

CSO MEMORANDUM OF PROPOSALS TO THE NATIONAL ENVIRONMENT MANAGENEMT AUTHORITY (NEMA) ON THE TILENGA PROJECT ESIA

8/November/2018

1. INTRODUCTION

Following NEMA's call for public comments on the Environmental and Social Impact Assessment (ESIA) report for the Tilenga oil project, the undersigned Civil Society organisations (CSOs) reviewed the six volumes and Non-Technical Summary (NTS) of the ESIA report, which is dated May 2018.

The undersigned CSOs appreciate the developer's efforts in compiling the Tilenga ESIA report that generally provides a comprehensive overview of the project description, potential impacts, lists of species and ecosystems, lists of national and international laws, names of projected mitigation plans and strategies and others.

However, we, note with concern that the report still lacks critical content and is therefore incomplete.

In this memorandum which has been prepared by the aforementioned undersigned 15 CSOs working for environmental conservation amidst oil developments, we outline some of the main gaps and weaknesses we identified in all the six volumes of the Tilenga ESIA report beginning with Volume one on policy and regulation analysis; Volume two which discusses the physical environment such as air and climate and Volume three which covers ecological and biological terrestrial vegetation and wildlife as well as aquatic life.

This memorandum also covers Volume four which discusses social and health ecosystems; Volume five which provides conclusions and discusses other matters such as unplanned events, cumulative impact assessment and transboundary issues among others and Volume six which contains appendixes including the environmental and social management plans (ESMP) mitigation checklist. We have also reviewed the NTS of the same report.

We call on NEMA to reject the Tilenga ESIA in its current form due to the gaps and weaknesses discussed below.

2. GAPS, WEAKNESSES AND RECOMMENDATIONS ON THE TILENGA ESIA REPORT

No.	Weaknesses in the ESIA report	Recommendations on what should be done to ESIA report
1.	<p>Concrete measures to protect wildlife and aquatic life from oil risks are missing in the ESIA report: The ESIA indicates that oil activities may result into many risks such as population changes and habits, degradation of ecosystems, disturbances and others. Indeed, the ESIA anticipates that risks such as population influx, overfishing, poaching, poisoning of wildlife, roads that act as barriers and others will potentially occur, endangering wildlife and aquatic life, because of the Tilenga project.</p> <p>However, the current ESIA report does not provide concrete information on laws and management plans needed to prevent, minimise, mitigate and compensate for the above dangers when they happen and before they affect wildlife and aquatic life. The report does not indicate that there is an Integrated Management Plan (IMP) as required by the Strategic Environmental Assessment (SEA) report of 2013 that is supposed to be used to plan for the entire landscape.</p> <p>Further, through the ESIA, the project developers promise to undertake risk assessment studies before they start drilling for oil. NEMA is expected to make a decision without full knowledge of</p>	<p>The current ESIA is insufficient to help NEMA make the right decision that will guarantee conservation of wildlife and aquatic life from oil impacts. A complete ESIA that provides detailed information on key conservation aspects such as risk assessment of tampering with the bed of River Nile, risk of operating without an Integrated Management Plan for the Murchison Falls landscape, application of the mitigation hierarchy and others is required.</p> <p>Further, the ESIA should have information on the amount of finances required for implementing management plans and monitoring and evaluation to ensure compliance with commitments. Future intentions cannot be a basis for decisions to be made today on conservation.</p> <p>The current ESIA lacks all this information and for this and other reasons, the report should be rejected.</p>

	<p>the risks of the Tilenga project because information from the promised risk assessment studies is lacking in the current ESIA.</p> <p>It should also be noted that the Environmental Impact Assessment (EIA) Regulations of 1998 do not allow NEMA to make decisions based on promised processes but rather on current information in the available ESIA.</p> <p>To make matters worse, the ESIA report does not quote any provision of the national laws that will guide and ensure compliance with such risk assessments, wetland management plans, plans to protect Ramsar Sites, forest corridor plans, enhanced park protection and others.</p>	
2.	<p>Social and economic aspects or community benefits of the Tilenga project: The ESIA report provides good information on the potential social and economic impacts of oil on communities. However, it lacks concrete information on the mitigation measures for the cited impacts. For example, the ESIA highlights risks such as community displacements, loss of business opportunities, loss of jobs, changes in social fabric, loss of tourism revenues, food insecurity due to over population, loss of agricultural land and others.</p> <p>However, when it comes to mitigation, the ESIA fails to provide concrete information on the financial and operational risks of the planned mitigation plans. Instead, the ESIA avoids the hard task of putting in place complete plans. It relies on soft documents such as the Land Acquisition and Resettlement Framework</p>	<p>NEMA should reject the report and ask the developer to provide complete mitigation plans and strategies including the ESMP to protect communities.</p> <p>The complete plans and strategies should be part of the ESIA report.</p>

	<p>(LARF), a document that is neither a law nor a regulation that can be enforced for compliance.</p> <p>The ESIA is also full of future promises including plans to put in place an influx management strategy to deal with in-migration, stakeholder engagement plan, grievance management plans, community content strategy, human-animal conflict strategy and others. Without information in the ESIA relating to costs, timeframe for formulation and implementation in addition to a monitoring and evaluation strategy, these could be seen as empty promises. The developer has given himself/herself a discretion of determining how, when and where those promised plans and strategies will be put in place and managed.</p>	
3.	<p>Information on impacts of unplanned events is lacking: The ESIA report lacks detailed plans such as the Oil Contingency Plan, the Emergency Response Plan and others that are necessary for mitigating impacts arising from emergencies. This means that if the ESIA report was to be endorsed in its current form, that decision would be made in absence of guarantees to protect sensitive ecosystems such as Lake Albert, River Nile and others from possible pollution. Neither the oil company nor government would have any workable plan to respond to unplanned emergencies.</p>	<p>The ESIA report should be rejected as it does not provide information on how the developer will deal with emergencies. It does not indicate whether there is even a fund to cater for emergency costs.</p>
4.	<p>The ESIA report lacks waste management plans: The ESIA report does not show how the treated water will be managed. Will it be released directly into the rivers and lakes? Further, the hierarchy of reporting in case of waste management challenges is</p>	<p>The ESIA report should be rejected for lack of a clear waste management plan.</p>

	<p>unclear. The requirement to report to the nearest jurisdiction is not provided for. In addition, the role of local governments which can enforce and monitor compliance and are some of the most impacted when there is a problem in waste management is downplayed by the ESIA.</p>	
5.	<p>Grievance handling mechanism: The ESIA report lacks a grievance handling plan that is costed and has timeframes to support implementation.</p>	<p>The ESIA report should be rejected because it does not provide a complete grievance handling plan to address anticipated grievances.</p>
6.	<p>The ESIA lacks a clear analysis of the strengths and weaknesses of Uganda’s environmental legal framework: The ESIA claims that it was undertaken based on the 1995 National Environment Act and the 1998 EIA Regulations. However, the above laws cover only environmental impact assessment. While the laws do not provide against assessing the social impacts, the ESIA does not in its analysis of the legal framework point out how the social impacts can be legally prevented and ensure compliance in the absence of a law governing social impacts. The ESIA is also contrary to the original Terms of Reference (ToR) that were approved by NEMA. The ToRs were on conducting an EIA but the developer conducted an ESIA, which is good but it will create compliance challenges as noted above.</p> <p>Further, the ESIA recognises that the government of Uganda is currently undertaking a reform of environmental laws including repealing and putting in place a new national environment law and EIA regulations to especially cover new aspects such as oil development, ESIA, Strategic Environment Assessment (SEA),</p>	<p>NEMA should reject the Tilenga ESIA and the developer should be asked to provide more information on the risks of allowing oil production under the Tilenga project based on laws that are outdated, obsolete and do not cover all areas of the sector such as mitigation hierarchy, climate change and others.</p> <p>The developer should explain why the project cannot wait until the new environment laws are enacted. The lead agency is part of government and if they so wish, they can put the laws in place within a short time to pave way for accurate decisions.</p> <p>The above is especially important because any decision based on a weak legal framework will negatively affect the reputation of both NEMA and the oil companies.</p>

	<p>mitigation hierarchy principles, climate change, contingency plans and others.</p> <p>While the above is the case, the ESIA report does not provide information on the risks of commencing the Tilenga oil project amidst weak national environmental laws and how the future new laws would apply to the current oil contracts.</p> <p>It is not enough for the ESIA to list all the national and international laws without assessing the relevance of depending on old and weak laws to run oil production or applying future new oil laws to existing oil contracts. This approach poses both reputational and operational risks.</p>	<p>The developer should therefore provide sufficient information on the gaps and weaknesses in the existing environmental laws and risks of making oil production decisions for the Tilenga project before relevant new environmental laws are in place.</p> <p>These laws include the National Environment Bill of 2017, the Uganda Wildlife Bill of 2018, the Climate Change Bill, the draft EIA Regulations of 2017, the draft SEA Regulations of 2017, the draft National Environment (Audit) Regulations and the draft National Environment (Noise Standards and Control) Regulations.</p> <p>Others include the draft National Environment (Waste Management) Regulations, the National Environment (Minimum Standards for Management of Soil Quality) Regulations, the National Environment (Standards for Discharge of Effluent into Water or on Land), the draft Air Quality Control Regulations, the Draft Industrial and Consumer Chemicals Control Regulations, the Draft Oil Spill Prevention, Control and Management Regulations and the Draft Petroleum Waste Management Regulations.</p> <p>We believe that the country should not talk about oil production before the above and other relevant laws are enacted.</p>
7.	<p>Land acquisition, resettlement, and compensation challenges not addressed: While the ESIA report indicates that the</p>	<p>NEMA should reject the ESIA report as it does not provide clear information on the different options available for</p>

<p>developer is ready to compensate the Project-Affected-Persons (PAPs), information from communities does not reflect this commitment. During consultations in the host districts, we discovered that PAPs are not satisfied with the Resettlement Action Plan (RAP) process. They are complaining about the compensation rates being used.</p> <p>Further, there is currently no law in the country that helps the PAPs to negotiate and determine what fair, adequate and prompt compensation is. The absence of this law leaves the PAPs at the mercy of government and oil companies yet experience of PAPs from other affected communities shows that government and companies pay unfair, inadequate and delayed compensation.</p> <p>In the Tilenga project, some PAPs are already threatening to petition authorities including the Minister of Lands, area MPs and others to help them secure fair and adequate compensation. Others are planning to sue government in the High Court of Uganda over unfair compensation, testifying to lack of consensus on what adequate and fair compensation is.</p> <p>The ESIA report also mainly focuses on cash and physical relocation as the only forms of compensation yet there are better options such as leasing where PAPs would retain legal ownership of their land while government and the developer would get equitable interests. This would allow PAPs to enjoy economic benefits throughout the project period through rent payments. They would then get back their land after oil has been exhausted.</p>	<p>compensation beyond cash and physical relocation that would benefit PAPs throughout their lives.</p> <p>The ESIA also does not, in practical terms, clearly provide for a framework through which the PAPs who will lose commercial opportunities, cultural ties, jobs, access to social services such as water, health centres and others will be compensated. NEMA should reject the ESIA report on this basis.</p>
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	<p>The ESIA report also does not recognise that currently, there is no domestic law clearly providing for the conduct and implementation of Resettlement Action Plan (RAP) processes in the country. The development and implementation of RAPs remain at the discretion of government and developers who compulsorily acquire land on government's behalf. This must be remedied.</p> <p>Indeed, the current ESIA report does not discuss legal gaps that cause compensation challenges and lacks crucial proposals that would improve the lives of the communities.</p>	
8.	<p>Failure to evaluate the impacts of oil development on other landscape activities such as tourism, agriculture and others: While the report recognises that many oil activities in the Tilenga area cover Murchison Falls National Park (MFNP), Lake Albert, River Nile, community land and other critical biodiversity areas, there is insufficient information on the anticipated impacts on tourism which greatly depends on the high biodiversity values in the region. The report does not clearly provide information on the value of these high biodiversity resources compared to the value of oil. Without these comparisons, it becomes impossible for NEMA or Ugandans to understand why they should allow oil in the area with all the listed potential impacts. It should be noted that MFNP is one of the most popular tourist attractions in the country. The park is visited by 30% to 40% of tourists who come to Uganda. Plans to increase the park's annual tourism revenues to UGX 12 billion by 2022 compared to UGX 5.4 billion that was generated from the same park in 2011 already exist. Unfortunately, the report does not provide information on such</p>	<p>NEMA should reject the ESIA report and ask the developer to undertake a detailed optional analysis. Information on the social and economic values of the Tilenga area's biodiversity and how these will be affected by oil production will show that we can conserve and generate huge benefits from other options in the Tilenga area for eternity compared to oil that will last for 25 to 30 years and may leave our environment in ruins.</p>

	trade-offs that should help Ugandans to decide whether they should forego oil and maintain their biodiversity for tourism.	
9.	<p>No information about the economic cost of Tilenga project: Information from government indicates that Uganda will have to borrow over \$15 billion to finance oil developments including developments under the Tilenga project. However, the ESIA report does not provide detailed information regarding the social and environmental implications of a poor country like Uganda borrowing more than half of her current GDP to produce oil that may generate only \$1.8 billion to 2 billion per year for the next 25 to 30 years. Yet Uganda has an opportunity to generate more revenues from sectors such as tourism if the environment is not degraded by oil.</p>	<p>NEMA should reject the ESIA report and ask the developer to provide more information on the economic impact of the Tilenga project and its risks on conservation.</p> <p>The report should further provide information on Uganda's huge debt burden and its implications on the country's capacity to conserve our biodiversity in the Tilenga project area and beyond.</p> <p>Experience shows that highly indebted poor countries have little or no flexibility to conserve their environment as they struggle to find revenues to meet their debt obligations. The Tilenga project will increase the national debt and therefore compromise conservation efforts.</p>
10.	<p>Transboundary impacts not addressed: Since the discovery of oil in 2006, conflicts between Uganda and DRC have increased. In particular, kidnappings and killings of fishermen on lakes Edward and Albert continue to be reported in the media in both countries. Yet the current ESIA report does not provide sufficient information on the implications of the Tilenga oil project on the future relations between Uganda and DRC considering that the Albert waters will be used for both the Tilenga and Kingfisher oil projects. The report also does not indicate the potential impacts of increased tensions between the two countries to oil developments.</p>	<p>The ESIA report should be rejected for lacking key information on the transboundary implications of the Tilenga oil project. It is not enough for the ESIA to highlight that the Tilenga project is 15km away from the nearest border point with the DRC yet the project plans to draw water from Lake Albert whose borders have remained contentious between the two countries for decades.</p> <p>The report should therefore assess and provide information on how both countries can enforce and comply with agreements on sharing of transboundary resources such as the 2007 Uganda-DRC Ngurdoto Agreement.</p>

11.	<p>Lack of baseline information on fisheries resources: The ESIA report lacks baseline information on the fisheries resources that are available in the water resources to be affected by the Tilenga project. Without the above information, it would be difficult to measure the impact of the project on the fisheries resources for mitigation and others.</p>	<p>The report should be rejected because it does not provide baseline information on available fisheries resources to enable monitoring and management of impacts.</p>
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3. CONCLUSION








We appreciate the developer’s vision and promise to maintain MFNP and its surroundings in the right state as if oil had not been exploited in the area. However, the current ESIA report does not provide any evidence that the developer is ready and has the practical means and resources to achieve the vision of conservation. We therefore ask NEMA to reject the ESIA report.

Thank you,

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 Mr Dickens Kamugisha,
 CEO, AFIEGO (On behalf of the signatories below).

SIGNATORIES:

No	Name of organisation	Logo
1.	Africa Institute for Energy Governance (AFIEGO)	
2.	National Association of Professional Environmentalists (NAPE)	

3.	The Environmental Conservation Trust of Uganda (ECOTRUST)	
4.	Citizens Concern Africa (CICOA)	
5.	Action Coalition on Climate Change (ACCC)	
6.	South Western Institute for Policy and Advocacy (SOWIPA)	
7.	World Voices Uganda	
8.	Guild Presidents' Forum on Governance	
9.	Buliisa Rural Development Organisation (BIRUDO)	
10.	Navigators for Environment and Development (NOVODA)	
11.	Oil Refinery Residents Association (ORRA)	
12.	Water Governance Institute	
13.	Greenwatch Uganda	
14.	Great Lakes Institute for Strategic Studies (GLISS)	
15.	Civic Response for Environment and Development	