NEMA, ADDRESS ILLEGATIES & IRREGULARITIES BY TOTAL IN TILENGA EMSPS REVIEW PROCESS

Stakeholders at a public hearing on the Tilenga oil project’s ESIA report in Buliisa district in November 2018. The report was incomplete when the public hearings in Buliisa and Nwoya were held, contrary to environmental laws.

Today, more environmental laws are being violated during the discriminatory review process on the Tilenga oil project’s Environmental and Social Management Plans (ESMPs). This must stop.

In this newsletter:

- NEMA must stop illegalities and irregularities in Tilenga ESMPs review process
- Pictorial of our activities
- Lobbying
- In the media
- Upcoming events
On July 13, 2020, civil society organisations (CSOs) working in the oil and gas sector received a letter from Total. The letter invited the CSOs to review and submit comments on the Tilenga oil project’s 28 draft Environmental and Social Management Plans (ESMPs). The comments are supposed to be submitted to Total, the main operator of the Tilenga project.

The call for comments came after the National Environment Management Authority (NEMA) had issued an Environmental Impact Assessment (EIA) certificate of approval to the Tilenga oil project developers, Total E&P and Tullow Oil.

The certificate was issued on April 15, 2019. Under condition 9.1 (ii) of the certificate, NEMA asked the developers to put in place management plans no later than June 30, 2020. This is because the Tilenga Environmental and Social Impact Assessment (ESIA) report that NEMA approved lacked the management plans. Today, the ESMPs are yet to be submitted to NEMA.

NEMA’s issuance of an EIA certificate of approval to the Tilenga project developers yet the ESIA report on which NEMA based to issue the certificate lacked EMPs violated the laws of Uganda. So did NEMA’s actions of inviting public comments and organising public hearings on the incomplete Tilenga ESIA report in 2018.

Per regulation 19 of the 1998 EIA regulations, NEMA is only supposed to invite the public to make written comments on an ESIA study when the ESIA report is complete. A complete ESIA report includes the mitigation measures, which are elaborated on in an ESMP, to eliminate, minimise or mitigate a project’s impacts, per Regulation 14 of the 1998 EIA regulations.

It is notable that experts whom NEMA invited to review the Tilenga ESIA on its behalf noted that the lack of ESMPs in the Tilenga ESIA made it incomplete. NEMA and the public could not judge whether the mitigation actions identified in the Tilenga ESIA report were implementable to address the identified risks based on the available monetary, human, technical and other resources in the country.

Fast forward to today and NEMA’s violation of the law through approval of the Tilenga ESIA without ESMPs has created a situation in which more irregularities and illegalities can thrive. For instance, Total has invited only a few select members of the public to make comments on the draft Tilenga ESMPs.

Moreover, the letter inviting CSOs to make comments on the draft ESMPs –the ESMPs to be reviewed were attached to the letter- was marked as being “Restricted [for] distribution”. This is unlawful and unacceptable.

The Tilenga project will have immense community, national, transboundary and international impacts. As such, the draft ESMPs need to be widely reviewed. Why then is Total discriminating against other stakeholders from receiving the draft ESMPs and providing comments? This act is contrary to Regulation 12 of the 1998 EIA regulations, which provides for public participation in the development of EIA reports.

Moreover, Total’s invitation for comments on the draft ESMPs raises oversight questions. If the ESMPs were part of the Tilenga ESIA report, they would be subjected to a public review process superintended over by NEMA.
and the Petroleum Authority of Uganda (PAU). This would ensure a modicum of much-needed oversight. In addition, per provisions in the EIA laws that safeguard public participation, affected communities and all Ugandans with interest would be invited to review and make comments on the ESMPs to promote environmental conservation and community livelihoods amidst oil risks and threats.

However, the above are not guaranteed as NEMA failed to ensure that the ESMPs were submitted as part of the ESIA report. This presents a huge problem that must be urgently addressed if the environment and community livelihoods are to be protected.

In our Word from CEO and Partners, we highlight the illegalities and laws that are being violated in the Tilenga ESMP review process that is being superintended over by the Tilenga project developers. We discuss the implications of the illegalities and irregularities and demand that NEMA and the developers undertake a wider public consultation process in conformity with the EIA laws. In addition, we discuss the gaps and weaknesses in the draft Tilenga ESMPs. We invite citizens to understand these gaps so that they can engage NEMA to demand that the gaps are addressed. Failure to do so will result in immense environmental, economic and social impacts.

Away from the above, this month, we engaged in a number of activities that are captured in our pictorial section. For instance, we engaged the Minister of Water and Environment, the Natural Resources Committee (NRC) of parliament and the European Union (EU) delegation to support efforts to protect Bugoma forest from land grabbing, sugarcane and oil threats. In addition, we organised a meeting during which staff and oil-affected communities reviewed the draft Tilenga ESMPs. We also joined other CSOs working in the oil and gas sector to review the draft ESMPs.

Furthermore, we participated in a meeting during which CSOs drew strategies to stop the planned dam at Murchison Falls.

We also supported our civil society partners from the Democratic Republic of Congo (DRC) to sensitise communities, women, youth, fisherfolk, farmers and others on oil impacts through film screenings among others. These and other activities are captured in the pictorial section.

In our lobbying section, we bring you a memorandum of proposals that we and our partners submitted to the Natural Resources Committee of parliament as part of the efforts to save Bugoma forest from land grabbing, sugarcane and oil threats.

Finally, in our in the media section, we bring you some of the over 13 newspaper articles that were written by our staff and partners and published by the media. The articles are part of our public education in addition to lobby and advocacy efforts. We also bring you articles that were published from some of our lobby and advocacy activities such as media interviews.

We hope that you will enjoy the newsletter.

Editorial team:
Diana Nabiruma
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This month, Total invited civil society organisations (CSOs) working in the oil and gas sector to make comments on the 28 draft Environmental and Social Management Plans (ESMPs) for its Tilenga project. The ESMPs were developed by Total to fulfill statutory obligations that require project developers to show how they will avoid, minimise or mitigate the impacts of their projects.

In a letter dated June 30, 2020 and signed by Total’s General Manager, CSOs were given up to July 31, 2020 to have submitted their comments on the ESMPs. It is notable that the letter was received by the CSOs on July 13, 2020. This gave CSOs up to two weeks (14 working days) to review and submit comments on the 28 draft ESMPs. The CSOs were informed that past that deadline, their comments would be considered during future review processes of the ESMPs.

“The management plans will be living documents, subject to regular reviews and updates ... For this reason, any updates not received by the stated timeline could be included in future updates of the documents.”

In addition, Total marked the letter and the ESMPs that were attached to the letter as being under “Restricted Distribution”.

This raised many legal and moral questions: Why would Total restrict the distribution of ESMPs for a project whose immense impacts will be felt at community, national, transboundary and global level? Why aren’t affected communities, including cross-border ones in the Democratic Republic of Congo (DRC), and other stakeholders involved in the Tilenga ESMP review process?

In addition, what does the law provide as regards timelines for reviewing Environmental Impact Assessment (EIA) reports of which ESMPs are a part? Are the 14 working days given by Total to CSOs within the law?

The request for comments by Total also raised questions about NEMA’s role in the Tilenga ESMPs public review process. Would NEMA invite the public and affected communities to review and submit written comments on the ESMPs? How about public hearings? Would NEMA organise any? What does the law say?

**EIA PUBLIC REVIEW PROCEDURES: THE LAW**

The laws that govern over EIA processes in Uganda include the 2019 National Environment Act, 1998 EIA regulations, 1999 EIA Public Hearing guidelines and others. In particular, the 1998 EIA regulations provide for the processes that must be followed in the conduct and public review of EIA studies. Below are key provisions from the regulations.

(a) **ESMPs should be part of ESIA reports:** The 1998 EIA regulations compel developers to have ESMPs as part of their EIA/ESIA studies. Regulation 9(1) of the 1998 EIA regulations provides that where “the Executive Director [of NEMA] finds that [a] project will have significant impacts on the environment and that the project brief discloses no sufficient mitigation measures to cope with the anticipated impacts, NEMA shall require that the developer undertakes an environmental impact study.” Regulation 14(1) of the same law as above provides that “… The environmental impact statement shall provide a description of the environmental effects of the project...
including:
(h) The direct, indirect, cumulative, short-term and long-term effects and possible alternatives [and];

(i) The measures proposed for eliminating, minimising, or mitigating adverse impacts.”

This means that for any EIA or ESIA study to be considered complete, ESMPs with the mitigation actions, implementing bodies, the resources (monetary and human) and others needed to eliminate, minimise or mitigate the adverse impacts of a project must be attached to an ESIA study. This was not done for the Tilenga ESIA.

(b) Consultation of affected communities:
The 1998 EIA regulations also provide for how EIA or ESIA studies are to be conducted. Regulation 10 provides for the conduct of an EIA in accordance with terms of reference developed by the developer in consultation with NEMA and the lead agency.

In conducting the EIA study, a developer is mandated to take all measures necessary to seek the views of the people in the communities which may be affected by the project. This is per Regulation 12(1) of the 1998 EIA regulations. Per Regulation 12(2)(a), the views are supposed to be sought following sensitisation of affected communities, over a period of 14 or more days, on the anticipated effects and benefits of a project in the mass media in a language understood by the affected people.

Thereafter, developers are mandated to hold meetings with the affected communities at convenient venues and times for the affected communities as agreed upon with local council leaders. This is per Regulation 12(2)(c) of the 1998 EIA regulations.

(c). Invitation of written comments from the general public: Following conduct of the EIA study by the developer and submission of an EIA report to NEMA, the following is supposed to be done:

• NEMA is supposed to invite for comments on the EIA study from the lead agency.

• Under Regulation 19(1), NEMA, is mandated to within ten days of receiving the comments of the lead agency, and if satisfied that the environmental impact statement is complete, invite the general public to make written comments on the EIA study.

• The above invitation is supposed to be made in a newspaper having national or local circulation and for a period NEMA considers necessary, per Regulation 19(2).

• Comments from the general public are supposed to be received by NEMA within 28 days from the date of the invitation, per Regulation 19(4).

(d) Invitation of comments from persons affected by the project: In addition, under Regulation 20(1) of the 1998 EIA regulations, NEMA is mandated to invite for comments from persons who are most likely to be affected by the proposed project. The invitation is supposed to be made in a newspaper having local circulation in the project area, other mass media and through the distribution of the necessary information through lower governments.

The individual or collective written comments of the persons likely to be affected by the project are supposed to be received within 21 days from the invitation, per Regulation 20(4).
VIOLATIONS IN TILENGA ESMPS REVIEW PROCESS

Is the Tilenga ESMPs review process in conformity with the law? It isn’t. An analysis of the draft ESMPs review process shows that the following violations of the law are occurring or occurred:

(i) NEMA invited the public to make comments on the Tilenga ESIA report in 2018 when it lacked the ESMPs. This violated regulations 14 and 19 of the 1998 EIA regulations.

(ii) Further, Total has failed to consult the affected communities in Buliisa, Nwoya, Masindi and other districts on the Tilenga ESMPs per Regulation 12 of the 1998 EIA Regulations. Needless to say, the procedures such as sensitising affected communities on the project through the mass media, inviting them for a meeting on an EIA study and others as provided for under Regulation 12 of the 1998 EIA regulations have not be implemented.

(iii) In addition, other than consulting CSOs working in the oil and gas sector, the wider general public is yet to be consulted on the Tilenga ESMPs using the procedures under Regulation 19 of the 1998 EIA regulations.

(iv) Further, an invitation of the affected communities to make comments on the Tilenga ESMPs per Regulation 20(1) of the 1998 EIA regulations has not been made yet. It is uncertain whether the communities will be invited to make comments.

(v) It also remains unclear as to whether NEMA will organise public hearings on the Tilenga ESMPs as is provided for under Regulation 22 of the 1998 EIA regulations. The regulations compel NEMA to call for public hearings where there is a controversy or where a project may have transboundary impacts, as the Tilenga project does.

GAPS AND WEAKNESSES IN TILENGA ESMPS

It is notable that amidst the above violations or uncertainties, the Tilenga ESMPs have gaps and weaknesses. These include the following:

• The ESMPs lack information on the resources (monetary, technical, equipment and others) needed to implement the ESMPs. This means that NEMA and Ugandans won’t have full information on whether the resources needed to avoid the risks of the Tilenga project are available so as to make a decision to approve the ESMPs or not; NEMA makes the decision on the ESMPs.

• Further, the timelines within which the ESMPs must be updated are not stated in most of the ESMPs. This means that citizens will not be able to hold the Tilenga project developers accountable to update the plans.

• In addition, overall, the role that stakeholders such as communities, CSOs, cultural institutions, religious leaders, local governments, government agencies, ministries and others will play in implementation of the ESMPs is not provided in most of the management plans. Without adequate stakeholder participation, the ESMPs may not be implemented.

• Furthermore, the ESMPs lack a sound analysis of Uganda’s laws. The plans merely state the laws without assessing whether the available laws are sufficient to protect the environment amidst oil risks and threats. This is dangerous.

• In addition, the ESMPs do not provide adequate mitigation measures to protect ecosensitive resources and biodiversity from degradation. For instance, the Waste Management Plan allows the developer to temporarily store hazardous waste in
Murchison Falls National Park (MFNP). Wildlife is also not adequately protected under the Site Clearance Plan. Further, wetlands aren’t adequately protected under the Wetland Management Plan.

• Furthermore, the mitigation actions to protect community health under the Community Health, Sanitation, Safety and Security Plan aren’t sufficient. This is because the developers fail to provide for measures that will ensure that health impacts arising from oil pollution, increased car emissions, increased dust and others are avoided, minimised or mitigated.

• In addition, the mitigation measures that are provided under the Gender Management Plan to protect women and youth from the Tilenga land acquisition and other project impacts are insufficient. No measures to protect women from the Gender Based Violence (GBV) that could arise from giving women and men the same powers in land acquisitions are provided.

• Further, while the same plan as above recognises that unmarried youth miss out on compensation due to cultural barriers—children miss out as well because they are not property owners—, no mitigation measures are provided to protect youth’s livelihood rights. Experience from the oil refinery land acquisition and other projects shows that youth’s economic rights and education are negatively affected by compulsory land acquisitions.

In view of the above, the following should be done:

(i) Parliament needs to investigate and penalise the Minister for Water and Environment that supervises NEMA over NEMA’s violation of the EIA regulations. This violation was seen when NEMA invited the public to make written comments and organised public hearings on the Tilenga ESIA in 2018 yet the ESIA lacked ESMPs.

(ii) In addition, in line with Regulation 12 of the 1998 EIA regulations, NEMA should compel Total to consult the affected communities on the Tilenga ESMPs using the procedure that is prescribed under the same regulation.

(iii) Further, when the Tilenga ESMPs are submitted by Total, NEMA should invite citizens and affected communities to submit written comments on the ESMPs as is prescribed under the 1998 EIA regulations. Public hearings should also be held on the ESMPs. Citizens should compel NEMA to implement this recommendation.

(iv) At the moment however, NEMA should halt the ongoing ESMP process by Total until all the cases against the irregularities and illegalities that were seen in Tilenga ESIA public review processes in 2018 are concluded. These cases were filed in the High Court by youth and CSOs.

(v) No oil activities should be allowed to commence until all the court cases and public concerns are resolved.

(vi) Finally, citizens should engage NEMA and Total to address gaps in the Tilenga ESMPs including filing court cases to ensure justice.

By CEO and Partners
AFIEGO AND PARTNERS ENGAGE MINISTRY OF WATER TO SAVE BUGOMA FOREST

On July 15, 2020, AFIEGO and our partners organised a meeting with the Minister of Water and Environment (MWE), Hon. Sam Cheptoris, to draw strategies to save Bugoma forest from land grabbing, sugarcane growing and oil threats.

The meeting was also participated in by the Executive Director of the National Forestry Authority (NFA), Mr. Tom Okurut in addition to representatives of CSOs, tourism operators and environmental journalists. It took place at the Ministry of Water and Environment’s head office in Kampala.

The meeting enabled the above-mentioned stakeholders to draw strategies to save Bugoma forest.

In the photos are Hon. Cheptoris (C), Mr. Okello (5th R) and some of the members of the Save Bugoma Forest Campaign team during and after the meeting.

AFIEGO AND PARTNERS PETITION PARLIAMENT TO SAVE BUGOMA FOREST

AFIEGO and our partners supplemented the above efforts to save Bugoma forest when we petitioned the Natural Resources Committee (NRC) of parliament on July 30, 2020.

In the petition that was received by Dr. Keefa Kiwanuka, the Chairperson of the NRC, AFIEGO and our partners called on parliament to act on government officers who are responsible for the giveaway of the forest.

We also called on parliament to engage NEMA to join efforts to save the forest. We also made other demands to save the forest.

In the photos are Dr. Kiwanuka (C), Hon. Andrew Kiiza Kaluya (2nd R), the vice-chairperson of the NRC, and other members of the NRC while receiving and discussing the petition from the Save Bugoma Forest Campaign team.
To save Bugoma forest from land grabbing, sugarcane growing and oil threats, it is important to engage a wide range of stakeholders who can play various roles to save the forest.

On July 28, 2020 therefore, AFIEGO and the Save Bugoma Forest Campaign team met a delegation from the European Union (EU). The delegation was led by the EU Ambassador to Uganda, H.E. Attilio Pacifici.

The meeting enabled the Save Bugoma Forest Campaign team and the EU delegation to agree on possible solutions to protect Bugoma forest from the threats it is faced with.

In the photos are H.E. Pacifici (C), other EU delegation members and the Save Bugoma Forest Campaign team after the meeting.

On July 16, 2020, AFIEGO and our partners under the Save Bugoma Forest Campaign commissioned research to defend Bugoma forest from the threats it is faced with.

The legal research will enable AFIEGO and our partners to understand the factors responsible for the court losses that NFA has suffered in its defence of Bugoma forest. The research will also enable AFIEGO and our partners to understand the legal options available to save Bugoma forest.

In the photos are some of the Save Bugoma Forest campaign team members during discussions with lawyers and after commissioning the legal research.
AFIEGO AND PARTNERS IN MEETINGS TO REVIEW THE TILENGA ESMPS

On July 28, 2020, AFIEGO organised a meeting during which staff, youth and oil-affected community members reviewed the Tilenga ESMPs.

In addition, between July 29 and 30, 2020, AFIEGO joined other CSOs working in the oil and gas sector during a workshop to review and compile comments on the Tilenga ESMPs.

The weakness and gaps identified in the ESMPs will be submitted to Total and will be used to influence NEMA as it makes a decision on the ESMPs.

In the photos are AFIEGO staff and CSOs working in the oil and gas sector during the review meetings.

AFIEGO SUPPORTS DRC CSOS TO STRENGTHEN COMMUNITIES’ UNDERSTANDING OF OIL IMPACTS

Between June and July 2020, AFIEGO supported our CSO partners in the Democratic Republic of Congo (DRC) to strengthen communities’ understanding of oil and gas impacts.

Our partners organised film screenings and distributed Information, Education and Communication (IEC) materials to communities to raise their awareness on oil impacts.

It is hoped that the lessons gained will be used to safeguard the environment and community livelihoods through the promotion of clean energy.

In the photos are the community members who live around Lake Albert following two film screenings.
This month, AFIEGO worked with the Save Bugoma Forest Campaign team to produce a memorandum containing proposals to save Bugoma forest from destruction. The memorandum was submitted to the Natural Resources Committee of Parliament.

In addition, AFIEGO and our partners under the Save Bugoma Forest Campaign undertook a media campaign as part of efforts to save the forest.
In the media

This month, staff, research associates and youth champions wrote over 13 newspaper articles that were published in the leading newspapers including the New Vision, Daily Monitor and The Observer.

The media also published articles from the media interviews we held this month. Some of the published articles are captured below.

Oil project will increase Uganda’s vulnerability to climate change

The discovery of commercial oil deposits in Uganda was made in 2006. It is anticipated that government will earn significant revenue from the sale of oil. However, government is not taking the climate impacts that will arise even when it is evident that oil is a blessing to the country. In this case, the understanding of EACOP must begin with the nature of the material that the pipeline would transport. It is not a rare variety of crude oil that solidifies at ambient temperatures and has to be heated to at least 50 degrees Celsius through the 1445km length of the pipeline to arrive at port for international export, vastly increasing the environmental and economic costs of transporting it.

Respect women rights on land as primary users

Women have been left out in decision making on land matters.

Chris Opio
Women rights

The constitutional right to own land under Article 37(1) of the Constitution clearly states that land belongs to citizens of Uganda and Article 37(6) prohibits discrimination based on gender and assigns men and women the same status and rights. This women are entitled to land. They are not sufficiently protected by that. The Constitutional Court in its 2014 decision in the case of Baker v. The Minister of Lands, Housing and Urban Development found that the law and the policies governing land did not adequately protect the rights of women and girls.

Electricity inaccessibility does not favour holding digital elections

In any country, Uganda inclusive, elections and other political processes are pivotal to the quality of a country’s governance. Elections can either advance or set back a country’s long-term democratic development as well as regional and global foreign policy priorities. Elections are a key benchmark in any nation-building project, allowing failed states and divided societies to reconstitute a source of commonly accepted authority.

The most vital principle defining credible elections is that they must reflect the free expression of the will of the people as clearly stated in the first article of the 1960 Constitution as amended that “all power belongs to the people who shall exercise their sovereignty in accordance with this Constitution.”

To achieve this, elections should be transparent, inclusive, and accountable, and there must be equitable opportunities to compete in the elections. These broad principles are butressed by several electoral process-related obligations, as well as a number of key rights and freedoms. The electoral cycle approach depicts elections as a continuous, integrated process made up of building blocks that interact with and influence each other, rather than as a series of isolated events.

Looking at the recently released revised electoral roadmap for 2021 General Election, the first of its kind given electoral campaign duration and prohibited mass rallies. The EC has rolled out scientific elections programme that involve contestants campaigning using TV, radio, and other media platforms. This is happening in a Uganda where electricity access has reached nearly 60 percent of the population in urban areas and only 18 percent in rural areas. Relating this to technology that depends on electricity to operate means that 40 percent of urban areas and 82 percent of rural areas will be left out of the electoral process. Therefore, the level of energy accessibility in the country does not favour holding of scientific elections.
Upcoming events

August 5, 2020; Kampala: Submission of letter to NEMA to address irregularities and illegalities in Tilenga Environmental and Social Management Plans (ESMPs) public review process

August 5 to 7, 2020; Hoima: AFIEGO-WEMNET media training on reporting on oil threats

August 7, 2020; Hoima: Meeting with Bunyoro Kitara Kingdom to save Bugoma forest

August 7, 2020; Kampala: Submission of comments on the Tilenga EMSPs to Total E&P

August 12, 2020; Buliisa, Hoima and Kikube: Sensitisation radio talkshow on saving Bugoma forest from land grabbing, sugarcane, oil and other threats

August 14, 2020; Kasese: Petitioning of area MPs to use their meeting with President Museveni and their oversight powers to stop licensing out of Ngaji oil block

August 18, 2020; Kampala: Petitioning the Minister of Energy to deal with the Achwa dam deemed power challenges and the Karuma dam project delays

August 19, 2020; Kampala: Hearing of the court case for cancellation of the Tilenga EIA certificate

August 20-21, 2020; Buliisa and Nwoya: Community sensitisation meetings on the Tilenga ESMPs

August 27-28, 2020; Hoima and Kikuube: Community empowerment meetings to address delayed compensation of the EACOP project-affected communities

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