



November 21, 2019

## **AFIEGO AND PARTNER CSOS' COMMUNIQUÉ CALLING ON NEMA TO ADDRESS GAPS IN 2019 DRAFT ESIA REGULATIONS**

### **1. Introduction**

On November 20, 2019, Africa Institute for Energy Governance (AFIEGO) and our partner civil society organisations (CSOs) organised a meeting to discuss gaps in the 2019 draft Environmental and Social Impact Assessment (ESIA) regulations.

The draft ESIA regulations were developed by the National Environment Management Authority (NEMA) in line with Section 179(2) (c) of the 2019 National Environment Act. The section requires the Minister for Water and Environment to formulate regulations including those covering Environmental and Social Assessments. NEMA acted on behalf of the Minister of Water and Environment to develop the regulations.

The 2019 draft regulations will repeal the 1998 Environmental Impact Assessment (EIA) regulations which do not conform to the 2019 National Environment Act that introduced new aspects such as ESIA.

The November 20, 2019 meeting that was organised by AFIEGO and our partners was attended by 14 CSOs and Community Based Organisations (CBOs) working to promote environmental conservation amidst oil threats.

The CSOs and CBOs included AFIEGO, World Voices Uganda (WVU), Centre for Constitutional Governance (CCG) and Guild Presidents' Forum on Oil Governance (GPFOG). They also included Green Organisation Africa (GOA), National Association of Professional Environmentalists (NAPE) and Oil Refinery Residents Association (ORRA) among others.

During the meeting, the participants thanked NEMA for developing the draft ESIA regulations. They noted that finalising and putting the regulations in place to support implementation of the 2019 National Environment Act is long overdue.

The CSOs noted that failure to have ESIA regulations means that Uganda is relying on the outdated 1998 EIA regulations that do not cover social issues, which is harmful for environmental conservation and protection of communities' rights.

While the CSOs appreciated NEMA, they expressed disappointment in the fact that the 2019 draft ESIA regulations developed by NEMA are worse than the 1998 EIA regulations that are being repealed.

The CSOs noted that the 2019 draft ESIA regulations are aimed at reducing public participation in ESIA processes. They also noted that the 2019 draft ESIA regulations are giving lead agencies in addition to NEMA too much power over citizens to determine the fate of environmental conservation, which is dangerous.

The CSOs made the following observations about the 2019 draft ESIA regulations.

## **2. Observations**

**(a) Allowing lead agencies to approve project briefs will undermine conservation:** The CSOs at the meeting observed that under clause 11(2) of the 2019 draft ESIA regulations, NEMA is giving powers to lead agencies to approve project briefs submitted by developers. The CSOs noted that this was a bad provision as lead agencies are interested in projects to go on whether the projects harm the environment or not. The CSOs observed that this is why Ugandans today see oil projects being allowed in ecosensitive areas including rivers, lakes, forests, wetlands and national parks such as Murchison Falls National Park. The CSOs affirmed that there is need for NEMA to provide oversight by being the one to determine whether a project brief is complete and to approve it if it is.

**(b) Shrinking public participation in ESIA processes:** The CSOs further discussed Clause 20(1) of the 2019 draft ESIA regulations. The clause provides that NEMA "may, 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 be affected by the project, to make oral or written comments on the environmental and social impact statement".

This CSOs noted that the above clause is meant to deny the general public that is not directly affected by a project from making comments on ESIA reports. This is bad and will undermine conservation, the CSOs said.

Moreover, the clause gives NEMA the right to determine whether to invite or not to invite affected communities to make comments on an ESIA report, the CSOs further said.

Giving NEMA discretionary powers to determine whether to involve the public in review of ESIA reports or not is against the tenets of good environmental governance and would hurt environmental conservation, the CSOs said.

**(c) Failure to specify timeframe within which affected communities should submit**

**comments:** Further, the CSOs at the meeting noted that clause 20(4) does not specify the period within which the public in the project area and affected communities must provide comments. Instead, the clause states that, "The public and communities likely to be affected by the project shall provide comments to [NEMA] within the period indicated in the invitation". The CSOs noted that NEMA could abuse this regulation by giving the public too few days to review and submit comments on ESIA reports. The CSOs noted that because ESIA reports are technical and are sometimes very long, the public and communities need ample time to review and submit comments which NEMA may not give based on clause 20 (4) of the draft ESIA regulations.

**(d) Allowing NEMA to either hold or not to hold public hearings on ESIA reports:**

The CSOs at the meeting also discussed Clause 21 (4) of the draft ESIA regulations which states that "The Authority shall, during consideration of the environmental and social impact statement under this regulation, determine whether a public hearing is necessary". The CSOs observed that the above draft regulation allows NEMA to decide to either organise or not to organise public hearings. The CSOs noted that the regulation is giving NEMA too many powers which will be abused to fail environmental conservation.

**(e) Communication of venue for public hearings:**

Further, the CSOs observed that clause 22(4) of the 2019 draft ESIA regulations which provides that "The Authority shall communicate the date and venue of the public hearing at least five days prior to the meeting" was bad. They noted that notifying the public less than a week prior to a public hearing would deny the public and communities time needed to either prepare or save money to participate in public hearings.

**(f) Denying the public access to ESIA documents:**

The CSOs also noted that under clause 51(2), the 2019 draft ESIA regulations contravene Article 41 of the 1995 Uganda Constitution by limiting access to documents pertaining to the ESIA process that are submitted to NEMA. The draft regulations provide that the public will need to pay a fee prescribed by NEMA prior to accessing the documents. Communities are too poor to pay for information, the CSOs noted. They called on NEMA to make documents from ESIA processes such as the presiding officer's report public. The CSOs advised that the documents could be posted to NEMA's website or could be availed at district local government offices.

**(g) The CSOs also noted that by giving persons aggrieved by NEMA's decisions only**

**fourteen** after a decision is made to submit in writing to NEMA a request for reconsideration of the decision, NEMA is denying the public a right to appeal to the high court in case they are aggrieved by NEMA's decision. This provision is made under clause 57 of the 2019 draft ESIA regulations.

### **3. Recommendations**

The CSOs recommended the following:

- (i) The 2019 draft ESIA regulations should provide that NEMA is the only government agency that will approve all project briefs.
- (ii) The 2019 draft ESIA regulations should provide that affected communities and the general public shall be invited by NEMA to make comments on ESIA reports; NEMA should not be allowed to lock out the general public from making comments.
- (iii) The timeframe, say 30 days, within which the public and affected communities will submit written comments to NEMA should be explicitly stated in the 2019 draft ESIA regulations.
- (iv) Moreover, NEMA should not be given the discretion to determine whether to invite or not to invite the public and affected communities to make comments on ESIA reports. The draft ESIA regulations should provide that NEMA shall invite the public to make comments on ESIA reports.
- (v) In addition, the 2019 draft ESIA regulations should provide that the invitation for comments from the public shall be made through the mass media.
- (vi) Further, the 2019 draft ESIA regulations should provide for mandatory public hearings where there is a controversy or where the project may have adverse or transboundary impacts.
- (vii) In addition, the 2019 draft EISA regulations should provide that citizens should be given 21 to 30 days' notice before a public hearing is held.
- (viii) The 2019 draft ESIA regulations should also provide that documents from ESIA processes such as the presiding officer's report are publicized without a fee. The documents should be posted to NEMA's website or should be availed at district local government offices.
- (ix) Finally, the 2019 draft ESIA regulations should give persons aggrieved with NEMA's decision on an ESIA report a right to appeal to the high court within 30 days after NEMA makes a decision.

**Signed by:**



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Chief Executive Officer, AFIEGO

**On behalf of the signatories below:**

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