

AFRICA INSTITUTE FOR ENERGY GOVERNANCE

Plot 1288, Space Centre Building, Buwala Nalera, P.O. Box 34913, Kampala - Uganda
Tel: +256 414 571597, Mob: +256 782 407085, Email: afiego@afiego.org, Website: www.afiego.org



May 13, 2022

Hon. Sam Cheptoris,
The Minister of Water and Environment,
Kampala (U).



Dear Sir,

RE: REQUEST TO REVIEW THE 2020 NATIONAL ENVIRONMENT (ENVIRONMENTAL AND SOCIAL ASSESSMENT) REGULATIONS

The above refers

Greetings from Africa Institute for Energy Governance (AFIEGO) and our undersigned partners. AFIEGO and our partners are Ugandan civil society groups working to promote good governance in Uganda's environmental and other sectors.

First and foremost, allow us to appreciate your ministry's environmental conservation efforts. The work that you are doing is commendable.

Today, we write to you with the objective of requesting your ministry, the entity that is responsible for policy formulation in Uganda's water and environment sector, **to reform the National Environment (Environmental and Social Assessment) regulations, 2020.**

We are also calling on parliament to use its oversight powers to ensure that the Ministry of Water and Environment reforms the regulations.

This is because the regulations are, in various critical respects, far worse than the 1998 Environmental Impact Assessment (EIA) regulations. The 2020 National Environment (Environmental and Social Assessment) regulations replaced the 1998 EIA regulations.

The 2020 regulations give the National Environment Management Authority (NEMA) wide-ranging discretionary powers to decide whether or not to allow the public to participate in Environmental and Social Impact Assessment (ESIA) processes.

At a time when corruption rates are high and risky oil as well as sugarcane- and rice-growing activities are being permitted in protected or ecosensitive areas amidst public resistance, the discretionary powers conferred on NEMA stand to further worsen the environmental and human rights violations in Uganda.

Below, we discuss the gaps and weaknesses in the 2020 National Environment (Environmental and Social Assessment) regulations and make recommendations to address them.

GAPS

(a) Regulation 14 provides a formula for the consideration of terms of reference (ToR) for an ESIA study.

Of concern to us is regulation 14 (3) (a) which provides that NEMA “shall, on receipt of the terms of reference submitted ..., consider the terms of reference and **may**, within seven days of receipt consult a lead agency or persons likely to be affected by the project, where applicable”.

The regulation gives NEMA the discretion to determine whether to consult a lead agency or the public on any ToR for an ESIA study.

Giving NEMA discretionary powers under this regulation could undermine the necessary scrutiny from lead agencies and the public to ensure that ToR are water-tight to protect the environment and community livelihoods.

(b) Regulation 16 provides a formula through which stakeholders are to be consulted during the environmental and social impact study. Regulation 16 (1) provides that “The developer shall, in undertaking the environmental and social impact study, carry out consultations with relevant stakeholders, communities likely to be affected by the project and the public.”

Regulation 16 (3) (b) provides that “The developer shall, in carrying out the consultations [with stakeholders] ... (b) give advance notice of the proposed consultation, **with a minimum notice of seven days**”.

The minimum notice of seven days is too little as stakeholders need time to research and prepare to effectively participate in the consultations.

(c) Regulation 19 provides the procedure for consultation with a lead agency. Particularly, regulation 19 (3) provides that NEMA “shall, on receipt of the environmental and social impact statement of the lead agency under subregulation (2), submit the statement to the relevant lead agency for comment.” Regulation 19 (5) provides that “The lead agency shall submit comments to [NEMA] within twenty-one days of receipt of the environmental and social impact statement or such a **lesser period** as [NEMA] may specify in writing.”

Regulation 19(5) gives NEMA the discretion to determine the lesser period within which a lead agency is supposed to provide comments on an ESIA study. This is problematic as short

timeframes undermine lead agencies' capacity to effectively review and provide comments on ESIA reports, which are often long in nature.

- (d) Regulation 20 provides for the procedure through which public consultations** on an ESIA study are to be undertaken. Regulation 20 (1) provides that NEMA “or the technical committee on environmental and social assessment in respect of a project by [NEMA], **may**, within ten days of receipt of a complete environmental and social impact statement, invite the **public in the area where 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.”

Regulation 20(1) precludes the general public from reviewing and making comments on an ESIA study. Yet some projects say those in the oil and gas sector not only affect the project host communities but the wider Ugandan public and general global population through their climate change impacts.

Moreover, the same regulation provides NEMA with discretionary powers to determine whether to consult project host communities on an ESIA study or not. This discretion could be abused, thereby undermining environmental conservation efforts.

- (e) Regulation 20 outlines the procedure through which project host communities** are to be invited to submit their comments on an ESIA study by NEMA.

Regulation 20 (3) provides that “The invitation for comments under subregulation (1) **may** be published— (a) in a newspaper having nation-wide circulation or a newspaper having local circulation in the area where the project is proposed to be located; (b) through announcements on radio, television or other relevant multimedia channels with local coverage; (c) on the website of the Authority and other relevant websites; or (d) by distributing the necessary information about the proposed project through local authorities.”

Again, this regulation gives NEMA discretionary powers to determine whether to invite project host communities to submit comments on an ESIA study through the mass media. If NEMA decides not to use the mass media to issue the invitation as empowered to under this regulation, project host communities may not be made aware of the consultation process and could fail to submit their views on an ESIA study.

- (f) Regulation 20 (4) provides that** “The public and communities likely to be affected by the project shall provide comments to the Authority within the period indicated in the invitation.”

Giving NEMA discretionary powers to determine how much time to give the public and communities to submit comments on an ESIA report could see NEMA give the public limited time, thereby undermining the public's capacity to submit views on ESIA studies.

- (g) Regulation 21 that provides the procedure for consideration of an ESIA by NEMA** notes that “The Authority or the technical committee on environmental and social assessment in

respect of a project by the Authority, shall consider the complete environmental and social impact statement submitted by the developer under regulation 18(1), taking into account— (c) comments from the public and communities likely to be affected by the project after consultation under regulation 20, **if any**”.

This regulation makes it look like it is OK for the public not to submit comments on ESIA studies. Yet without public participation in environmental conservation efforts, these efforts are bound to fail.

- (h) Regulation 21 (4) provides that** “The Authority or the technical committee on environmental and social assessment in respect of a project by the Authority, shall, during consideration of the environmental and social impact statement under this regulation, determine whether a public hearing is necessary.”

This regulation gives NEMA discretionary powers to determine whether public hearings for projects are necessary. This power could be abused. Already, in 2020, NEMA failed to organise public hearings on Hoima Sugar Ltd’s Kyangwali Mixed Land Use project in Bugoma forest. This is despite the project being controversial and being located in an environmentally-sensitive area.

- (i) Regulation 21 (5) provides that** “**In determining whether a public hearing is necessary** under subregulation (4), the Authority or the technical committee on environmental and social assessment in respect of a project by the Authority, shall take into account— (a) the accuracy and validity of the predictions made in the environmental and social impact statement; (b) the comments made to the Authority under regulation 19(5) or 20(4); (c) any public interest in the project; (d) any identified controversy associated with the proposed project, including on social and cultural values; (e) the gravity and significance of potential impacts of the project; (f) inter-district or transboundary impacts of the proposed project; or (g) any other factors the Authority may consider necessary”.

Unlike the 1998 EIA regulations, this regulation fails to provide that public hearings shall be mandatory for projects that meet the above requirements. This will fail public participation in ESIA processes.

- (j) Regulation 22 (4) provides that** “**The Authority shall communicate the date and venue of the public hearing** at least five days prior to the meeting”. This time is too little to enable communities to review ESIA studies and save money and prepare to participate in public hearings.

- (k) Finally, Regulation 22 (7) provides that** “**The presiding officer** shall give the developer an opportunity to make a presentation, to respond to any comments made at the public hearing and to provide further information relating to the project.” This regulation fails to make provisions for the public to submit their views at public hearings.

RECOMMENDATIONS

Given the above, we are calling the on Minister of Water and Environment to, through a public consultative process, urgently reform the National Environment (Environmental and Social Assessment) regulations, 2020.

Parliament should use its oversight powers to ensure that the minister reforms the regulations to protect the environment and communities. The following reforms should be made:

- i. Regulation 16 (1) should provide that a minimum notice of 14 days shall be given to communities by the developer prior to consultation on an ESIA study.
- ii. Regulation 19(5) should be revised to provide that the lead agency shall submit comments to NEMA within 21 days of receipt of the environmental and social impact statement.
- iii. Regulation 20 (1) should be revised to provide that NEMA shall within ten days of receipt of a complete environmental and social impact statement, invite the general public and communities likely to be affected by the project, to make oral or written comments on the environmental and social impact statement.
- iv. Regulation 20(3) should provide that the invitation for comments under subregulation (1) shall be published in the mass media.
- v. Regulation 20(4) should provide the specific timeframe that NEMA shall give the public to submit views on an ESIA report. This timeframe should not be below 21 days.
- vi. Regulation 21(5) should make it mandatory for NEMA to organise public hearings for projects that generate public interest, are controversial and have significant or transboundary impacts.
- vii. Regulation 22(4) should provide that NEMA shall communicate the date and venue of the public hearing at least 14 days prior to the meeting.
- viii. Finally, Regulation 22(7) should provide the procedure through which the public shall submit its views on an ESIA study at public hearings.

We thank you for your cooperation in advance.

Yours faithfully,

.....
Dickens Kamugisha,
Chief Executive Officer, AFIEGO

SIGNATORIES

1. Africa Institute for Energy Governance (AFIEGO)
2. Environment Governance Institute
3. Centre for Citizens Conserving Environment management (CECIC)
4. Youth for Green Communities (YGC)
5. African Initiative on Food Security and Environment (AIFE)
6. Tasha Research Institute Africa
7. Oil and Gas Residents' Association (ORGHA)
8. East African Crude Oil Pipeline Host Communities (EACOPHC)
9. Oil Refinery Residents Association (ORRA)
10. Women for Green Economy Movement Uganda (WoGEM)
11. South Western Institute for Policy and Advocacy (SOWIPA)
12. Friends with Environment in Development (FED)
13. Guild Presidents' Forum on Governance (GPFOG)
14. Strategic Response on Environmental Conservation (STREC)

CC:

- The Executive Director, NEMA
- The Chairperson, Natural Resources Committee of Parliament