

April 2019; Issue 4

APPROVAL OF TILENGA ESIA IS AGAINST STAKEHOLDER VIEWS AND NATION-AL LAWS: IT MUST BE CHALLENGED IN COURT



The Buliisa Woman MP, Hon. Norah Bigirwa (C), Buliisa women councillors and AFIEGO staff after a training this month. The training was to enable local leaders' participation in ESIA processes to prevent oil dangers on the environment and livelihoods. NEMA approved the Tilenga ESIA without addressing concerns of stakeholders such as these. This is dangerous for environmental conservation and protection of community livelihoods amidst oil exploitation.

In this newsletter:

- Approval of Tilenga ESIA is against stakeholder views and national laws: It must be challenged in court
- Pictorial of our activities
- Lobbying
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- Upcoming events

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Editorial

On April 15, 2019, the National Environment Management Authority (NEMA) issued an Environmental Impact Assessment (EIA) certificate for the Tilenga oil project.

Prior to NEMA's issuance of the certificate, AFIEGO and our partners had organised several engagements this month (April) in which stakeholders expressed disappointment with the way NEMA handled the Tilenga Environmental and Social Impact Assessment (ESIA) processes including the public review and public hearings.

The stakeholders we engaged through community senisitisation meetings and trainings to promote implementation and compliance with environmental conservation tools such as ESIA amidst oil developments included MPs, district leaders, local council leaders, youth and women leaders, cultural institutions, host communities and others.

The stakeholders faulted NEMA for aiding the Petroleum Authority of Uganda (PAU) to violate Uganda's environment and other laws during the Tilenga ESIA public hearing processes.

For instance, PAU and NEMA violated Guideline 5(3) of the 1999 EIA Public Hearing Guidelines that provides against appointment of a conflicted presiding officer. This guideline is meant to guard against bias by the presiding officer that would undermine the quality and public trust in ESIA processes.

PAU and NEMA also organised the public hearings within less than 21 or 45 days contrary to guideline 7(3) of the 1999 EIA Public Hearing Guidelines and Regulation 22 (2) of the 1998 EIA Regulations respectively.

Further, the presiding officer appointed by PAU in consultation with NEMA also denied some youth groups and communities an opportunity to make formal and informal presentations at the public hearing in Nwoya contrary to Regulation 23 (1) of the 1998 EIA Regulations and Guideline 15(1) of the 1999 EIA Public Hearing Guidelines.

The stakeholders we engaged also noted that NEMA failed to give the public the final Tilenga EISA report that reportedly addressed citizens' concerns and proposals.

The concerns and proposals were presented during the 2018 public hearings on the Tilenga ESIA in Buliisa and Nwoya in November 2018. Others were provided through written comments. They were meant to ensure that the planned oil exploitation under the Tilenga project does not endanger biodiversity.

To make matters worse, while NEMA and PAU organised the public hearings and public review based on an ESIA report that covered both environmental and social aspects, the Tilenga certificate of approval issued by NEMA shows that NEMA approved the environmental and not social aspects of the ESIA.

In law, express mention of one thing is an exclusion of those not directly mentioned.

It is therefore clear that approval of the Tilenga ESIA by NEMA was either made in error or it is part of government and companies' plans to conduct oil activities irrespective of their grave impacts on the environment and communities.

In our **Word from CEO and Partners**, we show that the violations of the law during the Tilenga ESIA public hearing processes will undermine environmental conservation amidst oil developments. We also analyse and provide evidence that the conditions that NEMA attached to the EIA certificate of approval for the Tilenga oil project will not save biodiversity and community livelihoods.

We are therefore calling on the public to challenge NEMA's decision on the Tilenga

oil project ESIA in the courts of law. We believe that court will be wise enough to annul the said certificate.

In **our pictorial** section, we show you some of the activities AFIEGO and partners implemented this month. For instance, we partnered with the Buliisa Woman MP to equip selected local council leaders from Bunyoro with knowledge and skills on ESIA to promote implementation, compliance and demand for transparency.

We also organised an expert facilitated training in which district political and technical leaders from 14 districts covered by the Tilenga, Kingfisher and East African Crude Oil Pipeline (EACOP) oil projects were empowered on their roles regarding the conduct and implementation of ESIA processes.

We also implemented other activities which you will read about in the pictorial section.

Finally, in the **lobbying** and **in the media** sections, you will, among others, see the letter 17 CSOs wrote to NEMA under the leadership of AFIEGO. In the letter, we requested NEMA to provide us with the conditions of the Tilenga EIA certificate in addition to the presiding officer's report from the Tilenga ESIA public hearings to assess whether our views were captured by the conflicted presiding officer.

In the media section, you will see some of the 12 newspaper articles written by our staff and partners in April 2019.

We hope you will enjoy the newsletter.

Editorial team:

Diana Nabiruma-Communications Expert Samuel Okulony-Environment Expert Sandra Atusinguza - Community Livelihoods Expert

Balach Bakundane – Design & Layout

Word from CEO & Partners

Approval of Tilenga ESIA is against stakeholder views and national laws: It must be challenged in court

The public hearings on the Tilenga oil project's Environmental and Social Impact Assessment (ESIA) that were held on November 12 and 15, 2018 in Buliisa and Nwoya respectively were the first of their kind in Uganda.

Unlike the first EIA public hearing that was held in Kaiso-Tonya, Hoima district in 2008 on the failed Early Production Scheme (EPS) that focused on assessing only environmental impacts of the planned mini oil refinery, the Tilenga oil project study of 2018 covered environmental and social impacts.

Despite all the gaps in the process, the Tilenga ESIA was a big milestone because for the first time, government appreciated that it was unwise to isolate the social and environmental impacts of a project, especially oil projects.

Unfortunately, NEMA and PAU failed to ensure that the Tilenga ESIA process followed the law to promote enforcement and compliance.

Indeed, speakers at the public hearings and through other fora criticised NEMA and PAU for violating the environmental laws in the Tilenga ESIA process.

Appointment of a conflicted presiding officer, failure to give the public sufficient notice for the hearings, failure to enable the public to access and review a full ESIA report including Resettlement Action Plans (RAPs), illegally denying people who had applied the right to make formal presentations and many other violations of environmental laws were committed during the public hearings.

Despite the violations, the people in Buliisa and Nwoya reviewed and made comments on the Tilenga ESIA report of May 2018.

Among others, the people at the public hearings informed NEMA, PAU and the developer that the ESIA report was faulty because of the following among others:

- The ESIA lacked an Environmental and Social Management Plan (ESMP) to inform NEMA whether the ESMP was enforceable to avoid, minimise or mitigate the identified environment and social impacts of the project. NEMA could not make a decision to protect the environment and communities without the ESMP.
- The ESIA did not have RAPs that would facilitate land acquisition while upholding national laws and international best practices; NEMA could not make an informed decision on it to protect community livelihoods.
- Public participation during the ESIA study was poor and the Tilenga project was disrespectful of communities' cultures; for example, the name Tilenga for the project was said to be a sign of disrespect to the cultures of host communities in Nwoya and Buliisa.
- The ESIA did not provide sufficient measures to conserve the environment from oil threats, lacked information to show how communities would benefit from the project and did not address the problem of increasing human-wildlife conflicts arising from oil activities among others.

In both Buliisa and Nwoya therefore, the majority of the over 2,000 stakeholders including MPs, district leaders, leaders of cultural institutions, host communities, media and CSOs who participated in the public hearings told NEMA one thing: do not approve the Tilenga ESIA.

They said that approving the Tilenga ESIA would allow dangerous oil activities which would destroy critical biodiversity and communities' livelihoods without any clear plan for avoidance and or mitigation.

However, contrary to citizens' views, NEMA went ahead and issued an EIA certificate for the Tilenga oil project. The approval was made on April 15, 2019 in disregard of citizens' views, national laws and international best practices.



Stakeholders at the Tilenga ESIA public hearing in Nwoya in November 2018. Over 2,000 stakeholders participated in the Nwoya and Buliisa public hearings. Majority of those rejected the ESIA and asked NEMA not to approve it.

NEMA disregarded their views and issued an EIA certificate of approval for the Tilenga oil project on April 15, 2019.

GAPS IN TILENGA EIA CERTIFICATE

In an attempt to address public concerns regarding the Tilenga ESIA, NEMA approved the Tielnga ESIA with 12 conditions.

Ostensibly, these conditions are supposed to address the challenges and risks to land, culture, wildlife, environment and others that were highlighted by the public on the Tilenga ESIA report.

However, the conditions will not help to promote environmental conservation and community livelihoods. We show why below.

(a) NEMA issued an EIA as opposed to an ESIA certificate for the Tilenga oil project in disregard of the 2019 National Environment Act. Yet under condition 2 of the Tilenga EIA certificate, NEMA said that the certificate was issued in accordance with the National Environment Act of 2019. The act requires that both environmental and social impacts of any project are considered and approved as one component. Because an EIA certificate was issued, the developer may refuse to implement social mitigations and the public may have no legal recourse. Moreover, it is difficult to understand why the Tilenga ESIA report covered both social and environmental aspects but NEMA chose to approve only the environmental aspects. The public must challenge NEMA to show whether the authority approved the Tilenga ESIA or some other unknown report.

In addition, failures that were seen in the (**b**) Tilenga ESIA public hearings will undermine compliance to the ESIA. While organising the public hearings on the Tilenga ESIA, PAU and NEMA violated laws governing public hearings. This showed that the main objective of the two government bodies was to facilitate the developer to commence oil exploitation irrespective of the Tilenga project impacts. NEMA and PAU were too biased and in a hurry to approve the Tilenga project to the extent that they disregarded laws and appointed a conflicted presiding officer who is the current Senior Presidential Advisor on Oil and Gas and an immediate former Permanent Secretary of the Ministry of Energy. Clearly, such a presiding officer was meant to facilitate oil exploitation irrespective of the impacts. He was the same person who had presided over oil exploration in the Murchison Falls National Park. Perhaps, this is why NEMA hid the presiding officer's report from the public contrary to Article 41 of the Constitution on the right of access to information. No amount of conditions attached to the Tilenga EIA certificate will therefore save our environment and communities because clearly, NEMA and PAU were biased or are under pressure to ensure that the Tilenga oil project continues irrespective of its impacts.

(c) Further, NEMA did not provide the public with the RAPs of the Tilenga project as part of the ESIA report. During the public hearings, NEMA said that RAPs were not part of their mandate. However, NEMA approved the Tilenga project with condition 8 which says that the developer should adequately compensate the project-affected persons (PAPs). However, how will NEMA enforce matters that it has not approved and were not even officially part of the reviewed ESIA report? Moreover, the RAPs were being implemented even before approval of the ESIA report. NEMA wants to erroneously create an impression that the authority can enforce condition 8 on the RAPs which requires adequate payment of compensation to PAPs. However, NEMA cannot and communities will not be saved from inadequate compensation irrespective of conditions attached to the Tilenga EIA certificate.



The NEMA board chairperson, Prof Tlckodri Togboa, displaying the Tilenga EIA certificate. The certificate does not cover social aspects such as land acquisitions. This raises questions as to whether NEMA can enforce matters such as payment of adequate compensation that it has not approved.

In addition, NEMA issued the certificate (d) with conditions that it and district environment officers will find difficult to enforce. Between April 16 and 18, 2019, with our partners, we facilitated district leaders to be trained on their role in ESIA processes. During the training, the district leaders were facilitated to visit an oil facility in Hoima district. During the visit, the officers assessed the facility's compliance to environment laws. After the visit, the district leaders said that they lack the budgets and technology needed to enforce compliance to good environmental practices such as maintenance of good air quality, monitoring pollution of ground water sources and others. Moreover, the district leaders complained that NEMA did not give them feedback before approving the Tielnga ESIA. It is as if NEMA did not want them to play a role in monitoring and enforcement of the Tilenga ESIA. Yet NEMA cannot be everywhere in the oil region to enforce all the conditions without the support of district leaders.



District political and technical leaders in addition to AFIEGO staff during a visit to an oil facility this month. The district leaders said they lack the ESIA budgets and equipment needed to monitor oil impacts on water, air and soil among others.

With its limited staff and lack of financial resources, NEMA would also be hard-pressed to enforce the Tilenga certificate conditions leaving communities at the mercy of developers.

(e) Lack of complete Environmental and Social Management Plan (ESMP): Moreover, condition 9.1 (ii) under the Tilenga EIA certificate raises suspicion that no ESMP was submitted by the developer before the Tilenga ESIA was approved and a certificate was issued. The condition states that the developer must "update, review and submit the ESMP to the Authority for consideration, including the management plans listed in Annex 1 to be in place not later than 30th June, 2020." Without a complete ESMP that shows the budgets, manpower and others needed to implement the mitigations set in the Tilenga ESIA, how did NEMA assess and satisfy itself that the developer and Uganda has the financial, human and technological capacity to implement the mitigations? NEMA did not satisfy itself with the above and issued an EIA certificate for the Tilenga project without evidence that the proposed mitigations will be implemented.

(f) Tranboundary impacts not addressed: In addition, fears of transboundary impacts arising from water abstraction from Lake Albert and construction of a pipeline under River Nile were not addressed. While stakeholders noted that oil spills from the River Nile pipeline crossing could trigger conflict with the Nile riparian countries such as Egypt, NEMA issued an EIA certificate for the Tilenga project when the developer had not put in place a comprehensive oil spill contingency plan. NEMA rushed to issue the certificate and only asked that the developer "puts in place a comprehensive Oil Spill Contingency Plan and Emergency Preparedness and Response Plan" under Condition 8.10.

RECOMMENDATIONS

Overall, NEMA failed to address the environmental and community livelihood concerns that stakeholders had prior to issuing an EIA certificate to the Tilenga oil project developer. What must be done in the face of the above?

i. NEMA should not be allowed to enforce a certificate that will not result in environmental conservation and promotion of community livelihoods. The public must compel NEMA to cancel the certificate.

ii. Should NEMA refuse to cancel the certificate, concerned members of the public and CSOs should take NEMA to court to pronounce the Tilenga ESIA proceedings as null and void. Several violations of the law as shown in the editorial and this article took place during the Tilenga ESIA's public hearings.

iii. In addition, NEMA should provide the public with feedback on how their comments were addressed by the developer. Despite AFIEGO and our partners writing to PAU and NEMA requesting for the presiding officer's report from the public hearings to determine whether stakeholder comments were well captured, PAU and NEMA have refused to provide the report.

iv. Further, in organising public hearings for the Kingfisher and EACOP projects, NEMA must avoid the mistakes and legal violations that characterised the Tilenga ESIA process. NEMA must also make a decision on the ESIAs that conform s to stakeholders' views.

v. Finally, NEMA should complete and operationalize the ESIA and SEA regulations that were being developed so that these can guide ESIA processes for the Kingfisher and EACOP projects. Delays in instituting new environment laws mean that oil processes are implemented amidst legal gaps which will result in failure to protect the environment and community livelihoods.

By AFIEGO and CSO Partners

Pictorial of our activities

AFIEGO AND PARTNERS FACILITATE CSOS TO COMPILE COMMENTS ON THE KINGFISHER AND EA-COP ESIAS



On April 15, 2019, the Shared Resources, Joint Solutions (SRJS) Implementing Committee Uganda (SICU) under the leadership of AFIEGO organised a one-day workshop at Esella Country Hotel in Kampala, Uganda.

The objective of the workshop was to enable CSOs to review and compile comments on the Kingfisher and EACOP ESIAs.

The workshop, which was organised after NEMA invited the public to make comments on the Kingfisher ESIA, enabled the over 36 CSOs leading on oil lobby and advocacy that participated in the workshop to identify gaps and weakness in the Kingfisher and EACOP ESIAs.

Further, the CSOs took stock of the best practices and challenges they experienced during review of the Tilenga ESIA with the view of better influencing the Kingfisher and EACOP ESIAs.



The CSOs resolved to work together to finalise their comments on the ESIAs, sensitise communities on gaps in the ESIAs and to ensure that mistakes that happened in the Tilenga ESIA public review process are not repeated.

The CSOs can be seen during the review workshop that was facilitated by the Netherlands Commission for Environmental Assessment (NCEA).

AFIEGO PARTNERS WITH BULIISA WOMAN MP TO TRAIN COUNCILLORS FOR COMPLIANCE TO ESIA



With the office of the Buliisa district MP, Hon. Norah Bigirwa, AFIEGO organised five trainings to equip councillors from Buliisa with knowledge on environmental conservation tools such as ESIA.

The trainings took place between April 9 and 13, 2019 at Albert Nile Hotel in Buliisa. They enabled district, sub-county, women, youth and councillors representing vulnerable groups to acquire knowledge needed to monitor oil companies for compliance to ESIA.

AFIEGO also gathered the leaders' views on the Kingfisher ESIA.

The trainings attracted over 150 participants including the L.C.V chairperson of Buliisa district, Mr Simon Kinene, L.C.3 chairpersons, women councillors, councillors for Persons with Disabilities (PWDs) and community development officers among others.

Each group of councillors was trained on different days to maximise learning and gathering of comments on the Kingfisher ESIA.

In the photos are councillors from five sub-counties in Buliisa after a training (top picture) on April 10, 2019 and AFIEGO's Mr. Dickens Kamugisha during an April 11, 2019 training with women councillors (bottom picture).

AFIEGO SENSITISES COMMUNITIES TO MAKE COMMENTS ON KINGFISHER ESIA



On April 9, 2019, AFIEGO organised a radio talkshow at Spice FM in Hoima in which we sensitised communities from eight districts in the Albertine Graben to enable them make comments on the Kingfisher ESIA.

During the radio talkshow, AFIEGO informed communities including those in Hoima and Kikuube districts where the Kingfisher project is located of the gaps that CSOs and other ESIA experts had identified in the ESIA.

AFIEGO will continue sensitising communities on the ESIA to gather their views for submission to NEMA during the planned public hearings.

In the photo are AFIEGO staff and the moderator during the radio talkshow.

AFIEGO TRAINS BULIISA YOUTH TO PROMOTE ACCOUNTABILITY FOR OIL REVENUES



On April 13, 2019, AFIEGO sensitised Buliisa youth leaders on their role in promoting environmental and financial accountability in the oil sector.

The training, which took place at Albert Nile Hotel in Buliisa, attracted over 89 youth leaders.

They gained knowledge on the oil royalties due to oil districts, the relevance of the money and how youth can monitor use of the oil royalties to benefit communities.

The youth were also informed that cabinet had taken a decision to sign up for the Extractive Industries Transparency Initiative (EITI). They were trained on the EITI objectives to enable them monitor government for compliance.

In the pictures are the youth leaders and AFIEGO's Ms Sandra Atusinguza during the training.

AFIEGO STRENGTHENS DISTRICT LEADERS KNOWLEDGE ON OIL IMPACTS AS WITNESSED IN ECUA-DOR AND U.S.





In 2018, AFIEGO was supported by our partners to participate in exchange learning visits to Ecuador and the United States of America (USA) to document oil impacts on communities and the environment. We also documented initiatives to promote green energy alternatives in the USA.

On April 18, 2019, AFIEGO used the lessons learnt to strengthen the knowledge of district political leaders and that of natural resources, environment, lands and development officers of oil impacts.

Environmental degradation, pollution of waters and soils, increased disease burden, erosion of cultures and others were some of impacts of oil that were highlighted.

The district leaders recognised that they had to increase their awareness raising efforts as they noted that their peers and communities are largely ignorant about oil impacts on health, food and water security among others.

In the pictures are AFIEGO's Ms Diana Nabiruma and the district leaders during sharing of the lessons.

Lobbying

Last month, the Minister of Lands, Hon. Betty Amongi, informed stakeholders during a national dialogue on land governance challenges held in Kampala that government was amending the Land Acquisition Act of 1965 to address land acquisition challenges in Uganda.

This month therefore, AFIEGO and 16 CSOs issued a communique in which we highlighted land acquisition challenges experienced by communities that the minister did not discuss. We called on the minister to address the challenges through the amendments to the 1965 Land Acquisition Act.

Further, following NEMA issuing an EIA certificate for the Tilenga project, AFIEGO and 16 other CSOs wrote a letter to NEMA requesting for a copy of the Tilenga EIA certificate and its conditions. We also once again requested for the presiding officer's report from the Tilenga ESIA public hearings that were held in November 2018 in Buliisa and Nwoya.

Finally, AFIEGO and 12 other CSOs issued a communiqué through which we called on parliament to use its oversight powers to stop government's abuse of oil revenues. This followed reports that government withdrew Shs 200 billion from the Petroleum Fund to support the 2018/2019 budget prior to parliamentary approval.

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In the media

This month, staff and research associates wrote 12 newspaper articles which were published in the leading newspapers including the New Vision and Daily Monitor. Some of the published articles are captured below.

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Does new land Bill serve our interest?

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Prioritise off-grid renewable energy

EDITOR: More than 600 people in Africa currendy have no access to electricity and other efficient energy sources.

The productivity and health of these people dominish by reliance on traditional fuels and technologies, with women and children suffering the monte. According to the Dyanda National

Propulation and Housing Consus 2014, household electrification rate on grid stood at 5-w and 10.306 for all forms of energy in rural areas, while the average grid pleerification rate duisd at 16m and 20.6% for all forms nauomental

The government of Cganda has gentineed the implementation of several power projects like the construction work on Karuma, Bujagali and Isimiba hydropower projects recently commissioned by the president with the

aim of increasing access to electriand or instructing access to cover any connections. Under the Gobal Energy Transfer Feed in Tartif (GETFET), projects included the 10MW Sorott and Tororo tolar power plants and the 20MW plot solar park in Kabulasula, also commissioned by the President with the same objective of increasing electricity access.

All the projects were about connection to the national grid, but people still pay the normal high electricity tatiffs.

The Government also launched the free electricity connections policy with a target of connecting 500,000 households annually as part of the efforts to increase electricity access across the country but the high electricity tariffs have made small improvements in the project. Electricity access, according to Ministry

of Energy statistics, remains 20% for all forms of energy. normality low at about

Therefore, with our grid solar power available to the people in rural communities, their lives are enriched with

clean air, greater learning environment for the children and a way to make money for the families

This will not only provide power for lighting and cooking, but rural communities will be empowered to start up small businesses which will have a presner impact on poverty eradication. Prioritising off-grid solar power in rural communities will encourage Ugandans who are below the poverty line to etiloy the benefits of renewable energy since it coats less than other energy sources. Petrick Edema, Kampala

PICTURE BY LABRENCE MULDING



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Upcoming events

May 2-3, 2019; Kampala: CSO workshop to review and finalise comments on Kingfisher ESIA

May 7-8, 2019; Hoima: Exchange learning visit to Kyakaboga on impacts of ESIA failures by Buliisa MPs and local council leaders

May 8-10; Hoima and Buliisa: High level and community film screenings of oil impacts in Ecuador and U.S.

May 14, 2019; Kampala: Submission of CSO comments on Kingfisher ESIA to NEMA

May 17, 2019; Kampala and Goma: Petitioning the Ugandan and DRC governments to avoid licensing out of oil blocks in sensitive ecosystems

May 23, 2019; Kasese: Experience sharing via radio talkshow of oil impacts in Ecuador and U.S.

About Africa Institute for Energy Governance (AFIEGO)

Africa Institute for Energy Governance (AFIEGO) is a public policy research and advocacy NGO dedicated to influencing energy policies to benefit the poor and vulnerable. Based in Kampala, Uganda, the organisation was born out of the need to contribute to efforts to turn Africa's energy potential into reality and to ensure that the common man and woman benefits from this energy boom. Through lobbying, research and community education, AFIEGO works with communities and leaders to ensure that energy resources are utilised in a way that promotes equitable development, environmental conservation and respect for human rights.

Our Vision

A society that equitably uses energy resources for socio-economic development

Our Mission

To promote energy policies that benefit poor and vulnerable communities