

# AFRICA INSTITUTE FOR ENERGY GOVERNANCE



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5<sup>th</sup>/August/2020

The Executive Director,  
National Environment Management Authority (NEMA),  
Kampala (U).



Dear Sir/Madam,

**RE: CSO CONCERNS REGARDING IRREGULAR AND ILLIGAL TILENGA ESMPs REVIEW PROCESS BY TOTAL E&P (U) B.V.**

The above refers

On behalf of the undersigned civil society organisations (CSOs) and on my own behalf, allow me to thank you and your team for the continued struggles to promote environmental conservation despite the many governance challenges in the country.

As CSOs, we remain committed to supporting and reminding NEMA in particular and government at large to always ensure that our environment is conserved and used to support sustainable development based on social justice and equity for the benefit of the present and future generations.

The main objective of this letter is to request you to use your regulatory powers to ensure that Total E&P (U) B.V. adheres to the relevant laws in the ongoing development and review process of the Tilenga oil project's Environmental and Social Management Plans (ESMPs). Our letter is based on a letter dated June 30, 2020, which Total shared with CSOs on July 13, 2020. Attached to the letter were 28 draft ESMPs for the Tilenga oil project.

In the letter, Total requested CSOs under Civil Society Coalition on Oil and Gas (CSCO) to submit comments on the Tilenga oil project's draft ESMPs by July 31, 2020. The letter indicates that the ESMPs will be living documents, subject to regular reviews and updates and notes that should CSOs miss the deadline for submitting comments, their concerns could be addressed during the review process.

The letter, which was signed by Total's General Manager, calls for restricted distribution of the listed 28 draft ESMPs. The letter does not quote any provision(s) of the law that govern the ESMPs review process including public consultations on the same.

Based on our reading of the 1998 Environmental Impact Assessment (EIA) regulations, and the 2019 National Environment Act, we are of the view that the ESMPs are part of the ESIA process. They should therefore, even when irregularly conducted independent of the Tilenga ESIA, follow the same ESIA development and review process.

We remind NEMA that the 1998 EIA regulations which govern over EIA/Environmental and Social Impact Assessment (ESIA) processes provide for the following:

- i. Regulation 9 requires developers to submit complete mitigation measures to enable NEMA determine whether to make a decision on a project based on a project brief or ask the developer to undertake a full EIA study.
- ii. Regulation 10 requires the developer to conduct an environmental impact study and submit an Environmental Impact Statement (EIS) in line with the Terms of Reference (ToRs) prepared by the developer in consultation with NEMA and the lead agency.
- iii. Regulation 12 details how the developer must consult the public especially the directly affected communities during the EIA study.
- iv. Regulation 14 provides for among others the contents of the EIS including the requirement to provide measures proposed to eliminate, minimise and/or mitigate adverse impacts of a proposed project.
- v. Regulation 17 provides the procedures to be followed as the developer submits an EIA report to NEMA.
- vi. Regulation 19 provides that “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.”
- vii. Regulation 20 further provides that “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.”
- viii. In addition, Regulation 21 provides that “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 (2).”
- ix. Under regulation 21(2), the Executive Director is mandated to “call for a public hearing ... where there is a controversy or where the project may have transboundary impacts.”
- x. Regulation 22 provides the procedures to be followed in organising for and while at any public hearing.
- xi. Regulation 24 provides the guidelines on which NEMA should rely to make a decision on an EIS.
- xii. Regulation 25 empowers NEMA to make any relevant decision including approving the project, rejecting the project, ordering for redesigning of the project and others.

xiii. Regulation 26 allows NEMA to approve any EIS with conditions.

### **OUR CONCERNS**

In view of the above regulations governing EIA/ESIA procedures and considering that ESMPs are part of an ESIA, we have the following concerns:

- (a) Total's ongoing Tilenga ESMPs development and review process is violating all the above provisions including regulation 12 that clearly requires the developer to effectively consult the public.
- (b) The Tilenga ESMPs review process is ongoing without ToR as required by regulation 10. Without ToR that define the scope of the ESIA or EMPs, it would be impossible for anyone to review the ESMPs and provide effective comments to Total or NEMA.
- (c) It is also strange that it took Total over 14 months to compile the draft ESMPs but the same Total that shared the 28 ESMPs on July 13, 2020 wants comments from CSOs by July 31, 2020. How does Total expect the CSOs to read 28 ESMPs, compile comments and submit the said comments within 14 working days?
- (d) In addition, we are questioning under what law(s) is Total proceeding to conduct the ESMPs and consult stakeholders? Why is Total sharing ESMPs with only CSCO? Why not share with and consult the public as per EIA Regulation 12?
- (e) We are also concerned that the ongoing ESMPs process by Total is being done in disregard of the Tilenga High Court cases against NEMA and the Petroleum Authority of Uganda (PAU). The cases were filed over the procedural irregularities and illegalities that happened during the Tilenga ESIA public review process in 2018. One of the issues before court is about an incomplete ESIA report that was submitted by Total and approved by NEMA in absence of complete mitigation plans.

### **GAPS IN TILENGA ESMPS**

Apart from failure to adhere to the laws in the ongoing ESMPs development and review process and breaching the rule of subjudice, Total has shared draft ESMPs that have gaps and weaknesses. Most of the draft ESMPs lack critical components including:

- A statement of risk(s) as identified in the ESIA report.
- Budgets for activities planned to eliminate, reduce or mitigate the specific risks for each ESMP.
- Relevant stakeholders and their clear roles in line with the risks in question.
- An analysis of the strengths and weaknesses of the relevant laws and how those laws are applicable or not to ensure compliance to address the identified risks.
- Timelines for implementing each of the ESMPs' mitigation actions and others.
- Further, it is wrong for Total to say that ESMPs will be living documents that will be regularly reviewed and updated. We demand that Total submits complete ESMPs and NEMA considers those ESMPs as per regulations 24 and 25 of the 1998 EIA regulations. The approved ESMPs must be reviewed and updated in consultation with NEMA based on clear ToRs.

## **RECCOMENDATIONS**

Based on the above, we ask NEMA to ensure that Total follows the law in the development and public review process of the Tilenga ESMPs by doing the following:

- a. The ESMPs development and public review process should be halted until the ongoing high court cases as regards the Tilenga ESIA procedural irregularities and illegalities are determined.
- b. When the cases have been decided, Total should be compelled to effectively consult the public including the directly affected communities and others on the Tilenga ESMPs as is provided for under EIA regulation 12.
- c. NEMA should also ensure that Total gives the public enough time, at least one week to review each ESMP.
- d. In addition, Total should disclose the ToRs guiding the conduct and the content of the ESMPs to allow effective public assessment of the quality of the draft ESMPs and to make comments.
- e. Once NEMA has received complete ESMPs from Total, NEMA should follow the 1998 EIA regulations including regulations 19, 20, 21, 22, 24, 25 and 26 to consult the public and in making a decision on the ESMPs.
- f. If the relevant laws are not adhered to, Ugandans should file more court cases against NEMA as a regulator for endorsing illegal and irregular activities.
- g. No oil activity should be considered until the court cases are determined.




We thank you in advance for taking action.











Dickens Kamugisha  
Chief Executive Officer, AFIEGO

## **Signatories**

### **SIGNATORIES:**

No	Name of organization	Logo
1.	Africa Institute for Energy Governance (AFIEGO)	
2.	Oil Refinery Residents Association	
3.	World Voices Uganda	

4.	Centre for Energy Governance	
5.	Center for Citizens Conserving	
6.	Guild Presidents' Forum on Governance	
7.	Centre for Constitutional Governance	
8.	Citizens Concern Africa (CICOA)	
9.	Action Coalition on Climate Change (ACCC)	
10.	South Western Institute for Policy and Advocacy (SOWIPA)	
11.	Environment Governance Institute	
12.	African Initiative on Food Security and Environment	
13.	Girl Power Foundation	
14.	Katwe Sanitation and Clean Energy Women's Club	
15.	Karambi Action for Life Improvement	
16.	Kwataniza Women's Group	
17.	Graffen Organisation –Butimba	
18.	Twimukye Women's Organisation	
19.	Association of oil-affected youth	
20.	Kasese Citizens Coalition to Safeguard Biodiversity	
21.	Publish What You Pay Uganda	

## CC

- The General Manager, Total
- The Executive Director, PAU.
- The Chairperson, Natural Resources Committee of parliament
- The president, Uganda Law Society
- The Chairman, Uganda Chamber of Mines and Petroleum
- All Bunyoro MPs