(5) Where the ministry responsible for foreign affairs receives the comments of the country referred to in sub regulation (4), it shall</p>	<p>and consult from the early stages and not wait after the final report.</p>	<p>border communities and authorities should be invited for comments into the study report and participate in the public hearings.</p>
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	<p>submit the comments to the Authority within the time period indicated in sub regulation (2)(e).</p> <p>(6) The Authority shall, as far as possible, take into account the comments received under sub regulation (5) in making the decision on the environmental and social impact assessment.</p> <p>(7) Where the authority notified under sub regulation (1) does not respond within the period specified in the notification, the Authority shall proceed to consider the project or activity in accordance with these Regulations.</p> <p>(8) Where the consultative processes provided for under these Regulations are complete and in the event that the Authority approves the project or activity, the Authority shall notify the country likely to be affected by the project or activity and the relevant Government ministry, department or agency for further action.</p>		
23	<p><b>51. Documents deemed to be public documents.</b></p> <p>(1) Subject to the Constitution and Access to Information Act, 2005, documents pertaining to the environmental and social impact assessment process submitted to the Authority under these Regulations shall be public documents.</p> <p>(2) Subject to section 146 of the Act, a person who desires to access the documents described in sub regulation (1) shall apply to the Authority and pay the prescribed fee.</p>	<p>This means that the poor cannot access the documents</p>	<p>We recommend to add sub-regulations (3) and (4) as follows:</p> <p>(3) Notwithstanding the effect of clause (1), the authority shall have in its library copies of all approved certificates, presiding officer’s reports, copies of all ESIA reports and non-technical summary reports and others, and every citizens shall have access to those documents at NEMA library.</p>

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			(4) The Authority shall translate all certificates of approval and their conditions into the languages spoken by the majority in the project area.
24	<p><b>52. Display of certificates of approval of environmental and social impact assessment.</b></p> <p>The developer shall exhibit the certificate of approval of environmental and social impact assessment including all the conditions of approval, in a conspicuous place on the premises of the project and official address of the developer, including, where possible, on its website.</p>	The regulation fails to mention about the languages.	The developer shall display both, the English and the copies in respective local languages.
25	<p><b>57. Appeals from the decisions of the Authority.</b></p> <p>A person aggrieved by the decisions of the Authority under these Regulations, may within fourteen days of the decision, submit in writing to the Authority, a request for reconsideration of the decision in accordance with section 140 of the Act.</p>	We think that 14 days is a very short time considering that one must first read all the conditions and other relevant reports. There is no need to appeal to the same authority that made a mistake. Its wastage of time.	<p>We recommend that the regulation should be revised to provide as follows:</p> <p>A person aggrieved by the decision of the Authority under these regulations, may within 30 days from the decision is made appeal to the High Court of Uganda.</p>

**Signed by:**



Dickens Kamugisha,

CEO, AFIEGO

# **AFIEGO AND OTHER CSOS COMMENTS TO NEMA ON THE 2019 DRAFT ESIA REGULATIONS**

## **Other signatories**

1. World Voices Uganda (WVU)
2. Center for Constitutional Governance (CCG)
3. Guild Presidents' Forum on Oil Governance (GPFOG)
4. Girl Power Foundation, Kasese
5. Green Organisation Africa (GOA);
6. National Association of Professional Environmentalists (NAPE)
7. Oil Refinery Residents Association (ORRA)
8. South Western Institute for Policy and Advocacy (SOWIPA);
9. Kasese Citizens Coalition to Safeguard Biodiversity against Oil and other threats;
10. Katwe Sanitation and Clean Energy Women's Club (Kasese)
11. Great Lakes Institute for Strategic Studies
12. Action Coalition on Climate Change
13. Kyambogo Students Association on Environment

## **CC**

- The Minister of Water and Environment
- The Chairperson and members of the Natural Resources Committee of Parliament
- The Chairperson and all members of Human Rights Committee of Parliament
- The Executive Director, Uganda Wildlife Authority
- The Executive Director, National Forestry Authority
- The President, Uganda Law Society