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Kampala, Uganda

CSOS AND YOUTH FILE COURT CASE, REQUEST FOR QUASHING OF TILENGA EIA CERTIFICATE

Civil society organisations (CSOs) and youth have filed a court case through which they are seeking court's intervention **to quash the Environmental Impact Assessment (EIA) certificate issued for the Tilenga oil project.**

The aggrieved CSOs and youth under their forum, the Guild Presidents' Forum on Governance (GPFOG), also **want court to order the Petroleum Authority of Uganda (PAU) and other government agencies to stay implementation of the Tilenga oil project's EIA certificate.**

The EIA certificate was issued to the developers of the Tilenga project, Total E&P (U) Ltd and Tullow Uganda Operations PTY Ltd, on April 15, 2019 by Uganda's National Environment Management Authority (NEMA).

The CSOs and youth, who filed a case in the Kampala High Court on Wednesday May 15, 2019, contend that the the public hearings on the Environmental and Social Impact Assessment (ESIA) report for the proposed Tilenga oil project were marred by flaws and procedural irregularities.

They also contend that the public hearings, which were held in Buliisa and Nwoya districts on November 12 and 15, 2018 respectively, were conducted in disregard of relevant laws, regulations and rules of natural justice.

Failure to follow established laws, regulations and rules of natural justice led to NEMA failing to make a decision to promote environmental conservation.

This is dangerous for the country especially at a time when Ugandans are faced with alarming environmental degradation and climate change whose biggest contributor is the use of fossil fuels.

The CSOs and youth want court to order PAU and NEMA to organise fresh public hearings to enable the public submit their views on the Tilenga oil project at public hearings that are free from bias and at which laws are respected to promote environmental conservation amidst oil exploitation.

APPOINTMENT OF CONFLICTED PRESIDING OFFICER

In their suit, the youth contend that NEMA appointed a conflicted presiding officer, contrary to the 1999 EIA Public Hearing Guidelines.

“In October 2018, PAU run a notice in newspapers and invited the public to attend public hearings on November 12 and 15, 2018 in Buliisa and Nwoya districts respectively.

During the public hearing on November 12, 2018 in Buliisa, I observed that the presiding officer at the hearing who was acting on behalf of PAU and NEMA had been illegally appointed,” Mr Yolamu Banyenzaki, the chairperson of GPF OG, says in the youth’s suit.

Dr Fred Kabagambe-Kaliisa, who was the presiding officer at the public hearings in Buliisa and Nwoya, is a Senior Presidential Adviser on Oil and Gas. He is also a former permanent secretary of the Ministry of Energy and Mineral Development. He was only relieved of his duties by the president in November 2016.

“Due to his positions [above], Dr Kabagambe-Kaliisa was ineligible to be a presiding officer in the public hearings. However, PAU in consultation with NEMA, illegally appointed him,” the youth say.

They affirm that one of the key goals of the Ministry of Energy, which Dr Kabagambe-Kaliisa served as the permanent secretary, is/was to ensure timely production of oil and gas in Uganda.

The youth note that Dr Kabagambe-Kaliisa relentlessly worked to meet the above target during his tenure as a permanent secretary at the Ministry of Energy.

He continues to work for attainment of the same goal in his current role as Senior Presidential Adviser on Oil and Gas.

His appointment was therefore a violation of Guideline 5(3) of the 1999 EIA Public Hearing Guidelines which stipulates that, “The presiding officer so appointed to preside over a public hearing shall not be an employee or have direct interest in the activities of the developer, the lead agency or the Authority.”

His current and former job positions also imply that Dr Kabagambe-Kaliisa could not have been impartial in writing a report from the public hearings, contrary to Guideline 5(2) of the 1999 EIA Public Hearing Guidelines.

Yet under regulation 24(1)(c) of the 1998 EIA regulations, NEMA’s decision to approve the Tilenga project and issue the developers with an EIA certificate was guided by the presiding officer’s report among other considerations.

DENYING STAKEHOLDERS SPEAKING OPPORTUNITIES

Through the suit, the youth also accuse the presiding officer, who was working on NEMA and PAU's behalf, of denying stakeholders including themselves an opportunity to speak at the public hearings.

"I attended the public hearing of November 15, 2018 in Nwoya and was directed by the presiding officer to use less than one minute to make a presentation. Yet the ESIA I was commenting on had been prepared for almost three years by highly expert professional teams.

This was unfair, was against the principles of natural justice and was a violation of Guideline 15(5) of the 1999 EIA Public Hearing Guidelines.

In conformity with the above laws, I notified PAU on November 7, 2018 that I intended to participate in the two public hearings and make formal presentations. Refusal to give me an opportunity to make a formal presentation was against the laws," Mr Banyenzaki says.

Denying him and other stakeholders an opportunity to adequately express their views on the Tilenga ESIA meant that stakeholders' rights to participate and contribute to environmental conservation were violated.

As such, the youth contend that the presiding officer's actions denied NEMA an opportunity to exhaustively hear from stakeholders to make the right decision to support environmental conservation.

APPROVAL OF EIA AND NOT ESIA ERRONOUS

The youth further say that whereas the Tilenga ESIA report covered social and environmental matters and the public made comments on both aspects, NEMA issued an EIA certificate that only covers environmental aspects.

"The certificate that NEMA issued to the Tilenga project developers reads 'Certificate of Approval of Environmental Impact Assessment'. Yet NEMA and PAU called on the public to present views on both the social and environmental aspects of the project.

Further, NEMA approved Terms of Reference [ToR] that covered only environmental matters yet the study covered both social and environmental matters.

This means that the Terms of Reference and the study were different from each other, which is wrong and against the law," Mr Banyenzaki says.

He and the youth further contend that NEMA and PAU misled the public to comment on an incomplete ESIA that lacked copies of the Resettlement Action Plan (RAP) reports and yet these must be part of ESIA report for it to be complete for public comments.

They argue that the above acts/omissions denied the public an opportunity to contribute to creation and protection of a clean and healthy environment which is part of every citizen's duties under Article 17(1) (j) of the 1995 Uganda Constitution.

They also affirm that all the above violations and irregularities led to NEMA making a decision that will not support environmental conservation and promotion of community livelihoods.

"If NEMA, PAU and other government agencies are allowed to implement the Tilenga EIA certificate, the public shall be denied their right to live in a clean and healthy environment contrary to Article 39 of the 1995 Uganda Constitution.

The public shall suffer irreparable damage as the approved ESIA report will allow oil activities in sensitive ecosystems including Murchison Falls National Park, Lake Albert, Budongo Central Forest Reserve and others.

We are therefore calling on court to cancel the Tilenga EIA certificate," Mr Banyenzaki says.

*******ENDS*******

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ABOUT AFIEGO AND GPFOG

GPFOG is a youth-led registered organisation comprising of current and former guild presidents and other university leaders. GPFOG's objective is to promote good governance especially in the natural resources sector in Uganda.

AFIEGO is a public policy research and advocacy registered non-governmental organisation dedicated to influencing energy policies for the common good. AFIEGO promotes rule of law, transparency, accountability and offers legal services to citizens whose rights are abused in energy projects or processes.

